

COMPANY CONSTITUTION

COMPANY DETAILS

Name:

SUMMERFRUIT AUSTRALIA LIMITED

ACN: 105 962 196

Registration:

Corporations Act 2001

Registered in New South Wales

Type:

Public company limited by guarantee

CONSTITUTION CREATION

Adoption

Adopted upon registration on 19th August 2003.

CONSTITUTIONAL RULES

1. GENERAL

1.1 Definitions

The following definitions apply in this Constitution unless the context otherwise requires.

A Member has the meaning given in rule 6.1(a)(i).

A Member Present means, in connection with a meeting, the A Member present in person by its Representative, by corporate representative or by proxy (but not by attorney) at the meeting and who is entitled to vote.

A Member Representative means an individual appointed by an A Member in accordance with rule 6.2.

Act means the *Corporations Act 2001* and the *Corporations Regulations 2001*.

Annual Election means the annual election of Directors by postal ballot contemplated by rule 8.4.

B Member has the meaning given in rule 6.1(a)(ii).

B Member Present means, in connection with a meeting, the B Member present in person by its Representative, by corporate representative or by proxy (but not by attorney) at the meeting and who is entitled to vote.

Board means the board of Directors of the Company.

Business means a business operated by any entity including a company, partnership or sole trader.

Chairperson means the chairperson of the Board appointed pursuant to rule 10.6.

Code of Conduct means a code of conduct for members in relation to matters concerning the Company and its employees, members and officers and which has been formulated or modified by the Board from time to time.

Company means Summerfruit Australia Limited ACN [105 962 196], a public company limited by guarantee taken to be registered in New South Wales.

Deputy-Chairperson means the deputy-chairperson of the Board appointed pursuant to rule 10.6.

Director means a director of the Company.

Director Candidate List has the meaning given in rule 8.3(a).

Industry Levy means the Summerfruit industry product levy collected with reference to Summerfruit sold, by the Commonwealth Government through the Department of Agriculture, Fisheries & Forestry Australia, Levies Revenue Service.

Member Present means, in connection with a meeting, the member present in person by its Representative, by corporate representative or by proxy (but not by attorney) at the meeting and who is entitled to vote.

Membership Committee means the committee dealing with membership matters and established by the Board under rule 10.10.

Membership Group has the meaning given in rule 6.1.

Register means a register of members of the Company.

Representative means an individual appointed by a Business in accordance with rule 6.2.

Seal means the common seal of the Company.

Secretary means a secretary of the Company from time to time.

Summerfruit means fresh stone fruit including plums, nectarines, peaches, apricots and interspecific hybrids.

Surplus Property has the meaning given in rule 5.1.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the rule or paragraph, respectively, in which the reference appears.
- (d) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (e) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.
- (f) A mention of anything after include, includes or including does not limit what else might be included.

1.3 Replaceable rules

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

1.4 Actions authorised under the Act

Where the Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this rule to be authorised or permitted to do that matter or thing, despite any other provision of this Constitution.

2. NAME AND OBJECTS

2.1 Name of the Company

The name of the Company is "Summerfruit Australia Limited".

2.2 Objects of the Company

The objects for which the Company is established are:

- (a) the advancement of the Summerfruit industry;
- (b) to increase Australian and international consumption of Australian Summerfruit at a profitable return;
- (c) to be the channel of communication in matters relating to issues affecting Summerfruit of a national and international nature;
- (d) to coordinate the efforts of members and the community in the best interests of the Summerfruit industry;
- (e) to develop a strong, professional Summerfruit industry operating with a common purpose and in cooperation;
- (f) to coordinate with others the collection, management and expenditure of the Industry Levy for the benefit of the Summerfruit industry; and
- (g) to support the efforts of other groups and individuals that are of benefit to the Summerfruit industry.

3. LIABILITY OF MEMBERS

3.1 Limited liability

The liability of the members is limited.

3.2 Limit on Members' undertaking to contribute in the event of winding up

Every member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while the member is a member or within one year afterwards, for the payment of the debts and liabilities of the Company contracted before the member ceases to be a member and the costs, charges and expenses of winding up the Company such amount as may be required but not exceeding \$20.00.

4. APPLICATION OF INCOME AND PROPERTY

4.1 Income and property to be applied for promotion of objects

The income and property of the Company shall be applied solely towards the promotion of the objects of the Company contained in this Constitution.

4.2 Prohibition on dividends and distributions

The Company is prohibited from paying any dividends or otherwise making any distributions to members and from paying fees to the Directors.

4.3 Permitted payments to officers, members and employees

Neither rule 4.1 nor rule 4.2 prevents the Company from making payments to any person, including officers, members and employees for:

- (a) reasonable remuneration for services actually rendered to the Company;
- (b) goods delivered to the Company;
- (c) out-of-pocket (including for travel and accommodation) expenses incurred in the performance of a duty to the Company or otherwise on Company business;
- (d) commercially reasonable interest on money lent to the Company; or
- (e) commercially reasonable rent for property leased to the Company.

