

**SUPERANNUATION**

**TRUST DEED**

of

**The COLYER ENTERPRISES  
SUPERANNUATION FUND**

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# CONTENTS OF THIS TRUST DEED

CLAUSE NO.	DESCRIPTION
1	THE FUND
2	PROPER LAW
3	THE TRUSTEES
4	INTERPRETATION
5	DATE OF COMMENCEMENT
6	ADMISSION OF MEMBERS
7	CONTRIBUTIONS BY AN EMPLOYER
8	CONTRIBUTIONS BY MEMBERS
9	INVESTMENTS
10	POLICIES OF INSURANCE AND ANNUITIES
11	RECORDS, ACCOUNTS AND AUDITING
12	VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES
13	EXCESSIVE BENEFITS
14	FORFEITURE OF BENEFITS
15	ALLOCATION OF FORFEITED BENEFITS
16	COMMON LAW RIGHTS OF MEMBERS
17	LOANS TO MEMBERS
18	MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS
19	EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT
20	TRUSTEES - APPOINTMENT AND REMOVAL
21	POWERS OF TRUSTEES
	(a) To pay costs
	(b) To pay expenses
	(c) To enter into contracts
	(d) To delegate powers and duties
	(e) To take advice
	(f) To take legal proceedings
	(g) To transact bank accounts
	(h) To sell assets on appropriate terms
	(i) To borrow money
	(j) To do all things required in administering the Fund
22	TRUSTEES - EXERCISING DISCRETIONS AND DISCRIMINATION
23	LIABILITY OF TRUSTEES
24	TRUSTEES' AND MEMBERS' INDEMNITY
25	TRUSTEES' MEETINGS
26	SIGNING OF DOCUMENTS BY TRUSTEES
27	REMUNERATION OF TRUSTEES
28	REMUNERATION OF PROFESSIONAL PERSONS
29	TRUSTEES AS MEMBER'S ATTORNEYS
30	TRUST DEED AVAILABLE FOR INSPECTION
31	VARIATION OF TRUST DEED
32	TRANSFER OF BENEFIT FROM ANOTHER FUND
33	TRANSFER OF BENEFIT TO ANOTHER FUND
34	BENEFITS PAYABLE IN AUSTRALIAN CURRENCY
35	ADMISSION OF EMPLOYERS TO FUND
36	DISSOLUTION OF THE FUND
SCHEDULE	RULES - PAYMENT OF BENEFITS

THIS DEED is made on the date set forth in the Schedule hereto as the date of making of this Deed

**BY** The person whose name is set forth in the Schedule hereto beside the words The Trustee (hereinafter called "The Trustee")

WHEREAS:-

A The Trustees wish to establish a superannuation trust fund to provide superannuation benefits for such approved persons who may by application become members of the fund.

1. THE FUND

1.1 The trust fund constituted by this Trust Deed shall be called by and known as the name set forth in the Schedule hereto beside the words "Name of this Superannuation Fund"

1.2 The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustees pursuant to this Deed who shall hold the same on trust for the objects and the purposes of this Deed.

2. PROPER LAW

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State or Territory set forth in the Schedule hereto beside the words "Law of this Fund".

3. THE TRUSTEES

The expression "the Trustees" shall include such other new or additional trustees as are appointed hereunder.

4. INTERPRETATION

4.1 This Trust Deed shall be read and construed on the basis that the provisions of the Act, as defined herein, are to the extent that they impose obligations on the Trustees in order for the Fund to gain income tax concessions, incorporated in the Trust Deed, provided that this Trust Deed shall not be so read or construed and no such provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by clause 31 to vary, add to or rescind the provisions of this Trust Deed. Where there is any inconsistency between a provision in this Trust Deed and a provision in the said Act or regulations which is so incorporated, the latter shall prevail over the former.

4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for an reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.

4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-

"Act" means the Income Tax Assessment Act, 1936 (C'th) and the Occupational Superannuation Standards Act, 1987 (C'th) and any regulations or rulings issued under either Act and any replacement or additional legislation in respect of superannuation or any rulings or regulations or guidelines made or issued thereunder and any reference to the provisions or requirements of the Act means the provisions or requirement of such legislation, rulings, regulations or guidelines which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation;

"Commissioner" means either the Commissioner of Taxation or the Insurance and Superannuation Commissioner or any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Dependant" means the spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustees was dependent on the Member at the relevant date;

"Employer" means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the Employer of that person at the relevant time;

"Employer's Contribution Account" has the meaning given to it in clause I 1 hereof,

"Full-Time Basis" means a Member who is employed or self-employed on a full-time basis within the meaning of the Act;

"Highest Average Salary" has the same meaning as that attributed to that expression or the expression "HAS" in the Regulations proclaimed under the Occupational Superannuation Standards Act, 1987;

