

**Constitution for  
The Hydroponics Company Limited  
ACN 614 508 039**

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# The Hydroponics Company Limited

ACN 614 508 039

## Constitution

### Part 1 - Preliminary

**1. Name**

The Company is The Hydroponics Company Limited.

**2. Nature of Company**

The Company is a public company limited by shares.

**3. Replaceable rules**

The replaceable rules in the *Corporations Act 2001* do not apply to the Company.

**4. The Hydroponics Company Limited**

If the Company is admitted to the official list of ASX:

- 4.1 not withstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- 4.2 nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- 4.3 if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- 4.4 if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- 4.5 if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision;
- 4.6 if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

### Part 2 – Shares

**5. Share capital and rights attaching**

Without limiting the Company's powers under the *Corporations Act 2001*, the Company (under the control of the Directors) may:

- 5.1 issue shares in the Company; and
- 5.2 grant options over unissued shares in the Company;

on any terms, with any rights or restrictions attached to the shares, at any time, and for any consideration the Directors decide.

- 5.3 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the *Corporations Act 2001* and the Listing Rules, shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors, subject to any resolution, determine.

- 5.4 The initial share capital of the Company is divided into:

**Fully Paid Ordinary Class Shares**

**"A" Class Shares**

**"B" Class Shares**

**"C" Class Shares**

**"D" Class Shares**

**"E" Class Shares**

**"F" Class Shares**

**"G" Class Shares**

**"H" Class Shares**

**"I" Class Redeemable Preference Shares**

**"J" Class Redeemable Preference Shares**

The rights attaching to each class of share are summarised in the following table:

Type of Share	Attend Meetings and Vote	Ordinary Dividends	Preferential Dividend	Repayment of capital	Right to participate in the division of any surplus assets or profits of the Company	Shares redeemable at Option of Company	Redeemable at Option of Member
Fully Paid Ordinary Shares	Yes	Yes	No	Yes	Yes	N/A	N/A
"A" "B" "C" "D" Class Shares	Yes	Yes	No	Yes	Yes	N/A	N/A
"E" Class Shares	Yes	Yes	No	Yes	No	N/A	N/A
"F" Class Shares	No	Yes	No	Yes	Yes	N/A	N/A
"G" Class Shares	No	Yes	No	Yes	No	N/A	N/A
"H" Class Shares	No	No	No	Yes	Yes	N/A	N/A
"I" Class Redeemable Preference Shares	No	No	Yes	Yes	No	Yes	No
"J" Class Redeemable Preference Shares	No	No	Yes	Yes	No	No	Yes



## 6. Fully Paid Ordinary Class Shares

A Member being the holder of an Fully Paid Ordinary Share holds such share subject to the following rights and entitlements:

- 6.1 the right to attend and vote at all meetings of the Company and on a show of hands to one vote for every share held and on every poll to one vote for every share held;
- 6.2 the right to participate in the dividends (if any) declared on that class of share;
- 6.3 in a winding up of the Company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the Company.

## 7. "A" "B" "C" or "D" Class Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of an "A" "B" "C" or "D" Class Share holds such share subject to the following rights and entitlements:

- 7.1 the right to attend and vote at all meetings of the Company and on a show of hands to one vote for every share held and on every poll to one vote for every share held;
- 7.2 the right to participate in the dividends (if any) declared on that class of share;
- 7.3 in a winding up of the Company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the Company.

## 8. "E" Class Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of an "E" Class Share holds such share subject to the following rights, entitlements and restrictions:

- 8.1 the right to attend and vote at all meetings of the Company and on a show of hands to one vote for every share held and on every poll to one vote for every share held;
- 8.2 the right to participate in the dividends (if any) declared on that class of share;
- 8.3 in a winding up of the Company to repayment of capital paid upon such share but **no right** to participate in the division of any surplus assets or profits of the Company.

## 9. "F" Class Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of a "F" Class Share holds such share subject to the following rights, entitlements and restrictions:-

- 9.1 **no right** to attend and vote at any meetings of the Company;
- 9.2 the right to participate in the dividends (if any) declared on that class of share;
- 9.3 in a winding up of the Company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the Company.

## 10. "G" Class Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of a "G" Class Share holds such share subject to the following rights, entitlements and restrictions (if any):

- 10.1 **no right** to attend and vote at any meetings of the Company;
- 10.2 the right to participate in the dividends (if any) declared on that class of share;
- 10.3 in a winding up of the Company to repayment of capital paid upon such share and **no right** to participate in the division of any surplus assets or profits of the Company.

## 11. "H" Class Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of a "H" Class Share holds such share subject to the following rights, entitlements and restrictions (if any):-

- 11.1 **no right** to attend and vote at any meetings of the Company;
- 11.2 **no right** to dividends;
- 11.3 in a winding up of the Company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the Company.

## 12. "I" Class Redeemable Preference Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of an "I" Class Redeemable Preference Share holds such share subject to the following rights, entitlements and restrictions:

- 12.1 **no right** to vote at any meeting of the Company except as provided for by this Constitution;
- 12.2 the right to receive from the profits of the Company a preferential dividend at a rate or dollar amount determined by the Directors in priority to the payment of a dividend to any non-preferential class of shares but ranking equally with any other class of preferential shares issued by the Company;
- 12.3 the right on redemption and in a winding up and in a reduction of capital (other than a reduction pursuant to a redemption of Redeemable Preference Shares) of the Company to payment of the capital for the time being paid up thereon together with any unpaid dividends in respect thereof in priority to any other class of non-preference shares, but ranking equally with any other class of preference shares, in the capital of the Company, but with **no right** to participate in any surplus assets or profits of the Company in the event of winding up;
- 12.4 the shares shall be redeemable **at the option of the Company** at any time but subject to such written notice being given by the Company as set out in this Constitution; and,
- 12.5 such other rights and restrictions as set out in Clause 14.

## 13. "J" Class Redeemable Preference Share

Subject to the *Corporations Act 2001* and the Listing Rules a Member being the holder of a "J" Class Redeemable Preference Share holds such share subject to the following rights, entitlements and restrictions:

- 13.1 **no right** to vote at any meeting of the Company except as provided for by this Constitution;
- 13.2 the right to receive from the profits of the Company a preferential dividend at the rate determined by the Directors in priority to the payment of a dividend to any non-preferential class of shares but ranking equally with any other class of preferential shares issued by the Company;
- 13.3 the right on redemption and in a winding up and in a reduction of capital (other than a reduction pursuant to a redemption of Redeemable Preference Shares) of the Company to payment of the capital for the time being paid up thereon together with any unpaid dividends in respect thereof in priority to any other class of non-preference shares, but ranking equally with any other class of preference shares, in the capital of the Company, but with **no right** to participate in any surplus assets or profits of the Company in the event of winding up;
- 13.4 the shares shall be redeemable **at the option of the Member** at any time subject to such notice period as set out hereafter; and
- 13.5 such other rights and restrictions as set out in Clause 14.

## 14. Redeemable Preference Shares

Subject to the *Corporations Act 2001* and the Listing Rules, any redeemable preference share shall be issued on the following terms:

- 14.1 Dividends on any Redeemable Preference Shares shall be non-cumulative, unless otherwise determined with the sanction of a resolution of the Directors prior to the

issue of such shares, and dividends shall rank ahead in priority to all other classes of shares in the capital of the Company.

- 14.2 No Redeemable Preference Share shall confer upon its holder a right to vote at any meeting except:
- 14.2.1 upon a proposal relating to reducing the share capital of the Company;
  - 14.2.2 upon a proposal to wind up the Company;
  - 14.2.3 upon a proposal that affects rights attached to the Redeemable Preference Shares; or
  - 14.2.4 during the winding up of the Company;

AND in any of the foregoing events, each holder of a Redeemable Preference Share shall have one vote for each Redeemable Preference Share held by him, and any holder may demand a poll at a general meeting of the Company where such holder is entitled to vote.

- 14.3 Shares in the capital of the Company (other than Redeemable Preference Shares) may not be issued to rank ahead of or pari passu with Redeemable Preference Shares (as regards the return of capital) without the prior written consent of the holders of at least 75% of all Redeemable Preference Shares.
- 14.4 The Company may at any time require the redemption of any "I" Class Redeemable Preference Share by notice in writing of not less than 21 days to the holder.
- 14.5 The holder of a "J" Class Redeemable Preference Share may at any time require the redemption of any "J" Class Redeemable Preference Share by giving notice of not less than twenty one (21) days to the Company EXCEPT THAT the Company shall not be obliged to redeem more than 10% of all issued "J" Class Redeemable Preference Shares (including those shares which have already been redeemed) in any one Financial Year.
- 14.6 It shall be a condition of the payment of the redemption amount payable that the holder shall deliver to the Company the share certificate relating to such Redeemable Preference Share or (if the share certificate has been lost or destroyed in circumstances not giving rise to any alienation of the Redeemable Preference Share) a statutory declaration made by the holder, or, where the holder is a body corporate, by an authorised officer of the holder, setting out the circumstances of such loss or destruction in respect of the Redeemable Preference Share to be redeemed.
- 14.7 All payments of dividends, redemption amounts and any other payments made in accordance with these terms shall be made (subject to any agreement to the contrary between the Company and the holder) by cheque delivered to the holder at the registered address of the holder or at such other place as the holder may elect by notice to the Company.

