

**CONSTITUTION OF  
AUSTRALIAN AUTOMOTIVE AFTERMARKET ASSOCIATION LIMITED  
ACN 002 271 454**

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## COMPANY CONSTITUTION OF AUSTRALIAN AUTOMOTIVE AFTERMARKET ASSOCIATION LIMITED

This is the constitution of Australian Automotive Aftermarket Association Limited (ACN 002 271 454) (**Company**)

### BACKGROUND

- A. The Company is a public company limited by guarantee.
- B. The liability of its Members is limited to the amount of guarantee contained in clause 3.

### OPERATIVE PROVISIONS

#### **1 Name of the Company**

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The name of the Company is Australian Automotive Aftermarket Association Limited.

#### **2 Objects and Powers**

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##### **2.1 Objects**

The Company's Objects are to:

- (a) represent, protect and promote the interests of the Australian automotive aftermarket industry (**Industry**) including manufacturers, distributors, importers, wholesalers, resellers and retailers of automotive aftermarket parts, accessories, tools and equipment, as well as providers of vehicle service, repair and modification services.
- (b) conduct, promote and assist with activities that relate to the Industry and/or deliver membership value, retention and growth. These activities may include but are not limited to:
  - (i) delivery of a coordinated and effective Government Relations Strategy that represents the interests of members at all levels of Government;
  - (ii) delivery of high quality biannual trade expo and awards program that recognise excellence at both a company and individual level;
  - (iii) effective communications to Members on major industry developments via publication of the AAAA magazine and other communication tools;
  - (iv) the facilitation of export cluster activities and a range of market research services to ensure Members are updated on major industry trends;
  - (v) providing a range of high quality networking activities as well as a range of services and advice to assist Members to add value to their businesses, achieve sustainable business advantage and be more profitable;
  - (vi) continued commitment to excellence in Governance and Leadership and strong financial management of the Company;

- (vii) promoting the development of the Industry through effective services, communication, representation, advocacy and other business development initiatives;
  - (viii) institute, promote, support or oppose legislative and other measures or proceedings affecting the interests of the industry including the provision of technical assistance to government agencies and legislative bodies; and
  - (ix) assist with the development of technical data for use in production performance and quality standards for the benefit of the industry, Members and customers.
- (c) do such other things as are incidental or conducive to the attainment of these Objects.

## **2.2 Powers**

The Company has all the powers of a company limited by guarantee as set out in the Act. The Company may use its powers to do:

- (a) anything which it considers will advance or achieve the Objects; and
- (b) all other things that are incidental or conducive to carrying out the Objects.

## **3 Member's liability and guarantee**

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### **3.1 Liability of Members**

The liability of each Member is limited to the amount of the guarantee set out in clause 3.2.

### **3.2 Guarantee by Members**

If the Company is wound up while a person is a Member (or within one year after they stop being a Member) then that person must contribute up to fifty dollars (\$50) to the Company so that it can pay the Company's debts and liabilities incurred before that person ceased to be a Member and the costs, charges and expenses of winding-up the Company.

## **4 How the Company's income and property are to be applied**

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### **4.1 For the Company's Objects**

All of the Company's income and property must be applied solely towards the promotion of the Company's Objects.

### **4.2 No dividends etc. to Members**

The Company may not pay, or transfer, any of its income or property, directly or indirectly, by way of dividend, bonus or otherwise to any person who is or has been a Member.

### **4.3 Remuneration and expenses for Members allowed**

- (a) Regardless of clause 4.2, the Company may pay remuneration in good faith to any Member,

officer or employee of the Company in return for any good or services they provide to the Company in the ordinary and usual course of business.

- (b) The Board may authorise the repayment of any expenses a Member incurs for the Company, or in connection with performing their duties for the Company.

#### **4.4 Payments to Independent Directors: restrictions, remuneration, expenses**

- (a) If the Company is to pay any remuneration to an Independent Director for services rendered in the capacity as an Independent Director, then:
  - (i) the remuneration must be on reasonable commercial terms;
  - (ii) the Board must have consented to the Independent Director providing those services; and
  - (iii) a Special Resolution endorsing the appointment of the Independent Director and the amount of the remuneration payment must be passed at the next Annual General Meeting.
- (b) If the Company is to pay any remuneration to a Director for services rendered in the capacity as an employee of the Company, then the Board must first have resolved to approve the terms of that employment.
- (c) The Board may authorise the repayment of any expenses a Director incurs for the Company, or in connection with performing their duties for the Company (e.g. reasonable travel costs to attend meetings).