"Member" means a person whom the Trustees have admitted as a Member of the Fund and includes a person who at the relevant time is receiving or is entitled to receive benefits from the Fund;

"Member's Benefit" in respect of a Member is the net amount then standing to his credit in the Employer's Contribution Account (if any) plus the amount standing to his credit in the Member's Contribution Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Employer's Contribution Account or Member's Contribution Account;

"Member's Contribution Account" has the meaning given to it in clause 11 hereof,

"Part-Time Basis" refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Act;

"Permanently and Totally Disabled" means -

(1) such disablement as, in the opinion of the Trustees, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or

(2) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance,

PROVIDED THAT, the Trustees shall only regard a Member as being permanently and totally disabled if they have received a certificate signed by two registered medical practitioners certifying that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;

"Revenue Account" has the meaning given to it in clause 11 hereof;

"Rules" means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

"Self employed" refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

"Taxation Reserve Account" has the meaning given to it in clause 11 hereof;

"Trust Deed" means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time;

#### DATE OF COMMENCEMENT

The Fund was constituted on the date hereinbefore mentioned.

#### ADMISSION OF MEMBERS

Persons who are engaged on a Full Time Basis or a Part Time Basis in a business, trade, profession, vocation, calling, occupation or employment who wish to become Members shall apply for membership by completing a form of application in Appendix A or such other form of application as the Trustees decide upon. Upon the acceptance of the application by the Trustees the person making the application shall be bound by this Trust Deed in all respects as if he were an original party to this Deed.

All applicants for membership of the Fund shall provide the Trustees with such information that the Trustees may require, including proof of their correct age.

A Member shall inform the Trustees, as soon as practicable, after he ceases:

- (a) to be employed or self employed on a Part-Time Basis after attaining age 65; and
- (b) to be employed or self employed on a Full-Time Basis after attaining age 65.

#### CONTRIBUTIONS BY AN EMPLOYER

1 An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it in its absolute and uncontrolled discretion shall determine PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act, to enable the Fund to obtain the maximum income tax concessions.

2 At the time of making such contribution, the Employer, or any other person contributing, shall advise the Trustees of the contribution in respect of each Member.

3 Any payment of contributions by the Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustees and a payment by the Trustees to the life insurance company or investment manager.

4 The Trustees shall refuse to accept contributions to the Fund from persons other than:-

- (a) the Member;
- (b) the Member's Employer;
- (c) a company in which the Member's Employer has a controlling interest;
- (d) if the Member's Employer is a company - a person who is associated with that company within the meaning of the Act; and
- (e) any other person authorised by the Act to make contributions to the Fund.

7.5 The Trustees shall refuse to commence to accept contributions to the Fund by or in respect of a Member if the Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment on a Full-Time Basis or a Part Time Basis.

7.6 The Trustees shall refuse to accept contributions, in respect of a Member:-

- (a) if the Member
  - (i) has ceased for a continuous period of 2 years to work on a Full Time Basis or a Part Time Basis, but
  - (ii) has not retired from the workforce.
- (b) if the Member has retired from the Workforce.

7.7 The Trustees shall refuse to accept a contribution by or in respect of a Member who has attained age 65 if to do so would result in the Fund not being entitled to the maximum income tax concessions.

#### 8. CONTRIBUTIONS BY MEMBERS

8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustees PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act, to enable the Fund to obtain the maximum income tax concessions. Unless otherwise allowed by the Act, the Trustees shall refuse to accept any such contribution during any period that a Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment. The Employer may if authorised by the Member, deduct such contribution from the Member's Salary and remit it to the Trustees within fourteen days of the end of the calendar month in which it was deducted.

At the time of paying the Member's contribution to the Trustees, the Employer or the Member shall advise the Trustees of the contribution in respect of the Member.

Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustees and a payment by the Trustees to the insurance company or investment manager.

The Trustees may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to clause 8.1 hereof from the Member's Salary and neither the Trustees nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustees have notice thereof.

## INVESTMENTS

The Trustees may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustees in exercising their absolute discretion think fit and without limiting the generality of the foregoing either directly or indirectly:-

- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustees, in their absolute discretion, determine PROVIDED THAT the Trustees may not loan any part of the moneys or assets of the Fund to Members;
- (d) in shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
- (e) in units or sub-units of any unit trust; and
- (f) in bills of exchange and other negotiable instruments,

PROVIDED THAT the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Act in order for the Fund to obtain the maximum income tax concessions and PROVIDED FURTHER THAT the investments made by the Trustees shall be of such nature that they can be readily realised to enable benefits to be paid in money as they fall due and PROVIDED FURTHER THAT the Trustees shall not invest in "in-house assets" within the meaning of the Act if to do so would result in the Fund not being entitled to the maximum income tax concessions.