## **15. Preference shares**

- 15.1 The Company may issue preference shares on terms approved by special resolution of the Company as to:
- 15.1.1 repayment of capital;
  - 15.1.2 participation in surplus assets and profits;
  - 15.1.3 cumulative and non-cumulative dividends;
  - 15.1.4 voting;
  - 15.1.5 priority of payment of capital and dividends in relation to other shares or classes of preference shares.
- 15.2 The Company may issue new preference shares that rank equally with existing preference shares. A new issue is taken not to vary the rights attached to the existing preference shares.
- 15.3 The Company may only redeem redeemable preference shares according to their terms of issue.

## 16. Variation of classes and class rights

16.1 Subject to the *Corporations Act 2001*, the Company may:

16.1.1 vary or cancel rights attached to shares in a class of shares;

16.1.2 convert shares from one class to another;

by special resolution of the Company and

16.1.3 by special resolution passed at a meeting of the holders of shares in that class; or

16.1.4 by the written consent of shareholders with at least 75% of the votes in that class.

16.2 The Company may issue new shares that rank equally with existing shares. The new issue is taken not to vary the rights attached to the existing shares.

## 17. Alteration of share capital

The Company in general meeting may convert its shares into a larger or smaller number of shares.

## 18. Reduction of capital and buy-backs

Subject to the *Corporations Act 2001* and the Listing Rules, the Company may:

18.1 reduce its share capital;

18.2 buy-back shares in itself.

## 19. Brokerage

The Company may pay brokerage or commission if a person takes up shares in the Company.

## 20. Joint holders

20.1 2 or more persons may hold a share only as joint tenants.

20.2 Subject to the *Corporations Act 2001* and the Listing Rules, the Company need not register more than 3 persons as joint holders of a share.

## 21. Trust not recognised

Except as required by *Corporations Act 2001* and the Listing Rules or this constitution, the Company need not recognise:

21.1 that a person holds a share on trust; or

21.2 any interest in a share except the registered holder's absolute ownership of the whole share.

## 22. Non-Marketable Parcels

22.1 If at any time the number of Shares registered in the name of a Member is less than a Marketable Parcel and those Shares are held on the certificated subregister ('**Eligible Member**'), the Directors may cause a written notice ('**Notice**') to be despatched to the Eligible Member, requiring the Eligible Member to advise the Company by a specified date ('**Relevant Date**') whether the Eligible Member elects that the provisions of this Clause are not to apply to the Shares.

22.2 The Relevant Date must be not less than six weeks after the date of service of the Notice.

22.3 At least four weeks before the Notice being despatched the Directors must cause a notice to be despatched to each Member who holds an Uncertificated Holding which is less than a Marketable Parcel, advising each of those Members of the Directors' intention to invoke the procedure provided for in this Clause 13 ('Procedure').

22.4 That notice must state that if the Member wishes to have its holding sold in accordance with the Procedure it will be necessary, for that Member to effect or

- arrange for conversion of its holding from uncertificated to certificated mode before a specified date, being the date on which the Directors intend to invoke the Procedure.
- 22.5 At the time the Procedure is invoked a Notice must be despatched to each and every Eligible Member.
- 22.6 The Notice must state that the Shares referred to in the Notice will be liable to be sold unless, by the Relevant Date:
- 22.6.1 the Member advises the Company that the provisions of this Clause are not to apply to the Shares; or
- 22.6.2 the Member's holding has been converted from certificated to uncertificated mode.
- 22.7 Every Eligible Member on which a Notice has been served may by notice in writing addressed to the Secretary and delivered to the Office before the Relevant Date require the Company not to sell that Member's Shares in accordance with this Clause in which event no sale of that Member's Shares will take place.
- 22.8 If the Eligible Member does not advise the Company by the Relevant Date that the provisions of this Clause are not to apply to the Shares referred to in the Notice, any of those Shares which are held in certificated mode as at the Relevant Date may be sold by the Company.
- 22.9 Any Shares which may be sold pursuant to this Clause may be sold on the terms, in the manner and at the time determined by the Directors and for the purposes of a sale pursuant to this Clause each Eligible Member:
- 22.9.1 appoints the Company the Eligible Member's agent for sale;
- 22.9.2 authorises the Company to effect on the Eligible Member's behalf a transfer of the Shares sold;
- 22.9.3 appoints the Company and its Directors jointly and severally as the Eligible Member's attorneys in the Eligible Member's name and on the Eligible Member's behalf to execute any instrument or take any other steps as they or any of them may consider appropriate to transfer the Shares sold.
- 22.10 The title of the transferee to Shares acquired pursuant to this Clause is not affected by any irregularity or invalidity in connection with the sale of Shares to the transferee.
- 22.11 The proceeds of any sale of Shares pursuant to this Clause less any unpaid calls and interest ('Sale Consideration') will be paid to the relevant Member or as that Member may direct.
- 22.12 The Sale Consideration received by the Company in respect of all Shares sold pursuant to this Clause will be paid into a bank account opened and maintained by the Company for the purposes of this Clause.
- 22.13 The Company will hold the Sale Consideration in trust for the Member whose Shares are sold pursuant to this Clause and will forthwith notify the Member in writing that the Sale Consideration in respect of the Member's Shares has been received by the Company and is being held by the Company pending instructions from the Member as to how it is to be dealt with. Unless the Member has waived any entitlement it may have to a share certificate or certificates, the Member's instructions, to be effective, must be accompanied by the share certificate or certificates to which the Sale Consideration relates or, if the certificate or certificates has or have been lost or destroyed, by a statement and undertaking pursuant to subsection 1070D of the *Corporations Act 2001*.
- 22.14 Subject to the *Corporations Act 2001*, the Company or the purchaser will bear all costs, including brokerage and stamp duty, associated with the sale of any shares pursuant to this Clause.
- 22.15 The Procedure may only be invoked once in any 12-month period after its adoption or renewal.
- 22.16 If the Procedure has been invoked and there is an announcement of a takeover offer or takeover announcement for Shares, no more sales of Shares may be made

pursuant to this Clause 13 until after the close of the offers made under the takeover offer or takeover announcement. The Procedure may then be invoked again.

22.17 For the purposes of this Clause 13:

22.17.1 **Marketable Parcel** has the same meaning as in the Listing Rules;

22.17.2 **Uncertificated Holding** means a holding of Shares which is not held on any certificated sub-register maintained by or on behalf of the Company."

### 23. Share and option certificates and CHESS statements

23.1 When the Company registers securities of any class to a shareholder or option holder, the Company must issue to the shareholder or option holder, without charge, in the discretion of the Directors:

23.1.1 one or more certificates for those securities;

23.1.2 a statement of holdings required by the CHESS Rules; or

23.1.3 any other document that confirms ownership of the securities as the Directors decide.

23.2 If the *Corporations Act 2001* so permits, the Company:

23.2.1 need not issue a certificate for the securities;

23.2.2 may cancel a certificate and not issue a replacement.

23.3 The Company must comply with the *Corporations Act 2001* and the Listing Rules in issuing those certificates, statements of holdings or other documents.

23.4 If required to issue a certificate, the Company need issue only one certificate for securities registered in more than one name. The Company must deliver that certificate to any one of the registered holders.

23.5 Subject to the *Corporations Act 2001* and the Listing Rules, the Company must issue a replacement certificate for a defaced, worn out, lost or destroyed certificate.

### 24. Restricted securities

24.1 Notwithstanding any other provision in this constitution:

24.1.1 restricted securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX;

24.1.2 the Company must refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the escrow period except as permitted by the Listing Rules or ASX;

24.1.3 during a breach of the Listing Rules relating to restricted securities, or a breach of a Restriction Agreement, the holder of the restricted securities is not entitled to any Dividend or distribution, or voting rights, in respect of the restricted securities.

24.2 In this clause:

24.2.1 **dispose** has the same meaning as in the Listing Rules;

24.2.2 **restricted securities** has the same meaning as in the Listing Rules.

## Part 3 - Calls, liens and forfeiture

### 25. Calls

25.1 Subject to the Listing Rules and the terms of issue, the Directors may make calls on the holder of a share for any unpaid portion of the issue price of that share at any time.

