

02-18-2000

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101271187

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1-19-00

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New

☐ Resubmission (Non-Recordation)
Document ID#

☐ Correction of PTO Error
Reel # Frame #

☐ Corrective Document
Reel # Frame #

Conveyance Type

☒ Assignment ☐ Security Agreement

☐ License ☐ Change of Name

☐ Merger ☐ Other

U.S. Government
(For Use ONLY by U.S. Government Agencies)

☐ Departmental File ☐ Secret File

Conveying Party(ies)

☐ Mark if additional names of conveying parties attached

Month Execution Date
Day Year
04 19 1996

Name (line 1) Alfred Parker

Name (line 2)

Second Party

Name (line 1)

Name (line 2)

Month Execution Date
Day Year
04 19 1996

Receiving Party

☐ Mark if additional names of receiving parties attached

Name (line 1) Vacuum/Pumping Systems Limited

Name (line 2)

Address (line 1) 48 Milford Road

Address (line 2) Milford

Address (line 3) Auckland City New Zealand Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name Katherine Proctor

Address (line 1) Brown, Martin, Haller & McClain

Address (line 2) 1660 Union Street

Address (line 3) San Diego, CA 92101

Address (line 4)

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

02/16/2000 TTOM11 00000293 5735172

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REEL: 010547 FRAME: 0599

Correspondent Name and Address

Telephone Number (619)238-0999

Name (line 1) Katherine Proctor

Address (line 1) Brown, Martin, Haller & McClain, LLP

Address (line 2) 1660 Union Street

Address (line 3) San Diego, CA 92101

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments.

17

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property)

Patent Application Number(s)

Patent Number(s)

5735172

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month

Day

Year

Patent Cooperation Treaty (PCT)

PCT

PCT

PCT

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40

Method of Payment:

Enclosed



Deposit Account



Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

02-4070

Authorization to charge additional fees:

Yes



No



Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Katherine Proctor

Katherine Proctor

January 12, 2000

Name of Person Signing

Signature

Date

AGREEMENT

THIS AGREEMENT is made the 14th day of Apr 1996

BETWEEN **ALFRED PARKER** of 46 Byron Avenue, Takapuna, North Shore City with his executors, administrators, personal representatives and assigns called "Parker"

AND ROBIN JOHN KELLY, Business Consultant of 48 Milford Road, Milford, North Shore City and MICHAEL WORTHINGTON, Company General Manager of 286 Upper Harbour Drive, Greenhithe with their executors, administrators, personal representatives and assigns called "Kelly and Worthington"

AND VACUUM/PUMPING SYSTEMS LIMITED at Auckland ("the Company")

RECITALS

- A.** Parker is the owner of an invention entitled "The Parker Swash Plate Pump" ("the invention").
- B.** Parker has agreed to assign and transfer to the Company all rights ("the patent rights") in the invention, including all rights in the patent applications set out in Schedule 1 ("the patent applications") the rights conferred by any patent granted from the patent applications and the right to apply for further patents or equivalent protection in the country or countries in the world and the right to claim priority under the international convention from any application or the patent applications or the patents (including those listed in Schedule 1) and the rights conferred by such patent or equivalent protection when granted in New Zealand or any other country.

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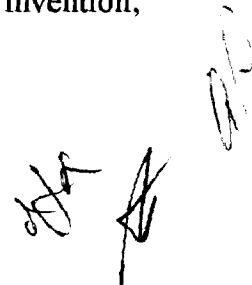
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- C. To the extent that Parker has been the creator of original artistic works (e.g. drawings and models) in relation to the invention and original literary works (including compilations of data) in relation to the invention ("the copyright works") Parker has agreed to assign and transfer to the Company the copyright in the copyright works ("copyright").
- D. To the extent that Parker has created designs ("designs") to the applied articles or relating to the invention Parker has agreed to assign and transfer to the Company all rights in the designs including the right to protect the designs in the country or countries in the world in relationship to the articles and rights conferred by such protection when granted ("the design rights").
- E. The consideration for the transfer and assignment of the invention, the patent rights, the copyright works, the designs and the design rights to the Company will be payment to Parker by the Company of the sum of FORTY THOUSAND DOLLARS (\$40,000.00) (plus GST if any) such sum to be paid and advanced to the Company by Parker as set forth in the agreement.
- F. Subject to various conditions Kelly and Worthington have agreed to provide secured funding to the Company to enable the invention to be developed and improved to its full commercial potential. Such improvements and developments to be the property of Pumping/Vacuum Systems Limited.

IT IS AGREED AS FOLLOWS:

1.0 Assignment and Transfer

In consideration of \$40,000.00 (plus GST if any) to be paid by the Company to Parker in the manner as specified in clause 2.0 Parker assigns and transfers to the Company the invention, the patent rights, the copyright works, the designs and the design rights.

Handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are two distinct signatures and some initials.