9.2 The Trustees may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as they, in their absolute discretion, think fit, without being responsible for loss occasioned by so varying, transposing or replacing.

9.3 The Trustees may, in their absolute discretion, hold particular investments for particular Members. The earnings on such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and income tax payable in respect of such investments shall be debited to the relevant Member's accounts.

## 10. POLICIES OF INSURANCE AND ANNUITIES

10.1 The Trustees may, in their absolute discretion, invest the whole or any part of the amount standing to the credit of a Member in the Books of the Fund in the payment of premiums on a policy or policies of life, disability or accident insurance in which the Trustees have a legal or equitable interest or in payment of the consideration for an annuity.

10.2 The Trustees may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustees think fit. The Trustees shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of an annuity on such terms as the Trustees, in their absolute discretion, determine.

The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the Member's credit in the Employer's Contribution Account and/or the Member's Contribution Account in such proportion as is agreed upon by the Trustees and the Member and in the absence of any such agreement, on such basis as the Trustees determine. The proceeds of such policies shall be credited to the Employer's Contribution Account and/or the Member's Contribution Account in the same proportion as premiums for such policies were paid from those accounts.

10.4 The Trustees shall have power to continue such policies or annuities for such periods as the Trustees think fit and to discontinue or surrender such policies or annuities.

## 11. RECORDS, ACCOUNTS AND AUDITING

11.1 The Trustees shall keep a complete record of all matters essential to the administration of the Fund including:-

- (a) A Minute Book in which proceedings and resolutions of the Trustees are recorded.
- (b) An Employer's Contribution Account for each Member in which is recorded:-
  - (i) contributions to the Fund by the Employer in respect of that Member pursuant to clause 7 of this Trust Deed;
  - (ii) amounts credited to such account pursuant to clause 32 of this Trust Deed;
  - (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
  - (iv) forfeited benefits credited to such account pursuant to clause 15 of this Trust Deed;
  - (v) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
  - (vi) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
  - (vii) amounts debited to such account to pay income tax;
  - (viii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.
- (c) A Member's Contribution Account for each Member in which is recorded:-
  - (i) contributions by that Member pursuant to clause 8 of this Trust Deed;
  - (ii) amounts credited to such account pursuant to clause 32 of this Trust Deed;
  - (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
  - (iv) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
  - (v) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
  - (vi) amounts debited to such account to pay income tax;
  - (vii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.

(d) *A Revenue Account to which shall be credited all income from investments, profits earned and capital gains realised during each financial year and to which shall be debited all expenses (other than premiums on policies of insurance), outgoings and losses incurred during each financial year.*

- (e) A Taxation Reserve Account to which shall be credited amounts set aside by the Trustees in respect of contributions to the Fund and earnings of the Fund and shall be debited income tax paid and amounts which the Trustees determine from time to time to transfer to the Members' Accounts in proportion to the amounts standing to the credit of such accounts at that time or on such other basis as the Trustees consider to be equitable. The amounts standing to the credit in the Taxation Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up or on crystallisation of the Fund.
- (f) A Forfeited Benefits Reserve Account to be credited with amounts in accordance with clause 15.1 and to which shall be debited any amounts which are applied in accordance with clause 15.1.

11.2 The Trustees shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustees whether the Fund complies with the standards imposed under the Act.

11.3 The Trustees shall comply with the standards imposed under the Act and shall maintain such records as are required under the Act.

## 12. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES

12.1 (a) After the thirtieth day of June each year, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities during the preceding financial year) or

(b) on the winding up of the Fund or whenever the Trustees think it necessary, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities) during the current financial year,

less such provision for depreciation, liabilities, losses and taxation as the Trustees in their absolute discretion deem prudent shall be credited or debited by the Trustees to the Employer's Contribution Accounts and the Members' Contribution Accounts in proportion to the amounts standing to the credit of such accounts on the thirtieth day of June of the preceding financial year or on such other basis as the Trustees consider to be equitable.

12.2 The Trustees may whenever they think it necessary make a valuation of the assets of the Fund (including life insurance policies of life insurance and annuities) in such manner as the Trustees may determine and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investment and a provision for taxation as the Trustees in their absolute discretion deem prudent and if the net value of the assets of the Fund determined in accordance with this clause exceeds or is less than the aggregate amounts standing to the credit of all of the Employer's Contribution Accounts and the Members' Contribution Accounts at that date, the Trustees shall credit the surplus or debit the deficit to the Employer's Contribution Accounts and the Members' Contribution Accounts in proportion to the amounts standing to their respective credits or on such other basis as the Trustees consider to be equitable.

