

Shareholders Agreement

Purple Orange One Thirty Two Com Pty Ltd ACN 601259689

The shareholders listed at Part 2 of Schedule 1

and

Purple Orange One Thirty Two Com Pty Ltd

ACN 601259689

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Sample

Parties

The shareholders listed at Part 2 of Schedule 1

AND

Purple Orange One Thirty Two Com Pty Ltd ACN 601259689

of 5/83 George Street

Parramatta, New South Wales, 2150

Background

- 1 Purple Orange One Thirty Two Com Pty Ltd is a company incorporated under the *Corporations Act*.
- 2 The company's shareholders and the shareholders' key persons (if any) as at the commencement date are set out in Part 2 of Schedule 1.
- 3 The company's issued share capital as at the commencement date is set out in Part 1 of Schedule 1.
- 4 The parties enter into this deed to regulate the conduct of the business and the management of the company and to give effect to their common intentions.

This deed witnesses

A Commencement of deed

- 1 This deed takes effect on the date of this deed.

B Company's constitution

Deed to take precedence over constitution

- 2 If a provision of the constitution is inconsistent with the provisions of this deed, then the provisions of this deed take precedence to the extent of the inconsistency. The constitution must be read subject to the provisions of this deed.
- 3 Further to clause 2:

3.1 clauses 6 – 47 of this deed take precedence over all provisions of the constitution relating to:

- appointment and removal of directors, secretaries and the chair;
- the chair's casting vote;
- any requirement to hold directors' meetings; and
- the processes by which directors' meetings must be convened and conducted.

3.2 clauses 48 – 55 of this deed take precedence over all provisions of the constitution relating to:

- decisions by directors, and how they are to be made; and
- the declaration and payment of dividends.

3.3 clauses 56 – 91 of this deed take precedence over all provisions of the constitution relating to:

- issue of shares;
- transfer and transmission of shares;
- creation, issue or transfer of securities relating to the company;
- creation of any encumbrances relating to shares;
- valuation of shares; and
- classes of shares.

Elimination of inconsistency

4 If a party requires the constitution to be amended to eliminate any inconsistency with this deed, the company and the shareholders must ensure those amendments are made within a reasonable period.

C Warranties

5 Each party represents and warrants to each other party that each of the warranties in Schedule 2 is true and correct and not misleading as at the commencement date.

D Objectives and business

Objectives

6 The company's objectives are:

- to conduct the business in an efficient and profitable manner; and

- to ensure that the business is managed to maximise the company's value and profitability.

Nature of business

7 The business includes:

- Textile Business; and
- any other business determined by the board, or the shareholders, in accordance with clauses 48 – 50.

E Board of directors

Number of directors

8 The company must at all times have no less than 1 director or such other minimum or maximum numbers as the directors decide by unanimous resolution.

9 A director does not need to hold shares to be eligible to be appointed to the board.

10 If the company's sole director dies, or is disqualified, the shareholders agree to use their respective best endeavours to appoint a replacement director either:

- pursuant to clause 14; or
- if the power under clause 14 has not been exercised within 10 business days of the death or disqualification, then by a unanimous resolution in writing, or by an ordinary resolution of the shareholders passed in a general meeting of the shareholders which any shareholder may convene on 21 days' written notice at the company's expense.

11 If the company has one or more directors, but the number of directors is less than the minimum number of directors, then the director or directors, as the case may be, may only act for the purpose of appointing an additional director or directors as necessary to satisfy the minimum. Any such appointment may be made by the directors passing an ordinary resolution.

Initial directors

12 The initial directors are specified in Part 1 of Schedule 1.

13 Subject to clause 19, within 6 months of the commencement date, the shareholders may by ordinary resolution remove a director who is not a representative director. If that director is the sole director, then the removal only takes effect when the shareholders appoint a replacement director by an ordinary resolution.

Appointment and replacement of directors

- 14 Each shareholder may appoint one director for each 20% of the shares the shareholder holds to be the shareholder's representative director.
- 15 An appointing shareholder may remove any or all of its representative directors by giving notice in writing to the company, and the other shareholders have no power to, and must not attempt to exercise any vote or power to, remove another shareholder's representative director.
- 16 A representative director automatically ceases to be a director if his or her appointing shareholder ceases to hold the requisite percentage shareholding referred to in clause 14. If the shareholder has more than one representative director, and the shareholder's shareholding remains at a level which entitles the shareholder to appoint a representative director, then:
- the shareholder may, prior to the shareholding being reduced, notify the company in writing which representative director or directors are to cease to be a director; and
 - if the shareholder does not notify the company in that way, then the director or directors who will cease to be directors will be those who have held office for the shorter time and, if equal, the younger director.
- 17 The board, or the secretary if there is one, must keep a record of the representative directors, and each shareholder must provide the board or the secretary, as applicable, with such information as is required to maintain that record.

Alternate director

- 18 A director may, with the approval of a majority of other directors (which approval may not be unreasonably withheld), appoint a person to be his or her alternate for a specified period, to be determined by the board.

Effective time of appointment

- 19 Each appointment and removal of a director takes effect when the written notice of appointment or removal is delivered to the company. In the case of appointment, the written notice is only validly served if it is accompanied by a consent to act from the relevant person.

