

**CONSTITUTION**  
**of**  
**FOREST GROWERS RESEARCH LIMITED**

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## CONTENTS

1. DEFINITIONS AND INTERPRETATION.....	1
2. SHARES.....	3
3. EQUITABLE INTERESTS IN SHARES.....	3
4. TRANSFER OF SHARE .....	3
5. DISTRIBUTIONS .....	4
6. APPOINTMENT AND REMOVAL OF DIRECTORS.....	4
7. REMUNERATION AND OTHER BENEFITS OF DIRECTORS .....	7
8. INDEMNITY AND INSURANCE .....	7
9. POWERS OF DIRECTORS .....	8
10. INTERESTS OF DIRECTORS.....	8
11. PROCEEDINGS OF BOARD .....	9
12. METHOD OF CONTRACTING .....	12
13. INSPECTION OF RECORDS .....	13
14. NOTICES.....	13

**CONSTITUTION**  
of  
**FOREST GROWERS RESEARCH LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**Board**” means the Directors.

“**Chairman**” means the chairman of the Board as may be appointed from time to time.

“**Company**” means Forest Growers Research Limited.

“**Constitution**” means this constitution, as altered from time to time.

“**Deputy Chairman**” means the Deputy Chairman of the Board as appointed from time to time.

“**Director**” means a person appointed as a director of the Company in accordance with this Constitution.

“**Distribution**” has the same meaning as set out in Section 2 of the Act.

“**Entitled Persons**” means:

(a) the Shareholder; and

(b) the Members.

“**Interested**”, in relation to a Director, has the meaning set out in section 139 of the Act.

“**Members**” means those persons who from time to time are a party to the Operating Agreement (together with the New Zealand Forest Owners’ Association Incorporated).

“**Operating Agreement**” means the then current Operating Agreement entered into between the Company and Members.

“**Share**” means the sole share in the capital of the Company.

“**Shareholder**” means Davys Burton Trustees Limited or such other person who from time to time is the transferee of the Share.

“**Trust Deed**” means the deed of trust under which the Shareholder holds the Share in trust for the Members.

**“Working Day”** has the meaning in section 2 of the Act.

1.2 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) “including” and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person’s liability is joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
- (g) singular includes plural and vice versa;
- (h) references to a gender covers all the genders;
- (i) New Zealand time and dates apply. Time is of the essence;
- (j) definitions in the Act have the same meaning in this agreement;
- (k) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (l) references to sections, clauses, schedules, annexes or other identifiers are to those in this Constitution;
- (m) references to a document or agreement includes it as varied, novated or replaced;
- (n) “written” and “in writing” include any means of reproducing words, figures or symbols in a tangible and visible form;
- (o) a reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation; and
- (p) any reference to “month” or “monthly” means, respectively, calendar month or calendar monthly.

1.3 **Constitution to prevail:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or

- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

- 1.4 **Operating Agreement to prevail:** If there is any conflict between the terms of the Operating Agreement and any provision of this Constitution, the terms of the Operating Agreement shall prevail. To the extent that this Constitution may have to be modified to enable full legal effect to be given to the terms of the Operating Agreement, the Shareholder shall, subject to the terms of the Trust Deed, make such modification.

## 2. SHARES

- 2.1 **Initial issue of Shares:** The Company was incorporated on 9 May 2006 under the name of Future Forests Research Limited with a capital of the Share only as now held by the Shareholder. The capital of the Company, as at the date of the adoption of this Constitution, still comprises the Share only.

- 2.2 **Future Shares:** Unless this Constitution is modified under the terms of the Operating Agreement and by way of special resolution permitting the issue of further shares, the capital of the company shall continue to comprise the Share only.

## 3. EQUITABLE INTERESTS IN SHARES

- 3.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

## 4. TRANSFER OF SHARE

- 4.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, or the Operating Agreement, the Shareholder may transfer the Share by an instrument of transfer.

- 4.2 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of the Share if the Board has notice of any agreement by the Shareholder to transfer only to some specified person or subject to some specified condition and the transfer is in breach of that agreement, provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within 5 Working Days of the resolution being passed by the Board.

- 4.3 **When transfer effective:** A transferor of the Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

- 4.4 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.

## 5. DISTRIBUTIONS

- 5.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, may, subject to the Act and this Constitution, and with the prior approval of the Shareholder, authorise Distributions by the Company at times, and of amounts, and to the Entitled Persons, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 5.2 **Form of Distribution:** The Board may make a Distribution in such form as it thinks fit.
- 5.3 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the Entitled Persons and in such manner as the Shareholder may in writing direct.
- 5.4 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

