

Company number: 11911214

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

DATUM ALLOYS GROUP LIMITED

(the "Company")

WEDNESDAY



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11/12/2019

#133

COMPANIES HOUSE

Circulation date: 28/10 2019

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (the "2006 Act"), the directors of the Company propose that the resolution be passed as a special resolution (the "Resolution").

SPECIAL RESOLUTION

THAT the articles of association of the Company attached to this written resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association of the Company.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, being a person entitled to vote on the Resolution on the date of circulation, hereby irrevocably agrees to the Resolution:

Signed

Date

28/10/19

Authorised signatory, for and on behalf of Rockpool Investment Nominee Limited

Signed

Date

30/10/19

Peter Annis

Signed

Date

20/11/19

Ian John

Signed

Date

30/10/19

Ben Widger

#### NOTES FOR MEMBERS

- 1 If you agree to the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:
  - **By Hand:** delivering the signed copy to Richard Coleman, Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD;
  - **Post:** returning the signed copy by post to Richard Coleman, Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD;
  - **Email:** by attaching a scanned copy of the signed document to an e-mail and sending it to Richard Coleman@crsblaw.com. Please enter "Datum resolution" in the e-mail subject box.
- 2 If you do not agree to the Resolution, you do not need to do anything as you will not be deemed to agree if you fail to reply
- 3 Your agreement is irrevocable which means that once you have indicated your agreement to the Resolution, you may not change your mind.
- 4 Unless, by the date falling 28 days from the circulation date of this written resolution, sufficient agreement has been received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

As approved by the board ACR



**THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES**

**DATUM ALLOYS GROUP LIMITED**  
**(Company No. 11911214)**

**ARTICLES OF ASSOCIATION**

(adopted by special resolution passed on 20<sup>th</sup> NOV 2019)

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**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**

**OF**

**DATUM ALLOYS GROUP LIMITED (the "Company")**

(adopted by special resolution passed on 2019)

**1 PRELIMINARY**

- 1.1 The Model Articles apply to the Company, except to the extent they are modified or excluded by or are inconsistent with these Articles.
- 1.2 The registered office of the Company will be situated in England and Wales.

**2 DEFINITIONS AND INTERPRETATION**

- 2.1 In these Articles the following expressions have the following meanings unless inconsistent with the context:

**A Share:** means an A ordinary share of £0.01 in the Equity Share Capital of the Company having the rights and being subject to the restrictions set out in these Articles;

**A Shareholder(s):** means the holder or holders of A Shares;

**Act:** means the Companies Act 2006;

**Acting in Concert:** has the meaning given to it in the City Code on Takeovers and Mergers;

**Annual Budget:** means the annual budget and cash flow projection for the Company's relevant accounting reference period (broken down in each case into periods of calendar months) including profit and loss and balance sheet budgets, a source and application of funds statement, details of the amount and nature of all proposed revenue and capital expenditure to be incurred and income to be received (including income derived from the sale of capital assets) by the Group and a budget narrative;

**Approved Offer:** means, subject to the Conditions being met, a bona fide arm's length offer in writing:

- (a) from any person to acquire the entire issued share capital in the Company;  
or
- (b) from a Connected Buyer or the Company to acquire all the A Shares and/or all the B Shares;

including in each case any Shares in the same class of Shares to which the offer relates which may be allotted during the offer period or upon the offer becoming unconditional pursuant to the exercise of options, subscription rights or the conversion of securities into Shares;

**Articles:** means the articles of association of the Company for the time being in force;

**Associate:** has the meaning given to it in section 435 of the Insolvency Act 1986;

**B Share:** means a B ordinary share of £0.01 each in the Equity Share Capital of the Company having the rights and being subject to the restrictions set out in these Articles;

**B Shareholders:** means the holder or holders of B Shares;

**Bad Leaver:** has the meaning set out in Article 22.10;

**Board:** means the board of Directors of the Company from time to time;

**Business:** means the business of the Group as carried on from time to time;

**Business Day:** means a day (other than Saturday or Sunday or a public holiday) on which banks are generally open for business in London for normal business;

**Call Notice:** has the meaning set out in Article 17.2;

**Calling A Shareholders:** has the meaning set out in Article 17.1;

**Calling B Shareholders:** has the meaning set out in Article 17.3;

**company:** includes (except when referring to the Company) any body corporate, partnership, limited liability partnership, unincorporated business or association or other body;

**Compulsory Sale Notice:** has the meaning set out in Article 22.3;

**Compulsory Transferee:** has the meaning set out in Article 22.3;

**Compulsory Transfer Shares:** has the meaning set out in Article 22.3;

**Conflict of Interest:** includes a conflict of duties, or a conflict of interest and duty, or a potential conflict;

**Conditions:** means the conditions for an Approved Offer, being an offer for Shares which:

- (a) is made in writing and sets out the terms and conditions applying to the offer;
- (b) is stipulated to be open for acceptance for at least 10 Business Days from the date the offer is made in writing;
- (c) includes an undertaking by the offeror that neither it nor any person acting by agreement or understanding with it have entered into an agreement with

any other shareholder for the purchase of Shares for a greater value per Share or pursuant to which consideration will be paid at a different time (save as to the allocation of consideration which shall be in accordance with the provisions of the Articles); and

- (d) has been approved in writing by the Investor Representative, such approval having been delivered to the Company prior to the offer being made;

**Connected Buyer:** means any Ordinary Shareholder or any of their Connected Persons;

**Connected Persons:** has the meaning given to it in section 1122 Corporation Tax Act 2010;

**Consideration Loan Notes:** nil coupon loan notes of the Company issued pursuant to a loan note instrument of the Company, the terms of which have the effect of making such loan notes rank pari passu with the A Shares and the Ordinary Shares (to the extent legally possible).

**Controlling Interest:** means the holding of Shares (or the right to exercise the votes attaching to Shares) which confers in aggregate more than 50% of the total voting rights conferred by all the Shares for the relevant time being in issue;

**Default Event:** means any of the following:

- (a) in the reasonable opinion of the Investor Representative, there having been a material breach of the Shareholders' Agreement (other than by the Investors) which, if capable of remedy, has not been remedied within 10 Business Days after the Investors have given written notice requiring the breach to be remedied;
- (b) in the reasonable opinion of the Investors, there having been or it is reasonably likely that there will be any material breach of any of the financial covenants in or other terms of any of the Finance Documents, which breach gives rise to an event of default under any of the Finance Documents or the terms of any other relevant facilities or loans;
- (c) the occurrence of any circumstances which entitle any provider of debt finance to any Group Company to enforce repayment or take any other enforcement action under any applicable Finance Documents;
- (d) the occurrence of an Insolvency Event;
- (e) the Company having failed to reach any forecast cashflow, profit or turnover targets as set out in an Annual Budget from time to time; or
- (f) the Group on a consolidated basis being, or (by reference to its monthly financial information packs prepared for the Board and/or Shareholders and/or Investor Representative) anticipated by the Investor Representative

(acting reasonably), at any time to be within three months of such time, unable to pay its debts as they fall due;