12.3 The Trustees may allocate to the Member's accounts of a Member, in respect of whom a benefit has been paid, an interim earning rate determined by the Trustees to apply from the date on which an allowance was last made under clause 12.1 or 12.2 to the date on which the benefit is being paid.

## 13. EXCESSIVE BENEFITS

If at any time, in the opinion of the Trustees, a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustees may take such of the following actions as they, in their absolute discretion, determine:-

- (a) decline to accept any further contributions for the benefit of that Member,
- (b) establish a separate excessive benefits fund of which the Trustees shall be the trustees and which shall be subject to the same trusts and powers contained in this Trust Deed;
- (c) transfer to the separate fund established under paragraph (b) of this clause, the amount of the benefit which the Trustees determine represents the excess over the maximum reasonable benefit for the purposes of the Act.

The Trustees may accept a transfer from the separate fund referred to in paragraph (b) of this clause.



#### 14. FORFEITURE OF BENEFITS

14.1 A Member or former Member shall cease to be presently or presumptively entitled to the Member's Benefit at the discretion of the Trustees if in their opinion:-

- (a) he has become bankrupt or insolvent or has attempted to assign, alienate, charge or encumber or a part of his Member's Benefit;
- (b) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (c) his whereabouts cannot be traced by the Trustees for a period of five years, after making reasonable enquiries.

14.2 In any such event the Trustees shall apply the amount so forfeited that stood to the credit of the Member's Contribution Account for the benefit of the Member or such of the Member's Dependents as the Trustees in their absolute discretion, determine and the Trustees may, in their absolute discretion, in order to relieve hardship only, apply the amount so forfeited that stood to the credit of the Member's Employer's Contribution Account for the maintenance or support of the Member or such of his Dependents as the Trustees in their absolute discretion determine or in a manner provided for in the Act. Such application of the Member's Benefit shall be a discharge to the Trustees for the payment thereof.

#### 15. ALLOCATION OF FORFEITED BENEFITS

The amount of any forfeited benefit in the Fund by reason of the operation of clause 14 hereof and the Rules annexed hereto which is not applied in accordance with clause 14.2 hereof shall be credited to the Forfeited Benefits Reserve Account established in accordance with the provisions of clause 11.1 (f) and shall be applied within six months of the end of each financial year (or such other period provided for in the Act):-

- (i) to the provision of the benefits that other Members or their Dependents have rights to receive from the Fund; or
- (ii) to the provision for other Members or their Dependents who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all of the circumstances; or
- (iii) for any purpose approved in writing by the Commissioner; or
- (iv) in such other manner that is permitted or required under the Act, in order for the Fund to obtain income tax concessions.

#### 16. COMMON LAW RIGHTS OF MEMBERS

The provisions of this Deed and the Rules annexed hereto shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law, in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

#### 17. LOANS TO MEMBERS

The Trustees shall not make any loans or advances to a Member.

#### 18. MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS

18.1 A Member shall have no right to or interest in his Member's Benefit except as provided herein and in the Rules annexed hereto and in the Act.

18.2 The rights of the Members and their Dependents to receive benefits from the Fund shall be those set out in this Trust Deed.

18.3 The rights of the Members and their Dependents to receive the benefits payable under the Rules shall be fully secured within the meaning of the Act.

18.4 The Members shall be provided with statements and information in relation to the administration of the Fund in accordance with the requirements of the Act.

## 19. EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT

19.1 Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise determine the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a Director.

19.2 The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim against the Member for alleged wrongful termination of employment or for claiming the payment of any amount in respect of retrenchment.

## 20. TRUSTEES - APPOINTMENT AND REMOVAL

20.1 The Trustees shall have the power by deed or by an oral or written resolution to appoint a new or additional Trustee or Trustees.

20.2 The office of a Trustee shall become vacant if:-

- (a) he resigns his office;
- (b) he dies;
- (c) he becomes bankrupt or makes an assignment to or composition with his creditors;
- (d) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (e) being a company a resolution is passed or a petition is represented for its winding up or liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or a receiver or liquidator of its assets is appointed.

20.3 A majority of the Members may, by resolution or in writing remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or additional Trustee.

20.4 If a company is at the time of being placed in receivership or liquidation the sole Trustee of the Fund shall have the power to appoint a new Trustee or Trustees.