Election of chair

- 20 The initial chair is named in Part 1 of Schedule 1.
- 21 The board may from time to time remove the chair and appoint another director as a replacement chair, or may appoint a director as a temporary chair.

Chair's casting vote

- 22 If an equal number of votes, in favour of and against, has been cast at a meeting of the board requiring a vote of the board, the chair will not have a casting vote in addition to his or her deliberative vote.

Company secretary and public officer

- 23 The directors may appoint one or more company secretaries in accordance with the *Corporations Act* on the terms and conditions they think fit. The directors may remove a company secretary from office. Unless the directors decide otherwise, the company secretary is also the company's public officer.
- 24 The directors must appoint a public officer in accordance with Australian tax law on the terms and conditions they think fit. The directors may remove a public officer from office.

Duties of directors

- 25 The directors must act in good faith and in the company's interests as a whole. Subject to this duty and the *Corporations Act*, a director appointed by a shareholder may have regard to, and act in the interests of, that shareholder.

Directors' and officers' insurance

- 26 To the extent permitted by the *Corporations Act*, the company may, at the directors' discretion, enter into and pay for a policy of insurance insuring an officer or former officer against any liability incurred as an officer or employee of the company. However, this does not apply in relation to either of the following liabilities:
- a liability arising out of conduct involving a wilful breach of duty in relation to the company; or
 - a contravention of section 182 or section 183 of the *Corporations Act*.

Directors' fees

- 27 The directors' fees (if any) will be determined by the board by unanimous resolution from time to time.
- 28 If the board has determined to pay directors' fees, then the directors' fees will be reviewed annually as at 1 July and determined at such rate as the board unanimously determines.

F Meetings of the board

Frequency and notice

- 29 The board must meet at least once each year from the commencement date.

- 30 Unless all directors agree to a meeting being held on short notice, at least 5 business days' notice must be given of a meeting of directors.
- 31 The directors may meet, adjourn and regulate their meetings as they think fit. Without limitation, a meeting of directors may be held at 1 or more physical locations as a Virtual Meeting or as a Hybrid Meeting.

Meeting of directors as Virtual Meeting or Hybrid Meeting

- 32 Clauses 32 to 36 apply if a meeting of directors is held as a Virtual Meeting or a Hybrid Meeting.
- 33 By agreeing to be a director, and on adoption of the Constitution, each director provides their standing consent to the use of any technology to hold a meeting of directors as a Virtual Meeting or a Hybrid Meeting. Each director agrees that the use of such technology will assist the efficient conduct of the company's business. A director may only withdraw their consent to the use of specified technology by giving 14 days' notice to the company secretary. Each director agrees this is a reasonable notice period and acknowledges the withdrawal of consent will not apply to a meeting of directors convened in accordance with the Constitution, held before the expiry of the relevant 14-day notice period.
- 34 All persons attending the meeting remotely are taken for all purposes to be present in person at the meeting while so attending.
- 35 Unless the *Corporations Act* provides otherwise, the meeting is taken to be held at the place decided by the chair of the meeting, if at least 1 director was at the place for the duration of the meeting. The time for the meeting is taken to be the time at the place for the meeting.
- 36 If technical difficulties arise before or during the meeting such that a director cannot participate in the meeting, then the chair may, unless the *Corporations Act* otherwise requires:
- 36.1 adjourn the meeting either for a reasonable period to fix the technology, or to another time and place;
 - 36.2 allow the meeting to continue (with the same technology or with different technology selected by the chair), if a quorum of directors remain able to participate. For clarity, any resolution passed at the continued meeting is valid.

Quorum

- 37 The quorum required for meetings of directors will be either the lesser of all the directors, or at least one representative director of each eligible shareholder under clause 14.
- 38 If a quorum is not present within 30 minutes at the appointed time and place for a board meeting, then the meeting is adjourned to the same time and place 5 business days later. The quorum for the adjourned meeting will be those directors who attend.

Voting entitlements

- 39 Subject to clause 40, each director (or his or her alternate) has one vote.

40 The exceptions to clause 39 are that:

- in the case of an equality of votes, or if a representative director calls for a resolution to be decided on a poll, then the representative directors of a shareholder together have a number of votes equal to the number of shares held by their appointing shareholder and the other directors have one vote each; and
- the representative directors of a defaulting shareholder have no vote for so long as the shareholder is a defaulting shareholder (a shareholder is a defaulting shareholder for this purpose for the duration of the 20 business day period referred to in clause 79.2.1).

Minutes

41 A copy of the minutes of each board meeting must be provided to each director within 10 business days after the meeting.

G Management of the company

Managing director and board

42 At the board's first meeting after the commencement date, the board may appoint a managing director on the terms and conditions they think fit.

43 The board may remove or replace a managing director, subject to the terms of the managing director's employment agreement.

Changes to appointments

44 The board may from time to time as they think fit:

- appoint additional or replacement accountants and advisers; and
- subject to the requirements of the *Corporations Act*, appoint or replace an auditor.

Records

45 The shareholders must ensure that the company's records are kept in accordance with the law and reflect generally accepted Australian accounting principles, procedures and practices consistently applied.

