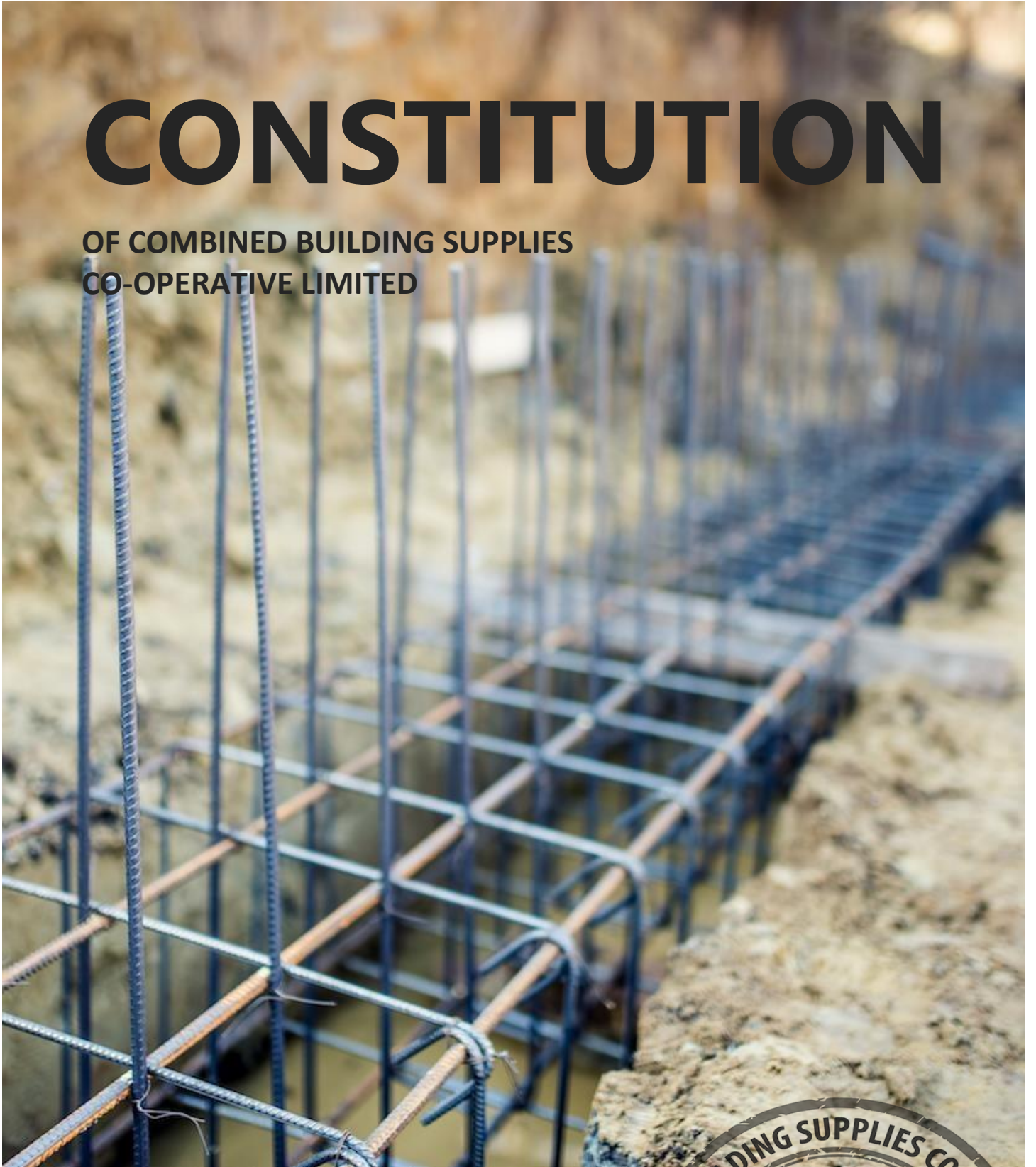


# CONSTITUTION

OF COMBINED BUILDING SUPPLIES  
CO-OPERATIVE LIMITED



# Constitution of Combined Building Supplies Co-operative Limited



## 1.0 Preliminary

1.1 **Purpose:** The principal activities of the Company are:

- a. the group or bulk buying and marketing on a mutual basis of building supplies for the benefit of the businesses of Transacting Shareholders;
- b. to ensure Transacting Shareholders maximise mutual benefit from their transactions with the Company, and with suppliers who have entered into contractual arrangements of the Company, and from their ownership of the Company.

1.2 **Capacity:** Notwithstanding clause 1.1, the Company has:

- a. full capacity to carry on or undertake any business activity, do any act, or enter into any transaction; and
- b. for the purposes of clause 1.2(a), full rights, powers and privileges.

1.3 **Rights, powers and duties:** The Company, the Board and each Director and Shareholder of the Company has the rights, powers, duties and obligations set out in the Act and the Co-operative Companies Act except to the extent that they are negated or modified in accordance with the Act or the Co-operative Companies Act by this Constitution.

## 2.0 Interpretation

2.1 **Definitions:** In this Constitution unless the context otherwise requires:

"**Act**" means the Companies Act 1993;

"**Board**" means:

- (a) Directors of the Company who number not less than the required quorum acting as the Board of Directors of the Company; or
- (b) If the Company only has one Director, that Director;

"**Company**" means Combined Building Supplies Co-operative Limited;

"**Corporate Transacting Shareholder**" means a Transacting Shareholder which is a company;

"**Co-operative Companies Act**" means the Co-operative Companies Act 1996;

"**class**" means a class of shares having attached to them identical rights, privileges, limitations and conditions;

"**Director**", in relation to the Company, has the meaning set out in Section 126;

"**Disclosure Document**" has the meaning set out in Section 62, 64 or 79 as is appropriate in the circumstances;

"**Distribution**" has the meaning set out in Section 2 and includes a rebate;

"**Dividend**" has the meaning set out in Section 53 as modified by section 30(3) of the Co-operative Companies Act and includes a rebate and "**Dividends**" shall have the corresponding meaning;

"**Financial Year**" means a year ending on the balance date of the Company;

"**Interest Group**" has the meaning set out in Section 116;

"**Interests Register**" means the register kept under Section 189(1)(c).

"**Major Transaction**" has the meaning set out in Section 129;

"**Minimum Purchases Requirement**" means the minimum dollar value of Purchases that a Transacting Shareholder must make in any Financial Year determined by the Board in accordance with clause 45.2;

"**New Shares**" means all shares in the Company issued after its registration and excludes any shares in the Company specified in the Company's application for registration;

"**Non Transacting Shareholder**" means any Shareholder who is not a Transacting Shareholder;

"**Ordinary Resolution**" is a resolution of the Company that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

"**Purchases**" means purchases made by a Shareholder from the Company in accordance with the Company's terms and conditions;

"**Redeemable**" has the meaning set out in Section 68;

"**Register**" means the share register maintained under Section 87;

"**Related Company**" has the meaning set out in Section 2(3);

"**Relevant Interest**" has the meaning set out in Section 146;

"**Rules**" means the rules for Transacting Shareholders, including the requirements relating to transactions with the Company, which shall be fixed by the Board from time to time under clause 45.1 and notified in writing to all Shareholders.

"**Section**" means a Section of the Act;

"**Shareholder**" has the meaning set out in Section 96 and includes Transacting Shareholders and Non Transacting Shareholders;

"**Solvency Test**" has the meaning set out in the Act;

"**Special Resolution**" means a resolution approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the question; and

**"Transacting Shareholder"** means, in terms of section 4 of the Co-operative Companies Act, a transacting shareholder who complies with the Rules and meets the Minimum Purchases Requirement set by the Board under clauses 45.1 and 45.2.

- 2.2 **Undefined terms:** Any expression not defined in this Constitution but defined in the Act or the Co-operative Companies Act shall bear the same meaning in this Constitution as in the Act or the Co-operative Companies Act, as the context requires.
- 2.3 **Headings:** Headings shall not affect the interpretation of this Constitution.
- 2.4 **Reference to Statutes:** Unless the context otherwise requires, references to a statute include amendments to that statute, a statute passed in substitution for that statute, and regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.

## 3.0 Company Name

- 3.1 **Change of Company Name:** Any Director may, with the approval of the Board and a Special Resolution, apply to change the name of the Company.

## 4.0 Capacity and Powers

- 4.1 **Full capacity:** Subject to this Constitution, the Act, the Co-operative Companies Act, any other enactment and the general law, the Company has both within and outside New Zealand, the capacity, rights, powers and privileges to carry on or undertake any business or activity, do or enter into any transaction.

## 5.0 Shares

- 5.1 **Types of shares:** Subject to clause 23 and Section 117 (which relate to alteration of Shareholders' rights), any share in the Company may be issued with such preferred, deferred, or other special rights or such restrictions (whether in regard to dividends, voting, return of capital or otherwise) as the Board may from time to time determine and, in particular, shares in the Company may:
- a. Be redeemable either at the option of the Company, the option of the Shareholder, or on a date specified or determined by the Board;
  - b. Confer preferential rights to distributions of capital or income;
  - c. Confer special, limited, or conditional voting rights; or

d. Not confer voting rights.

5.2 **Rights attaching:** A share in the Company is personal property and, unless the Board determines to issue the shares with other special rights or restrictions (including in relation to any reserve or the indemnity fund of the Company), all ordinary shares will have the rights specified in Section 36(1) subject to the following variations:

- a. each ordinary share shall have a nominal value of \$1.00 unless that nominal value is altered in accordance with the Co-operative Companies Act;
- b. the right to an equal share in the distribution of the surplus assets of the Company as modified by clause 43;
- c. each ordinary share will give the holder the voting rights calculated in accordance with clauses 5.3 and 5.4, provided that if the Transacting Shareholder does not comply with the Rules, does not meet the Minimum Purchases Requirement, or the Transacting Shareholder's trading account with the Company is not current as at the date the notice of meeting is sent, the Transacting Shareholder will not be entitled to exercise any right to vote.

5.3 **Non Transacting Shareholders:** In accordance with the Co-operative Companies Act, shares may be issued to Non Transacting Shareholders under clause 5.1 with such preferred, deferred or other special rights or such restrictions as the Board may from time to time determine and, subject to the terms of such shares issued to Non Transacting Shareholders, the right to vote on any resolution, provided that not less than the specified percentage, not being less than 60%, of the voting rights are at all times are held by Transacting Shareholders. On registration this specified percentage shall be 100%. This specified percentage may be amended from time to time by Special Resolution.

5.4 **Voting rights:** Subject to clause 5.2(c), every Transacting Shareholder shall be entitled to one vote for each ordinary share with a nominal value of \$1.00 held by that Transacting Shareholder.