## 21. POWERS OF TRUSTEES

The Trustees shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:-

- (a) to pay out of the Trust Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Trust Fund expenses incurred in:-
  - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
  - (ii) having the accounts of the Fund audited;
  - (iii) having taxation returns and returns to Government authorities prepared; and
  - (iv) engaging such persons as the Trustees consider appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustees consider necessary for the administration of the Fund;

- (d) to delegate (by power of attorney or otherwise) to any person or company any of the trusts, powers and authorities and discretions vested in the Trustees on such terms and conditions as the Trustees in their absolute and sound discretion think fit and the Trustees shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act upon the advice of a barrister, solicitor, accountant, actuary or other professional consultant in relation to the administration of the Fund and pay out of the Trust assets any fees or costs payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustees in their absolute and sound discretion think necessary for the proper administration of the Fund or to protect the interests of the Members;
- (g) to open and maintain such bank accounts as the Trustees think fit;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms to be determined in any other manner and on such other terms as the Trustees see fit;
- (i) to borrow any sum of money for the purposes of obtaining temporary finance (as defined in the Rules) and secure the repayment thereof in such manner and upon such terms and conditions as the Trustees think fit and in particular by charging or mortgaging all or any part of the assets of the Fund and no lender shall be concerned to enquire as to whether the need for such borrowing has arisen or as to the purpose for which it is required or as to the amount of money borrowed;
- (j) generally to do all such things and perform such acts as the Trustees in their absolute and sound discretion consider appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed and the Rules annexed hereto.

## 22. TRUSTEES - EXERCISING DISCRETIONS AND DISCRIMINATION

In administering the Fund and in exercising the trusts, powers and authorities vested in them herein and in the Rules annexed hereto, the Trustees shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities PROVIDED HOWEVER that the Trustees shall not discriminate against any person on the grounds of that person's race, sex or marital status in any manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

## 23. LIABILITY OF TRUSTEES

A Trustee shall not be liable for any loss that is:-

- (a) not attributable to his own dishonesty;
- (b) attributable to actions or defaults of a co-trustee;
- (c) attributable to any action taken in conformity with the decisions of the Trustees hereunder; or
- (d) attributable to the neglect or default of an agent employed in good faith by the Trustees.

## 24. TRUSTEES' AND MEMBERS' INDEMNITY

Each of the Trustees and Members shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund for such amount of indemnity and shall not be liable for any amount to which such indemnity does not extend.

## 25. TRUSTEES' MEETINGS

1. The Trustees may meet together to dispose of business concerned with the administration of the Fund and may determine a quorum, adjourn the meetings and otherwise regulate their meetings as they see fit. Two-thirds of the Trustees shall be a quorum unless there is only one Trustee in which case a quorum shall be the one Trustee.

2. A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers and authorities and discretions vested in the Trustees herein and the Rules annexed hereto.

25.3 The Trustees may elect a Chairman of each meeting.

25.4 A resolution of the Trustees shall be valid and binding if two-thirds of the total number of Trustees voted in favour of it.

25.5 The Trustees shall keep minutes of their resolutions and proceedings in a book provided for that purpose.

25.6 A resolution, in writing signed by two-thirds of the Trustees, shall have the same effect and validity as a resolution of the Trustees passed at a duly convened meeting.

## 26. SIGNING OF DOCUMENTS BY TRUSTEES

Any two of the Trustees, where there are more than two Trustees, are hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

## 27. REMUNERATION OF TRUSTEES

The Trustees shall be entitled to be paid and retain out of the Trust Fund such remuneration as the Trustees consider reasonable.

## 28. REMUNERATION OF PROFESSIONAL PERSONS

Any person who is an accountant, actuary, solicitor, barrister or other professional person and is also a Trustee or a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he would make had he not been a Trustee or a director of a company acting as Trustee hereof.

## 29. TRUSTEES AS MEMBER'S ATTORNEY

Each Member hereby irrevocably appoints the Trustees his attorneys to execute and sign all such deeds and instruments and do all such things the Trustees consider necessary or desirable in administering the Fund.

## 30. TRUST DEED AVAILABLE FOR INSPECTION

A copy of this Trust Deed and the Rules annexed hereto shall be kept by the Trustees and be available for inspection by any Member at all reasonable times.

## 31. VARIATION OF TRUST DEED

31.1 The Trustees may at any time and from time to time either by deed executed by the Trustees or by oral resolution vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the Rules annexed hereto and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner PROVIDED THAT no such variation, addition or rescission shall have the effect of-

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable, before the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this clause, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

and the benefits that have accrued, or become payable, to or in respect of a Member shall not otherwise be reduced, unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required only to enable the Fund to comply with the Act; or
- (iii) the Member so affected approves in writing of the reduction; or

(iv) the Commissioner approves in writing of the reduction.

31.2 The Trustees shall as soon as practicable advise the Members in writing of the nature, purpose and of any such variation, addition or rescission.

