

# **Constitution of Insulation Australasia Limited**

A company limited by guarantee

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# CONSTITUTION OF INSULATION AUSTRALASIA LIMITED (ACN 152 505 961)

## A company limited by guarantee under the Corporations Act 2001

### 1 General

#### Name of Company

1.1 The name of the Company is Insulation Australasia Limited.

#### Replaceable rules

1.2 The replaceable rules contained in the Act do not apply to the Company.

#### Constitution

1.3 This Constitution contains the Rules setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.

### 2 Definitions and interpretation

#### Definitions

2.1 In this Constitution, the following terms have the following meanings unless the context otherwise requires:

**Act** means the *Corporations Act 2001* (Cth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or re-enacted.

**AGM** means an annual general meeting of the Company held in accordance with section 250N of the Act.

**ASIC** means the Australian Securities and Investments Commission.

**Auditor** means the auditor for the time being of the Company.

**Board** means the board of Directors for the time being of the Company.

**Chair** includes an acting Chair under Rule 11.12.

**Code of Conduct** means the policy, if any, adopted by the Board which governs the manner in which each of the Directors are required to conduct themselves in the discharge of their duties.

**Committee** means a committee to which powers have been delegated by the Board pursuant to Rule 17.12.

**Company** means Insulation Australasia Limited.

**Constitution** means this constitution and any supplementary, substituted or amended Constitution for the time being in force.

**Director** means a director for the time being of the Company.

**Externally Audited** means the financial accounts and records of a Member have been subject to a financial audit carried out by a registered auditor in accordance with the Act.

**Guarantee** means the maximum amount each Member agrees to pay the Company in accordance with Rule 4.

**Importation Member** means any person involved in the insulation industry as an importer of insulation.

**Installation Member** means any person involved in the insulation industry as an installer of insulation.

**Manufacturing Member** means any person involved in the insulation industry as a manufacturer of insulation.

**Member** means any person who becomes a member in accordance with the Act and this Constitution.

**Members present** means Members present at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney.

**Non-Voting Member** means Members other than Voting Members.

**Office** means the registered office of the Company from time to time.

**Officer** means an officer of the Company within the meaning of section 9 of the Act.

**Register** means the register of Members of the Company to be kept pursuant to the Act.

**Registered address** means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices.

**Retailing Member** means any person involved in the insulation industry as a retailer of insulation.

**Rules** means the rules of this Constitution as amended from time to time.

**Seal** means the common seal, if any, of the Company.

**Secretary** means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary.

**Third Party Certified** means that the goods and services provided by a Member have been satisfactorily tested by any third party accredited tester or certifier approved by the Board from time to time.

**Voting Member** is a Member who under the Rules is entitled to vote at any general meeting.

**Wholesaling Member** means any person involved in the insulation industry as a wholesaler of insulation.

**writing** and **written** includes printing, typing, lithography and other modes of reproducing words in a visible form.

## **Interpretation**

2.2 In the interpretation of this Constitution, the following provisions apply unless the context otherwise requires:

2.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Constitution.

2.2.2 A reference in this Constitution to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales.

- 2.2.3 If the day on which any act, matter or thing is to be done under this Constitution is not a business day, the act, matter or thing must be done on the next business day.
- 2.2.4 A reference in this Constitution to dollars or \$ means Australian dollars and all amounts payable under this Constitution are payable in Australian dollars.
- 2.2.5 A reference in this Constitution to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 2.2.6 A reference in this Constitution to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 2.2.7 A reference to a Rule, clause, part, schedule or attachment is a reference to a Rule, clause, part, schedule or attachment of or to this Constitution.
- 2.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 2.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 2.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 2.2.12 A reference to this Constitution includes the agreement recorded in this Constitution.
- 2.2.13 Unless the context otherwise requires (or unless otherwise defined in this Constitution), an expression used in this Constitution that has a particular meaning in the Act has the same meaning in this Constitution.
- 2.2.14 This Constitution is subject to the Act and where there is any inconsistency between a Rule of this Constitution and the Act, the Act prevail to the extent of the inconsistency.
- 2.2.15 Any schedules and attachments form part of this Constitution.

### **3 The Company**

#### **Public Company limited by Guarantee**

3.1 The Company is a public company limited by guarantee.

#### **Restriction on shares**

3.2 The Company does not have the power to issue or allot shares of any kind.

## **Non-profit**

- 3.3 The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- 3.4 The Company is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members. Further, no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Directors, or their relatives, except as provided by this Constitution.
- 3.5 Nothing in this Constitution prevents:
- 3.5.1 the payment, in good faith, of reasonable and proper remuneration to any Officer or servant of the Company, or to any Director or the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - 3.5.2 the payment of interest at a rate not exceeding interest at the relevant rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member; or
  - 3.5.3 payment of reasonable and proper rent for premises demised or let by any Member to the Company.

## **No distribution of profits to Members on winding up**

- 3.6 If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to some other institution or institutions:
- 3.6.1 having objects similar to the objects of the Company;
  - 3.6.2 whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by this Constitution; and
  - 3.6.3 approved by the Australian Commissioner of Taxation as an institution exempt from income tax.
- 3.7 The Directors may determine the identity of the institution or institutions for the purpose of Rule 3.6 at the time of dissolution. If the Directors fail to determine the identity of the institution or institutions under this Rule 3.7, the Supreme Court of New South Wales may make that determination.

## **4 Guarantee of Members**

- 4.1 In the event that the Company is wound up, each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:
- 4.1.1 the debts and liabilities of the Company;
  - 4.1.2 the costs, charges and expenses of any winding up; and
  - 4.1.3 the adjustment of the rights of Members among themselves,
- while the Member is a Member or within one year after the Member ceases to be a Member.