46 The company's annual accounts must be prepared and submitted to the board within 7 months after the end of each financial year.

Access by shareholders to records

47 Shareholders will have the right to review the company's records at any time at their own expense, if they provide the company secretary with reasonable written notice in advance.

H Decision making

Simple majority decision

48 Subject to clause 49 and 50, all decisions of the board, or the shareholders in general meeting, must be made by ordinary resolution.

Unanimous decisions of the board

49 All decisions in respect of the following matters, except where they have been included in an approved business plan and budget, must be made by a unanimous resolution of the board:

- 49.1 annual budget: adopting each annual budget for the company, any material deviation from an annual budget, and each revised annual budget;
- 49.2 borrowings: obtaining new or increasing existing external borrowings where the total of all external borrowings exceeds the limits as determined by the shareholders by an ordinary resolution;
- 49.3 capital expenditure: incurring any capital expenditure or liability (other than in the ordinary course of business) which exceeds an amount of \$50,000, or \$50,000 per annum, and includes incurring a liability in respect of procuring products or services from suppliers, or the engagement of sub-contractors;
- 49.4 change in business: materially changing the business, acquiring a business or entering into a new business;
- 49.5 disposal of assets: disposing of any assets (other than in the ordinary course of business) with a book value or market value of \$50,000 or more for each financial year;
- 49.6 dividend: recommending or declaring an interim or a final dividend that differs from the company's intention under a dividend policy adopted under clause 55;
- 49.7 company guarantee: provision of guarantees by the company to any third party that exceeds a total contingent liability in excess of \$50,000, or such other limit as determined by the shareholders by an ordinary resolution;
- 49.8 directors' guarantee: provision of guarantees by a director to any third party;
- 49.9 land: acquisition or disposal of any freehold land;
- 49.10 lease: entering into leases of real property with rental payments of more than \$50,000 for each financial year;
- 49.11 liquidation: liquidating or proposing a winding up of the company or appointing a liquidator, administrator, receiver or other similar person to the company or any of its assets;
- 49.12 major contract: execution of any contract or entering into any commitment with a value of \$50,000 or more for each financial year; and
- 49.13 non-arm's length transactions: entering into an arrangement or incurring a liability which is not on arm's lengths terms.

Unanimous decisions of the shareholders

50 All decisions in respect of the following matters, except where they have been included in an approved business plan and budget, must be made by unanimous resolution of the shareholders:

- 50.1 disposal of business: disposing of the business or a substantial part of it;
- 50.2 merger: merging or amalgamating the company with another company; and
- 50.3 reorganisation: reorganising or reconstructing share capital.

I Approved business plan and budget

Approved business plan and budget

51 The approved business plan and budget for the period commencing on the commencement date is at Annexure 1.

Adoption of approved business plan and budget

52 Before the end of each financial year, the company and each shareholder must ensure that the board adopts an approved business plan and budget for the following financial year, in a form and content prepared and approved by the board.

Previous annual budget to apply

53 If the board has not adopted an approved business plan and budget for a financial year before the start of that financial year, then until such time as an approved business plan and budget is adopted for that financial year, the approved business plan and budget for the previous financial year will apply, where possible.

J Dividends

Resolutions as to dividends

54 Subject to the *Corporations Act*, the amount of any dividend or distribution payable to the shareholders is at the board's discretion and must be approved by a unanimous resolution of the directors.

Dividend policy

55 The board may adopt a dividend policy by ordinary resolution. Any such policy adopted by the board in relation to dividends or the distribution of distributable profits must be consistent with:

- prudent financial management, having regard to the objectives of this deed;
- the current adopted approved business plan and budget;

- the company's taxation and working capital requirements and operational requirements;
- the company's capital expenditure requirements;
- the terms of all loan agreements (including applicable banking covenants) under which the company has borrowed funds; and
- appropriate debt amortisation.

K Shares

Ordinary shares

56 Unless agreed otherwise by a written resolution of all shareholders:

56.1 all shares on issue in the company on the date of this deed become ordinary shares with equal rights to:

- receive notice of any general meeting of the company;
- vote at any general meeting of the company in accordance with clauses 61 – 62;
- receive dividends, as determined; and
- participate in distribution of any capital, or surplus assets on winding up;

56.2 the board may only issue ordinary shares and only in proportion to the shareholders existing shareholdings; and

56.3 the board may, at its discretion, issue those ordinary shares as partly paid shares, and the rules for partly paid shares set out in the company's constitution will govern the issue and terms of issue of those shares.

No change in control

57 A change in control of a shareholder is not permitted without the prior written consent of all other shareholders, which may be withheld at a shareholder's absolute discretion.

Security Interests

58 A shareholder must not provide any shares as security, or create or give any security interest over shares in favour of any person without the prior written consent of all other shareholders, which may be withheld at a shareholder's absolute discretion.

59 Subject to clauses 58 and 60, this clause does not prohibit external borrowings by the company on terms agreed by the board.

60 No shareholder is required (unless they consent in writing) to give a security interest to enable the company to undertake any activity including:

- entering into a contract or arrangement to provide services; or
- obtaining external borrowings from a financial institution or other third party.

Voting rights

- 61 An individual shareholder may vote personally or by proxy or attorney.
- 62 Each corporate shareholder appoints its key person as its corporate authorised representative.

