

COMPANY CONSTITUTION

WALNUTS NEW ZEALAND CO-OPERATIVE LIMITED

September 2017

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CONSTITUTION OF WALNUTS NEW ZEALAND CO-OPERATIVE LIMITED

1. PRINCIPAL ACTIVITY

1.1 The purpose of the co-operative company is to grow the wealth and security of its New Zealand Walnut producer shareholders through the common goals of:

- (a) reliable supply of premium-value product to consumers
- (b) providing a path to market for shareholders
- (c) efficient and effective processing and cohesive marketing
- (d) unity of purpose amongst suppliers
- (e) behaviour that is socially, financially and environmentally responsible.

1.2 Notwithstanding clause 1.1, the Company has, both within and outside New Zealand:

- (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and has
- (b) full rights, powers and privileges to do so.

2. EFFECT OF THIS CONSTITUTION

The Company, the Board, each director and each shareholder of the Company has the rights, powers, duties and obligations set out in the Act and the CC Act except to the extent that they are negated or modified by this Constitution in accordance with the Act or the CC Act.

3. INTERPRETATION

3.1 In this Constitution, unless the context otherwise requires:

"The Act" means the Companies Act 1993;

"The Board" means the Directors of the Company who number not less than the required quorum acting together as a board of directors;

"The CC Act" means the Co-operative Companies Act 1996;

"The Constitution" means this document including any amendment or extension for the time being in force;

"The Company" means Walnuts New Zealand Co-operative Limited;

"Current Value" means the value of a share in the Company determined by the Board from time to time by calculating the value of the assets of the Company less liabilities of the Company, and dividing that figure by the number of shares on issue in the Company as at the date of the calculation;

"Appointed Director" means a Director appointed pursuant to Clause 24.8 of this Constitution;

"Date of Surrender" means, in the case of the surrender of shares under Clause 9.1, the date the Board resolves to accept the surrender of shares, or in the case of the surrender of shares under Clause 9.2, the date that is one month after notice in writing of the requirement to surrender the shares is given to the shareholder, or in the case of Clause 9.3, means the date the Board resolves to accept the surrender of shares in accordance with section 20(3) of the CC Act;

"Directors" means the Directors for the time being of the Company;

"Financial Year" means the period of 12 months ending on the expiration of the 31st day of March;

"General Manager" means a person appointed as the General Manager of the Company for the time being in accordance with Clause 24.10;

"Reclassification Notice" means a Reclassification Notice given under Clause 10.7;

"Standard of Shareholding" or "Share Standard" relates to kilograms (kgs) of dry in-shell walnuts supplied to and accepted by (walnuts meeting the Conditions of Supply which are fixed by the Board from time-to-time and notified in writing to all shareholders) the Company and, in accordance with this Constitution, the shareholder is required to hold a minimum of one share in the Company per kilogram of walnuts supplied to and accepted by the Company;

"Surrender Value" means the Surrender Value determined under Clause 10.1 (but without prejudice to Clause 10.3, and as may be adjusted under Clause 10.4);

"Transacting shareholder" has the meaning in section 4 of the CC Act;

"Walnut" when used in this Constitution means walnuts and any other product or by-product of the walnut tree.

- 3.2** Expressions defined in the Act and the CC Act have those defined meanings where the expressions are used in this Constitution.
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3.3 Subject to the provisions of the CC Act, the Board may decide whether any person is at any time a shareholder of the Company.

3.4 Headings have been included for convenience only and shall not affect the interpretation of clauses in this Constitution.

4. COMPANY NAME

An application to change the name of the Company shall not be made without the prior approval of a special resolution.

5. SHARES

5.1 Classes of Shares

(a) Subject to the terms of this Constitution, the Board may issue shares in different classes and may in the terms of issue of any or all classes of shares negate, alter or add to the rights attaching to any share specified in Section 36(1) of the Act.

(b) Without limiting clause 5.1(a) shares or securities issued may:

- (i) be redeemable; or
- (ii) confer preferential rights to distribution of capital or income; or
- (iii) confer special, limited, or conditional voting rights;
- (iv) be convertible;
- (v) not confer voting rights;
- (vi) be options; or
- (vii) be such other types and classes of securities that the Board considers appropriate.

(c) Without limiting clause 5.1(a), classes of shares shall include the following:

Class A nominal value shares to be held by Transacting shareholders in respect of supply of Walnuts to the Company, or intention in good faith to supply (notwithstanding natural fluctuations in crop volume);

Class B non-voting shares,

with each of the Class A and Class B shares being redeemable under the terms of this Constitution.

- (d) Shares in Class A shall confer on the holder:
 - (i) the voting rights specified in clause 23 of this Constitution, and
 - (ii) the right of receipt of any dividend paid by the Company in respect of that class, where the value of any dividend is at the discretion of the Board, and
 - (iii) the right to share in the distribution of the surplus assets of the Company on liquidation (equally with the holders of the shares in the capital of the Company) as specified in clause 28 of this Constitution.

 - (e) Shares in Class B shall confer on the holder:
 - (i) without prejudice to the rights of a shareholder under Section 117 of the Act, no voting rights;
 - (ii) the right of receipt of any dividend paid by the Company in respect of that class, where the value of any dividend is at the discretion of the Board, and
 - (iii) the right to share in the distribution of the surplus assets of the Company on liquidation (equally with the holders of the shares in the capital of the Company) as specified in clause 28 of this Constitution.
- 5.2** Class A Shares are issued in respect of new or increased supply of Walnuts received or expected by the Company, and must be paid up in full within two months of issue unless determined otherwise by the Board.
- 5.3** Subject to the limitations and restrictions on the transfer of shares in this Constitution, a share in the Company is transferable.
- 5.4** A share is transferred by entry in the share register in accordance with Section 84 of the Act.
- 5.5** The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- 5.6** The Company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the Company, or by its holding company, whether directly or indirectly, only if the financial assistance is given in accordance with the Act.
- 5.7** The requirements of Section 45 of the Act regarding the issue of shares are hereby negated.
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6. SHARE ISSUES

6.1 Nominal Value: As at the date of adoption of this Constitution all existing Class A shares are nominal value shares having a nominal value of \$2.75.

6.2 New shares: All Class A shares issued by the Company after the date of adoption of this Constitution shall be nominal value shares having the nominal value specified in clause 6.1.

6.3 The consideration for the issue of Class B shares will be:

- (a) for Class B shares that are reclassified under clause 10.7, the Surrender Value of the relevant Class A shares that are so reclassified; and
- (b) for any other Class B shares, an issue price as determined by the Board from time to time.