4.4 Approval of payments to Directors

The Directors must approve all payments authorised by rule 4.3 the Company makes to Directors.

5. APPLICATION OF SURPLUS ON WINDING UP

5.1 Distribution of Surplus Property

If upon the winding up or dissolution of the Company, after the satisfaction of all its debts and liabilities, there remains any property of the Company ("**Surplus Property**"), such Surplus Property shall not be paid to nor distributed amongst the members but shall be distributed in accordance with rule 5.2 or, if that is not applicable, rule 5.3.

5.2 Determination of members regarding distribution of Surplus Property

At or before the winding up or dissolution of the Company, the members may determine that the Surplus Property shall be given or transferred to one or more institutions or entities, provided the institution or entity:

- (a) is connected with the promotion of the Summerfruit industry;
- (b) has objects similar to those of the Company; and

- (c) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution.

If there is a determination in accordance with this rule 5.2, the Surplus Property shall be transferred to the institution or entity after the winding up or dissolution of the Company. If there is more than one institution or entity specified in the determination, the Surplus Property shall be transferred in the proportion specified in the determination or, if there is no such proportion specified, then, in proportions as determined by the Directors.

5.3 Determination of Directors regarding Surplus Property

- (a) If there is no determination made in accordance with rule 5.2, the Surplus Property shall be given or transferred to any Australian entity, as determined by the Board, which has substantially similar objects to those of the Company and which prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution, in such manner as the Directors shall determine.
- (b) If and so far as effect cannot be given to this rule 5.3, the Surplus Property shall be applied in Australia to some charitable object.

6. MEMBERSHIP

6.1 Membership Groups

- (a) Membership of the Company shall be voluntary and shall be respectively comprised of Businesses connected with the Summerfruit industry that:
 - (i) pay the Industry Levy ("A Member"); and
 - (ii) do not pay the Industry Levy ("B Member"),each a "Membership Group".
- (b) Each member must, on seeking admission and in good faith, nominate which Membership Group to which it wishes to belong. The Membership Committee shall decide the Membership Group to which the member is to belong, and the Membership Committee's decision on this matter shall be final and binding.
- (c) The Membership Committee shall review the Membership Group to which each member belongs as they consider necessary, but at least once annually. The Membership Committee shall decide the Membership Group to which the member is to belong, and the Membership Committee's decision on this matter shall be final and binding.
- (d) A member shall, if so requested by the Membership Committee, provide evidence to the satisfaction of the Membership Committee as to their entitlement to belong to a particular Membership Group.

6.2 Appointment of Representative

Each Business shall, on seeking admission, appoint one Representative who will be entitled to:

- (a) vote on behalf of the Business; and
- (b) subject to this Constitution, be elected as a Director.

6.3 Conditions governing membership

Subject to rule 6.1, any Business may be admitted as a member of the Company if the Business:

- (a) demonstrates to the satisfaction of the Membership Committee sufficient interest, concern and knowledge of the affairs of the Company;
- (b) demonstrates to the satisfaction of the Membership Committee that it is sufficiently connected, affiliated or sympathetic to the views of the Summerfruit industry;
- (c) provides the Membership Committee with any particulars, undertakings or documents the Membership Committee requires;
- (d) is approved by the Membership Committee; and
- (e) agrees to be bound by this Constitution by signing and forwarding an application to the Secretary in the following form or in such other form as the Membership Committee may determine from time to time:

"[name of entity] _____ of
 _____ applies to

become a member of Summerfruit Australia Limited and agrees to be bound by the Constitution of the Company and abide by the Code of Conduct attached to this application. [name of entity] consents to its name being entered on the Register.

[name of entity] appoints [individual's name] as its Representative.

Dated:

Signed:

Title: _____"

6.4 Application for membership

- (a) Each application for membership shall be sent to the Secretary and accompanied by a remittance of any annual membership fee or other subscription fees payable, the remittance to be refunded in the event the applicant is not admitted to membership.
- (b) The fees payable pursuant to this rule shall be the amount determined from time to time by the Directors.

6.5 Entry of applicant's name on Register

Subject to rule 6.3 and upon compliance with rule 6.4, the Secretary may enter the applicant's name on the Register.

6.6 Annual membership fee and other fees

- (a) The Directors shall determine the amount of fees payable by members, including the annual membership fee. The Directors may grant any concession in regard to membership fees that they see fit, including the full or partial waiver of all or any of such fees.
- (b) The Directors shall review the fees payable by members as they consider necessary, but at least once each financial year.
- (c) The annual membership fee shall be payable annually in advance on the first day of the month in which each member's membership anniversary falls or on such other day as the Directors determine.
- (d) Any other fees shall be payable at the time determined by the Directors, provided that members are given at least two months' prior notice.
- (e) A member who ceases to be a member before any fee becomes due and payable shall not be liable for that fee.
- (f) The Directors may remit the annual membership fee and other fees, and any arrears thereof, of any member on any grounds they consider appropriate.