25.2 The Directors may make a call payable by instalments.

25.3 While the Company is admitted to the official list of ASX, the Directors must give to the shareholder:

- 25.3.1 the period of notice of the call required by the Listing Rules; and
- 25.3.2 a call notice containing the information required by the Listing Rules.

While the Company is not admitted to the official list of ASX, the Company must give to the shareholder at least 14 days' notice of a call, specifying the amount payable, and the time and place of payment.

- 25.4 A call is made when the Directors resolve to make the call.
- 25.5 The Directors may revoke or postpone a call or extend the time for payment.
- 25.6 A call is still valid if either or both:
  - 25.6.1 a shareholder does not receive notice of the call;
  - 25.6.2 the Company accidentally does not give notice of the call to a shareholder.
- 25.7 A shareholder must pay to the Company:
  - 25.7.1 the amount called, by the time and at the place specified;
  - 25.7.2 if the amount called is not paid by that time, interest at the rate fixed in this Part on an unpaid call (or instalment) from the date the call (or instalment) becomes presently payable until and including the date of payment; and
  - 25.7.3 costs incurred by the Company in respect of the non-payment or late payment of the call.
- 25.8 Joint holders of a share and their respective personal representatives are all jointly and severally liable to pay all calls on the share.
- 25.9 If, by the terms of issue of a share, an amount is payable on issue or at a fixed date, the Company is taken to have properly called that amount and given proper notice of it.
- 25.10 The Directors may waive all or any part of an amount payable under this clause or the terms of issue of a share.
- 25.11 The Directors may recover an amount presently payable under this clause from a shareholder in all or any of the following ways:
  - 25.11.1 by suing the shareholder for debt;
  - 25.11.2 by enforcing the lien on the share;
  - 25.11.3 by declaring forfeit the share.
- 25.12 A debt is sufficiently proved by evidence that:
  - 25.12.1 the shareholder is registered as a holder or a joint holder of the share; and
  - 25.12.2 the resolution for the call is recorded in the minute book.
- 25.13 The Directors may authorise the Company:
  - 25.13.1 to accept from a shareholder an amount paid before call;
  - 25.13.2 to pay interest on the amount paid before call, at any rate the Directors decide, from the date of payment until and including the date the call becomes presently payable;
  - 25.13.3 to repay the amount to the shareholder.
- 25.14 An amount paid before call is ignored in determining a Dividend or surplus in a winding up.

## **26. Indemnity from taxation**

- 26.1 If the Company is required by *Corporations Act 2001* and the Listing Rules to pay an amount (including a tax) in respect of a shareholder or a share held by that shareholder or a Dividend in respect of a share held by that shareholder:
  - 26.1.1 the shareholder or the shareholder's personal representative must:

- (a) indemnify the Company against that liability;
  - (b) on demand, reimburse the Company for any payment by the Company, and pay to the Company interest on it at the rate fixed under this Part from the date of payment by the Company until and including the date the shareholder reimburses the Company and pays any costs incurred by the Company because of the payment;
- 26.1.2 subject to clause 35, the Company may refuse to register a transfer of any shares by or to the shareholder or the shareholder's personal representative until payment of all amounts presently payable under this clause.
- 26.2 The Directors may waive any of the Company's rights under this clause.
- 26.3 The Directors may recover an amount presently payable under this clause from a shareholder in both or either of the following ways:
- 26.3.1 by suing the shareholder for debt;
  - 26.3.2 by enforcing the lien on the share.

## **27. Forfeiture**

- 27.1 The Directors may resolve that a shareholder's share is forfeited if:
- 27.1.1 the shareholder does not pay a call or instalment on the share when presently payable; and
  - 27.1.2 the Company gives the shareholder notice:
    - (a) requiring payment of that call or instalment, any interest on it and any costs incurred by the Company because of the non-payment;
    - (b) stating that the share will be forfeited if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after the notice is given; and
  - 27.1.3 the shareholder does not pay the total amount within that period.
- 27.2 When a share is forfeited, the Company must:
- 27.2.1 notify the former holder that the share is forfeited; and
  - 27.2.2 record the forfeiture and date of forfeiture in the register of shareholders.
- A failure to do this does not invalidate the forfeiture.
- 27.3 The former holder of a forfeited share must pay to the Company:
- 27.3.1 all calls, instalments, interest and costs in respect of the share at the date of forfeiture; and
  - 27.3.2 interest at the rate fixed in this Part on those amounts from the date of forfeiture until and including the date of payment.
- 27.4 The forfeiture of a share extinguishes:
- 27.4.1 the former shareholder's interest in the share; and
  - 27.4.2 all claims against the Company in respect of the share, including all Dividends presently payable by the Company on the share.
- 27.5 Subject to the Listing Rules, the Company may sell or otherwise dispose of a forfeited share on any terms and in any way the Directors decide
- 27.6 A certificate by a director or secretary of the Company that the share was forfeited on a specified date is sufficient evidence of the matter, unless it is proved to be incorrect.
- 27.7 The Directors may:
- 27.7.1 waive any of the Company's rights under this clause;



27.7.2 before sale or re-issue of a forfeited share, annul the forfeiture on any terms the Directors decide.

## **28. Lien**

28.1 The Company has a first ranking lien on:

28.1.1 each share registered to a shareholder;

28.1.2 Dividends on the share;

28.1.3 proceeds of sale of the share;

for:

28.1.4 an unpaid call or instalment that is due but unpaid on the share;

28.1.5 if the share was acquired under an employee incentive scheme, an amount owing to the Company for acquiring the share;

28.1.6 any amounts the Company is required by *Corporations Act 2001* and the Listing Rules to pay (and has paid) in respect of the shares of that shareholder or deceased former shareholder;

28.1.7 any interest and costs presently payable to the Company under this Part.

28.2 The Company may sell a share to enforce the lien if:

28.2.1 an amount secured by the lien is presently payable;

28.2.2 the Company gives the shareholder notice:

(a) requiring payment of that amount, any interest on it and any costs incurred by the Company because of the non-payment;

(b) stating that the share will be sold if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after service of the notice; and

28.2.3 the shareholder does not pay the total amount within that period.

28.3 The Directors may waive any of the Company's rights under this clause.

28.4 Registration by the Company of a transfer of a share releases any lien on that share, insofar as the lien relates to money owing by the transferor or previous transferor, unless the Company gives the transferee notice of its claim.

## **29. Sale**

29.1 The Directors may authorise a person to sign a transfer of a forfeited share or a share sold to enforce a lien.

29.2 The Company must apply the sale price from:

29.2.1 the sale of a forfeited share;

29.2.2 the sale of a share sold to enforce a lien;

in the following order:

29.2.3 to the costs of the sale;

29.2.4 to the amount presently payable by the former holder to the Company;

29.2.5 to the former holder or the former holder's personal representative, on receipt of the certificate for the share.

29.3 The Company must register the purchaser of the share as the holder of the share.

29.4 The purchaser need not enquire whether the Company:

29.4.1 properly exercised its powers in respect of the share;

29.4.2 properly applied the sale price for the share.

These matters do not affect the title of the purchaser.

29.5 Unless expressly agreed, the purchaser is not liable for calls and other amounts presently payable in respect of the share before the sale.

**30. Interest**

30.1 A shareholder must pay interest under this Part to the Company:

30.1.1 at a rate the Directors decide;

30.1.2 if the Directors do not decide a rate, at 10% per annum.

30.2 Interest payable to the Company accrues daily.

30.3 The Company may capitalise interest monthly or at any other intervals the Directors decide.

## **Part 4 - Transfer of shares**

**31. Instruments of transfer**

Subject to this constitution, a shareholder may transfer a share:

31.1 in the case of CHESSE Approved Securities, in accordance with the CHESSE Rules;

31.2 by an instrument of transfer in any common form or other form approved by the Directors;

31.3 by any other method of transferring securities recognised by the *Corporations Act 2001* and ASX and approved by the Directors.

**32. Registration**

32.1 If a CHESSE Approved Security is transferred, the Company must comply with the CHESSE Rules.

32.2 If an instrument of transfer is used, it must be:

32.2.1 executed by or for both the transferor and the transferee (unless it is a sufficient transfer of marketable securities);

32.2.2 stamped;

32.2.3 delivered to the Company's share registry, together with any evidence the Directors require to prove:

(a) the title of the transferor;

(b) the transferor's right to transfer the shares; and

(c) the proper execution of the instrument of transfer.

**33. Effect of transfer**

Subject to the CHESSE Rules, a transferor of shares remains the holder of the shares until the transfer is registered and the name of the transferee is entered in the register of shareholders as the owner of the shares.

**34. No charge**

The Company must not charge a fee to register a transfer.

