

THE COMPANIES ACTS 1985 TO 1989

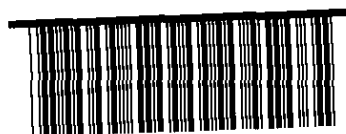
ARTICLES OF ASSOCIATION

of

DEVAR FLOORING LIMITED

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MACROBERTS
Solicitors
Glasgow



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THE COMPANIES ACTS 1985 TO 1989

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION*

of

DEVAR FLOORING LIMITED**

1. **DEFINITIONS AND INTERPRETATION**

1.1 In these articles:-

Act means the Companies Act 1985 and any statutory re-enactment or modification thereof from time to time;

Acting in Concert shall have the meaning given to it in the City Code on Takeovers and Mergers which is in force on the Adoption Date;

Adoption Date means the date of adoption of these articles;

Associated Transferee means any person who, pursuant to article 5.2, acquires Shares from:-

- (a) the Leaving Member in question; and/or
- (b) the trustees of a Family Trust of that Leaving Member;

Business Day means a day (other than a Saturday or a Sunday) on which the Scottish clearing banks are open for over-the-counter business in Scotland;

* Adopted by resolution dated _____, 2000.

** Incorporated on June 23, 1978.

Compulsory Purchase Notice means a notice served on a Minority Shareholder by the Company pursuant to article 5.7.1;

Controlling Interest means an interest in Shares conferring, in aggregate, more than 50% of the total voting rights in general meeting in, substantially, all circumstances;

Directors means the directors of the Company from time to time (or any duly constituted committee of them) and **Director** means any director of the Company;

Fair Value means the fair value of each Share comprised within a Transfer Notice as at the Valuation Date as shall be:-

- (a) agreed between the Proposing Transferor and the Company; or
- (b) failing agreement pursuant to (a) above within a period of 21 days after the Valuation Date, certified, in writing, by a Valuer as being, in its opinion, the fair value, as at the Valuation Date, as between a willing seller and a willing buyer provided that, in determining the fair value of any such Shares, the Valuer shall:-
 - (i) ignore any reduction in value which may be ascribed to the Shares in question by virtue of the fact that they may:-
 - (1) represent a minority interest; and/or
 - (2) be subject to a restriction on transfer in terms of these articles; and
 - (ii) take into account any bona fide offer made by a third party to purchase Shares on or before the Valuation Date;

Family Trust means, in relation to any member, a trust of which he is the settlor and which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of:-

- (a) that member; and/or
- (b) a Privileged Relation of that member;

and under which no power of control over the voting powers conferred by any Shares comprised in the trust property is capable of being exercised by any person other than:-

- (i) the trustees;
- (ii) that member; and/or
- (iii) a Privileged Relation of that member;

Group means the Company, any holding company or parent undertaking of it, any subsidiary or subsidiary undertaking of it and any other subsidiary or subsidiary undertaking of any such holding company or parent undertaking (including, for the avoidance of doubt, a holding company, parent undertaking, subsidiary and/or subsidiary undertaking constituted in a jurisdiction outwith the United Kingdom, however described in that jurisdiction);

Leaving Member means any member or former member who, having been a director and/or employee of one or more members of the Group, becomes neither a director nor an employee of any member of the Group, for whatever cause;

Minority Shareholder means a member or other person entitled to Shares who, following a general offer made pursuant to article 5.6, has not sold and/or contracted to sell his Shares to the Third Party Purchaser in question;

Original Member means a person who is a member of the Company on the Adoption Date or a permitted transferee (whether directly or indirectly) of such a member in terms of article 5.2;

Privileged Relation means, in relation to any member, that member's:-

- (a) spouse or widow/widower;
- (b) child (including any step-child and any adopted child); and
- (c) grandchild;

Proposing Transferor means any member or other person entitled to Shares who serves or is deemed to serve a Transfer Notice on the Company;

Qualifying Shares means Shares other than those which, at the date of the offer in question, are:-

- (a) held by the Proposing Transferor concerned; and/or
- (b) subject to another Transfer Notice;

Register means the register of members of the Company;

Settlor means the settlor in relation to the Family Trust in question, whether created during life or on death;

