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2346109

THE COMPANIES ACT 1985

A PRIVATE COMPANY LIMITED BY SHARES

ALTERED  
MEMORANDUM OF ASSOCIATION

OF

BORG-WARNER AUTOMOTIVE TURBO SYSTEMS LIMITED<sup>1</sup>

1. The Company's name is Borg-Warner Automotive Turbo Systems Limited.
2. The Company's registered office is to be situated in England and Wales.
23. The Company's objects are:
  - (a) To carry on all or any kind of engineering business and the business of designers, manufacturers, importers, exporters, consultants for and dealers of and in all types and descriptions of plant, machinery, equipment, apparatus, buildings, fixtures, fittings and tools for the erection, conversion, installation and assembly of steel work, metal work of all kinds, buildings and other structures of any and every kind.
  - (b) To buy, sell, hire, manufacture, repair, let on hire, alter, improve, treat and deal in all apparatus, machines, materials and articles of all kinds which are capable of being used for the purposes of the above mentioned businesses or any of them or likely to be used by the customers of any such businesses.
  - (c) To carry on any other business, whether manufacturing or otherwise, which may seem to the Company capable of being conveniently carried on in connection with the above businesses or any of them, or calculated, directly or indirectly, to further or facilitate the objects of the



<sup>1</sup> The Company changed its name by Special Resolution passed on 13th March 1989 from Three Hundred and Forty-Sixth Shelf Trading Company Limited to Schwitzer (Europe) Limited. Certificate of Incorporation on Change of Name was issued on 22nd March 1989. By written resolution pursuant to section 381A of the Companies Act 1985 the name of the Company was changed from Schwitzer (Europe) Limited to Borg-Warner Automotive Turbo Systems Limited on 4th June 1999.

<sup>2</sup> As amended by Special Resolution passed on 28th March 1989.

SLAUGHTER AND MAY  
35 BASINGHALL STREET  
LONDON EC2V 5DB

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Company, or to enhance the value of or render more profitable any of the Company's property.

- (d) To adopt such means of making known the businesses or any of them or the products of the Company as may seem expedient, and in particular by advertising in the Press, by circulars, by purchase and exhibition of works or art or interest, by publication in books and periodicals, and by granting prizes, rewards and donations, and to carry on and conduct prize and competition schemes or any scheme or arrangement of any kind, either alone or in conjunction with any other person, firm or company, whereby the above businesses or any of them may be promoted or developed, or whereby the Company's products may be more extensively advertised and made known.
- (e) To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, easements, rights, privileges, concessions, patents, patent rights, licences, secret processes, machinery, plant, stock-in-trade, and any real or personal property of any kind necessary or convenient for the purpose of or in connection with the Company's business or any branch or department thereof.
- (f) To enter into any arrangement with any governments or authorities, supreme, municipal, local or otherwise, of any country, and to obtain from any such government or authority all rights, concessions and privileges that may seem conducive to the Company's objects or any of them.
- (g) To borrow or raise or secure the payment of money for the purposes of or in connection with the Company's business.
- (h) To mortgage and charge the undertaking and all or any of the real and personal property and assets, present or future, and all or any of the uncalled capital for the time being of the Company, and to issue at par or at a premium or discount, and for such consideration, and with such rights, powers and privileges as may be thought fit, debentures, mortgage debentures or debenture stock, payable to bearer or otherwise, and either permanent or redeemable or repayable and collaterally or further to secure any securities of the Company by a trust deed or other assurance.
- (i) To issue and deposit any securities which the Company has power to issue by way of mortgage to secure any sum less than the nominal amount of such securities, and also by way of security for the performance of any contracts or obligations of the Company or of its customers or other persons or corporations having dealings with the

Company or in whose businesses or undertakings the Company is interested, whether directly or indirectly.

