

Company Number 3262598

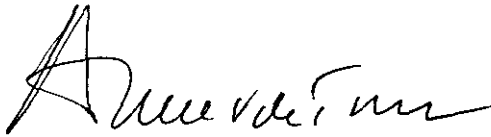
THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES  
WRITTEN RESOLUTION  
OF THE A SHAREHOLDERS OF  
ORCHARD CAPITAL MANAGEMENT LIMITED

DATED 3 July 2001

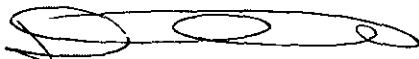
We, the undersigned, being the holders of all the A Shares in the share capital of the Company, pass the following resolution as if it had been passed as a special resolution at a general meeting of the A Shareholders duly convened and held, pursuant to article 68 of the Company's articles of association:

THAT:

The share option rules, a copy of which is attached to this resolution and initialled for the purposes of identification, be adopted as the new share option rules of the Company.



.....  
Signed for and on behalf of  
Barclays Bank PLC



.....  
Signed for and on behalf of  
Shinsei Bank, Ltd.



**ORCHARD CAPITAL MANAGEMENT LIMITED**

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**RULES OF THE  
ORCHARD CAPITAL MANAGEMENT LIMITED  
DISCRETIONARY SHARE OPTION SCHEME**

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**Authorised by shareholders on 3 July 2001**

**Adopted by the Board on 3 July 2001**

## CONTENTS

	<b>Page</b>
1. <b>Grant of Options</b>	1
2. <b>Option Price</b>	1
3. <b>Limits on Eligible Employees</b>	2
4. <b>Scheme Limits</b>	2
5. <b>Rights of Exercise and Lapse of Options</b>	3
6. <b>Early Exercise of Options</b>	3
7. <b>Ceasing Employment with the Company</b>	3
8. <b>Cancellation of Options</b>	4
9. <b>Exercise of Options</b>	4
10. <b>Adjustment of Options</b>	5
11. <b>Administration</b>	6
12. <b>Amending the Scheme</b>	6
13. <b>General</b>	7
<b>Appendix of definitions</b>	8

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## RULES OF THE ORCHARD CAPITAL MANAGEMENT LIMITED

### DISCRETIONARY SHARE OPTION SCHEME

#### 1. GRANT OF OPTIONS

- 1.1 Grant of Options:** The Remuneration Committee may, in its absolute discretion, grant to any Eligible Employee nominated by the Company an Option at the Option Price over such whole number of Shares as the Remuneration Committee may decide.
- 1.2 Period for granting Options:** Options shall be granted annually, within the period of 30 days following the end of the Company's Financial Year. No Option shall be granted after the Scheme Period.
- 1.3 Option certificates and payment for Options:** Options shall be granted by deed in such form as the Remuneration Committee shall decide. A single deed of grant may be executed in favour of any number of Participants. Each Participant shall on, or as soon as possible after, the Date of Grant be given an option certificate as evidence of the grant of an Option, together with a notice of exercise. There shall be no payment for the grant of an Option.
- 1.4 Options personal to Participants:** An Option is personal to the Participant to whom it is granted and may not, nor any rights in respect of it, be transferred or otherwise disposed of to any other person except that, on the death of a Participant, an Option will be transmitted to his personal representatives in accordance with Rule 7.3.
- 1.5 Disclaimer of Options:** A Participant may disclaim his Option, in whole or in part, in writing to the Secretary of the Company within 30 days after the Date of Grant. No consideration shall be paid for the disclaimer of the Option which shall be deemed, to the extent that it has been disclaimed, never to have been granted.
- 1.6 Grant of Options in excess of limits:** If an Option is granted on terms which do not comply with Rule 3 or Rule 4, the number of Shares over which that Option has been granted shall:
- 1.6.1 in the case of Rule 3, be reduced automatically to the largest lower number as would comply with the terms of Rule 3; or
- 1.6.2 in the case of Rule 4, together with the number of Shares over which all other Options have been granted on the same Date of Grant, be reduced pro rata to the largest lower number as would comply with the terms of Rule 4;

and in either case, the Exercise Price shall be adjusted accordingly and an adjusted Option shall take effect from the Date of Grant as if it had been granted on the adjusted terms.