**35. Refusal to register transfer**

35.1 If the Company is not admitted to the official list of ASX, the Directors may refuse to register a transfer of shares only if:

35.1.1 clause 31 or clause 32 is not complied with;

35.1.2 the shares are not fully paid; or

35.1.3 the Company has a lien on the shares.

- 35.2 If the Company is admitted to the official list of ASX, the Company must not prevent, delay or interfere with the registration of a transfer document. This does not apply to a paper-based transfer document which is not a proper instrument of transfer. However, the Company may ask SCH to apply a holding lock to prevent a transfer, or refuse to register a paper-based transfer document, where permitted by the *Corporations Act 2001* or The Listing Rules. The Company must do so if the *Corporations Act 2001* or The Listing Rules so require.
- 35.3 The Directors must give notice of any refusal to the security holder and any broker lodging the transfer. The notice must set out the reason for the refusal. Failure to do so does not invalidate the decision of the Directors.

**36. Suspension of registration**

Subject to the *Corporations Act 2001* and The Listing Rules, the Directors may suspend registration of transfers of shares in the Company at the times and for the periods they decide. The periods of suspension must not exceed 30 days in any calendar year.

**37. Company retains paper-based transfer document**

- 37.1 The Company may keep a paper-based transfer document after registration.
- 37.2 If demand is made within 12 months after the Company gives notice of a refusal to register and there is no allegation of fraud, the Company must return the paper-based transfer document to the depositor.

**38. Death of shareholder**

- 38.1 If a shareholder (other than a joint shareholder) dies, the Company must recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's shares.
- 38.2 If a shareholder who owns shares jointly dies, the Company must recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
- 38.3 Whether the deceased shareholder owned the shares solely or jointly, the estate of the deceased shareholder is not released from any liability in respect of the shares.

**39. Transmission**

- 39.1 If a person is entitled to shares because of a Transmission Event and gives the Directors the information they reasonably require to establish the person's entitlement:
- 39.1.1 the person may:
- (a) by giving notice to the Company, elect to be registered as the holder of the shares; or
  - (b) by giving a completed instrument of transfer to the Company, transfer the shares to another person; and
- 39.1.2 the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder or deceased shareholder.
- 39.2 On receiving a notice under clause 39.1.1(a), the Company must register the person as the holder of the shares.
- 39.3 A transfer under clause 39.1.1(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

## **Part 5 - Proceedings of shareholders**

**40. One shareholder**

While the Company has only one shareholder:

- 40.1 it may pass a resolution by the shareholder recording it and signing the record;
- 40.2 the rest of this Part does not apply.

#### **41. Annual general**

The Company must hold an annual general meeting:

- 41.1 within 18 months after its registration;
- 41.2 at least once in each calendar year and within 5 months after the end of its financial year.

#### **42. Who may call meetings of shareholders**

- 42.1 A director may call a meeting of shareholders, when and where the director decides.
- 42.2 The Directors may call a meeting of shareholders, when and where the Directors decide.
- 42.3 The Directors must call a meeting of shareholders when requested by the shareholders specified in the *Corporations Act 2001*.
- 42.4 The shareholders specified in the *Corporations Act 2001* may call a meeting of shareholders.

#### **43. How to call meetings of shareholders**

- 43.1 At least 28 days' notice must be given of a general meeting. However, unless prohibited by the *Corporations Act 2001*, the Company may call on shorter notice:
  - 43.1.1 an annual general meeting, if all the shareholders entitled to attend and vote at the annual general meeting agree beforehand; and
  - 43.1.2 any other general meeting, if shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 43.2 Notice of a meeting must be given to shareholders, directors, the auditor and ASX.
- 43.3 A notice of a general meeting must:
  - 43.3.1 set out the place, date and time for the meeting;
  - 43.3.2 state the general nature of the meeting's business;
  - 43.3.3 if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution; and
  - 43.3.4 contain a statement setting out the following information:
    - (a) that the shareholder has the right to appoint a proxy;
    - (b) that the proxy need not be a shareholder of the Company;
    - (c) that a shareholder who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
  - 43.3.5 if the Company is admitted to the official list of ASX, specify a place and a fax number, and may specify an electronic address, for the purposes of receipt of proxy appointments;
  - 43.3.6 if the Company is admitted to the official list of ASX, contain a proxy form in accordance with the Listing Rules;
  - 43.3.7 contain anything else required by the *Corporations Act 2001* or, if the Company is admitted to the official list of ASX, the Listing Rules.
- 43.4 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
  - 43.4.1 the consideration of the annual financial report, Directors' report and auditor's report;
  - 43.4.2 the election of directors;
  - 43.4.3 the appointment of the auditor;

43.4.4 the fixing of the auditor's remuneration.

43.5 Non-receipt of notice of a meeting, or failure to give proper notice of a meeting to a person entitled to receive it, does not invalidate anything done at the meeting if:

43.5.1 the failure was accidental;

43.5.2 the person gives notice to the Company that the person waives proper notice or agrees to the thing done at the meeting; or

43.5.3 the person attends the meeting and:

(a) does not object at the start of the meeting to the holding of the meeting; or

(b) if the notice omitted an item of business, does not object to the consideration of the business when it is presented to the meeting.

#### **44. Membership at a specified time**

The convenor of a general meeting may determine that all shares are taken, for the purposes of the meeting, to be held by the persons who held them at a specified time (not more than 48 hours before the meeting). The determination must be made before notice of the meeting is given. Particulars of the determination must be given in the notice of meeting.

#### **45. Quorum**

45.1 If there are less than 20 shareholders on the register of shareholders (counting joint holders of a share as one shareholder), a quorum for a meeting of shareholders is 2 shareholders entitled to vote. If there are 20 or more shareholders on the register of shareholders (counting joint holders of a share as one shareholder), a quorum is 5 shareholders entitled to vote. The quorum must be present at all times during the meeting.

45.2 In determining whether a quorum is present, the chairman must count shareholders, proxies, attorneys, body corporate representatives and any other persons entitled to vote. However, if a shareholder has more than one proxy, attorney or body corporate representative, the chairman must count only one of them. If an individual is attending both as a shareholder and as a proxy, attorney or body corporate representative, or in any other capacity, the chairman must count them only once.

45.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:

45.3.1 if the meeting was called on the request of shareholders or by shareholders, the meeting is dissolved;

45.3.2 any other meeting is adjourned to any day, time and place the Directors decide.

45.4 If a quorum is not present within 30 minutes after the time appointed for an adjourned meeting, the meeting is dissolved.

#### **46. Chairman**

46.1 The chairman of Directors is entitled to chair all meetings of shareholders.

46.2 If there is no chairman of Directors, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman of Directors may chair the meeting. If there is no deputy chairman, or if the deputy chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the directors present must elect one of themselves to chair the meeting. If they do not do so, the shareholders present must elect a person to chair the meeting.

#### **47. Regulation of meetings**

The chairman may regulate the meeting of shareholders in any way consistent with this constitution.

#### **48. Adjournment**

- 48.1 The chairman may adjourn a meeting of shareholders to any day, time and place.
- 48.2 The chairman must adjourn a meeting of shareholders if the shareholders present with a majority of votes at the meeting agree or direct the chairman to do so. The chairman may adjourn the meeting to any day, time and place.
- 48.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for more than a month.
- 48.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **49. How shareholders make decisions at meetings**

- 49.1 A meeting of shareholders makes a decision by passing a resolution. A resolution is passed if more than 50% of the votes cast by the shareholders entitled to vote are in favour of the resolution (unless the *Corporations Act 2001* and the Listing Rules requires a special resolution).
- 49.2 A special resolution is passed if:
  - 49.2.1 the notice of the meeting sets out an intention to propose the special resolution and states the resolution;
  - 49.2.2 it is passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution.

#### **50. How voting is carried out**

- 50.1 Unless a poll is properly requested, a resolution put to the vote at a meeting of shareholders must be decided on a show of hands.
- 50.2 If a poll is properly requested, the result of the poll is the resolution of the meeting.
- 50.3 A declaration by the chairman that a resolution is passed, or passed by a particular majority, or lost, and an entry to that effect in the minutes, are sufficient evidence of that fact, unless proved incorrect.

#### **51. Polls**

- 51.1 A poll may be requested on any resolution.
- 51.2 A poll may be requested by:
  - 51.2.1 at least 5 shareholders entitled to vote on the resolution;
  - 51.2.2 shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
  - 51.2.3 the chairman.
- 51.3 The poll may be requested:
  - 51.3.1 before a vote is taken;
  - 51.3.2 before the voting results on a show of hands are declared; or
  - 51.3.3 immediately after the voting results on a show of hands are declared.
- 51.4 A request for a poll may be withdrawn.
- 51.5 A poll requested on a matter other than the election of a chairman or the question of an adjournment must be taken when and how the chairman directs.
- 51.6 A poll on the election of a chairman or the question of an adjournment must be taken immediately.
- 51.7 A request for a poll does not prevent the meeting dealing with other business.