- (j) To receive money on deposit or loan upon such terms as the Company may approve, and to guarantee the obligations and contracts of any person, firm or company.
- (k) To make advances to such persons with or without security and upon such terms as may seem expedient.
- (l) To enter into guarantees and contracts of indemnity of all kinds with any person, firm or company (including without prejudice to the generality of the foregoing any Holding Company or Subsidiary Company (as the same are defined by Section 736 of the Companies Act 1985) of, or any other company associated in any way with the Company), either with or without the Company receiving any consideration or advantage, direct or indirect, from giving any such guarantee or indemnity and so as to be an independent object of the Company to give indemnities of all kinds and to guarantee the performance of the obligations of others including the payment of capital or principal together with any premium of and any dividends or interest on or other payment in respect of loans, credits, stocks, shares, or securities or other obligations of any nature whatsoever and without limiting the generality of the foregoing obligations for the repayment of money and/or discharge of liabilities both present and future, actual or contingent and insofar as the same is not prohibited by law, obligations and liabilities incurred in connection with or for the purpose of the acquisition of shares in the Company or in any company which is for the time being the Company's Holding Company as defined by Section 736 of the Companies Act 1985 due, owing or incurred to bankers or any other person of any company, firm or person, and in particular, (but not by way of limitation) of the Company's Holding Company or any company which is contemplated to become the Company's Holding Company or a subsidiary, as defined by Section 736 of the Companies Act 1985 of the Company or of the Company's Holding Company, or otherwise associated with the Company in business or of any company, firm or person which the directors of the Company shall think appropriate and to create mortgages, charges or liens upon all or any of the property or assets of the Company (both present and future) including its uncalled capital in support of such guarantees or otherwise as security for any such obligations and liabilities of others.
- (m) To establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation schemes or funds for the benefit of and to give or procure the giving of donations, gratuities, pensions, allowances or

emoluments to any persons who are or were at any time in the employment or service of the Company, or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary company, or who are or were at any time directors or officers of the Company or of any such other company as aforesaid, or any persons in whose welfare the Company or any such other company as aforesaid is or has been at any time interested, and the wives, widows, families and dependants of any such persons, and also to establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or of any such other company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid, either alone or in conjunction with any such other company as aforesaid.

- (n) To draw, make, accept, endorse, negotiate, discount and execute promissory notes, bills of exchange and other negotiable instruments.
- (o) To invest and deal with the moneys of the Company not immediately required for the purposes of the business of the Company in or upon such investments or securities and in such manner as may from time to time be determined.
- (p) To pay for any property or rights acquired by the Company, either in cash or fully or partly paid-up shares, with or without preferred or deferred or guaranteed rights in respect of dividend or repayment of capital or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another, and generally on such terms as may seem expedient.
- (q) To accept payment for any property or rights sold or otherwise disposed of or dealt with by the Company, either in cash, by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred or guaranteed rights in respect of dividend or repayment of capital or otherwise, or in debentures or mortgage debentures or debenture stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and generally on such terms as may seem expedient and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.
- (r) To enter into any partnership or joint-purse arrangement or arrangement for sharing profits, union of interests or co-operation with

any company, firm or person carrying on or proposing to carry on any business within the objects of this Company, and to acquire and hold, sell, deal with or dispose of shares, stock or securities of any such company, and to guarantee the contracts or liabilities of or the payment of the dividends, interest or capital of any shares, stock or securities of and to subsidise or otherwise assist any such company.

- (s) To establish or promote or concur in establishing or promoting any other company whose objects shall include the acquisition and taking over of all or any of the assets or liabilities of or the promotion of which shall be in any manner calculated to advance directly or indirectly the objects or interests of this Company, and to acquire and hold or dispose of shares, stock or securities of and guarantee the payment of the dividends, interest or capital of any shares, stock or securities issued by or any other obligations of any such company.
- (t) To purchase or otherwise acquire and undertake all or any part of the business, property, liabilities and transactions of any person, firm or company carrying on business which this Company is authorised to carry on, or the carrying on of which is calculated to benefit this Company or to advance its interests, or possessed of any property suitable for the purpose of the Company.
- (u) To sell, improve, manage, develop, turn to account, exchange, let on rent, royalty, share of profits or otherwise grant licences, easements and *other rights in or over, and in any other manner deal with or dispose of* the undertaking and all or any of the property and assets for the time being of the Company for such consideration as may be deemed fit.
- (v) To amalgamate with any other company whose objects are or include objects similar to those of this Company, whether by sale or purchase (for fully or partly paid-up shares or otherwise) of the undertaking, subject to the liabilities of this or any other such company as aforesaid with or without winding-up or by sale or purchase (for fully or partly paid-up shares or otherwise) of all or a controlling interest in the shares or stock of this or any other such company as aforesaid, or by partnership, or any arrangement of the nature of partnership, or in any other manner.
- (w) To pay out of the funds of the Company all expenses which the Company may lawfully pay of or incidental to the formation, registration and advertising of or raising money for the Company and the issue of its capital including brokerage and commissions for obtaining applications for or taking, placing or under-writing shares, debentures or debenture stock, and to apply at the cost of the Company to Parliament for any extension of the Company's powers.