## 6.0 Issue of Shares

6.1 **Generally:** Subject to the Act and this Constitution, and in particular clause 6.2, the Board may issue shares at any time, to any person, and in any number it thinks fit, and the consideration for which such shares are issued may take any form.

6.2 **Shares having Nominal Value:** The Board may issue shares having a nominal value under sections 15 - 17 of the Co-operative Companies Act. Unless the Board specifies otherwise on issue or the nominal value is amended in accordance with the Co-operative Companies Act, ordinary shares issued shall have a nominal value of \$1.00. The consideration for the issue of any shares or class of shares shall be the nominal value of the shares or class of shares. The Board may change the nominal value of Shares from time to time provided the change is approved by Ordinary Resolution.

- 6.3 **Board's duties:** Subject to the Co-operative Companies Act and clauses 6.2 and 6.5, before the Board issues shares or any securities that are convertible into shares in the Company, or any options to acquire shares in the Company it shall:
- a. decide the consideration for which the shares, convertible securities or options will be issued and the terms on which they will be issued; and
  - b. if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
  - c. resolve that, in its opinion, the consideration for and terms of the issue of the shares, convertible securities or options, are fair and reasonable to the Company and to all existing Shareholders; and
  - d. if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration is not less than the amount to be credited for the issue of the shares.
- 6.4 **Director's certificate:** The Directors who vote in favour of a resolution required by clause 6.3 shall sign a certificate in accordance with section 47(2).
- 6.5 **Exceptions:** Clause 6.3 does not apply to:
- a. the issue of shares that are fully paid up from the reserves of the Company to all Shareholders of the same class in proportion to the number of shares held by each Shareholder;
  - b. the consolidation and division of the shares or any class of shares in the Company in proportion to those shares or the shares in that class;
  - c. the subdivision of the shares or any class of shares in the Company in proportion to those shares or the shares in that class; or
  - d. the issue of shares having a nominal value in accordance with the Co-operative Companies Act.
- 6.6 **Consent to issue:** Subject to clause 6.8, the issue by the Company of a share that:
- a. increases a liability of a person to the Company; or
  - b. imposes a new liability on a person to the Company,
- is void if that person or an agent of that person authorised in writing does not consent in writing to becoming the holder of the share before it is issued.
- 6.7 **Time of issue:** A share is issued when the name of the Shareholder is entered on the share register.
- 6.8 **Issue to Existing Shareholders:** Clause 6.6 does not apply in relation to the issue of shares having a nominal value if the shares are, in accordance with this Constitution, issued to a Shareholder who already holds shares with a nominal value.
- 6.9 **Issue of Nominal Value Shares from Reserves:** Ordinary Shares having a nominal value may be issued and partly, fully or partly, from the reserves of the Company if:

- a. the shares are issued to each Shareholder in the same class in proportion to the shares held by that Shareholder in the class; or
- b. the Shares are issued to shareholders in the same class in proportions calculated by reference to transactions by those shareholders with the Company (including by references to the number or value or volume of, or the profit derived by the Company, from transactions by the Shareholder with the Company during a period determined by the Board.

## 7.0 Restriction on Share Issues

- 7.1 **10% limit:** Notwithstanding the remaining provisions of this Constitution, the Board is expressly prohibited from issuing shares to any person (whether an individual or a body corporate and including any existing Shareholder) where any such share issue would result in that person, together with any other person or persons related to that person, becoming the holder or controller of, or increasing its holding or control above, 10% of the shares then on issue in the Company.
- 7.2 **Meaning of "related":** For the purposes of clause 7.1 above, a person is "related" to another person if:
- 7.2.1 that person is a "relative" of the other person within the meaning of paragraph (a) of the definition of "relative" in the Income Tax Act 2007;
  - 7.2.2 that person is the other person's "partner" within the meaning of the Partnership Act 1908 or the Limited Partnerships Act 2008 or a foreign counterpart of either of those enactments;
  - 7.2.3 that person is a body corporate and the other person has the power, directly or indirectly, to exercise, or control the exercise of, the right to vote attached to 50% or more of the voting securities of the body corporate;
  - 7.2.4 that person can, either directly or indirectly, appoint or remove all the directors of the other person, or such number of directors of the other person as together hold a majority of the voting rights at meetings of the board of the other person; or
  - 7.2.5 that person has the power to otherwise control the conduct, affairs or policy of the other person.
- 7.3 **Board's decision final:** The Board shall have the sole discretion to determine any dispute as to whether a person is "related" to another and the Board's determination of any such dispute shall be final.
- 7.4 **Voidable share issues:** Any issue of shares that is made in contravention of this clause 7 will be deemed to be null and void and of no effect and any Shareholder issued Shares in contravention of this clause 7 will be required to surrender those Shares to the Company immediately on demand by the Board.

## 8.0 Allocation of new Shares

- 8.1 **Section 45 not to apply:** The Board shall be free to issue any New Shares to any person or persons in its discretion, and Section 45 shall accordingly not apply.
- 8.2 **Alteration of shares:** The Company may by Ordinary Resolution:
- 8.2.1 consolidate and divide shares or any class of shares in proportion to those shares or the shares in that class; and
  - 8.2.2 sub-divide shares or any class of shares in proportion to those shares or the shares in that class.

## 9.0 Liability of Shareholders

- 9.1 **Limited liability:** Subject to the Act, the liability of a Shareholder to the Company is limited to:
- 9.1.1 Any amount unpaid on a share held by the Shareholder;
  - 9.1.2 Any liability expressly provided for in this Constitution;
  - 9.1.3 Any liability under clause 27 and Sections 131 to 137 (which relate to Directors' duties) that arises by reason of Section 126(2) (which deems certain persons to be Directors);
  - 9.1.4 Any liability to repay a Distribution received by the Shareholder to the extent that the Distribution is recoverable under Section 56 (which relates to recovery of Distributions); and
  - 9.1.5 Any liability under Section 100 (which relates to the liability for calls) and clause 9.2.
- 9.2 **Shareholders not required to acquire shares by alteration to Constitution:** A Shareholder is not bound by an alteration to this Constitution that:
- 9.2.1 requires the Shareholder to acquire or hold more shares in the Company than the number held on the date the alteration is made; or
  - 9.2.2 increases the liability of the Shareholder to the Company,
- unless the Shareholder agrees in writing to be bound by the alteration either before, on, or after it is made.

## 10.0 Liens

- 10.1 **Lien on shares:** The Company shall have a first and paramount lien on all of the shares registered in the name of each Shareholder (whether solely or jointly) and on all money

payable to the Shareholder for such Shareholder's several and joint debts and liabilities to or with the Company, including all money payable by the Shareholder to the Company on any account ("**Lien**").

10.2 **Lien effective:** The Lien shall be effective whether:

10.2.1 The debts or liabilities were incurred before or after notice of any equitable interest in any person other than the Shareholder;

10.2.2 The period for repayment, fulfilment or discharge of such debts or liabilities shall have actually arrived or not.

10.3 **Dividend and bonuses:** The Lien shall extend to all dividends or bonuses from time to time declared in respect of the shares.

10.4 **Waiver:** Unless otherwise agreed by the transferee, the registration of a transfer of shares by the Company shall operate as a waiver of the Lien by the Company.

10.5 **Sale of shares:** A Director, on behalf of the Company, may sell any shares on which the Company has a Lien if:

10.5.1 A sum in respect of which the Lien exists is presently payable; and

10.5.2 14 days' notice in writing demanding payment of such sum has been given to the Shareholder or the person entitled by reason of the Shareholder's death or bankruptcy.

10.6 **Execution:** For giving effect to any such sale a Director, on behalf of the Company, may execute a transfer of the shares to the purchaser.

10.7 **Discharge from calls:** On registration of the transfer to the purchaser of shares sold by the Company under this clause 10 ("**Transferee**") the Transferee shall be the Shareholder of such shares discharged from all calls due prior to such purchase.

10.8 **Purchase money:** The Transferee shall not be bound to see to the application of the purchase money nor shall the Transferee's title to the shares be affected by any irregularity or invalidity in the sale procedure.

10.9 **Former Shareholder's remedy:** The remedy of the former Shareholder and of any person claiming under or through the former Shareholder shall be against the Company exclusively and in damages only.

10.10 **Proceeds:** The proceeds of any sale shall be applied:

10.10.1 Firstly, in payment of all costs and expenses of such sale and any attempted sale;

10.10.2 Secondly, in payment of such part of the amount in respect of which the Lien exists; and

10.10.3 Thirdly, be paid to the Shareholder entitled to the shares at the date of sale.

## 11.0 Call on Shares

- 11.1 **Power to call:** Subject to clause 11.3, the Board or such person authorised by the Board or the Board's authorised delegate may from time to time make such calls as they may think fit on the Shareholders in respect of all moneys unpaid on the shares held by them respectively and not paid in accordance with the conditions of the issue of the shares. A call may be made payable by instalments and may be revoked or postponed as the Board may determine. Each Shareholder shall pay the amount of every call so made on him or her to the Company or person (if any) appointed for the purpose and at the times and places appointed by the Board.
- 11.2 **Ability to deduct:** Notwithstanding clause 11.1, the Board may, for as long as a Transacting Shareholder is supplying goods or services to the Company:
- 11.2.1 refrain from requiring payment immediately of the money payable on the shares in cash; and
- 11.2.2 deduct on account of the amount called such amounts by way of instalments as the Board thinks fit from any moneys due by the Company to the Shareholder until the whole of the moneys payable on the shares has been paid.
- 11.3 **Prior holders not liable for calls:** Where a share renders its holder liable for calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to a prior holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current holder.
- 11.4 **Call made:** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
- 11.5 **Joint holders:** Joint Shareholders shall be jointly and severally liable to pay all calls in respect of their Shares.
- 11.6 **Interest:** If an amount called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Board may determine. The Board may, however, waive payment of that interest wholly or in part.
- 11.7 **When payable:** Any sum which by the terms of issue of a share becomes payable on issue or at any date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 11.8 **Different amounts:** Subject to the Board's duties under the Act (including Section 47 - which relates to the consideration for the issue of shares to be decided by the Board) and clause 5, the Board may on the issue of shares differentiate between the Shareholders as to the amount of calls to be paid and the times of payment.
- 11.9 **Receipt of uncalled money:** The Board may if it thinks fit receive from any Shareholder willing to advance the same all or any of the moneys uncalled and unpaid on any shares held by that Shareholder. On receipt of such advance the Board may (but shall not be obligated to):

- 11.9.1 Pay interest at such rate as agreed on by the Board and the Shareholder from the date of the advance until the due date for payment;
  - 11.9.2 Agree with the Shareholder that the Shareholder may participate in profits on the amount advanced; or
  - 11.9.3 Repay the advance on giving the Shareholder 3 months' notice in writing.
- 11.10 **Proof of liability:** The amounts of any unpaid call or instalment may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call became payable. In any such proceedings it shall be sufficient to prove that:
- 11.10.1 The name of the Shareholder sued is entered in the Register as the holder or one of the holders of the shares in respect of which the debt has accrued;
  - 11.10.2 The resolution making the call is duly recorded in the minute book of the Company; and
  - 11.10.3 Notice of such call was given to the Shareholder.
- 11.11 **Proof of debt:** Proof of the matters referred to in this clause 11 shall be conclusive evidence of the debt. It shall not be necessary to prove any other matter.