#### **4.5 Loans and leases from Members**

- (a) The Company may pay:
  - (i) interest on money borrowed from any Member; and
  - (ii) reasonable and proper rent for premises a Member leases to the Company.
- (b) For the purposes of this clause, if a Member pays the Company a deposit, bond or other security for the payment of fees and charges levied under the Constitution, then that payment is not a loan from the Member.

### **5 Fees imposed by the Company**

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#### **5.1 Setting fees**

- (a) The Board may prescribe:
  - (i) A cost payable by the Members by way of Membership fees and any other fees the Board thinks fit; and
  - (ii) When and in what circumstances these fees are payable.

- (b) Membership fees may vary depending on the type of Membership and the number of persons employed by the Member.
- (c) Membership fees will become due and payable in advance on the 1st day of July in every year.
- (d) The Board must give Members at least one month's notice of any increase in the Membership fees, or of a change in the due date for fees payable under this clause.

## **6 Membership**

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### **6.1 Members**

The Company's Members are persons who have consented to be Members and who are recognised by the Board as Members of the Company (unless the Member has resigned under clause 6.9 or been expelled under clause 6.10).

### **6.2 Register of Members**

- (a) The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.
- (b) Any dispute that arises in relation to the Register must be referred to the Board. The Board's decision is final and binding on all Members (in the absence of manifest error).

### **6.3 Eligibility for Membership**

The following are eligible to be Members:

- (a) any person who has a demonstrated interest in the Company;
- (b) any person that the Board considers would benefit the Company by becoming a Member; and
- (c) any person in a category of persons that the Company has determined to be eligible to be Members.

### **6.4 Types of Membership**

At any time, the Board may (subject to the Act) create different types of Membership with different rights, obligations and restrictions.

### **6.5 Membership is not transferable**

A Member may not transfer their Membership to another person.

### **6.6 Voting rights**

- (a) A Member is entitled to one vote at a General Meeting of the Company.

- (b) However, the Board may suspend a Member's entitlement to vote if the Member owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

#### **6.7 A Member's representative**

- (a) In accordance with the Act, each Member is entitled to appoint an individual as their Representative to attend General Meetings, provided the Member has not appointed a proxy, and to exercise all the powers that the Member could exercise at a meeting or in voting on a resolution unless those powers are restricted in a way set out by the Member in the appointment.
- (b) A Member may appoint more than one Representative but only one Representative may exercise the Member's powers at any one time.

#### **6.8 Applying and being admitted to Membership**

- (a) A person's Application to be a Member must be made in the form, and accompanied by any fee, the Board has set.
- (b) The Board (or the CEO as delegate of the Board) will consider and, in its absolute discretion, accept or reject an Application. If the Board (or the CEO as delegate of the Board) rejects an Application, then:
  - (i) it must arrange for any money the Applicant tendered with the Application to be repaid to the Applicant, without interest; and
  - (ii) the Board (or the CEO as delegate of the Board) does not have to give any reasons for the rejection.
- (c) When an Applicant has been accepted for Membership, the Company will send the Applicant written notice of acceptance and a request for payment of the fee that applies (e.g. first annual subscription).
- (d) An Applicant does not become a Member until the Company has:
  - (i) received any fee that applies; and
  - (ii) the name and address of the Applicant (and its Representative if relevant) are entered in the Register.
- (e) Each Member is liable for all taxes, duty and charges payable in respect of their Application, their Membership and any related transaction or document. Each Member indemnifies the Company and will keep it indemnified in respect of any liability for all those amounts.

#### **6.9 Resigning from Membership: and ongoing liability**

- (a) A Member may resign from Membership by giving notice to the Company. When the notice period expires, the Member stops being a Member but:

- (i) they remain liable for any money they owe the Company; and
  - (ii) under clause 3, they remain liable for another 12 months.
- (b) A Member also resigns if they owe the Company any amount that is more than 3 months overdue (the Board may change the length of that period). If a Member resigns under this clause, then the Board may reinstate their membership if they pay the outstanding amount.

