

Constitution of Soft Plastic Stewardship Australia Limited

# Constitution of Soft Plastic Stewardship Australia Limited

ACN 679 696 998

The Corporations Act

A public company limited by guarantee

Registered in New South Wales

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## Constitution of Soft Plastic Stewardship Australia Limited

Constitution of Soft Plastic Stewardship Australia Limited, a not-for-profit public company limited by guarantee.

### General

#### 1 Definitions

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

**Board** means all or some of the Directors for the time being acting as a board.

**Brand Owner** means:

- (a) a person who is the owner or licensee in Australia of a trade mark under which any Product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or
- (b) a person who is the franchisee in Australia of a business arrangement which allows that person to operate under the name of an already established business which sells or otherwise distributes Products; or
- (c) in the case of a Product that has been imported, the first person to sell that Product in Australia; or
- (d) any Retailer who provides plastic bags to the consumer for the transportation of products purchased by the consumer at the point of sale; or
- (e) the Holding Company of any group of companies conducting any of the activities contemplated by paragraphs (a) to (d).

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in New South Wales.

**By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with rule 54.

**CC Act** means the *Competition and Consumer Act 2010* (Cth).

**Chief Executive Officer** means the chief executive appointed by the Board under rule 44.

**Committee** means a committee of the Board.

**Company** means Soft Plastic Stewardship Australia Limited.

**Constitution** means this constitution.

**Corporations Act** means the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth).

**Director** means a person appointed or elected to the office of director of the Company in accordance with this Constitution and, where appropriate, includes an alternate Director.

**Directorship Category** means, in respect of a Director, a Proprietary Brand Owner Director, Retail Brand Owner Director, Industry Association Proprietary Brand Owner Director or Industry Association Retail Brand Owner Director (as the case may be) (together the **Directorship Categories**).

**Governmental Agency** means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

**Holding Company** has the meaning given in the Corporations Act.

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**Independent Director** means a Director who is not an employee of the Company or any Member and who is free of any business or other relationship that could materially interfere with, or could reasonably be perceived to materially interfere with, the independent exercise of their judgment.

**Industry Association** means a body corporate registered under Australian law representing the interests of Brand Owners.

**Industry Association Member** means a Member meeting the criteria set out in 0 and such other criteria determined by the Board under rule 7.2.

**Industry Association Proprietary Brand Owner Director** means a Director who is either:

- (a) employed by, or is an Officer of, an Industry Association Member that represents Proprietary Brand Owners; or
- (b) a Proprietary SME Member Representative,  
elected in accordance with rule 38.

**Industry Association Retail Brand Owner Director** means a Director who is either:

- (a) employed by, or is an Officer of, an Industry Association Member that represents Retail Brand Owners; or
- (b) a Retail SME Member Representative,  
elected in accordance with rule 38.

**Letter of Support** means a letter supporting a person's nomination for a vacant directorship in a certain Directorship Category, as signed by:

- (a) in the case of a person nominating to be a Proprietary Brand Owner Director, a Proprietary Brand Owner Member (other than an SME Member);
- (b) in the case of a person nominating to be a Retail Brand Owner Director, a Retail Brand Owner Member (other than an SME Member);
- (c) in the case of a person nominating to be an Industry Association Proprietary Brand Owner Director, a Proprietary Brand Owner Member that is also an SME Member;
- (d) in the case of a person nominating to be an Industry Association Retail Brand Owner Director, a Retail Brand Owner Member that is also an SME Member.

**Levy Contribution** has the meaning given to that term in the Scheme Agreement.

**Member** means a person admitted to the membership of the Company in accordance with the provisions of this Constitution and **Membership** has the corresponding meaning.

**Member Fee** has the meaning given to that term in the Scheme Agreement.

**Member's Guarantee Amount** means the amount referred to in rule 9.

**Member Present** means, in connection with a general meeting, a Voting Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

**Officer** has the same meaning as defined in section 9 of the Corporations Act.

**Packaging** means packaging which is used for the containment, protection, marketing, handling or distribution of consumer products and/or business-to-business products.

**Product** means a product sold or supplied in Packaging to a business or consumer, where that Packaging (once used) is Used Packaging that is covered by the Scheme..

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**Proprietary Brand Owner** means a Brand Owner that does not derive the majority of its Revenue from Retailing. For the avoidance of doubt, Proprietary Brand Owner includes Brand Owner corporations that predominantly use third parties to sell their products, such as manufacturers.

**Proprietary Brand Owner Director** means a Director who is employed by, or is an Officer of, a Proprietary Brand Owner Member (other than an SME Member) and elected in accordance with rule 38.

**Proprietary Brand Owner Member** means a Member meeting the criteria set out in rule 7.1(a) and such other criteria determined by the Board pursuant to rule 7.2.

**Proprietary Brand Owner Member Present** means, in connection with a general meeting, a Proprietary Brand Owner Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

**Proprietary SME Member Representative** means a person who is employed by, or an Officer of, an SME Member, and that SME Member is a member of an Industry Association Member that represents Proprietary Brand Owners.

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

**Registration** means registration of the Company as a body corporate by the Australian Securities and Investments Commission.

**Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in rule 12.

**Retail Brand Owner** means a Brand Owner that derives the majority of its Revenue from Retailing. For the avoidance of doubt, Retail Brand Owner includes supermarkets, department stores, general stores and other retailers that predominantly sell direct to consumers.

**Retail Brand Owner Director** means a Director who is employed by, or is an Officer of, a Retail Brand Owner Member (other than an SME Member) and elected in accordance with rule 38.

**Retail Brand Owner Member** means a Member meeting the criteria set out in rule 0 and such other criteria determined by the Board pursuant to rule 7.2.

**Retail Brand Owner Member Present** means, in connection with a general meeting, a Retail Brand Owner Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

**Retail SME Member Representative** means a person who is employed by, or an Officer of, an SME Member, and that SME Member is a member of an Industry Association Member that represents Retail Brand Owners.

**Retailing** means the selling of products directly to the public, whether in store or online and

**Retailer** means a person engaged in doing so.

**Revenue** means in respect of a Brand Owner, the total gross revenue, as stated in that Brand Owner's audited financial statements, for a particular financial year.

**RWR Act** means the *Recycling and Waste Reduction Act 2020* (Cth).

**RWR Rules** means the *Recycling and Waste Reduction (Product Stewardship – Accreditation of Voluntary Arrangements) Rules 2020*.

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**Scheme** means the product stewardship scheme for Used Packaging which may be regulated by the RWR Act and RWR Rules and which, subject to ACCC authorisation, is to be established under the Scheme Agreement.