2.0 Payment

The purchase price of \$40,000 (plus GST if any) and any costs incurred and work to be undertaken by Parker as provided for in Clause 12.0 (the principal sum) shall be advanced to the Company by Parker as a loan upon the following terms:

(i) Date of Advance

Subject to the terms of Clause 7.0 the Company will enter into the security in favour of Parker referred to in subclause (iv) hereof 14 days after the conditions contained in Clause 7.0 (i) to (iv) of the Agreement have been satisfied (or waived by Worthington, Kelly and the Company) ("the Settlement Date").

(ii) Payment of Principal Sum

The principal sum shall not be repayable to Parker until after the Company has:

- (a) taken all necessary steps to obtain patent rights in respect of the invention in the countries listed in the Schedule to this Agreement;
- (b) completed construction of a 100 cubic foot capacity air and vacuum pump utilising the technology for development purposes ("the development unit");
- (c) completed an evaluation of the development unit to assess its suitability for commercial manufacture and sale; and
- (d) earned sufficient tax paid profit from the sale or licensing of the technology to enable the Company to repay the principal sum.

(iii) Interest

Pending repayment of the principal sum to Parker interest shall be payable at the ordinary rate of NIL% per annum, penalty rate 15% per annum.

(iv) Security

The Company shall on or before the Settlement Date enter into and execute a registerable deed of assignment by way of mortgage creating a first charge over the technology in favour of Parker. The reasonable legal costs of preparation and execution of the Deed of Assignment by way of Charge shall be paid by the Company.

3.0 Information

Parker shall at the request of the Company and without delay furnish to the Company all documents, drawings and other information in his possession relating to the technology and where practical shall deliver to the Company all original versions of the invention, the copyright works and the designs.

4.0 Company Structure

The parties agree the Company structure will be as follows:

(i) Directors and Secretary

Alfred PARKER	Director
Robin John KELLY	Director
Michael WORTHINGTON	Director
Robin John KELLY	Secretary

(ii) Share capital

Subject to the terms of Clause 7.0 the share capital \$15,000.00 to be paid for in full in cash by Kelly and Worthington within 14 days after the conditions contained in Clause 7.0 (i) to (iv) have been satisfied or waived by Worthington, Kelly and the Company.

(iii) Shareholding

Robin John KELLY	- 6,000 fully paid \$1.00 shares
Michael WORTHINGTON	- 6,000 fully paid \$1.00 shares
Alfred PARKER	- 3,000 fully paid \$1.00 shares subject to the terms of Clause 7.0 (to be transferred to Parker free of all encumbrances or charges by Kelly and Worthington for consideration of \$1.00 within 14 days after the conditions contained in Clause 7.0 (i) to (iv) have been satisfied or waived by Worthington, Kelly and the Company).

(iv) Constitution

The Company Constitution to be in the form attached and marked as the 'Third Schedule (subject to any amendments that are agreed upon between the parties).

5.0 Development Funding

Subject to the conditions contained in clause 7.0 (i) to (iv) being satisfied or waived, Kelly and Worthington agree to advance to the Company (upon the security of a first debenture such debenture to be upon the terms of clause 6.0) a sum of up to \$100,000.00 such sum to be utilised to :

- (a) Produce a working prototype of the invention.
- (b) Complete registration of patent rights in the countries specified in the Second Schedule together with any other countries the Company may select in its unfettered discretion to protect the ownership by the Company of the invention.
- (c) Complete further development work on the invention.
- (d) Market the invention for commercial production and sale.

6.0 Advance by Kelly and Worthington

In consideration of the advances being made the Company agrees to provide Kelly and Worthington with a first charge debenture over the assets of the Company (subject to the first charge in favour of Parker over the invention as provided for in clause 2.0). Further terms of the advance made to Kelly and Worthington to be as follows:

- (a) Term - Until the Company has earned sufficient tax paid profit from the sale or licensing of the technology to enable the Company to repay the principal sum after the advance made by Parker has been repaid by the Company.
- (b) Interest - Interest at the ordinary rate of NIL% per annum to be payable with a penalty rate of 15% payable.
- (c) Security - First charge debenture over the assets of the Company (subject to the prior



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charge in favour of Parker over the invention as provided for in clause 2.0.

7.0 Conditions

This agreement is conditional upon the Company and Kelly and Worthington being satisfied in their unfettered discretion that:

- (i) Ownership in the invention, the patent rights, the copyright works, the designs and the design rights are vested in Parker.
- (ii) That all necessary steps to protect ownership in the invention, the patent rights, the copyright works, the designs and the design rights has been undertaken by Parker.
- (iii) That Parker can assign and transfer to the Company complete and unencumbered ownership in the invention, the patent rights, the copyright works, the designs and the design rights.
- (iv) That the working prototype of the invention to be constructed functions as anticipated and demonstrates that the invention can be manufactured commercially for sale and there is a market for the invention at a profit to the Company.