6.7 Resignation of membership

A member's resignation shall be in writing and addressed and forwarded to the Secretary.

6.8 Termination of membership

Membership shall cease and the Secretary may remove the member's name from the Register upon the Membership Committee being satisfied that any one of the following has occurred:

- (a) the Directors have passed a resolution expelling the member for actions the Directors determine are prejudicial to the welfare, interest or character of the Company, including wilful breach of this Constitution or the Code of Conduct;
- (b) subject to rule 6.6(f), the member has failed to pay any fees payable by the end of 90 days from the due date of such fee (unless the Membership Committee permits such member's name to remain upon the register); or
- (c) a written resignation from the member has been received by the Secretary.

6.9 Member entitled to due process

If a resolution under rule 6.8(a) is proposed in relation to any member, that member is entitled to:

- (a) receive reasonable notice of the resolution and notice of the reason(s) that the resolution is proposed; and

- (b) put their case to the Directors by giving the Secretary a written statement for circulation to the Directors and speaking to the resolution for a reasonable time (which time is to be determined by the Chairperson) at the meeting at which the resolution is considered.

A statement given under paragraph (b) must be circulated to the Directors before the meeting or, if there is insufficient time, read out at the meeting before the resolution is considered, unless the statement is more than 1,000 words long or is considered defamatory by the Chairperson.

6.10 Effect of termination on fees due and payable

Subject to rule 6.6(e), resignation or other termination of a member's membership of the Company will not relieve a member of responsibility for any financial obligations, including fees and other amounts due and payable, accrued up to the effective date of termination.

7. GENERAL MEETINGS

7.1 Power to convene

- (a) An annual general meeting shall be convened in accordance with the Act and any other general meeting shall be convened whenever the Board thinks fit.
- (b) In addition to the circumstances under which the Directors must call a meeting on requisition of the members under the Act, the Directors must call a general meeting within 21 days if a written requisition signed by 5% of the members entitled to vote is received by the Secretary. The requisition must state any resolution to be proposed at the meeting and be signed by the members making the request.
- (c) The Board may cancel by notice in writing to all members any meeting convened by the Board, except that a meeting convened on the requisition of a member or members shall not be cancelled without their consent.
- (d) The Board may, but in the case of a meeting requisitioned by members only with their written consent, postpone a general meeting or change the place at which it is to be held by notice, not later than 72 hours prior to the time of the meeting, to all persons to whom the notice of meeting (the "first notice") was given. The postponing notice shall specify the place, date and time of the meeting. The meeting shall be taken to have been duly convened under the first notice.

7.2 Notice of general meetings

- (a) Each notice convening a general meeting shall contain the information required by the Act.
- (b) The non-receipt of a notice convening a general meeting by or the accidental omission to give notice to any person entitled to receive notice shall not invalidate the proceedings or any resolution passed at the meeting.
- (c) Notice convening a general meeting may be given either personally, by post, courier, facsimile, email or any other form of wire or wireless communication. A notice of meeting sent by post is taken to be delivered on

the business day after it is posted. A notice of meeting sent by facsimile or other electronic means is taken to be received on the business day that it is sent.

7.3 Business of general meetings

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

7.4 Quorum

A quorum for a General Meeting shall be constituted by two Members Present representing not less than 5% of the total number of members of the Company.

7.5 If quorum not present

If a quorum is not present within 20 minutes after the time appointed for the meeting:

- (a) where the meeting was convened on the requisition of members, the proposed meeting shall be dissolved (subject to rule (a)); and
- (b) in any other case:
 - i. the meeting stands adjourned to a day and at a time and place as the Board decide or, if no decision is made by the Board, to the same day in the next week at the same time and place; and
 - ii. if at the adjourned meeting a quorum is not present within 20 minutes after the time appointed for the meeting, the meeting shall be dissolved.

7.6 Departure of members so that there is no longer a quorum

If a quorum is present at the time appointed for the meeting (or within 20 minutes after the time appointed) but enough members depart so that there is no longer a quorum, the Members Present may adjourn the meeting until a quorum is present, at which time any business may be transacted that would have been transacted at the meeting as originally called.

7.7 Chairperson of general meetings

- (a) Subject to paragraph (b), the Chairperson shall preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chairperson of the meeting,

the Deputy-Chairperson (if any) must act as the chairperson of the meeting. If there is no Deputy-Chairperson, or that person is absent or does not wish to act as chairperson of the meeting, the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the

Members Present shall elect one of their number to be chairperson of the meeting.