#### 2. OPTION PRICE

- 2.1 The Remuneration Committee's decision:** The Remuneration Committee shall decide the Option Price in respect of an Option, which shall be stated at the Date of Grant.
- 2.2 Calculating the Option Price:** The Option Price shall be not less than the higher of the nominal value of a Share and:
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- 2.2.1 in respect of Options granted in January 2002, a price equal to the subscription price paid by each investor in accordance with the Shareholders Agreement (including any additional premium paid by such investor on or prior to the Date of Grant); and
  - 2.2.2 in respect of Options granted in January 2003, a price equal to the subscription price paid by any investor subsequent to the execution of the Shareholders Agreement or, if there has been no further subscription, the Market Value of a Share as at the Date of Grant; and
  - 2.2.3 in respect of Options granted in January 2004, January 2005 and January 2006, the Market Value of a Share as at the Date of Grant

but subject to any adjustment under Rule 10.

### 3. LIMITS ON ELIGIBLE EMPLOYEES

No Option shall be granted to an Eligible Employee which would, at the Date of Grant, result in the total number of Shares over which he has been granted an Option during the Scheme Period to exceed 60,000 (sixty thousand) Shares.

### 4. SCHEME LIMITS

#### 4.1 **Maximum number of Shares:** If, following the execution of the Shareholders Agreement and before 30 June 2002:

- 4.1.1 there are no additional shareholders subscribing for Shares, the maximum number of Shares which may be put under Option under the Scheme during the Scheme Period is 800,000 (eight hundred thousand) (the "**Maximum Amount**"); and
- 4.1.2 there are additional shareholders subscribing for Shares, the maximum number of Shares is 666,666 (six hundred and sixty six thousand, six hundred and sixty six) (the "**Lesser Amount**").

#### 4.2 **Flow rates:** The maximum number of Shares which may be put under Option each year during the Scheme Period is:

- 4.2.1 **During January 2002:** 250,012 Shares;
- 4.2.2 **During January 2003:** 166,675 Shares;
- 4.2.3 **During each of January 2004, January 2005 and January 2006:** no more than 16% of 383,313 Shares if the Maximum Amount applies and 16% of 249,979 if the Lesser Amount applies

provided that no more than 75% of the maximum specified in Rule 4.2 in any one year will be allocated unless the Remuneration Committee decides that the circumstances justify allocating the relevant maximum amount.

#### 4.3 **Exclusions from these limits:** In calculating the limits in Rule 4, there shall be disregarded Shares where the right to subscribe for such Shares was released or lapsed without being exercised.

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- 4.4 **Adjustment to Shares to be taken into account:** Where Shares which have been issued pursuant to this Scheme are to be taken into account for the purposes of any of the limits in this Rule 4 and a Variation in the equity share capital of the Company has taken place between the date of issue of any such Shares and the date on which any such limit is to be calculated, then the number of such Shares which shall be taken into account for the purposes of any such limit shall be adjusted in such manner as the Remuneration Committee shall consider appropriate to take account of the Variation.

## 5. RIGHTS OF EXERCISE AND LAPSE OF OPTIONS

- 5.1 **Rights of exercise:** An Option shall not be exercised earlier than the **fifth** anniversary of its Date of Grant EXCEPT as provided in Rule 6. An Option may not be exercised unless and until the provisions of Rule 9.2 have been satisfied.
- 5.2 **Lapse of Options:** Options shall lapse to the extent not already exercised on the earliest of the following events occurring:

- 5.2.1 the tenth anniversary of the Date of Grant;
- 5.2.2 the expiry of any of the periods specified in Rule 6;