## **52. How many votes a shareholder has**

- 52.1 Subject to the Listing Rules, this constitution and any special rights or restrictions attached to a share, at a meeting of shareholders:
- 52.1.1 on a show of hands, each shareholder present (in person, by proxy, attorney or representative) has one vote;
  - 52.1.2 on a poll, each shareholder present (in person, by proxy, attorney or representative) has:
    - (a) one vote for each fully paid share they hold; and
    - (b) a fraction of a vote for each partly paid share they hold. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call are ignored.
- 52.2 The chairman has a casting vote, if the chairman has a personal deliberative vote.
- 52.3 If a share is held jointly and more than one shareholder votes the share, only the vote of the shareholder whose name appears first in the register of shareholders counts.
- 52.4 The parent or guardian of an infant shareholder may vote that infant's share, if the parent or guardian satisfies the Directors of the relationship or appointment before the meeting. If the infant's parent or guardian votes the share, the infant shareholder must not vote.
- 52.5 A person may vote a share if:
- 52.5.1 the person is entitled to be registered as the holder of the share because of a Transmission Event; and
  - 52.5.2 the person satisfies the Directors of that entitlement before the meeting.
- The shareholder must not vote a share if another person does so under this sub-clause.
- 52.6 A shareholder must not vote a share if:
- 52.6.1 a call or other amount is presently payable in respect of the share;
  - 52.6.2 the shareholder is in breach of a Restriction Agreement in respect of the share; or
  - 52.6.3 the Listing Rules require the Company to disregard the shareholder's vote in respect of the share.
- 52.7 The chairman or other person may disregard any vote by a shareholder who is not entitled to vote.

## **53. Challenging a right to vote**

- 53.1 A challenge to a right to vote at a meeting of shareholders may only be made:
- 53.1.1 before the meeting, to the Directors; or
  - 53.1.2 at the meeting, to the chairman of the meeting.
- 53.2 The challenge must be decided by the Directors or the chairman (as the case may be). The Directors' decision or the chairman's decision is final.

## **54. Proxies, attorneys and representatives**

- 54.1 A shareholder, who is entitled to vote at a meeting of shareholders, may vote:
- 54.1.1 on a show of hands:
    - (a) personally;
    - (b) by one proxy;
    - (c) by one attorney; or

- (d) if a body corporate, by its representative, or by one proxy or by one attorney;
- 54.1.2 on a poll:
  - (a) personally;
  - (b) by not more than 2 proxies;
  - (c) by not more than 2 attorneys; or
  - (d) if a body corporate, by its representative, or by not more than 2 proxies or by not more than 2 attorneys.
- 54.2 A proxy, attorney or representative need not be a shareholder of the Company.
- 54.3 A shareholder may appoint a proxy, attorney or representative for all or for particular meetings of shareholders.
- 54.4 An appointment of an attorney or representative must be in a form approved by the Directors.
- 54.5 An appointment of a proxy is valid if it is signed by the shareholder making the appointment and it contains the following information:
  - 54.5.1 the shareholder's name and address;
  - 54.5.2 the Company's name;
  - 54.5.3 the proxy's name or the name of the office held by the proxy;
  - 54.5.4 the meetings at which the appointment may be used.

The Directors may decide to accept a proxy even if it contains only some of that information.
- 54.6 Unless otherwise specified in the appointment, the proxy, attorney or representative may:
  - 54.6.1 agree to short notice for the meeting;
  - 54.6.2 even if the appointment directs how to vote on a particular resolution:
    - (a) vote on an amendment to the particular resolution, a motion not to put the particular resolution or any similar motion;
    - (b) vote on a procedural motion, including a motion to elect the chairman, to vacate the chair or adjourn the meeting;
  - 54.6.3 speak at the meeting;
  - 54.6.4 vote (but only to the extent allowed by the appointment);
  - 54.6.5 request or join in a request for a poll.
- 54.7 If a person represents 2 or more shareholders, that person has only one vote on a show of hands.
- 54.8 If a shareholder appoints 2 proxies or 2 attorneys in one instrument and both are present, on a show of hands only the first named proxy or attorney may vote.
- 54.9 The appointment may specify the proportion or number of votes that the proxy or attorney may exercise. If the shareholder appoints 2 proxies or 2 attorneys and the appointment does not specify the proportion or number of the shareholder's votes each proxy or attorney may exercise, on a poll each proxy or attorney may exercise half of the votes.
- 54.10 A later appointment of a proxy or attorney revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 54.11 An appointment may specify the way a proxy or attorney is to vote on a particular resolution. A proxy may vote only as directed.



- 54.12 An appointment of a proxy is effective only if the Company receives the appointment (and any authority under which the appointment was signed or certified copy of the authority) at least 48 hours before the meeting or resumed meeting, unless the Directors decide to reduce that time. The Company receives an appointment or authority when it is received at any of the following:
- 54.12.1 the Company's registered office;
  - 54.12.2 a fax number at the Company's registered office;
  - 54.12.3 a place, fax number or electronic address specified for the purpose in the notice of meeting.
- These requirements also apply to an appointment of an attorney.
- 54.13 Unless the Company receives written notice of the matter before the start or resumption of a meeting, a vote by a proxy, attorney or representative is valid even if:
- 54.13.1 there is a Transmission Event in respect of the shareholder;
  - 54.13.2 the appointment of the proxy, attorney or representative is revoked;
  - 54.13.3 the shareholder revokes the authority under which the proxy was appointed by a third party; or
  - 54.13.4 the shareholder becomes an externally-administered body corporate.
- 54.14 A vote by a proxy or attorney is valid even if the shareholder transfers the share for which the appointment was given, if the transfer is not registered at the time of the meeting (or at any earlier time fixed by the Directors so that shareholders at that time are taken to be shareholders at the time of the meeting).
- 54.15 A proxy or attorney may take part in a meeting of shareholders even if the appointor or representative is present. However, if the appointor or representative votes on a resolution, the proxy or attorney must not vote.

## 55. Proportional takeovers

- 55.1 If offers are made under a proportional takeover bid for securities of the Company:
- 55.1.1 the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution (an **approving resolution**) to approve the bid is passed in accordance with this clause;
  - 55.1.2 a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the bid was made, held bid class securities is entitled to vote on an approving resolution;
  - 55.1.3 the Directors may determine whether an approving resolution is voted on:
    - (a) at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; or
    - (b) by means of a postal ballot conducted by the Company in accordance with the procedure set out in this clause;
  - 55.1.4 an approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- 55.2 The provisions that apply to a general meeting of the Company apply, with such modifications as the Directors decide are necessary, to a meeting convened under this clause.
- 55.3 In a postal ballot:
- 55.3.1 the Company must send a notice of postal ballot and ballot paper, to all persons holding bid class securities, at least 14 days (or any shorter period the Directors decide) before the date specified for the close of the postal ballot (**ballot closing date**);

- 55.3.2 non-receipt of a notice of postal ballot or ballot paper, or accidental failure to give a notice of postal ballot or ballot paper to a shareholder entitled to receive them, does not invalidate the postal ballot and any resolution passed under the postal ballot;
- 55.3.3 the notice of postal ballot must contain the text of the proposed resolution and the ballot closing date, and may contain any other information the Directors consider appropriate;
- 55.3.4 each ballot paper must specify the name of the shareholder entitled to vote;
- 55.3.5 a postal ballot is only valid if the ballot paper is properly completed and:
  - (a) if the shareholder is an individual, signed by the individual or a duly authorised attorney; or
  - (b) if the shareholder is a corporation, executed by the corporation in any way permitted by its constitution or the *Corporations Act 2001* or by a duly authorised officer or duly authorised attorney;
- 55.3.6 a postal ballot is only valid if the Company receives the ballot paper (and any authority under which the ballot paper is signed or a certified copy of the authority) before the close of business on the ballot closing date at the registered office or share registry of the Company or any other place specified for that purpose in the notice of postal ballot;
- 55.3.7 a person may revoke a postal ballot vote by notice received by the Company before the close of business on the ballot closing date.

## **Part 6 – Directors**

### **56. Number of directors**

- 56.1 There must be at least 3 directors and at most 10 directors.
- 56.2 Subject to clause 56.1, the Company in general meeting may increase or reduce the number of directors.

### **57. Appointment of directors**

- 57.1 The first directors of the Company are the persons specified in the application for registration of the Company as directors.
- 57.2 The Directors may appoint a director.
- 57.3 The Company in general meeting may appoint a director.
- 57.4 A person is eligible for election as a director at a general meeting only if:
  - 57.4.1 the person is a director retiring under the next clause and notifies the Company that he or she is available for re-election; or
  - 57.4.2 the person has signed a consent to nomination and lodged it at the Company's registered office.