Should the conditions detailed in this clause not be satisfied by the ^{25th} ~~19th~~ day of ^{May} ~~April~~ 1996 then this agreement is voidable at the option of either the Company or Kelly and Worthington and if avoided this agreement shall be at an end. For the avoidance of any doubt if this agreement is avoided by either the Company or Kelly and Worthington, Kelly and Worthington shall be under no obligation to advance to the Company any funds or any further funds, or pay for any additional shares in the Company (other than the shares they hold at the date of this agreement) or transfer to Parker the 3,000 shares in the Company provided for in clause 4.0.

8.0 Costs

Each party shall bear their own legal costs in respect to the implication of this agreement and any security granted or given (except as provided for in Clause 2.0(iv)).

9.0 Further Assurances

- 9.1 Parker shall at the expense of the Company (if requested by the Company) in respect of the invention, the copyright works, the design works in New Zealand or any other

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country:

- (a) Apply for and obtain (or if the Company thinks fit) join with the Company in applying for any intellectual property protection of the invention, copyright, works designs or any of them with the understanding and intention that all interest in the application and any granted protection to vest in the Company; and
- (b) Execute documents and do all acts necessary or convenient to assure the applying for and obtaining of any intellectual property protection; and
- (c) Execute documents and do all things necessary or convenient to vest any intellectual protection of the Company; and
- (d) Execute documents and do all acts necessary or convenient to enable enforcement of intellectual property protection.

9.2 Parker or Kelly and Worthington (jointly or severally) shall not develop or invent or work on any similar invention or pumping device without the express written consent of the Company and will for as long as this agreement is in force and binding on the parties Parker will provide technical/intellectual support to enable the invention to be developed to its full commercial potential.

9.3 Parker, Kelly and Worthington acknowledge that all improvements modifications and developments to the invention, the patent rights, the copyright works, the designs and design rights shall be the property of the Company.

9.4 The parties shall execute and deliver all documents and do anything else necessary for the proper and complete performance of all the respective obligations under this agreement.

10.0 Specific Performance

If any party or the Company shall fail or refuse to comply with any of the terms or


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provisions of this agreement (after this agreement becomes unconditional and the condition contained in clause 7.0 (i) to (iv) has been satisfied) the other parties shall have in addition to any other of their respective rights and remedies rights to have any one or more of those terms or provisions specifically enforced.

11.0 Patent for Engine

The parties acknowledge that the engine technology may be the subject of a new patent application by Parker and would not be opposed or objected to by the Company provided that it did not employ any of the pump technology assigned to the Company.

12.0 Work/Expenses to be Incurred by Parker

The Company authorises Parker (at the Company's expense but payable as provided in Clause 2.0) to undertake the following work or incur the following expenses to complete engineering drawings and machining instructions to enable a dimensionally correct prototype to be manufactured:

- (i) Purchase of materials for prototype
- (ii) Parker's labour at \$25 per hour

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THE FIRST SCHEDULE OF PATENTS APPLIED FOR OR OBTAINED

New Zealand Patent Application No.250094 filed on 28 October 1993 entitled "Improvements in or Relating to Swashplate Machines".

PCT Patent Application No.PCT/NZ94/00121 filed on 28 October 1994 and entitled "Swashplate Machine".


PATENT

REEL: 010547 FRAME: 0609

THE SECOND SCHEDULE**(DESIGNATION OF STATES - PROTECTION TO BE APPLIED FOR IN)**

1. European Patent (E.P.)
2. Australia
3. New Zealand
4. United States of America
5. Any other countries, upon the agreement or approval of the Company


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THE THIRD SCHEDULE**(BEING THE DRAFT CONSTITUTION OF THE COMPANY)**

PATENT

REEL: 010547 FRAME: 0611

IN WITNESS WHEREOF the parties have executed this agreement the date hereinbefore mentioned.

SIGNED by the said
ALFRED PARKER
 in the presence of:

)
)
)

Alfred Parker

SIGNED by the said
ROBIN JOHN KELLY
 in the presence of:

)
)
)

Robin John Kelly

SIGNED by the said
MICHAEL WORTHINGTON
 in the presence of:

)
)
)

Michael Worthington

EXECUTED on behalf of
VACUUM/PUMPING SYSTEMS
LIMITED by

)
)
)

P.P. Vacuum Pumping Systems Ltd
Robin John Kelly
(Director)

in the presence of:

)

pumpvac

~~VACUUM/PUMPING~~
~~PUMPING/VACUUM~~ SYSTEMS LIMITED

CONSTITUTION



SIMPSON GRIERSON
LAW

VACUUM/PUMPING
PUMPING/VACUUM SYSTEMS LIMITED

CONSTITUTION

1. COMPANIES ACT

The provisions of the Companies Act 1993 ("the Act") are negated, modified, adopted and extended as provided in this constitution.