6.4 The Board may at any time:

- (a) allot to any shareholder such number of Class A shares as are necessary to cause that shareholder to hold that shareholder's Share Standard; and
- (b) deduct from moneys of any nature payable by the Company to that shareholder such amounts as are necessary to pay for shares allotted to that shareholder in accordance with clause 6.4(a), and apply those amounts on behalf of that shareholder for that purpose.

Each allotment to a shareholder by the Board in accordance with this clause will bind that shareholder as if that shareholder had applied and subscribed for the shares so allotted, and the Board may require payment of the amounts payable in respect of those shares whether or not the Board exercised the power specified in clause 6.4(b).

6.5 The Board may issue any bonus shares as fully paid securities to Shareholders of such classes of shares and in such proportions as the Board may determine.

6.6 The Board may, subject to section 15(4) of the CC Act:

- (a) consolidate and divide shares of any class; and
- (b) subdivide the shares of any class;

and in each case in proportion to those shares or the shares in that class as the case may be.

6.7 A share is issued when the name of the holder is entered on the share register.

6.8 The Board may, in exercising any powers under this Constitution, deal with a fractional entitlement to shares or other securities in such manner as the Board considers equitable and in the interests of the Company.

7. ACQUISITION BY THE COMPANY OF ITS OWN SHARES

- 7.1 The Company may purchase, redeem or otherwise acquire shares issued by it in accordance with the Act or the CC Act.

8. REDEMPTION OF SHARES

- 8.1 The Company may redeem shares in accordance with the Act and the terms of issue of the shares:

- (a) at its option; or
- (b) at the option of the holder of the share; or
- (c) on a date specified in the terms of the issue of the share;

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified and independent person as provided by Section 68 of the Act.

- 8.2 The Company may exercise an option to redeem shares in relation to one or more shareholders in accordance with Section 69(1)(b) of the Act.

9. SURRENDER OF NOMINAL VALUE SHARES

- 9.1 By Agreement

Where a Transacting shareholder has ceased to supply the Company, or holds Class A shares in excess of their Share Standard, based on supply over a period of time determined by the Board from time to time, then, in May, June or July only of any year, the Board may accept an offer by that Transacting shareholder to surrender a number of that shareholder's Class A shares, subject in all respects to the Board's compliance with this Constitution and the Act.

- 9.2 At the Option of the Company

The Company may at any time at its option require any shareholder to surrender to the Company any or all nominal value shares held by that shareholder provided that:

- (a) the Shareholder has ceased to be a Transacting shareholder, or holds shares in excess of their Share Standard based on supply of Walnuts over a period of time determined by the Board from time to time; or
 - (b) the shareholder has failed to comply in a material respect with the requirements relating to transactions with the Company contained in any contract between the Company and the shareholder; or
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- (c) the Board resolves that surrender is in the best interests of the Company because that shareholder is bringing the Company into disrepute, or is causing significant loss or disruption to the business of the Company.

9.3 At the Option of the Shareholder

Subject to the Company and the shareholder complying with all applicable statutory conditions, a shareholder may require the Company to surrender any or all nominal value shares held by that shareholder where:

- (a) that shareholder has not been a Transacting shareholder during the immediately preceding five (5) years, or such other period as may be determined by the Board; or
- (b) that shareholder has disposed of, or changed the use of, that shareholder's property and other assets with the result that the shareholder does not have the capacity to continue to be a Transacting shareholder.

9.4 The Board shall determine when it will pay consideration for the surrender of shares but being no later than five years after the Date of Surrender.

10. CONSIDERATION FOR SURRENDERED SHARES

10.1 Consideration

Subject to clause 10.3, the consideration payable by the Company for the surrender of Class A shares (**Surrender Value**) shall be the lesser of:

- (a) the nominal value of the shares on the Date of Surrender or, if any of those shares are not fully paid up, then the amount then paid up in respect of those shares; or
- (b) the Current Value on the date notice for surrender is:
 - (i) given by the Company to the shareholder accepting that shareholder's surrender request; or
 - (ii) given by the Company at the Company's option,

as the case may be.

10.2 Notice to Shareholder

If the Board has accepted a request for surrender of shares under clause 9.1, or has determined to require the surrender of shares under clause 9.2, or receives notice from a shareholder requiring surrender of shares under clause 9.3, the Board shall notify the shareholder accordingly, and such notice shall include:

- (a) the then nominal value of the relevant shareholder's Class A shares;
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- (b) the amount paid up on the relevant shareholder's Class A shares;
- (c) the then Current Value of the relevant shareholder's Class A shares;
- (d) the Surrender Value for the Class A shares;
- (e) whether the Board requires the shareholder to accept reclassification as Class B shares in lieu of surrender of Class A shares in accordance with clause 10.7;
- (f) the date for surrender of the Class A shares or reclassification as Class B shares as the case may be; and
- (g) the payment terms for the surrender of Class A shares in accordance with clause 10.5 (if payment is not to occur on the date the shares are surrendered and the shares are not being reclassified as Class B shares).

10.3 Agreement

Notwithstanding clause 10.1, the consideration may be an amount agreed by the Company and the shareholder, provided that the agreed consideration will be less than the amount calculated under clauses 10.1(a).

10.4 Arbitration

If the Surrender Value is the Current Value and either the Company or the shareholder whose shares are being surrendered objects to the Current Value, then the Company or the shareholder may require the Surrender Value to be determined by arbitration under Section 22(2) of the CC Act.

10.5 Deferred Payment of Consideration

The consideration for the surrender of any shares to the Company shall be payable by the Company at a date to be determined by the Board (not being greater than five (5) years after the of the notice given in clause 10.3). As from the Date of Surrender, the shareholder shall not be entitled to any distribution declared after that date and no other rights shall accrue or any right to vote shall attach in respect of shares surrendered.

10.6 Payments where Deferred Settlement

The Board may determine that the Company shall make payments to former shareholders whose shares have been surrendered but for whom payment of the consideration for the surrender of shares has been deferred by the Company, provided that in no case shall such payments be greater than the dividend the former shareholder would have received on the shares had those shares not been surrendered.