The Company must accept these notices and nominations up to 35 Business Days (or in the case of a meeting that shareholders requested the Directors to call, 30 Business Days) before the general meeting. The Directors may decide to accept these notices and nominations closer to the date of the general meeting.

- 57.5 Without limiting the previous sub-clause, a person who has attained the age of 72 years is eligible for election as a director until the next annual general meeting, only if the Company gives notice to shareholders as required by the *Corporations Act 2001* and the Company in general meeting passes a resolution as required by the *Corporations Act 2001*.

### **58. Compulsory retirement**

- 58.1 The following directors automatically retire at the end of each annual general meeting:

- 58.1.1 any director appointed by the Directors or the Company in general meeting since the last annual general meeting;
  - 58.1.2 any director who has attained the age of 72 years;
  - 58.1.3 one third (or if that is not a whole number, the next lowest whole number) of the other directors (not counting the managing director);
  - 58.1.4 any director for whom this would be the third annual general meeting since their last appointment.
- 58.2 The directors who must retire under clause 58.1.3 are those directors who have been longest in office since their appointment on registration or their last election (whichever is later). If they became directors on the same day, they may agree who retires. If they do not agree, they may select by lot who retires.
- 58.3 This clause does not apply to the managing director.

**59. Vacation of office**

A director ceases to be a director if:

- 59.1 the *Corporations Act 2001* so provides;
- 59.2 the director resigns by notice to the Company;
- 59.3 the Company in general meeting removes the person as a director;
- 59.4 the director is absent, without the consent of the Directors, from all Directors' meetings over any 6 month period;
- 59.5 the director becomes mentally incapable and the director's estate or property has had a personal representative or trustee appointed to administer it; or
- 59.6 the director automatically retires under the previous clause.

**60. Alternate directors**

- 60.1 A director may appoint an alternate for a specified period with the consent of the Directors.
- 60.2 The appointor may terminate the alternate's appointment at any time.
- 60.3 An appointment or termination is effective only if:
  - 60.3.1 it is in writing;
  - 60.3.2 the appointor signs it; and
  - 60.3.3 the Company is given notice of it.
- 60.4 The alternate need not be a shareholder or director of the Company.
- 60.5 The alternate is entitled to notice of Directors' meetings.
- 60.6 If the appointor is not present, the alternate may:
  - 60.6.1 attend the Directors' meeting, count in the quorum, speak, and vote in the place of the appointor;
  - 60.6.2 exercise any other powers (except the power to appoint an alternate) that the appointor may exercise.
- 60.7 A person may act as an alternate for more than one director.
- 60.8 If the appointor ceases to be a director, the alternate cannot exercise the appointor's powers.
- 60.9 Where:
  - 60.9.1 an appointor ceases to be a director; and
  - 60.9.2 that appointor's alternate purports to do an act as a director;

that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actually knowing that the appointor has ceased to be a director, as if the appointor had not ceased to be a director.

- 60.10 The Company may pay an alternate any remuneration the Directors decide, in reduction of the appointor's remuneration.
- 60.11 While acting as a director, an alternate is an officer of the Company and not the agent of the appointor.

## **61. Remuneration**

- 61.1 The Company may remunerate each director as the Directors decide, but the total amount of the remuneration of non-executive directors may not exceed the amount fixed by the Company in general meeting for that purpose.
- 61.2 A director's remuneration may be any combination of:
- 61.2.1 a stated salary;
  - 61.2.2 a fixed sum for each attendance at a Directors' meeting;
  - 61.2.3 if a non-executive director, a share of the amount fixed under sub-clause 1 of this clause, divided among them as the Directors decide and in default equally.
- 61.3 A director's remuneration must not include a commission on, or percentage of, operating revenue.
- 61.4 A stated salary or a share of a fixed amount accrues from day to day.
- 61.5 The Company must also pay travelling and other expenses that a director properly incurs on the Company's business.
- 61.6 If a director performs extra or special services for the Company, the Company may pay to the director any special remuneration the Directors decide, in addition to the director's normal remuneration.
- 61.7 The Company may pay a former director, or the estate of a director who dies in office, a benefit for past services as the Directors decide. This must not exceed the amount permitted by the *Corporations Act 2001* and the Listing Rules.
- 61.8 The Company may establish or support superannuation or similar funds for the directors, as the Directors decide.

## **62. Share qualification**

- 62.1 A director need not be a shareholder of the Company.
- 62.2 A director, who is not a shareholder, may still attend and speak at meetings of shareholders.

## **63. Director's interests**

- 63.1 Subject to the *Corporations Act 2001* and the Listing Rules, a director may:
- 63.1.1 hold an office or place of profit (except as auditor) in the Company, on any terms the Directors decide;
  - 63.1.2 hold an office or otherwise be interested in any related body corporate or other body corporate in which the Company is interested;
  - 63.1.3 retain benefits for doing so.
- 63.2 Subject to the *Corporations Act 2001* and the Listing Rules:
- 63.2.1 a director who has a material personal interest in a matter that is being considered at a Directors' meeting:
    - (a) may be present while the matter is being considered at the meeting;
    - (b) may be counted in a quorum for a meeting considering the matter;

- (c) may vote on the matter;
- 63.2.2 a director (or a Spouse, parent or child of a director, or any entity in which a director or a Spouse, parent or child of a director has an interest) may contract or make an arrangement with the Company (or a related body corporate or a body corporate in which the Company is interested) in any matter in any capacity;
- 63.2.3 a director may sign for the Company, or attest the affixing of the common seal to, any document in respect of that contract or arrangement;
- 63.2.4 a director may retain benefits under that contract or arrangement;
- 63.2.5 the Company cannot avoid that contract or arrangement because of the director's interest.

## **Part 7 - Proceedings of Directors**

### **64. Circulating resolutions**

- 64.1 The Directors may pass a resolution without a Directors' meeting being held, if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. An alternate appointed by a director may sign the document instead of that director.
- 64.2 Separate copies of a document may be used for signing by directors, if the wording of the resolution and statement is identical in each copy.
- 64.3 The resolution is passed when the last director signs.
- 64.4 Passage of the resolution must be recorded in the Company's minute book.

### **65. Meetings**

- 65.1 The Directors may meet, adjourn and otherwise regulate their meetings as they decide.
- 65.2 A Directors' meeting may be held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw consent within a reasonable period before the meeting.
- 65.3 If a Directors' meeting is held by telephone link-up or other contemporaneous audio or audio visual communication, a director is taken to be present unless the director states to the chairman that the director is disconnecting his or her telephone or communication device.

### **66. Calling meetings**

- 66.1 Any director may call a Directors' meeting.
- 66.2 On the request of any director, the company secretary must call a Directors' meeting.

### **67. Notice**

- 67.1 Notice of a Directors' meeting must be given to each director and each alternate.
- 67.2 The notice must:
  - 67.2.1 specify the day, time and place of the meeting;
  - 67.2.2 state the business to be transacted;
  - 67.2.3 be given at least 48 hours before the meeting, unless all directors otherwise agree.
- 67.3 Non-receipt of notice of a meeting, or failure to give notice of a meeting to a director or an alternate, does not invalidate anything done at the meeting if:
  - 67.3.1 the failure was accidental;
  - 67.3.2 the director or alternate gives notice to the Company that he or she waives the notice or agrees to the thing done at the meeting; or

67.3.3 the director or alternate attends the meeting.

## **68. Quorum**

68.1 The quorum for a Directors' meeting is 3 directors, unless the Directors otherwise decide.

68.2 In determining whether a quorum is present, the chairman must count alternates. If a director is also an alternate, the chairman must count the director as a director and separately as an alternate. If a person is an alternate for more than one director, the chairman must count the person separately for each appointment.

68.3 The quorum must be present at all times during the meeting.

68.4 If there are not enough directors in office to form a quorum, the remaining directors may act only:

68.4.1 to increase the number of directors to a quorum;

68.4.2 to call a general meeting of the Company; or

68.4.3 in an emergency.

## **69. Chairman and deputy chairman**

69.1 The Directors may elect a director as chairman for any period they decide.

69.2 The Directors may elect a director as deputy chairman for any period they decide.

69.3 The Directors may remove the chairman or deputy chairman.

69.4 The Directors may decide that either office is an extra or special service for the Company, for the purpose of deciding special remuneration.

69.5 The chairman is entitled to chair each Directors' meeting.

69.6 If there is no chairman, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman may chair the Directors' meeting. If there is no deputy chairman, or if the deputy chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the directors present must elect one of themselves to chair the meeting.