Shares means shares in the capital of the Company from time to time and **Share** means any one of them;

Specified Shares means the Shares first referred to in article 5.6;

Specified Price means a price per Share equal to that offered, paid or payable by the proposed transferee (in cash or otherwise) for the Specified Shares plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified Shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Specified Shares (and, in the event of disagreement, the calculation of the Specified Price may be referred, by any party, to a Valuer for determination);

Table A means Table A scheduled to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985;

Third Party Purchaser means a bona fide third party who is not Acting in Concert with an Original Member;

Transfer Notice means a written notice served on the Company pursuant to article 5.3.1;

Valuation Date means the date on which a Transfer Notice is served or deemed to be served on the Company;

Valuer means:-

- (a) the then auditor of the Company; or
- (b) in the event of the Proposing Transferor so requiring, an independent chartered accountant appointed by agreement between the Directors and the party concerned or, failing such agreement within 5 Business Days of the dispute arising, appointed on the application of either party by the then president of the Institute of Chartered Accountants of Scotland.

- 1.2 For the purposes of article 4, **trust** includes any right in respect of any Shares other than an absolute right thereto in the registered holder thereof for the time being or, in the case of transmission of Shares, such other rights as are mentioned in Table A.
- 1.3 The singular includes the plural and vice versa and reference to any gender includes all genders.
- 1.4 Words and expressions defined in the Act and/or Table A shall, save where otherwise defined in these articles, bear the same meanings herein.
- 1.5 For the purpose of article 5.6, **transfer** and **transferee** shall include, respectively, the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment.
- 1.6 Each Valuer will act as an expert and not as an arbiter and his determination (including as to liability for costs) shall be final and binding for all purposes.

2. **MODIFICATIONS TO TABLE A**

- 2.1 The regulations contained in Table A, insofar as not excluded or varied by or inconsistent with these articles, shall apply to the Company and be deemed to be incorporated herein.
- 2.2 Regulations 5, 50, 64, 73 to 77 inclusive, 80, 94 to 98 inclusive and 101 of Table A shall not apply to the Company.

2.3 The following regulations of Table A shall be modified:-

- 2.3.1 regulation 1 by the deletion of the words "the seal" means the common seal of the company";
- 2.3.2 regulation 6 by the deletion of the words "shall be sealed with the seal" and by the substitution therefor of the words "shall be signed by two Directors or by one Director and the Secretary";
- 2.3.3 regulation 18 by the addition of the words "and all expenses of the Company incurred by reason of such non-payment" at the end of the first sentence thereof;
- 2.3.4 regulation 23 by the deletion of the words "and, unless the share is fully paid, by or on behalf of the transferee";
- 2.3.5 regulation 35 by the deletion of the words "otherwise than out of.....issue of shares" and the substitution therefor of the words "whether out of distributable profits of the Company, the proceeds of a fresh issue of shares and/or otherwise";
- 2.3.6 regulation 41 by the insertion of the words "if convened upon the requisition of members be dissolved; in any other case it shall" after the word "shall" where it first appears;
- 2.3.7 regulation 46 by the deletion of:-
 - (a) the words "two members" where they appear in paragraph (b) and the substitution therefor of the words "one member";
 - (b) the word "or" at the end of paragraph (b); and
 - (c) the whole of paragraph (c) and (d);
- 2.3.8 regulation 78 by the deletion of the words "and may also determine the rotation in which any additional directors are to retire";
- 2.3.9 regulation 79 by the deletion of the second and third sentences; and
- 2.3.10 regulation 88 by the deletion of the fifth sentence thereof.

3. **ISSUE OF SHARES**

- 3.1 Subject to article 3.2, the Directors shall have authority, for the purposes of section 80 of the Act, to allot relevant securities up to an aggregate nominal amount equal to the authorised share capital of the Company on the Adoption Date and that at any time or times during the

period of five years from such date or at any time thereafter if allotted pursuant to an offer or agreement entered into during such period.