10.7 Reclassified Shares

In lieu of the surrender of Class A Shares as set out above, the Board may, at its discretion, determine that any or all of the shares to be so surrendered shall not be surrendered but shall be re-classified as Class B shares on the basis set out below:

- (a) The Company shall give notice (**Reclassification Notice**) to that holder of the Class A shares to be surrendered that such shares are not surrendered but are re-classified as Class B shares from the date of that notice or such other date as may be specified in that notice;
- (b) The Class B shares arising from such re-classification may be redeemed or re-purchased at the option of the Company within a period of five years from the date of such re-classification, on 7 days' notice of redemption, in whole or in part from any holder or holders of Class B shares to the exclusion of others, for the Surrender Price notified for the relevant Class A shares from which they were reclassified, and in accordance with the requirements of Sections 69 and 71 of the Act;
- (c) The Reclassification Notice shall specify the terms and conditions of the Class B shares and shall be given to the holder affected within 60 days of the date on which the Board resolved that the shares shall be re-classified.

11. COMPANY MAY HOLD ITS OWN SHARES

The Company may hold any of its own shares acquired under Sections 59 or 112 of the Act, or surrendered under Section 24 of the CC Act.

12. TRANSFER OF SHARES

12.1 Form of Transfer

The Board may from time-to time prescribe the form of transfer of shares.

12.2 Execution of Form of Transfer and Terms and Conditions of Supply

The form of transfer shall be executed by or on behalf of the transferor and the transferee and the transferee shall also execute the Terms and Conditions of Supply of Walnuts which are referred to in clause 19.1.

12.3 Transfer of Shares to Others

Notwithstanding the provisions of Section 44 of the CC Act, no transfer of shares to people other than Transacting shareholders or intending Transacting shareholders shall be approved or recorded in the share register of the Company.

12.4 Delivery of Form of Transfer

The form of transfer must be delivered to the registered office of the Company.

12.5 Delay or Refusal to Register Transfers

The Board may delay or refuse to register a transfer:

- (a) Where the Company has a lien on a share or shares included in the transfer;
- (b) Where a call is due and unpaid or any other money is due to the Company and unpaid in respect of a share or shares included in the transfer or the transferor otherwise owes any amount to the Company;
- (c) Where the form of transfer and any other documentation required has not been provided or has not been duly executed;
- (d) Where the Board is of the opinion that the proposed transferee is not a desirable person to become a shareholder of the Company;
- (e) Where the transferee would hold shares exceeding the number required to be held under clause 19.5 of the Constitution;
- (f) Where the Board resolves that it is not in the best interests of the Company to register the transfer or that it is not likely that the transferee will become a Transacting shareholder of the Company; or
- (g) Where the transferee would cause the Company to become subject to any regulatory or statutory control;
- (h) Where the transferee has failed to comply with any request to identify the beneficial owner of the transferee;
- (i) Where the Company would cease to become a co-operative Walnut marketing company as a result of the transfer.

12.6 Close of the Share Register

The share register may be closed during such times as the Board thinks fit, not exceeding in aggregate 30 working days in each year.

12.7 Custody of Form of Transfer

All forms of transfer shall when registered be retained by the Company, but any form of transfer which the Board refuses to register shall be returned to the person who delivered the form to the Company within one month after the date on which the form was lodged with the Company.

12.8 Share Register

The Company may divide its share register into two or more registers kept in different places and shall maintain any such registers in accordance with the relevant law in force.

13. CERTIFICATES**13.1 Advice to Shareholders**

The Company shall as soon as practicable after 31 March each year advise in writing each shareholder of (a) the number of shares held by that shareholder on 31 March, and the class to which the shares belong, (b) the amount paid up on the shares, and (c) the then applicable nominal value, redemption value or Current Value for shares.

13.2 No Recognition of Trusts

The Company shall be entitled to treat the person whose name appears on the register as the absolute owner of that share, and shall not be under any obligation to recognise any trust or equity, or partial, equitable or other claim to or interest in any share whether or not it has express notice of any such interest.

13.3 Joint Holders

If several persons are recognised as joint holders of any share, any one of those persons may give receipts for any money payable in respect of that share.

13.4 Share Certificates

- (a) Every person holding shares whose name is entered in the register shall, if the directors deem it expedient to issue certificates, be entitled without payment to a certificate specifying the number of shares held by it, the class to which the shares belong and the amount paid on the shares.
- (b) If a share certificate is lost, defaced or destroyed it may be replaced on such terms (if any), including the payment of charges, as the Directors may in each case think fit.

13.5 Surrendered or Redeemed Share Certificate

Where shares to which a share certificate relates are surrendered, redeemed or repurchased by the Board, the share certificate relating to these shares will be cancelled and the Board may, as a condition of issuing further certificates, require delivery of the cancelled certificate.

14. CALLS

14.1 Consideration due on Allotment

Unless otherwise expressly determined by the Board, the whole of the money payable on every share shall forthwith on allotment, without any call being formally made, become due and payable to the Company at the registered office of the Company.

14.2 Deferral of Payment of Consideration

The Board may, for as long as a shareholder is a Transacting shareholder, refrain from requiring payment forthwith of the money payable on shares in cash and may deduct on account of the said money such amounts by way of instalments as the Board think fit from any moneys due by the Company to the shareholder until the whole amount of the money payable by the shareholder on shares held by him or her has been paid, and may in this case further require payment of interest, and may waive payment of that interest wholly or in part.

14.3 Immediate Payment

Where a shareholder has not paid all moneys payable on shares held by that shareholder and has ceased or failed to supply Walnuts in accordance with any contract made between the shareholder and the Company or in accordance with this constitution, the Board may serve upon the shareholder notice in writing to pay to the Company forthwith the amount due by the shareholder on any or all of the shares held by the shareholder and the amount shall thereupon become payable as herein provided.

14.4 Power to Call

The Board may from time to time make such calls as they think fit upon the shareholders in respect of all money unpaid on the shares held by them respectively and which is not by the conditions of allotment made payable at fixed times. Each shareholder shall pay the amount of every call so made on him or her to the persons and at the times and places appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

14.5 Notice and Arrears of Call

Fourteen days' notice of any call shall be given specifying the time and place of payment and the person or persons to whom the call shall be paid. The Board may deduct from any money due by the Company to any shareholder, the whole or any part of the amount due by the shareholder to the company for or in respect of arrears of calls on the shares held by the shareholder.

14.6 Joint Holders

The joint holders of a share shall be jointly and severally liable to pay all calls.

14.7 Call Made

A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

14.8 Interest

If the call payable in respect of any share is not paid on or before the day appointed for payment, the holder for the time being of the share shall be liable to pay interest on the same at such rate as the Board may determine from the day appointed for payment to the time of actual payment, but the Board shall be at liberty to waive payment of that interest wholly or in part.