## 12.0 Forfeiture of Shares

- 12.1 **Failure to pay:** If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment, the Board may serve a notice on the Shareholder requiring payment of the unpaid call, together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
- 12.2 **Notice:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made. The notice shall also state that in the event that payment in full is not made by the time appointed the shares in respect of which the call was made will be liable to be forfeited.
- 12.3 **Non-compliance:** If full payment is not made by the time appointed in any notice under clause 12.2, any share in respect of which the notice has been given, may, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 12.4 **Forfeited share:** Any share so forfeited shall be deemed to be the property of the Company and may be sold, re-issued, or otherwise disposed of in such manner as the Board thinks fit. The Board may, at any time before such share is disposed of, annul the forfeiture on such terms or conditions as it may approve.
- 12.5 **Ceasing to be a Shareholder:** A person whose shares have been forfeited shall cease to be a Shareholder in respect of the forfeited shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the shares. The Shareholder's liability shall cease if and when the Company receives

payment in full of all such money in respect of the shares.

12.6 **Entry of forfeiture:** On the forfeiture of any share the Board shall:

12.6.1 Cause a note of such forfeiture and the date thereof to be entered in the Register;

12.6.2 Cause notice of such forfeiture and the date of forfeiture to be given to the Shareholder in whose name it stood immediately prior to the forfeiture; and

12.6.3 On the disposal of any forfeited share cause a note of the manner and date of such disposal to be similarly entered.

12.7 **Evidence of forfeiture:** An entry in the Register that a share has been forfeited on a date stated in the Register shall be conclusive evidence of the facts stated in the Register as against all persons claiming to be entitled to the share. A Director, on behalf of the Company, may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and may receive the consideration from such disposal or sale. In the case of a reissue, the person to whom the share shall have been reissued, and in the case of a sale or other disposition, the person or persons to whom the share shall be sold or disposed of, shall:

12.7.1 be entered in the Register as the holder of the share; and

12.7.2 be bound to see to the application of the purchase money, and nor shall such person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, re-issue, sale or other disposal of the share.

12.8 **Fixed time payments:** The provisions of this clause 12 as to forfeiture of shares shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

12.9 **Disposal of residue after sale:** In the event of shares being forfeited and sold, re issued, or otherwise disposed of within 12 months of the date of forfeiture, any residue after the satisfaction of unpaid calls, instalments, interest, and expenses shall be paid to the previous Shareholder or that Shareholder's executors administrators or assigns.

12.10 **Forfeiture of Shares of Untraceable Shareholders:** In addition to the right of the Company to forfeit shares under this clause 12, the Company may forfeit the shares of a Shareholder in accordance with Section 28 of the Companies Co-operative Act.

## 13.0 Distributions to Shareholders

13.1 **Satisfaction of Solvency Test:** The Board, if it is satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the Solvency Test may, subject to the Act, the Co-operative Companies Act and this Constitution, authorise a Distribution by the Company at a time, and of an amount, and to any Shareholders it thinks fit.

13.2 **Director's Certificate:** The Directors who vote in favour of the Distribution must sign a certificate

in accordance with Section 52(2).

- 13.3 **Rebates to Transacting Shareholders:** The Company may give rebates to Transacting Shareholders in the form of:
- 13.3.1 Payments; or
  - 13.3.2 Shares in lieu wholly or in part of payments, issued under clause 13.12, calculated by reference to transactions by those Shareholders with the Company, including by reference to the number or value or volume of, or the profit derived by the Company from, transactions by the Shareholders with the Company.
- 13.4 **Dividend to joint holders:** If several persons are registered as joint holders of any shares, and such persons are entitled to receive Dividends in respect of the shares, any one of them may give effectual receipts for any Dividend or other moneys payable on or in respect of the share.
- 13.5 **Manner of payment:** Any Dividend may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to the Dividend. Failing any direction, payment may be made by cheque sent by post:
- 13.5.1 To the registered address of the Shareholder or person entitled to the Dividend;
  - 13.5.2 In the case of joint holders to any one of the joint holders at his or her registered address; or
  - 13.5.3 To the person and the address as the Shareholder or person entitled or such joint holders as the case may be, may direct,
- and the Company shall not be responsible for any loss arising from such mode of transmission.
- 13.6 **No interest on Dividend:** No Dividend shall bear interest against the Company.
- 13.7 **Deductions from Dividend:** The Board may deduct from the Dividend payable to any Shareholder entitled to receive Dividends all such sums of money as may be due from him or her to the Company on account of:
- 13.7.1 Calls or instalments, premiums, or any debt or liability;
  - 13.7.2 Debts, liabilities or obligations in respect of which the Company has a Lien under this Constitution on the specific shares in respect of which the Dividend is payable; or
  - 13.7.3 Such amounts as the Company may be called on to pay under any statute or legislative enactment in respect of the shares of a deceased or other Shareholder.
- 13.8 **Persons to whom Dividend payable:** A Dividend shall be payable to the person or persons who are the registered holder or holders of the shares in respect of which they are declared at the time of the declaration of the Dividend (or at the time when the Dividend is declared to be payable).
- 13.9 **Right not transferred:** A transfer of any share shall not pass the right to any Dividend declared thereon before the registration of the transfer.
- 13.10 **Dividend by way of distribution of assets:** The Board may distribute in kind among the Shareholders by way of Dividend, any of the assets of the Company, and in particular any shares or securities of other companies to which the Company is entitled.

### 13.11 **Unclaimed Dividends:**

13.11.1 All Dividends and other Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle and spend the amounts (or refrain from issue, as the case may be) of any such Distribution, with other money from the Company and shall not be required to hold them or regard them as being impressed with any trust.

13.11.2 Any Dividend, and any other moneys payable to any Shareholder or former Shareholder in respect of shares in the Company remaining unclaimed for 5 years after having been declared or otherwise having become payable, may, at the expiry of such period of 5 years after having been declared or otherwise having become payable, be forfeited by the Board for the benefit of the Company, provided always that the Board may at any time after such forfeiture annul the same and pay the Dividend or interest or issue the bonus (as the case may be) so forfeited to any person producing evidence and he or she is entitled to the same, and the Board shall do so unless in the opinion of the Board such payment or issue would embarrass the Company.

### 13.12 **Shares in lieu of Rebates:** The Board may issue shares to any Transacting Shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of the payment of a proposed rebate or proposed future rebates if:

13.12.1 The right to receive shares, wholly or partly, in lieu of the payment of the proposed rebate or proposed future rebates has been offered to all Transacting Shareholders of the same class on the same terms; and

13.12.2 The Transacting Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and

13.12.3 The shares issued to each Transacting Shareholder are issued on the same terms and subject to the same rights as the shares issued to all Transacting Shareholders in that class who agree to receive the shares.

### 13.13 **Shareholder discounts:** The Board may in accordance with section 55 as modified by section 29(d) of the Co-operative Companies Act resolve that the Company offer Shareholders discounts in respect of some or all of the goods sold or services provided by the Company, subject to the following conditions:

13.13.1 The Board has previously resolved that the proposed discounts are fair and reasonable to the Company and to all Shareholders and to be available to all Shareholders or all Shareholders of the same class on the same terms.

13.13.2 The Board is satisfied on reasonable grounds that the Company satisfies the Solvency Test.

## 14.0 Company may acquire its own Shares

### 14.1 **Company may acquire its own shares:** The Company may, in accordance with the Act and the

Co-operative Companies Act, acquire its own shares.

- 14.2 **Form of offer:** The Board may make an offer to acquire shares issued by the Company if the offer is:
- 14.2.1 an offer to all Shareholders to acquire a proportion of their shares, that would, if accepted, leave unaffected relative voting and Distribution rights, and affords a reasonable opportunity to accept the offer; or
  - 14.2.2 an offer to one or more Shareholders to acquire shares to which all Shareholders have consented in writing or
  - 14.2.3 that is made in accordance with the procedure set out in Section 61 (which relates to special offers to acquire shares).
- 14.3 **Offers to all Shareholders:** Where an offer is made in accordance with clause 14.2.1:
- 14.3.1 the offer may also permit the Company to acquire additional shares from a Shareholder to the extent that another Shareholder does not accept the offer or accepts the offer only in part; and
  - 14.3.2 if the number of additional shares exceeds the number of shares that the Company is entitled to acquire, the number of additional shares shall be reduced rateably.
- 14.4 **Resolutions required:** The Board may make an offer under clause 14.2 if:
- 14.4.1 the Board has passed a resolution in accordance with Section 60(3) setting out in full the reasons for the Directors' conclusions; and
  - 14.4.2 the Directors who voted in favour of the resolution have signed a certificate in accordance with Sections 52(2) and 60(5).
- 14.5 **Offers to one or more Shareholders:** The Board may make an offer under clause 14.2.2 if:
- 14.5.1 the Company has sent to each Shareholder a Disclosure Document that complies with Section 62 before the offer is made;
  - 14.5.2 the Board has passed a resolution in accordance with Section 61(1) setting out in full the reasons for the Directors' conclusions; and
  - 14.5.3 the Directors who voted in favour of the resolution have signed a certificate in accordance with Sections 52(2) and 61(3).
- 14.6 **Cancellation of shares repurchased:** Subject to the Act and the Co-operative Companies Act, Shares that are acquired by the Company under this clause 14 are deemed to be cancelled immediately on acquisition by the Company. For the purposes of this clause 14.6, shares are acquired by the Company on the date on which the Company would, apart from this clause 14.6
- become entitled to exercise the rights attaching to the shares. On the cancellation of a share by virtue of this clause 14.6:
- 14.6.1 the rights and privileges attached to that share expire; but
  - 14.6.2 the share may be reissued in accordance with this Constitution and the Act.