- 3.2 Any Shares which the Directors resolve to issue shall, in the first instance, be offered in writing to the members of the Company at that time and that in proportion to the aggregate number of Shares held by each of them. Such offer shall:-

- 3.2.1 specify the number of Shares for which the member concerned is entitled to subscribe;
- 3.2.2 notify that member that, if he wishes to subscribe for Shares in excess of his proportion, he should, in his reply, state how many additional Shares he wishes to subscribe for; and
- 3.2.3 limit the time (being not less than 14 days from the date of the offer) within which the offer, if not accepted in whole or in part, shall be deemed to be declined.

If any member does not accept his proportion in full, the unaccepted Shares shall be used for satisfying any claims for additional Shares. If there shall be insufficient unaccepted Shares to satisfy, in full, all such claims, the unaccepted Shares shall be distributed amongst the members making such claims as nearly as may be in proportion to the aggregate number of Shares held by each of them. Subject to the foregoing, the Directors may dispose of any unaccepted Shares as they think fit.

- 3.3 In the event of any difficulty arising by reason of an offer of Shares involving fractions, the Directors may settle the same as they think expedient and, in particular, they may:-

- 3.3.1 ignore fractions altogether; or
- 3.3.2 dispose of the Shares represented by such fractions as they think fit and distribute any net proceeds thereof among the members entitled to the same, rateably in accordance with the rights of such members to the Shares concerned.

- 3.4 Pursuant to section 91(1) of the Act, the application to the Company of sections 89(1) and 90(1) to (6) inclusive of the Act shall be excluded.

4. **TRUSTS**

The Company shall be entitled (but, save in the case of a Family Trust, shall not be bound) to recognise, in such manner and to such extent as it may think fit, any trusts in respect of any Shares. Notwithstanding any such recognition, the Company shall not be bound to see to the

execution, administration or observance of any trust, whether express, implied or constructive, in respect of any Shares and shall be entitled to recognise and give effect to the acts and deeds of the holders of such Shares as if they were the absolute owners thereof.

5. **TRANSFER OF SHARES**

5.1 Except for a transfer pursuant to article 5.2, the Directors may, in their absolute discretion and without assigning any reason therefor, refuse to register any transfer of any Share and the right to transfer a Share is restricted accordingly.

5.2.1 Subject to article 5.7.3, any member may, at any time, transfer (or, by will, bequeath or otherwise dispose of on death) all or any Shares held by him (other than Shares acquired by him pursuant to this article 5.2.1, any Shares acquired by him in connection with such Shares (whether directly or indirectly) and any Shares which then form the subject matter of an outstanding Transfer Notice) to:-

- (a) a Privileged Relation; or
- (b) trustees to be held upon a Family Trust.

5.2.2 Where Shares are held by trustees upon a Family Trust pursuant to article 5.2.1:-

- (a) on any change of trustees, those Shares may be transferred to the new trustees of that Family Trust;
- (b) those Shares may be transferred at any time to:-
 - (i) the Settlor; and/or
 - (ii) any person to whom, under article 5.2.1, the same could have been transferred by the Settlor if he had remained the holder thereof; and
- (c) if any Shares cease to be held upon a Family Trust (otherwise than as a consequence of a transfer authorised by article 5.2.2(b)), the trustees shall, forthwith, *serve a Transfer Notice in respect of those Shares.*

5.3.1 If a member or other person entitled to Shares wishes to transfer all or any of his Shares (other than pursuant to article 5.2 or article 5.7), he shall serve a written notice on the Company (which notice shall not be revocable except with the agreement of the Company) stating the number of Shares to be transferred. Such notice shall constitute the Company his agent for the sale of such Shares (in accordance with this article 5.3) at the Fair Value.

5.3.2 With a view to finding a purchaser for the Shares comprised in a Transfer Notice, the Company shall offer such Shares at the Fair Value to the members then holding Qualifying Shares and that, as nearly as may be, in proportion to the aggregate number of Qualifying Shares held. Such offer shall:-

- (a) specify the number of Shares which the member concerned is entitled to purchase;
- (b) notify that member that, if he wishes to purchase Shares in excess of his proportion, he should, in his reply, state how many additional Shares he wishes to purchase at the Fair Value; and
- (c) limit the time (being not less than 14 days from the date of the offer) within which such offer, if not accepted in whole or in part, shall be deemed to be declined.