14.9 Proof of Liability

In any proceedings for the recovery of any money due for any call, it shall be sufficient to prove that:

- (a) the name of the shareholder sued is entered in the register of shareholders of the Company as the holder or one of the holders of the shares in respect of which the debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of the call was duly given to the shareholder.

and it shall not be necessary to prove the appointment or qualification of the directors who made the call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt.

14.10 Different Amounts

Notwithstanding anything in this Constitution but subject to any applicable rule of law, the Board may, if they deem it advisable so to do, call up the balance due by any shareholder upon his or her shares without the necessity of making a similar call on all or any of the other shareholders for the time being.

15. DISTRIBUTIONS**15.1** Solvency test

- (a) Subject to this constitution and in particular to clause 0, the Board may if it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the solvency test, authorise a distribution by the Company at a time and of an amount and to any shareholders it thinks fit.
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- (b) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the Company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.
- (c) If, after a distribution is authorised and before it is made, the Board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the Company is deemed not to have been authorised.

15.2 Form of distribution

Subject to the rights of holders of any shares in a class, the board may make a distribution in such form as it thinks fit, but must not differentiate between shareholders as to the form in which a distribution is made without the prior approval of the shareholders.

15.3 Rebates

- (a) The directors may from time to time pay to a members' rebate suspense account such moneys as appear to the directors to be justified by the profits of the Company.
- (b) The directors may at any time after the end of each financial year divide the amount outstanding to the credit of members' rebate suspense account at the end of the relevant financial year amongst the Transacting shareholders in such proportions as they in their absolute discretion think fit having regard to the kind and or value of what was supplied by each member to the Company and the kind or value of what was purchased by each Transacting shareholder from the Company during the said financial year.
- (c) The directors may in their discretion at any time or times during any financial year make an estimate of the amount then available to be credited to the members' rebate suspense account and may divide the amount so estimated or any less amount amongst the members who would be entitled thereto if the division had taken place at the time prescribed in clause 15.3(b).

15.4 Dividends

- (a) The Board must not authorise a dividend:
 - (i) in respect of some but not all the shares in a class; or
 - (ii) for Class A shares and not Class B shares (and vice versa); or
 - (iii) that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class unless the
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amount of the dividend in respect of a share of that class is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share; or

- (iv) that is of a greater value per share for Class A shares than Class B shares (and vice versa).
- (b) A shareholder may waive his or her entitlement to receive a dividend by notice in writing to the Company signed by or on behalf of the shareholder.
- (c) The Board will, subject to commercial considerations, endeavour to pay an annual end-of-financial-year dividend that provides a fair return on the share value. Consideration will be given to achieve this prior to determining the levels of grower payments. No dividend will be paid in the Company's first three years of operation.

15.5 Shareholder discounts

- (a) The Board may resolve that the company offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.
 - (b) The Board may approve a discount scheme under clause 15.5(a) only if it has previously resolved that the proposed discounts are:
 - (i) fair and reasonable to the company and to all shareholders; and
 - (ii) to be available to all shareholders or all shareholders of the same class on the same terms.
 - (c) A discount scheme may not be approved or continued by the Board unless it is satisfied on reasonable grounds that the Company satisfies the solvency test.
 - (d) Subject to clause 15.5(e), a discount accepted by a shareholder under a discount scheme approved under this clause is not a distribution for the purposes of the Act.
 - (e) Where:
 - (i) a discount is accepted by a shareholder under a scheme approved or continued by the Board; and
 - (ii) at the time the scheme was approved or the discount was offered, the Board ceased to be satisfied on reasonable grounds that the Company would satisfy the solvency test,
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section 56 of the Act applies in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorised.

15.6 Deduction of shareholders' debts

The Board may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by him or her to the company on account of calls or otherwise in relation to the shares of the Company.

15.7 Mode of payment

- (a) Any dividend, or other money payable in cash in respect of shares, may be paid by cheque or warrant sent through the post directed to:
 - (i) the registered address of the holder; or
 - (ii) in the case of joint holders, to the registered address of that one of the joint holders who is first named in the register of shareholders; or
 - (iii) to such person and to such address as the holder or joint holders may in writing direct.
- (b) Every such cheque or warrant must be made payable to the order of the person to whom it is sent.
- (c) Any one of 2 or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

15.8 Interest

No distribution shall bear interest against the Company.

15.9 Unclaimed Distributions

All distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. All distributions unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company provided always that the Board may at any time after such forfeiture annul the same and pay the distribution so forfeited to any person producing evidence that he or she is entitled to the same and shall do so unless in the opinion of the Board such payment would embarrass the Company.

16. FORFEITURE OF SHARES

16.1 Failure to Pay

If any shareholder fails to pay any call or instalment of a call on or before the day appointed for payment the Board may at any time thereafter during such time as the call or instalment remains unpaid serve notice upon the member requiring him or her to pay the call or instalment, together with interest and any expenses that may have accrued by reason of the non-payment.

16.2 Notice

The notice shall:

- (a) name a further day (not being less than ten days from the date of the notice) on or before which the call or instalment and all interest and expenses (if any) that have accrued by reason of the non-payment are to be paid;
- (b) name the place where payment is to be made, the place so named being either the registered office of the company or some other place at which calls of the Company are usually made payable; and
- (c) state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call or instalment is made will be liable to be forfeited.

16.3 Non-Compliance

If the shareholder does not comply with requirements of any such notice, any shares in respect of which the notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all distributions authorised in respect of the forfeited shares.

16.4 Forfeited Share

Any share or shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Board think fit and as this Constitution permits.

16.5 Ceasing to be a Shareholder

Any shareholder whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the shareholder to the Company in respect of the shares. The shareholder's liability shall cease if and when the Company receives payment in full of the amount so owing by the shareholder.

16.6 Evidence of Forfeiture

A statutory declaration in writing that the declarant is a director of the Company, and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

16.7 Sale of Shares

The Company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he or she shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

16.8 Fixed Time Payment

The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

16.9 Cancellation of Forfeiture

If all calls, instalments, and interest due in respect of any forfeited share are paid before the share has been disposed of, together with such sum as the Board may require to repay expenses incurred in respect of non-payment, the forfeiture may be cancelled by the Board at its discretion; and if the forfeiture is cancelled and an entry thereof made in the minutes of the Board, the share shall then revert to the person entitled to it before the forfeiture and be held by him or her thereafter in the same manner as if no such forfeiture had taken place.