#### **6.10 Expelling and disciplining a Member**

- (a) The Board may, in the way described in clause 6.10(b), expel a Member or implement appropriate disciplinary action if the Member:
- (i) has committed a breach of any obligation or duty under this Constitution; or
  - (ii) has engaged in conduct which is inappropriate, amounts to misconduct or is otherwise detrimental to the interests of the Company.
- (b) For any expulsion or discipline to be valid:
- (i) at least twenty one (21) days before the Board meeting at which the resolution is considered, the Member must be given written notice of:
    - (A) the meeting;
    - (B) the intended resolution; and
    - (C) the particulars of the alleged act, omission or conduct complained of;
  - (ii) at the meeting (and before the resolution is passed), the Member must be given the opportunity to explain themselves in writing or orally (or both if they request it);
  - (iii) if the Member does give an explanation, then the Board must take it into account;
  - (iv) the relevant resolution must be passed by 75% of the Directors present and voting;
  - (v) the Board must arrange for the Member to be given written notice of any Board resolution on the matter; and
  - (vi) if the Board resolves to expel the Member, then the Member ceases to be a Member when the Board serves them with the notice. Also the Member's name will be removed from the Register as set out in clause 6.11.

#### **6.11 Removing an expelled Member's name from the Register**

- (a) If a Member is expelled from the Company, then their name (and that of any Representative they have appointed) must be removed from the Register. The Company has no liability to the Member in respect of their removal from the Register.
- (b) When a Member's name is removed from the Register, the Member no longer has:

- (i) any rights or privileges attaching to Membership; or
- (ii) any rights which they had against the Company that arose out of their Membership.

## **7 General Meetings: frequency and notice**

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### **7.1 Annual General Meeting required**

The Company must hold an Annual General Meeting:

- (a) in every calendar year;
- (b) within five (5) months after the end of its financial year; and
- (c) at the time and place the Board determines.

### **7.2 Convening Extraordinary Meetings**

An Extraordinary Meeting may be convened:

- (a) by the Board at such time and place as the Board thinks fit, (as long as it complies with the Act); and
- (b) by Members as allowed under the Act.

### **7.3 Notice of General Meetings**

- (a) The Board must give at least twenty one (21) days' written notice of a General Meeting to the Members, the Directors and the Auditor (unless a change to that arrangement is made under clause 7.4). The notice must specify:
  - (i) the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) the general nature of the meeting's business;
  - (iii) the details of any Special Resolutions to be proposed at the meeting; and
  - (iv) that Members are entitled to appoint a proxy who must be a Member.
- (b) A Member that is a company is responsible for notifying its Representative of any General Meeting.

### **7.4 Changing the notice procedure for General Meetings**

A meeting may be convened in a way other than, and on shorter notice than, clause 7.3 requires as long as:

- (a) all the Members entitled to vote at the meeting consent to the change; and
- (b) the notice complies with the Act.

## **7.5 Failure to receive notice**

A meeting and its proceedings and resolutions are valid even if any one or more of the following is the case:

- (a) the Company accidentally omitted to give notice of a meeting to any Member; or
- (b) any Member did not receive notice of the meeting.

## **8 General Meetings: proceedings**

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### **8.1 Use of technology in conferencing**

- (a) The Chair may (with the approval of the meeting) confer with Members and others by radio, telephone, facsimile, computer, Internet (including Skype or other online conferencing facilities), closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Members held on the day and at the time the conference was held, even if the Members were not present together in one place at the time. This clause does not limit the discretion of the Members to regulate their meetings.
- (b) The provisions of this Constitution regulating the proceedings of the Members apply so far as they are capable to such conferences.

### **8.2 Business at the meeting**

- (a) The ordinary business of an Annual General Meeting may include:
  - (i) considering any annual financial report, Directors' report and Auditor's report;
  - (ii) electing and appointing Directors;
  - (iii) fixing an Independent Director's remuneration; and
  - (iv) appointing the Auditors and fixing the Auditor's remuneration (if the Company is required to have an auditor).
- (b) All other business at an Annual General Meeting, and all business at an Extraordinary Meeting, is regarded as special business.

### **8.3 Quorum required**

For any business to be transacted at any General Meeting, except the adjournment of the meeting, a quorum must be present. The quorum for a General Meeting is twenty (20) Members, present in person or by Representative, proxy or attorney.

### **8.4 If no Quorum present**

If a quorum is not present within half an hour after the time appointed for a General Meeting then:

- (a) if the meeting was convened on the requisition of Members, then it will be dissolved; or
- (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place (or at such other place as the Chair decides). If at that adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, then the Members present are a valid quorum.