- (x) To distribute among the Members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.
- (y) To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees or otherwise.
- (z) To do all such other things as are incidental or conducive to the above objects or any of them.

The objects specified in each of the paragraphs of this Clause shall not, except where the context expressly so requires, be in any way limited or restricted by the terms of any other paragraph and shall be construed as separate, distinct and independent objects capable of being performed and carried out separately, distinctly and independently of each other.

- 4. The liability of the members is limited.
- 5. The Company's share capital is £100 divided into 100 shares of £1 each.<sup>3</sup>

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<sup>3</sup> By an Ordinary Resolution of the Company passed on 28th March 1989 the Authorised Share Capital of the Company was increased to £20,000,000 by the creation of 19,999,900 Ordinary Shares of £1 each.

THE COMPANIES ACT 1985

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A PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

OF

BORG-WARNER AUTOMOTIVE TURBO SYSTEMS LIMITED<sup>1</sup>

REGULATIONS OF THE COMPANY

1. The articles comprise these Articles and, save insofar as it is modified by these Articles, Table A (which expression means that Table as prescribed by regulations made pursuant to the Companies Act 1985 and in force on 1st August 1985).
2. Regulations 8, 24, 54, 60-62 (inclusive), 65-69 (inclusive), 73-80 (inclusive), 87, 90, 100 and 118 in Table A do not apply to the company.

SHARE CAPITAL

3. The share capital of the company is £100 divided into 100 shares of £1 each.<sup>2</sup>
4. (1) Subject to the provisions of paragraph (2) of this Article the directors are hereby authorised to exercise the powers of the company to offer, allot, agree to allot, grant any right to subscribe for, or to convert any security into, and otherwise dispose of any of the shares in the capital of the company for the time being unissued to such persons (including any directors) at such times and generally on such terms and conditions as they think proper but subject to any direction to the contrary given by the company in general meeting and to the terms on which any shares are created or issued and provided that no shares shall be issued at a discount contrary to the Act. Section 89(1) of the Act is hereby excluded.

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<sup>1</sup> By a Special Resolution of the company passed on 13th March 1989 the name of the company was changed from Three Hundred and Forty-Sixth Shelf Trading Company Limited to Schwitzer (Europe) Limited. Certificate of Incorporation on Change of Name was issued on 22nd March 1989. By written resolution pursuant to section 381A of the Companies Act 1985 the name of the Company was changed from Schwitzer (Europe) Limited to Borg-Warner Automotive Turbo Systems Limited on 4th June 1999.

<sup>2</sup> By an Ordinary Resolution of the Company passed on 28th March 1989 the Authorised Share Capital of the Company was increased to £20,000,000 by the creation of 19,999,900 Ordinary Shares of £1 each.

(2) The directors may not in the exercise of the authority conferred on them by paragraph (1) of this Article allot relevant securities if

- (a) the amount of such allotment, added to the amount of relevant securities previously allotted pursuant to such authority, would exceed £98; or
- (b) a period of five years has elapsed from the date of incorporation of the company and the allotment is not made pursuant to an offer or agreement made by the company during such period.

(3) The authority of the directors conferred on them by paragraph (1) of this Article to allot relevant securities may be varied revoked or renewed by ordinary resolution of the company in accordance with the provisions of the Act.

### **VARIATION OF RIGHTS**

5. The rights attached to any existing shares shall not (unless otherwise expressly provided by the terms of issue of such shares) be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith or subsequent thereto.

6. In Regulation 3 in Table A there shall be inserted after the words "provided by the articles" the following words, namely: "or by special resolution".

### **SHARE CERTIFICATES**

7. In Regulation 6 in Table A there shall be inserted after the word "seal" the following words, namely: "or the official seal of the company".

### **LIEN**

8. The company shall have a first and paramount lien on all the shares registered in the name of any member (whether solely or jointly with others) for all moneys due to the company from him or his estate, whether solely or jointly with any other person (whether a member or not) and whether such moneys are presently payable or not. The company's lien on a share shall extend to all dividends or other moneys payable thereon or in respect thereof. The directors may at any time resolve that any share shall be exempt, wholly or partly, from the provisions of this Article.

### **CALLS ON SHARES**

9. The directors may accept from any member the whole or any part of the amount remaining unpaid on any share held by him notwithstanding that no part of that amount has been called up.



### TRANSFER OF SHARES

10. The directors may, in their absolute discretion and without assigning any reason therefor, refuse to register the transfer of a share whether or not it is fully paid.