**Scheme Agreement** means the agreement which, subject to ACCC authorisation, is to be entered into between the Company and the Scheme Participants, as amended from time to time.

**Scheme Participant** has the meaning given to that term in the Scheme Agreement.

**Secretary** means a person appointed as, or to perform duties of, secretary of the Company.

**SME** means an entity that has an annual turnover of less than \$50 million in the immediately preceding financial year.

**SME Member** means an SME that has, in the immediately preceding financial year, placed on the Australian market no more than a specified number of tonnes (as determined by the Board acting in good faith) of Used Packaging covered by the Scheme.

**Special Resolution of Directors** means a resolution passed by at least 75% of the votes cast by Directors entitled to vote on the resolution.

**Special Resolution of Members** means a resolution passed by at least 75% of the votes cast by Members Present.

**Used Packaging** means Packaging that has reached the end of its initial useful life, or such other materials determined by the Board from time to time, subject to the RWR Act and RWR Rules. For the avoidance of doubt, Used Packaging includes used plastic packaging.

**Voting Member** means each Proprietary Brand Owner Member and Retail Brand Owner Member (together the **Voting Members**).

## 2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iii) A reference to *dollars* or \$ is to Australian currency.
  - (iv) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a rule is a reference to a rule of this Constitution.
  - (vi) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (vii) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

## 3 Replaceable Rules

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

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**Objects**

**4 Objects of the Company**

The objects of the Company are to:

- (a) develop, implement and support the overall operation of the Scheme to:
  - (i) collect and recycle Used Packaging;
  - (ii) minimise as far as reasonably practicable environmental damage from disposal of Used Packaging through waste minimisation, reuse and recycling;
  - (iii) result in a net environmental benefit targeting Used Packaging;
  - (iv) support recycled material being made available for producing food grade and other contact-sensitive packaging; and
  - (v) support the re-manufacture of plastic packaging in Australia;
- (b) determine the governance of the Scheme;
- (c) monitor and report to Scheme Participants and, to the extent necessary, regulators on the Scheme;
- (d) promote improvements in the end-to-end operation of the Scheme, including in order to minimise costs, promote efficiency and drive end markets;
- (e) support research and market development in relation to product stewardship of Used Packaging;
- (f) undertake education, awareness and information activities to promote the Scheme;
- (g) promote or support any changes to the law designed or likely to help all or any of the objects of the Company;
- (h) collect and administer levies in connection with the Scheme;
- (i) contract and administer payments for services necessary for the implementation of the Scheme;
- (j) as appropriate, support provision of contracted services to assist with plastic packaging stockpile management or other aspects of Used Packaging stewardship;
- (k) ensure confidentiality of Members' commercially sensitive data; and
- (l) do all such lawful things deemed necessary to achieve the objects of the Company, including all things incidental or conducive to achieving these objectives.

**5 Application of Income and Property to Objects**

- (a) Subject to rule 5(b), the assets and income of the Company must only be used to further the objects of the Company set out in rule 4 and no portion of that income or property may be paid or transferred, directly or indirectly, to any Member by way of dividend, bonus or otherwise.
- (b) Rule 5(a) does not prevent the Company from making a payment in good faith to a Member:
  - (i) of reasonable and proper remuneration for services provided to the Company;
  - (ii) for goods supplied in the ordinary course of business;
  - (iii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company by a Member;

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- (iv) of reasonable and proper rent for premises let by a Member.

### Membership

#### 6 Members of the Company

- (a) The Company must have at least one Member.
- (b) A Member must be a body corporate incorporated in Australia.
- (c) The Members are those persons admitted to the membership of the Company whose names are entered into the Register.
- (d) On Registration of the Company the Members will be those persons set out in the schedule.
- (e) Any body corporate is eligible to apply to become a Member if the body corporate:
  - (i) agrees to assume the liability to pay the Member's Guarantee Amount;
  - (ii) satisfies the criteria for the relevant class of Membership in accordance with rule 7;
  - (iii) agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
  - (iv) submits a written application in accordance with rule 10; and
  - (v) subject to rule 13(c), pays any Member Fee and/or Levy Contribution due and payable as determined by the Board in accordance with rule 13.
- (f) Each Voting Member will be entitled to vote at all general meetings.
- (g) The Board may determine from time to time any additional benefits that shall attach to Membership.

#### 7 Members and Classes of Membership

##### 7.1 Membership classes

There shall be the following classes of Membership:

- (a) **Proprietary Brand Owner Members**  
Proprietary Brand Owner Members:
  - (i) must be bodies corporate which are Proprietary Brand Owners;
  - (ii) when the Scheme is established, must be Scheme Participants; and
  - (iii) shall be entitled to vote on all resolutions concerning the Company at general meetings.
- (b) **Retail Brand Owner Members**  
Retail Brand Owner Members:
  - (i) must be bodies corporate which are Retail Brand Owners;
  - (ii) when the Scheme is established, must be Scheme Participants; and
  - (iii) shall be entitled to vote on all resolutions concerning the Company at general meetings.

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### (c) **Industry Association Members**

Industry Association Members:

- (i) must be bodies corporate which are Industry Associations registered or active in Australia;
- (ii) must be aligned with the objects of the Company and have a demonstrated track record of alignment, as determined by the Board;
- (iii) must have as part of their membership:
  - (A) Members of the Company; and
  - (B) at least 25% of members who are SMEs; and
- (iv) shall not be entitled to vote on any resolution concerning the Company at general meetings, unless otherwise required by law.

## 7.2 **Membership matters reserved to the Board**

Without limiting the Board's powers more generally, the Board may determine from time to time, acting in good faith:

- (a) additional restrictions to or qualifications and criteria for admission to each Membership class which restrictions, qualifications or criteria must be set out in a Membership By-Law;
- (b) the rights attached to each Membership class which rights must be set out in a Membership By-Law;
- (c) the Membership class best applicable to any body corporate applying for Membership pursuant to rule 10; and
- (d) whether a Member should be transferred to another Membership class because of a change in their circumstance or status.

## 8 **Limited Liability of Members**

The liability of the Members is limited.

## 9 **Members' Liability on Winding Up**

Each Member undertakes to contribute to the assets of the Company in the event of it being wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company and of the costs, charges and expenses of winding up, such amount as may be required not exceeding \$100 (***Member's Guarantee Amount***).