L Transfer of shares

Transfer prohibited

- 63 A shareholder must not dispose of any legal or beneficial interest in any of its shares except in accordance with this deed.

Transfer with parties' consent

- 64 If a shareholder proposes to dispose of any of the shareholder's shares, that shareholder must first:
- 64.1 obtain the consent of all other shareholders, which may be withheld at a shareholder's absolute discretion; or
- 64.2 follow the procedure set out in clauses 65 – 70.

Pre-emptive procedure

- 65 A transfer notice:
- 65.1 must be given to the company by a shareholder who intends to dispose of any of its shares to a third party;
- 65.2 is deemed to be given by a defaulting shareholder when the shareholder becomes a defaulting shareholder (as determined under clause 79).
- 66 A transfer notice must:
- 66.1 state the number of shares the shareholder proposes to transfer;
- 66.2 state the price and all other terms of the proposed transfer, including the identity of the proposed transferee (if any); and
- 66.3 appoint the company as agent for the sale of those shares at that price.
- 67 Within 10 business days of receipt of the transfer notice, the company must forward a copy of it to all other shareholders offering those shares to the shareholders in accordance with the terms of the transfer notice.

- 68 A shareholder may purchase the shares offered to the shareholder on the terms set out in a transfer notice by giving notice in writing to the company within 20 business days of receipt of the transfer notice from the company. Each receiving shareholder may accept:
- 68.1 a proportion of the shares offered determined by the receiving shareholder's existing shareholding (as a percentage of the shareholdings of all receiving shareholders); and
 - 68.2 such additional shares as they specify in the notice in the event that not all shares offered are accepted by the receiving shareholders.
- 69 The receiving shareholders will be bound to complete the purchase of:
- 69.1 all shares accepted under clause 68; and
 - 69.2 the lesser of all shares accepted under clause 68 and a proportion of the shares accepted under clause 68.1 determined by reference to the receiving shareholder's existing shareholding as a percentage of the shareholdings of all receiving shareholders who accepted under clause 68.
- 70 If any shares are not accepted by the process set out above, then the shareholder may dispose of the shares provided that, if the disposal involves a transfer of the shares to a third party purchaser:
- 70.1 the consideration paid at the time of the transfer is not less than the price set out in the transfer notice;
 - 70.2 the third party purchaser signs an accession deed, under which the third party purchaser becomes a party to this deed; and
 - 70.3 the sale and purchase is completed within 3 months after the original transfer notice was served and at the same date and time as any sale to other shareholders.

Settlement

- 71 Settlement of any disposal of the shares must take place at the company's registered office on or before the date which applies under clause 70.3 either as agreed by the participating parties, or at 11:00am on the final date.
- 72 Payment of the price for shares must be made to the shareholder selling the shares by bank cheque at settlement (unless otherwise agreed between the shareholder selling the shares and the purchaser).
- 73 The shareholder selling the shares must return their share certificates to the company at settlement, and the shareholders must procure a meeting of the board to register the share transfers, cancel share certificates and issue new share certificates.
- 74 At settlement, a third party purchaser must deliver its signed accession deed to the company.
- 75 Title to and risk in the shares sold passes at settlement.

M Determination of share price

76 When required by this deed, the share price may be agreed between the shareholders.

77 If agreement cannot be reached within a reasonable time, being one month, then:

77.1 the board will obtain a determination of the value of the shares by appointing a valuer;

77.2 the board must instruct the valuer to value the relevant shares, adopting the method of valuation that the valuer considers appropriate having regard to the following factors based on the best information available at the time:

- the prospects of the business;
- the value, at a specified capitalisation rate appropriate to the business, of the estimated future maintainable earnings of the company;
- the yields which an open-market investor could reasonably require in an acquisition of the relevant shares; and
- the net tangible assets of the company as disclosed in the last audited accounts for the last preceding financial year, or if no audited accounts of the company are available, as disclosed in the latest full year management accounts of the company; and

77.3 the valuer's determination of the share price will be final and binding on all the relevant parties; and

77.4 the costs of any valuation will be borne by the shareholders in proportion to their respective shareholdings or, where applicable, by the defaulting shareholder.

N Shareholder conduct

Actions of shareholders

78 In order to fulfil the objectives listed in clause 6, each shareholder must:

78.1 devote appropriate resources, cooperate and use the shareholder's best endeavours to ensure that the company successfully carries on the business;

78.2 not use confidential information in a way which damages or is reasonably likely to damage the company or any other shareholder;

78.3 not unreasonably delay an action, approval, direction, determination or decision which is required of them;

78.4 use the shareholder's best endeavours to lawfully procure that the shareholder's representative directors:

- act in a manner consistent with the objectives stated in clause 6; and

- conduct the business and manage the company in a manner consistent with this deed and the constitution;
- 78.5 give approvals or make decisions that are required of the shareholder in good faith and in the best interests of the company and the carrying on of the business as a commercial venture; and
- 78.6 be just and faithful in the shareholder's activities and dealings with the other shareholders.