### TRANSMISSION OF SHARES

11. There shall be inserted at the end of Regulation 31 in Table A the following proviso, namely: "provided always that the directors may at any time give notice requiring any such person to elect either to become or to have another person registered as the holder of the share and if the requirements of the notice are not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with".

### PROCEEDINGS AT GENERAL MEETINGS

12. In Regulation 41 in Table A there shall be inserted after the words "the directors may determine" the following words, namely: "and if at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, one member present in person or by proxy or (being a corporation) by its duly authorised representative shall be a quorum".

13. A poll may be demanded by any member present in person or by proxy or (being a corporation) by its duly authorised representative. Regulation 46 in Table A shall be construed accordingly.

### VOTES OF MEMBERS

14. Subject to any rights or restrictions as to voting attached to any shares by the terms on which they were issued or by or in accordance with the articles or otherwise, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by its duly authorised representative not being himself a member 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) is present by its duly authorised representative shall have one vote for every share of which he is the holder.

15. The instrument appointing a proxy shall be in writing in any usual or common form and shall (except in the case of an appointment by telex or facsimile copy of an appointment otherwise complying with the requirements of this Article) be executed by the appointor or his attorney duly authorised in writing or in such other form as the directors may approve. A proxy need not be a member of the company.

16. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is executed, or a notarially certified copy of such power or authority, shall be deposited or received at the office (or at such other place in the

United Kingdom as is specified for that purpose in any instrument of proxy sent by the company in relation to the meeting) not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or handed to the chairman of the meeting or adjourned meeting, and, in default, the instrument of proxy shall be invalid.

#### **ALTERNATE DIRECTORS**

17. (1) A director may by written notice signed by him (except in the case of an appointment by telex or a facsimile copy of an appointment otherwise complying with the requirements of this Article) or in such other manner as the directors may approve appoint another director or any other person to be and act as his alternate director. Any such appointment of a person who is not a director shall not be effective unless and until such appointment is approved (i) by a resolution of the directors, or (ii) by a majority of the directors attending for the purposes of the meeting at which the alternate director proposes to be present as such.

(2) Every alternate director shall (subject to his giving to the company an address within the United Kingdom at which notices may be given to him) be entitled to notice of meetings of the directors or of committees of directors, and to attend and vote as a director at any such meeting at which the director appointing him is entitled to attend and vote but is not personally present and generally at such meeting to exercise all the powers, rights, duties and authorities of the director appointing him. Every alternate director shall also be entitled, in the absence from the United Kingdom of the director appointing him, to sign on his behalf a resolution in writing of the directors.

(3) An alternate director shall neither be an officer of the company nor entitled to any remuneration from the company for acting as an alternate director.

(4) A director may by written notice signed by him (except in the case of a revocation by telex or a facsimile copy of a revocation otherwise complying with the requirements of this Article) and deposited or received at the office or in such other manner as the directors may approve at any time revoke the appointment of an alternate director appointed by him.

(5) If a director shall cease to hold the office of director for any reason, the appointment of his alternate director shall thereupon automatically cease.

#### **DELEGATION OF DIRECTORS' POWERS**

18. The following words shall be added at the end of the first sentence of Regulation 72 in Table A, namely: "and may also appoint to any such committee persons who are not directors provided that the chairman and a majority of such committee shall be directors".

### RETIREMENT, APPOINTMENT AND REMOVAL OF DIRECTORS

19. (1) A member or members holding a majority in nominal value of the issued shares for the time being conferring the right to vote at general meetings of the company shall have power from time to time and at any time to appoint any person or persons as a director or directors and to remove from office any director howsoever appointed. Any such appointment or removal shall be effected by an instrument which shall be in writing and shall (except in the case of an appointment or removal by telex or a facsimile copy of an appointment or removal otherwise complying with the requirements of this Article) be executed by the member or members making the same or by their duly authorised attorneys or in such other manner as the directors may approve, and shall take effect upon such appointment or removal being deposited or received at the office or otherwise communicated to the company at the office or being handed or otherwise communicated to the chairman of a meeting of the directors at which a quorum is present.

(2) Without prejudice to paragraph (1) of this Article the company may by ordinary resolution appoint any person to be a director either to fill a vacancy or as an additional director.

### DISQUALIFICATION AND REMOVAL OF DIRECTORS

20. In Regulation 81 in Table A there shall be inserted

- (a) after the word "company" in paragraph (d) the following words, namely: ", provided that such action shall be without prejudice to the terms of and to any rights of the company under any contract between the director and the company"; and
- (b) after the word "period" in paragraph (e) the following words, namely: "and his alternate director, if any, shall not during that period have attended in his stead".