2. SHARES

Subject to the Act, the provisions of this constitution and to any rights previously conferred on any shares or class of shares, different classes of shares may be issued in the Company including, without limitation, shares which are redeemable, (whether at the option of the Company, at the option of the holder or on a specified date), shares which confer preferential rights to distributions of capital or income, shares which confer special, limited or conditional voting rights and shares which do not confer voting rights.

The present shares in the Company comprise 15,000 ordinary shares numbered 1 to 15,000 inclusive and divided into the following groups:

- 2.1 Group A:** 6,000 shares held by Robin John Kelly and numbered 1 to 6,000 inclusive;
- 2.2 Group B:** 6,000 shares held by Michael Worthington and numbered 6,001 to 12,000 inclusive; and
- 2.3 Group C:** 3,000 shares held by Alfred Parker and numbered 12,001 to 15,000 inclusive;

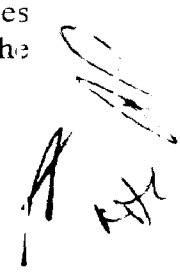
and except as is expressly provided in this constitution, the Group A Shares, the Group B Shares and the Group C Shares shall have the same rights and privileges and shall be subject to the same restrictions.

3. CALLS ON SHARES

- 3.1 Board May Make Calls:** The board may from time to time make such calls as it thinks fit upon the shareholders in respect of any amount unpaid on their shares and not by the conditions of issue made payable at a fixed time or times, and each shareholder shall, subject to receiving at least 14 days' written notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called. A call may be revoked or postponed as the board may determine.

- 3.2 Timing of Calls:** A call may be made payable at such times and in such amount as the board may determine.
- 3.3 Liability of Joint Holders:** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 3.4 Interest:** If an amount called in respect of a share is not paid before or on the time appointed for payment thereof, the person from whom the amount is due shall pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate not exceeding 10% per annum as the board may determine, but the board shall be at liberty to waive payment of that interest wholly or in part.
- 3.5 Instalments:** Any amount which by the terms of issue of a share becomes payable on issue or at any fixed time shall for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable and, in case of non-payment, all the relevant provisions of this constitution relating to payment of interest and expenses, forfeiture, or otherwise shall apply as if the amount had become payable by virtue of a call duly made and notified.
- 3.6 Differentiation as to Amounts:** The board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

4. FORFEITURE OF SHARES

- 4.1 Notice of Default:** If any person fails to pay any call or any instalment of a call for which such person is liable at the time appointed for payment, the board may at any time thereafter serve notice on such person requiring payment of the amount unpaid together with any interest which may have accrued.
- 4.2 Final Payment Date:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the amount was owing will be liable to be forfeited.
- 4.3 Forfeiture:** If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may be forfeited, at any time before the required payment has been made, by a resolution of the board to that effect. Such forfeiture shall include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.
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- 4.4 Sale of Forfeited Shares:** A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the board thinks fit. If any forfeited share shall be sold within 12 months of the date of forfeiture the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all amounts owing in respect of the forfeited share and interest thereon shall be paid to the person whose share has been forfeited.
- 4.5 Cessation of Shareholding:** A person whose share has been forfeited shall cease to be a shareholder in respect of the forfeited share, but shall, nevertheless, remain liable to pay to the company all amounts which, at the time of forfeiture, were payable by such person to the company in respect of the share, but that liability shall cease if and when the company receives payment in full of all such amounts.
- 4.6 Evidence of Forfeiture:** A statutory declaration in writing declaring that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of such facts as against all persons claiming to be entitled to the share.
- 4.7 Validity of Sale:** The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and such person shall then be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall such person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

5. TRANSFER OF SHARES

- 5.1 Freedom to transfer is qualified:** Every change in the ownership of shares in the capital of the company shall be subject to the following limitations and restrictions.
- 5.2 Pre-emptive provisions:** No share in the capital of the company shall be sold or transferred by any shareholder unless and until the rights of pre-emption hereinafter conferred have been exhausted.
- 5.3 Obligation to Give a Transfer Notice:** Every shareholder including the personal representative of a deceased shareholder or the assignee of the property of a bankrupt shareholder who may desire to sell or transfer any share or shares shall give notice in writing to the company of the desire to sell or transfer such share or shares. Such notice shall specify the sum the Proposing Transferor considers to be the fair value thereof and shall

(subject as is hereinafter provided) constitute the company such person's agent for the sale of the shares to any shareholder or shareholders or other person or persons nominated by the directors at the fair value thereof as herein provided. If a notice shall include several shares it shall not operate as if it were a separate notice in respect of each such share and the person giving the same shall be under no obligation to sell or transfer part only of the shares specified in the notice. No such notice shall be revocable without the sanction of the directors.