## **5 Scope of Company's powers**

- 5.1 Provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects, the Company has the legal capacity and powers set out in section 124 of the Act.

## **6 Objects of the Company**

- 6.1 The objects of the Company are:

- 6.1.1 to at all times act in the best interests for all insulation product groups in an unbiased manner without favour;
- 6.1.2 to support the maintenance of optimum building energy efficiency codes and standards in Australia and New Zealand;
- 6.1.3 to promote and maintain internationally recognised standards of insulation installation expertise which benefits the Australian and New Zealand building energy efficiency goals and to promote its environmental protection benefits;
- 6.1.4 to promote product accreditation and compliance scheme recognised by all building regulators;
- 6.1.5 to collect supply and demand side insulation industry data to assist government and industry in the maintenance of international best practice building energy efficiency policy;
- 6.1.6 to assist in implementing effective building energy efficiency codes and generic insulation product standards;
- 6.1.7 to assist in implementing effective industry codes for product performance and sales and marketing conduct;
- 6.1.8 to increase community awareness of insulation cost savings for consumers by way of building energy efficiency and environmental benefits;
- 6.1.9 to promote the interests of and cooperation between persons and bodies engaged in the insulation industry in Australia and New Zealand;
- 6.1.10 to develop and promote the contribution of the insulation industry to the economies of Australia and New Zealand by way of optimum building energy efficiency;
- 6.1.11 to encourage the efficiency and value on the insulation industry by providing advice, information and other services to industry's target audiences;
- 6.1.12 to have a broad membership representative of all segments of the insulation industry in Australia and New Zealand, including installers, manufacturers, wholesalers, importers, retailers, federal and state regulators and building industry groups;
- 6.1.13 to obtain representation on key energy efficiency related Standards Australia and Standards New Zealand insulation committees;

- 6.1.14 to promote the Company's website as a communication portal between its Members, governance, industry participants, media and the community;
- 6.1.15 to develop and pursue any other policies consistent with the promotion the insulation industry as an environmentally sustainable, economically viable and socially responsible industry and to provide advocacy and support on key issues related to the insulation industry;
- 6.1.16 to pursue with federal, state and local governments and their agencies programs, policies and actions that are responsive to the needs of the insulation industry in Australia and New Zealand.

## **7 Membership**

### **Number of Members**

- 7.1 There must be at least one Member.
- 7.2 The Directors may set a limit on the maximum number of Members.

### **Qualification for Membership**

- 7.3 Any person involved in the insulation industry as a manufacturer, installer, retailer, wholesaler or importer may apply for membership as a Manufacturing Member, Installation Member, Retailing Member, Wholesaling Member or Importing Member as the case may be.
- 7.4 Any person involved in the insulation industry as an association, government department or student may apply for membership as an Association Member, Government Member or Student Member as the case may be.
- 7.5 An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:
  - 7.5.1 an undertaking on the part of the applicant to be bound by the Constitution;
  - 7.5.2 the postal address and electronic mail address of the applicant;
  - 7.5.3 particulars of the applicant's qualifications for membership;
  - 7.5.4 if the applicant is an organisation, the name of the organisation's proposed nominee(s); and
  - 7.5.5 the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.
- 7.6 Applications must be in writing signed and in such form as the Board determines.
- 7.7 The Board may in its absolute discretion admit or reject any applicant for membership. The Board must determine whether or not to approve each application for Membership at the next Board meeting after receipt of the application. If the applicant is not admitted to membership, all monies paid by that applicant to the Company must be returned in full. If a membership application is rejected, the Board need not provide any reasons for so doing.
- 7.8 The Board may fix the fee (if any) and the subscription payable by an applicant for membership. The Board may not deal with any application for membership unless the

fee and subscription payable in respect of the application has been received by the Company.

### **Categories of voting membership**

- 7.9 A Member is a Voting Member if the Member meets all of the following criteria:
- 7.9.1 the Member is a Member in one of the following classes:
    - (a) Manufacturing Members;
    - (b) Installation Members;
    - (c) Retailing Members;
    - (d) Wholesaling Members; or
    - (e) Importing Members;
  - 7.9.2 the Member is incorporated or registered under the Act;
  - 7.9.3 at the time of the relevant vote, the Member is Externally Audited or the Member's chief executive officer (or functional equivalent) has provided a signed statement as to the Member's revenue (or that the Member's revenue is within a specified revenue range), which has been accepted by the Board; and
  - 7.9.4 at the time of the relevant vote, the Member is Third Party Certified.

### **Categories of non-voting membership**

- 7.10 The following classes of Members are Non-Voting Members:
- 7.10.1 Association Members;
  - 7.10.2 Government Members; and
  - 7.10.3 Student Members.

### **Rights attaching to classes of Members**

- 7.11 A Voting Member has the right to receive notices of and to attend and be heard at any general meeting and to vote at any general meeting.
- 7.12 A Non-Voting Member:
- 7.12.1 has the right to receive notices of and to attend and be heard at any general meeting; but
  - 7.12.2 has no right to vote at any general meeting.

### **Further classes of Membership**

- 7.13 Provided that any determination made in accordance with this Rule is not inconsistent with this Constitution, the Directors may at any time:
- 7.13.1 establish a new category of membership;
  - 7.13.2 establish a new class of membership;
  - 7.13.3 determine whether that new category or class of membership is a Voting Member;
  - 7.13.4 prescribe the qualifications, rights and privileges of persons to become a Member of a class; or

- 7.13.5 set and amend the membership fees for each class of membership (or any category of ordinary membership).