#### **8.5 Chair of the meeting**

- (a) The Chair or in the Chair's absence, the Deputy Chair is to preside as chair at every General Meeting.
- (b) If at any General Meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting (or if neither is willing to preside), then the Members present are to choose a Director to preside. If no Director is present (or if all Directors present decline to preside), then those persons present will choose a Member who is present to preside as Chair.

#### **8.6 Adjourning (and resuming) a meeting**

- (a) The Chair of a General Meeting:
  - (i) may, with the consent of the Members present and entitled to vote at any meeting, and at which a quorum is present, adjourn a meeting; and
  - (ii) must adjourn a meeting if the meeting directs them to do so.
- (b) If the Chair adjourns a General Meeting, then they may do so to another time or place (or both).
- (c) If a General Meeting is adjourned for one month or more, then the Company must arrange for a new notice of the adjourned meeting to be given.
- (d) After an adjourned meeting is resumed, the only business that may be transacted at the meeting is business that was unfinished before the adjournment.

#### **8.7 Auditor attending etc. meeting**

The Auditor is entitled:

- (a) to attend any General Meeting of the Company;
- (b) to receive the same notices of, and other communications relating to, any General Meeting that a Member is entitled to receive; and
- (c) to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity. The Auditor's right to be heard exists even if the Auditor retires at that meeting or if a resolution to remove the Auditor from office is passed at that meeting.

## **9 General Meetings: voting**

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### **9.1 Show of hands vote**

Every item of business submitted to a General Meeting is to be decided in the first instance by a show of hands of the Members, or their Representatives, who are personally present and entitled to vote. The Chair will not have a casting vote.

### **9.2 Evidence of resolution**

- (a) It is conclusive evidence that a resolution has been passed (regardless of whether there is any proof of the number or proportion of the votes recorded in favour of or against the resolution) if:
  - (i) the Chair declares that a resolution has been passed or lost (having regard to the majority required); and
  - (ii) an entry to that effect has been made in the Company's books and signed by the Chair of that, or the next meeting.

### **9.3 Poll vote**

- (a) The Chair or at least 3 Members present (personally or by Representative, proxy or attorney) who are entitled to vote may demand a poll before, or on the declaration of the result of, a show of hands. Any person who has demanded a poll may withdraw their demand.
- (b) A poll demanded on any question of adjournment must be taken before any adjournment.
- (c) The poll is to be taken:
  - (i) in the manner and at the time and place as the Chair of the meeting directs; and
  - (ii) either at once or after an interval or adjournment or otherwise.
- (d) The result of the poll is to be the resolution of the meeting at which the poll was demanded.
- (e) If there is a dispute as to the admission or rejection of a vote, then the Chair will finally determine that dispute.
- (f) At a poll, the Chair will not have a casting vote.

### **9.4 Continuing with other business before a Poll**

After a poll has been demanded, the meeting may continue with any business other than the issue on which poll has been demanded.

## **10 General Meetings: appointing a proxy**

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### **10.1 Eligibility to be proxy**

Any Member may:

- (a) appoint a natural person who is a Member, or a Representative, as a proxy to vote on the Member's behalf; and
- (b) may direct the proxy to vote either for or against each or any resolution.

### **10.2 Company receiving notice of proxy**

- (a) For an appointment of a proxy to be valid, the Company must receive the document appointing the proxy (and an original, or certified copy, of the power of attorney, if any, under which it is signed):
  - (i) at least forty eight (48) hours before the time for holding the relevant meeting or adjourned meeting or poll; and
  - (ii) at one of:
    - (A) the Registered Office;
    - (B) a fax number at the Registered Office; or
    - (C) a place, fax number or electronic address specified for such purpose in the notice of meeting.
- (b) An instrument appointing a proxy is valid for any adjournment of the meeting to which it relates — unless it states something to the contrary.

### **10.3 Form of proxy**

An instrument appointing a proxy must be signed by the appointor, or his or her attorney, and must contain the following information:

- (a) the Company name;
- (b) the Member's name and address;
- (c) the Member's type of Membership;
- (d) the proxy's name or the name of the office held by the proxy; and
- (e) the meetings at which the appointment may be used.

### **10.4 Proxy's voting instructions**

A document appointing a proxy may specify the way in which the proxy is to vote for a particular resolution. If it does so, then the proxy must vote on the resolution as specified.