Defaulting shareholder

- 79 A shareholder will be a defaulting shareholder if:
- 79.1 an insolvency event occurs in relation to the shareholder or their key person;
- 79.2 the shareholder commits a breach of any material obligation under this deed:
- 79.2.1 which is not remedied to the company's reasonable satisfaction within 20 business days after notice of the breach is given to the shareholder either by the company or by another shareholder; or
- 79.2.2 if the breach cannot be remedied, for which the shareholder has not compensated the company or the other shareholders by way of liquidated damages agreed in writing between the defaulting shareholder, the company and the other shareholders within 20 business days of the company becoming aware of the breach; or
- 79.2.3 a change of control occurs in relation to that shareholder.

Defaulting shareholder transfer notice

- 80 A defaulting shareholder is deemed to have given a transfer notice to the other shareholders under clause 65.1 on the date by which both the shareholder has become a defaulting shareholder, and the company is notified of the relevant default event.
- 81 A transfer notice given in respect of a defaulting shareholder is deemed to have been given on the following terms:
- 81.1 the number of shares the defaulting shareholder proposes to transfer must be all of the defaulting shareholder's shares;
- 81.2 the price to be paid for the defaulting shareholder's shares is determined in accordance with Part M; and
- 81.3 the offer period is 20 business days from the later of:
- 58.1.1 receipt of the transfer notice; and
- 58.1.2 the date on which the share price is agreed or determined under Part M.
- 81.4 The procedures under clauses 68 and 69 apply to a transfer notice given by a defaulting shareholder under clause 65.1.

81.5 Settlement of a defaulting shareholder's shares must occur in accordance with clauses 71 – 75.

81.6 Despite clause 70, if the defaulting shareholder's shares are not accepted by the other shareholders, then the defaulting shareholder must retain their shares.

Key persons

82 Each shareholder must procure that their key person adheres to the requirements of clause 78.

83 A shareholder can replace a key person at any time by giving written notice to the company, however the key person must be a shareholder or director of the shareholder.

Release

84 On ceasing to hold any shares in the company by operation of this deed, a shareholder (**departing shareholder**) releases and forever discharges the company and each shareholder from, and indemnifies them against, any and all claims which either that departing shareholder, their key person or their representative director may have against the company or the other shareholders which is in any way related to the company, its business and this deed.

85 The release provided under clause 84 does not apply to:

- payments required at law in relation to employment; or
- amounts owed under loan accounts pursuant to which the company is indebted to the departing shareholder, their key person or representative director.

Transmission

86 If an individual shareholder dies, then the company only recognises the survivor (where the deceased was a joint holder) and the individual's legal personal representative (where the deceased was a sole holder), as having title to the individual's interest in the shares. This clause 86:

- does not release the individual's estate from any liability in respect of a share, including where the share was jointly held; and
- does not apply to the death of a key person who is not a shareholder.

87 Subject to the *Bankruptcy Act* 1966 (Cth), a person (**nominee**) who becomes entitled to a share because of an individual shareholder's death or bankruptcy may, upon providing such information as the directors properly require, elect to be registered as the holder of the share.

88 The nominee must deliver or send the notice in writing to the company. The company will register the transfer as soon as practicable provided all relevant requirements have been met to the directors' satisfaction acting reasonably.

- 89 The nominee, upon providing such information as the directors properly require, is entitled to the same dividends and other advantages, and to the same rights, to which the registered holder would have been entitled if he or she had not died or become bankrupt.
- 90 If 2 or more persons are jointly entitled to any share in consequence of the death of an individual shareholder, then for the purposes of this deed they are deemed to be joint holders of the share.
- 91 Clauses 86 – 90 do not limit the application of the balance of the limitations, restrictions and provisions of this deed relating to the right to transfer shares and the registration of transfers of shares.

O Intellectual property

Business related intellectual property

- 92 A shareholder must only use business intellectual property on behalf of the company.
- 93 If a shareholder creates any business intellectual property, the shareholder must:
- 93.1 promptly disclose to the company full details of that business intellectual property;
 - 93.2 not publicise details of that business intellectual property;
 - 93.3 at the request of the company, do all things, at the expense of the company, necessary to:
 - vest all right and title to and interest in that business intellectual property in the company absolutely as legal and beneficial owner; and
 - secure and preserve full protection in respect of that business intellectual property in favour of the company.

Existing business intellectual property

- 94 If a shareholder owns or has any interest in any business intellectual property as at the date of this deed that shareholder:
- assigns that business intellectual property to the company; or
 - if that business intellectual property is not assignable without the consent of a third party, that shareholder must use the shareholder's best endeavours to obtain that consent,

and that shareholder agrees to do all things, including executing all documents required to perfect that assignment.

P Non competition and non disclosure

Non competition with business

95 For the sole purpose of protecting the goodwill of the business, each shareholder jointly and severally agree that they and their related entities (as defined in the *Corporations Act*) will not, either directly or indirectly, be involved with any business which competes with the business in any way, either jointly or individually, or have any interest as owner (except as owner of publicly traded securities), director, officer, employee, consultant, lender, representative or agent or in any other capacity in any business which competes with the business, while the shareholder remains a shareholder of the company and for one or more of the following periods from ceasing to be shareholder:

- 3 years;
- 2 years; or
- 1 year,

in one or more of the following areas:

- Australia;
- New South Wales;
- within 50 kilometres of the company's principal place of business as registered with the Australian Securities and Investments Commission; or
- within 15 kilometres of the company's principal place of business as notified to the Australian Securities and Investments Commission,

without the prior written consent of the other shareholders which may be withheld at a shareholder's absolute discretion.