## 15.0 Treasury Stock

- 15.1 **Hold own shares:** Subject to the Act and the Co-operative Companies Act, the Company is permitted to hold those of its own shares:
- 15.1.1 acquired under the Act; or
  - 15.1.2 surrendered under the Co-operative Companies Act.
- 15.2 **Rights and obligations:** The rights and obligations attaching to a share that the Company holds in itself including (without limitation):
- 15.2.1 any voting rights attaching to the share; or
  - 15.2.2 the right to receive any distribution authorised or payable in respect of the share, shall not be exercised by or against the Company whilst it holds the share.
- 15.3 **Reissue of shares:** All of the provisions of the Act, the Co-operative Companies Act and this Constitution in relation to the issue of shares by the Company shall apply to the transfer of a share held by the Company in itself as if the transfer were the fresh issue of the share.

## 16.0 Redemption of Shares

- 16.1 **Power to Redeem:** The Company may redeem any share which is issued as Redeemable.
- 16.2 **Redemption at option of the Company:** Except as provided by clause 16.3 the Company must not exercise an option to redeem shares unless:
- 16.2.1 the option is exercised in relation to one or more Shareholders and:
    - (a) All Shareholders have consented in writing; or
    - (b) The option is exercised in accordance with the procedure set out in Section 71 (which relates to special redemption of shares);
  - 16.2.2 before the exercise of the option, the Board:
    - (a) has passed a resolution in accordance with Section 69(2) setting out in full the grounds for the Directors' conclusions; and
    - (b) is satisfied on reasonable grounds that the Company will, immediately after the share is redeemed, satisfy the Solvency Test in accordance with Section 52 (which relates to distributions authorised by the Board) and the Directors who voted in favour of exercising the option signed a certificate in accordance with Section 70(2).

- 16.3 **Special redemption of shares:** The Company may exercise an option to redeem shares under clause 16.2.2(b) if:
- 16.3.1 the Board has previously passed a resolution in accordance with Section 71(1) setting out in full the grounds for the Directors' conclusions;
  - 16.3.2 the Directors who voted in favour of the resolution have signed a certificate in accordance with Section 71(3); and
  - 16.3.3 the Company has sent to each Shareholder a Disclosure Document that complies with Section 72 before the option is exercised.
- 16.4 **Time limit:** The option to redeem shares under clause 16.3 must be exercised not less than 10 and not more than 30 working days after the Disclosure Document has been sent to each Shareholder.
- 16.5 **Redemption at option of Shareholder:** If a share is redeemable at the option of a Shareholder and the Shareholder gives proper notice to the Company requiring the Company to redeem the share:
- 16.5.1 the Company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice; and
  - 16.5.2 from the date of redemption, the former Shareholder ranks as an unsecured creditor of the Company for the sum payable on redemption.
- 16.6 **Redemption on fixed date:** If a share is redeemable on a specified date:
- 16.6.1 the Company shall redeem the share on that date; and
  - 16.6.2 from that date the former Shareholder ranks as an unsecured creditor of the Company for the sum payable on redemption.
- 16.7 **Cancellation of shares redeemed:** Shares that are redeemed by the Company under this clause 16 are deemed to be cancelled immediately on redemption. On the cancellation of a share:
- 16.7.1 the rights and privileges attached to that share expire; but
  - 16.7.2 the share may be reissued.

## 17.0 Surrender of Shares

- 17.1 **Surrender at option of Shareholder:** Subject to complying with the Co-operative Companies Act and this Constitution, the Board:
- 17.1.1 may, subject to section 18 of the Co-operative Companies Act, resolve to accept an offer to surrender all or any of the shares in the Company having a nominal value made in accordance with section 20(1) of the Co-operative Companies Act by a Shareholder who has ceased to be a Transacting Shareholder; and

- 17.1.2 must resolve to accept an offer to surrender of all or any of the shares in the Company having a nominal value made in accordance with sections 20(2) or 20(3) of the Co- operative Companies Act.
- 17.2 **Surrender at option of Company:** Subject to complying with the Co-operative Companies Act and this Constitution, the Company may require any Shareholder to surrender all or any shares in the Company having a nominal value held by that Shareholder if:
- 17.2.1 the Shareholder has ceased to be a Transacting Shareholder;
- 17.2.2 the Shareholder is in default of an obligation to the Company (including the Rules and any requirement set out in any application form that the Shareholder submitted to the Company in order to be accepted as a Transacting Shareholder at the time such Shareholder applied to become a Transacting Shareholder) or one of its related companies ;
- 17.2.3 the Shareholder is in default of an obligation to a supplier of the Company (including an obligation to pay money by the due date); or
- 17.2.4 the Board resolves that surrender is in the best interests of the Company (including, without limitation, because in the opinion of the Board that Shareholder is bringing the Company into disrepute or is causing significant loss or disruption to the business of the Company).

## 18.0 Consideration for transfer of Shares

- 18.1 **Consideration if required by the Transacting Shareholder:** The consideration for the surrender of shares in the Company where that surrender is requested by the Transacting Shareholder under clause 17.1 shall be \$nil.
- 18.2 **Consideration if required by the Company:** The consideration for the surrender of shares in the Company where that surrender is required under clause 17.2 shall be the lesser of:
- 18.2.1 the nominal value of the shares on the date that the surrender takes effect;
- 18.2.2 the amount paid up for the shares;
- 18.2.3 if the terms of issue include a procedure for determining the consideration on surrender, the amount determined in accordance with those terms; or
- 18.2.4 an amount agreed between you and the Board.,
- less any amount owed by the Transacting Shareholder to the Company or any of its related companies on any account whatsoever.
- 18.3 **Payment of Consideration:** The consideration owed by the Company for any surrender of shares to the Company shall be payable at a date decided by the Board being no later than 3 months after the surrender is accepted or deemed to take effect.

## 19.0 Statement of Shareholder Rights

- 19.1 **Statement to be given to Shareholders:** The Company shall issue to a Shareholder, on request, a statement that complies with Section 83(1) (which relates to the required content of such notices).
- 19.2 **Power to refuse:** The Company is not obliged to provide a Shareholder with a statement if:
- 19.2.1 a statement has been provided within the previous 6 months;
  - 19.2.2 the Shareholder has not acquired or disposed of shares since the previous statement was provided;
  - 19.2.3 the rights attached to shares of the Company have not been altered since the previous statement was provided; and
  - 19.2.4 there are no special circumstances which would make it unreasonable for the Company to refuse the request.

## 20.0 Transfer of Shares

- 20.1 **Transfer generally:** Shares in the Company may be transferred by entry of the name of the transferee on the share register.
- 20.2 **Delivery of form of transfer:** For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by his or her personal representative must be delivered to:
- 20.2.1 the Company; or
  - 20.2.2 an agent of the Company who maintains the share register under Section 87(3).
- 20.3 **Signature by transferee:** The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the Company on the transferee.
- 20.4 **Duty on receipt:** On receipt of a form of transfer in accordance with clause 20.2 and, if applicable, clause 20.3 the Company shall forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless:
- 20.4.1 The Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
  - 20.4.2 Notice of the resolution, including those reasons, is sent to the transferor and to

the transferee within 5 working days of the resolution being passed by the Board;  
and

20.4.3 The Act or this Constitution expressly permits the Board to refuse or delay registration for the reasons stated.

20.5 **Power to refuse or delay:** The Board may refuse or delay the registration of a transfer of shares if:

20.5.1 the holder of the shares has failed to pay to the Company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with this Constitution; or

20.5.2 the Company has a lien on a share or shares included in the transfer;

20.5.3 the transfer would result in a breach of any share trading policy determined by the Board;

20.5.4 the transfer would result in less than the specified percentage of the voting rights under clause 5.4 being held by Transacting Shareholders;

20.5.5 the transferee refuses to accept the Rules or the Minimum Purchases Requirement;

20.5.6 the Board resolves that it is not in the best interests of the Company to register the transfer;

20.5.7 a share certificate has been issued in respect of the shares, unless the form of transfer required by this clause 20 is accompanied by the share certificate, or by evidence as to its loss or destruction and, if required, an indemnity in a form prescribed by the Board;

20.5.8 the transfer does not comply with this Constitution, including this clause 20 or clause 21;

20.5.9 the holder of the shares is interested or involved whether directly or indirectly in a competitor of the Company and such interest or involvement in the opinion of the Board may be prejudicial or harmful to the interests of the Company or the other Shareholders; or

20.5.10 the Board does not otherwise approve of the transferee, in respect of which matter the Board shall have absolute discretion not controllable or reviewable by any Court of law or equity.

20.6 **Conditions on transfer and holding:** The Board may refuse or delay the registration of a transfer of ordinary shares having a nominal value if it is not likely that the transferee will become a Transacting Shareholder.

20.7 **Transfer by operation of law:** Shares in the Company may pass by operation of law but any such transfer shall not affect or prejudice any lien held over the shares or the Board's right to refuse or delay registration of any further transfer of shares.

## 21.0 Restriction on Share Transfers

- 21.1 **10% limit:** Notwithstanding the remaining provisions of this Constitution, each Shareholder is expressly prohibited from transferring shares to any other Shareholder or prospective Shareholder where any such share transfer would result in that person, together with any other person or persons related to that person, becoming the holder or controller of, or increasing its holding or control above, 10% of the shares then on issue in the Company.
- 21.2 **Meaning of "related":** For the purposes of clause 21.1 above, the meaning of "related" shall be as defined in clause 7.2 and subject to the Board's rights as stated in clause 7.3.
- 21.3 **Voidable share transfers:** Subject to clause 21.4, any transfer of shares that is made in contravention of clause 21.1 will be deemed to be null and void and of no effect and any Shareholder to whom shares have been transferred in contravention of clause 21.1 will be required to transfer those shares back to the transferring Shareholder immediately on demand by the Board.
- 21.4 **Exit share transfer event:** Where a Shareholder (an "**Affected Shareholder**") is found to have breached the shareholding limit imposed by clause 21.1 through no action of its own and solely as a result of another Shareholder (the "**Relevant Transferor**") transferring all or part of:
- 21.4.1 its shares to the Company in accordance with the buy-back or surrender provisions of clauses 13 or 17; or
  - 21.4.2 the assets to which its shares relate to any third party who, at the time of the proposed transfer of assets, is not, or does not intend on becoming, a Transacting Shareholder,
- (each an "**Exit Share Transfer Event**"), then:
- 21.4.3 for the avoidance of any doubt, any share transfer contemplated as part of a proposed Exit Share Transfer Event that results in the shareholding limits imposed by clause 21.1 being breached by an Affected Shareholder will remain subject to the Board's power to refuse or delay the registration of that transfer of shares in accordance with clause 20.5; and
  - 21.4.4 notwithstanding that the Affected Shareholder shall be entitled to retain all of its then current shares, the Affected Shareholder shall:
    - (a) be prohibited from further increasing its shareholding otherwise than as the result of a further Exit Share Transfer Event in relation to which it is also an Affected Shareholder (and not a Relevant Transferor);
    - (b) if required by the Board in its absolute discretion, only be entitled to vote such number of its shares which, together with the number of shares held by any person or persons related to it, represent a maximum of 10% of the Company's shares then on issue (and, for such purposes, such Affected Shareholder shall be deemed to have waived its voting rights in respect of all additional shares held by it in excess of such threshold).