### REMUNERATION OF DIRECTORS

21. The following sentence shall be added at the end of Regulation 82 in Table A, namely: "Any director who serves on any committee, or who devotes special attention to the business of the company, or who otherwise performs services which in the opinion of the directors are in addition to or outside the scope of the ordinary duties of a director (which services shall include, without limitation, visiting or residing abroad in connection with the company's affairs), may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the directors may determine".

### DIRECTORS' APPOINTMENTS AND INTERESTS

22. In Regulation 84 in Table A there shall be substituted for the words "shall not be subject to retirement by rotation" the following words, namely: "shall be subject to the same provisions as to resignation and removal as other directors of the company".

### DIRECTORS' AND EMPLOYEES' GRATUITIES AND PENSIONS

23. The directors may:-

- (a) establish and maintain, or procure the establishment and maintenance of, any share option or share incentive or profit sharing schemes or trusts or any non-contributory or contributory pension or superannuation schemes or funds for the benefit of, and may make or give or procure the making or giving of loans, donations, gratuities, pensions, allowances or emoluments (whether in money or money's-worth) to, or to trustees on behalf of, any persons who are or were at any time in the employment or service of the company, or of any company which is a subsidiary of the company, or is allied to or associated with the company or with any such subsidiary, or who are or were at any time directors or officers of the company or of any such other company as aforesaid, and to the wives, husbands, widows, widowers, families and dependants of any such persons;
- (b) establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of, or to advance the interests and well-being of the company, or of any such other company as aforesaid, or of any such persons as aforesaid;
- (c) make payments for or towards policies of assurance on the lives of any such persons and policies of insurance of or in respect of any such persons (including insurance against their negligence) as aforesaid;
- (d) pay, subscribe or guarantee money to or for any charitable or benevolent objects, or for any exhibition, or for any political, public, general or useful object; and
- (e) do any of the above things either alone or in conjunction with any such other company as aforesaid.

Subject always, if the Act shall so require, to particulars with respect to the proposed payment being disclosed to the members of the company and to the payment being approved by the company, any director shall be entitled to participate in and retain for his own benefit any such loan, donation, gratuity, pension, allowance or emolument.

## PROCEEDINGS OF DIRECTORS

24. In Regulation 88 in Table A there shall be substituted for the third sentence the following sentences, namely: "All directors shall be given notice of every meeting of the directors provided that it shall not be necessary to give notice of a meeting to any director who is absent from the United Kingdom. Any director or alternate director may by notice to the company waive his right to receive notice of the meeting and the *presence of any director or alternate director at the commencement of a meeting shall constitute such waiver by him*".

25. The following words shall be substituted for the final sentence of Regulation 89 in Table A, namely: "A person who is the alternate director of more than one director shall be counted separately in respect of each of them who is not present, but no less than two individuals shall constitute a quorum".

26. In Regulation 93 in Table A there shall be inserted after the words "signed by" in the first line the following words, namely: "or on behalf of" and the words "entitled to receive notice of a meeting of directors or of a committee of directors" shall be deleted.

27. Subject to any requisite declaration of interest in accordance with the provisions of the Act and (if applicable) Regulation 85 in Table A having been made by him a director may vote as a director in regard to any transaction or arrangement in which he is interested, or upon any matter arising therefrom and Regulation 94 in Table A shall be construed subject to this provision.

28. In Regulation 97 in Table A:-

- (a) there shall be inserted after the words "the appointment" the following words, namely: "*or the terms of appointment*"; and
- (b) the following words shall be deleted, namely: "and be counted in the quorum" and there shall be inserted after the words "his own appointment" the following words, namely: "*and shall be counted in the quorum in respect of each resolution including that concerning his own appointment*".

## MINUTES

29. The directors shall cause minutes to be made in books kept for the purpose-

- (a) of all appointments of officers and alternate directors made by the directors; and
- (b) of all proceedings at meetings of the company, of the holders of any class of shares in the company, of the directors, and of committees of

directors, including the names of the persons present at each such meeting.

#### **THE SEAL**

30. The company is authorised pursuant to Section 39 of the Act for so long as its objects require or comprise the transaction of business in foreign countries to have an official seal for use in any territory, district, or place elsewhere than in the United Kingdom.

#### **INDEMNITY**

31. Subject to the provisions of the Act, every director, other officer or auditor of the company or person acting as an alternate director shall be entitled to be indemnified out of the assets of the company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of his duties to the company or otherwise in relation thereto.