96 Clause 95 will have effect as if it were several separate covenants comprising each period of time combined with each separate area.

97 If any of the several separate covenants in clause 95 are or become invalid or unenforceable for any reason, their invalidity or unenforceability will not affect the validity or enforceability of any of the other separate covenants.

Non-disclosure

98 A shareholder must not disclose to any third party or use any trade secrets, inventions, techniques, know-how, systems or information gained as a result of the shareholder's involvement in the company at any time without the prior written consent of the other shareholders, which may be withheld at a shareholder's absolute discretion.

99 A shareholder may only use any trade secrets, inventions, techniques, know-how, systems or information provided by another shareholder to the company for the sole purpose of enabling the company to conduct the business.

100 Each shareholder must take or cause to be taken all necessary precautions to maintain the secrecy and confidentiality of any trade secrets, inventions, techniques, know-how, assistance or information provided by each shareholder to the company.

Non-competition and non-disclosure agreement

101 Each shareholder must procure the shareholder's representative director to enter into a non-competition and non-disclosure agreement upon the terms similar to those set out in this Part P.

Q Dispute resolution

General obligations

102 If a dispute arises out of or relates to:

- this deed; or
- the breach, termination, validity or subject matter of the deed,

the parties to this deed and to the dispute agree to endeavour in good faith to settle the dispute in accordance with this Part Q before having recourse to court proceedings (other than court proceedings by a party seeking urgent interlocutory relief).

Notification of dispute

103 A party to the deed claiming that a dispute has arisen must give written notice to the other parties to the dispute specifying:

- the nature of the dispute,
- what outcome the complainant wants; and
- what action the complainant considers will settle the dispute.

104 On receipt of the notice specified in clause 103, the parties to the dispute must within 7 days take reasonable steps to confer and try to resolve the dispute.

Mediation

105 If the dispute is not resolved within 21 days (or such further period as the parties agree in writing) then the parties, or any one of the parties, shall notify the Australian Disputes Centre (**ADC**) or the Resolution Institute (**RI**) that the dispute has not resolved and that the dispute is to be referred to the ADC or the RI for mediation.

106 Each party will pay half of the costs of the ADC or RI registration fee (or such other proportion as may be agreed by the parties and ADC or RI) and provide ADC or RI with a brief statement of the key facts and issues that each consider will arise in the mediation.

107 The mediation must be conducted in accordance with and subject to the ADC Guidelines for Commercial Mediation (**ADC Guidelines**) or the Resolution Institute Mediation Rules (**RI Guidelines**) (as the case may be) operating at the time the dispute is referred to the ADC or RI. The ADC Guidelines and the RI Guidelines (as the case may be) set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the ADC Guidelines or the RI Guidelines (as the case may be) are deemed incorporated into the deed.

Failure to settle

108 If the dispute has not settled within 30 days after the appointment of the mediator, or such further period as agreed to in writing between the parties, then either party may commence court proceedings in respect of the dispute.

Performance

109 The parties must continue to perform their obligations under this deed while attempts are made to resolve the dispute.

R Notices

Delivery of notice

110 A notice or other communication required or permitted to be given to a party under this deed must be in writing and may be delivered in person, or sent by mail to the current address of the party.

Particulars for delivery

111 The address of each party is set out in Part 2 of Schedule 1 of this deed under the heading 'parties' (or as notified by a party to the other parties in accordance with this Part S).

Time of service

112 A notice is to be treated as received in accordance with the following:

- if delivered personally, on the actual date of receipt
- if it is sent by post in Australia:
 - using regular pre-paid post or registered post, 6 business day after pre-paid posting;

- using priority pre-paid post or priority registered post, 4 business days after posting;
- using express post, 2 business days after posting;
- if it is sent by post to an address outside Australia, 10 business days after posting; or
- if it is sent electronically, on the business day after it is sent.

S General

Variation

113 This deed may only be varied by a document duly executed by the parties.

Entire understanding

114 This deed contains the entire understanding between the parties as to the subject matter contained in it. This deed replaces all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter. They have no effect.

Further assurance

115 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this deed.

Legal costs and expenses

116 Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this deed and other documents referred to in it, unless expressly stated otherwise.

Stamp duty

117 The company must pay all stamp duty (including all fines and penalties except those arising from the default of another party) on this deed.

Waiver and exercise of rights

118 A single or partial exercise or waiver of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.

119 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

Assignment

120 A shareholder must not:

- sell, transfer, delegate, assign, license; or
- mortgage, charge or otherwise encumber

any right or obligation under this deed to any person without the prior written consent of the other parties, which may be withheld by a party at that party's absolute discretion.

Time of the essence

121 Time is of the essence as regards to all dates, periods of time and times specified in this deed.

T Interpretation

Governing law and jurisdiction

122 This deed is governed by and is to be construed in accordance with the laws of New South Wales. Each party to the deed irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

Persons

123 In this deed, a reference to:

- a person (excluding reference to a natural person) includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and permitted assigns of that person; and
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most clearly serves the purposes or objects of the first mentioned body.