## 10 **Admission as a Member**

- (a) Except for the initial Members set out in the schedule, a person, who must be a body corporate, who wants to apply for Membership must submit a written application to the Secretary signed by the applicant in the form determined by the Board.
- (b) An application for Membership of the Company must:
  - (i) be made in writing in the form prescribed by the Board from time to time, which may include an online form;
  - (ii) specify the class of Membership being applied for by the applicant;
  - (iii) include a signature, or equivalent acknowledgement by the applicant evidencing that the applicant agrees to be bound by the Constitution;

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- (iv) be accompanied by any Member Fee and/or Levy Contribution payable at that time pursuant to rule 13; and
- (v) be lodged with the Secretary.
- (c) At the next Board meeting after the receipt of an application for membership, the Board will consider the application and decide whether or not to admit the applicant in their absolute discretion (including whether that applicant satisfies any eligibility criteria set out in the Scheme Agreement).
- (d) If the Board decides not to admit an applicant to the Membership, it does not have to give any reasons for its decision.
- (e) As soon as practicable after the Board makes a determination under rule 10(c), the Secretary must:
  - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
  - (ii) if the Board approved the application, as soon as possible after receipt by the Board of a signed Deed of Accession (as that term is defined in the Scheme Agreement), enter the applicant's name and class of Membership in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
  - (iii) if the Board rejected the application, refund any Member Fee and/or Levy Contribution to the applicant.

### **11 Membership Entitlements not Transferable**

A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

### **12 Representative**

- (a) Each Member must appoint as its Representative a natural person.
- (b) The name and address of the Representative will be entered in the Register as the representative of the Member.
- (c) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Member which is represented by that particular Representative.
- (d) If the appointment of a Representative by the Member is made by reference to a position held, the appointment must identify the position.
- (e) A Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.
- (f) A signature by a Representative of a Member on behalf of that Member is taken to be the signature of that Member for the purposes of this Constitution.
- (g) Any power or right of a Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (h) Members are represented at meetings of Members by their Representatives, subject to the right of a Member Representative to appoint a proxy pursuant to rule 35.

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- (i) The actions of a Representative bind the Member which is represented by that particular Representative.
- (j) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

### **13 Member Fees and Levy Contributions**

- (a) There may be a Member Fee and/or Levy Contribution payable by each Member to the Company, including by way of annual subscription, as provided in the Scheme Agreement when it is finalised.
- (b) Subject to rule 13(c), the amount of the Member Fee and/or Levy Contribution shall be payable by Members at such times, in such amounts and in such manner as determined by the Board from time to time.
- (c) The Board may, by a Special Resolution of Directors:
  - (i) determine that no Member Fees and/or Levy Contributions are payable by a Member or Members (in whole or in part) in a given year; and
  - (ii) extend the time for payment of Member Fees and/or Levy Contributions by any Member.
- (d) No part of any Member Fee and/or Levy Contribution shall be refunded to a Member who ceases to be a Member in accordance with rule 17.

### **14 Resignation of a Member**

A Member may resign from the Company by giving at least 30 days' prior written notice to the Secretary. The resignation will be effective from the date it is received by the Secretary.

### **15 Misconduct of a Member**

- (a) The Board may expel from the Company any Member:
  - (i) who does not comply with the provisions of this Constitution;
  - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company; or
  - (iii) at the written request of at least 50% of Members,  
and remove the Member's name from the Register.
- (b) At least 21 days before the Board meets to expel a Member the Board must send a notice to the Member that states:
  - (i) all relevant information, including any allegations against the Member;
  - (ii) the proposed resolution for the Member's expulsion;
  - (iii) that the Member has an opportunity to address the meeting, before the passing of the resolution, either orally or in writing and provide any explanation or defence the Member thinks fit; and
  - (iv) that the Member may elect to have the question of expulsion dealt with by the Company in general meeting, with the notice of meeting to enclose a copy of the notice sent to the relevant Member and such relevant information as the Member reasonably requests, provided that the Member notifies the Secretary in writing, at least 48 hours before the meeting at which the resolution is to be considered by the Board.

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- (c) If an election is made under rule 15(b)(iv):
  - (i) a general meeting must be convened and the resolution considered; and
  - (ii) the Company must expel the Member and remove the Member's name from the Register where the resolution is passed at the meeting for the expulsion of the Member by a majority of no less than two-thirds of those present and voting (such voting will be by ballot).

### **16 Liability after a Person Ceases to be a Member**

A person who ceases to be a Member must pay to the Company:

- (a) all Member Fees, Levy Contributions or other amounts owing to the Company that are due and unpaid at the date that the person ceases to be a Member; and
- (b) any amount that the Member is or may become liable to pay under rule 9.

### **17 Ceasing to be a Member**

A Member's membership of the Company will automatically cease on the date:

- (a) that the Secretary receives written notice of resignation from that Member under rule 14;
- (b) determined by the Board passing a resolution that the Member no longer satisfies the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
- (c) determined by the Board passing a resolution that the Member's Membership ceases because that the Member has:
  - (i) failed to pay a Levy Contribution or Member Fee within thirty (30) days after it falls due (taking into account any decisions of the Board with respect to that Member's Member Fee and/or Levy Contribution under rule 13(c)); and
  - (ii) subsequently failed to rectify this default within thirty (30) days of being notified by the Company;
- (d) that the Member is expelled from the Company under rule 15;
- (e) a liquidator is appointed in connection with the winding up of the Member; or
- (f) an order is made by a court for the winding up or deregistration of the Member.

### **18 Register of Members**

The Register of Members must be kept by the Secretary and must contain the full name and address of each Member and any other information required by the Board.

### **19 Address of Members**

If a Member informs the Secretary in writing of any change in their address, the Secretary will enter any such change of address in the Register. The latest address in the Register is deemed to be the Member's registered address.

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**General Meetings**

**20 General Meetings**

- (a) At least 50% of Directors may convene a general meeting of the Company whenever they think fit to be convened at a time and:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using virtual meeting technology; or
  - (iii) using virtual meeting technology only,provided that, in each case, Members as a whole are given a reasonable opportunity to participate in the meeting.
- (b) If virtual meeting technology is to be used for a general meeting of the Company, the Board will determine the type of virtual meeting technology to be used, which may include any combination of telephone, video conferencing, messaging, smartphone application or any other audio or visual device which permits instantaneous communication.
- (c) Any Director may cancel or postpone any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed general meeting.