If all such members do not accept their proportions in full, the unaccepted Shares shall be used for satisfying any claims for additional Shares. If there shall be insufficient unaccepted Shares to satisfy, in full, all such claims, the unaccepted Shares shall be distributed amongst the members making such claims as nearly as may be in proportion to the aggregate number of Qualifying Shares held by each of them.

5.3.3 The Company shall make such arrangements as regards the finding of a purchaser (including the Company) for any Shares not accepted or claimed in terms of article 5.3.2 as it shall think just and reasonable, save that the price payable therefor shall not be less than the Fair Value.

5.3.4 If, pursuant to article 5.3.2 and/or 5.3.3, the Company finds any person willing to purchase any or all of the Shares comprised in a Transfer Notice and/or is, itself, willing to purchase any or all of them and, in either case, gives notice in writing thereof to the Proposing Transferor within 90 days after the Valuation Date, the Proposing Transferor shall be bound to complete the transfer of such Shares to the purchaser within 7 days following whichever is the latest of:-

- (a) the date on which the Company so notifies him;
- (b) the date on which he is served with stock transfer forms in respect of the Shares being purchased; and
- (c) if the purchaser is the Company, the date upon which the Company complies, in full, with all applicable statutory requirements;

and the purchaser concerned shall be bound to complete the purchase within that 7 day period.

- 5.3.5 If the Proposing Transferor makes default in transferring any Shares to a purchaser thereof in accordance with article 5.3.4, the Directors shall be entitled to nominate one of their number to receive the purchase money, to execute a transfer on behalf of the Proposing Transferor, to cause the name of the purchaser to be entered in the Register as the holder of the Shares and to do any other act and/or thing and/or execute any other document required to effect the purchase of the Shares and the Company shall be entitled to hold the purchase money in trust for the Proposing Transferor. The receipt of the Company for the purchase money shall be a good discharge to a purchaser and, after the purchaser's name has been entered in the Register in respect of the Shares in question and/or, in the case of a purchase by the Company, after any of the Shares have been cancelled, the validity of the proceedings shall not be questioned by any person.

5.3.6 If:-

- (a) the Company fails to find a purchaser for all of the Shares comprised in a Transfer Notice and/or fails, for any reason, to give written notice to the Proposing Transferor in terms of article 5.3.4; and/or
- (b) a purchaser fails to complete his purchase (otherwise than as a consequence of a failure on the part of the Proposing Transferor) within the period of 7 days referred to in article 5.3.4;

the Proposing Transferor shall, at any time within 90 days thereafter, be entitled to:-

- (i) dispose of the Shares which are not so purchased but at a price no less than the Fair Value; or
- (ii) if the Transfer Notice given by the Proposing Transferor relates to all the Shares held by him, require that the Company be wound up forthwith.

In the event of the Proposing Transferor being entitled to do so and exercising his rights under (ii) above, he shall, within the said period of 90 days, give notice in writing to the Company requiring that the Company be wound up forthwith and, upon receipt by the Company of such notice, each Director and/or member shall be bound to exercise all rights competent to him to this end.

- 5.4.1 Subject to article 5.4.2, a Leaving Member and any Associated Transferee (or the personal representatives of the Leaving Member or any Associated Transferee, as the case may be) shall, for all purposes under these articles, be deemed, on the date on which the Leaving Member becomes neither a director nor an employee of any member of the Group, to have served a Transfer Notice on the Company in respect of all Shares registered in the name of and/or beneficially owned by the Leaving Member and the Associated Transferee, respectively and, without prejudice to the foregoing generality, the provisions of article 5.3 shall apply, *mutatis mutandis*, to any such Transfer Notice.
- 5.4.2 Article 5.4.1 applies to Shares of an Associated Transferee (or the personal representatives of an Associated Transferee, as the case may be) only to the extent that they have been acquired by that Associated Transferee from the Leaving Member in question and/or the trustees of a Family Trust of that Leaving Member pursuant to article 5.2 (or in connection with Shares so acquired).
- 5.5 If any person is registered as the holder of a Share pursuant to regulation 30 of Table A (whether as the personal representative of a deceased member or as the trustee in sequestration of a bankrupt member), he shall, for all purposes under these articles, be deemed to have served a Transfer Notice on the Company in respect of that Share on the fifth day following service on him of a written notice to that effect issued by the Directors and, without prejudice to the foregoing generality, the provisions of article 5.3 shall apply, *mutatis mutandis*, to any such Transfer Notice.
- 5.6. No sale or transfer of the legal or beneficial interest in any Shares shall be made or registered if that sale or transfer would result in a person who is not an Original Member obtaining a Controlling Interest in the Company (whether alone or Acting in Concert with another) unless, *before the transfer is lodged for registration, the proposed transferee has made an offer* (stipulated to be open for acceptance for 28 days) to purchase all the other Shares at the Specified Price together, in each case, with a sum equal to any arrears and/or accruals of dividends (and all interest payable thereon) to be calculated to the date of the offer. If a member does not accept that offer, in writing, within 28 days of it being made, he shall be deemed to have rejected it.