## **10.5 Proxy's authority**

A document appointing a proxy will be treated as giving the proxy:

- (a) authority to demand, or join in demanding, a poll; and
- (b) the power to act generally at the meeting for the person giving the proxy (except to the extent to which the proxy is specifically directed to vote for or against any proposal).

## **11 General Meeting: appointing an attorney**

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### **11.1 Member appointing an attorney**

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all, or certain specified, meetings of the Company. If the attorney wishes to appoint a proxy for the Member granting the power of attorney, then the attorney must at the Registered Office (or any other place the Board determines) produce:

- (a) the power of attorney for inspection; and
- (b) any evidence the Board requires that it has been properly executed.

### **11.2 Directors appointing an attorney of the Company**

- (a) The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. The appointment:
  - (i) may be for any purposes and with powers, authorities and discretions (not exceeding those vested in, or exercisable by, the Directors under this Constitution);
  - (ii) may authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them;
  - (iii) may be for periods and on conditions as the Directors think fit; and
  - (iv) may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit.

## **12 General Meeting: voting by attorney or proxy**

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### **12.1 Validity of vote after death or revocation**

If a person who has appointed a proxy or attorney has either died or revoked the appointment but any notice in writing of the death or revocation has not been received at the Registered Office before the meeting, then a vote given in accordance within the terms of appointment will be valid.

### **12.2 Person who has appointed proxy or attorney may attend meetings**

A person who has appointed a proxy or attorney may attend and take part in a meeting. Doing so does not revoke the appointment — unless the person votes on the resolution to which the appointment applies.

## **13 Directors**

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### **13.1 Number and qualifications of Directors**

- (a) The number of Directors comprising the Board will be at least six (6) and no more than twelve (12) elected by the Members in accordance with this Constitution — except as provided in clauses 13.3(a)(iii) and 13.6.
- (b) Each Director must be a Member or a Representative of a Member (up to a maximum of two (2) Directors per associated entity) except for Independent Directors.

### **13.2 Independent Directors**

- (a) The Board may appoint up to 3 Independent Directors in total.
- (b) The Board may terminate the appointment of an Independent Director at any time whether or not the appointment was expressed to be for a specified term.

### **13.3 Election of Directors**

- (a) Directors will be elected in the following way:
  - (i) Any two (2) Members may nominate any Member or Representative to serve as a Director or eligible person to serve as an Independent Director.
  - (ii) The nomination of any Member or Representative as a candidate for election as a Director must be:
    - (A) in writing and signed by the nominated person and their proposer and seconder; and
    - (B) lodged with the Secretary at least thirty (30) days before the Annual General Meeting at which the election is to take place (or any other scheduled General Meeting).
  - (iii) If the number of nominated candidates:
    - (A) is no more than the number of vacancies, then the Chair of the Annual General Meeting will declare those candidates elected as Directors.
    - (B) is more than the number of vacancies, then the Company Secretary will arrange for balloting lists to be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.

- (C) is not enough to meet the required minimum number of Directors, then the Board must appoint a Member or Representative as Director (as long as they consent) until there is at least the minimum number of Directors.

#### **13.4 Officers on the Board**

At the first meeting of the Board after the Annual General Meeting, the Directors will elect from among their number a Chair, a Deputy Chair, a Secretary and a Treasurer (one (1) Director may fill more than one (1) position). Each of them will hold office until the end of the next Annual General Meeting.

#### **13.5 Chief Executive Officer**

- (a) The Board will appoint a Chief Executive Officer.
- (b) The Chief Executive Officer holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Board.
- (c) The exercise of those powers and authorities, and the performance of those duties, by the Chief Executive Officer are subject at all times to the control of the Board.
- (d) Subject to the terms and conditions of the appointment, the Board may suspend or remove the Chief Executive Officer from that office.
- (e) The Board may delegate to the Chief Executive Officer the power (subject to such restrictions on the power as are decided by the Board) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:
  - (i) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Board and to implement them to the extent approved by the Board;
  - (ii) manage the financial and other reporting mechanisms of the Company;
  - (iii) approve and incur expenditure subject to specified expenditure limits;
  - (iv) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Company; and
  - (v) any other powers and responsibilities which the Board considers appropriate to delegate to the Chief Executive Officer.
- (f) The Chief Executive Officer is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Company, all meeting of the Board and any committees and may speak on any matter but does not have a vote unless they are also a Director.