**21 Notice of General Meetings**

- (a) Where the Board has called a general meeting, notice of the meeting may be given in the form and manner in which the Board determines, subject to the Corporations Act, and provided not fewer than 21 days' notice is given.
- (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 does not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Shorter notice of a general meeting may be given if the calling of the general meeting on shorter notice is agreed by Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

**22 Meetings Requested by Members**

- (a) If the Board receives a request from Members with at least 5% of the votes that may be cast at a general meeting to call and arrange to hold a general meeting, the Board must give notice of a general meeting within 21 days after the date of receipt of that request.
- (b) A request made under rule 22(a) must:
  - (i) detail any proposed resolution;
  - (ii) include the names of the Members making the request; and
  - (iii) be signed by all of the Members making the request. For the avoidance of doubt, signatures for this purpose may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

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**23 Business of Annual and Other General Meetings**

- (a) The business of an annual general meeting of the Company includes:
  - (i) to receive and consider the accounts and reports required by the Corporations Act to be laid before each annual general meeting;
  - (ii) to elect Directors (including as required pursuant to rule 38);
  - (iii) when relevant to appoint an auditor and to fix the auditor's remuneration; and
  - (iv) to transact any other business that, under this Constitution or the Corporations Act, is required to be transacted at any annual general meeting.

The business of an annual general meeting may also include any other business that may be transacted at a general meeting.

- (b) No person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution, except with the approval of the Board, with the permission of the chair of the meeting or under the Corporations Act.

**24 Right of Others to Attend General Meeting**

- (a) A Secretary, Chief Executive Officer or Director who is not a Member is entitled to be present at and, at the request of the chair of the meeting, to speak at any general meeting.
- (b) Any other person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the chair of the meeting, to speak at that general meeting.

**25 Quorum for General Meetings**

- (a) No business may be transacted at any general meeting except, subject to rule 26, the election of a chair of the meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 10 Members Present constitutes a quorum, unless there are fewer than 15 Voting Members, in which case a quorum is 50% of Voting Members.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the chair of the meeting or the Board adjourns the meeting to a date, time and place determined by that chair or the Board. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (d) Nothing in this Constitution limits the Company's power to pass a resolution without a general meeting in accordance with the Corporations Act.

**26 Conduct of General Meetings**

- (a) Subject to rule 26(b), the chair of the Board is entitled to preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chair of the Board; or

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- (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to act as chair of the meeting,

the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 26(b)(i) or 26(b)(ii) apply to the deputy chair of the Board, the Directors present may 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 may elect one of their number to be chair of the meeting.

- (c) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (d) The chair of a general meeting of the Company may make rulings without putting the question (or any question) to a vote if that chair considers action is required to ensure the orderly conduct of the meeting.
- (e) If at any time the chair of a general meeting of the Company considers it necessary or desirable for the proper and orderly conduct of the meeting, that chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the chair of a general meeting in relation to matters of procedure (including any procedural motions moved at, or put to, the meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, the meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (g) If a person purports to cast a vote at a general meeting in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a chair of a general meeting by law.

## **27 Acting Chair**

- (a) If during any general meeting the chair of the meeting acting under rule 26 is unwilling to chair any part of the proceedings, that chair may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings. On the conclusion of the relevant part of the proceedings the acting chair of the meeting is to withdraw and the chair of the meeting acting under rule 26 is to resume to chair the meeting.
- (b) Where an instrument of proxy appoints the chair of a general meeting as proxy for the part of the proceedings for which an acting chair of the meeting has been nominated, the instrument of proxy is taken to be in favour of that acting chair for the relevant part of the proceedings.

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**28 Adjournment of General Meetings**

- (a) During the course of a general meeting the chair of the meeting may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by that chair.
- (b) If the chair of a general meeting exercises a right of adjournment of the meeting under rule 28(a), that chair has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless that chair exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (c) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**29 Voting**

**29.1 Voting at General Meetings**

- (a) Subject to the requirements of the Corporations Act and rule 29.2, any question submitted to a general meeting is to be decided by a simple majority of votes validly cast on the question at the meeting.
- (b) Subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (c) Unless a poll is demanded, a declaration by the chair of a general meeting following a vote on a show of hands at the meeting that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) At any general meeting, a poll may be demanded by a Member in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of the meeting or, unless that chair otherwise determines, the adjournment of the meeting. A demand for a poll may be withdrawn.

**29.2 Voting by special resolution**

- (a) In addition to any decisions that require a Special Resolution of Members at law and any decisions which the Scheme Agreement requires to be passed by a Special Resolution of Members, the following decisions must be passed by a Special Resolution of Members:
  - (i) any decision to amend or repeal this Constitution;
  - (ii) any decision to create a new class of Membership;
  - (iii) any decision to materially change the nature of the business of the Company;
  - (iv) any decision to change the Company name or type (other than to the extent required by law); and
  - (v) any decision to make an application or commence any proceedings or take any other steps for the winding up, dissolution, or appointment of an administrator of the Company.

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**30 Special Meetings**

All the provisions of this Constitution as to general meetings apply to any special meeting that may be held under the operation of this Constitution or the Corporations Act.

**31 Procedure for Polls**

- (a) When demanded at a general meeting, a poll may be taken in the manner and at the time that the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chair of the meeting considers appropriate.
- (c) The result of a poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. Subject to rules 27 and 29.1(d), a poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

**32 Chair Does Not Have Casting Vote**

In the case of an equality of votes on a show of hands or on a poll at a general meeting of the Company, the chair of the meeting does not have a casting vote in addition to any vote to which that chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.

**33 Representation and Voting of Members**

- (a) Subject to this Constitution and any rights or restrictions for the time being placed on any Member:
  - (i) at meetings of Members, each Voting Member entitled to attend and vote may:
    - (A) attend and vote in person; or
    - (B) be represented and vote by proxy, by attorney or by representative,
  - (ii) a Voting Member may only vote by one of the permitted methods in rule 33(a)(i) although, without limiting rule 36(b), a Voting Member may attend and participate in a meeting even though the Voting Member has previously appointed a proxy or attorney in respect of that meeting; and
  - (iii) each Voting Member has one vote both on a show of hands and a poll, subject always to the voting entitlements attached to their Membership class.
- (b) No person other than:
  - (i) a Voting Member;
  - (ii) a Representative of a Voting Member;
  - (iii) a proxy or attorney of a Voting Member;
  - (iv) a proxy or attorney of a Representative of a Voting Member,shall be entitled to vote at a general meeting.

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**34 Objection to Qualification to Vote**

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the chair whose decision shall be final and conclusive and a vote allowed by the chair shall be valid for all purposes.