7.8 Adjournments

- (a) The chairperson may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided by paragraph ©, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.9 Voting at general meetings

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) Despite the Act, a poll for a resolution may be demanded by the Chairperson or by at least 2 Members Present and entitled to vote on the resolution. A demand for a poll may be withdrawn.

7.10 Procedure for polls

- (a) Subject to this rule, a poll when demanded in accordance with this Constitution shall be taken in the manner and at the time the Chairperson directs.
- (b) A poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.
- (c) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent a meeting from continuing with the transaction of any business other than that on which a poll has been demanded.

7.11 No casting vote for chairperson

In the event of an equality of votes on a show of hands or on a poll the Chairperson of the meeting shall not have a casting vote in addition to any vote to which the Chairperson may be entitled as a member.

7.12 Representation and voting of members

- (a) Members shall have the right to attend and vote at meetings of members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date of the meeting.
- (b) Subject to this Constitution:
 - (i) at meetings of members each member entitled to attend and vote may attend and vote in person or by proxy;
 - (ii) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
 - (iii) on a poll, every Member Present having the right to vote at the meeting has one vote.
- (c) In relation to a resolution to modify or repeal this Constitution:
 - (i) on a show of hands, every A Member Present having the right to vote at the meeting has two votes and every B Member Present having the right to vote at the meeting has one vote; and
 - (ii) on a poll, every A Member Present having the right to vote at the meeting has two votes and every B Member Present having the right to vote at the meeting has one vote.

7.13 Proxies

- (a) A member may appoint a proxy. A proxy need not be a member.
- (b) An instrument appointing a proxy must be in writing under the hand of the appointor (not by an attorney).
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting, unless the member directs otherwise.
- (e) An instrument appointing a proxy shall be in any form that the Board may accept or stipulate.
- (f) The documents to be received under the Act for an appointment of a proxy to be effective may be received by the Company at any time before the meeting commences or resumes (as the case may be).

7.14 Right of officers and advisers to attend general meeting

- (a) A Director shall be entitled to be present and to speak at any general meeting.
- (b) An auditor shall be entitled to be present and to speak at any general meeting.

- (c) A Secretary shall be entitled to be present and, at the request of the chairperson, to speak at any general meeting.
- (d) Any other person (whether a member or not) requested by the Board to attend any general meeting shall be entitled to be present and, at the request of the chairperson, to speak at that general meeting.

7.15 Circulating resolutions

Nothing in this Constitution limits the Company's power under the Act to pass a resolution as a circulating resolution, including a resolution circulated by email signifying assent to the resolution.

8. DIRECTORS

8.1 Composition of Board

Subject to clause 8.2, the Board shall consist of 7 Representatives with at least one representative elected from each of:

- (a) Western Australia;
- (b) Tasmania;
- (c) South Australia;
- (d) Victoria;
- (e) Queensland; and
- (f) New South Wales,

elected as contemplated by this rule 8.

However, if there is a vacancy and there is no Representative from any one particular State, the vacancy may be filled by a candidate from any other State only if there is no candidate from the first mentioned State.

8.2 Composition of Board for first two Annual Elections

In respect to the first two Annual Elections only, the Board shall consist of 11 A Member Representatives with at least:

- (a) 2 A Member Representatives elected from Western Australia;
- (b) 1 A Member Representative elected from Tasmania;
- (c) 2 A Member Representatives elected from South Australia;
- (d) 2 A Member Representatives elected from Victoria;
- (e) 2 A Member Representatives elected from Queensland;
- (f) 2 A Member Representatives elected from New South Wales,

elected as contemplated by this rule 8.

However, if there is a vacancy and there is no A Member Representative from any one particular State, the vacancy may be filled by a candidate from any other State only if there is no candidate from the first mentioned State.

8.3 Director Candidate List

- (a) The Directors shall call, at least 45 days prior to the date fixed under clause 8.5(a), for nominations for election as Directors. Only Representatives of the A Members are entitled to nominate or second the nomination of persons for election as Directors. Nominees shall be included in a list of persons from whom nominations have been received by the Directors (the "Director Candidate List"). Each person included on the list must be a Representative, have signed a consent to act as a Director and supplied any other information required by the Board, unless the Directors resolve otherwise.
- (b) The Director Candidate List shall be sent to each Representative of an A Member together, subject to rule 8.4, with a ballot paper and the other material referred to in clause 8.5(c).

8.4 Election of Directors by A Members

- (a) Only A Members are entitled to vote in the election of Directors.
- (b) Subject to this rule and rule 8.5, every candidate for Director shall be elected to office by postal ballot of the Representatives of A Members.
- (c) In the event that more candidates have been nominated than vacancies exist on the Board, the election of Directors shall take place by way of postal ballot. In any other case, the nomination of persons under rule 8.3 shall operate as an election of those persons nominated, effective from the proposed closing date of the postal ballot fixed under clause 8.5(a).
- (d) An election of Directors must be held each year.