17. TRANSMISSION OF SHARES

17.1 Transmission on Death of Holder

In the event of the death of a shareholder the legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title in the share. In the case of a share registered in the names of two or more persons, the survivor or survivors or where all survivors of the first deceased joint holder are later deceased the legal personal representative of the last surviving joint holder on his or her death shall be the only person recognised by the Company as having any title to the share.

17.2 Assignee in Bankruptcy

Any person becoming entitled to a share in consequence of the bankruptcy of a shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right to make such transfer of the share as the bankrupt person could have made; but the Board shall have the same right to decline or delay registration as they would have had in the case of a transfer of the share by the person before the bankruptcy.

17.3 Right of Personal Representative or Assignee

Where the registered holder of any share dies or becomes bankrupt, his or her personal representative or the assignee of his or her estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board, be entitled to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt. Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall for the purposes of this Constitution be deemed to be joint holders of the share.

18. LIEN ON SHARES**18.1 Lien on Shares**

The Company shall have a first lien for all debts, obligations and liabilities of any shareholder of the Company, owed to the Company or to any subsidiary of the Company, upon all shares held by the shareholder, whether alone or jointly, and upon all money payable to the shareholder.

18.2 Discharge of Lien

If the Company shall register any transfer of any share upon which it has such a lien without giving to the transferee notice of its claim, the said share shall be freed and discharged from the lien of the Company.

18.3 Sale of Shares

The Company may sell, in such manner as the Board thinks fit, any share on which the Company has a lien, if

- (a) some sum in respect of which the lien exists is presently payable; and
 - (b) 10 days' notice in writing, demanding payment of such, has been given to the shareholder or the person entitled thereto by reason of the shareholder's death or bankruptcy.
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18.4 Execution of Sale

For giving effect to any such sale the Board may authorise some person to transfer the share sold to the purchaser. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he or she shall not be bound to see to the application of the purchase money, nor shall his or her title to the shares be affected by any irregularity or invalidity in the sale proceedings.

18.5 Proceeds

The proceeds of the sale shall be received by the Company and applied in payment of:

- (a) First, in and towards the satisfaction of the amount in respect of which the lien exists;
- (b) Secondly, in payment of all costs and expenses of such sale and any attempted sale; and
- (c) Thirdly, (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) in payment to the person entitled to the shares at the date of the sale.

18.6 Discharge from Calls

Upon registration of the transfer to the purchaser of shares sold by the Company pursuant to clause 18.3, the purchaser shall hold such shares free from all calls due prior to such purchase.

18.7 Former Shareholder's Remedy

The remedy of the former shareholder and of any person claiming under or through the former shareholder shall be against the Company exclusively and in damages only.

19. TERMS AND CONDITIONS OF SUPPLY OF WALNUTS**19.1 Supply by Shareholders**

All Walnuts supplied to the Company by a Transacting shareholder shall be supplied on the Terms and Conditions which are fixed by the Board from time-to-time and notified in writing to all shareholders.

19.2 Supply by Non-Shareholders

Subject to clause 20.1, the Board may accept supply of Walnuts from persons who are not shareholders on such terms and conditions as they think fit.

20. SHAREHOLDING BY SUPPLIERS

20.1 Irrevocable Application

Unless determined otherwise by the Board, the supply by any person of Walnuts in excess of 2000 kg to the Company shall be deemed to be an irrevocable application by that person to become a Transacting shareholder of the Company and to hold such number of shares as is required under this Constitution.

20.2 Board may Accept Application

The Board may in its absolute discretion decide whether or not to accept an application to become a shareholder.

20.3 Board May Allot Shares

In respect of new or increased supply of Walnuts, the Board may allot shares after the supply for the relevant Financial Year, and therefore the number of shares required to be held under clause 20.5, has been ascertained.

20.4 Notice to shareholder

The Company shall inform the shareholder in writing of any requirement for purchase of shares in respect of new or increased supply of Walnuts in the relevant Financial Year.

20.5 Share Standard

Every Transacting shareholder supplying Walnuts shall be liable, in respect of each Financial Year of the Company, to hold such number of shares fixed by the Board in a class of shares fixed by the Board (or if not fixed, Class A shares), but not less than one share per kilogram of dry Walnuts supplied and accepted by the company. This is to be set at the number of kilograms of Walnuts supplied in the highest yielding year to date.

20.6 Implementation of Share Standard

The Board may, in its absolute discretion, at any time and from time-to-time require any shareholder who does not hold the number of shares required to be held by that shareholder under clause 20.5 to acquire such number of further shares as the Board thinks fit. The consideration payable for such shares to the Company shall be the nominal value.

20.7 Payment for shares

Payment for shares allotted under clause 20.3 shall be on a date to be determined in writing by the Board from time to time.

21. ALTERATION OF SHAREHOLDER RIGHTS

The Company may issue shares which rank equally with or in priority to existing shares, whether as to voting rights or distributions and any such issue is deemed not to be an action which affects the rights attached to existing shares.

22. MEETINGS OF SHAREHOLDERS

22.1 Annual Meetings

The annual meeting of the Company shall be held once in every calendar year, at such time (not being more than 15 months after the holding of the last preceding meeting) and place as may be determined from time to time by the Board.

22.2 Business of an Annual Meeting

The business of the annual meeting shall be:

- (a) to receive and consider the financial statements, the reports of the Board and of the auditor, and any matters incidental thereto;
- (b) to elect directors in the place of those retiring subject to any alternative procedures of a postal ballot;
- (c) to appoint auditors and fix or authorise the Board to fix their remuneration;
- (d) to transact any other business which, by law, may be transacted at an annual meeting.

22.3 Special Meeting

A special meeting of shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board at the written request of shareholders holding shares carrying together not less than 25 per cent of the voting rights entitled to be exercised on the issue.

22.4 Shareholder Request for Special meeting

Any request by shareholders to hold a special meeting must specify the issue to be voted on at the meeting and shall be signed by the persons making the same and shall be deposited at the registered office of the Company. It may consist of several documents in the like form each signed by one or more of the requisitionists.

22.5 Proceedings at Meetings

The proceedings of meetings of shareholders shall be governed by the First Schedule of this Constitution.

23. VOTES OF SHAREHOLDERS**23.1** Voting on a Poll

Upon a poll, every Transacting shareholder entitled to vote present in person or by proxy shall be entitled to, subject to clause 23.2, one vote for every 500 Class A shares held in the Company (or part thereof).

23.2 No shareholder shall at any time exercise more than 20% of the voting rights in the Company. To the extent that a shareholder holds more than 20% of the voting rights in the Company that shareholder is not permitted to exercise voting rights beyond 20%.