**35 Form of Proxy**

- (a) A Member who is entitled to attend and vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A Voting Member may appoint one proxy. A proxy need not be a Member.
- (c) An appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) that the Board may prescribe or accept.
- (d) If a proxy appointment is not properly executed or validated, incomplete or unclear, the following provisions apply. Nothing obliges the Board or the Company to do anything referred to in those provisions.
  - (i) If the name of the proxy is not included, the appointment of proxy is taken to be given in favour of the chair of the meeting.
  - (ii) If the appointment has not been duly signed or validated, the Company may:
    - (A) return the appointment to the appointing Member;
    - (B) request that the Member sign or validate the appointment and return it to the Company within a period decided by the Board (which may be later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
  - (iii) If the appointment is otherwise incomplete or unclear, the Company may, by written or oral communication, clarify with a Member any instruction on the appointment and complete or amend the contents of any appointment to reflect any clarification in instruction received from the Member (which completion or amendment may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments). For this purpose, the Member appoints the Company as its attorney.
- (e) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment lodged at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Company and validated by the Member if there is compliance with the requirements set out in the notice.

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(f)

### 36 Validity of Proxies, Attorneys and Representatives

- (a) A vote exercised in accordance with the terms of a proxy appointment, a power of attorney or other relevant instrument of appointment is valid despite:
- (i) the previous death or unsoundness of mind of the principal; or
  - (ii) the revocation of the appointment, power or instrument (or of the authority under which it was made or given),

if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the Company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy appointment or power of attorney (subject to its terms) is not revoked by the principal attending and taking part in the relevant meeting unless the principal actually votes at the meeting on a resolution for which the proxy appointment or power of attorney is proposed to be used.
- (c) Voting instructions given by a Voting Member to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy. If a Voting Member wishes to give a Company Proxy appointed by the Member new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the Company at least 48 hours before the meeting or adjourned meeting by a notice in writing signed by the Voting Member or they are otherwise validated by the Voting Member in a manner acceptable to the Board in its discretion prior to the commencement of the meeting.

#### 36.1 Written Resolutions of Members

- (a) The Members may pass a resolution without a general meeting being held if all Members, who are entitled to vote on the resolution, unanimously assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Member may signify assent to a document under this rule by signing the document. The resolution is passed when the last of the Members has assented to the document.
- (c) Separate copies of a document may be used for signing by the Members if the wording of the resolution and statement is identical in each copy.

## Appointment, Removal and Remuneration of Directors

### 37 Number of Directors

- (a) All Directors are to be natural persons.
- (b) The number of Directors (not including alternate Directors) must not be fewer than four (4) nor more than ten (10) (or, subject to rule 39(d), such lower number that the Board may determine from time to time in accordance with the Corporations Act, provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction).

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- (c) The Board must be made up of:
  - (i) up to three Proprietary Brand Owner Directors, appointed in accordance with rule 38;
  - (ii) up to three Retail Brand Owner Directors, appointed in accordance with rule 38;
  - (iii) up to one Industry Association Proprietary Brand Owner Director, appointed in accordance with rule 38;
  - (iv) up to one Industry Association Retail Brand Owner Director, appointed in accordance with rule 38; and
  - (v) up to two Independent Directors, appointed in accordance with rule 39.
- (d) On incorporation of the Company, the initial Board comprises:
  - (i) William Heague and Sandra Edit Martinez Penaloza, each a Proprietary Brand Owner Director; and
  - (ii) Brooke Frances Donnelly and Lorenzo Kozlovic, each a Retail Brand Owner Director.

## **38 Nomination and election process for appointment of Directors in each Directorship Category**

### **38.1 Nomination process**

- (a) In advance of the Company's annual general meeting each year, the Secretary is to notify Members of the number of vacant directorships in each Directorship Category which may be filled at the next annual general meeting. This notice is to be issued no later than 60 days prior to the annual general meeting, and if there is a vacancy the notice must include information on eligibility and the nomination process.
- (b) Nominations for each Directorship Category may be submitted by any person, provided such nomination is:
  - (i) in writing and signed by the proposer and (if not identical to the proposer) the nominee for election;
  - (ii) accompanied by a consent to act as a Director signed by the nominee for election, as required under the Corporations Act;
  - (iii) accompanied by a statement that they are:
    - (A) supportive of the objects of the Company set out in rule 4; and
    - (B) not disqualified from becoming a Director under the Corporations Act;
  - (iv) accompanied by a nomination form identifying the Directorship Category for which nomination is made, and addressing core criteria, as determined by the Board in the By-Laws from time to time;
  - (v) accompanied by a valid Letter of Support; and
  - (vi) received by the Secretary no later than 20 days after the Secretary issues the notice under rule 38.1(a).
- (c) A nomination may be withdrawn by the relevant nominee for election at any time prior to the relevant annual general meeting by giving written notice to the Secretary.

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**38.2 Election process for vacant directorship(s) in a certain Directorship Category**

- (a) If, at the date of the annual general meeting, the number of persons who have nominated for a vacant directorship in a certain Directorship Category is equal to the number of vacant directorships in that Directorship Category at the relevant time, the chair of the meeting must declare such persons elected to such vacant directorship(s) in that Directorship Category.
- (b) If, at the date of the annual general meeting, the number of persons who have nominated for a vacant directorship in a certain Directorship Category is more than the number of vacant directorships in that Directorship Category at the relevant time, a ballot must be held in accordance with rule 38.3 to determine who shall be elected to such vacant directorship(s) in that Directorship Category.

**38.3 Ballot for vacant directorship(s) in a certain Directorship Category**

- (a) If a ballot is required for the election of a certain vacant directorship(s) in a certain Directorship Category, the Secretary must conduct the ballot for such vacant directorships in that Directorship Category.
- (b) The election must be by secret ballot.
- (c) If the election is held in person, the Secretary must give a ballot paper to:
  - (i) each Eligible Member Present at the annual general meeting; and
  - (ii) if relevant, each proxy appointed by a Eligible Member Present,where **Eligible Member Present** means, in relation to a vacant directorship which relates to:
  - (iii) a Proprietary Brand Owner Director, each Proprietary Brand Owner Member Present that is not an SME Member;
  - (iv) a Retail Brand Owner Director, each Retail Brand Owner Member Present that is not an SME Member;
  - (v) an Industry Association Proprietary Brand Owner Director, each Proprietary Brand Owner Member Present that is an SME Member (or, if there are no Proprietary Brand Owner Members Present that are SME Members, each Proprietary Brand Owner Member Present); and
  - (vi) an Industry Association Retail Brand Owner Director, each Retail Brand Owner Member Present that is an SME Member (or, if there are no Retail Brand Owner Members Present that are SME Members, each Retail Brand Owner Member Present),at such annual general meeting.
- (d) If the ballot is for a single vacant directorship in that Directorship Category, the Eligible Members Present must write on the ballot paper the name of the candidate for whom they wish to vote.
- (e) If the ballot is for more than one vacant directorship(s) in that Directorship Category:
  - (i) the Eligible Members Present must write on the ballot paper the name of each candidate for whom they wish to vote;
  - (ii) the Eligible Members Present must not write the names of more candidates than the number to be elected.