**Defaulter:** has the meaning set out in Article 17.4;

**Deferred Shares:** means the deferred shares of £0.0001 each in the capital of the Company;

**Director:** means a director of the Company, an alternate director appointed by a director and any former director or a shadow director to the extent that the general duties apply to them and the definition of "director" in regulation 1 of the Model Articles is modified accordingly;

**Disposal:** means the sale of the whole or substantially the whole of the undertaking or assets of the Company;

**Employee Option Shares:** has the meaning given to it in the Investment Agreement;

**Equity Share Capital:** has the meaning given to it in section 548 of the Act;

**ESOP:** has the meaning given to it in the Investment Agreement;

**Exit Event:** means any of the following events:

- (a) a Disposal;
- (b) a Share Sale;
- (c) a Listing; or
- (d) a Liquidation;

**Expert:** has the meaning set out in Article 22.14;

**Fair Price:** has the meaning set out in Article 22.11;

**Finance Documents:** means any document governing or relating to the provision of debt finance to any Group Company from time to time (including any associated security documents and intercreditor or similar deeds referred to therein and including any documents for the amendment, variation or waiver of any terms of debt finance);

**Good Leaver:** has the meaning set out in Article 22.10;

**Group:** means the Company and any Subsidiary or Holding Company or any Subsidiary of the Holding Company from time to time (and "**Group Company**" means any of them from time to time);

**Insolvency Event:** means any of the following events:

- (a) the Company (or any Group Company) ceasing or threatening to cease to carry on business, whether due to its inability to pay its debts as they fall due or otherwise;



- (b) the Company (or any Group Company) being unable to pay its debts as they fall due (or being deemed to be unable to pay its debts within the meaning of any of paragraphs (a) to (e) of section 123(1) or section 123(2) Insolvency Act 1986) or admitting that it is unable to pay its debts as they fall due or suspending making payment on any of its debts or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (c) a meeting of creditors of the Company (or of any Group Company) being convened or held;
- (d) an arrangement or composition with or for the benefit of the Company's (or any Group Company's) creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being entered into or proposed by or in relation to the Company (or any Group Company);
- (e) a moratorium coming into force in respect of that person in accordance with paragraph 8.1 of Schedule A1 to the Insolvency Act 1986;
- (f) a receiver, administrative receiver taking possession of or being appointed over or a mortgagee, chargee or other encumbrancer taking possession of the whole or any material part of the assets of the Company (or any Group Company);
- (g) any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of, the assets of the Company (or of any Group Company);
- (h) the Company or the Board (or, as the case may be, the relevant Group Company or its board of directors) or the holder of a qualifying floating charge (as defined in Schedule B1 to the Insolvency Act 1986) over the assets of the relevant Group Company giving notice of its or their intention to appoint an administrator in accordance with paragraphs 18 or 26 of Schedule B1 to the Insolvency Act 1986;
- (i) the Company or the Board (or, as the case may be, the relevant Group Company or its board of directors) or any creditors of the Company (or a Group Company) or the holder of a qualifying floating charge (as defined above) making an application to the court for the appointment of an administrator;
- (j) an administrator being appointed of the Company (or a Group Company) under paragraphs 14 or 22 of Schedule B1 to the Insolvency Act 1986 or otherwise;
- (k) a petition being advertised or a resolution being passed or an order being made for the administration or the winding-up or dissolution of the Company (or of any Group Company) or the Company (or any Group Company) being struck off the register of companies; or
- (l) the happening in relation to any Group Company of any analogous event in any other applicable jurisdiction;

**Investment Agreement:** means the agreement dated the date of adoption of these Articles and made between, inter alia, (1) the Company and (2) the Investors;

**Investors:** has the meaning given to it in the Investment Agreement;

**Investor Representative:** has the meaning given to it in Article 9.1;

**Issue Price:** means in respect of a Share the price at which the relevant Share is issued, being the aggregate of the amount paid up or credited as paid up in respect of the nominal value thereof and any share premium thereon;

**ITA:** means the Income Tax Act 2007;

**Leaver:** means a person who ceases to be an employee of, or consultant of or to, any Group Company, unless determined otherwise for the purposes of these Articles by the Investor Representative;

**Liquidation:** means the passing of a resolution for voluntary winding-up or an order for winding-up being made by the court or as further envisaged by section 247 of the Insolvency Act 1986 (as amended) from time to time;

**Listing:** means the admission of all or any of the shares in any Group Company or securities representing those shares on the Official List of the United Kingdom Listing Authority, on the AIM Market operated by the London Stock Exchange Plc or any other Recognised Investment Exchange or Overseas Investment Exchange;

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

**Offer Price:** has the meaning set out in Article 22.9;

**Options:** has the meaning given to it in the Investment Agreement;

**Ordinary Share:** means an ordinary share of £0.01 in the Equity Share Capital of the Company having the rights and being subject to the restrictions set out in these Articles;

**Ordinary Shareholder(s):** means any holder or holders of Ordinary Shares;

**Overseas Investment Exchange:** bears the meaning set out in section 313 of the Financial Services and Markets Act 2000;

**Proceeds Available for Distribution:** means:

- (a) on a Disposal, the total consideration paid or payable for the assets sold or transferred (whether that consideration is to be satisfied in cash, shares, loan notes or a combination thereof or otherwise);
- (b) on a Share Sale, the total consideration paid or payable for all of the Shares (whether that consideration is to be satisfied in cash, shares, loan notes or a combination thereof or otherwise);

- (c) on a Listing, the valuation placed on all of the Shares on the date on which all or any of the Shares are listed, as shown in the prospectus, listing particulars or admission document published in connection with the Listing, less the gross amount of any new money raised by the Company in connection with the Listing from a subscription for new shares (if any); and
- (d) on a Liquidation, the aggregate amount in money or money's worth available for distribution to Shareholders after payment of creditors,

in each case less the amount of costs and expenses reasonably and properly incurred and borne by the Company in respect of any of the above events;

**Recipient Shareholders:** has the meaning set out in Article 17.2;

**Recognised Investment Exchange:** bears the meaning set out in section 285 of the Financial Services and Markets Act 2000;

**Relevant Amount:** means the total amount paid up or credited as paid up (including any premium) on the Shares less any part of the Relevant Amount that has already been paid to shareholders on an Exit Event pursuant to Article 14.1;

**Relevant Event:** has the meaning set out in Article 22.2;

**Relevant Shareholder:** has the meaning set out in Article 22.3;

**Shareholder:** means a registered holder of shares in the Company (and includes joint holders);

**Shareholders' Agreement:** means any agreement, by whatever name called, in effect from time to time between the Company and any shareholders holding in aggregate a Controlling Interest that relates in whole or in part to the conduct of the Company's affairs;

**Share Sale:** means the completion of any transaction or series of transactions in which any person, Connected Persons or group of persons Acting in Concert purchases or otherwise acquires or obtains all of the Shares;

**Shares:** means any share or shares in the capital of the Company; and

**Subsidiary and Holding Company:** have the meanings ascribed to such expressions by section 1159 of the Act.

- 2.2 Unless the context otherwise requires words or expressions which have particular meanings in the Model Articles or in the Act have the same meanings in these articles.
- 2.3 The headings in these Articles are included for convenience only and do not affect the meaning of these Articles.