The Members in general meetings may amend a decision or determination of the Board made pursuant to this Rule 7.13.

#### **Address of Member**

- 7.14 Each Member must provide to the Secretary details of an address in Australia where the Company can send notices.
- 7.15 If a Member fails to provide an address in accordance with Rule 7.14, the address of the Member is deemed to be the registered office of the Company.

#### **Cessation of membership**

- 7.16 A Member ceases to be a Member if they:
- 7.16.1 die;
  - 7.16.2 resign in writing;
  - 7.16.3 become of unsound mind or become liable to be dealt with in any way under the law relating to mental health;
  - 7.16.4 are convicted of an indictable offence; or
  - 7.16.5 if they are a company, have a receiver or a receiver and manager appointed to its assets or some of them or passes a resolution or takes or has taken against it any action having the effect of its winding up.

#### **Non-payment of Subscription**

- 7.17 If any subscription or other membership fee of a Member remains unpaid for 3 months after they become payable and a notice of default is given to the Member, the Member will cease to be entitled to any of the rights or privileges of Membership. The Directors may, if they think fit, reinstate the Member on payment of all arrears.

#### **Effect of cessation**

- 7.18 A Member who ceases to be a Member continues to be liable for:
- 7.18.1 any subscription and all arrears due and unpaid at the date of cessation;
  - 7.18.2 all other moneys due by them to the Company; and
  - 7.18.3 the Guarantee.

#### **Power of Directors in respect of a Member's conduct**

- 7.19 If any Member:
- 7.19.1 willfully refuses or neglects to comply with the provisions of this Constitution; or
  - 7.19.2 is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Board has the power to censure, fine, suspend or expel the Member from the Company pursuant to a Board resolution.
- 7.20 At least one week before the meeting of the Board at which a resolution under Rule 7.19 is passed, the Company must provide the Member with:

- 7.20.1 notice of the meeting;
  - 7.20.2 details of any allegations against them;
  - 7.20.3 the intended resolution; and
  - 7.20.4 advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing (or both), any explanation or defence they think fit.
- 7.21 Any Member referred to in Rule 7.19 may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Company in general meeting.
- 7.22 If an election is made under Rule 7.21:
- 7.22.1 a general meeting must be convened and the resolution considered; and
  - 7.22.2 if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by secret ballot), the Member concerned will be expelled and the member's name must be removed from the Register.

## **8 Rights and obligations of Members**

### **Amount of fees and subscriptions payable**

- 8.1 Membership fees, annual subscription fees for the various classes of membership and categories of ordinary membership, sponsorship payments and other periodical payments from Members or supporters of the Company will be in such amounts and due at such times as the Board determines.

### **Variation of rights of Members**

- 8.2 Whilst membership is divided into different classes, the rights attached to any specific membership class (unless otherwise provided by the terms of application for membership of that class) may, whether or not the Company is being wound up, be varied only by a special resolution of the relevant membership class.

## **9 Financial records**

### **Keeping of Accounting and financial records**

- 9.1 Accounting and other financial and business records must record and explain the transactions and financial position of the Company to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution.
- 9.2 The financial records must be kept:
- 9.2.1 in such manner as to enable them to be conveniently and properly audited;
  - 9.2.2 for 7 years after the completion of the transactions or operations to which they relate; and
  - 9.2.3 at the Company's registered office or at such other place as the Director's think fit.
- 9.3 The financial records must at all times be open to inspection by the Directors.

## **Financial year and financial reports**

- 9.4 The financial year of the Company commences on the 1<sup>st</sup> day of July and ends on the 30<sup>th</sup> day of June in the following calendar year, unless the Board resolves otherwise.
- 9.5 Each financial year, the Company must prepare a financial report and a director's report in accordance with the Act.

## **Keeping of financial records**

- 9.6 Proper books and financial records must be kept and maintained correctly reflecting the financial affairs of the Company. The Company must comply with the relevant accounting and auditing requirements of the Act.
- 9.7 The Board must distribute to all Members copies of the financial report (including a copy of any auditor's report) and any other documentation required under the Act.

## **Appointment of Auditor**

- 9.8 The Company must appoint and retain a properly qualified Auditor.

## **Inspection of financial records of the Company**

- 9.9 The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members.
- 9.10 No Member has the right to inspect any document of the Company except as provided by the Act (or other applicable laws) or as authorised by the Board.

# **10 General meetings**

## **Calling of meetings of Members by a Director**

- 10.1 A Director may call a meeting of Members.

## **Calling of meetings by Members**

- 10.2 Members with more than 50% of the votes that may be cast at a general meeting of the Company may call and arrange to hold a general meeting.

## **Amount of notice of meetings**

- 10.3 Subject to the Act, at least 21 days notice must be given of a meeting of Members.
- 10.4 Subject to Rule 10.5, the Company may on shorter notice call:
- 10.4.1 an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
  - 10.4.2 any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 10.5 At least 21 days notice must be given of a meeting of Members at which a resolution will be moved to remove or appoint Directors or remove an Auditor.

## **Notice of meetings of Members**

- 10.6 Written notice of the meeting of Members must be given to each Member entitled to vote at the meeting and to each Director.
- 10.7 Notice to joint Members must be given to the joint Member first named in the Register.

- 10.8 The Company may give the notice of meeting to a Member:
- 10.8.1 personally;
  - 10.8.2 by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by the Member;
  - 10.8.3 by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - 10.8.4 by any other means authorised by the Act.

#### **Auditor entitled to notice and other communication**

- 10.9 The Company must give its Auditor:
- 10.9.1 notice of general meeting in the same way that a Member is entitled to receive notice; and
  - 10.9.2 any other communication relating to the general meeting that a Member is entitled to receive.