- 5.4 Obligation to Transfer:** If the company shall within the space of 60 days after the fair value of the shares has been agreed or determined as herein provided find a shareholder or shareholders or any other person or persons willing to purchase the shares then the company shall within such period give notice thereof to the Proposing Transferor and, subject to the provisions of section 6, the Proposing Transferor shall be bound upon payment of the fair value as herein provided (subject to any lien which the company may have hereunder and by deduction thereof) to transfer the shares to such shareholder or shareholders or person or persons.
- 5.5 Determination of Fair Value:** In case any difference arises between the Proposing Transferor and the company as to the fair value of the shares such fair value shall be determined by an independent valuer to be agreed upon by the parties or in the event of their failure to agree to be nominated by the chairperson for the time being of the Auckland branch of the New Zealand Society of Accountants. The valuer shall certify in writing the sum which in his or her opinion is the fair value of the shares and shall give notice in writing to both parties of the sum so certified. In certifying as to the fair value of the shares the valuer shall be acting as an expert and not as an arbitrator and accordingly the Arbitration Act 1908 shall not apply. The costs of the valuer shall be borne by the company.
- 5.6 Default by the Proposing Transferor:** If in any case the Proposing Transferor after becoming bound as aforesaid makes default in transferring the shares the company may execute a transfer or transfers of the shares on behalf of the Proposing Transferor and the company may receive the purchase money and shall thereupon cause the name or names of the Transferee or Transferees to be entered in the Register as the holder or holders of the shares and shall hold the purchase money (subject to any lien in favour of the company as aforesaid) in trust for the Proposing Transferor. The company's receipt shall be a good discharge to the Transferee or Transferees for the purchase price and no question shall be raised as to the title of the Transferee or Transferees to the shares after they are registered as the holder or holders thereof.
- 5.7 Shares to be Offered:** Subject to the provisions hereof and until otherwise determined by the company by special resolution the shares specified in any Transfer Notice given to the company as aforesaid shall be dealt with as follows:

- 5.7.1 To Others in the Group:** as soon as is practicable after the fair value of the shares has been agreed or determined as provided herein the shares shall be offered in the first instance to the holder or holders of shares in the group of shares of which the said shares comprise part as nearly as may be in proportion to the number of such shares held by them respectively and the offer shall in each case limit the time (not being less than 14 days nor more than 28 days) within which the offer if not accepted will be deemed to be declined and shall also contain a notification that any such shareholder who desires to purchase shares in excess of those to which such shareholder is entitled shall in such shareholder's reply to the company state how many excess shares he, she or it desires to purchase;
- 5.7.2 To Those Claiming in Excess:** if all such shareholders do not claim their proportions the unclaimed shares shall be used for satisfying the claims in excess and if there shall be insufficient unclaimed shares to satisfy the claims in excess then the unclaimed shares shall be divided amongst the shareholders claiming the same in proportion to their existing shareholding in the relevant group;
- 5.7.3 To Other Shareholders:** if thereafter any shares specified in a Transfer Notice shall not have been accepted the same shall be offered to the holder or holders of shares in the groups of shares of which the said shares do not comprise part and the provisions of subclauses 5.7.1 and 5.7.2 shall mutatis mutandis apply to any such offer;
- 5.7.4 To Nominated Persons:** if thereafter any shares specified in a Transfer Notice shall not have been accepted the company will offer such shares to any person or persons nominated by the holder or holders of a majority of the shares in the groups of shares of which the said shares do not comprise part; and
- 5.7.5 To Other Acceptable Parties:** if thereafter any shares specified in a Transfer Notice and offered as aforesaid shall not have been accepted the directors may offer such shares to any person or persons whom they are prepared to register as a shareholder or shareholders.
- 5.8 Proposing Transferor May Sell:** If the company shall not within the space of 60 days after the fair value of the shares has been agreed or determined as herein provided find a shareholder or shareholders or other person or persons as aforesaid willing to purchase the said shares and give notice in the manner aforesaid in accordance with this section 5 the Proposing Transferor shall at any time within 30 days thereafter be at



liberty to sell and transfer the shares (but not a portion only) to any person or persons at a price not lower than the value specified by him in the Transfer Notice as the sum he considers to be the fair value of the shares or the fair value fixed as aforesaid (whichever is the lower) and on terms as to payment generally no more favourable than those which would have applied had the company found a member or members or other person or persons as aforesaid willing to purchase the said shares and the foregoing provisions of this section 5 shall not apply to such transfer.

5.9 Substantial Competitors: The directors shall register any transfer of shares made pursuant to the foregoing provisions of this section 5 except if in the reasonable opinion of the directors such transfer shall be to a transferee who is a substantial competitor of the company or shall otherwise be not in the best interests of the company. If any dispute shall arise under this clause 5.9 as to whether the directors shall register any transfer of shares such dispute shall be determined by arbitration under the provisions of the Arbitration Act 1908.