## 6. EARLY EXERCISE OF OPTIONS

- 6.1 **The sale of the Company:** If at any time prior to the exercise of an Option there is a change of Control of the Company as a result of an offer to acquire the whole of the issued share capital of the Company (or such part of it which is not at the time owned by the offeror and any party acting in concert with the offeror), all Options shall become exercisable for the period of 30 days following the change of Control.
- 6.2 **Lapse of Options following the sale of the Company:** If any Option is not exercised within the period referred to in Rule 6.1, it shall lapse on the day following the end of that period.
- 6.3 **Offer to purchase Shares following the exercise of Options:** The Company will use its best endeavours to procure that if a Participant acquires Shares pursuant to the exercise of an Option and those Shares were not the subject of the offer referred to in Rule 6.1, the offeror will make an offer to acquire Shares from the Participant at not less than the value per Share offered for the Company's ordinary shares under the offer. However, the purchaser may make this offer on the basis that the Participant's Shares are acquired over a period of up to six months from the date of the change of Control and subject to any conditions the purchaser may reasonably impose.
- 6.4 **A public offering in respect of the Company's Shares:** If at any time prior to the exercise of an Option some or all of the Company's Shares are admitted to a recognised investment exchange, all Options shall become exercisable immediately following admission and any Option not exercised within six months after such admission shall lapse on the day following the end of that period.

## 7. CEASING EMPLOYMENT WITH THE COMPANY

- 7.1 **If the Participant is a Good Leaver:** If at any time prior to the exercise of an Option a Participant's employment with the Company ceases and the Participant is a Good Leaver, his Option will neither lapse nor become exercisable on the date he so ceases but will subsist in accordance with the Rules.
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- 7.2 If the Participant is a Bad Leaver:** If at any time prior to the exercise of an Option a Participant's employment with the Company ceases and the Participant is a Bad Leaver, his Option will lapse immediately on the date his employment so ceases, unless the Remuneration Committee, in its absolute discretion, unanimously decides otherwise.
- 7.3 If the Participant dies:** If at any time prior to the exercise of an Option a Participant dies, his Option shall neither lapse nor be exercisable but will be transferred to his personal representatives and will be subject to Rule 8.1.

## **8. CANCELLATION OF OPTIONS**

- 8.1 Cancellation of Options:** If a Participant's Option has been preserved under Rule 7.1 or Rule 7.3, the Company may at any time cancel the Participant's Option on payment to the Participant of a sum equal to the Market Value immediately before the cancellation of the Option of the aggregate number of Shares under Option, less any deductions which the Company is required to make.
- 8.2 Transfer of the business of the Company:** If at any time prior to the exercise of an Option the business of the Company is transferred as a going concern to a person who will then control the business, the Option will be cancelled immediately following the transfer on payment to the Participant of a sum equal to the Market Value immediately before the transfer of the aggregate number of Shares under Option, less any deductions which the Company is required to make. However, the person to whom the business is transferred may, at its discretion, provide payment in respect of a cancelled Option over a period of up to six months from the date of the transfer and subject to any conditions the transferee may reasonably impose.

## **9. EXERCISE OF OPTIONS**

- 9.1 Exercise in whole or in part:** When an Option becomes exercisable in accordance with these Rules, it may be exercised in whole or in part.
- 9.2 The exercise of an Option is conditional:** If the exercise of an Option would give rise to national insurance or an obligation on the Company to account for the Participant's income tax liability through Pay as you Earn ("**PAYE Liability**"), its exercise is conditional on:
- 9.2.1 the Participant entering into either an agreement or an election with the Company before the Option is exercised to pay the whole of the national insurance. In the case of an election, prior approval of the Inland Revenue must also be obtained; and
  - 9.2.2 there being arrangements in place, satisfactory to the Company, to provide payment in respect of the national insurance liability and the PAYE Liability, and, if necessary, the Company shall withhold any Shares issued on the exercise of the Option and make arrangements to sell such number of Shares acquired on the exercise of an Option to meet such national insurance and PAYE Liability.
- 9.3 Manner of exercise:** To exercise an Option, the Participant must deliver at the address specified in the notice of exercise:
- 9.3.1 an option certificate covering at least all the Shares over which the Option is then to be exercised;
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- 9.3.2 the notice of exercise in the prescribed form properly completed and signed by the Participant (or by his duly authorised agent);
  - 9.3.3 remittance for the Exercise Price payable in respect of the Shares over which the Option is to be exercised;
  - 9.3.4 if applicable, the election or agreement (as specified by the Company) referred to in Rule 9.2.1; and
  - 9.3.5 if applicable, written confirmation, agreed in advance by the Company, of the arrangements referred to in Rule 9.2.2.