#### **Notice of adjourned meetings**

- 10.10 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

#### **Time and place for meetings of Members**

- 10.11 A meeting of Members must be held at a reasonable time and place determined by the Board.

#### **Technology**

- 10.12 The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

## **11 Proceedings of meetings**

#### **Business of general meetings**

- 11.1 The Chair of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person who is not:
- 11.1.1 a Member or a proxy, attorney or, if applicable, a corporate representative of a Member;
  - 11.1.2 a Director;
  - 11.1.3 any other person (whether a Member or not) requested by the Directors to attend any general meeting; or
  - 11.1.4 the auditor of the Company.
- 11.2 Except with the approval of the Board, with the permission of the Chair or pursuant to the Act, no person may move at any meeting either:
- 11.2.1 in regard to any special business of which notice has not been given under Rule 10.6, any resolution or any amendment of a resolution; or
  - 11.2.2 any other resolution which does not constitute part of special business of which notice has been given under Rule 10.6.

- 11.3 The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting concerning an audit in their capacity as auditor. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

#### **Quorum**

- 11.4 A quorum for a meeting is constituted by at least 20% of the Voting Members being present or four members, whichever is the lower, except if the Company at any time has only one Member (or where a class of Members is constituted by one Member in respect of any meeting of a class of Members), in which case it is that one Member. No business may be transacted at any meeting except the election of a Chair and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business. The quorum must be present at all times during the meeting.
- 11.5 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted. If a Member has appointed more than one proxy or representative, only one of them is to be counted.

#### **Adjournment in absence of quorum**

- 11.6 A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- 11.7 If the Directors do not specify one or more of those requirements, the meeting is to be adjourned to:
- 11.7.1 if the date is not specified, the same day of the week;
  - 11.7.2 if the time is not specified, the same time; or
  - 11.7.3 if the place is not specified, the same place.
- 11.8 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

#### **Chairing meetings of Members**

- 11.9 The Chair of the Board is entitled to take the chair at every general meeting.
- 11.10 If at any general meeting:
- 11.10.1 the Chair of the Board is not present at the specified time for holding the meeting; or
  - 11.10.2 the Chair of the Board is present but is unwilling to act as Chair of the meeting,
- the deputy Chair of the Board is entitled to take the chair at the meeting.
- 11.11 If at any general meeting:
- 11.11.1 there is no Chair of the Board or deputy Chair of the Board;
  - 11.11.2 the Chair of the Board and deputy Chair of the Board are not present at the specified time for holding the meeting; or
  - 11.11.3 the Chair of the Board and the deputy Chair of the Board are present but each is unwilling to act as Chair of the meeting,

the Directors present may choose another Director as Chair of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chair of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

### **Acting Chair**

11.12 If during any general meeting the Chair acting pursuant to Rules 11.9, 11.10 or 11.11 is unwilling to act as chair for any part of the proceedings, the Chair may withdraw as chair during the relevant part of the proceedings and may nominate any person:

11.12.1 who immediately before the general meeting was a Director; or

11.12.2 who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings.

On conclusion the acting chair is to withdraw and the Chair is to resume as chair of the meeting.

### **General conduct of meeting**

11.13 Subject to the requirements of the Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are determined by the Chair.

11.14 The Chair may as considered necessary for the proper conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.

11.15 The Chair may require the adoption of any procedure that, in the Chair's opinion, is necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

11.16 The Chair will ensure that the business carried out a general meeting of the Company will be performed in such a manner that wherever possible is unbiased, fair and in line with the objectives of the Company as set out in Clause 6.1.

### **Adjournment**

11.17 Subject to the provisions of Rule 11.19, the Chair may at any time during the course of the meeting adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.

11.18 Subject to the provisions of Rule 11.19, if the Chair exercises a right of adjournment of a meeting pursuant to Rule 11.16, the Chair has the discretion to decide whether to seek the approval of the Members present to the adjournment. Unless the Chair exercises that discretion, no votes regarding the adjournment can be taken by the Members present.

11.19 No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.20 The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

### **Voting**

11.21 Unless otherwise required by this Constitution or the Act, all questions arising at any meeting of Members will be decided by a majority of votes and a determination by a majority of the Members present and entitled to vote on the resolutions will for all

purposes be deemed a determination of the Company.

11.22 A challenge to a right to vote at a meeting of Members:

11.22.1 may only be made at the meeting; and

11.22.2 must be determined by the Chair whose decision is final.

11.23 Each question put to a general meeting is to be decided in the first instance by a show of hands of the Voting Members present and entitled to vote. Subject to Rule 12.5, in the case of equal votes, the Chair has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chair may be entitled as:

11.23.1 a Voting Member;

11.23.2 a proxy,

11.23.3 an attorney or,

11.23.4 if applicable, a duly appointed corporate representative of a Voting Member.

#### **Declaration of vote on a show of hands; when poll demanded**

11.24 At any meeting, unless a poll is demanded, a declaration by the Chair that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the minute book signed by the Chair for that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.25 A poll may be demanded:

11.25.1 before a vote is taken;

11.25.2 before the voting results on a show of hands are declared; or

11.25.3 immediately after the voting results on a show of hands are declared.

11.26 A poll may be demanded by:

11.26.1 the Chair;

11.26.2 at least 2 Voting Members present entitled to vote on the resolution.

11.27 No poll may be demanded on the election of a Chair of a meeting or the adjournment of a meeting.

#### **Taking a poll**

11.28 If a poll is demanded as provided in Rule 11.24, it is to be taken in the manner and at the time and place as the Chair directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chair's determination in respect of the dispute made in good faith is final.