5.10 Exempted Transfers: Notwithstanding the foregoing provisions of this section 5 the directors shall register a transfer of shares:

5.10.1 Shareholder Consent: by any shareholder to any person if the holder or holders of all of the shares in the capital of the company shall consent in writing to the registration of such transfer; or

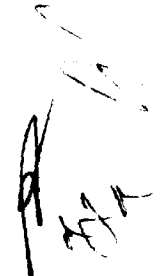
5.10.2 Related Companies: by any shareholder being a body corporate to a body corporate which is in relation to such member a holding company or a subsidiary company or a subsidiary of a holding company as defined in section 5 of the Act provided however that such transfer shall be made upon such terms to be approved in writing by the directors as shall enable the transferor company to obtain the immediate retransfer of such share or shares in the event that the transferee company shall at any time cease to be a holding company or a subsidiary company in relation to the transferor company.

6. REFUSAL TO REGISTER TRANSFERS

Subject to compliance with the provisions of section 84 of the Act, the board may refuse or delay the registration of any transfer of any share to any person whether an existing shareholder or not:

6.1 Required by Law: if so required by law;

6.2 Imposition of Liability: if registration would impose on the transferee a liability to the company and the transferee has not signed the transfer;



- 6.3 **Failure to Pay:** if a holder of any such share has failed to pay on due date any amount payable thereon either in terms of the issue thereof or in accordance with the constitution (including any call made thereon);
- 6.4 **Infant or Unsound Mind:** if the transferee is an infant or a person of unsound mind;
- 6.5 **More than One Class:** if the transfer is in respect of more than one class of shares;
- 6.6 **Proof of Ownership:** if the transfer is not accompanied by such proof as the board reasonably requires of the right of the transferor to make the transfer;
- 6.7 **Pre-emptive Rights:** if the pre-emptive provisions contained in section 5 have not been complied with; or
- 6.8 **Contrary to Interests of Company** if the board acting in good faith decides in its sole discretion that registration of the transfer would not be in the best interests of the company and/or any of its shareholders.

7. NEW ISSUE OF SHARES

New shares offered to shareholders pursuant to section 45 of the Act and not accepted within the prescribed time or in respect of which an intimation is received from the person to whom the offer is made declining such offer may be disposed of by the board in such manner as it thinks most beneficial to the company. If the board shall dispose of any such share at a price in excess of that at which it was offered to a shareholder, it may in its discretion pay the whole or any part of such excess to such shareholder.

8. ACQUISITION OF COMPANY'S OWN SHARES

- 8.1 **Authority to Acquire Own Shares:** For the purposes of sections 59 and 60(1)(b)(ii) of the Act, the company is expressly authorised to purchase or otherwise acquire shares issued by it.
- 8.2 **Authority to Hold Own Shares:** to any restrictions or conditions imposed by law the company is expressly authorised to hold shares acquired by it pursuant to section 59 or section 112 of the Act.

9. SHARE REGISTER

The Register shall be located at the registered office of the company, unless otherwise resolved by the directors.



10. **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

10.1 First Schedule Modified: The first schedule to the Act is modified as provided in this section 10.

10.2 Chairperson: Sub-clause 1(2) of the first schedule to the Act is deleted and replaced with the following:

"1(2) If no chairperson of the board has been elected, or if at any meeting of shareholders the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the directors present shall elect one of their number to be chairperson of the meeting. If at any meeting no director is willing to act as chairperson, or if no director is present within 15 minutes of the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairperson of the meeting."

10.3 Notice of Meetings: Clause 2 of the first schedule to the Act is amended as follows:

10.3.1 By deleting subclause (4) and replacing it with the following:

"(4) The chairperson may, and if so directed by the meeting shall, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting."

10.3.2 By adding the following subclause:

"(5) The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting."

10.4 Proxies: Clause 6 of the first schedule to the Act is amended by adding the following subclauses:

"(6) A proxy form shall be sent with each notice calling a meeting of the company."

"(7) An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

PUMPING/VACUUM SYSTEMS LIMITED

INSTRUMENT APPOINTING A PROXY

I/We
of

being a member of Pumping/Vacuum Systems Limited
hereby appoint

(print name of proxy) of
or failing him/her of

as my/our proxy to vote for me/us on my/our behalf at the
[...th Annual] [Special] Meeting of the company to be held
at on
commencing at [am/pm] [or all meetings of the
company held within twelve months of the date hereof]
and at any adjournment of any such meeting.

Signed this day of
(Usual signature/s)"

"(8) Where it is desired to afford shareholders an
opportunity of voting for or against a resolution,
the instrument appointing a proxy shall be in the
following form or a form as near thereto as
circumstances admit:

PUMPING/VACUUM SYSTEMS LIMITED

INSTRUMENT APPOINTING A PROXY

I/We
of

being a member of Pumping/Vacuum Systems Limited
hereby appoint

(print name of proxy) of
or failing him/her of

as my/our proxy to vote for me/us on my/our behalf at the
[...th Annual] [Special] Meeting of the company to be
held at on
commencing at
[am/pm] and at any adjournment thereof.