## 22.0 Register

- 22.1 **Company to maintain Register:** The Company shall maintain a register that records the shares issued by the Company and states the information specified in Section 87 (which relates to the duty of the Company to maintain a share register).
- 22.2 **Agents:** An agent may maintain the Register.
- 22.3 **Power to divide Register:** The Register may be divided into 2 or more registers in accordance with Section 88 (which relates to the place of the share register).
- 22.4 **Location:** The principal Register shall be kept in New Zealand.
- 22.5 **Rules for divided Register:** If the Register is divided into 2 or more Registers kept in different places the Company must comply with Section 88(3).
- 22.6 **Trusts not to be entered on Register:** No notice of a trust, whether express, implied or constructive, may be entered on the Register.
- 22.7 **Personal representative may be registered:** Notwithstanding clause 22.6, a personal representative of a deceased person whose name is registered in the Register as the holder of a share in the Company is entitled to be registered as the holder of that share as personal representative.
- 22.8 **Registration where beneficial interest:** Notwithstanding clause 22.6, a personal representative of a deceased person beneficially entitled to a share in the Company, being a share registered in the Register, is with the consent of the Company and the registered holder of that share, entitled to be registered as the holder of that share as personal representative.
- 22.9 **Registration not notice of trust:** The registration of a trustee, executor, or administrator under this clause 22 does not constitute notice of a trust.
- 22.10 **Registration of assignee:** Notwithstanding clause 22.6, the assignee of the property of a bankrupt registered in the Register as the holder of a share in the Company is entitled to be registered as the holder of that share as the assignee of the property of the bankrupt.
- 22.11 **Registration where beneficial interest:** Notwithstanding clause 22.6, the assignee of the property of a bankrupt beneficially entitled to a share in the Company, being a share registered in the Register, is, with the consent of the Company and the registered holder of that share, entitled to be registered as the holder of that share as the assignee of the property of the bankrupt.

## 23.0 Alteration of Shareholder rights

- 23.1 **Special Resolution required:** The Company must not take action that affects the rights attached to shares unless that action has been approved by a Special Resolution of each

Interest Group.

23.2 **Interpretation:** For the purposes of clause 23.1, the rights attached to a share include:

23.2.1 the rights, privileges, limitations, and conditions attached to the share by the Act or this Constitution, including voting rights and rights to Distributions;

23.2.2 the right to have the procedure set out in this clause 23, and any further procedure required by this Constitution for the amendment or alteration of rights, observed by the Company; and

23.2.3 the right that a procedure required by this Constitution for the amendment or alteration of rights not be amended or altered.

23.3 **Relation of further issues to existing shares:** For the purposes of clause 23.1, the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions is expressly permitted and will not be deemed to affect the rights attached to the existing shares if made in accordance with this Constitution.

23.4 **Action not invalid:** The taking of action by the Company affecting the rights attached to shares is not invalid by reason only that the action was not approved in accordance with this clause 23.

## 24.0 Shareholders entitled to receive distributions, attend meetings and exercise rights

24.1 **Shareholders named in Register:** The Shareholders who are:

24.1.1 entitled to receive Distributions;

24.1.2 entitled to exercise any other right or receive any other benefit under the Act or this Constitution,

are:

24.1.3 if the Board fixes a date for the purpose, those Shareholders whose names are registered in the Register on that date; or

24.1.4 if the Board does not fix a date for the purpose, those Shareholders whose names are registered in the Register on the day on which the Board passes the resolution concerned.

24.2 **Date on which entitlement decided:** A date must not be fixed under clause 24.1 that precedes by more than 20 working days the date on which the proposed action will be taken.

24.3 **Notice of meeting:** The Shareholders who are entitled to receive notice of a meeting of Shareholders are:

- 24.3.1 if the Board fixes a date for the purpose, those Shareholders whose names are registered in the Register on that date; or
  - 24.3.2 if the Board does not fix a date for the purpose, those Shareholders whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.
- 24.4 **Entitlement date in relation to meeting:** A date must not be fixed under clause 24.1 that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

## 25.0 Meeting of Shareholders

- 25.1 **Annual meeting of Shareholders:** The Board must call an annual meeting of Shareholders to be held:
- 25.1.1 Once in each calendar year;
  - 25.1.2 Not later than 6 months after the balance date of the Company; and
  - 25.1.3 Not later than 15 months after the previous annual meeting.
- 25.2 **Special meeting of Shareholders:** A special meeting of Shareholders entitled to vote on an issue:
- 25.2.1 may be called at any time by:
    - (a) the Board; or
    - (b) a Director, at any time that there are insufficient Directors appointed or entitled to act to form a quorum of Directors.
  - 25.2.2 shall be called by the Board on the written request of Shareholders holding shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on the issue.
- 25.3 **Proceedings at meetings:** The provisions of Schedule 1 to this Constitution govern proceedings at meetings of Shareholders.

## 26.0 Powers of Directors

- 26.1 **Management by Board:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- 26.2 **Powers:** The Board has all the powers necessary for managing and for directing and supervising the management of, the business and affairs of the Company.
- 26.3 **Board may delegate:** The Board may delegate to a committee of Directors, a Director or

employee of the Company, or any other person, any one or more of its powers other than its powers under any of the Sections set out in the Second Schedule to the Act. A Board that delegates a power under this clause 26.3 is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:

26.3.1 believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and

26.3.2 has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

26.4 **Ratification of Directors actions:** The purported exercise by a Director or the Board of a power vested in the Shareholders or any other person may be ratified or approved by those Shareholders or that person in the same manner in which the power may be exercised. The purported exercise of a power that is so ratified is deemed to be, and always to have been, a proper and valid exercise of that power.

## 27.0 Duties of Directors

27.1 **Duty to act in good faith and in best interests of Company:** Subject to this clause 27, a Director of a Company, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.

27.2 **Exercise of powers in relation to Employees:** Nothing in clause 27.1 limits the power of a Director to make provision for the benefit of Employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

27.3 **Definitions:** In clause 27.2:

27.3.1 **"Employees"** includes former employees and the dependants of employees or former employees; but does not include an employee or former employee who is or was a Director;

27.3.2 **"Company"** includes a subsidiary of the Company.

27.4 **Powers to be exercised for proper purpose:** A Director must exercise a power for a proper purpose.

27.5 **Directors to comply with Act and Constitution:** A Director must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution.

27.6 **Reckless trading:** A Director must not:

27.6.1 agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or

27.6.2 cause or allow the business of the Company to be carried on in a manner likely to

create a substantial risk of serious loss to the Company's creditors.

- 27.7 **Duty in relation to obligations:** A Director must not agree to the Company incurring an obligation unless the Director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.
- 27.8 **Director's duty of care:** A Director, when exercising powers or performing duties as a Director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:
- 27.8.1 the nature of the Company;
  - 27.8.2 the nature of the decision; and
  - 27.8.3 the position of the Director and the nature of the responsibilities undertaken by him or her.
- 27.9 **Use of information and advice:** Subject to clause 27.10, a Director, when exercising powers or performing duties as a Director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- 27.9.1 An employee of the Company whom the Director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - 27.9.2 A professional adviser or expert in relation to matters which the Director believes on reasonable grounds to be within the person's professional or expert competence; and
  - 27.9.3 Any other Director or committee of Directors on which the Director did not serve in relation to matters within the Director's or committee's designated authority.
- 27.10 **Good faith:** Clause 27.9 applies to a Director only if the Director:
- 27.10.1 acts in good faith;
  - 27.10.2 makes proper inquiry where the need for inquiry is indicated by the circumstances; and
  - 27.10.3 has no knowledge that such reliance is unwarranted.

## 28.0 Use of Company information

- 28.1 **Restriction on use:** A Director who has information in his or her capacity as a Director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- 28.1.1 for the purposes of the Company;
  - 28.1.2 as required by law; or

- 28.1.3 in accordance with clauses 28.2 or 28.3; or
  - 28.1.4 in complying with Section 140 (which relates to disclosure of directors' interests) and clause 29.1.
- 28.2 **Necessary information:** A Director may, unless prohibited by the Board, disclose information to:
- 28.2.1 a person whose interests the Director represents; or
  - 28.2.2 a person in accordance with whose directions or instructions the Director may be required or is accustomed to act in relation to the Director's powers and duties and, if the Director discloses the information, the name of the person to whom it is disclosed must be entered in the Interests Register.
- 28.3 **Procedure for disclosure, use etc:** A Director may disclose, make use of, or act on the information if:
- 28.3.1 particulars of the disclosure, use, or the act in question are entered in the Interests Register;
  - 28.3.2 the Director is first authorised to do so by the Board; and
  - 28.3.3 the disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

## 29.0 Transactions involving self interest

- 29.1 **Disclosure of interest:** Subject to clause 29.5, a Director shall forthwith after becoming aware of the fact that he or she is interested (as defined in Section 139) in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board:
- 29.1.1 if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - 29.1.2 if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- A failure by a Director to comply with this clause 29.1 does not affect the validity of a transaction entered into by the Company or the Director.
- 29.2 **Shareholders etc in other companies:** For the purposes of clause 29.1 a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 29.3 **Interested Director may vote:** A Director who is interested in a transaction entered into, or to be entered into, by the Company, may:

- 29.3.1 Vote on a matter relating to the transaction;
  - 29.3.2 Attend a meeting of Directors at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purpose of a quorum;
  - 29.3.3 Sign a document relating to the transaction on behalf of the Company; and
  - 29.3.4 Do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not interested in the transaction.
- 29.4 **Acquisition or disposition of relevant interest:** Except as provided in Section 147 (which relates to Relevant Interests being disregarded in certain cases), a Director who acquires or disposes of a Relevant Interest in shares issued by the Company must, forthwith after the acquisition or disposition:
- 29.4.1 disclose to the Board:
    - (a) the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the Relevant Interest was disposed of, as the case may be;
    - (b) the nature of the Relevant Interest;
    - (c) the consideration paid or received;
    - (d) the date of acquisition or disposition; and
  - 29.4.2 ensure that the particulars disclosed to the Board under clause 29.4.1 are entered in the Interests Register.
- 29.5 **Exclusion for Transacting Shareholders:** The provisions in clause 29.1 shall not apply to a transaction or proposed transaction in the ordinary course of business between:
- 29.5.1 the Company and a Director in his or her capacity as a Transacting Shareholder or as trustee for a Transacting Shareholder; or
  - 29.5.2 The Company and a Transacting Shareholder in the Shareholder's capacity as such, being a Shareholder of which a Director is a director, officer or trustee.