#### **13.6 Casual vacancies**

If there is a casual vacancy in the office of Director, then the Board may appoint a replacement Director. That replacement Director holds office until the end of the next Annual General Meeting.

### **13.7 Specified period**

Directors are appointed for a period of three (3) years unless otherwise specified.

### **13.8 End of Directors appointment**

The office of a Director will be vacated if:

- (a) they are a Member, or a Representative of a Member, and they become bankrupt or make any arrangement or composition with their creditors;
- (b) they are a Representative of a Member and that Member resigns or is expelled as a Member;
- (c) they are a Representative of a Member which is not a natural person, and a winding-up order is made in respect of that Member;
- (d) they become of unsound mind or becomes physically or mentally incapable of performing their functions as Director;
- (e) they are absent for 3 consecutive Board Meetings without leave of the Board (unless the Board resolves to the contrary);
- (f) they resign from their Directorship by giving written notice to the Company;
- (g) they were appointed to the office for a specified period and that period expires; or
- (h) they cease to hold office by reason of any order made under the Act.

### **13.9 Too few Directors**

If the number of Directors is reduced below the minimum required, the continuing Directors may act as the Board only:

- (a) To appoint Directors up to that minimum number;
- (b) To convene a meeting of the Members; and
- (c) In emergencies.

## **14 Alternates**

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### **14.1 Appointment of Alternate**

A Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

### **14.2 Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

### **14.3 Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if he or she is also a Director, has a separate right to vote as Alternate;
- (c) if Alternative for more than one (1) Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an Officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights of the Appointor as a Director; and
- (e) is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board, or of the Company, or while otherwise engaged on the business of the Company on the same basis as other Directors, but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

### **14.4 Termination of appointment**

The Appointor may, at any time, revoke the appointment of a person as Alternate, whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs that would cause the Alternate to cease to be a Director if the Alternate were a Director.

#### **14.5 Appointments and revocations in writing**

The Appointor must appoint and revoke the appointment of any Alternate in writing. The appointment or revocation is not effective until a copy of the relevant document is provided to the Board.

### **15 Powers of the Board**

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#### **15.1 The board controls and directs the Company**

- (a) The control and direction of the Company and the management of its property and affairs are vested in the Board.
- (b) The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

#### **15.2 Borrowing**

The Board may raise money in any manner it thinks fit including by borrowing money (whether on the security of the Company's assets or not) and the issuing of a security for any other purpose — so long as this is done to further the Company's Objects.

#### **15.3 Investment**

The Board may invest the Company's money in any manner, and for any period, it thinks fit.

#### **15.4 Negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for and on behalf of the Company by any two (2) Directors, the CEO as delegate of the Board or in such other manner as the Board from time to time determines.

### **16 Proceedings of the Board**

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#### **16.1 General**

- (a) The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) The Board must meet at least one (1) time a year.

#### **16.2 Use of technology in Board conferencing**

- (a) The Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet (including Skype or other online conferencing facilities), closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Board held on the day and at the time the conference was held — even if the Directors were not present together

in one place at the time. This clause does not limit the discretion of the Board to regulate its meetings.

- (b) The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

### **16.3 Notice of meeting**

- (a) At any time, the Board may convene a Board meeting by at least twenty four (24) hours' notice served on each Director. The Secretary is to arrange that notice at the request of the Chair or Deputy Chair.
- (b) All Directors may waive in writing the notice requirements for a particular meeting.
- (c) The proceedings of a Board meeting are valid even if:
  - (i) the Company accidentally omitted to give notice of a meeting to any Director; or
  - (ii) any Director did not receive notice of the meeting.

### **16.4 Quorum**

A quorum for Board meetings is (unless the Board determines otherwise) six (6) Directors. A quorum must be present for the whole meeting.

### **16.5 Chair**

- (a) The Chair, or in the Chair's absence the Deputy Chair, is to chair every Board meeting.
- (b) If at a Board meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding that meeting (or if neither is willing to chair), then the Directors present will choose one of their number to Chair the meeting.

### **16.6 Voting**

- (a) Questions arising at any meeting will be decided by a majority of votes. Each Director present is entitled to one (1) vote. The Chair does not have a casting vote.
- (b) However, the Board may suspend a Director's entitlement to vote if the Director (or the Member for whom the Director is a Representative) owes the Company any amount that is more than three (3) months overdue (or such other period as the Board determines).