24. DIRECTORS**24.1** Number of Directors

- (a) Unless altered in accordance with clause 24.1(c), the number of directors including any Appointed Director for the time being shall be seven.
- (b) The number of Appointed Directors shall not exceed one at any given time.
- (c) The Company by special resolution may from time to time increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

24.2 Qualifications of Directors

- (a) No person shall be qualified to act as a director (other than an Appointed Director) unless he or she is a Transacting shareholder of the Company or is a member of a company or of a partnership which is a Transacting shareholder of the Company.
- (b) Only one member of a company or partnership holding shares in the Company shall be qualified to act as a director of the Company.

24.3 Rotation of Directors

- (a) Subject to clause 24.8 each director shall retire from office at the annual meeting in the third year after his or her last election.
 - (b) One third of the number of the directors shall retire in rotation every year. If there has been equal tenure between more than one-third of
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the directors, the director or the directors to retire shall be determined by lot.

24.4 Eligibility for Election as a Director

- (a) A retiring director shall be eligible for re-election. Subject to clause 24.5 he or she shall retain office until the dissolution or adjournment of the meeting at which his or her successor is elected.
- (b) No person (not being a retiring director) shall be eligible for election to the office of director at any meeting unless he or she has been nominated in writing provided that such nomination shall not be required if that person is recommended by the Board. Every nomination must be made and signed by two Transacting shareholders (other than the person nominated) as nominator and seconder. Every nomination paper must be left at the registered office of the Company, not later than 28 clear days before the annual general meeting.
- (c) No person may take office as a director unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.

24.5 Election of Directors

- (a) Subject to clause 24.1, the Company at any meeting at which any directors retire by rotation shall fill up the vacated offices by electing a like number of directors and, without notice, may fill up any other vacancies.

24.6 Ballot for the Election of Directors by Postal or Electronic means

- (a) The Board may resolve to hold a ballot for the election of directors by postal or electronic means (including Email).
- (b) Transacting shareholders shall be entitled, on a ballot by postal or electronic means, to the same number of votes to which they are entitled on a vote by poll.
- (c) Transacting shareholders may vote for one or any number of candidates not exceeding the number of vacancies to be filled.
- (d) No election shall be required if the number of vacancies exceeds or is equal to the number of nominations.

24.7 Vacancies

- (a) In the event of any vacancy occurring among the directors, the directors must call a special meeting for the purpose of filling up any such vacancy within six (6) months after the vacancy occurring.
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- (b) The remaining directors may continue to act notwithstanding any vacancy in their number; but if the number of directors falls below 5 the Board shall not, except for the purpose of filling vacancies, act so long as the number is below 5.

24.8 Appointed Directors

- (a) The Board shall have power at any time, and from time to time, to appoint any person who does not comply with clause 24.2 to be an additional director to those who qualify under clause 24.2 and are elected pursuant to clause 24.5 or clause 24.6, and the provisions of this clause 24.8 shall apply to such appointed directors.
- (b) The Board may determine and authorise payment of remuneration or the provision of other benefits by the Company to an appointed director for services as a director, or in any other capacity if the Board is satisfied that to do so is fair to the Company.
- (c) The power conferred by this clause may not be exercised to increase the total number of directors above the number fixed in accordance with clause 24.1 and at any time no more than one director may be appointed under this clause.
- (d) Any director so appointed shall be appointed for a period up to the conclusion of the third Annual Meeting held after the next following Annual Meeting.
- (e) A director whose term expires in accordance with this clause shall be eligible to be reappointed in like manner by the Board from the date of such expiry and if so appointed shall remain in office for a further period of up to the conclusion of the third Annual Meeting held after the Annual Meeting on which his or her previous term expired.
- (f) A director appointed or re-appointed under this clause 24.8 shall cease to hold office at the conclusion of the first Annual Meeting after his or her appointment or re-appointment unless such Annual Meeting, by ordinary resolution, ratifies his or her appointment or re-appointment.

24.9 Status of Appointed Director

All the provisions of this Constitution shall apply to Appointed Directors except:

- (a) clause 24.2 relating to qualifications of directors;
 - (b) clause 24.3 relating to rotation of directors;
 - (c) clause 24.4(a) and 24.4(b) relating to eligibility for election as directors;
 - (d) clause 24.5 relating to election of directors;
 - (e) clause 24.6 relating to election of directors by postal ballot.
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24.10 General Manager

- (a) The Board may from time to time appoint a suitable person to be the General Manager of the Company for such term, at such remuneration, and generally on such terms and conditions as they may think fit; and may, subject to any contract between him or her and the Company, from time to time remove or dismiss him or her from office and appoint another in his or her place. Subject to the terms and conditions of any agreement between the Company and its General Manager, the general and routine business of the Company shall be managed by the General Manager, who shall at all times faithfully observe and obey all resolutions of the Board, but, subject thereto, he or she shall have full power and authority to engage, suspend, or discharge all or any of the employees and servants of the Company and to fix their respective salaries, wages, or remuneration, to buy and sell, and to enter into all contracts, and generally to do all such acts and things that he or she may deem expedient in carrying on the ordinary business of the Company.
- (b) A General Manager shall not while he or she holds office be eligible to be a director of the Company.

24.11 Remuneration of Directors

- (a) The Board may determine and authorise payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity if the Board is satisfied that to do so is fair to the Company, provided that the shareholders by ordinary resolution authorise such remuneration or other benefits.
- (b) The directors shall be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as directors.

24.12 Retirement of Directors

A director may retire from his or her office at any time on giving notice in writing to the Company. His or her retirement shall take effect upon receipt by the Company of the notice or at a later time specified in the notice.

24.13 Disqualification of Directors

The office of a director shall be vacated:

- (a) If he or she, not being an Appointed Director, ceases to qualify to act as a director in accordance with clause 24.2(a);
 - (b) If he or she becomes bankrupt; or
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- (c) If he or she becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a personal order relating to his or her property is made under the Protection of Personal and Property Rights Act 1988, or
- (d) If he or she resigns his or her office in accordance with the provisions of section 157(2) of the Act; or
- (e) If he or she becomes a person to whom section 151 of the Act applies.

24.14 Removal of Director

The shareholders may by ordinary resolution remove any director before the expiration of that director's period of office and elect another person in that director's place. The notice of meeting for the meeting must specify that one of the purposes for the meeting is to vote on such a resolution. A person so appointed shall hold office only for the remainder of the term for which the director in whose place he or she is appointed had been appointed or elected.

24.15 Proceedings at Meetings

The proceedings of meetings of the Board shall be governed by the Second Schedule of this Constitution.