### 3 DECISION-MAKING BY DIRECTORS

- 3.1 Subject to Article 7, any decision of the Directors must be:

- 3.1.1 a majority decision at a Directors' meeting; or
  - 3.1.2 a decision taken in accordance with regulation 8 of the Model Articles; or
  - 3.1.3 in the form of a Directors' written resolution,
- and regulation 7(1) of the Model Articles is modified accordingly.

#### **4 QUORUM FOR DIRECTORS' MEETINGS**

- 4.1 Subject to Article 7, the quorum for Directors' meetings is two Directors (or one Director if only one Director is in office) provided that the Investor Representative, if any, must also be present for the meeting to be considered quorate.
- 4.2 Regulation 11(2) of the Model Articles does not apply to the Company.

#### **5 CASTING VOTE**

In the case of an equality of votes, the chairman shall not have a casting vote and regulation 13 of the Model Articles shall not apply to the Company.

#### **6 DIRECTORS' CONFLICTS OF INTEREST**

- 6.1 Regulation 14 of the Model Articles does not apply.
- 6.2 This Article 6 contains provisions for dealing with Directors' conflicts of interest, so that the general duties of Directors set out in sections 171 to 177 of the Act (the "general duties") are not infringed by anything done (or omitted) by a Director in accordance with this Article. So far as is lawful, the general duties have effect subject to any authority given by or under this Article 6.
- 6.3 A Director may enter into any transaction in or relating to securities of the Company or its holding company or may have any interest arising as holder of securities of the Company or its holding company or in any transaction in his character as holder of such securities.
- 6.4 Subject to Article 9.4, the Directors may authorise any matter proposed to them which otherwise would or might infringe the duty of a Director to avoid conflicts of interest. Provided that he has declared the nature and extent of his interest as if the matter were a transaction or arrangement with the Company in which he was interested, a Director may vote and be counted in the quorum on any resolution to authorise a conflict of interest of his and section 175(6) of the Act shall not apply.
- 6.5 The Directors may:
  - 6.5.1 give any such authorisation subject to such conditions as they think fit;
  - 6.5.2 vary or terminate the authorisation or waive, vary or terminate any such conditions at any time or excuse any non-compliance with such conditions either before or after it occurs, but any termination or variation will not affect

anything done or omitted to be done by the director prior to such termination or variation.

6.6 The conditions may include that the director:

6.6.1 is to be excluded from discussions, whether at meetings of directors or otherwise, relating to matters in respect of which he has the conflict of interest;

6.6.2 is not to be given documents or information relating to matters in respect of which he has the conflict of interest;

6.6.3 may not vote, or count in the quorum at any future meeting of Directors in relation to any resolution relating to matters in respect of which he has the conflict of interest.

6.7 Any authorisation of a conflict of interest authorised by or under this Article 6 shall (unless the contrary intention appears) extend to any conflict of interest which may reasonably be expected to arise out of the matter authorised either at the time of giving the authority or subsequently.

6.8 A Director is not required to account to the Company for any remuneration, profit or other benefit which he gains from any matter in respect of which he has a conflict of interest which has been authorised by or under this Article 6, no contract, arrangement or transaction shall be avoided on the grounds of any conflict of interest so authorised, and the receipt of such remuneration, profit or benefit shall not constitute a breach of the director's duty not to accept benefits from third parties.

6.9 The Company may by ordinary resolution authorise or ratify any contract, transaction, arrangement, conflict of interest, acceptance of a benefit or other proposal which might otherwise infringe or may have infringed the general duties, including any contravention of any provision of this Article 6. When shareholders ratify a conflict of interest the vote of any shareholder who is also an interested Director will not be counted.

6.10 The Directors may authorise the receipt and retention by a Director or any specific benefit from a third party which has been disclosed to the Directors.

## **7 DEFAULT EVENTS**

7.1 If at any time a Default Event has occurred, then (subject to Article 7.3):

7.1.1 the holders of Ordinary Shares shall cease to be entitled to:

7.1.2 receive notice of, attend and vote (whether on a show of hands or on a poll) at any general meeting of the Company; or

(a) receive and vote on any proposed written resolution of the Company;

(b) the A Shares in issue shall entitle the holders to cast such number of votes as is equivalent to an aggregate of 100 per cent. of all the votes capable of being exercised on a poll or written resolution, such votes

to be allocated amongst them pro rata to the aggregate number of votes exercisable by each such Shareholder (prior to the operation of this Article 7.1) on a poll or written resolution;

7.1.3 new shares in the Company may be issued ranking ahead of or pari passu with the Ordinary Shares, without the consent of the holders of such Shares but subject to the written consent of the Investor Representative;

7.1.4 if the Investor Representative is a Director:

(a) the Investor Representative shall constitute the quorum of any meeting of the Board or any committee of the and shall be entitled to call and hold any such meeting on such notice as it may determine;

(b) at any meeting of the Board, the Investor Representative shall be entitled to cast such number of votes as necessary to constitute a majority of the Board;

7.1.5 at any meeting of any committee of the Board or the board of any Group Company established from time to time, the Investor Representative shall be entitled to cast such number of votes as necessary to constitute a majority of that committee; and

7.1.6 without prejudice to their other rights of appointment, Shareholders holding more than 50 per cent. in nominal value of the A Shares in issue may by notice (in writing or in electronic form) to the Company appoint any one or more persons to be a Director, and any such appointment shall be deemed to be an act of the Company and not only of such shareholders. The notice may consist of one or more documents each executed by or on behalf of such Investors and shall take effect when such notice is received at the registered office of the Company or produced to a meeting of the Board.

7.2 For the avoidance of doubt, if a Default Event has occurred the provisions in Article 7.1 shall enable the holders of A Shares in issue from time to time together to:

7.2.1 pass written resolutions of the Company pursuant to chapter 2 of part 13 of the Act or otherwise as permitted by law; and

7.2.2 consent to the holding of a general meeting of the Company on short notice pursuant to section 307(4)-(6) of the Act,

in either case, on the basis that all such holders would constitute the only Shareholders who would be entitled to attend and vote at a general meeting of the Company or vote on a proposed written resolution.

7.3 The provisions of Articles 7.1 and 7.2 shall only apply if the Investor Representative has, following a Default Event, served notice on the Company at the Office or at any meeting of the Board activating their respective rights under Articles 7.1 and 7.2 and such rights shall thereafter continue only for so long as the breach or failure giving rise to the Default Event subsists (as evidenced by written notice by the Investor

Representative to the Company, acting reasonably). Any Directors appointed pursuant to this article 7 shall automatically cease to be a Director on the date that the Default Event is no longer subsisting.