**9.4 Option Exercise Date:** If any conditions must be fulfilled before an Option may be exercised, the Option shall not be treated as exercised unless and until the Remuneration Committee is satisfied that those conditions have been fulfilled. Otherwise the Option Exercise Date shall be the date of receipt of all the items referred to in Rule 9.3.

**9.5 Issue of Shares:** Subject to the relevant provisions of the Rules, the Company shall allot any Shares to be allotted to a Participant pursuant to the exercise of an Option within 30 days following the Option Exercise Date.

**9.6 Ranking of Shares:** Shares which are issued under the Scheme will rank equally in all respects with the Shares then in issue, except that they shall not rank for any right attaching to Shares by reference to a record date preceding the Option Exercise Date.

## 10. ADJUSTMENT OF OPTIONS

**10.1 Variation in equity share capital:** If there is a Variation in the equity share capital of the Company:

- 10.1.1 the number and/or the nominal value of Shares over which an Option is granted; and/or
- 10.1.2 the Option Price; and/or
- 10.1.3 where an Option has been exercised but as the date of the Variation no Shares have been allotted or transferred pursuant to such exercise, the number of Shares which may be so allotted or transferred and the price at which they may be acquired,

shall be adjusted in such manner as the Company shall determine, so that (as nearly as may be without involving fractions of a Share or an Option Price calculated to more than two decimal places) the Exercise Price shall remain unchanged.

**10.2 Nominal value of Shares:** Apart from under this Rule 10.2, no adjustment under Rule 10.1 above may have the effect of reducing the Option Price to less than the nominal value of a Share. Any such adjustment may only be made if the reduction of the Option Price in respect of both the issued and the unissued Shares can be made to the same extent. Any adjustment made to the Option Price of Options over unissued Shares shall only be made if and to the extent that the Board shall be authorised to:

- 10.2.1 capitalise from the reserves of the Company a sum equal to the amount by which the nominal value of the Shares in respect of which the Option is exercisable exceeds the adjusted Exercise Price; and
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10.2.2 apply such sum in paying up such amount on such Shares so that on exercise of any Option in respect of which such a reduction shall have been made the Board shall capitalise such sum (if any) and apply the same in paying up such amount.

**10.3 Notifying Participants of adjustments:** The Company may take such steps as it may consider necessary to notify Participants of any adjustment made under this Rule 10 and to call in, cancel, endorse, issue or re-issue any certificate as a result of such adjustment.

## 11. ADMINISTRATION

**11.1 Notices:** Any notice or other communication in connection with the Scheme may be given by electronic mail, by personal delivery, by post, (in the case of a company to its registered office and in the case of an individual to his last known address), or by any other means which the Company and its employees use to communicate with each other. Where a notice or other communication is given by first-class post, it shall be deemed to have been received 72 hours after it was put into the post properly addressed and stamped.

**11.2 Documents sent to shareholders:** Participants may, but are not entitled to, receive copies of any notice or document sent by the Company to the holders of ordinary shares.

**11.3 Partial exercise of Options:** In the case of the partial exercise of an Option, the Company may in consequence call in, endorse or cancel and re-issue, as it considers appropriate, any certificate for the balance of the Shares over which the Option was granted.