#### **Continuation of business**

11.29 A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

#### **Special meetings**

11.30 All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members that may be held pursuant to the operation of this

Constitution or the Act.

## **12 Votes of Members**

### **Voting rights**

- 12.1 Subject to any rights or restrictions attached to any class of Member, the entitlement of a Member to vote at a meeting of Members is as follows:
- 12.1.1 on a show of hands, each Voting Member has one vote;
  - 12.1.2 on a poll, each Voting Member in a relevant classification of Voting Members has the number of votes specified in the document most recently promulgated by the Board specifying the number of votes attaching to each relevant classification of Voting Members (where such classification may be determined with respect to annual subscription or membership fees paid by Members, or any other criteria determined by the Board from time to time), and if no such document has been promulgated by the Board, each Voting Member has one vote;
  - 12.1.3 each Non-Voting Member has no right to vote.
- 12.2 In the case of a Member who is of unsound mind or whose personal affairs or estate are to be dealt with under the mental health laws, the trustee or person managing the Member's affairs or estate may exercise any of the Member's rights at a general meeting as if the trustee or person managing were the Member.
- 12.3 A Member is not entitled to vote or speak at any general meeting if the Member's annual subscription or membership fee is more than one month in arrears at the date of the meeting.
- 12.4 Subject to Rule 12.5, where a person is entitled to vote in more than one capacity, that person is only entitled to one vote on a show of hands.
- 12.5 If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands. If the person is the Chair, on a show of hands, where the Chair has 2 or more appointments that specify different ways to vote on a resolution, the Chair cannot vote but has a casting vote in the case of an equality of votes cast by Voting Members.

### **Appointment of proxies**

- 12.6 Any Voting Member entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Voting Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- 12.7 A proxy need not be a Voting Member of the Company who is entitled in their own right to vote at a general meeting of the Company.
- 12.8 A proxy or representative appointed under Rules 12.6 and 12.7 must be appointed in the manner set out in, and has the rights set out in, Division 6 of Part 2G.2 of the Act, or may be in such other form as the Directors from time to time prescribe or in a particular case accept.

### **Validity of vote**

- 12.9 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **Form and execution of instrument of proxy**

- 12.10 Unless the Company otherwise determines, an instrument appointing a proxy must be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, executed by the corporation or signed by a duly authorised officer.
- 12.11 The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- 12.12 An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any signed proxy that is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Act. The Board may authorise completion of the proxy by the insertion of the Director's name as the person in whose favour the proxy is given.
- 12.13 No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

## **Attorneys of members**

- 12.14 An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a meeting of Members or a class of Members the instrument conferring the power of attorney or a certified copy of it must be produced to the Board at least 15 minutes before the meeting or the taking of a poll, in the same way as the appointment of a proxy, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

## **13 AGMs**

### **Holding of AGM**

- 13.1 The Company must hold an AGM within 18 months of its registration.
- 13.2 The Company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.
- 13.3 An AGM is to be held in addition to any other meetings held by the Company in a year.
- 13.4 If the Company only has one Member, it is not required to hold an AGM.

### **Consideration of Reports at AGM**

- 13.5 The Directors must lay before an AGM:
- 13.5.1 the financial report;
  - 13.5.2 the Board's report; and
  - 13.5.3 the Auditor's report,
- for the last financial year that ended before the AGM in accordance with the requirements of the Act.

## **Business of the AGM**

- 13.6 The business of the AGM may include any of the following, even if not referred to in the notice of meeting:
- 13.6.1 the consideration of the annual financial report, Boards' report and Auditor's report;
  - 13.6.2 the election of Directors;
  - 13.6.3 the appointment of the Auditor; and
  - 13.6.4 the fixing of the Auditor's remuneration.

## **Questions by Members of the Company**

- 13.7 The Chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

## **Questions by Members of Auditors**

- 13.8 If the Auditor or their representative is at the AGM, the Chair must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## **Auditor's right to be heard at meetings of Members**

- 13.9 The Auditor is entitled to attend and be heard at meetings of Members.
- 13.10 The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- 13.11 The Auditor is entitled to be heard even if:
- 13.11.1 the Auditor retires at the meetings; or
  - 13.11.2 the meeting passes a resolution to remove the Auditor from office.
- 13.12 The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

# **14 The Board**

## **Members of the Board**

- 14.1 The names of the first Directors are those persons named as directors in the application for registration of the Company.
- 14.2 The Board consists of a maximum of seven Directors, five of whom are required to be elected or appointed in accordance with this Constitution and two of whom may be appointed directly by the Board. The maximum number includes Directors appointed as the Chair and the deputy Chair.

## **Obligations and duties of Directors**

- 14.3 Each Director (including the Chair and deputy Chair) are subject to, and must comply with, the requirements, obligations and duties imposed on directors under the Act, this Constitution, the Company's Code of Conduct (if adopted, and as amended) and at common law.