- 7.4 If an issue of Shares has taken place pursuant to this article 7 in circumstances where a Default Event has occurred without consent of the holders of the Ordinary Shares as set out in article 7.1.3 ("**Emergency Issue**"), then within 10 Business Days following such an issue of shares, the Company shall give notice (a "**Catch-Up Notice**") to each holder of Ordinary Shares (provided that a Catch-Up Notice need not be served on any shareholder who as at the date of the Catch-Up Notice, is bound to give, or has given or is deemed to have given, a Compulsory Sale Notice in respect of any Shares registered in his name) offering such members the right to subscribe for such number of Ordinary Shares as would mean that, if fully taken up, they would each have the same proportion of Shares as they had immediately prior to the Emergency Issue, at the same subscription price per share as during the Emergency Issue, within 20 Business Days of the date of service of such Catch-Up Notice.

## 8 **ASSOCIATE DIRECTOR**

- 8.1 The Directors may at any time and from time to time appoint any person to be an associate director with a title including the word "director". An associate director is not a director of the Company and is not a member of the Board.
- 8.2 The Directors may define and limit the powers and duties of any associate directors and may determine their remuneration, which may be in addition to their remuneration as managers or employees of the Company.

## 9 **INVESTOR REPRESENTATIVE**

- 9.1 A majority of the A Shareholders and B Shareholders (as though they constituted a single class of share) shall be entitled at their discretion to appoint, remove and replace from time to time one observer ("**Observer**") to the board and will have the right to appoint such Observer as a director of the Company (the "**Investor Director**") (and the Investor Director or Observer shall be the "**Investor Representative**"). If appointed, such Investor Director shall not be removed without the prior written consent of the majority of the A Shareholders and B Shareholders. Upon request of the Investor Representative the Company shall procure that such person is similarly appointed in relation to the board of directors of any Group Company. The Observer shall be entitled to receive notice of, attend and speak (but not vote) at meetings of the relevant board(s) of directors.
- 9.2 The majority of the A Shareholders and the B Shareholders (as though they constituted a single class of share) shall be entitled at their discretion to appoint, remove and replace from time to time any further person or persons to the board of directors of the Company or of any Group Company on written notice to the Company.
- 9.3 The Investor Representative shall be entitled to appoint his successor.

- 9.4 The written consent of the Investor Representative shall be required for and in respect of:
- 9.4.1 the allotment, issue, redemption, purchase or re-purchase of any shares in any Group Company, securities or stock;
  - 9.4.2 Save in regards to the grant of Options and Employee Option Shares as set out in column 4 of the table at Schedule 2 Part 4 of the Investment Agreement pursuant to the ESOP, the grant to any person of any option, warrant or right to call for the issue of any shares in any Group Company, securities or stock (including convertible securities);
  - 9.4.3 the reduction of the Company's share capital, share premium account, capital redemption reserve or any other reserve, or the reduction of any uncalled liability in respect of partly paid shares of the Company;
  - 9.4.4 the reorganisation, sub-division, consolidation, redesignation or other variation of any Shares or stock in the Company in any way or the variation of any rights, preferences or privileges attaching to any Shares or stock in the Company;
  - 9.4.5 the alteration of the memorandum or Articles (including adoption of new Articles);
  - 9.4.6 the taking of steps to liquidate, wind up or dissolve the Company save as required by law;
  - 9.4.7 any material change in the nature of the Business or any material change in the nature of any division of the Business or any disposal of the whole or substantially the whole of any division of the Business or the whole of or substantially the whole of the Business;
  - 9.4.8 the disposal or acquisition by whatever means by any Group Company in any financial year of:
    - (a) a significant asset (namely an asset having a value in excess of £40,000 and which is not stock purchased or sold in the ordinary course of business);
    - (b) the whole or a significant part of an undertaking; or
    - (c) a subsidiary undertaking;
  - 9.4.9 the alteration of the accounting reference date of the Company or the alteration to any accounting policy or practice, or the adoption of any new accounting policy or practice, save as required by any changes to accounting standards;
  - 9.4.10 the entry into, termination or variation of any contract or arrangement between (1) any Group Company and (2) a Director or a person who in



relation to a Director is a Connected Person or any employee of the Company whose total remuneration is (or will be after such action) in excess of £40,000 per annum, including the variation of the remuneration or other benefits under such a contract or arrangement, and the waiver of any breach of such a contract or arrangement;

- 9.4.11 the delegation by the directors of the Company of any of its powers to a committee;
- 9.4.12 the incurring by any Group Company of any borrowing or any other indebtedness or liability in the nature of borrowing except, for the avoidance of doubt, any trade credit granted to the Company by a supplier to the Business;
- 9.4.13 the incurring by any Group Company of capital expenditure which would cause capital expenditure of the Group in any financial year to exceed in aggregate that provided in the Annual Budget by more than 20%;
- 9.4.14 the entering into by any Group Company of any lease, licence or similar obligation which would make the Group liable for payments exceeding in any year under all its leases, licences or similar obligations that provided in the Annual Budget by more than 10%;
- 9.4.15 the creation of any mortgage or charge over any asset of any Group Company;
- 9.4.16 the giving of any guarantee, pledge or other form of security for any indebtedness by any Group Company other than in the ordinary course of trading;
- 9.4.17 the entering into by any Group Company of any contract or arrangement outside the ordinary course of trading or otherwise than at arm's length;
- 9.4.18 the entering into by any Group Company of any contract or arrangement which is in the ordinary course of trading and at arm's length, but which incorporates any special or unusual payment terms, or retrospective or future discounts;
- 9.4.19 the incorporation of a new subsidiary undertaking of the Company or the acquisition by the Company or any Group Company of an interest in any shares in the capital of, or any material business and assets of, any body corporate or incurring any cost, commitment, liability or expenditure in relation to any proposed or potential incorporation, acquisition or other transaction contemplated by this Article 9.4.19;
- 9.4.20 the adoption or variation, once agreed, of any Annual Budget;
- 9.4.21 the entering into by any Group Company of any agreement or arrangement in the nature of a joint venture, partnership or consortium;

- 9.4.22 the establishment by any Group Company of any pension scheme or similar arrangement for the benefit of a Director or a person who is, in relation to a Director, a Connected Person;
  - 9.4.23 the appointment or removal of auditors to the Company;
  - 9.4.24 the passing of any resolution to disapply any pre-emption provisions of the Acts to any allotment of the Company's equity securities;
  - 9.4.25 the appointment or removal of any director of any Group Company;
  - 9.4.26 the purchase or redemption by the Company of its own Shares or loan notes;
  - 9.4.27 a Listing, Disposal or Share Sale;
  - 9.4.28 the declaration, making or payment of any dividend or other distribution by the Company;
  - 9.4.29 the instigation of any litigation by any Group Company where the value of the claim exceeds £20,000 (exclusive of costs) or where the costs of conducting such action are likely to exceed £10,000 other than to recover trade debt in the ordinary course of business for amounts not exceeding £30,000 in the aggregate;
  - 9.4.30 varying the terms of any Shareholders' Agreement and any document defined therein as an Investor Document; and
  - 9.4.31 in relation to any Director, the authorisation of any matter which would otherwise result in such director infringing his duty to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest (including a conflict of interest and duty or conflict of duties.
- 9.5 Any appointment, removal or consent to be given under Article 9 shall be by written notice signed by or on behalf of a majority of the A Shareholders and B Shareholders (as though they constituted a single class of share) or by written notice signed by the Investor Representative and in both cases delivered to the Company.
- 9.6 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 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.