**11.4 Replacement option certificates:** If any option certificate shall be worn out, defaced or lost, it may be replaced on such evidence being provided as the Company may require.

**11.5 Shares to cover Options:** The Company shall at all times keep available sufficient Shares to satisfy all Options granted by it.

**11.6 Administration of the Scheme:** Subject to Rule 12.1, the Scheme shall be administered by the Remuneration Committee. The Remuneration Committee shall have full authority, consistent with the Scheme, to administer the Scheme, including authority to interpret and construe any provision of the Scheme and to adopt such regulations for administering the Scheme and such forms of exercise as it may deem necessary or appropriate. Decisions of the Remuneration Committee shall be final and binding on all parties.

## 12. AMENDING THE SCHEME

**12.1 The power to amend the Scheme:** Subject to the provisions of Rule 12, the Board may at any time alter, delete or add to all or any of the provisions of the Scheme in any respect.

**12.2 Shareholders' approval:** No alteration, deletion or addition to the advantage of Participants shall be made under Rule 12.1 without the prior approval of (a) the holders of more than 50 per cent of the B Shares then in issue and (b) Institutional Consent unless the alteration, deletion or addition is:

12.2.1 minor and to benefit the administration of the Scheme;

12.2.2 to take account of any changes in legislation; or

12.2.3 to obtain or maintain favourable taxation, or regulatory treatment for the Company or any Participant.

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- 12.3 Participants' approval:** No alteration, deletion or addition shall be made under Rule 12.1 which would abrogate or adversely affect the subsisting rights of a Participant unless it is made with the consent in writing of the Participant or by a resolution passed as if the Options constituted a separate class of share capital and the provisions of the Company's Articles of Association and of the Companies Act 1985 relating to class meetings (with the necessary amendments) applied to that class.
- 12.4 Notice of amendments:** Participants shall be given written notice of any alteration, deletion or addition under Rule 12.1 as soon as reasonably practicable after they have been made.

### **13. GENERAL**

- 13.1 Termination of the Scheme:** Nothing in the Shares nor in any instrument executed pursuant to it will confer upon any person any right to continue in the employment of the Company, nor will affect the right of the Company to terminate the employment of any person without liability at any time with or without cause, or will impose upon the Company, the Board or their respective agents and employees any liability whatsoever (whether in contract, tort, or otherwise howsoever) in connection with:
- 13.1.1 the lapse of any Option pursuant to the Rules;
  - 13.1.2 the failure or refusal to exercise any discretion under the Rules; and/or
  - 13.1.3 a Participant ceasing to be a person who has the status or relationship of an employee with the Company for any reason as a result of the termination of the employment relationship with the Company.
- 13.2 Waiver of any rights:** Any person who ceases to have the status or relationship of an employee with the Company for any reason as a result of dismissal (lawfully or otherwise) shall not be entitled and shall be deemed irrevocably to have waived any entitlement by way of damages for dismissal or by way of compensation for loss of office or otherwise to any sum, damages, Shares or other benefits to compensate that person.
- 13.3 Options are subject to the Rules:** Options are granted incorporating and subject to the Rules.
- 13.4 Articles of Association:** Any Shares acquired on the exercise of Options shall be subject to the Articles of Association of the Company as amended from time to time;
- 13.5 Governing Law:** These Rules shall be governed by and construed in accordance with the law of England. All Participants and the Company shall submit to the jurisdiction of the English courts in relation to anything arising under the Scheme.
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**APPENDIX****1. INTRODUCTION**

The words and expressions used in this Scheme which have capital letters have the meanings set out in the Appendix. Words and expressions not otherwise defined have the same meaning they have in the Taxes Act. In these Rules:

- (i) the headings are for the sake of convenience only and should be ignored when construing the Rules;
- (ii) reference to any statutory provisions are to those provisions as amended, extended or re-enacted from time to time, and shall include any regulations or other subordinate legislation made under them; and
- (iii) the Interpretation Act 1978 shall apply with the necessary changes as if they were an Act of Parliament.