Joint and several

124 If a party consists of more than one person, this deed binds them jointly and each of them severally.

Legislation

125 In this deed a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

This document, clauses and headings

126 In this deed:

- a reference to this or another document includes the document as varied or replaced regardless of any change in the identity of the parties;
- a reference to a part, clause, schedule or appendix is a reference to a part, clause, schedule or appendix in or to this deed;
- a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- headings, sub-headings and footnotes are inserted for ease of reference only and do not affect the interpretation of this deed;
- if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- if the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation'.

Severance

127 If a provision in this deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

128 If it is not possible to read down a provision as required in clause 127, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this deed.

Counterparts

129 This deed may be executed in any number of counterparts all of which taken together constitute one instrument.

Electronic execution

130 This deed may be executed electronically in accordance with the following:

- a party may sign this deed, and any variations to it, by electronic means where permitted by Law. Each other party consents to that party signing by electronic means;

- the parties agree that if any party signs this deed under clause 130, then an electronic form of this deed with that party's electronic signature(s) appearing will constitute an executed counterpart, and a print-out of this deed with that party's electronic signature(s) appearing will also constitute an executed counterpart.

Currency

131 In this deed a reference to '\$' or 'dollars' is a reference to Australian dollars.

Business Day

132 If a payment or other act is required by this deed to be made or done on a day which is not a business day, the payment or act must be made on the next following business day.

Number and gender

133 In this deed, a reference to:

- the singular includes the plural and vice versa; and
- a gender includes the other genders.

U Definitions

In this document, unless expressed or implied to the contrary:

Accession deed means a deed in the form set out in Annexure 2.

Board means the company's board of directors, from time to time.

Business means the company's business described in clause 7.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales.

Business Intellectual Property means all intellectual property rights that are owned, created or used by or for the company or the business.

Change in Control means, in relation to an entity (including a trust for which a shareholder acts as trustee), that a person who did not control that entity at the commencement date is in a position to control, or has control of, the entity at a date after the commencement date.

Commencement Date means the date described in clause 1.

Company means Purple Orange One Thirty Two Com Pty Ltd ACN 601259689.

Constitution means the constitution of the company.

Control has the meaning given in section 50AA of the *Corporations Act*.

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

Deed means this document entitled 'Shareholders Agreement' executed by the parties as a deed.

Defaulting Shareholder has the meaning given in clause 79.

Director means a director of the company.

Dispose includes a sale or a transfer of shares, the creation of a trust, and the alienation of the right to exercise the votes attached to the shares.

Disqualified means the relevant person is unable to, or ceases to, act as an officer of the company by operation of section 203B of the *Corporations Act*.

Eligible Shareholder means a shareholder who is eligible under clause 14 to elect a representative director to the board.

Financial Year means a period of 12 months ending on 30 June (or another date determined by the board).

Government Agency means any foreign or domestic governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Hybrid Meeting means a meeting held at 1 or more physical locations linked with 1 or more technologies, such that participants may participate in the meeting physically or remotely.

Initial Directors means the directors listed in Part 1 of Schedule 1.

Insolvency Event means, in relation to a person, any of the following events:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (d) the person assigns any of its property for the benefit of creditors or any class of them;

- (e) the holder of a security interest takes any step towards taking possession or takes possession of any assets of the person or exercises any power of sale;
- (f) the person has a judgment or order given against him or her in an amount exceeding \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 business days after being given;
- (g) an action is taken to do any of the things listed in paragraphs (a) to (f).

Key Person means the individual named alongside the shareholder in Part 2 of Schedule 1, or as later nominated by that shareholder in accordance with clause 83.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any government agency; and
- (b) any statute, regulation, proclamation, ordinance or by-law,

in Australia or any other jurisdiction.

Ordinary Resolution means a resolution of the directors or shareholders (as the case may be) which is passed by simple majority by those directors or shareholders present and entitled to vote.

Party means a party to this deed.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Law means:

- (a) the PPSA and the *Personal Property Securities Regulations 2010* (Cth) and any other regulations made at any time under the PPSA; and
- (b) any amendment made at any time to any other law as a consequence of a law or regulation referred to in paragraph (a).

Records means originals and copies of all books, files, records, reports, correspondence, documents and other materials of or relating to or used in connection with the company or the business, in electronic, digital or printed form, including:

- (a) minute books, statutory records, ledgers, registers, books of account, company annual returns, and any Tax related documents, returns and records;
- (b) all sales and purchasing records;

- (c) all trading and financial records;
- (d) lists of all past and present customers and suppliers;
- (e) all employee and payroll records and all records relating to PAYG deductions and remittances and workcover returns and remittances;
- (f) bank statements, cheque books, cheque pay in books and other banking records; and
- (g) all sales literature, market research reports, brochures and other promotional materials (including digital files and associated materials).

Regulatory Authority means:

- (a) a government agency; and
- (b) any other authority, tribunal, agency or entity having powers or jurisdiction under any law or the listing rules of any recognised stock or securities exchange.

Representative Director means a director appointed to represent a shareholder under clause 14.