### **16.7 Delegation by the Board**

- (a) Subject to clause (b), the Board may, as it thinks fit, delegate any of its powers to individual Directors or Members or to committees. A committee may consist of the Directors or Members (or both) that the Board thinks fit. Any individual or committee must comply with any Board direction about how to execute the delegated powers.
- (b) The Board may not delegate its power to delegate.

- (c) The meetings and proceedings of any committee will be governed by the provisions of this Constitution that regulate the meetings and proceedings of the Board so far as they apply and so far as the Board has not replaced them.

### **16.8 Defects in appointment**

An act done in good faith by any meeting of the Board, any meeting of any committee formed by the Board or by any person acting as a Director will not be invalidated merely because of:

- (a) any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- (b) the disqualification of any of them.

## **17 Board minutes and circulated resolutions**

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### **17.1 Making Board resolutions**

The Board may make resolutions either:

- (a) in a meeting, of which minutes must be kept as set out in clause 17.2; or
- (b) by Circulated Resolution which must be made and kept as set out in clause 17.3.

### **17.2 Minutes to be kept**

The Board must arrange for:

- (a) proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- (b) the minutes to be entered in books kept for that purpose; and
- (c) the minutes to be signed by the Chair of the meeting or by the Chair of the next meeting.

### **17.3 Circulated Resolution General**

- (a) If all Directors have signed a document containing a statement that they are in favour of a resolution set out in the document, then that resolution is to be treated as having been passed as a Circulated Resolution at a meeting of the Board held at the time and date on which the resolution was last signed by a Director. (Reference to "all directors" in this clause means all Directors required to pass the Resolution (e.g. majority) and does not include any Director who is not entitled to vote on the Resolution.)
- (b) Any Circulated Resolution may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Company.

### **17.4 Evidence of proceedings and resolutions**

A minute or Circulated Resolution that is recorded and signed in accordance with clause 17.2 or 17.3 (as the case may be) is evidence of the proceeding or resolution to which it relates (unless the contrary is proved).

## **18 Accounts**

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### **18.1 Accounts to be kept**

The Board must arrange for the Company to keep proper books of account that:

- (a) record true and complete accounts of the affairs and transactions of the Company; and
- (b) give a true and fair view of the state of the Company's affairs and explain its transactions.

### **18.2 Location and inspection of accounts**

The Board must arrange for the books of account:

- (a) to be kept at the Registered Office, or in a place or places it thinks fit; and
- (b) to be open to the inspection of the Directors during usual business hours.

### **18.3 Financial Reporting**

If required under the Act, the Board must cause the Company to prepare a financial report and a director's report that comply with the Act and must report to Members in accordance with the Act no later than the deadline set out in the Act.

### **18.4 Auditor**

The Company will comply with the Act in relation to the appointment, removal and resignation of an Auditor.

## **19 Indemnity**

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### **19.1 Definition of Liability and Officer**

In clauses 19.2(a) to 19.3(a):

- (a) Liability means costs, losses, liabilities and expenses.
- (b) Officer means a Director, secretary or other officer of the Company and includes a former Officer but does not include an Auditor or agent of the Company.

### **19.2 Indemnity of Officers**

- (a) The Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that Officer in their capacity as an Officer by reason of any act or thing done or omitted to be done by that person:

- (i) in that capacity; or
  - (ii) in any way in the discharge of that person's duties; or
  - (iii) by reason of or relating to the person's status as an Officer.
- (b) However, the indemnity in this clause does not extend to any Liability from, or against, which the Company is not permitted by the Act to exempt or indemnify the Officer.

### 19.3 Indemnity for Proceedings

- (a) Without limiting clause 19.2, the Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer.
- (b) However, the indemnity in this clause does not extend to any Liability from, or against, which the Company is not permitted by the Act to exempt or indemnify the Officer.

## 20 Notices

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- (a) The Company may serve notice on any Member using any method shown below. A notice will be taken to be served at the time shown in the right-hand column of that table on the relevant row. Any notice to be served on a Representative is served by serving it on the relevant Member.