8.5 Conduct of Postal Ballot for election of Directors

- (a) The Board shall:
 - (i) fix the dates for the forwarding of ballots to members and the closing of the ballot; and
 - (ii) appoint a returning officer for the ballot.

Every ballot must be conducted by the returning officer appointed by the Board. A Director may not be appointed as a returning officer.

- (b) The returning officer must cause ballot papers to be prepared in the form of Schedule 1 to this Constitution. Each ballot paper must be initialled by the returning officer or an appointed assistant.
- (c) The returning officer must, at least 21 days before the date fixed for the closing of the ballot, send by post or otherwise deliver to every Representative of an A Member one set of the following materials:

- (i) one ballot paper;
 - (ii) an envelope addressed to the returning officer ("outer envelope");
 - (iii) a smaller envelope, the reverse side of which must be printed in the form of Schedule 2 to this Constitution ("middle envelope"); and
 - (iv) a small envelope in which the ballot paper is to be enclosed ("inner envelope").
- (d) The returning officer may send a duplicate ballot paper to any Representative of an A Member if the returning officer is satisfied:
- (i) that the Representative has not received a ballot paper; or
 - (ii) that the ballot paper received by the Representative has been lost, damaged or destroyed and that the Representative has not already voted.
- (e) An A Member casts a vote in the ballot by its Representative:
- (i) completing the details on the reverse side of the middle envelope;
 - (ii) marking his or her vote on the ballot paper according to the instructions on the ballot paper; and
 - (iii) sending the ballot paper, in the envelopes provided, to the returning officer.
- (f) Ballot papers received after 3.00 pm on the date fixed for the closing of the ballot must not be taken into account at the ballot.
- (g) As soon as practicable after 3.00 pm on the date fixed for the closing of the ballot, the returning officer must, in the presence of such scrutineers as may be appointed by the Board, open the ballot box and deal with the contents in accordance with clause 8.6.

8.6 Scrutiny of votes in Board elections

- (a) The returning officer shall:
- (i) remove the middle envelope from the outer envelope;
 - (ii) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it "rejected";
 - (iii) according to the information on the middle envelope, for each set of voting papers returned, mark the voter's name on the roll by drawing a line through the name;
 - (iv) if a member's name has already been crossed out on the roll, reject the postal vote and mark it "rejected";
 - (v) if the middle envelope has not been signed, or if the details shown on the envelope are insufficient to disclose by whom the vote is being exercised, reject the envelope and mark it "rejected";

- (vi) extract the inner envelopes containing the ballot papers from all middle envelopes not rejected, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with any particular voter; and
 - (vii) when all middle envelopes have been dealt with in the above manner, open all inner envelopes not rejected and taken the ballot papers from them.
- (b) The ballot papers must be scrutinised by the returning officer who must reject as informal any ballot paper that:
- (i) is not duly initially by the returning officer or appointed assistant;
 - (ii) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer;
 - (iii) has any mark or writing not authorised by Schedule 1 that, in the opinion of the returning officer, will enable the voter to be identified; or
 - (iv) has not been marked as prescribed on the ballot paper itself.
- (c) The returning officer must determine the "quota" by dividing the total number of first preference votes by the number of candidates required to be elected. Any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
- (d) Where, after the counting of votes of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who stands lowest in the poll shall be excluded and the ballot papers of the excluded candidate shall be distributed in accordance with rule 8.6(e).
- (e) Where a candidate is excluded in accordance with this rule, the ballot papers expressing the excluded candidate as a first preference (or ballot papers received by the excluded candidate on distribution from another excluded candidate) must be transferred to the next available preference on the ballot paper.
- (f) Any candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes from an excluded candidate in accordance with rule 8.6(e) shall be elected.
- (g) Unless all vacancies have been filled, the process referred to in rules 8.6(d), 8.6(e) and 8.6(f) shall be repeated until all positions have been filled.
- (h) If two candidates remain to fill the last vacancy, the continuing candidate who has the larger number of votes shall be elected notwithstanding that the number is below the quota, and if those candidates have an equal number of votes, the Chairperson shall have a casting vote.

8.7 Appointment of Directors by the Board

- (a) Subject to the Act and this Constitution, the Board may at any time appoint any Representative as a Director to fill a casual vacancy.
- (b) Unless the number of Directors is or would be less than the minimum

number provided by rule 8.1, no casual vacancy is to be filled within 3 (three) months prior to the Company's next Annual Election or, if no date has been fixed for the election, within the period April to July.

8.8 Term of Directors elected to fill casual vacancy

A person elected to fill a casual vacancy remains in office until the next Annual Election, when such person may be elected for further terms of up to 2 years.

8.9 Removal of Directors

Subject to the Act and this Constitution, the Company may at any time by resolution passed in general meeting remove any Director from office.