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- (f) Ballot papers that do not comply with rule 38.3(e)(ii) are not to be counted.
- (g) Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.
- (h) The Secretary must declare elected the candidate or, in the case of an election for more than one vacant directorship in that Directorship Category, the candidates, who received the most votes.
- (i) If the Secretary is unable to declare the result of an election under rule 38.3(h) because two or more candidates received the same number of votes, the Secretary must:
  - (i) conduct a further election for the position in accordance with rules 38.3(b) to 38.3(h) to decide which of those candidates is to be elected; or
  - (ii) with the agreement of those candidates, decide by lot which of them is to be elected.
- (j) If the election is not held in person, the Secretary must conduct the process in rules 38.3(b) to 38.3(g) via a secure electronic voting platform.

### **39 Appointment and Removal of Independent Directors**

- (a) For the avoidance of doubt, this rule 39 applies only to Independent Directors.
- (b) The Members Present at a general meeting may by resolution:
  - (i) appoint any eligible person as an Independent Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed the maximum number determined under rule 37(b) and the number of Independent Directors does not exceed the maximum number specified in rule 37(c)(v); and
  - (ii) remove any Independent Director from office.
- (c) No person other than an Independent Director vacating office under rule 42 is eligible to be elected an Independent Director at any general meeting unless a notice of the person's candidature (signed by the person) is given to the Company at its registered office at least 35 Business Days before the meeting (or, in the case of a meeting that Members have requested the Board to call, 30 Business Days).
- (d) The Board may at any time appoint a person with the skills and experience described in rule 39(e) as an Independent Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed the maximum number determined under rule 37(b) and the number of Independent Directors does not exceed the maximum number specified in rule 37(c)(v).
- (e) Any Independent Director appointed by the Board must be a person who will bring skills and experience to the Board to enable the Board to advance the objects of the Company.

### **40 Term**

- (a) Directors who are not Independent Directors shall hold office for a term of three (3) years but shall be eligible for re-election for a further term of three (3) years.
- (b) Directors who are not Independent Directors shall not hold office for more than six (6) consecutive years.
- (c) Independent Directors shall hold office for a term of up to three (3) years but shall be eligible for reappointment:

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- (i) for a further term of up to three (3) years; and
  - (ii) for two further terms of one (1) year each.
- (d) Once a Director has served the maximum consecutive term, the Director is not eligible for reappointment or re-election to the Board until after a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board.

### **41 Remuneration of Directors**

- (a) No Director who is not an Independent Director is entitled to be paid a fee for their service as a Director.
- (b) Independent Directors will be remunerated for their services as Directors by such amount or value of remuneration each year (if any) as the Board may determine by resolution of at least fifty one percent (51%) of Directors voting on the resolution.
- (c) Any remuneration for Independent Directors must be a fixed amount or value and not a commission of any nature.
- (d) The Directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Board or of a committee of the Board or any general meeting of the Company, or otherwise in connection with the business or affairs of the Company, where the amount payable has been approved by the Board.
- (e) Subject to the Corporations Act, a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be determined by the Board.

### **42 Vacation of Office of Director**

- (a) In addition to the circumstances in which the office of a Director becomes vacant:
  - (i) under the Corporations Act; and
  - (ii) under rule 39(b)(ii),the office of a Director becomes vacant with immediate effect if the Director:
  - (iii) 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;
  - (iv) resigns by notice in writing to the Company;
  - (v) is absent without the consent of the Board from meetings of the Board held during a continuous period of six months;
  - (vi) dies; or
  - (vii) in the case of a Director in a Directorship Category, that Director:
    - (A) ceases to be employed by, or an Officer of, a Member; or
    - (B) becomes employed by, or becomes an Officer of, an entity that is already represented on the Board in any Directorship Category;
  - (viii) in the case of a Retail Brand Owner Director, that Director ceases to be employed by, or an Officer of, a Retail Brand Owner Member that is not an SME Member;
  - (ix) in the case of a Proprietary Brand Owner Director, that Director ceases to be employed by, or an Officer of, a Proprietary Brand Owner Member that is not an SME Member;

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- (x) in the case of an Industry Association Retail Brand Owner Director, that Director ceases to be either:
  - (A) a Retail SME Member Representative employed by a Retail Brand Owner; or
  - (B) employed by, or an Officer of, an Industry Association that represents Retail Brand Owners;
- (xi) in the case of an Industry Association Proprietary Brand Owner Director, that Director ceases to be either:
  - (A) a Proprietary SME Member Representative employed by a Proprietary Brand Owner; or
  - (B) employed by, or an Officer of, an Industry Association that represents Proprietary Brand Owners; or
- (xii) in the case of an Independent Director, that Director becomes employed by, or becomes an Officer of, a Member.
- (b) If a vacancy arises in a Directorship Category more than 60 days before an annual general meeting, the Board may appoint a person (being a person eligible to stand for election in that Directorship Category) as a Director to fill that casual vacancy. Any Director appointed under this rule must retire at the next annual general meeting, and may stand for election at that meeting in accordance with rule 38.
- (c) The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in rule 37(b) the Board may only act:
  - (i) for the purpose of:
    - (A) increasing the number of Directors to the minimum; or
    - (B) convening a general meeting; or
  - (ii) in emergencies (as determined by the Board from time to time).

**43 Alternate Directors**

Subject to this Constitution, each Director may appoint a person with the skills and experience described in rule 39(e) approved by a majority of the other Directors to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office of the Company or to a meeting of the Board. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of the Company of notice in writing signed by the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by

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- whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (d) the alternate Director is entitled to be reimbursed under rule 41(b) as if the alternate Director were a Director;
  - (e) unless previously terminated, the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
  - (f) the alternate Director is not to be taken into account in determining the number of Directors; and
  - (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

## CEO and Powers of the Board

### 44 Appointment of Chief Executive Officer

- (a) The Board may appoint a person to the office of Chief Executive Officer of the Company for the period and on the terms as it determines.
- (b) Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any such appointment, with or without cause.
- (c) An exempt Chief Executive Officer is not subject to election and re-election. An exempt Chief Executive Officer is a Chief Executive Officer designated by the Board to be an exempt Chief Executive Officer.