**32. TRANSFER OF BENEFIT FROM ANOTHER FUND**

Where a Member requests that an amount standing to his credit or a policy of insurance in a superannuation or approved deposit fund be transferred to the Fund, the Trustees may accept the transfer of such amount or policy to the credit of the Member's Contribution Account PROVIDED THAT if the amount or policy is being transferred from a superannuation fund conducted by or contributed to by the Employer or an associate of an Employer, the said amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account (or the equivalent thereof) in the previous superannuation or provident fund or on such other basis as the Trustees and the Member agree upon.

**33. TRANSFER OF BENEFIT TO ANOTHER FUND**

The Trustees may, on receiving the written request of a Member, transfer the whole or a part of a Member's Benefit to the trustees of another superannuation fund which the Trustees are satisfied complies with the Act or provided termination of employment has occurred transfer the benefit to an approved deposit fund which the Trustees are satisfied complies with the Act, PROVIDED THAT such a transfer shall be made if it is a condition of such transfer that the amount transferred shall not be paid from the fund prior to the Member retiring from the workforce and attaining age 55 except in the event of death or permanent incapacity for work or in such other circumstances as are permitted under the Act and if the condition of such transfer that the benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions. The receipt of the trustees of such fund shall be a complete discharge of the Trustees in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred.

**34. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

**35. ADMISSION OF EMPLOYERS TO FUND**

The Trustees may admit an Employer as a contributor to and a participant in the Fund on completion of Appendix B or such other form of application as the Trustees decide upon. An Employer so admitted shall be bound by the provisions of this Trust Deed and the Rules annexed hereto in the same way the Employer would be if it had been an original party to the Trust Deed.

**36. DISSOLUTION OF THE FUND**

36.1 When the last remaining Member ceases to be a Member the Fund shall be wound up and the Trustees shall, subject to the Rules annexed hereto, pay or transfer to the Members or former Members, benefits in accordance with the provisions of the Rules annexed hereto, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted by the Members and former Members in full discharge of all claims in respect of the Fund.

36.2 Notwithstanding anything contained in clause 36.1, the Trustees shall not pay or transfer the benefit to a Member except in accordance with the provisions of the Rules annexed hereto.

36.3 If any amount remains in the Fund, after all the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependents in such proportions as the Trustees consider to be equitable.

36.4 The trusts constituted by this Trust Deed shall, unless previously terminated in accordance with clause 36 hereof, endure during the life of the survivor of all the lineal descendants of His Late Majesty King George V living at the date of this Trust Deed and for twenty-one years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts hereby established provided that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provides that the Rule against Perpetuities shall not apply.

SCHEDULE

DATE OF MAKING THIS DEED:

11 June, 1993

THE TRUSTEE:

COLYER ENTERPRISES PTY. LTD. A.C.N. 051 836 429 of  
241 Watkins Road  
WANGI WANGI NSW 2267

THE NAME OF THE FUND:

COLYER ENTERPRISES SUPERANNUATION FUND

LAW OF THIS FUND:

New South Wales

IN WITNESS WHEREOF this Trust Deed has been executed on the day and year set forth in the Schedule. \$2.00



THE COMMON SEAL OF  
COLYER ENTERPRISES PTY. LTD.  
A.C.N. 051 836 429  
was hereunto affixed by  
authority of the Board of  
Directors and in the  
presence of:

Director

Secretary

220695 2903 12 800307317/03

## SCHEDULE

### OF

### RULES

#### 1. BENEFIT PAYABLE ON RETIREMENT OR DEATH AFTER RETIREMENT

- 1.1 The amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to a Member upon his retirement from the workforce after attaining age 55. In the event of the Member's death on or after attaining age 55, the Member's Benefit or the balance thereof shall, subject to Rules 1.4 and 1.5, be paid or applied by the Trustees in a lump sum in accordance with the provisions of Rule 2. The benefit payable under this Rule 1.1 on retirement shall, in the discretion of the Trustees, be paid in a lump sum or by way of pension or annuity. A pension or annuity paid to a Member shall not exceed 75% (or such other amount permitted under the Act) of Highest Average Salary and shall be paid on a basis that meets the requirements of the Act for the Fund to obtain the maximum income tax concessions. If a Member's Benefit that is being paid by pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum. The Trustees may, at the request of the Member and with the approval of the Commissioner pay benefits by transferring in specie assets of equivalent value to the benefit payable.
- 1.2 A benefit payable under Rule 1.1 shall commence to be paid no later than the Member's sixty-fifth birthday unless the Member is continually employed or self employed on a Part-Time Basis after attaining age 65 and elects to retain his benefit in the Fund in which case the benefit payable under Rule 1.1 shall commence to be paid no later than the Member's seventieth birthday.
- 1.3 Where a Member continues to be employed or self employed on a Full-Time Basis, after attaining age sixty five, his benefit may, if he so elects, remain in the Fund until he retires from the workforce PROVIDED THAT if the Member ceases to be employed or self employed on a Full-Time Basis, but immediately thereafter becomes continually employed or self employed on a Part-Time Basis, his benefit shall continue to be paid on his seventieth birthday or, if later, the date he ceases to be employed or self employed on a Full-Time Basis.
- 1.4 On the death of a Member to whom a pension is being paid pursuant to Rule 1.1 and who is survived by a spouse, an annual pension equal to the annual pension payable to the deceased Member at the date of death shall be paid to the deceased Member's spouse for the balance of the 10 year period which commenced on the first day of the period to which the first pension payment to the deceased Member by the Trustees relates and at the expiry of the said 10 year period, an annual pension equal to 85% (or such other amount permitted under the Act) of the annual pension payable to the deceased Member at the date of death shall be paid to the deceased Member's spouse for life (provided the Member's Benefit is not exhausted in that period). If, at the date of the Member's death, 10 years have elapsed from the first day of the period to which the first pension payment made to the deceased Member relates, an annual pension not exceeding 85% (or such other amount permitted under the Act) of the annual pension payable to the deceased Member at the date of death, shall be paid to the deceased Member's spouse for life (provided the Member's Benefit is not exhausted in that period). Such a pension shall commence on the date of the Member's death and shall comply with the requirements of the Act for the Fund to obtain the maximum income tax concessions.
- 1.5 In the event of the death of a retired Member who does not have a spouse or in the event of the death of a Member's spouse to whom a pension was payable under Rule 1.4, the balance of the Member's Benefit shall be paid in a lump sum to such of the Member's Dependents as the Trustees, in their absolute discretion determine. If the payment of part or all of such benefit does not comply with the requirements of the Act for the Fund to obtain the maximum income tax concessions the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustees are unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any Dependents, the benefit payable under this Rule 1.5 shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustees determine), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustees in accordance with the provisions of clause 15 of the Trust Deed.

## 2. **BENEFIT PAYABLE ON DEATH BEFORE RETIREMENT**

- 2.1 In the event of the death of a Member the amount of the Member's Benefit shall be held by the Trustees upon trust for the benefit of such one or more of the Member's Dependents, to be paid in a lump sum in such shares and proportions as the Trustees, in their absolute discretion, determine.
- 2.2 If the Trustees are unable to establish within six months of the Member's death that there are any Dependents, the benefit payable under Rule 2.1 shall be paid to the Member's Legal Personal Representative but if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such other period as the Trustees determine), the benefit payable hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustees in accordance with the provisions of clause 15 of the Trust Deed.

## 3. **BENEFIT PAYABLE ON DISABLEMENT**

- 3.1 If the event of a Member becoming in the opinion of the Trustees, Permanently and Totally Disabled, the amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to the Member or, if he is unable to manage his own affairs, to such of this Dependents and in such proportions as the Trustees, in their absolute discretion, determine. If, prior to the Trustees determining that a Member is Permanently and Totally Disabled, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his Dependents as aforesaid **PROVIDED THAT** the amount of such periodical benefit shall not exceed the maximum reasonable benefit that is allowed under the Act in order for the Fund to obtain the maximum income tax concessions.
- 3.2 The benefit payable under Rule 3.1 on the occurrence of Permanent and Total Disablement shall, in the discretion of the Trustees, be paid in a lump sum or by way of pension. A pension or annuity shall comply with the requirements of the Act for the Fund to obtain the maximum income tax concessions. If a Member's Benefit that is being paid by pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum. The Trustees may, at the request of the recipient of a benefit and with the approval of the Commissioner, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.
- 3.3 Where a benefit is payable under Rule 3.2 by way of pension, the Trustees shall, in their absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid **PROVIDED THAT** if, at the date that the payment of the pension commences, the Member's Benefit exceeds the maximum reasonable lump sum benefit for the purposes of the Act, the pension shall be paid for a minimum period of ten years and on a basis that meets the requirements of the Act for the Fund to obtain the maximum income tax concessions **AND PROVIDED FURTHER THAT** the amount of the pension from time to time shall not exceed the amount which a qualified Actuary consulted by the Trustees certifies in writing to be the maximum amount that can be paid to the Member.
- 3.4 In the event of the death of a Member or a Member's spouse to whom a pension was payable under Rule 3.2 the balance of the Member's Benefit shall be paid in a lump sum to such of the Member's Dependents as the Trustees, in their absolute discretion, determine provided such payment complies with the requirements of the Act for the Fund to obtain the maximum income tax concessions. If the payment of part or all of such benefit does not so comply, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustees are unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any Dependents, the balance of the Member's Benefit shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustees determine), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustees in accordance with the provisions of clause 15 of the Trust Deed.