## 30.0 Appointment and removal of Directors

- 30.1 **Number of Directors:**
  - 30.1.1 The number of Directors shall not be less than 3 nor more than 7.
  - 30.1.2 Following the first annual general meeting of the Company after registration as a co-operative, a majority of the Directors must be representatives of Transacting Shareholders, being a Transacting Shareholder or a director, employee or shareholder of a company or partner of a partnership which is a Transacting Shareholder.
  - 30.1.3 For each Transacting Shareholder that is a company or partnership, only one director,

employee or shareholder of that company or partner of a partnership will be qualified to act as a Director at any one time.

- 30.1.4 The Directors may act notwithstanding any vacancy in their body, but if and for so long as the number of Directors is reduced below **3**, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.

30.2 **Disqualified persons:** The following persons are disqualified from being appointed or holding office as a Director:

- 30.2.1 A person who is under 18 years of age;
- 30.2.2 A person who is an undischarged bankrupt;
- 30.2.3 A person who would but for the repeal of section 188A or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or being concerned or taking part in the management of a company within the meaning of that Act;
- 30.2.4 A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 199K or section 199L of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act;
- 30.2.5 A person who is prohibited from being an officer or promoter of or being concerned or taking part in the management of a company under section 199N of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act;
- 30.2.6 A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under Section 382 or Section 383 or Section 385;
- 30.2.7 A person who is subject to a property order made under Section 30 or Section 31 of the Protection of Personal and Property Rights Act 1988.

30.3 **Appointment and removal of Directors:** A person named as a director in the application for registration holds office as a Director in accordance with the Act. All subsequent Directors of the Company (following the first annual general meeting of the Company) shall be appointed or removed as follows:

- 30.3.1 A majority of Directors must be representatives of Transacting Shareholders, being a Transacting Shareholder or a director, employee or shareholder of a company or partner of a partnership that is a Transacting Shareholder, appointed in accordance with clause 30.9, as applicable and able to be removed by Ordinary Resolution;
- 30.3.2 The Board may, as the Board thinks fit, appoint and remove up to 2 Directors who are not representatives of Transacting Shareholders (and who shall be known as "Non-Transacting Directors") **PROVIDED THAT** at all times the total number of Directors shall not exceed 7.

30.4 **Appointment of Directors need not be voted on individually:** Notwithstanding Section 155(1)

(which relates to the requirements of a resolution to appoint a Director), the Shareholders may vote on a resolution to appoint a Director if the resolution is a single resolution for the appointment of 2 or more persons as Directors and it shall not be necessary for a separate resolution that it be so voted on to have first been passed without a vote being cast against it.

30.5 **Director ceasing to hold office:** The office of Director is vacated if the person holding that office:

30.5.1 Resigns in accordance with clause 30.6; or

30.5.2 Is removed from office in accordance with the Act or clause 30.3; or

30.5.3 Becomes disqualified from being a Director under Section 151 (which relates to qualifications of Directors);

30.5.4 Dies; or

30.5.5 Ceases to be a Transacting Shareholder, or where the person is a director, employee or shareholder of a company or is a partner of a partnership that was a Transacting Shareholder, that Transacting Shareholder no longer qualifies as a Transacting Shareholder;

30.5.6 Retires in accordance with clause 30.7.

30.6 **Resignation procedure:** A Director may resign office by signing a written notice of resignation and delivering it to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

30.7 **Rotation:**

30.7.1 Subject to clause 30.3 and this clause 30.7.1, each Director who represents Transacting Shareholders shall retire compulsorily at the Annual General Meeting held in the third year of the Director's term of office. Notwithstanding the foregoing, a maximum of two Directors representing Transacting Shareholders shall retire at any Annual General Meeting. If more than two Directors representing Transacting Shareholders are due to rotate in any year, the Directors will decide among themselves which of the Directors will remain in office until the next Annual General Meeting so as to ensure a maximum of two Directors representing Transacting Shareholders shall retire;

30.7.2 Any Director appointed as a result of a by-election conducted under clause 30.9 shall be appointed for the term of appointment set out in the ballot form for such by-election or, if there is more than one Director appointed at any such by-election and there are differing terms of appointment set out in the ballot form, such Directors appointed at such by-election shall agree between them which one of them shall retire on which date and, should they be unable to so agree, then the Board shall determine the retirement dates for each such Director.

30.8 **Eligibility:** A retiring Director shall be eligible for re-election.

30.9 **Election of Directors:** Notwithstanding the provisions in Schedule 1 relating to proceedings at meetings of shareholders:

30.9.1 In each year an election shall be held to fill vacancies occurring under clause 30.7.

- 30.9.2 The Board shall call for nominations of Directors to be representatives of Transacting Shareholders and fix a date for closing of nominations.
- 30.9.3 If at the closing date for nominations the number of qualified and duly nominated candidates (including any qualified retiring Director seeking re-election) does not exceed the number of vacancies to be filled then the person or persons so nominated shall be deemed to be elected and declared by the Chairperson to be elected from the date of the Annual General Meeting when those Directors will take office.
- 30.9.4 If at the closing date for nominations the number of qualified and duly nominated candidates (including any qualified retiring Director seeking re-election) shall exceed the number of vacancies to be filled then the Directors shall be determined by votes cast at the Annual General Meeting.
- 30.9.5 If no nominations are received in respect of any vacancy then subject to the provisions of clause 30.9.6 any such vacancy shall be deemed to be a vacancy which can be filled by the Board in accordance with clause 30.3.2.
- 30.9.6 If the places of the retiring Directors are not filled up, the retiring Directors or such of them as have not had their places filled up shall, if willing and not disqualified, continue in office, and so on from year to year until their places are filled up, unless it shall be determined at any special meeting to reduce the number of Directors. If any question should arise as to which Directors have not had their places filled up, the matter shall be determined by the Directors then in office, whose decision shall be final.
- 30.9.7 Should any Director appointed under clause 30.3.1 (any such Director referred to in this clause 30.9 as a "Transacting Director") cease to hold office in accordance with clause 30.5 before the expiry of that Transacting Director's term, then, if the date on which such Transacting Director ceases to hold office is more than 5 months prior to the next following Annual General Meeting, the Board may appoint a Director who is a representative of a Transacting Shareholder as soon as is reasonably possible to fill any such Transacting Director vacancy. Such Director shall hold office until the next Annual General Meeting of the Company, at which time the vacancy shall be filled by an election under this clause 30.9. The Transacting Director appointed by the Board under this clause 30.9.7 may, if eligible, stand for re-election as a Transacting Director at that next Annual General Meeting.

## 31.0 Alternate Directors

- 31.1 **Appointment and powers:** Any Director may by notice in writing to the Company appoint any person not being a Director, who is approved by a majority of the Directors, to be the alternate of that Director. Each alternate shall be entitled to receive notice of meetings of directors and during the absence of the appointing director, be entitled to attend and vote at meetings of Directors and shall have all the rights, powers, duties and authorities of the appointing Director except that:
- 31.1.1 The alternate shall not be entitled to appoint an alternate; and
  - 31.1.2 The alternate shall not be entitled to be remunerated otherwise than out of the remuneration of the appointing Director.
- 31.2 **Revocation of appointment:** A Director may at any time by notice in writing to the company revoke the appointment of any alternate appointed by that Director and appoint another person not being a director who is approved by a majority of the Directors as a replacement alternate. If a Director shall die or otherwise cease to be a Director, the appointment of that Director's alternate shall cease.
- 31.3 **Alternate not agent:** Every person acting as an alternate shall alone be responsible to the Company for his or her own acts and defaults and the alternate shall not be deemed to be the agent of or for the appointing Director.

## 32.0 Proceedings of Directors

- 32.1 **Proceedings governed by Schedule 2:** The provisions set out in Schedule 2 to this Constitution govern the proceedings of the Board.

## 33.0 Remuneration of Directors

- 33.1 **Power to authorise:** The Board may authorise:
- 31.3.1 The payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity;
  - 31.3.2 The payment by the Company to a Director or former Director of compensation for loss of office;
  - 31.3.3 The entering into of a contract to do any of the things set out in clauses 33.1.1 or 33.1.2, if the Board is satisfied that to do so is fair to the Company.
- 33.2 **Duty to enter in interests register:** The Board must ensure that forthwith after authorising the making of the payment or the provision of the benefit or the making of the loan or the giving of the guarantee or the entering into of the contract, as the case may be, particulars of the payment or benefit or loan or guarantee or contract are entered in the Interests Register.

- 33.3 **Separate authorisation unnecessary:** The payment of remuneration or the giving of any other benefit to a Director in accordance with a contract authorised under clause 33.1 need not be separately authorised under that clause.
- 33.4 **Certificate:** Directors who vote in favour of authorising a payment, benefit, loan, guarantee or contract under clause 33.1 shall sign a certificate that complies with section 161(4).

## 34.0 Indemnity and insurance

- 34.1 **Indemnity to maximum extent permitted by law:** The Company shall indemnify every Director of the Company, and may indemnify every director of any Related Company and every employee of the Company or any Related Company, out of the assets of the Company to the maximum extent permitted at law. Without limiting the extent of the above, such indemnity shall include indemnification of a Director of the Company, and may include indemnification of a director of any Related Company or an employee of the Company or a Related Company, in respect of:
- 34.1.1 Any costs incurred by him or her in any proceeding:
    - (a) That relates to liability for any act or omission in his or her capacity as a Director or employee; and
    - (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;
  - 34.1.2 Liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as a Director or employee; and
  - 34.1.3 Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach, in the case of a Director, of the duty specified in Section 131 of the Act (which relates to the duty to act in good faith and in what the Director believes to be the best interests of the Company) or, in the case of an employee, of any fiduciary duty owed to the Company or any Related Company.
- 34.2 **Insurance against liability:** Subject to any requirement for Board approval under Section 162(5), the Company may effect insurance for a Director or employee of the Company or a Related Company to the maximum extent permitted at law. Without limiting the extent of the above, such insurance may provide cover in respect of:
- 34.2.1 Liability, not being criminal liability, for any act or omission in any Director's or employee's capacity as Director or employee; or
  - 34.2.2 Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
  - 34.2.3 Costs incurred by that Director or employee in defending any criminal proceedings

in which he or she is acquitted.

- 34.3 **Directors certificate:** The Directors who vote in favour of authorising the effecting of insurance under clause 34.2 must sign a certificate stating that, in their opinion, the cost of effecting insurance is fair to the Company.
- 34.4 **Entry in interests register:** The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a Related Company are forthwith entered in the Interests Register.
- 34.5 **Definitions:** For the purposes of this clause 34 the words and expressions "**Director**", "**effect insurance**", "**employee**", "**indemnify**" and "**indemnity**" shall each have the meaning ascribed to them by Section 162.