### 45 Powers of the Board and Chief Executive Officer

- (a) The business of the Company is managed by the Board, which may exercise all powers of the Company that are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) The Board may, on the terms and conditions and with any restrictions as it determines, delegate to the Chief Executive Officer any of the powers exercisable by it and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer. Giving powers to the Chief Executive Officer does not prevent the exercise of those powers by the Board.

## Proceedings of the Board

### 46 Proceedings of the Board

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it determines.
- (b) Until otherwise determined by the Board, 51% of Directors form a quorum.
- (c) A Director may at any time, and a Secretary upon the request of a Director must, convene a meeting of the Board. A meeting of the Board may also be convened in any other manner determined by the Board from time to time.

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- (d) Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission or other electronic means to the usual place of business or residence of the Director or at any other address given to a Secretary by the Director or by any technology agreed by all the Directors.

### **47 Meetings of the Board by Technology**

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) any other technology that permits each Director to communicate with every other Director; or
  - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) 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:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in the one location.

### **48 Chair of the Board**

- (a) The Board must elect one of the Independent Directors as chair of the Board and the other as deputy chair of the Board and may decide the period for which that chair and that deputy chair are to hold office as chair and deputy chair, respectively.
- (b) In the absence of a sufficient number of Independent Directors to hold the offices of chair and deputy chair, the Directors must elect one Director as the chair and/or deputy chair until sufficient Independent Directors are appointed to hold such offices.
- (c) Where a meeting of the Board is held and:
  - (i) a chair of the Board has not been elected as provided by rule 48(a); or
  - (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to chair the meeting,

the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 48(c)(i) or 48(c)(ii) apply to the deputy chair of the Board, the Directors present may elect one of their number to chair the meeting.

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**49 Directors' Voting Rights and Exercise of Powers**

- (a) Without limiting rule 52, a meeting of the Board of which notice has been given to all Directors and at which a quorum is present, is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board. Nothing in this rule 49(a) limits the exercise of any authority, power or discretion of the Board which has been delegated by the Board in accordance with law or this Constitution.
- (b) Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting.
- (c) In addition to any decisions which the Scheme Agreement or this Constitution require to be passed by a Special Resolution of Directors, the following decisions of the Board must be passed by a Special Resolution of Directors:
  - (i) making a repayment or prepayment of Member debt;
  - (ii) entering into, varying or terminating any agreements or arrangements with a Member or a related body corporate of a Member;
  - (iii) varying the terms of appointment of a Director;
  - (iv) creating new legal entities which are subsidiaries of the Company;
  - (v) making an application or submission to a Governmental Agency (for example, an application for voluntary product stewardship accreditation under the RWR Act and RWR Rules, or an application for authorisation (including an interim authorisation) pursuant to section 88 of the CC Act), except for routine reporting;
  - (vi) amending the Scheme name or logo;
  - (vii) borrowings or other forms of financial accommodation (other than credit in normal course of business);
  - (viii) commencing, conducting or settling any litigation, arbitration or other legal proceedings for more than \$500,000 (other than routine debt collection proceedings);
  - (ix) appointing or revoking the appointment of a Chief Executive Officer in accordance with rule 45; and
  - (x) expanding the scope of the Scheme or implementing a new product stewardship scheme.
- (d) In the case of an equality of votes on an ordinary resolution at a meeting of the Board, the chair of the meeting has a casting vote in addition to that chair's deliberative vote, unless only two Directors are present and entitled to vote at the meeting on the relevant question.
- (e) Subject to rule 50 and the Corporations Act (which has a number of provisions directed at avoiding conflicts of interest), a Director:
  - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Board and be counted as part of the quorum;
  - (ii) may enter into contracts with, or otherwise have dealings with, the Company;
  - (iii) may hold any other office or place of profit in the Company, except as auditor; and

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- (iv) may hold any other office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.
- (f) A Director is not disqualified from the Director's office by contracting with the Company in any capacity by reason of holding the office of Director.
- (g) A Director is not liable to account to the Company for any profit realised by any contract, dealings, office or place of profit contemplated by rule 49(e), by reason only of holding the office of Director or of the fiduciary relationship established by the office of Director.
- (h) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.
- (i) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

### **50 Material Personal Interests of Directors**

- (a) In relation to a contract or arrangement in which a Director has a material personal interest:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (b) Nothing in this rule 50 affects the duty of a Director:
  - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with the Corporations Act or any other law.

### **51 Committees of the Board**

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit and may revoke that delegation. In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not in conflict with or superseded by any regulations made by the Board under rule 51.
- (c) Nothing in this rule 51 limits the power of the Board to delegate.

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**52 Written Resolutions of Directors**

- (a) The Board may pass a resolution without a Board meeting being held if all Directors, or a majority of the Directors (where notice of the resolution has been given to all Directors), who are entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Director may signify assent to a document under this rule 52 by signing the document or by notifying a Secretary of the assent of the Director by any technology including fax or email. The resolution is passed when the last of the Directors constituting a majority (as applicable), has assented to the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) For the purpose of this rule 52, the references to Directors include any alternate Director appointed by a Director who is not available to assent to the document or is otherwise unable to assent to the document within a reasonable time, but do not include any other alternate Directors.

**53 Defects in Appointments of Directors**

- (a) All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

**54 By-Laws**

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on the Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments and repeals.

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**Secretaries and Other Officers**

**55 Secretaries**

- (a) A Secretary holds office on the terms and conditions as to remuneration, and otherwise, as the Board decides.
- (b) The Secretary may be, but need not be, a Director.
- (c) The Board may at any time terminate the appointment of a Secretary.

**56 Other Officers**

- (a) The Board may from time to time:
  - (i) create any other position or positions in the Company with the powers and responsibilities as the Board may from time to time confer; and
  - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 56(a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under rule 56(a)(i) and may abolish the position.

**Commercially Sensitive Information**

**57 Principles and Protocol Regarding Commercially Sensitive Information**

- (a) As soon as reasonably practicable after Registration, the Board must implement a protocol to minimise the receipt by the Company of commercially sensitive information of Members, which protocol may include the appointment of a collection agent.
- (b) The Members and the Board agree that in implementing the objects of the Company, to the extent practicable and to the extent permitted by law, any financial record or other record of the Company that contains commercially sensitive information of a Member must be managed in accordance with the protocol adopted by the Board in accordance with rule 57(a).

**Execution of Documents**

**58 Execution of Documents**

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (i) two (2) Directors signing the same; or
  - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

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**Accounts and Inspection of Records**

**59 Accounts and Inspection**

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Members.