**DEFINITIONS**

<b>Appendix</b>	this appendix which forms part of the Rules;
<b>Bad Leaver</b>	a Participant whose employment with the Company is terminated in any circumstances not covered by the definition of Good Leaver;
<b>Board</b>	the board of directors for the time being of the Company or a duly authorised committee of it;
<b>B Share</b>	a "B" ordinary share in the capital of the Company;
<b>the Company</b>	Orchard Capital Management Limited (registered no. 3262598);
<b>Control</b>	has the meaning given by Section 840 of the Taxes Act;
<b>Date of Grant</b>	the date on which an Option is granted by the Company;
<b>Eligible Employee</b>	any person who at the Date of Grant is an employee of the Company, but excluding Hugh Willis and Mark Poole;
<b>Exercise Price</b>	the total amount payable in relation to the exercise of an Option, whether in whole or in part, being an amount equal to the relevant Option Price multiplied by the number of Shares in respect of which the Option is exercised;
<b>Financial Year</b>	1 January to 31 December;

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<b>Good Leaver</b>	<p>a Participant whose employment with the Company:</p> <ul style="list-style-type: none"><li>(i) is terminated because the Participant suffers, in the view of the Remuneration Committee, from permanent ill-health;</li><li>(ii) is terminated because the Participant suffers in the view of the Remuneration Committee, from permanent disability;</li><li>(iii) is terminated because the Participant is made redundant (within the meaning of the Employment Rights Act 1996);</li><li>(iv) is terminated by the Company other than because of the Participant's serious misconduct or because the Participant has, in the opinion of the Company, been underperforming over a period of time; or</li><li>(v) is terminated because the Participant retires at or after statutory retirement age.</li></ul>
<b>Institutional Consent</b>	<p>the prior written approval of the holders of more than 70 per cent. of the "A" ordinary shares in the capital of the Company in issue for the time being;</p>
<b>Market Value</b>	<p>in relation to a Share on any day, its market value, as determined by an investment bank appointed by the Company to report to the Company, the A Shareholders and the B Shareholders (as defined in the Shareholders Agreement) or in the absence of such an appointment, by unanimous decision of the shareholders of the Company, and in the absence of such unanimous decision, the market value will be determined by the chairman of the Chartered Institute of Accountants;</p>
<b>Option</b>	<p>a right to subscribe for Shares under the Scheme which is either subsisting or is proposed to be granted;</p>
<b>Option Exercise Date</b>	<p>the date when the exercise of an Option is effective because it complies with Rule 9;</p>
<b>Option Price</b>	<p>the price per Share at which a Participant may subscribe for Shares on the exercise of an Option and calculated in accordance with Rule 2;</p>
<b>Participant</b>	<p>any Eligible Employee to whom an Option has been granted, or (where the context requires) his personal representatives;</p>
<b>Remuneration Committee</b>	<p>a duly authorised remuneration committee of the Board the majority of whose members are non-executive directors;</p>

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<b>Rules</b>	these rules as amended from time to time;
<b>Scheme</b>	the Orchard Capital Management Limited Discretionary Share Option Scheme in its present form or as from time to time amended in accordance with the Rules;
<b>Scheme Period</b>	the period starting on the date the Scheme is approved by the Company in general meeting and ending on 1 February 2006;
<b>Share</b>	a fully paid "C" ordinary share in the capital of the Company;
<b>Shareholders Agreement</b>	the agreement dated on or around 3 July, 2001 between the Company, Hugh Willis, Mark Poole, Barclays Bank PLC, and Shinsei Bank, Ltd.;
<b>Taxes Act</b>	the Income and Corporation Taxes Act 1988; and
<b>Variation</b>	in relation to the equity share capital of the Company:  (i) a capitalisation issue, an offer or invitation made by way of rights, a subdivision, a consolidation or reduction; or  (ii) any other variation as determined by the Remuneration Committee.