69.7 If the chairman is unable or unwilling to chair a part of the meeting, the deputy chairman may chair that part. If there is no deputy chairman, or the deputy chairman is unable or unwilling to act, the directors present must elect one of themselves to chair that part.

## **70. Decisions of Directors**

70.1 Subject to the *Corporations Act 2001*, each director has one vote.

70.2 If a director is also an alternate, the director has one vote as a director and one vote as an alternate. If a person is an alternate for more than one director, the person has one vote for each appointment.

70.3 A resolution of the Directors is passed by a majority of votes cast.

70.4 Subject to the Listing Rules, the chairman has a casting vote, if the chairman has a personal deliberative vote.

## **Part 8- Directors' powers**

### **71. General powers**

71.1 The business of the Company is managed by or under the direction of the Directors.

71.2 The Directors may exercise all the powers of the Company except any powers that the *Corporations Act 2001* or this constitution requires the Company to exercise in general meeting.

## **72. Execution of documents**

- 72.1 The Company may execute a document without a common seal if the document is signed by:
- 72.1.1 2 directors of the Company; or
  - 72.1.2 a director and a company secretary of the Company.
- 72.2 If the Company has a common seal, it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- 72.2.1 2 directors of the Company; or
  - 72.2.2 a director and a company secretary of the Company.
- 72.3 The Company may execute a document only if authorised by the Directors or by a committee of directors authorised by the Directors to do so.
- 72.4 The Directors may decide, generally or in a particular case, that a director or company secretary may sign certificates for securities of the Company by mechanical or other means.
- 72.5 This clause does not limit the ways in which the Company may execute a document (including a deed).

## **73. Negotiable instruments**

The Directors may decide how negotiable instruments (including cheques) may be signed, drawn, accepted, endorsed or otherwise executed.

## **74. Committee and delegate**

- 74.1 The Directors may delegate any of their powers (including this power to delegate) to a committee of directors or to one director.
- 74.2 The Directors may revoke or vary that delegation.
- 74.3 A committee or delegate must exercise the powers delegated subject to any directions of the Directors. The effect of the committee or delegate exercising a power in this way is the same as if the Directors exercised it.
- 74.4 Part 7 applies with the necessary changes to meetings of a committee.
- 74.5 The Directors may decide that membership of a committee or acting as a delegate is an extra or special service for the Company, for the purpose of deciding special remuneration.

## **75. Attorney and agent**

- 75.1 The Directors may appoint any person to be the attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) the Directors decide.
- 75.2 The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- 75.3 The Directors may revoke or vary:
- 75.3.1 the appointment; or
  - 75.3.2 any power delegated to the attorney or agent.

# **Part 9 - Executive officers**

## **76. Managing director**

- 76.1 The Directors may appoint one of themselves as managing director, for any period and on any terms (including as to remuneration) the Directors decide.
- 76.2 Subject to any agreement between the Company and the managing director, the Directors may remove or dismiss the managing director at any time, with or without cause.

- 76.3 The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- 76.4 The Directors may revoke or vary:
- 76.4.1 the appointment; or
  - 76.4.2 any power delegated to the managing director.
- 76.5 A managing director must exercise the powers delegated subject to any directions of the Directors. The effect of the managing director exercising a power in this way is the same as if the Directors exercised it.
- 76.6 A person automatically ceases to be managing director if the person ceases to be a director or an executive of the Company.

**77. Executive director**

A person automatically ceases to be an executive director if the person ceases to be a director or an executive of the Company.

**78. Company secretary**

- 78.1 The first company secretary of the Company is the person specified in the application for registration of the Company as company secretary.
- 78.2 The Directors may appoint one or more company secretaries, for any period and on any terms (including as to remuneration) the Directors decide.
- 78.3 Subject to any agreement between the Company and the company secretary, the Directors may remove or dismiss the company secretary at any time, with or without cause.
- 78.4 Unless the Directors otherwise decide, the company secretary is the public officer of the Company.

**79. Indemnity**

- 79.1 To the extent permitted by the *Corporations Act 2001*, the Company:
- 79.1.1 must indemnify each person who is or has been an Officer against any liability incurred as an Officer;
  - 79.1.2 may pay a premium for a contract insuring an Officer against that liability.
- 79.2 Subject to the *Corporations Act 2001*, the Company may enter into an agreement or deed with an Officer under which the Company must do all or any of the following:
- 79.2.1 keep a set of the Company's books (including minute books) and allow the Officer and the Officer's advisers access to the books for any period agreed;
  - 79.2.2 indemnify the Officer against any liability incurred by the Officer as an Officer;
  - 79.2.3 keep the Officer insured for any period agreed in respect of any act or omission by the Officer while an Officer.
- 79.3 In this clause, **Officer** means an officer of the Company or of a subsidiary of the Company or both.

## **Part 10 – Dividends**

**80. Who may determine Dividends**

- 80.1 Subject to any special rights or restrictions attached to a share, the Directors may pay Dividends as they decide but only out of profits.
- 80.2 The Directors may determine that a Dividend will be payable on a share and fix:
- 80.2.1 the amount;
  - 80.2.2 the time for payment; and



80.2.3 the method of payment.

The methods of payment may include the payment of cash, the issue of shares or other securities, the grant of options and the transfer of assets.

80.3 If the Directors do not exercise their power under this clause, the Company in general meeting may.

**81. Dividends for different classes**

Dividends may be paid:

81.1 on shares of one class but not another;

81.2 at different rates for different classes.

**82. Dividends proportional to paid up capital**

82.1 Subject to any special rights or restrictions attached to a share:

82.1.1 the holder of a fully paid share is entitled to the full Dividend on the share (whether the issue price was paid or credited or both);

82.1.2 the holder of a partly paid share is not entitled to a greater proportion of a Dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the share.

82.2 Amounts paid or credited as paid in advance of a call are ignored.

**83. Transfers before payment of Dividend**

Subject to the Listing Rules, the Directors may fix a record date to identify shareholders entitled to a Dividend. A transferee of shares is entitled to a Dividend on the shares only if:

83.1 the Directors fix a record date and the transfer is registered or left with the Company for registration on or before the record date; or

83.2 the Directors do not fix a record date and the transfer is registered or left with the Company for registration on or before the date the Directors pass the resolution that a Dividend will be payable.

**84. No interest**

Interest is not payable on a Dividend.

**85. Calls**

The Directors may deduct from a Dividend payable to or for a shareholder any money presently payable by the shareholder to the Company for calls or otherwise in respect of any shares held by the shareholder.

**86. Capitalising profits**

86.1 The Directors may capitalise any profits and distribute that capital to the shareholders, in the same proportions as the shareholder are entitled in a distribution by Dividend.

86.2 The Directors may decide to apply that capital in either or both of the following ways:

86.2.1 in paying up amounts unpaid on shares already issued;

86.2.2 in paying up in full any unissued shares or other securities in the Company.

86.3 The shareholders must accept that application of capital in full satisfaction of their interests in the capital.

**87. Transfer of assets**

The Directors may settle any problem about a distribution under this Part in any way. This may include:

87.1 rounding down amounts to the nearest whole number;

87.2 ignoring fractions;

- 87.3 valuing assets for distribution;
- 87.4 paying cash to any shareholder on the footing of the valuation of the assets;
- 87.5 vesting assets in trustees on trust for the shareholders entitled.

**88. Notice of Dividend**

The Company must give to the shareholders notice of any Dividend.

**89. Payments**

- 89.1 The Company may pay Dividends and other amounts in respect of a share:
  - 89.1.1 by crediting a financial institution account authorised by the shareholder; or
  - 89.1.2 by cheque or warrant posted to:
    - (a) the address of the holder of the share shown in the register of shareholders;
    - (b) if joint holders, to the address (shown in the register of shareholders) of the holder named first in the register of shareholders; or
    - (c) to any other address which the holder or joint holders direct in writing.
- 89.2 A cheque may be made payable to bearer or to the order of the shareholder or any other person the shareholder directs.
- 89.3 Any joint holder of a share may give an effective receipt for the Dividend or other amounts paid in respect of the share.

**90. Dividend reinvestment plan**

The Directors may:

- 90.1 implement a dividend reinvestment plan on any terms, under which the Dividends of participants are applied in subscribing for securities of the Company or a related body corporate;
- 90.2 amend, suspend or end the plan.

**91. Dividend selection plan**

The Directors may:

- 91.1 implement a dividend selection plan on any terms, under which participants may choose:
  - 91.1.1 to receive a Dividend from the Company out of profits derived from a particular source;
  - 91.1.2 to forego a Dividend from the Company in place of another distribution from the Company or another body corporate or a trust;
- 91.2 amend, suspend or end the plan.