Method of servicing notice	When notice is taken to be given
In person	The day it is delivered
By posting it to the Member's Registered Address or an alternative address (if any) nominated by the Member for service of notices	3 days after the day it is posted with the correct payment of postage costs
By leaving it at the Member's Registered Address or an alternative address (if any) nominated by the Member for service of notices	If delivered on a Business Day, the day it is delivered. If delivered on a day that is not a Business Day, the next Business Day after it is delivered.
By sending it to the fax number, email or other electronic address (if any) nominated by the Member for service of notices	The Business Day after it is sent

- (b) A certificate in writing signed by the Secretary or any officer of the Company that the envelope containing the notice was sent will be conclusive evidence of the service of such notice.

## 21 Distribution of property on winding-up

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- (a) If on the winding-up or dissolution of the Company after all its debts and liabilities have been satisfied there remains any property, then that property must not be paid to or distributed among the Members.
- (b) Instead, this property must be given or transferred to some other institution or institutions that have:
  - (i) objects similar to the Objects of the Company (if there is one); and
  - (ii) a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 4 of this Constitution.
- (c) Choosing which institution or institutions the Company will transfer this property to must be done by:
  - (i) a Special Resolution of the Members at or before the time of the Company's dissolution; or
  - (ii) if no such Special Resolution is passed, then by a Judge or Registrar of the Supreme Court or such other court of competent jurisdiction.

## 22 Replaceable Rules displaced

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Each of the provisions of the Act that would, but for this clause, apply to the Company as a replaceable rule is expressly displaced and does not apply to the Company.

## 23 Definitions and interpretation

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### 23.1 Definitions

In this Constitution:

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

**Annual General Meeting** means the annual general meeting of Members.

**Alternate** means an alternate Director appointed under this Constitution.

**Applicant** means the person who lodged an Application under this Constitution.

**Appointor** in relation to an Alternate, means the Director who appointed the Alternate.

**Auditor** means the auditor or auditors of the Company, if the Company is required to have one. If the Company is not required to have an auditor, but has one, then it includes any such auditor.

**Board** means the board of Directors of the Company.

**Business Day** means Monday to Friday excluding public holidays in the State or Territory the Company is registered in.

**Chair** means the Director who is elected to this office in accordance with clause 16.5.

**Chief Executive Officer** means a person appointed as Chief Executive Officer of the Company by the Directors.

**Company** means the company named at the beginning of this constitution, as amended from time to time.

**Constitution** means this Constitution, as amended.

**Director** means a person who is at any time, a Director of the Company.

**Extraordinary Meeting** means a General Meeting of Members other than an Annual General Meeting.

**General Meeting** means an Annual General Meeting or an Extraordinary Meeting of the Company.

**Independent Director** means a Director who is not formally affiliated or associated with any Member and does not have any relationship with the Company or any other person that could, in the opinion of the elected Directors, materially interfere with:

- (i) the exercise of objective, unfettered and independent judgement by the person; or
- (ii) the person's ability to act in the best interests of the Company.

**Industry** means the Australian automotive aftermarket industry.

**Member** means a person, organisation or entity that has been admitted to Membership in accordance with this Constitution.

**Membership** means membership of the Company.

**Objects** means the Objects of the Company set out in clause 2.

**Officer** has the meaning given by section 9 of the Act.

**Register** means the register of Members kept as required by sections 168 and 169 of the Act.

**Registered Address** means the address of a Member shown in the Register. Registered Office means the registered office of the Company.

**Representative** means a person as described in clause 6.7.

**Secretary** means the Director who is elected to this office in accordance with clause 13.4.

**Special Resolution** means a resolution of which notice has been given and that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

**Treasurer** means the Director who is elected to this office in accordance with clause 13.4.

## **23.2 Interpretation of this document**

In this Constitution, unless the context requires otherwise:

- (a) a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- (b) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (d) a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- (e) a word or phrase that is defined has the corresponding meaning in its other grammatical forms
- (f) writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- (g) the singular includes the plural and vice versa;
- (h) a gender includes all other genders; and
- (i) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

**24 Execution**

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Executed as a deed

Signed sealed and delivered by *[name]* in  
the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Signed sealed and delivered by *[name]* in  
the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Signed sealed and delivered by *[name]* in  
the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_

---

Print Name

---

Signed sealed and delivered by [name] in  
the presence of:

---

Signature

---

Witness Signature

---

Date

---

Print Name

---

Signed sealed and delivered by [name] in  
the presence of:

---

Signature

---

Witness Signature

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Date

---

Print Name

---

Signed sealed and delivered by [name] in  
the presence of:

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Signature

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Witness Signature

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Date

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Print Name

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DRAFT