## 35.0 Authority to bind Company

- 35.1 **Company obligations:** A contract or other enforceable obligation may be entered into by the Company in accordance with clause 35.2.
- 35.2 **Entry into obligations:**
- 35.2.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, shall be entered into on behalf of the Company in writing signed under the name of the Company by:
- (a) 2 or more Directors;
  - (b) if there is only one Director, by that Director whose signature must be witnessed;
  - (c) a single Director or by any other person or class of persons appointed by the Board for that purpose whose signature or signatures must be witnessed; or
  - (d) one or more attorneys appointed by the Company in accordance with clause 35.4.
- 35.2.2 An obligation which, if entered into by a natural person, is by law, required to be in writing, shall be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority;
- 35.2.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, shall be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.
- 35.3 **Rules apply worldwide:** Clause 35.2 applies to a contract or other obligation:
- 35.3.1 whether or not that contract or obligation was entered into in New Zealand; and
  - 35.3.2 whether or not the law governing the contract or other obligations is the law of New Zealand.

35.4 **Attorney:** The Company may, by an instrument in writing executed in accordance with clause 35.2 appoint a person as its attorney for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as the Board may think fit. Any such power of attorney may contain such provisions for the protection and convenience of the persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him, her or it.

## 36.0 Major Transactions

36.1 **Special Resolution required:** Unless otherwise permitted by the Act, the Company must not enter into a Major Transaction unless the transaction is:

36.1.1 Approved by Special Resolution; or

36.1.2 Contingent on approval by Special Resolution.

## 37.0 Company records

37.1 **Comply with the Act:** The Company must comply with Section 189 (which relates to Company records), Section 190 (which relates to the form of records) and Section 191 (which relates to inspection by Directors).

## 38.0 Registered office

38.1 **New Zealand office:** The Company must always have a registered office in New Zealand.

38.2 **Comply with the Act:** The Company must otherwise comply with Section 186 (which also relates to the place of the registered office and its description), Section 187 (which relates to a change of registered office), and Section 188 (which relates to requirements to change of registered office).

## 39.0 Address for service

39.1 **New Zealand address:** The Company must have an address for service in New Zealand.

39.2 **Restriction on certain addresses:** The address for service may be the Company's registered office or another place, but it must not be at a postal centre or document exchange.

39.3 **New Zealand register:** The Company's address for service at any particular time is the

address that is described as its address for service in the New Zealand register at that time.

39.4 **Address and location required:** The description of the address for service must state that it is at the registered office of the Company, or if it is at another place, must:

39.4.1 state the address of that place; and

39.4.2 if the address for service is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state:

(a) that the address for service of the Company is at the offices of that firm or person; and

(b) particulars of the location in any building of those offices; or

39.4.3 if the address for service is not at the offices of any such firm or person but is located in a building occupied by persons other than the Company, state particulars of its location in the building.

39.5 **Power to change:** Subject to clause 39.7, the Board may change the address for service of the Company at any time.

39.6 **Duty to notify Registrar:** Notice in the prescribed form of the change must be given to the Registrar of Companies for registration.

39.7 **Effective date:** A change of address for service takes effect on a date stated in the notice, not being a date that is earlier than 5 working days after the notice is registered.

## 40.0 Accounting records

40.1 **Accounting records to be kept:** The Board shall cause accounting records to be kept that comply with Section 194(1) and 194(2).

40.2 **Place accounting records to be kept:** The accounting records shall be kept at the registered office of the Company, or subject to Section 195, at such other place as the Board thinks fit and shall always be open to inspection by any Director.

## 41.0 Auditors

41.1 **Appointment of auditors:** The Company shall, at each annual meeting, appoint an auditor to:

41.1.1 hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

41.1.2 audit the financial statements of the Company and, if the Company is required to complete group financial statements, those group financial statements, for

the accounting period next after the meeting.

- 41.2 **Vacancies:** The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.
- 41.3 **Auditors fees and expenses:** The fees and expenses of an auditor of the Company shall be fixed:
- 41.3.1 if the auditor is appointed at a meeting of the Company, by the Company at the meeting or in such manner as the Company determines at the meeting;
- 41.3.2 if the auditor is appointed by the Board, by the Board.
- 41.4 **Appointment:** An auditor of the Company, other than an auditor appointed under clause 41.7 is automatically reappointed at an annual meeting of the Company unless:
- 41.4.1 the auditor is not qualified for appointment;
- 41.4.2 the Company passes a resolution at the meeting appointing another person to replace him or her as auditor;
- 41.4.3 the Company passes a resolution that no auditor be appointed; or
- 41.4.4 the auditor has given notice to the Company that he or she does not wish to be reappointed.
- 41.5 **Death etc. of replacement:** An auditor is not automatically reappointed if the person who it is proposed will replace him or her dies, or is, or becomes incapable of, or disqualified from, appointment.
- 41.6 **Appointment of first auditor:** The first auditor of the Company may be appointed by the Board before the first annual meeting and, if so appointed, holds office until the conclusion of that meeting. If the Board does not so appoint an auditor the Company shall, subject to clause 41.2, appoint the first auditor at a meeting of the Company.
- 41.7 **Replacement of auditor:** The Company shall not appoint a new auditor in the place of an auditor who is qualified for reappointment, unless the matters in Section 202(1) (which relate to notice to auditors and the opportunity for the auditor to make representations) have been complied with.
- 41.8 **Auditor not seeking reappointment:** If an auditor gives the Board written notice that he or she does not wish to be reappointed, the Board must, if requested to do so by that auditor comply with the requirements in Section 203(1) (which related to the opportunity for the auditor to make representations).
- 41.9 **Auditor's attendance at Shareholders' meeting:** The Board shall ensure that an auditor of the Company:
- 41.9.1 is permitted to attend a meeting of Shareholders;
- 41.9.2 receives the notices and communications that a Shareholder is entitled to receive relating to a meeting of Shareholders; and
- 41.9.3 may be heard at a meeting of Shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

## 42.0 Disclosure to Shareholders

- 42.1 **Comply with the Act:** Subject to the modifications provided by the Co-operative Companies Act, the Board shall cause to be prepared and disclosed to Shareholders such material as required by and in accordance with Section 208 (which provides for the obligation to prepare an annual report), Section 209 (which provides for the sending of the annual report to Shareholders), Section 210 (which provides for financial statements), Section 211 (which provides for the contents of the annual report), Section 212 (waiver by Shareholders), Section 213 (which provides for the failure to disclose) and Section 214 (which provides for the annual return).

## 43.0 Liquidation and removal from register

- 43.1 **Liquidation on certain events:** A liquidator of the Company may be appointed by Special Resolution of those Shareholders entitled to vote and voting on the question.
- 43.2 **Shareholders' view:** The Shareholders passing a resolution under clause 43.1 may also set out their views in the resolution which views the liquidator must have regard to under Section 258.
- 43.3 **Division of surplus assets:** The liquidator may divide among the Shareholders the whole or any part of the surplus assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value as he or she deems fair on any property to be divided and may determine how the division shall be carried out as between the Shareholders or different classes of Shareholders. The liquidator shall divide the surplus assets of the Company so as to ensure that each Shareholder receives his or her right (subject to clause 5) to an equal share in the distribution of the surplus assets of the Company and shall otherwise distribute the Company's surplus assets in accordance with the Act.
- 43.4 **Removal from register:** Any Director with the prior approval of the Board may request the Registrar of Companies to remove the Company from the New Zealand register of companies under Section 318 on the grounds that:
- 43.4.1 the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
  - 43.4.2 the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under Section 241 for an order putting the Company into liquidation.
- 43.5 **No liquidator in some cases:** For the purpose of clause 43.4.1 the Company shall have distributed its surplus assets in accordance with the Constitution and the Act, if the Company

makes such distribution in accordance with clause 43.3, except that a liquidator need not be appointed.

## 44.0 Notices

44.1 **Service of documents on the Company in legal proceedings:** A document, including a writ, summons, notice, or order, in any legal proceedings may be served on the Company:

- 44.1.1 by delivery to a Director;
- 44.1.2 by delivery to an employee of the Company at the Company's head office or principal place of business;
- 44.1.3 by leaving it at the Company's registered office or address for service;
- 44.1.4 by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
- 44.1.5 in accordance with an agreement made with the Company.

The methods of service specified in this clause 44.1 are the only methods by which a document in legal proceedings may be served on the Company.

44.2 **Service of other documents on the Company:** A document, other than a document in any legal proceedings, may be served on the Company:

- 44.2.1 by any of the methods set out in clauses 44.1.1 to 44.1.3 or clause 44.1.5;
- 44.2.2 by posting it to the Company's registered office or address for service; or
- 44.2.3 by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the Company's registered office or address for service or its head office or principal place of business.

44.3 **Service of documents on Shareholders, Directors and creditors who are natural persons:** A notice, statement, report, accounts, or other document to be sent to a Shareholder or creditor who is a natural person or to a Director may be:

- 44.3.1 delivered to that person;
- 44.3.2 posted to that person's address or delivered to a box at the document exchange which that person is using at the time; or
- 44.3.3 sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

44.4 **Service of documents on Shareholders or creditors that are companies:** A notice, statement, report, accounts, or other document to be sent to a Shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in clause 44.2 or (in the case of an overseas company) Section 390 as the case maybe.

- 44.5 **Service of documents on creditors that are body corporates, not being a company or an overseas company:** A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:
- 44.5.1 delivered to a person who is a principal officer of the body corporate;
  - 44.5.2 delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate;
  - 44.5.3 delivered in such manner as the Court directs;
  - 44.5.4 delivered in accordance with an agreement made with the body corporate;
  - 44.5.5 posted to the address of the principal office of the body corporate; or
  - 44.5.6 sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.
- 44.6 **Liquidator:** Where a liquidator sends documents:
- 44.6.1 to the last known address of a Shareholder or creditor who is a natural person; or
  - 44.6.2 to the address for service of a Shareholder or creditor that is a company,
  - 44.6.3 and the documents are returned unclaimed 3 consecutive times, the liquidator need not send further documents to the Shareholder or creditor until the Shareholder or creditor gives notice to the Company of its new address.
- 44.7 **Additional provisions relating to service:** Subject to clause 44.8, for the purposes of clauses 44.1 to 44.6:
- 44.7.1 if a document is to be served by delivery to a natural person, service must be made:
    - (a) by handing the document to the person; or
    - (b) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;
  - 44.7.2 a document posted or delivered to a document exchange is deemed to be received 5 working days, or any shorter period as the Court may determine in a particular case, after it is posted or delivered;
  - 44.7.3 a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;
  - 44.7.4 in proving service of a document by post or by delivery to a document exchange, it is sufficient to prove that:
    - (a) the document was properly addressed;
    - (b) all postal or delivery charges were paid; and
    - (c) the document was posted or was delivered to the document exchange; and
  - 44.7.5 in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person

concerned.