## **Election of Directors**

- 14.4 The right to appoint Directors is as follows:
- 14.4.1 Manufacturing Members have the right to appoint 1 Director;
  - 14.4.2 Installation Members have the right to appoint 1 Director;
  - 14.4.3 Wholesaling / Importing Members have the right to appoint 1 Director; and
  - 14.4.4 The additional two Directors up to a total of five elected Directors may be appointed from any class of membership by the members.
- 14.5 At every AGM, one third of the Directors or, if their number is not a multiple of 3, then the number nearest to but not more than one third (or such number as is necessary to ensure compliance with this Rule), must retire from office. A Director must retire from office at the conclusion of 3 years after which the Director was elected or re-elected. A retiring Director retains office until the dissolution of the meeting at which the Director retires. Nothing in this Rule requires a Director to retire from office earlier than at the conclusion of the third AGM after which the Director was elected or re-elected.
- 14.6 Any Director retiring from office, whether in accordance with Rule 14.7 or otherwise, will be replaced by a Director of appointed by the same class of Member that appointed the retiring Director.
- 14.7 The Directors that are required to retire pursuant to Rule 14.7 are the Directors longest in office since last being elected. If Directors were elected on the same day, the Directors to retire are (in default of agreement between them) determined by ballot. The length of time a Director has been in office is calculated from the date of their last election or appointment. A retiring Director is, subject to this Constitution, eligible for re-election.
- 14.8 Any 2 Voting Members of a class of Members may nominate any eligible person as a Director. Any Director so nominated and elected is counted as a Director appointed by that class of Member.
- 14.9 No person is eligible for election to the Board at any AGM (or any general meeting of the Company) unless the person or some Member intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the Member to nominate the nominee. To be valid, the notice must be left at the Company's registered office at least 25 days before the meeting.
- 14.10 A list of the candidates' names in alphabetical order are to be forwarded to all Members of the Company at least 7 days immediately preceding the day of the AGM (or any general meeting of the Company) at which the election is to take place. The list of candidates will specify which class of Member the candidate represents if applicable.
- 14.11 Each Member in a particular class present at the AGM (or any general meeting of the Company) is entitled to vote for any number of such candidates nominated for appointment representing Members in that class not exceeding the number of vacancies.

- 14.12 Where there are an insufficient number of candidates nominated, the Board must fill the remaining vacancy or vacancies as set out in Rules 14.17 to 14.19. The Board may appoint a director only to fill a casual vacancy. The Board must appoint any Directors filling casual vacancies to represent the same class of Members as the Director that previously filled the role.

#### **Qualification for membership of the Board**

- 14.13 A Director need not be a member of the Company.
- 14.14 All Directors must be natural persons.
- 14.15 The Auditor can not be elected or appointed as a Director.

#### **Casual vacancies**

- 14.16 The Board has the power at any time and from time to time to appoint a qualified person as a Director either to fill a casual vacancy among the Board or as an addition to the existing members. However, the total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.
- 14.17 Any person appointed under this Rule holds office until the next general meeting when an election will be held to fill the vacancy. However, such person is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting. Any person appointed under this Rule is eligible for election at that general meeting.
- 14.18 The Members in general meeting may by ordinary resolution elect a qualified person as a Director but so that the total number of members does not at any time exceed the number fixed in accordance with this Constitution.

#### **Remuneration**

- 14.19 Subject to Rules 14.21 and 14.22, no Director, except one appointed directly by the Board as an Independent Non-Executive Director, is entitled to be paid a fee for service as Director.
- 14.20 The Directors will be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the directors, committee of the Directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.
- 14.21 Subject to Rule 14.23, a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.
- 14.22 Any amount paid under Rules 14.21 and 14.22 must be approved by the Directors.

## **15 Resignation and removal**

#### **Resignation**

- 15.1 Any Director may resign from membership of the Board by notice in writing delivered to the Secretary.
- 15.2 Resignation takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice as the effective date.

## **Removal**

- 15.3 A Director may be removed from office by ordinary resolution of the Members in the class of Member that appointed a Director at a general meeting of the Company convened for that purpose. At any such general meeting the Director must be given the opportunity to fully present their case as to why they should not be removed either orally or in writing or partly by either or both of these means.
- 15.4 A Director who ceases to be a Director under Rule 15.3 retains office until the dissolution or adjournment of the general meeting at which the member is removed.

## **Disqualification**

- 15.5 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office becomes vacant if that member:
- 15.5.1 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - 15.5.2 becomes a bankrupt under the Bankruptcy Act;
  - 15.5.3 dies;
  - 15.5.4 fails to attend 3 consecutive meetings of the Board without appointing an alternate director to attend Board meetings in the place of that Director.
- 15.6 A Director who vacates office pursuant to Rule 15.5 is not to be taken into account in determining the number of Directors who are to retire by rotation at any AGM.

## **16 Chair and deputy chair**

### **Appointment to office**

- 16.1 Subject to Rule 16.2, the Chair and deputy Chair are chosen by the Board at the first Board meeting after any AGM.
- 16.2 The Chair and deputy Chair continue to hold office until the earlier of:
- 16.2.1 their resignation from that office in accordance with Rule 15.1;
  - 16.2.2 their removal from that office in accordance with Rule 15.3;
  - 16.2.3 their office as Director becoming vacant in accordance with this Constitution or he or she resigns or is removed from that office;
  - 16.2.4 the date of the first Board meeting after the first anniversary of their appointment to that office.
- 16.3 The Board has the sole power at any time to appoint any Directors as Chair and deputy Chair and to remove any Director appointed under this Constitution from any of those offices, but not from the office of Director.

### **Resignation**

- 16.4 Resignation of the Chair or deputy Chair must be effected in accordance with Rule 15.1.

## **17 Board proceedings**

### **Procedures relating to Board meetings**

- 17.1 The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 17.2 Until otherwise determined by the Board, the lower of 3 Directors or 50% of the appointed Directors form a quorum (unless at any time there are less than 3 Directors appointed, in which case the quorum is all Directors appointed at that time). The quorum must be present at all times during the meeting.
- 17.3 If any Director is unable to attend a Board meeting, and has not appointed an alternate director to attend the Board meeting in place of that Director, that Director must provide a written proxy form by no later than 5:30pm on the business day before the date of the Board meeting specifying the manner in which that Director votes on each resolution to be put to the Board meeting, and any other matters that the Director wishes to be made known.
- 17.4 Notice must be provided to Directors in accordance with Rule 23.