## 6. APPOINTMENT AND REMOVAL OF DIRECTORS

- 6.1 **Number of Directors:** The number of Directors shall be not less than 5 and not more than 7.
- 6.2 **Appointment:** Directors shall be appointed as follows:
- (a) 3 Directors shall be appointed by the New Zealand Forest Owners' Association Incorporated.
  - (b) 1 Director shall be appointed by the New Zealand Farm Forestry Association Incorporated.
  - (c) 1 Director, who will have knowledge of those Members who are investing directly in the Company's programs and the research objectives of those Members, shall be appointed by the 4 Directors referred to in paragraphs (a) and (b) above. In the event of any disagreement between the 4 Directors making the appointment, a majority vote of 3 of those Directors shall suffice for the purpose of making the appointment.
  - (d) Up to 2 independent Directors may be appointed by the Board where such appointments are considered desirable to ensure that the mix of skills, experience and interests of Directors is appropriately balanced.
- 6.3 **Term of appointment:** The term of appointment of the Directors shall be as follows:
- (a) Of the 4 Directors appointed by the New Zealand Forest Owners' Association Incorporated and the New Zealand Farm Forestry Association Incorporated:
    - i. 3, including the Director appointed by the New Zealand Farm Forestry Association Incorporated, will be appointed for a term of 2 years, but may offer himself or herself for reappointment for a further term of 3 years;

- ii. 1 will be appointed for a term of 1 year, but may offer himself or herself for reappointment for a further term of 3 years;
    - iii. If appointed for further terms of 3 years, each such Director may offer himself or herself for subsequent and further successive terms of 3 years (without there being any limitation as to the number of times they may be reappointed).
  - (b) The Director to be appointed pursuant to clause 6.2(c) shall be appointed for such term as is determined by the Directors making the appointment.
  - (c) Any independent Directors appointed by the Board will retire after the expiry of the term of appointment. Any such Directors will be eligible for reappointment by the Board. Any independent Director may also be removed prior to expiry of the term of appointment by way of a Board resolution passed in accordance with clause 11.10(g).
- 6.4 **Removal:** Those persons or parties who have the power to appoint a Director or Directors in accordance with clause 6.2 shall have the power to remove such Director or Directors notwithstanding that their term of appointment may have not expired. Such power shall be exercised by written notice given to the Company.
- 6.5 **Alternate Directors:** The persons or parties with the power to appoint a Director or Directors may at any time appoint a person who is not already a Director to act as an alternate Director for a Director previously appointed to represent that person or party. The following provisions shall apply to an alternate Director:
- (a) The appointment may at any time be revoked by notice to the Company given by the person or parties with the power of appointment and is automatically revoked when the Director in whose place the alternate Director acts vacates office.
  - (b) The alternate Director is not entitled in that capacity to any remuneration additional to that of the Director in whose place he or she acts.
  - (c) Unless otherwise provided by the terms of the appointment, the alternate Director, while acting in that capacity:
    - (i) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company); and
    - (ii) shall discharge all the duties and obligations,
 of the Director in whose place he or she acts.
  - (d) Any alternate Director may only act in that capacity when the Director for whom they are acting as an alternate is unable to discharge his or her obligations as a Director.
- 6.6 **Notice of appointment and removal:** Any notice to the Company pursuant to this section appointing or removing a Director or alternate Director must:

- (a) be signed, or purport to be signed, by the person or party exercising such right;
- (b) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice shall be effective from the time of receipt of the notice by the Company at its registered office.

6.7 **Appointment of managing director:** The Board may from time to time appoint one or more Directors to the office of Managing Director for such period, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A Managing Director shall be subject to the same provisions as to vacation of office as apply to the other Directors and, if a Managing Director ceases for any reason to hold office as a Director, he or she shall immediately cease to hold the office of Managing Director.

6.8 **Appointment of chairman/deputy chairman:** The Board shall appoint a Chairman and Deputy Chairman on an annual basis by way of a 75% majority vote.

6.9 **Vacation of office:** A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being a Director pursuant to the Act; or
- (d) is removed from office in accordance with clauses 6.4 and 6.6; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

6.10 **Appointment of substitute director:** Where a person ceases to be a Director, the party with the power under clause 6.2 to appoint that Director shall appoint a substitute Director for the balance of the existing term of the Director who has vacated his or her office where such appointment is necessary. Where, however, the balance of the existing term is 6 months or less, the appointment of a substitute Director shall be for not only that balance but also for the whole of the further term commencing from the expiry of the existing term.

## 7. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

7.1 **Power to authorise:** If approved by the Board, Directors shall be entitled to remuneration from the Company and to reimbursement by the Company of expenses reasonably incurred in attending Board meetings.



## 8. INDEMNITY AND INSURANCE

8.1 **Indemnity of Directors:** Subject to clause 8.2 every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company for any act or omission by him or her in his or her capacity as a Director of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment, but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

8.2 **Exceptions:** An indemnity conferred by clause 8.1(b) shall not apply in respect of

- (a) any criminal liability; or
- (b) in the case of an employee of the Company, any liability in respect of a breach of any fiduciary duty owed to the Company; or
- (c) in the case of a Director, any liability in respect of a breach of the duty specified in section 131 of the Act.