## 10 **SHARE CERTIFICATES**

Sub-paragraph (d) of regulation 24(2) of the Model Articles shall not apply.

## **11 RESTRICTIONS ON ALLOTMENT OF SHARES**

**11.1** Subject to the provisions of these Articles, the directors are generally and unconditionally authorised, for the purpose of section 551 of the Act, to exercise any power of the Company to:

**11.1.1** offer or allot;

**11.1.2** grant rights to subscribe for or to convert any security into; or

**11.1.3** otherwise deal in, or dispose of,

any Shares in the Company to any person, at any time and subject to any terms and conditions as the Directors think proper.

**11.2** The authority referred to in Article 11.1:

**11.2.1** shall be limited to a maximum number (including all Shares in issue immediately prior to the adoption of these Articles) of:

(a) 863,549 A Shares;

(b) 1,095,600 B Shares;

(c) 174,759 Ordinary Shares; and

(d) an unlimited number of Deferred Shares;

or such other amounts as may, subject to Article 9.4, from time to time be authorised by the Company by ordinary resolution;

**11.2.2** shall only apply insofar as the Company has not, subject to these Articles, renewed, waived or revoked it by ordinary resolution; and

**11.2.3** may only be exercised for a period of five years from the date of adoption of these Articles, save that the directors may make an offer or agreement which would, or might, require shares to be allotted after the expiry of such authority (and the directors may allot shares in pursuance of an offer or agreement as if such authority had not expired).

**11.3** The Shares (other than the Deferred Shares) are ordinary in nature and shall rank equally except as specifically set out in these Articles and pursuant to the operation of Article 13 and Article 14.

**11.4** In accordance with section 570 of the Act, the Directors are generally empowered to allot equity securities (as defined in section 560 of the Act) pursuant to the authority conferred by Article 11.1, as if section 561 of the Act did not apply to any such allotment, provided that this power shall:

**11.4.1** be limited to the allotment of equity securities up to the aggregate nominal amounts as stated in Article 11.2; and

- 11.4.2 expire on the date 5 years following the date of adoption of these Articles (unless renewed, varied or revoked by the Company prior to or on that date) save that the Company may, before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry.
- 11.5 Subject to Article 11.6, the rights attaching to any class of the Shares (other than the Deferred Shares) may not be amended or altered in any way unless previously approved by:
  - 11.5.1 Shareholders holding at least 75% in nominal value of the issued shares of that class of Shares; and
  - 11.5.2 Shareholders holding at least 75% of the voting rights in respect of all Shares.
- 11.6 Subject to the provisions of the Act, Shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the Holder on such terms and in such manner as may be provided by the Articles.

## **12 VOTING**

- 12.1 Subject to Article 7, each Ordinary Shareholder and A Shareholder shall be entitled to receive notice of, attend and vote at general meetings of the Company. Except, in each case, as provided otherwise in the Act, each such holder present in person or by proxy or by representative shall be entitled on a show of hands to one vote and on a poll or written resolution to one vote for each such share held by him.
- 12.2 Save in respect of any matter which requires the approval of the B Shareholders pursuant to Article 11.5, the B Shareholders shall otherwise not be entitled to receive notice of, attend nor vote at general meetings of the Company in respect of such B Shares.
- 12.3 The holders of Deferred Shares shall not be entitled to receive notice of, attend nor vote at general meetings of the Company in respect of such Deferred Shares.
- 12.4 Notwithstanding any other provisions of these Articles, a Bad Leaver shall not have any rights to receive notice of or attend or vote at any general meeting of the Company, or to receive a copy of or agree to a proposed written resolution.

## **13 INCOME**

Any profits that the Company may decide to distribute shall be distributed to the A Shareholders and the Ordinary Shareholders pro rata to the amount paid up per share.

## **14 RETURN OF CAPITAL AND EXIT**

- 14.1 On an Exit Event, the total Proceeds Available For Distribution among the Shareholders will be distributed in the following order and priority:
  - (a) first, in paying up to the Relevant Amount on each B Share to the B Shareholders;

- (b) second, in paying up to the Relevant Amount on each A Share and Ordinary Shares (as if the same constituted one class of share pro rata to the amount paid up per share) to the A Shareholders and the Ordinary Shareholders;
  - (c) third, in paying the holders of Deferred Shares (if any) £1.00 in aggregate for all Deferred Shares; and
  - (d) thereafter, to the A Shareholders and the Ordinary Shareholders as if the same constituted one class of share pro rata to the amount paid up per share.
- 14.2 In the event of a Share Sale, the selling Shareholders agree that the Directors shall not register any transfer of Shares unless:
  - 14.2.1 in the amounts and in the order of priority as set out in Article 14.1; or
  - 14.2.2 as may otherwise be agreed by all selling Shareholders in the agreement governing such Share Sale.
- 14.3 Upon the completion of a Disposal, all of the shareholders shall procure that the Company is wound up and shall take all such steps as are required to wind up the Company and distribute the assets of the Company remaining after the payment of its liabilities to the shareholders in accordance with the order of priority set out in Article 14.1.
- 14.4 Immediately prior to and conditionally upon a Listing:
  - 14.4.1 subject to Article 14.4.2, the shareholders shall enter into such reorganisation of the share capital of the Company as necessary to ensure that the shareholders are in the same economic position as if the order of priority set out in Article 14.1 for the distribution of the Proceeds Available For Distribution had been applied to the Listing; or
  - 14.4.2 if decided by the Board, the Company shall issue to each shareholder, by way of automatic capitalisation of reserves, such number of new Shares as would put them in the same economic position as if the order of priority set out in Article 14.1 for the distribution of the Proceeds Available For Distribution had been applied to the Listing.
- 14.5 All Shares to be issued in accordance with Article 14.4 shall be paid up by the automatic capitalisation of any amount standing to the credit of the share premium account or any other available reserve of the Company as determined by the board and shall be credited as fully paid at par. Such a capitalisation shall be automatic and shall not require any action on the part of the shareholders and the board shall allot the Shares arising on the capitalisation to the shareholders entitled to them in accordance with Article 14.4. If and to the extent that the Company is not lawfully permitted to carry out the capitalisation required by Article 14.4 in full (whether by virtue of the Act or otherwise), each such shareholder shall be entitled to subscribe in cash at par for the

balance of that number of additional Shares as would otherwise have been issued pursuant to Article 14.4. The shareholders shall procure (so far as they are lawfully able) that the board shall have sufficient authorisations required to issue the Shares which may fall to be issued under Article 14.4 or this Article 14.5.