### **Meetings by telephone or other means of communication**

- 17.5 The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the members present at the meeting is at that place for the duration of the meeting.

### **Votes at meetings**

- 17.6 Questions raised at any Board meeting are decided by a majority of votes.
- 17.7 In the case of an equality of votes, the chair of the meeting has a casting vote in addition to the chair's deliberative vote.
- 17.8 Any vote cast in accordance with Rule 17.3 may be counted in determining the votes cast on a resolution.

### **Convening of meetings**

- 17.9 The Board may at any time, and the Secretary, upon the request of any one Director, must convene a Board meeting upon reasonable notice individually to each other Director.

### **Chair**

- 17.10 The Chair will, if present, able and willing preside as chair at all meetings of the Board and if:
- 17.10.1 there is no such Chair;
  - 17.10.2 the Chair is not present within 15 minutes after the time appointed for the meeting; or
  - 17.10.3 the Chair is unable or unwilling to preside,
- then the deputy Chair if present at the meeting, able and willing or in the absence or unwillingness of both of them a Director, appointed by the meeting, must act as chair of the meeting.

## **Powers of meetings**

- 17.11 A Board meeting or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

## **Delegation of powers to Committees**

- 17.12 The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to subdelegate any of the powers for the time being vested in the delegate.

## **Proceedings of Committees**

- 17.13 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 17.12.
- 17.14 A Committee in the exercise of the duties delegated or assigned to it must conform to any regulations, directions or instructions that may be imposed or given by the Board.
- 17.15 A Committee appointed by the Board is under the control and direction of the Board and has no direct part or power in the management of the Company.

## **Validity of acts**

- 17.16 All acts done at any Board meeting or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the members or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a Committee member.
- 17.17 If the number of Directors is reduced below the minimum number fixed pursuant to this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

## **Written resolutions**

- 17.18 If a document:
- 17.18.1 is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
  - 17.18.2 the terms of the resolution are set out or identified in the document;
  - 17.18.3 contains a statement that the signatories to it are in favour of that resolution; and
  - 17.18.4 has been signed by a majority of the Directors entitled to vote on that resolution,
- a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Directors and the document has effect as a minute of the resolution.

- 17.19 For the purposes of Rule 17.18:
- 17.19.1 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director;
  - 17.19.2 a reference to a majority of the Directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of the alternate director's appointor; and
  - 17.19.3 a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a Director or alternate director shall be taken to be signed by that Director or alternate director not later than the time of receipt of the fax by the Company or its agent in legible form.

## **18 Powers of the Board**

### **General powers of the Board**

- 18.1 The management and control of the business and affairs of the Company is vested in the Board, which (in addition to the powers and authorities conferred upon them by this Constitution) may exercise all powers and do all things as are within the power of the Company.
- 18.2 The Board may make, amend or rescind such regulations consistent with the Constitution, as considered by the Board to be necessary for:
- 18.2.1 the proper control, administration and management of the Company's finances, affairs and property or
  - 18.2.2 the convenience, comfort and well-being of the Members (including the terms of entry of Members to the Company's premises and any event or function sponsored, promoted, facilitated or conducted by the Company).
- 18.3 Regulations made by the Board may be disallowed by the Company in a later general meeting.
- 18.4 A resolution or regulation made by the Company in a general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

### **Directors contracting with the Company**

- 18.5 A Director is not disqualified by the Director's office from contracting with the Company in any capacity.
- 18.6 A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested shall not be avoided merely because the Director is a party to or interested in it.
- 18.7 A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:

- 18.7.1 declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
- 18.7.2 not contravened this Constitution or the Act in relation to the matter.
- 18.8 A general notice that the Director is an officer or member of a specified body corporate or firm stating the nature and extent of the Director's interest in the body corporate or firm shall, in relation to a matter involving the Company and that body corporate or firm, be a sufficient declaration of the Director's interest, provided the extent of that interest is no greater at the time of first consideration of the relevant matter by the Directors than was stated in the notice.
- 18.9 Subject to the Act, a Director may vote in respect of a matter in which that Director has a material interest.
- 18.10 If the provisions of this Article and the Act have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement shall not in any way affect its validity.
- 18.11 A Director may hold any office of employment or profit in the Company (other than auditor) in addition to holding office as a Director.
- 18.12 A Director may sign or execute any document irrespective of any interest that the Director has in the subject matter of that instrument or document, or any other office or place of profit held by such Director.

## **19 Secretary**

### **Appointment**

- 19.1 The Directors must appoint a Secretary in accordance with the Act.

### **Terms and conditions of office**

- 19.2 The Secretary holds office on such terms and conditions in relation to remuneration and otherwise as the Board determines.

## **20 Other salaried officers**

- 20.1 The Board has the power to appoint officers and employees at any time on such terms as it thinks fit and may, subject to conditions of the employment of such officers and employees, dispense with their services and appoint other officers and employees.

## **21 The Seal**

### **Company Seal is optional**

- 21.1 The Company may have a Seal.

### **Affixing the Seal**

- 21.2 If the Company has a Seal, the Board is to provide for its safe custody and it should only be used with the Board's authority. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary, a second Director, or another person appointed by the Board for the purpose. The Board may determine

either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

### **Execution of documents without a Seal**

21.3 The Company may execute a document, including a deed, by having the document signed by:

21.3.1 2 Directors;

21.3.2 a Director and Secretary, and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in this Rule or as required by law.