**92. Unclaimed Dividends**

The Directors may invest unclaimed Dividends for the benefit of the Company, until they are claimed or dealt with under a *Corporations Act 2001* and the Listing Rules about unclaimed money.

**93. Restricted securities**

A shareholder is not entitled to a Dividend on restricted securities (within the meaning of the Listing Rules) under a current Restriction Agreement, while in breach of the agreement.

## Part 11 - Winding up

### 94. Distribution of assets

Subject to any special rights or restrictions attached to shares:

- 94.1 if on a winding up there are enough assets to repay all capital to shareholders, all capital must be repaid to the shareholders and any surplus must be distributed among the shareholders in proportion to the number of fully paid shares held by them and for this purpose a partly paid share is treated as a fraction of a share equal to the proportion which the amount paid bears to the total issue price of the share before the winding up began;
- 94.2 if on a winding up there are not enough assets to repay all capital to shareholders, the available assets must be distributed among the shareholders in proportion to the number of fully paid shares held by them and for this purpose a partly paid share is treated as a fraction of a share equal to the proportion which the amount paid bears to the total issue price of the share before the winding up began (without the necessity of a call up).

### 95. Distribution of property in kind

- 95.1 Subject to any special rights or restrictions attached to shares, on a winding up, the liquidator may, with the sanction of a special resolution of shareholders:
  - 95.1.1 distribute among the shareholders the whole or any part of the property (in its actual state) of the Company;
  - 95.1.2 decide how to distribute the property as between the shareholders or different classes of shareholders.
- 95.2 The liquidator may, with the sanction of a special resolution of shareholders, distribute the property contrary to the legal rights of the shareholders, or give or remove special rights in respect of any class of shareholders. However, a dissenting shareholder has the same rights as if section 507 of the *Corporations Act 2001* applied.
- 95.3 The liquidator may settle any problem about a distribution under this clause in any way. This may include:
  - 95.3.1 rounding down amounts to the nearest whole number;
  - 95.3.2 ignoring fractions;
  - 95.3.3 valuing assets for distribution;
  - 95.3.4 paying cash to any shareholder on the footing of the valuation of the assets;
  - 95.3.5 vesting assets in a trustee on trust for the shareholders entitled;
  - 95.3.6 capitalising profits and distributing capital as if the liquidator were the Directors.

95.4 A shareholder need not accept a security carrying a liability.

### 96. Restricted shares

Restricted shares, under a Restriction Agreement current at the start of the winding up, must rank behind all other shares in the repayment of capital on a winding up.

### 97. Commissions

- 97.1 The Company must not pay to a director, the Directors or a liquidator a commission or fee for sale of assets on a winding up, unless approved by the shareholders.
- 97.2 The Company must notify the shareholders of the amount of the proposed commission or fee at least 7 days before the shareholders' meeting.

## Part 12 – Records

### 98. Register

The Company must keep a register of shareholders in accordance with the *Corporations Act 2001*.

### 99. Branch registers

99.1 The Company may keep a branch register of shareholders in any place.

99.2 The Directors may regulate the transfer of shares among the main register of shareholders and branch registers of shareholders.

### 100. Inspection

The Company must allow inspection of any register of shareholders only as required by the *Corporations Act 2001*.

### 101. Evidence of register

Unless proved incorrect, the register of shareholders is sufficient evidence of the matters shown in the register.

### 102. Minute book

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

102.1.1 proceedings and resolutions of meetings of the shareholders;

102.1.2 proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);

102.1.3 resolutions passed by shareholders without a meeting;

102.1.4 resolutions passed by directors without a meeting.

102.2 The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

102.2.1 the chair of the meeting;

102.2.2 the chair of the next meeting.

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

### 103. Evidence of minutes

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### 104. Financial records

104.1 The Company must keep the financial records required by the *Corporations Act 2001*.

104.2 The financial records must be audited as required by the *Corporations Act 2001*.

### 105. Inspection

Unless authorised by the Directors or the Company in general meeting or the *Corporations Act 2001*, a shareholder is not entitled to inspect the Company's books.

## Part 13 - Notices and interpretation

### 106. In writing

Notice must be in writing and in English, and may be given by an authorised representative of the sender.

## **107. Notice to shareholders**

- 107.1 The Company may give notice to a shareholder:
- 107.1.1 personally;
  - 107.1.2 by sending it by post to the address of the shareholder in the register of shareholders or the alternative address (if any) nominated by the shareholder;
  - 107.1.3 by sending it to the fax number or electronic address (if any) nominated by the shareholder.
- 107.2 The Company may give notice to a person entitled to a share because of a Transmission Event in the same ways.
- 107.3 Notice to joint shareholders must be given to the joint shareholder named first in the register of shareholders.
- 107.4 Notice to a person, entitled to a share because of a Transmission Event, is taken to be notice to the shareholder.
- 107.5 A notice to a shareholder is sufficient, even if the shareholder (whether or not a joint shareholder) is dead, mentally incapacitated, an infant, bankrupt or an externally-administered body corporate, and the Company has notice of that event.
- 107.6 A person, entitled to a share because of a transfer, Transmission Event or otherwise, is bound by every notice given in respect of the share.

## **108. Notice to directors**

The Company may give notice to a director or alternate director:

- 108.1 personally;
- 108.2 by sending it by post to the director's or alternate director's usual residential or business address or any other address nominated by them;
- 108.3 if a notice calling a meeting - by sending it to the fax or electronic address (if any) nominated by the director or alternate, only if all the directors have consented to the use of that technology;
- 108.4 if any other notice - by sending it to the fax or electronic address (if any) nominated by the director or alternate.

## **109. Notice to the Company**

A person may give notice to the Company:

- 109.1 by leaving it at the Company's registered office;
- 109.2 by sending it by post to the Company's registered office;
- 109.3 by sending it to the fax or electronic address (if any) of the Company's registered office.

## **110. Addresses outside Australia**

A notice sent by post to or from a place outside Australia must be sent by air mail.

## **111. Time of service**

- 111.1 A notice sent by post within Australia is taken to be given 3 Business Days after posting.
- 111.2 A notice sent by post to or from a place outside Australia is taken to be given 7 Business Days after posting.
- 111.3 A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number).

## 112. CHES Rules

While any securities in the Company are CHES Approved Securities, the Company must comply with the CHES Rules.

## 113. Interpretation

In this constitution, unless the context otherwise requires:

- 113.1 subject to the next clause, a word or phrase has the same meaning as it has in the *Corporations Act 2001*;
- 113.2 singular includes plural and plural includes singular;
- 113.3 words of one gender include any other gender;
- 113.4 reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- 113.5 reference to a person includes a corporation, a firm and any other entity;
- 113.6 headings do not affect interpretation;
- 113.7 the Company must not exercise any power in contravention of the *Corporations Act 2001* or the Listing Rules or the SCH Business Rules;
- 113.8 a reference to the Listing Rules and the SCH Business Rules applies only while the Company is admitted to the official list of ASX.

## 114. Definitions

In this constitution:

**ASX** means Australian Stock Exchange Limited and any successor body;

**Business Day** means:

- (a) while the Company is admitted to the official list of ASX, Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day;
- (b) while the Company is not admitted to the official list of ASX, any day except a Saturday or Sunday or other public holiday in New South Wales;

**CHES** means Clearing House Electronic Subregister System;

**CHES Approved Securities** means securities of the Company which are the subject of the CHES Rules;

**CHES Rules** means the SCH Business Rules and the provisions of the *Corporations Act 2001* and the Listing Rules about the electronic share registration and transfer system;

**Company** means The Hydroponics Company Limited;

**The Hydroponics Company Limited** means The Hydroponics Company Limited ACN [Number];

**Corporations Act 2001** means Corporation Act 2001 (Cth);

**Directors** means the directors of the Company and may include an alternate director;

**Dividend** includes interim dividend and bonus;

**Listing Rules** means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**Restriction Agreement** means a restriction agreement within the meaning of the Listing Rules;

**SCH** means ASX Settlement and Transfer Corporation Pty Ltd ACN 145 105 148 008 504 532 as approved as the securities clearing house under the *Corporations Act 2001*;

**SCH Business Rules** means the business rules made by SCH;

**Spouse** of a person means:

- (a) that person's husband, wife, widow or widower (whether or not remarried);
- (b) anyone else who, although not legally married to that person, in the Directors' opinion, lives or lived with that person on a genuine domestic basis as the husband or wife of that person;

**Transmission Event** means:

- (a) if the shareholder is an individual - death, bankruptcy, or becoming of unsound mind or becoming a person whose property is liable to be dealt with under a *Corporations Act 2001* and the Listing Rules about mental health;
- (b) if the shareholder is a body corporate - the deregistration or winding up of the shareholder or the succession by another body corporate to the assets and liabilities of the shareholder.

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