8.3 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

8.4 **Definitions:** In this section 8:

- (a) "Director" includes a former Director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

## 9. POWERS OF DIRECTORS

- 9.1 **Management of Company:** Subject to the Operating Agreement, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- 9.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act, the Operating Agreement or this Constitution, to be exercised by the Shareholder.
- 9.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.
- 9.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 9.5 **Ratification by Shareholder:** Subject to the provisions of section 177 of the Act (relating to ratification of Directors' actions) the Shareholder may ratify the purported exercise of a power vested in the Shareholder by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.
- 9.6 **Change of name of Company:** The Board shall not authorise a change of name of the Company without the prior approval of the Shareholder by Special Resolution.

## 10. INTERESTS OF DIRECTORS

- 10.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 10.2.
- 10.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a Director from acting as auditor of a company), a Director may:
- (a) contract with the Company in any capacity;
  - (b) be a party to any transaction with the Company;
  - (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;

(d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and

(e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

10.3 **Interested Directors:** A Director who is interested (as defined in the Companies Act 1993) in a transaction entered into or to be entered into by the Company may vote on any matter related to the transaction and shall be included in the quorum of Directors considering the transaction.

10.4 **Best interests:** All Directors shall act in what the Director believes to be the best interests of the Company, and section 131(4) of the Companies Act shall not apply.

## 11. PROCEEDINGS OF BOARD

11.1 **Third Schedule to Act not to apply:** The provisions of the Third Schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

11.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

(a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

11.3 **Procedure:** Except as provided in this Constitution and the Operating Agreement, the Board may regulate its own procedure.

11.4 **Convening of meeting:** The Board shall:

(a) Meet at least once a year.

(b) Set its meeting dates for the year at its first Board meeting each year.

11.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board except where otherwise agreed by all Directors in relation to any particular meeting or meetings:

(a) Not less than 10 days' notice of a meeting shall be given to each Director (other than a Director who has waived that right).

(b) Notice to a Director of a meeting may be:

- (i) given to the Director in person by telephone or other oral communication;
  - (ii) delivered to the Director;
  - (iii) posted to the address given by the Director to the Company for such purpose;
  - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
  - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) It is not necessary to give notices of meetings to an alternate Director, unless the Director who appointed that person has given written notice to the Company requiring that such notices be given.
- (d) A notice of meeting shall:
- (i) specify the date, time and place of the meeting;
  - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
  - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.
  - (iv) specify the wording of any resolutions which will require a 75% majority approval vote of the Directors.
- (e) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
  - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
  - (iii) in the case of posting, 3 days after it is posted;
  - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
  - (v) in the case of electronic means, at the time of transmission.

- (f) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 11.5(e) but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director
- 11.6 **Director may convene meeting:** Without limiting the provisions of clauses 11.3 or 11.5, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than 7 days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.
- 11.7 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.
- 11.8 **Quorum:** A quorum for a meeting of the Board shall be 3 Directors unless the Board otherwise resolves from time to time that the quorum shall be a higher number.
- 11.9 **Voting:** At a meeting of the Board:
- (a) Each Director shall have one vote only on any Board resolutions.
  - (b) The Chairman shall have a deliberative but not a casting vote.
  - (c) All decisions will require a majority vote, except for those decisions referred to in clause 11.10 where a 75% majority vote shall be required.
- 11.10 **Special majority:** A 75% majority vote shall be required for those Board decisions which involve:
- (a) approval of Company policies and procedures;
  - (b) adoption of a strategic plan;
  - (c) adoption of an annual operating plan and budget;
  - (d) adoption of any research program;
  - (e) approval of any contract to license intellectual property to a third party;
  - (f) borrowing of any money;
  - (g) appointment, removal and terms of appointment of any independent Director or his or her alternate. The 75% vote required for removal of any independent Director shall be exclusive of that independent Director or his or her alternate;
  - (h) appointment, removal and terms of appointment of a manager;
  - (i) appointment of a Chairman and Deputy Chairman.

- 11.11 **Majority Vote:** Any references in this Constitution to a 75% majority vote of the Board (including in clauses 6.8, 11.5(d)(iv), 11.9(c) and 11.10) means (notwithstanding that the majorities referred to below are, on a mathematical basis, less than or more than 75%):
- (a) 3 Directors where the Board currently comprises 5 Directors; and
  - (b) 4 Directors where the Board currently comprises 6 Directors; and
  - (c) 5 Directors where the Board currently comprises 7 Directors.
- 11.12 **Resolution in writing:** A resolution in writing signed or assented to by a majority of the Directors is as valid and effective as if passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. The Company shall, within 7 days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.
- 11.13 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 11.14 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 11.15 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholder and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 12. METHOD OF CONTRACTING

- 12.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) any 2 Directors; or
  - (b) any Director, whose signature must be witnessed; or
  - (c) one or more attorneys appointed by the Company.
- 12.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

12.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

### 13. INSPECTION OF RECORDS

13.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

### 14. NOTICES

14.1 **Reports, etc to Shareholder:** Annual reports, notices and other documents required to be sent to the Shareholder shall be sent in the manner provided in section 391 of the Act.

14.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to the Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting the Shareholder if the failure to do so was accidental.