## **22 Minutes and access**

### **Company must maintain minute books**

22.1 The Company must keep minute books in which it records within one month:

22.1.1 proceedings and resolutions of Members' meetings;

22.1.2 proceedings and resolutions of Directors' meetings and committee meetings (together with the names of the Directors present at each meeting of the Company, the Board and of any Committees);

22.1.3 resolutions passed by Members without a meeting; and

22.1.4 resolutions passed by Directors without a meeting.

22.2 The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting. The minutes of any Board meeting or of any Committee or of the Company, if purporting to be signed by the Chair of the meeting or by the Chair of the next succeeding meeting are prima facie evidence of the matters stated in the minutes.

22.3 The Company must ensure that any minutes which record the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### **Access to minutes**

22.4 Members are entitled to gain access to the minute book of meeting of Members in accordance with the Act.

## **23 Notices**

### **Service of notices**

23.1 A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, in any of the formats described in this Rule 23.

### **When notice deemed to be served**

23.2 Any notice served on a Member:

- 23.2.1 by post is deemed to have been served 3 business days after postage of a properly addressed prepaid envelope. Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice.
  - 23.2.2 personally or left at the Member's Registered address is deemed to have been served when delivered.
  - 23.2.3 by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is taken to have been sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee.
  - 23.2.4 by electronic means is deemed to have been served when the electronic message is sent.
- 23.3 If any notice is delivered on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

#### **Member not known at Registered address**

- 23.4 Where a Member does not have a Registered address, all future notices are:
- 23.4.1 deemed to have been given to the Member if the notice is exhibited in the Office for a period of 48 hours; and
  - 23.4.2 deemed to have been served at the commencement of that period unless and until the Member informs the Company of a registered address.

#### **Provision of period of notice**

- 23.5 Where a given number of days' notice must be provided, the day of service is not included in the calculation of the number of days.

#### **Service on deceased Members**

- 23.6 A notice delivered to the Registered address of a Member pursuant to this Constitution is deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death).

#### **Persons entitled to notice of general meeting**

- 23.7 Notice of every general meeting is to be given to:
- 23.7.1 each Member who is entitled to vote at general meetings of the Company;
  - 23.7.2 each Director;
  - 23.7.3 the auditor for the time being of the Company.
- 23.8 No other person is entitled to receive notices of general meetings.

#### **Notification of change of address**

- 23.9 Every Member must notify the Company of any change of his or her address and any such new address must be entered in the Register as required to be kept by the Act and upon being so entered becomes the Member's Registered address.

## **24 Indemnity**

### **Extent of indemnity**

- 24.1 Subject to Part 2D.2 of the Act, a person who is an Officer or auditor of the Company is indemnified by the Company against any liability to another person (other than the Company or a related body corporate of the Company) incurred in that person's capacity as an Officer unless the liability:
- 24.1.1 arises out of conduct involving a lack of good faith; or
  - 24.1.2 is for a pecuniary penalty order or composition order under Part 9.4B of the Act.
- 24.2 The Company must indemnify an Officer against a liability for costs and expenses (including, without limitation, legal expenses on a full indemnity basis) incurred by the Officer:
- 24.2.1 in defending proceedings, whether civil or criminal, in which –
    - (a) judgment is given in favour of the Officer; or
    - (b) the Officer is acquitted; or
  - 24.2.2 in connection with an application, in relation to proceedings under Rule 24.2.1, in which a court grants relief to the Officer under the Act,  
subject to an obligation that the Officer repay to the Company the expenses advanced by the Company if:
    - 24.2.3 judgment is not given in the Officer's favour;
    - 24.2.4 the Officer is not acquitted;
    - 24.2.5 a court subsequently determines that the indemnification is not permitted; or
    - 24.2.6 the indemnification is not permitted by the Act.
- 24.3 For the purposes of this Rule 24, the Company has the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
- 24.4 The indemnification rights in this Rule 24 constitute a contract between the relevant parties seeking indemnification and the Company and continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

### **Payment of costs**

- 24.5 The Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer incurs or will incur under any contract entered, as a result of an act or thing done by them as an Officer or due to the discharge of their duties.

### **Limit of indemnity**

- 24.6 Subject to the provisions of the Act, an Officer of the Company is not liable for:
- 24.6.1 the acts, receipts, neglect or defaults of any other Officer;
  - 24.6.2 joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
    - (a) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or

- (b) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company are invested;
- 24.6.3 any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects are deposited;
- 24.6.4 any loss occasioned by any error of judgment or oversight on the Officer's part; or
- 24.6.5 any other loss, damage or misfortune which occurs in the execution of the Officer's duties

unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

#### **Contract of insurance**

- 24.7 Subject to law, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against:
  - 24.7.1 any liability incurred by the Officer which does not arise out of conduct involving a willful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
  - 24.7.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.

#### **Personal liability of Officer**

- 24.8 If the Board, Director, or any Officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute a charge or security over all or part of the Company assets as an indemnity for any loss incurred by the person as a result of the liability.

#### **Insurance**

- 24.9 Subject to law, the Company may pay insurance premiums in respect of insurance for the benefit of every person who is or has been a Director, Secretary or Board Officer acting in that capacity against:
  - 24.9.1 costs and expenses in defending any proceedings, whether civil or criminal; or
  - 24.9.2 a liability arising from negligence or other conduct, except for a liability incurred by the person acting in that capacity and arising out of conduct involving a wilful breach of duty in relation to the Company or a breach of the provisions of the Act.
- 24.10 The Company may pay insurance premiums in respect of insurance for the benefit of the auditor or an employee of the Company who is not a Director, Secretary or Board Officer concerned in the management of the Company.