I/We direct my/our proxy to vote in the following manner



Vote with a Tick

**Resolutions
Against**

For

1. _____

2. _____

Signed this _____ day of
(Usual signature/s)"

"(9) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer has been received by the company before the start of the meeting or adjourned meeting at which the proxy is used."

"(10) The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default, the instrument of proxy shall be treated as invalid."

10.5 Postal Votes: Clause 7 of the first schedule to the Act providing for postal votes is deleted.

10.6 Resolutions in Lieu of Meeting: A shareholders' resolution in lieu of a meeting authorised by section 122 of the Act may consist of several documents in like form, each signed by one or more shareholders. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.

11. DIRECTORS

11.1 Appointment and Removal: The following provisions shall govern the appointment and removal of directors:

11.1.1 Directors at Date Hereof: The directors at the date hereof are Robin John Kelly, Michael Worthington and Alfred Parker all of



whom shall be deemed to have been appointed under subclause 11.1.2.

11.1.2 Appointment Directors: The holder or holders of a majority of the shares in each of the groups specified in clause 2.1 may each appoint one person to be a director.

11.1.3 Removal: Each director may at any time be removed from office by the holder or holders of a majority of the relevant appointing group of shares.

11.1.4 Manner of Appointment or Removal: Any such appointment or removal shall be in writing served on the company and signed by the holder or holders of a majority of the relevant appointing group of Shares. In the case of a corporation such document may be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.

11.2 Tenure of Office: Each director shall hold office until:

11.2.1 Removal: removal in accordance with the constitution, or

11.2.2 Vacation of Office: vacation of office pursuant to section 157 of the Act.

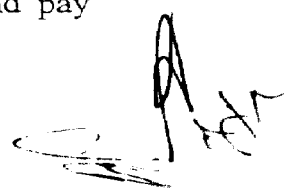
11.3 Cross Directorships: A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interests in, any such other company unless the company otherwise directs or the law requires.

11.4 Professional Directors: Any director may act by himself or herself or his or her firm in a professional capacity for the company, and a director or firm shall be entitled to remuneration for professional services as if he or she were not a director provided that nothing herein shall authorise a director or his or her firm to act as auditor of the company.

11.5 Directors Gratuities: Subject to the provisions of section 161 of the Act, the board may on behalf of the company:

11.5.1 On Retirement: pay a gratuity or pension or allowance on retirement to any director of the company or in the case of a director's death to his or her spouse or dependants; and

11.5.2 Retirement Benefit: make contributions to any fund and pay premiums for the purchase or provision of any such benefit.



The amount so paid or used as a base for calculating any such benefit shall not, without the sanction of an ordinary resolution, exceed the total remuneration paid by the company to such director as a director in respect of any three financial years selected by the board during which he or she was a director. All such benefits paid or payable shall be in addition to normal amounts or benefits paid or payable to any such director from any superannuation scheme established by the company or any of its subsidiaries.

- 11.6 Alternate Directors:** Each director shall have the power from time to time to nominate, by notice in writing to the company, any person not already a director and who is acceptable to the majority of other directors to act as an alternate director in his or her place either for a specified period or generally during the absence from time to time of such director and in like manner to remove any such alternate director. Unless otherwise provided for by terms of his or her appointment, an alternate director shall have the same rights, powers and privileges (including the right to receive notice of meetings of the board but excluding the power to appoint an alternate director) and shall discharge all the duties of and be subject to the same provisions as the director in whose place he or she acts. An alternate director shall not be remunerated otherwise than out of the remuneration of the director in whose place he or she acts and shall ipso facto vacate office if and when the director in whose place he or she acts vacates office. Any notice appointing or removing an alternate director may be given by delivering the same or by sending the same through the post or by facsimile to the company and shall be effective as from the receipt.
- 11.7 Directors' Duties:** A director may act in a manner which he or she believes to be in the best interests of the holder or holders of the group of shares represented by that director even though it may not be in the best interests of the company.

12. PROCEEDINGS OF THE BOARD

- 12.1 Third Schedule Deleted:** The provisions of the third schedule to the Act are deleted and replaced as provided in this section 10.
- 12.2 Regulation of Meetings, Quorum and Convening:** The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Subject to clause 12.4 the quorum necessary for the transaction of business by the shall be three. A director may at any time, by any means of communication, summon a meeting of the board.
- 12.3 Voting** Questions arising at any meeting of the board shall be decided by a majority of votes. In cases of an equality of votes the chairperson shall not have a second or casting vote.

12.4 Vacancies The office of a director of the company shall be deemed to be vacated if that director has for more than four weeks been absent without the consent of the other directors from meetings of directors held during that period. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below three the quorum necessary for the transaction of business shall be reduced to two.

12.5 Chairperson: The board may elect a chairperson of its meetings and determine the period for which he or she is to hold office but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the meeting, the directors present may choose one of their number to be chairperson of the meeting.

12.6 Resolution in Writing A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the board shall be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.