25. INDEMNITY AND INSURANCE

The Company may give such indemnities and effect such insurances as are referred to in section 162 of the Act to the fullest extent permitted by that section.

26. NOTICES

26.1 Notice to Joint Holders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the share register in respect of the share.

26.2 Notice to Personal Representative or Assignee of Shareholder

A notice may be given by the Company to any person entitled to share in consequence of the death of bankruptcy or other incapacity of a member by any method specified in section 391 of the Act addressed to him or her by name or by the title of representative of the deceased or assignee of the bankrupt or otherwise, as the case may require, at the address (if any) or to the telephone number (if any) within New Zealand supplied for the purpose by the person claiming to be so entitled, or (until such an address or telephone number has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy or incapacity had not occurred.

26.3 Effect if Notice Where Shares are Transferred

Every person who by operation of law, by transfer, or by other means whatsoever shall become entitled to any share shall be bound by every notice in respect of that share which after becoming so entitled and prior to his or her name and address being entered on the register has been duly given to the person from who he or she derived his or her title to that share.

26.4 Period of Notice

Where a given number of days' notice extending over any period is required to be given, the day of service shall not be, but the day upon which the notice will expire shall be, included in the number of days or other period.

26.5 Notice to Overseas Shareholders

Each shareholder whose place of address is not in New Zealand shall notify in writing to the Company a place in New Zealand which shall be deemed his or her registered place of address. In the absence of any such notification the registered office of the Company shall be deemed the registered address of the member for all purposes whatsoever, and all proceedings taken without other notice to any such member shall be as valid as if he or she had due notice thereof.

27. DEDUCTIONS

The Board may deduct from any money payable by the Company to any shareholder all or any sums of money presently payable to him or her to the Company on account of any or all of the following:

- (a) calls or instalments or otherwise or any debt, liability or engagement; and
- (b) debts, liabilities or obligations in respect of which the Company has a lien on the shares on which such money is payable; and
- (c) such amounts as the Company may be called upon to pay under any legislative enactment in respect of the shares of a deceased or other shareholder.

28. LIQUIDATION

28.1 On liquidation of the Company, the net assets of the Company shall be distributed to shareholders pro-rata in proportion to the number of paid up shares held by the Shareholder.

28.2 For the purposes of clause 28.1 "net assets" means assets of the Company available for distribution to shareholders after satisfying or providing for the liabilities of the Company (other than a liability to return paid up capital) and the proper costs of the liquidation.

SCHEDULE 1

Proceedings at Meetings of Shareholders

1. CHAIRPERSON

The Chairperson of the Board shall take the chair at every general meeting, or if there be no such Chairperson, or if at any meeting he or she shall not be present within 15 minutes after the time appointed for holding the meeting, the Deputy Chairperson of the Board shall take the chair, or if there be no such Deputy Chairperson or if at any meeting he or she shall not be present as hereinbefore provided, the Transacting shareholders present shall choose another director as Chairperson of the meeting; and if no director be present, or if all directors present decline to take the chair, then the Transacting shareholders present shall choose one of their number to be Chairperson of that meeting.

2. NOTICE OF MEETING

2.1 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.

2.2 The notice must state:

(a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) the text of any special resolution to be submitted to the meeting.

2.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

2.5 The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. When a meeting is adjourned for less

than 30 days, notice of the time and place of the adjourned meeting may be given by announcement at the meeting which is adjourned.

3. METHODS OF HOLDING MEETINGS

A meeting of shareholders may be held either:

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

4. QUORUM

4.1 Subject to clause 4.3 no business may be transacted at any general meeting if a quorum is not present.

4.2 A quorum for a meeting of shareholders is present if not less than ten Transacting shareholders or their proxies are present, and who between them represent not less than 15% of the shares held by all Transacting shareholders of the Company.

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

- (a) In the case of a meeting covered under section 121(b) of the Act, the meeting is dissolved;
- (b) In the case of any other meeting the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint and for which notice has been given in accordance with clause 2.5. If, at the adjourned meeting, a quorum is not present within 30 minutes of the time appointed for the meeting, the Transacting shareholders or their proxies present are a quorum.

5. VOTING

5.1 In the case of a meeting of shareholders held under clause 3(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:

- (a) Voting by voice; or
 - (b) Voting by show of hands.
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- 5.2** In the case of a meeting of shareholders held under clause 3(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 5.3** A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 5.4.
- 5.4** At a meeting of shareholders a poll may be demanded by:
- (a) not less than 5 shareholders having the right to vote at the meeting;
 - (b) a shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote at the meeting; or
 - (c) by a shareholder or shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right.
- 5.5** A poll may be demanded either before or after the vote is taken on a resolution.
- 5.6** If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- 5.7** The Chairperson of a shareholders' meeting is entitled to a casting vote.
- 5.8** For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.
- 5.9** Subject to clause 5.10 if a poll is demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting may direct and either at once or after an interval of adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- 5.10** Any poll duly demanded on the election of a Chairperson of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.
- 5.11** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
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6. PROXIES

- 6.1** A shareholder may exercise the right to vote either by being present in person or by proxy.
 - 6.2** A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
 - 6.3** A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. The shareholder's signature must be witnessed.
 - 6.4** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
 - 6.5** The notice appointing a proxy shall be in the following form or any other form which the Board approves;
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**WALNUTS NEW ZEALAND CO-OPERATIVE LIMITED
INSTRUMENT APPOINTING A PROXY**

I/we

of

being a Transacting shareholder of Walnuts New Zealand Co-operative Limited hereby appoint

[name of proxy] of
or failing him/her of

as my/our proxy to vote for me/us on my/our behalf at [the [annual] [special] meeting
of the company to be held at
on
commencing at]
[all meetings of the company held within 12 months after the date hereof]
and at any adjournment of any such meeting.