**60 Minutes and records**

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
  - (i) proceedings and resolutions of meetings of the Company's Members;
  - (ii) proceedings and resolutions of Board meetings;
  - (iii) resolutions passed by Members or the Board without a meeting; and
  - (iv) such other matters as are required by the Corporations Act to be recorded in the record books of the Company.
- (b) Minutes of meetings must be signed by the chairperson of the meeting or a Director within a reasonable time after the meeting is held, or by a Director in the case of a written resolution.
- (c) Minute books must be kept at the Company's registered office or its principal place of business in this jurisdiction.
- (d) Minute books that relate to Members' meetings and Members' resolutions passed without meetings must be available for inspection by Members, free of charge. Members may send a written request to the Company for a copy of those minutes. The Company must provide, free of charge, copies of any minutes made pursuant to this rule within 14 days after receipt of a written request for a copy of those minutes.

**Seals**

**61 Seals and Their Use**

The Company may have a common seal and a duplicate common seal. If the Company has any such seal:

- (a) it may only be used with the authority of the Board; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

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**Service of Documents**

**62 Service of Documents**

In this rule 62, a reference to a document includes a notice. Subject to the Corporations Act:

- (a) Any Member who has not left at or sent to the registered office, a place of address or an electronic address (for registration in the Register) at or to which all documents of the Company may be served or sent is not entitled to receive any document.
- (b) A document may be given by the Company to any Member by, in the Company's discretion:
  - (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 nominated by the Member to the Company for the giving of documents;
  - (iii) sending it to the fax number nominated by the Member to the Company for the giving of documents;
  - (iv) sending it electronically (including by providing a URL link to any document or attachment) to the electronic address nominated by the Member to the Company for the giving of documents or by other electronic means nominated by the Member;
  - (v) by sending a document by any of the means referred to in rules 62(b)(i) to (iv) that notifies the holder of the electronic address where the primary notice can be accessed; or
  - (vi) serving it in any manner contemplated in this rule 62(b) on a Member's attorney as specified by the Member in a notice given under rule 62(d).
- (c) This rule 62 applies to any notice given under this Constitution, the Corporations Act and any other notice that the Company is required to, or may elect to, give to any Member.
- (d) By written notice to the Secretary left at or sent to the registered office of the Company or, a Member may request that all documents to be given by the Company or the Board be served on the Member's attorney at an address, or by electronic means, nominated in the notice and the Company may do so in its discretion.
- (e) A document may be sent to a Member whose address for documents is outside Australia by airmail, air courier or fax or otherwise be sent or made available electronically (including as contemplated by rule 62(b)(iv)).
- (f) Any document sent by post is conclusively considered to have been served at the expiration of five (5) days after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Member personally or left at the Member's address is conclusively considered to have been served when delivered. Any document sent to a Member by fax or other electronic means is conclusively considered to have been served when the fax or other electronic transmission is sent. Any document made available to a Member by electronic means as contemplated by rule 62(b)(iv) is conclusively considered to have been served when notification that the document is available for access by that means is sent.

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- (g) A document served in accordance with this Constitution is (despite the fact that the Member is then dead and whether or not the Company has notice of the Member's death) conclusively considered to have been properly served. The service is sufficient service of the document on the Member's personal representative.

## Winding Up of the Company

### 63 Winding Up or Revocation of Endorsement

- (a) On the winding up or dissolution of the Company, any property whatsoever that remains, after satisfaction of all debts and liabilities, must not be paid to or distributed among the Members but must be given or transferred to one or more organisations which has:
- (i) objects similar to the objects of the Company set out in rule 4;
  - (ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
  - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by rule 4.
- (b) The identity of the corporation(s) or institution(s) referred to in rule 63(a) is to be determined:
- (i) by the Board; or
  - (ii) if the Board does not decide or does not wish to decide, then by the Member(s), in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

### 64 Amalgamation

Where it furthers the objects of the Company to amalgamate with any one or more organisations having similar objects to the objects of the Company, the other organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

## Indemnity

### 65 Indemnity of Officers, Insurance and Access

- (a) The Company indemnifies each officer of the Company and, if the Board considers it appropriate, any officer of a wholly-owned subsidiary of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary (as the case may be) or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a wholly-owned subsidiary of the Company, provided that such terms are not inconsistent with this rule 65.

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- (c) Where the Board considers it appropriate, the Company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a wholly-owned subsidiary of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary (as the case may be) or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the Company or a wholly owned subsidiary of the Company to make the payments.
- (d) Where the Board considers it appropriate, the Company may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 65:
  - (i) **officer** means:
    - (A) a director, secretary, other officer or senior manager; or
    - (B) a responsible manager; or
    - (C) a person appointed as a trustee by, or acting as a trustee at the request of, the Company or a wholly-owned subsidiary of the Company, and includes a former officer.
  - (ii) **responsible manager** means any responsible manager appointed under the terms of an Australian financial services licence.
  - (iii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, a subsidiary of the Company to any other corporation.
  - (iv) **to the relevant extent** means:
    - (A) to the extent the Company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
    - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
    - (D) in the case of a responsible manager who is not a director, secretary or senior manager, to the extent that the conduct of the responsible manager did not constitute serious and wilful misconduct.
  - (v) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

## Schedule 1

### Consent to Terms of this Constitution

#### Initial Members

Each of the people named below as a Member consents to becoming a Member and agrees to the terms of this Constitution.

Name	Address
ALDI Foods Pty Limited (ACN 086 210 139)	1 Sargents Road, Minchinbury, NSW 2770
Coles Group Limited (ACN 004 089 936)	800-838 Toorak Road, Hawthorn East, VIC 3123
Mars Australia Pty Ltd (ACN 008 454 313)	1 Petcare Place, Wodonga, VIC 3690
McCormick Foods Australia Pty Ltd (ACN 004 763 259)	71 Fairbank Road, Clayton South, VIC 3169
Nestlé Australia Ltd (ACN 000 011 316)	1 Homebush Bay Drive, Rhodes, NSW 2138
Woolworths Group Limited (ACN 000 014 675)	1 Woolworths Way, Bella Vista, NSW 2153

**Executed** in accordance with section 127 of the  
*Corporations Act 2001* by **Soft Plastic**  
**Stewardship Australia Limited:**



C03B29FBFE674CD

Director

Bill Heague

Print name



Secretary

Scott Dickson

Print name

*Version notes: this version of the Constitution is as amended by Special Resolutions passed by members in general meeting held 19 June 2025 and replaces the original version of the Constitution as prepared by Allens and executed by the Members August 2024.*