## **15 PROHIBITION ON TRANSFER**

15.1 Subject to the exceptions set out in Article 15.2, shareholders may not sell, transfer or dispose of any of their Shares or any interest in them, or create or permit to exist any charge, lien or encumbrance over any of their Shares or any interest in them, or agree to do any of the above whether conditionally or unconditionally without the prior written consent of the Investor Representative (who may stipulate further terms and conditions to which the proposed disposal of Shares will be subject). Any transfer that has the written consent of the Investor Representative shall be registered by the Board.

15.2 The exceptions are:

15.2.1 any transfer that has the written consent of the Investor Representative;

15.2.2 a transfer of Shares which is required or permitted by Article 16 (*Tag Along Rights*) or Article 17(*Drag Along Rights*);

15.2.3 a transfer of Shares which is required by Article 22 (*Compulsory Sale of Ordinary Shares*)

## **16 TAG ALONG RIGHTS**

16.1 Notwithstanding any other provisions relating to the transfer of Shares in these Articles, if a transfer of Shares would result in a person and/or his Connected Persons obtaining a Controlling Interest, then no transfer of Shares shall be made or registered unless an Approved Offer is made for the entire issued share capital of the Company.

16.2 Transfers of Shares in the Company on completion of an Approved Offer pursuant to this Article 16 shall not be subject to any other restrictions on transfer pursuant to these Articles.

## **17 DRAG ALONG RIGHTS**

17.1 If at any time an Approved Offer for:

17.1.1 the entire issued share capital in the Company; or

17.1.2 all the A Shares and B Shares; or

17.1.3 all the A Shares;

is made and is accepted by A Shareholders holding at least 50 per cent. in nominal value of the A Shares then in issue ("**Calling A Shareholders**"), then the Calling A Shareholders will have the drag along rights set out in Article 17.2.

- 17.2 The Calling A Shareholders will be entitled at any time to require all the other holders of Shares in the Company to whom the Approved Offer is made ("**Recipient Shareholders**") by serving notice in writing to them ("**Call Notice**") to sell all of the Shares held by the Recipient Shareholders within 5 Business Days of receipt of the Call Notice. The sale will be to any person to whom the Calling A Shareholders propose to sell all of their Shares under the Approved Offer. At the request of the Calling A Shareholders, the Company will send a Call Notice to the Recipient Shareholders on behalf of the Calling A Shareholders.
- 17.3 If at any time an Approved Offer for all the B Shares is made and is accepted by B Shareholders holding at least 50 per cent. in nominal value of the B Shares then in issue ("**Calling B Shareholders**"), then the Calling B Shareholders shall have the same drag along rights as the Calling A Shareholders set out in Article 17.2.
- 17.4 If any person (a "**Defaulter**") fails to transfer any Shares in accordance with Articles 17.2 or 17.3 within 5 Business Days of the Approved Offer having been made the Directors may authorise any person to execute and deliver on his behalf the necessary stock transfer form transferring the relevant Shares with full title guarantee and the Company shall receive the purchase money in trust for the Defaulter and cause the purchaser to be registered as the holder of such Shares (subject to payment of any stamp duty). The receipt by the Company of the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to the application thereof). The Defaulter shall in such case be bound to deliver up his certificate for such Shares to the Company whereupon he shall be entitled to receive the purchase price without interest.
- 17.5 At the same time as any Calling A Shareholders or Calling B Shareholders give a Call Notice to Recipient Shareholders they will also be entitled to give the Call Notice to any person who has the right to subscribe for, or convert securities or indebtedness into, shares in the Company which is capable of being exercised on or prior to or within 24 months after completion of the sale of Shares pursuant to this Article 17. The effect of serving a Call Notice on such person will be that if he exercises such right and becomes a registered holder of shares in the capital of the Company on or prior to or within 24 months after such completion then that person will, for all the purposes of this Article 17, be treated as a Recipient Shareholder in respect of all such Shares and shall be obliged to sell such Shares in accordance with this Article 17.
- 17.6 For the purposes of this Article 17, a 'sale' includes a disposal of Shares where the consideration is to be provided wholly or partly in securities or any other non-cash consideration and the expressions 'sell', 'purchase' and 'purchaser' will be construed accordingly.
- 17.7 Transfers of Shares in the Company on completion of an Approved Offer pursuant to this Article 17 shall not be subject to any other restrictions on transfer or pre-emption provisions contained in these Articles.

## **18 GENERAL MEETINGS**

Regulation 41 of the Model Articles applies with the addition of the following sentence:

"If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, any person or persons entitled to vote upon the business to be transacted, being (or each being) a shareholder or a proxy for a shareholder or a duly authorised representative of a corporation, shall be a quorum if he is (or they are together) entitled to cast more than one half of the number of votes which might be cast at the meeting upon the business to be transacted; or in other circumstances, the meeting shall be dissolved."

## **19 WRITTEN RESOLUTIONS**

The joint holder of a share whose name comes first in the register of shareholders in respect of the joint holding is authorised to agree to any written resolution on behalf of all the joint holders and to receive any document which is required by the Act to be supplied to the joint holders in connection with that resolution.

## **20 INDEMNITY**

20.1 Subject to the provisions of the Act, every Director or other officer of the Company shall 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 the duties of his office or otherwise in relation thereto, including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which relief is granted to him by the Court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. No Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto.

20.2 Without prejudice to the provisions of Article 20, the Board shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees or auditors of the Company or of any subsidiary undertaking of the Company including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the exercise or purported exercise of their powers and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any such subsidiary undertaking.

## **21 OBLIGATION TO TRANSFER WHOLE LEGAL AND BENEFICIAL INTEREST**

An obligation to transfer any Share pursuant to any provision of these Articles is an obligation to transfer the whole of the legal and beneficial title to such Share free from all charges, liens and encumbrances and other third party rights and together with all



rights, title and interest in such Share in existence at the date of transfer and which may arise afterwards. A shareholder must not do anything which would be inconsistent with or which would prevent the shareholder from complying with this obligation.

## **22 COMPULSORY SALE OF ORDINARY SHARES**

22.1 A shareholder may become obliged in certain events (defined below as Relevant Events) to offer his Ordinary Shares for sale pursuant to this Article 22.