Signed this day of

Usual signature(s):

Witness:

- 6.6** The Company shall not issue any proxy form with a proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a proxy if shareholders desire to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the directors for the time being of the Company. An instrument of proxy in favour of the chairperson of the meeting (howsoever expressed) shall be valid and effectual as though it were in favour of a named person and shall constitute the person who chairs the meeting or meetings for which the proxy is used (whether an adjournment or not) the lawful proxy or proxies of the appointor.
- 6.7** Where it is desired to enable shareholders to direct their proxies to vote for or against a resolution the instrument appointing a proxy shall be in the following form or in a form appointed by the directors.
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- 6.8** A vote given in accordance with the terms of a notice of appointment of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of any share in respect of which proxy is given, if no intimation in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting.
- 6.9** Any notice appointing a proxy given by a Transacting shareholder shall be deemed to be revoked on receipt from the Transacting shareholder of a notice in writing to that effect at the registered office of the Company not less than one hour before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

7. VOTING BY POST OR ELECTRONIC MEANS

- 7.1** The Board may decide in respect of a particular meeting on a particular resolution or resolutions at a meeting that the shareholders may exercise the right to vote at a meeting by casting a written vote in accordance with the provisions of this clause, where a written vote may be sent by post, facsimile, Email, or other electronic means.
- 7.2** The notice of a meeting at which shareholders are entitled to cast a written vote must state the name of the person authorised by the Board to receive and count written votes at that meeting.
- 7.3** If no person has been authorised to receive and count written votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 7.4** A shareholder may cast a written vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count written votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 7.5** It is the duty of a person authorised to receive and count written votes at a meeting:
- (a) To collect together all written votes received by him or her or by the Company; and
 - (b) In relation to each resolution to be voted on at the meeting, to count:
 - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
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- (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;
 - (c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause and which sets out the results of the counts required by paragraph (b) of this subclause; and
 - (d) To ensure that the certificate required by paragraph (c) of this subclause is presented to the Chairperson of the meeting.
- 7.6 If a vote is taken at a meeting on a resolution on which written votes have been cast, the Chairperson of the meeting must:
 - (a) On a vote by show of hands, count each shareholder who has submitted a written vote for or against the resolution; and
 - (b) On a poll, count the votes cast by each shareholder who has submitted a written vote for or against the resolution.
- 7.7 The Chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient written votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 7.8 The Chairperson of a meeting must ensure that a certificate of written votes held by him or her is annexed to the minutes of the meeting.

8. MINUTES

- 8.1 The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and are tabled at the subsequent meeting.
- 8.2 Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

9. SHAREHOLDER PROPOSALS

- 9.1 A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
 - 9.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
 - 9.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant
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meeting of shareholders is required to be given by the Board, the Board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

- 9.4** If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to Receive notice of the meeting.
- 9.5** If the Board intends that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 9.6** The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous or vexatious.
- 9.7** Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

10. CORPORATIONS MAY ACT BY REPRESENTATIVES

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

11. VOTES OF JOINT HOLDERS

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

12. LOSS OF VOTING RIGHTS IF CALLS UNPAID

If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholder's meeting other than a meeting of an interest group.

13. PRIVATE MEETINGS

- 13.1** The meetings of the Company shall be regarded as private meetings. Except as provided in clause 13.2 persons other than shareholders or persons holding
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proxies for members may be present there only during the pleasure of the Chairperson of the meeting.

- 13.2** A director who is not a shareholder of the Company is entitled to attend and speak at meetings of shareholders.

14. VOTING BY ADMINISTRATION ETC

If any person otherwise entitled by this constitution to a vote is a minor, a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992, a person subject to a property order or a donor of an Enduring Power of Attorney under the Protection of Personal and Property Rights Act 1988 he or she may vote by his or her guardian or committee or manager or administrator or attorney under an enduring power of attorney, as the case may be.

15. OTHER PROCEEDINGS

Except as provided in this Schedule, and subject to the constitution of the Company, a meeting of shareholders may regulate its own procedure.

SCHEDULE 2

Proceedings of Meetings of the Board

1. CHAIRPERSON

- 1.1** The directors shall elect one of their number as Chairperson of the Board, and, if they think fit, one of their number as Deputy Chairperson of the Board. The Board shall determine the period for which the Chairperson and the Deputy Chairperson (if appointed) are to hold office, and, unless otherwise determined, they shall be elected annually.
- 1.2** The Chairperson of the Board shall preside at each meeting of the Board, and in case of his or her absence or incapacity to act at any meeting, the Deputy Chairperson, if there has been one appointed, shall preside. In the absence from any meeting of the Board or inability to act of the Chairperson of the Board and of the Deputy Chairperson (if any) the directors present shall choose one of their number to be Chairperson of the meeting.

2. NOTICE OF MEETING

- 2.1** One director may at any time, and the Company shall, upon the request of a director, convene a meeting of directors including a telephone meeting as provided in clause 8.
- 2.2** Not less than 2 days' notice of a meeting of the Board must be sent to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 2.3** An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

3. METHODS OF HOLDING MEETINGS

A meeting of the Board may be held by:

- (a) A number of the directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) In accordance with clause 8 of this Schedule.

4. QUORUM

- 4.1** Unless otherwise determined by the Board, five (5) directors is a quorum.
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- 4.2 No business may be transacted at a meeting of directors if a quorum is not present.

5. VOTING

- 5.1 Every director has one vote.
- 5.2 The Chairperson shall have a casting vote.
- 5.3 A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against the resolution at the meeting.

6. MINUTES

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) Of the names of the directors present at each meeting of the Board and of any committee of the Board;
- (b) Of all resolutions and proceedings of the meetings of the Board and committees;

and any such minutes of any meeting of the Board or of any committee, if purporting to be signed by the Chairperson of the meeting, or by the Chairperson of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in the minutes.

7. UNANIMOUS RESOLUTION

- 7.1 A resolution in writing signed or assented to by all directors then entitled to receive notice of a Board meeting by means of facsimile or otherwise is valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.2 Any such resolution may consist of several documents (including facsimile or other means of communication) in like form each signed or assented to by one or more directors.
- 7.3 A copy of any such resolution must be entered in the minute book of Board proceedings.
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8. TELECOMMUNICATIONS

- 8.1** The contemporaneous linking together by audio, or audio and visual, communication of a number of directors not less than a quorum, whether or not any one or more of the directors is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:
- (a) All the directors shall be entitled to notice of such a meeting and to be linked for the purposes of such meeting.
 - (b) Each of the directors taking part in the meeting must, throughout the meeting, be able to hear each of the other directors taking part;
 - (c) At the commencement of the meeting each director must acknowledge his or her presence, for the purpose of a meeting of the Board of the Company, to all the other directors taking part.
- 8.2** A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by audio communication unless he or she has previously advised the Chairperson of the meeting that he or she is leaving the meeting.
- 8.3** A minute of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson.

9. PROCEEDINGS OF COMMITTEES OF THE BOARD

The rules in this constitution governing meetings and proceedings of the Board shall, except as altered by any resolutions made by the Board, apply also to the meetings and proceedings of any committee of the Board.

10. OTHER PROCEEDINGS

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