8.10 Retirement of Director

- (a) All Directors appointed, before the first Annual Election are to retire at the first Annual Election, and shall be eligible for re-election, provided that they are still a Representative.
- (b) At each Annual Election after the first Annual Election, one-half of the Directors for the time being, or, if their number is not 2 nor a multiple of 2, then the number nearest one-half rounded-up to the nearest whole number, and any other Director who has held office for 2 years or more (except the Managing Director), must retire from office and shall be eligible for re-election, provided they are still a Representative.
- (c) The Directors to retire at any Annual Election must be those who have been longest in office since their last election, but, as between persons who became Directors on the same day, those to retire must (unless they otherwise agree among themselves) be determined by lot.

8.11 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant either under the Act or because of a resolution under rule 8.10 a Director ceases to be a Director if the Director:

- (a) ceases to be a Representative;
- (b) becomes bankrupt or enters into an assignment for the benefit of creditors;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) being a Director nominated by a member, ceases to be affiliated with the member that nominated him or her (unless the Directors agree that the Director may remain a Director until the next Board Meeting);
- (e) resigns by notice in writing to the Secretary or refuses to act;
- (f) is absent without the consent of the Board from two consecutive meetings of the Board; or
- (g) dies.

9. POWERS AND DUTIES OF BOARD

9.1 Powers of Board

- (a) Subject to the Act and this Constitution, the business of the Company shall be managed by the Board, who may, subject to any regulations from time to time made by the Company in general meeting, exercise all powers of the Company which are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made and provided further that the Board shall not implement a significant departure from the ethos of the Company without the prior approval of the Company in general meeting.
- (b) Without limiting the generality of paragraph (a), the Board may exercise all the powers of the Company to borrow money and to charge any property or business of the Company.

9.2 Appointment of attorneys

The Board may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board as may be specified by them and for such period and subject to such conditions as they think fit.

9.3 Negotiable instruments

All negotiable instruments of the Company shall be executed by the persons and in the manner that the Board decide from time to time.

10. PROCEEDINGS OF BOARD

10.1 Number of Board Meetings

The Board shall meet together for the dispatch of business of the Company at least two times in each year and shall meet at least once in each six consecutive months, and may adjourn and otherwise regulate their meetings as they think fit.

10.2 Convening Board Meetings

- (a) Any two Directors may, at any time, by written notice to the Secretary request that a meeting of the Board be convened. The Secretary shall forthwith convene a meeting in accordance with such a request.
- (b) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board. Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given.

10.3 Meetings by technology

- (a) For the purposes of the Act, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a Board meeting:

- (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each Director to communicate with every other Director; or
 - (v) any combination of the technologies described in the above paragraphs.
- (b) A Director may withdraw the consent given under this rule in accordance with the Act.

10.4 Holding of Board Meetings using technology

Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:

- (a) the participating Directors shall, for the purpose of every provision of this Constitution concerning meetings of the Board, be taken to be assembled together at a meeting and to be present at that meeting; and
- (b) all proceedings of those directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

10.5 Quorum at meetings

A quorum for a meeting of the Board is the presence of not less than 5 Directors entitled to vote.

10.6 Chairperson and Deputy-Chairperson

- (a) At their first meeting after the Annual Election in each year the Board shall elect one of their number as their chairperson until the next Annual Election. The Directors may also elect one of their number as Deputy-Chairperson of their meetings and may determine the period for which the person elected Deputy-Chairperson is to hold office.
- (b) Where a meeting of the Board is held and:
 - (i) a Chairperson has not been elected as provided by paragraph (a); or
 - (ii) the Chairperson is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,

the Deputy-Chairperson (if any) must act as chairperson of the meeting. If there is no Deputy-Chairperson or that person is absent or does not wish to chair the meeting, the Directors present shall elect one of their number to be the chairperson of the meeting.

10.7 Proceedings at meetings

- (a) Subject to this Constitution, questions arising at a meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be taken to be a decision of the Board.
- (b) In the case of an equality of votes, the chairperson of the meeting has a second or casting vote in addition to the chairperson's deliberative vote.

10.8 Disclosure of interests

- (a) A Director is not disqualified by the Director's office from contracting with the Company in any capacity.
- (b) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested shall not be avoided merely because the Director is a party to or interested in it.
- (c) A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director has a material personal interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
 - (i) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
 - (ii) not contravened this Constitution or the Act in relation to the matter.
- (d) A general notice that the Director is an officer or member of a specified body corporate or firm and stating the nature and extent of the Director's interest in the body corporate or firm shall, in relation to a matter involving the Company and that body corporate or firm, be a sufficient declaration of the Director's interest, provided:
 - (i) the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board than was stated in the notice; and
 - (ii) the Director has complied with section 192 of the Act.
- (e) A Director may not vote in respect of a matter in which that Director has a material personal interest unless the Director is permitted to do so under the Act.
- (f) If the provisions of this rule and the Act have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement shall not in any way affect its validity.