Securities means any of the following in relation to the company:

- (a) securities, as that term is defined in section 92(2) of the *Corporations Act*;
- (b) a derivative, as that term is defined in section 761D of the *Corporations Act*, in relation to the company, its assets or its shares; and
- (c) an option over or in respect of either of the above.

Security Interest means:

- (a) any mortgage, lien, charge, pledge, assignment by way of security, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement, property right or interests, restrictive covenant, restriction on transfer, right of first refusal, option, hypothecation, defect in title, "security interest" (as defined in the PPS law) or other security interest or arrangement having the same effect; and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Share Price means the price determined under Part M.

Shares means ordinary shares in the capital of the company.

Shareholder means any shareholder of the company from time to time who is, or is required to be, a party to this deed.

Simple Majority means a majority that together holds more than 50% of the total voting rights of all directors or shareholders, as the case may be, present and entitled to vote at a meeting of the board or shareholders, as the case may be.

Third Party Purchaser means a person who is not a party and who makes an offer to purchase one or more shares.

Transfer Notice means a notice given or deemed to be given under clause 66.

Unanimous Resolution means a resolution which can only be passed with the unanimous approval of all directors or shareholders (as the case may be) present and entitled to vote.

Valuer means a person, agreed by the relevant parties, who is a qualified and experienced industry expert with valuing companies, or shares in companies, such as the company or, in the absence of such agreement, then a person nominated by the then President of the Institute of Chartered Accountants Australia.

Virtual Meeting means a meeting held using 1 or more technologies where all participants participate remotely.

Sample

Schedule 1

Company details

Part 1 – Company information

| | |
|-----------------------------|--|
| Name | Purple Orange One Thirty Two Com Pty Ltd |
| ACN | 601259689 |
| Registered Office | 5/83 George Street Parramatta, New South Wales, 2150 |
| Initial directors | Peter Parker of 5/83 George Street Parramatta, NSW, 2150 Sue Parker of 5/83 George Street Parramatta, NSW, 2150 |
| Secretary | Peter Parker of 5/83 George Street Parramatta, 2150 |
| Public Officer | Peter Parker of 5/83 George Street Parramatta, 2150 |
| Initial chair | Peter Parker |
| Issued Share Capital | 100 ordinary shares |

Part 2 – Shareholdings

| Shareholder | Key person | Number and class of shares | % of shares | Representative director |
|--|------------|----------------------------|-------------|---|
| Peter Parker 5/83 George Street Parramatta, 2150 | | 40 ordinary shares | 40.0 | None. May be appointed under clause 14. |
| Sue Parker 5/83 George Street Parramatta, 2150 | | 60 ordinary shares | 60.0 | None. May be appointed under clause 14. |

Schedule 2 Warranties

The parties

- 1 The party is properly incorporated and validly existing under the laws of Australia.
- 2 The party has full power and authority to enter into and perform its obligations under this deed.
- 3 This deed constitutes and imposes legal and binding obligations on the party in accordance with its terms.
- 4 The party has obtained all necessary approvals, consents and authorisations including under its constitution, the trust deed and the *Corporations Act* to enter into and perform its obligations under this deed.
- 5 Execution of this deed and completion of the transactions contemplated by this deed by the party will not result in:
 - a breach of any provision of its constitution;
 - a breach of, or a default under, any agreement or instrument to which it is a party; or
 - a breach of any order, judgment or decree of any court or regulatory authority by which it is bound.
- 6 The party is not and has not been subject to an insolvency event.
- 7 Where a party has entered into this deed in its capacity as trustee of a trust (**trust**):
 - it is the only trustee of the trust and it is not aware of any action to remove it as trustee of the trust;
 - it has power under the deed constituting the trust (**trust deed**) to enter into and perform its obligations under this deed;
 - it is not in default under the trust deed, the trust has not been terminated and no vesting of the trust's property has occurred and it is not aware of any action proposed to terminate or vest the property of the trust;
 - the trust's property has not been resettled, set aside or transferred to any other trust;
 - the entry into and the performance of this deed is for the benefit of the beneficiaries of the trust;
 - it has a right to be indemnified fully out of the trust's assets in respect of all of the obligations and liabilities incurred by it, or which may be incurred by it, under this deed; and
 - its right of indemnity out of the trust's property is not restricted or reduced in any way except in the case of the trustee's dishonesty, negligence, wilful misconduct, breach of

trust, breach of duty or fraud or as restricted or reduced by law and its lien over the trust's property retains its priority over the rights and interests of the trust's beneficiaries to the extent provided by law.

Sample

Execution

Executed by the parties as a deed.

Dated: 03/04/2025

Signature of
shareholder:
Signed sealed and
delivered by

Peter Parker

Signature of witness:

Name of witness:

Signature of
shareholder:
Signed sealed and
delivered by

Sue Parker

Signature of witness:

Name of witness:

Executed as a deed by Purple Orange One
Thirty Two Com Pty Ltd ACN 601259689, in
accordance with sections 127(1) and 127(3)
of the *Corporations Act* 2001 (Cth):

Peter Parker, director

Sue Parker, director

Sample

Annexure 1

Approved business plan and budget

Sample

Annexure 2

Accession Deed Poll

Sample