- 44.8 **Effect of failure to receive:** A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

## 45.0 Transacting Shareholder Qualification

### 45.1 Rules:

- 45.1.1 The Board may from time to time prescribe Rules that apply to the dealings between Transacting Shareholders and the Company.
- 45.1.2 Transacting Shareholders must comply with the Rules as prescribed and notified by the Board to Transacting Shareholders from time to time and the Rules will bind each of the Transacting Shareholders as if set out in full in this Constitution.
- 45.1.3 The Board must consult with affected transacting shareholders before making any material change to the Rules.
- 45.1.4 For the purposes of this clause 45.1, "**Affected Transacting Shareholders**" are those Transacting Shareholders whose rights under the Rules would in the Board's opinion be affected by any such material change to the Rules.
- 45.1.5 Without limiting the foregoing, the Company may require each Transacting Shareholder to enter into and sign the Rules from time to time.

- 45.2 **Minimum Purchases:** The Board shall from time to time set the Minimum Purchase Requirement as the minimum dollar value of Purchases that a Shareholder must purchase from the Company in each Financial Year in order to qualify or remain qualified as a Transacting Shareholder.

- 45.3 **Constitution prevails:** If there is any conflict between the Rules and this Constitution, this Constitution prevails.

# Schedule 1

## Proceedings at meetings of Shareholders

### 1. CHAIRPERSON

- 1.1 The chairperson (if any) of the Board shall preside as chairperson at every general meeting of the Shareholders. If there is no such chairperson or if he or she is not present within 15 minutes after the time appointed for the commencement of the meeting the Shareholders shall choose one of their number to be chairperson of the meeting.

### 2. NOTICE OF MEETINGS

- 2.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 working days before the meeting.
- 2.2 The notice must state:
- a. The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - b. The text of any Special Resolution to be submitted to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by a Shareholder does not invalidate the proceedings at that meeting.

### 3. METHODS OF HOLDING MEETINGS

- 3.1 A meeting of Shareholders may be held either:
- a. By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - b. By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### 4. QUORUM

- 4.1 Subject to clause 4.3 of this Schedule no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 4.2 A quorum for a meeting of Shareholders is present if the lesser of:
- a. 50% of the Shareholders (or their proxies) entitled to vote at the meeting are present or where permitted, have cast postal votes; or
  - b. 20 Shareholders (or their proxies) entitled to vote at the meeting are present or where permitted, have cast postal votes.

- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a. In the case of a meeting called under Section 121(b) (which relates to Shareholder requisition), the meeting shall be dissolved; and
  - b. In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint and, if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

## **5. ADJOURNMENT**

- 5.1 A meeting at which a quorum is present may be adjourned by the chairperson from time to time and from place to place if:
- a. The chairperson has the consent of the meeting;
  - b. The chairperson is directed by the meeting (in which case the meeting shall be adjourned);
  - c. The meeting becomes so unruly or disorderly that in the chairperson's opinion the business of the meeting cannot be conducted in a proper and orderly manner; or
  - d. In the chairperson's opinion the meeting becomes unduly protracted.
- 5.2 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more notice of the adjourned meeting shall be given as in the case of any original meeting. Otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- 5.3 Without limiting clause 5.1, a meeting of Shareholders or any business being considered or remaining to be considered may be adjourned indefinitely, if the meeting becomes so disorderly or protracted that in the opinion of the chairperson in his/her sole discretion the business of the meeting cannot be conducted in a proper and orderly manner.
- 5.4 If any meeting is adjourned under clause 5.1 or 5.3, then with respect to any unfinished business of such meeting:
- a. a resolution not voted on concerning the remuneration of the Auditors will be deemed to have been withdrawn and a resolution authorising the Board to fix the remuneration of the Auditors will be deemed to have been passed; and
  - b. the chairperson may direct that any other item of business uncompleted at the original meeting (of which notice was given in the notice convening the original meeting) be put to the vote on a poll without further discussion.

## **6. VOTING**

- 6.1 In the case of a meeting of Shareholders held under clause 3.1(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- a. Voting by voice; or
  - b. Voting by show of hands.

- 6.2 In the case of a meeting of Shareholders held under clause 3.1(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 6.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.4 of this Schedule.
- 6.4 At a meeting of Shareholders a poll may be demanded by:
- a. Not less than 5 Shareholders having the right to vote at the meeting;
  - b. A Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - c. A Shareholder or Shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right.
- 6.5 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.6 If a poll is taken votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting.
- 6.7 The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 6.8 For the purposes of clause 6 of this Schedule, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- 6.9 The poll shall be taken at the time and in the manner determined by the chairperson of the meeting. Any other business may be proceeded with pending the taking of the poll.
- 6.10 If a poll is taken:
- a. votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting;
  - b. the scrutineers shall be the Auditor unless the Auditor is unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson;
  - c. the chairperson of the meeting shall finally determine in good faith the admission or rejection of any vote;
  - d. the chairperson may declare the result of a poll when its outcome is known regardless of whether all votes have been counted;
  - e. the chairperson may declare the result of the poll at or after the meeting.
- 6.11 Where there are shares of the same class, some of which are not fully paid, each share which is not fully paid shall carry only a proportion of the vote which would be exercisable, if the share were fully paid, equivalent to the portion of the total issue price of that share which has been paid (disregarding any payment in advance).
- 6.12 If a sum already due and payable to the Company in respect of a share has not been paid, that share may not be voted at a meeting other than a meeting of an Interest Group.

6.13 Subject to the terms of particular classes of shares, all Shareholders, regardless of whether they are Transacting Shareholders, who hold voting shares will be entitled to vote on a particular resolution.

## **7. PROXIES**

7.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.

7.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

7.3 A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

7.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company not less than 24 hours before the start of the meeting.

## **8. POSTAL VOTES**

8.1 Shareholders may not exercise the right to vote at a meeting by casting a postal vote unless the Board has, prior to the giving of notice of the meeting, so determined, in which case the provisions of clause 8 of this Schedule shall apply.

8.2 The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.

8.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.

8.4 A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

8.5 It is the duty of a person authorised to receive and count postal votes at a meeting:

- a. To collect together all postal votes received by him or her or by the Company; and
- b. In relation to each resolution to be voted on at the meeting, to count:
  - i. The number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
  - ii. The number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution; and
- c. To sign a certificate that he or she has carried out the duties set out in clauses 8.5(a) and 8.5(b) of this Schedule and which sets out the results of the counts required by clause 8.5(b) of this Schedule; and
- d. To ensure that the certificate required by clause 8.5(c) of this Schedule is presented to the chairperson of the meeting.

8.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast,

the chairperson of the meeting must:

- a. On a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution;
  - b. On a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.
- 8.7 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands or on a vote by voice.
- 8.8 The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

## **9. MINUTES**

- 9.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 9.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **10. SHAREHOLDER PROPOSALS**

- 10.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 10.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 10.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 10.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board *may*, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 10.5 If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- 10.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.
- 10.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must,

on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

**11. CORPORATIONS MAY ACT BY REPRESENTATIVES**

11.1 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

**12. VOTES OF JOINT HOLDERS**

12.1 Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

**13. OTHER PROCEEDINGS**

13.1 Except as provided in this Schedule a meeting of Shareholders may regulate its own procedure.

## Schedule 2

### Proceedings of the Board

#### 1. CHAIRPERSON

- 1.1 The Directors may elect one of their number as chairperson of the Board.
- 1.2 The Director elected as chairperson under clause 1 of this Schedule holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

#### 2. NOTICE OF MEETING

- 2.1 A Director or, if requested by a Director to do so, an employee of the company, may convene a meeting of the Board.
- 2.2 Not less than 2 days' notice of a meeting of the Board must be given to every Director who is in New Zealand (including alternate Directors). The notice must include the date, time, and place of the meeting, and the matters to be discussed but need not be in writing.
- 2.3 The failure to give proper notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

#### 3. METHODS OF HOLDING MEETINGS

- 3.1 A meeting of the Board may be held either:
  - a. By a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - b. By means of telephone communication under clause 4 of this Schedule.

#### 4. MEETINGS BY TELEPHONE

- 4.1 The contemporaneous linking together by telephone of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors. The following conditions shall be met in relation to a telephone meeting:
  - a. All the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate Directors) shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of any such meeting may be given on the telephone;
  - b. Each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting;
  - c. At the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his presence for the purpose of a meeting of the Directors to

all the other Directors taking part;

- d. A Director may not leave the meeting by disconnecting his telephone unless he or she has previously obtained the express consent of the chairperson of the meeting. A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the chairperson to leave the meeting;
- e. A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting; and
- f. For the purposes of this clause "**telephone**" shall include television or any other audio or audio and visual device which permits instantaneous communication.

## **5. QUORUM**

- 5.1 A quorum for a meeting of the Board is 3 of the Directors (or their alternates) entitled to receive notice of the meeting (provided that, following the first Annual General Meeting of the Company, a quorum must include at least 2 Directors who are representatives of Transacting Shareholders).
- 5.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 5.3 If notice of a meeting of the Board has been properly given under clause 2 of this Schedule and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than 2 days' notice to every Director who is in New Zealand (including alternate Directors) convene a further meeting of the Board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director or alternate Director present **is a** quorum.

## **6. VOTING**

- 6.1 Every Director has one vote.
- 6.2 The chairperson does not have a casting vote.
- 6.3 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 6.4 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to execute any director's certificates required under the Act.

## **7. MINUTES**

- 7.1 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 7.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.
- 7.3 A copy of any written resolution under clause 8 of this Schedule shall be entered in the minute book of board proceedings.

## **8. WRITTEN RESOLUTION**

- 8.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board

duly convened and held.

- 8.2 A resolution in writing for the purposes of clause 8.1 of this Schedule may consist of one or more documents in like form, each signed by one or more Directors and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by one or more Directors shall be conclusive evidence of the execution of the original document by those Directors.

## **9. COMMITTEES**

- 9.1 A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- 9.2 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes the chairperson shall not have a second or casting vote.

## **10. OTHER PROCEEDINGS**

- 10.1 Except as provided in this Schedule, the Board may regulate its own procedure.

## **11. THIRD SCHEDULE**

- 11.1 The Third Schedule to the Act shall not apply to the Company.