10.9 Alternate Directors

A Director may not appoint a person to act as an alternate Director in the Director's place.

10.10 Committees

- (a) The Board may delegate any of their powers to a committee or committees consisting of such number of them and/or members of the Company or any other person as they think fit. A committee may consist of two or more persons.
- (b) Without limiting paragraph (a), the Board may delegate matters concerning membership to a Membership Committee. If no Membership Committee is established, any function to be performed by such committee under this Constitution, shall be performed by the Board.
- (c) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Board, this Constitution and the Act. A power so exercised shall be taken to have been exercised by the Board.
- (d) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Board and, if not so determined, is two (except in the case of a committee with one member, in which case the quorum is one). Unless the Board determines otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (e) Minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.

10.11 Written resolutions of Directors

- (a) If a document:
 - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
 - (ii) contains a statement that the signatories to it are in favour of that resolution;
 - (iii) the terms of the resolution are set out or identified in the document; and
 - (iv) has been signed by all of the Directors entitled to vote on that resolution and situate in Australia,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by such Directors and the document has effect as a minute of the resolution.

- (b) For the purposes of paragraph (a):
 - (i) "signed" shall include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director's instructions;
 - (ii) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall

together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and

- (iii) a fax or email which is received by the Company or an agent of the Company and is sent by a Director shall be taken to be signed by that Director not later than the time of receipt of the fax or email by the Company or its agent in legible form.

10.12 Defects in appointments

- (a) All acts done by any meeting of the Board, committees of the Board, or any person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified.

11. MINUTES

11.1 Minutes to be kept

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

- (a) of all appointments of officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
- (c) of all orders made by the Board and of any committee of the Board; and
- (d) of all resolutions and proceedings of meetings of the Company, of all meetings of the Board of the Company, and of all meetings of any committee of the Board,

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

11.2 Copies of minutes shall be forwarded to the Secretary

Copies of all minutes shall be forwarded to the Secretary as soon as possible.

12. SECRETARIES AND OTHER OFFICERS

12.1 Secretaries

- (a) The Secretary holds office on the terms and conditions, as to remuneration and otherwise, as the Board decides. A Secretary shall be appointed at the first meeting of Board after a vacancy in that office occurs.
- (b) The Board may at any time terminate the appointment of a Secretary.

12.2 Other officers

The Board may:

- (a) create any position in the Company with such powers and responsibilities as the Board confers; and
- (b) appoint any person, whether or not a Director to a position created under paragraph (a)(i).

The Board may at any time terminate the appointment of a person holding a position created under paragraph (a)(i) and may also abolish the position.

13. SEAL AND EXECUTING DOCUMENTS

- (a) The Company shall have a common seal.
- (b) The Seal shall be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the Seal. Any document to which the Seal is affixed shall be signed by:
 - (i) two Directors; or
 - (ii) a Director and a Secretary, or any other person engaged by the directors to countersign that document, or a class of documents comprising that document.
- (c) The directors may consent to signature of the affixation of a seal by a director, secretary or other person by facsimile signature affixed by mechanical, electronic or other means.
- (d) This provision shall not limit any other method of execution of any document by the Company.

14. INSPECTION OF RECORDS, ACCOUNTS AND AUDIT

14.1 Inspection of records

- (a) The Board may authorise a member to inspect books of the Company (to the extent, at the time and places and under the conditions the Board considers appropriate).
- (b) A member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Board.

14.2 Accounts

The Board shall:

- (a) cause proper accounts and other records to be kept and audited;
- (b) send members copies of the financial report for the financial year, the Directors' report for the year and the auditor's report on the financial report which shall include a profit and loss statement for the year, a balance sheet as at the end of the year and a statement of cash flows for the year and

every document required by law to be attached thereto by the earlier of 21 days before the next Annual General Meeting or 4 (four) months after the end of the financial year; and

- (c) cause to be laid before each Annual General Meeting the financial report, the Directors' report and the auditor's report for the last financial year that ended before the Annual General Meeting;
- (d) send members the financial report, profit and loss accounts demonstrating the performance of each subsidiary of the Company (if any) for the financial year; and
- (e) send members a half yearly report on the state of affairs of the Company.

14.3 Audit

A properly qualified auditor shall be appointed for the Company to review the financial reports for the financial year in accordance with the Act and to report to the members as required by the Act.