## 4. **BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

### 4.1 **Member Going Overseas**

The benefit payable under these Rules shall be paid to the Member prior to the Member attaining age 55 if the Trustees are satisfied that the Member intends to live permanently overseas with no intention of returning to live in Australia.



#### 4.2 Financial Hardship

The Trustees shall, in their absolute discretion, pay part or all of the benefit payable to a Member prior to the Member attaining age 55, if the Trustees are satisfied that the Member would suffer financial hardship if part or the whole of his benefit is not paid to him **PROVIDED THAT** any such payment must first be approved by the Commissioner, if the Act so requires in order for the Fund to obtain income tax concessions.

#### 5. PAYMENT OF BENEFITS TO MINORS

Where a person, to whom benefits are payable hereunder, is a minor, the Trustees may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustees in respect of such benefit.

#### 6. DEDUCTION OF INCOME TAX

The Trustees may deduct from any benefit payable, the amount of any income tax that is calculated by the Trustees to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

#### 7. PENSION CONDITIONS

- 7.1 If a Member's Benefit that is being paid by a pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum.
- 7.2 When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.
- 7.3 The recipient of a pension under these Rules may commute to a lump sum payment any amount up to fifty percent (or such other percentage that is prescribed by the Act) of the pension on making written application to the Trustees **PROVIDED** the option to commute a pension to a lump sum payment is exercised within six months of the first day of the period to which the first pension payment paid by the Trustees relates, except in the event of the death of a Member or in such other circumstances as are permitted by the Act in order for the Fund to obtain the maximum income tax concessions.
- 7.4 A pension payable under these Rules shall not be assigned by the person in receipt of it and it shall not be mortgaged or encumbered in any manner whatsoever.
- 7.5 A pension payable under these Rules may be increased annually by the Trustees by an amount not exceeding any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) or any replacement index **PROVIDED THAT** the minimum annual increase of the pension shall be the lesser of--
  - (i) 5% of the pension;
  - (ii) any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) published by the Australian Statistician for the March quarter in the preceding year or any replacement index; and
  - (iii) any other minimum increase permitted under the Act.
- 7.6 The Trustees may, in their absolute discretion, provide a pension payable under these Rules by applying a Member's Benefit to the purchase, in the ownership of either the Trustees or the Member, of an annuity that meets the requirements of the Act for the Fund to obtain the maximum income tax concessions.

APPLICATION FOR MEMBERSHIP

APPENDIX A

OF

COLYER ENTERPRISES SUPERANNUATION FUND

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex: \_\_\_\_\_

I hereby apply to become a member in category \_\_\_\_\_ of the abovementioned Fund which is administered in terms of a Trust Deed dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

I have been advised of the benefits which I am entitled to receive from the Fund on retirement, death or termination of service with my Employer.

In consideration of my admission to membership, I hereby agree to abide by and be bound by the provisions of the abovementioned Trust Deed and I declare that I am not entitled to a deferred annuity and I am not a member of any other superannuation fund or approved deposit fund nor have I received benefits from any such fund, other than the following:-

\*I hereby authorise my current Employer to deduct from my salary such amounts (if any) as are from time to time agreed upon by myself and my employer as contributions to be made by me to the abovementioned Fund.

**NOMINATION OF BENEFICIARIES**

Whilst I acknowledge the discretion the Trustees have to determine who the benefit is paid to, I hereby nominate the following persons to receive the benefit payable by the Trustees of the fund in the event of my death:

Name and Address	Relationship to member	Proportion of benefit
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Signature of Applicant: \_\_\_\_\_

Witness: \_\_\_\_\_

\* Delete this clause if applicable

**APPLICATION FOR PARTICIPATION BY EMPLOYER**

*APPENDIX B*

To the Trustees of:

I/We, \_\_\_\_\_  
(hereinafter called "the Associated Employer") hereby applies to participate in the above-mentioned Fund and to include the employees of the Associated Employer as members of the Fund and in consideration of the acceptance of the Associated employer as a participant in the fund, the Associated employer undertakes to contribute to the fund and be bound by the Trust Deed and Rules governing the fund as if it were originally named therein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

THE COMMON SEAL OF \_\_\_\_\_

was hereto duly affixed in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Secretary

SIGNED SEALED AND DELIVERED by the said

\_\_\_\_\_

(FULL NAME)

\_\_\_\_\_  
(SIGNATURE)

in the presence of:

\_\_\_\_\_

SIGNED SEALED AND DELIVERED by the said

\_\_\_\_\_

(FULL NAME)

\_\_\_\_\_  
(SIGNATURE)

in the presence of:

\_\_\_\_\_

N.B. The upper panel is to be used where the Associated Employer is a Company and the lower panel is to be used wher the Associated employer is a Partnership or Sole Trader