22.2 A "**Relevant Event**" occurs in respect of a shareholder, if the shareholder:

22.2.1 has a bankruptcy order made against him;

22.2.2 dies;

22.2.3 by reason of his mental health, has a court make an order which wholly or partly prevents him from personally exercising any powers or rights which he would otherwise have;

22.2.4 ceases to be an employee or director of any Group Company (except because of death) and does not continue as an employee or director of any Group Company or, if earlier, he gives or receives notice which will lead to such cessation;

22.2.5 acquires Ordinary Shares in the Company at a time when he is not an employee of any Group Company as a result of the exercise of an option granted to him to acquire such Ordinary Shares when he was an employee of any Group Company;

22.2.6 acquires Ordinary Shares in the Company at any time after any other person has acquired the entire issued share capital of the Company as a result of the exercise of a right granted to the shareholder, prior to such acquisition, to subscribe for, or convert securities or indebtedness into, such Ordinary Shares;

22.2.7 makes any voluntary arrangement or composition with his creditors;

22.2.8 commits any breach of Article 15 (Prohibition on Transfer);

22.2.9 at any time following the date of adoption of these Articles competes with the Business, meaning that the shareholder (whether directly or indirectly, and whether solely or jointly with or as agent, director, shareholder, shareholder, sole proprietor, partner, manager, employee, consultant or independent contractor of, in or to any other person) acquires any proprietary interest in, or carries on or becomes engaged, concerned or interested in carrying on, or works for or provides services or advice to any person carrying on within the United Kingdom (or any other territory anywhere else in the world in which at that time any Group Company has customers or outstanding contracts, enquiries, tenders, quotations or the like in relation to its business)

any business competing with the Business in breach of his restrictive covenants in the Investment Agreement; or

22.2.10 has an event occur which is regarded as a Relevant Event in respect of the shareholder pursuant to the terms of any Shareholders' Agreement in force from time to time which is binding on the shareholder.

22.3 Subject to Article 22.4, if a Relevant Event occurs in respect of a shareholder, the Directors shall if instructed by the Investor Representative serve written notice ("**Compulsory Sale Notice**") on that shareholder notifying him that he is, with immediate effect, deemed to have offered to sell such number of his Ordinary Shares (the "**Compulsory Transfer Shares**") as are specified in the Compulsory Sale Notice at the Offer Price. A shareholder on whom a Compulsory Sale Notice is served is referred to as a "**Relevant Shareholder**".

22.4 A Compulsory Sale Notice may require the Relevant Shareholder to offer to sell some or all of his Compulsory Transfer Shares on the terms set out in this Article 22 to such person(s) as may be specified in the Compulsory Sale Notice as determined by the Investor Representative, or otherwise nominated subsequently by the Investor Representative, including any one or more of:

22.4.1 a person or persons intended to take the Relevant Shareholder's place;

22.4.2 another director, officer or employee of, or consultant to a Group Company;

22.4.3 any trust established to enable or facilitate the holding of Shares by, or for the benefit of, all or most of the bona fide employees of any Group Company;

22.4.4 the Company in accordance with the Act;

22.4.5 a holder of A Shares, nominee, trustee or other person,

(each a "**Compulsory Transferee**" and one or more of them, the "**Compulsory Transferee(s)**"),

and in the case of more than one Compulsory Transferee, in the proportions indicated in the Compulsory Sale Notice. The Compulsory Sale Notice may reserve the right to finalise the identity of the Compulsory Transferee(s) (as directed by the Investor Representative) once the price for the Compulsory Transfer Shares has been agreed in accordance with Article 22.11 or determined in accordance with Article 22.12.

22.5 All amounts payable to Relevant Shareholder by the Company for Compulsory Transfer Shares shall be paid upon the completion of the transfer of the Compulsory Transfer Shares. The consideration for any Compulsory Transfer Shares shall be satisfied in cash or, to the extent an Investor Director so directs by written notice to the Company:

22.5.1 Consideration Loan Notes; or

- 22.5.2 where the Offer Price for some or all of the Compulsory Transfer Shares is that set out in Article 22.9.1(a) or Articles 22.9.1(b)(ii) by the conversion of such Compulsory Transfer Shares into Deferred Shares.
- 22.6 Upon receipt of a Compulsory Sale Notice, the Relevant Shareholder shall be obliged to offer to transfer, and (if such offer is accepted) transfer, at the Offer Price with full title guarantee and free from all encumbrances, the Compulsory Transfer Shares specified in the Compulsory Sale Notice in accordance with these Articles.
- 22.7 Any shareholder who becomes aware of the occurrence of a Relevant Event in respect of himself or another shareholder must promptly notify the Directors and the Investor Representative of that Relevant Event.
- 22.8 A reference to a shareholder in the definition of Relevant Event includes a joint holder of shares. If a Relevant Shareholder holds shares jointly then the provisions of this Article 22 shall extend to all the jointly held shares and to all the joint holders of such shares.
- 22.9 The sale price for each of the Compulsory Transfer Shares specified in a Compulsory Sale Notice (the "**Offer Price**") shall be:
- 22.9.1 if the Relevant Shareholder is a Bad Leaver:
- (a) in the event that his employment or appointment is terminated by the Group due to circumstances which would entitle any Group Company to summarily dismiss him, the lower of (i) the Fair Price and (ii) the Issue Price only; or
  - (b) in any other event:
    - (i) the Fair Price of the Shares held by the Relevant Shareholder on the date of adoption of these Articles; and
    - (ii) the lower of the (i) the Fair Price and (ii) the Issue Price on the balance of any Shares held by the Relevant Shareholder; and
- 22.9.2 if the Relevant Shareholder is a Good Leaver, the Fair Price.
- 22.10 A "**Bad Leaver**" is a Relevant Shareholder who is not a Good Leaver. A Relevant Shareholder is a "**Good Leaver**" if the Relevant Event occurs in circumstances where the Relevant Shareholder is:
- 22.10.1 in permanent severe ill health or permanent disability, in each case, as verified by a doctor appointed by the Company (whose identity shall have been approved by the Investor Representative) which renders him incapable of continued full time employment in his current position, except in circumstances where the use or abuse of drugs and/or alcohol has been a significant factor in causing such ill health, disability and/or incapacity;
- 22.10.2 retiring at 67;

- 22.10.3 made redundant;
- 22.10.4 the subject of resolution by the Investor Representative to the effect that he shall be deemed a Good Leaver, despite any circumstances which would otherwise cause him to be a Bad Leaver; or
- 22.10.5 dies.
- 22.11 For the purposes of these articles, the "**Fair Price**" shall be:
- 22.11.1 such price for the Compulsory Transfer Shares as at the date of the Relevant Event as may be agreed between the Relevant Shareholder and (acting with the written consent of the Investor Representative) the Company; or
- 22.11.2 if required by the Investor Representative, the price determined in accordance with Articles 22.12 to 22.15.
- 22.12 If the Fair Price is not agreed between (i) the Relevant Shareholder and (ii) the Company pursuant to Article 22.11 above, within 15 Business Days of the service of the Compulsory Sale Notice (or such longer period as may be specified by the Investor Representative), then the Investor Representative may instruct the Company to instruct the Expert to determine the Fair Price of the Compulsory Transfer Shares as at the date of the Relevant Event and on the following basis:
- 22.12.1 the Expert shall be instructed by the Company to determine the Fair Price:
- (a) as at the date of the Relevant Event;
  - (b) on the basis that the price per Leaver Share shall be the sum which would be attributable to it if a willing buyer were to agree with a willing seller to buy the entire issued ordinary share capital of the Company and the proceeds of sale were to be applied in accordance within the provisions of Article 14;
  - (c) without subtraction of any discount by reference to the percentage which the Compulsory Transfer Shares represent of the entire issued share capital of the Company or in relation to any restrictions on the transferability of the Compulsory Transfer Shares; and
  - (d) having regard to the negotiations and discussions relating to the Fair Price (and the prices proposed on either side) prior to the appointment of the Expert and taking into account such other factors as the Expert considers appropriate,  
  
but for the purposes of such determination, any treasury shares shall be disregarded;
- 22.13 the Expert shall determine the Fair Price as soon as possible after being instructed by the Company and, in so determining, the Expert shall be deemed to be acting as expert and not as arbitrator and the Arbitration Act 1996 shall not apply;