15. NOTICES

15.1 Notices generally

- (a) Any member who has not left at or sent to the registered office a place of address, facsimile number or an email address (for registration in the register) at or to which all notices and documents of the Company may be served or sent shall not be entitled to receive any notice.
- (b) A notice may be given by the Company to any member by:
 - (i) serving it on the member personally;
 - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
 - (iii) fax to the fax number supplied by the member to the Company for the giving of notices; or
 - (iv) transmitting it electronically to the email address given by the member to the Company for the giving of notices.
- (c) Notice to a member whose address for notices is outside Australia shall be sent by airmail, courier, fax or email or any other method which ensures the notice is received within reasonable time.
- (d) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
 - (i) in the case of a notice of a meeting, on the day next after the date of its posting; and
 - (ii) in any other case, at the time at which the letter would be delivered

in the ordinary course of post.

- (e) Where a notice is sent by fax or electronic transmission, service of the notice shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the business day after it is sent.

15.2 Notices of general meeting

- (a) Notice of every general meeting shall be given in the manner authorised by rule 15.1:
 - (i) to every member and to each Director; and
 - (ii) to the auditor for the Company.
- (b) Except as required by the Act, no other person is entitled to receive notice of general meetings.

16. INDEMNITY AND INSURANCE

16.1 Indemnification of Directors and Secretary

To the extent permitted by law, the Company must indemnify each person who is, or has been, a Director or Secretary against any liability incurred as a Director or Secretary, except where the liability:

- (a) is owed to the Company or a related body corporate;
- (b) arises out of conduct involving a lack of good faith;
- © is for a pecuniary penalty order under section 1317G of the Act;
- (d) is for a compensation order under section 1317H of the Act; or
- (e) is for legal costs.

16.2 Indemnification for legal costs

To the extent permitted by law, the Company must indemnify each officer against any liability for legal costs incurred in defending an action for a liability incurred as an officer of the Company, except if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 16.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities & Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Australian Securities & Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

16.3 Loans or advances for legal costs

The Company may, by unanimous resolution of the Board, give an officer a loan or advance in respect of legal costs for defending an action for a liability incurred as an officer of the Company, provided that such loan or advance does not contravene the Act.

16.4 Insurance for officers and auditor

The Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer or auditor of the Company against any liability other than:

- (a) one for legal costs;
- (b) conduct involving a wilful breach of duty in relation to the Company; or
- (c) a contravention of section 182 or 183 of the Act.

16.5 Limitation on Company's obligation to indemnify

The Company need not indemnify a person as provided for in rule 16.1 or 16.2 in respect of a liability to the extent that the person is entitled to compensation in respect of that liability under a contract of insurance.

16.6 Company may enter into document for indemnity and insurance policy

To the extent permitted by law the Company may enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, a Director, Secretary, employee or other officer of the Company.

16.7 16.7 Term of indemnity

The benefit of each indemnity given in rules 16.1 and 16.2 continues, even after its terms or the terms of this paragraph are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

SCHEDULE 1

POSTAL BALLOT PAPER

SUMMERFRUIT AUSTRALIA LIMITED

NOTE: Before completing this ballot paper, please read the "How to Vote" section set out on the reverse of this ballot paper.

BALLOT OF MEMBERS FOR THE ELECTION OF DIRECTORS NAME OF

CANDIDATE PREFERENCE (1 - [*])

[Candidate 1]

[Candidate 2]

[Candidate 3]

[Candidate 4]

etc. TO CONSTITUTE A VALID VOTE, YOU MUST NUMBER EACH OF THE ABOVE CANDIDATES FROM 1 TO [*] IN ACCORDANCE WITH YOUR PREFERENCES.

THE BALLOT WILL CLOSE AT NOON ON [INSERT DATE].

HOW TO VOTE

1. Complete and sign the details on the reverse side of the envelope that has appropriate spaces for the insertion of your name, address and signature (in this Ballot Paper referred to as the "middle envelope").
2. Insert a number from 1 to [*] alongside each candidate in accordance with your preferences. That is, place the number 1 alongside your first preference, 2 alongside your second preference etc.
3. After marking the Ballot Paper as required under paragraph 2, fold it and place it in the small envelope provided and seal the envelope. Then place the small envelope in the completed middle envelope and place the middle envelope in the envelope addressed to the returning officer. Forward this envelope either by post or by personal delivery so as to reach the returning officer **not later than noon [insert date]**.
4. Unless the Ballot Paper is marked as indicated in paragraph 3 above and the details referred to in paragraph 2 above are completed in full and the middle envelope is signed, your vote may be rejected as informal.

.....
Initials of returning officer or appointed assistant

Date:

SCHEDULE 2

MIDDLE ENVELOPE

NOTE: Please use capital letters for your name and address

.....
(Full name of A Member)

.....
(Address of A Member)

.....
(Full name of Representative casting vote on behalf of the A Member)

.....
(Address of Representative casting vote on behalf of the A Member)

.....
(Signature of Representative casting vote on behalf of the A Member)

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Corporations Act 2001 Public Company Limited by Guarantee

SUMMERFRUIT AUSTRALIA LIMITED (Company)

COMPANY CONSTITUTION

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