12.7 Method of Meeting: A meeting of the board may be held either:

12.7.1 Physical Meeting: by a number of the directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or

12.7.2 Other Means: by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

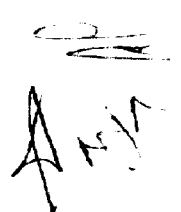
12.8 Minutes: The board shall ensure that minutes are kept of all proceedings at meetings of the board.

13. INDEMNITIES

The company is expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by subsections (3),(4) and (5) of section 162 of the Act to the maximum extent permitted by those subsections.

14. DIVIDENDS

14.1 Dividends on Shares Not Fully Paid Up to be Paid Pro Rata: Subject to the rights of persons, if any, entitled to shares with special rights as to



dividend, all dividends on shares not fully paid up shall be authorised and paid in proportion to the amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under this constitution or pursuant to the terms of issue of the shares. No amount paid or credited as paid on a share in advance of calls shall be treated for these purposes as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

- 14.2 Deduction of Unpaid Calls:** The board may deduct from any dividend payable to any shareholder any amount presently payable by such shareholder to the company on account of calls or otherwise in relation to the shares on which such dividends are payable.
- 14.3 Payment by Cheque or Warrant:** Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, in the case of joint holders, to the registered address of that one of the joint holders who is first named in the share register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.
- 14.4 No Interest:** No dividend shall bear interest against the company.
- 14.5 Unclaimed Dividends:** All dividends unclaimed for one year after having been authorised may be invested or otherwise made use of by the board for the benefit of the company until claimed, and all dividends unclaimed for five years after having been declared may be forfeited by the board for the benefit of the company. The board may, however, annul any such forfeiture and agree to pay a claimant who produces evidence of entitlement to the board's satisfaction of the amount due to such claimant unless in the opinion of the board such payment would embarrass the company.

15. NOTICES

- 15.1 Services:** A notice may be served by the company upon any director or shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder.

15.2 Time of Service by Facsimile: A notice served by facsimile shall be deemed to have been served at 5.00 pm on the day following completion of transmission or if such day is a Saturday or a Sunday or a day on which major trading banks are closed for usual business in the place of intended receipt then on the next day (not being a Saturday or a Sunday) on which such banks are open for usual business.

15.3 Time of Service by Post: A notice sent by post or delivered to a document exchange shall be deemed to have been served:

15.3.1 In New Zealand: in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and

15.3.2 Outside New Zealand: in the case of a person whose last known address is outside New Zealand, at the expiration of seven days after the envelope or wrapper containing the same was duly posted by fast post in New Zealand.

15.4 Proof of Service: In proving service by post or delivery to a document exchange, it shall be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it shall be sufficient to prove that the document was properly addressed and sent by facsimile.

15.5 Service on Joint Holders: A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

15.6 Service on Representatives: A notice may be given by the company to the person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied), by giving the notice in any manner in which the same might have been

16. LIQUIDATION

16.1 Distribution of Surplus Assets: Subject to the terms of issue of any shares in the company and to clause 16.2, upon the liquidation of the company the assets, if any, remaining after payment of the debts and liabilities of the company and the costs of liquidation ("the surplus assets") shall be distributed among the shareholders in proportion to their shareholding provided however that the holders of shares not fully paid up shall only



receive a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under the constitution of the company or pursuant to the terms of issue of the shares.

- 16.2 Distribution In Specie:** Upon a liquidation of the company, the liquidator, with the sanction of an ordinary resolution and any other sanction required by law, may divide amongst the shareholders in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator thinks fit, but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

17. REMOVAL FROM THE NEW ZEALAND REGISTER

In the event that:

- 17.1 Cessation of Business:** the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and the Act; or
- 17.2 No Surplus Assets:** the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation;

the board may in the prescribed form request the Registrar to remove the company from the New Zealand register.

18. DEFINITIONS

In this constitution, unless the context otherwise requires:

- 18.1 Group A Shares:** means the shares constituted by subclause 2.1 and any additional shares issued as Group A Shares;
- 18.2 Group B Shares:** means the shares constituted by subclause 2.2 and any additional shares issued as Group B Shares;
- 18.3 Group C Shares:** means the shares constituted by subclause 2.3 and any additional shares issued as Group C Shares;

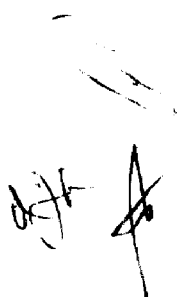
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- 18.4 Proposing Transferor:** means the person who gives or is required to give a Transfer Notice under clause 5.3;
- 18.5 Register:** means the share register of the company;
- 18.6 Transfer Notice:** means the notice in writing given or to be given under clause 5.3; and
- 18.7 Transferee or Transferees:** means the shareholder or shareholders or person or persons willing to purchase shares subject to a Transfer Notice.

Certified as the constitution of the company

Applicant

Date

Handwritten signature and initials in the bottom right corner of the page.