- 5.7.1 If, following a general offer made pursuant to article 5.6, a Third Party Purchaser acquires a Controlling Interest, the Third Party Purchaser may, by serving written notice on the Company within 60 days of such acquisition, require the Company (as its agent) to serve a written notice on each Minority Shareholder intimating that he is to have his Shares acquired compulsorily and that on the terms set out in such general offer. The Company shall serve such a notice on each Minority Shareholder forthwith following service on it of such written notice by the Third Party Purchaser.
- 5.7.2 Any transfer pursuant to a Compulsory Purchase Notice shall not require the recipient of that notice to give a Transfer Notice.
- 5.7.3 No sale or transfer by a Minority Shareholder of the legal or beneficial interest in any Shares shall be made or registered following the service on him of a Compulsory Purchase Notice unless such sale or transfer is to the Third Party Purchaser who has acquired a Controlling Interest.
- 5.7.4 The Third Party Purchaser and the Minority Shareholder concerned shall be bound to complete the sale and purchase of all Shares forming the subject matter of a Compulsory Purchase Notice within 21 days from the date of service of that Compulsory Purchase Notice. If the Minority Shareholder makes default in transferring any Shares to the Third Party Purchaser in accordance with this article 5.7, the Directors shall be entitled to nominate one of their number to receive the purchase money, to execute a transfer on behalf of the Minority Shareholder, to cause the name of the Third Party Purchaser to be entered in the Register as the holder of the Shares and to do any other act and/or thing and/or execute any other document required to effect the purchase of the Shares and the Company shall be entitled to hold the purchase money in trust for the Minority Shareholder. The receipt of the Company for the purchase money shall be a good discharge to the Third Party Purchaser and, after the Third Party Purchaser's name has been entered in the Register in respect of the Shares in question, the validity of the proceedings shall not be questioned by any person.
- 5.7.5 Once it has served written notice on the Company pursuant to article 5.7.1, the Third Party Purchaser shall be bound to effect the purchase of all Shares held by Minority Shareholders in accordance with this article 5.7.

6. DIRECTORS

- 6.1 The minimum number of Directors shall be two. There shall be no maximum number of Directors.
- 6.2 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 determining whether a quorum is present at the meeting at which such contract or arrangement is under consideration.
- 6.3 All or any of the Directors may participate in a meeting of the Directors by means of a conference telephone or any other communication equipment which allows all of those participating in the meeting to hear each other. A Director so participating shall be deemed to be present, in person, at the meeting and, accordingly, shall be entitled to vote and shall be taken into account in determining whether a quorum is present. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is at the time of the meeting.
- 6.4 Any person may be appointed as a Director and any Director may be removed from such office, at any time, by:-
- 6.4.1 the holder of a majority of the Shares carrying the right of attending and voting at general meetings of the Company sending to (or leaving at) the registered office of the Company, a written notice effecting such appointment or removal (and such appointment or removal shall take effect from the date and time specified in such notice (which shall not be earlier than the date and time of the notice) or, if no date and time is specified, from the date and time of the notice); or
- 6.4.2 the Company in general meeting.

7. BORROWING POWERS

The Directors may exercise all of the powers of the Company to borrow money, to mortgage or charge its undertaking, property and uncalled capital (or any part thereof) and, subject to section 80 of the Act, to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party.