- 22.13.1 the decision of the Expert shall, in the absence of manifest error, be final and binding; and
  - 22.13.2 the Company shall procure that any determination required under this Article is obtained as soon as reasonably practicable and the cost of obtaining such determination shall be borne as to one half by the Company and as to one half by the Relevant Shareholder, unless the Fair Price as determined by the Expert is less than 110% of that price (if any) which the Company or the Investor Representative had previously notified to the Relevant Shareholder as being in its opinion the Fair Price, in which event the cost shall be borne in full by the Relevant Shareholder.
- 22.14 Where Article 22.12 applies, the Fair Price shall be determined by an independent person (the “**Expert**”) who shall be an investment bank or an independent firm of chartered accountants of repute appointed by the Company (with the agreement (subject to Article 22.15) of each of:
- 22.14.1 the Investor Representative; and
  - 22.14.2 the Relevant Shareholder.
- 22.15 In the event of failure to agree on the identity of the Expert within 10 Business Days of a request by the Board for approval of the Company's proposed appointee, the Board shall request the President from time to time of the Institute of Chartered Accountants in England and Wales to appoint the Expert.
- 22.16 The Company shall on request promptly supply the Relevant Shareholder, the Investor Representative and the Expert with all such information concerning its affairs, assets and financial position as is fair and reasonable to enable the Expert to form a view as to the Fair Price of the relevant Compulsory Transfer Shares.
- 22.17 Completion of the sale and purchase of the Compulsory Transfer Shares shall take place during normal business hours at the Office within five Business Days of the later of:
- 22.17.1 the Offer Price having been agreed or determined in accordance with these Articles;
  - 22.17.2 (if applicable) the completion of any relevant statutory process required to effect any purchase of Compulsory Transfer Shares by the Company; or
  - 22.17.3 the identification of the person to whom such Compulsory Transfer Shares are to be transferred and in what proportions,
- or at such other place and/or at such time during normal business hours as the Company (acting with the written consent of the Investor Representative) may specify, when the Relevant Shareholder shall deliver to the Company at the Office or such other place as shall have been specified by the Company (acting with the written consent of the Investor Representative) a duly executed stock transfer form in respect of the relevant Compulsory Transfer

Shares together with the relevant share certificates (or an indemnity in respect any lost share certificate in a form satisfactory to the Board (acting reasonably)) against payment of the Offer Price for such Compulsory Transfer Shares. Payment must be:

- (a) in the form of a cheque (drawn on a London clearing bank) delivered at the Office or such other place as shall have been specified by the Company (acting with the written consent of the Investor Representative); or
- (b) by electronic funds transfer or any other method of payment as may be specified by the Company (with the written consent of the Investor Representative).

22.18 Save in the case of an acquisition of any Compulsory Transfer Shares by the Company under the provisions of these Articles, if any Relevant Shareholder defaults in transferring any of his Compulsory Transfer Shares pursuant to this Article 22, the Company may:

22.18.1 receive the relevant purchase money in whatever form;

22.18.2 nominate any person to execute, complete and deliver an instrument of transfer of such Compulsory Transfer Shares together with any other documents necessary to effect the transfer of such Compulsory Transfer Shares, in the name and on behalf of the Relevant Shareholder,

and thereafter, when such instrument has been duly stamped, the Company shall cause the name of the proposed transferee to be entered in the register of members of the Company as the holder of such Compulsory Transfer Shares and shall hold the purchase money on trust (without interest) for the Relevant Shareholder. The receipt by the Company of the purchase money shall be a good discharge to the proposed transferee (who shall not be bound to see to the application thereof) and, after his name has been so entered in the register of members of the Company, the validity of the proceedings shall not be questioned by any person.

22.19 In the case of any acquisition of Compulsory Transfer Shares by the Company under the provisions of these Articles, if the Relevant Shareholder defaults in transferring any Compulsory Transfer Shares pursuant to this Article 22, the Company shall be entitled to nominate any person to execute, complete and deliver a buyback agreement, an instrument or form of transfer relating to the buyback of such Compulsory Transfer Shares, together with any other documents necessary to effect the purchase by the Company of the Compulsory Transfer Shares, in the name and on behalf of the Relevant Shareholder and thereafter, when the applicable instrument or form of transfer has (if appropriate) been duly stamped, the Company shall cause such share capital to be cancelled in accordance with the Act and shall hold the purchase money in whatever form on trust (without interest) for the Relevant Shareholder.

22.20 For the avoidance of doubt, there shall be no obligation on any party as regards a Relevant Shareholder to purchase some or all of the Compulsory Transfer Shares from

that Relevant Shareholder prior to or following agreement or determination of the Offer Price for such Compulsory Transfer Shares and/or service of the Compulsory Sale Notice.

- 22.21 Unless otherwise directed by the Investor Representative in writing, any Shares held by a Relevant Shareholder shall, irrespective of whether a Compulsory Sale Notice has been served, cease to confer upon that Leaver the right to receive notice of, attend and vote at any general meeting, or any meeting of the holders of any class of Shares or to receive and vote on any proposed written resolution or to exercise any pre-emption or other right and such Shares shall not be counted in determining the total number of votes which may be cast at any such meeting or for the purposes of a written resolution of any Shareholders or class of Shareholders. This restriction shall cease immediately upon the Company registering a transfer of the relevant Shares in accordance with these Articles.
- 22.22 The provisions of this Article 22 may be waived, disappplied, modified, suspended or relaxed in whole or in part, in any particular case, by the Investor Representative.

## **23 DEFERRED SHARES**

- 23.1 Any Deferred Shares which were issued as redeemable shares may be redeemed by the Company at any time at its option for one penny for all the Deferred Shares registered in the name of any holder without obtaining the sanction of the holder or holders.
- 23.2 The allotment or issue of Deferred Shares or the conversion of Shares into Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after their allotment, issue or conversion to appoint any person to execute or give on behalf of the holder of those Deferred Shares:
- 23.2.1 an agreement to transfer and a transfer of such Deferred Shares to such person or persons as the Company may determine; and/or
  - 23.2.2 a consent to the cancellation of such Deferred Shares; and/or
  - 23.2.3 an agreement to transfer and a transfer of such Deferred Shares to such person or persons as the Company may determine as custodian thereof; and/or
  - 23.2.4 an agreement for the Company to purchase such Deferred Shares in accordance with the Act,

in any such case for a price being not more than an aggregate sum of one penny for all the Deferred Shares so purchased without obtaining the sanction of such holder or holders and pending such transfer and/or purchase to retain the certificates (if any) in respect thereof.