

# **BAUER Aktiengesellschaft Schrobenhausen**

## **Articles of Association**

### **Section 1**

#### **General Terms and Conditions**

##### **§ 1 Company name, registered place of business and fiscal year**

1. The name of the Company shall be

**BAUER Aktiengesellschaft**

2. The Company's registered place of business is Schrobenhausen, Germany.
3. The fiscal year shall be the calendar year.

##### **§ 2 Object of the enterprise**

1. The object of the enterprise is the holding and management of shareholdings and the provision of services for the management of enterprises.
2. The Company is authorised to conduct all business transactions and take all measures which appear likely to promote the achievement of the Company's object. This authorisation also comprises the right to establish, acquire and participate in other enterprises, as well as to conclude agreements between business enterprises. It can spin off its operations to affiliated companies in whole or in part. Such authorisation is not restricted to Germany.

##### **§ 3 Notifications, Information**

1. The Company's notifications shall be published in the electronic Federal Gazette ("Bundesanzeiger"). Other mandatory statutory disclosure duties remain unaffected.
2. The Company is entitled to transmit information to shareholders with their consent by data transmission in compliance with statutory requirements.
3. The transmission of notifications according to Section 125 (2) of the German Stock Corporation Act (AktG) by electronic communication is restricted. The Management Board is entitled, but not obliged, to also send this information by other means.

## Section II

### Share capital and shares

#### § 4 Amount and division of the share capital

1. The share capital of the Company is EUR 73,001,420.45 (seventy-three million one thousand four hundred and twenty euros and forty-five cents) and is divided into 17,131,000 no-nominal-value shares. The shares are bearer shares.
2. A shareholder's right to have his share evidenced by certificate is excluded, unless the evidencing of ownership is required according to the rules applicable at a stock exchange listing the share.
3. In the event of a capital increase, it may be determined that new shares participate in the profits in deviation to Section 60 (2) sent. 3 of the German Corporation Act (AktG).
4. The Management Board is authorized, with the consent of the Supervisory Board, to increase the share capital, in whole or in part, once or more than once, by June 25, 2013 by up to a total of EUR 2,000,000.00 by the issue of new no-nominal-value bearer shares against cash and/or non-cash contributions (authorized capital). The shareholders are thereby to be granted a right of subscription in principle. The legal subscription right may also be granted in that the new shares are acquired by a bank or consortium of banks nominated by the Management Board, subject to the obligation that they be offered to the company's shareholders for purchase. The Management Board is further authorized, with the consent of the Supervisory Board, to exclude the legal subscription rights of shareholders in the following cases:
  - in the event of a capital increase against non-cash contributions in the course of acquisition of a business, parts of a business or shares in businesses;
  - in the event of capital increases against cash contributions where the issue amount of the new shares issued excluding shareholders' subscription rights pursuant to section 186, subsection 3, clause 4 of the German Stock Corporation Act (AktG) does not fall materially below the market price of the already quoted shares of the same category and structure, and the total pro rata amount of the share capital accounted for by the new shares issued excluding shareholders' subscription rights pursuant to section 186, subsection 3, clause 4 AktG does not exceed ten percent of the existing share capital at the time this authority takes effect and at the time of exercising this authority. Shares issued in direct or corresponding application of section 186, subsection 3, clause 4 AktG during the term of this authority until the time it is exercised are to be set off against the said 10 percent limit of the share capital;
  - to avoid residual amounts.

The Supervisory Board is authorized to amend article 4 of the Articles of Association accordingly following complete or partial execution of the increase in share capital or on expiration of the period of authority.

## **Section III**

### **Management Board**

#### **§ 5 Composition and rules of procedure of the Management Board**

1. The Management Board consists of at least two members. The Supervisory Board appoints members of the Management Board and decides on the number thereof. The Supervisory Board may appoint a chairman of the Management Board and a deputy chairman.
2. Decisions of the Management Board shall be taken by a simple majority of the votes cast by the members of the Management Board taking part in the decision-making. In case of a tie in the votes, the chairman shall have the casting vote if the Management Board consists of more than two members.
3. The Supervisory Board shall issue rules of procedure for the Management Board, which can also determine the transactions requiring the approval of the Supervisory Board or one of its committees.

#### **§ 6 Representation of the Company**

1. The Company shall be legally represented by two members of the Management Board jointly or by one member of the Management Board in conjunction with an executive vested with full power of commercial representation under German law ("Prokurist"). The Supervisory Board can grant one or more members of the Management Board a sole power of representation. Furthermore, the Supervisory Board can determine generally or for an individual case that individual or all members of the Management Board are authorised to represent the Company in legal transactions as representatives of a third party.

## **Section IV**

### **Supervisory Board**

#### **§ 7 Composition, term of office and resignation**

1. The Supervisory Board consists of twelve members.
2. Members of the Supervisory Board are elected for a period not exceeding the end of the Annual General Meeting which decides on the formal approval of their actions for the fourth fiscal year after the beginning of the term of office. In this connection, the fiscal year in which the term of office begins shall not be included in the calculation. Members may be re-elected.
3. Members of the Supervisory Board who have been elected by the Annual General Meeting can be dismissed before the expiry of their term of office. The decision requires a majority which includes at least three quarters of the votes cast and three quarters of the share capital carrying voting rights represented during the decision-making.
4. It is possible to elect substitutes for all shareholder representatives on the

Supervisory Board who replace prematurely resigning members of the Supervisory Board in a sequence determined during their election.

5. If a member of the Supervisory Board is elected in the place of a resigning member, his term of office lasts for the remaining period of office of the resigning member. If a substitute replaces the resigned member and at the next Annual General Meeting or at the one after next, the resigned member is re-elected after such replacement, the substitute's term of office ends at the end of this Annual General Meeting, otherwise upon the expiry of the remaining term of office of the resigned person. The re-election of the resigned member after a substitute has replaced the resigned member requires a majority which must consist of at least three quarters of the votes cast.
6. Each member of the Supervisory Board may resign from office without giving any reasons with one month's notice, by stating a good cause at any time without observing a notice period. Resignation is carried out by submitting a written declaration to the Management Board and notifying the chairman of the Supervisory Board. In the event of resignation, the above paragraph 4 applies correspondingly.

### **§ 8 Chairman and deputy chairman**

1. A Supervisory Board meeting shall be held, which requires no separate invitation, following the Annual General Meeting at which all the Supervisory Board members to be elected by the Annual General Meeting have been elected or re-elected. At this meeting the Supervisory Board shall elect the chairman of the Supervisory Board and his deputy from its midst subject to Section 27 of the German Codetermination Act (MitbestG) for the duration of his term of office with the Supervisory Board member who is oldest in terms of age acting as chairman. The Supervisory Board can also appoint a second deputy chairman with a majority of the votes cast at this meeting.
2. Should the chairman of the Supervisory Board or a deputy prematurely resign, the Supervisory Board must immediately elect a substitute, unless this already took place upon electing the resigned member.
3. The first deputy chairman of the Supervisory Board only has the chairman's rights and duties under the law and these Articles of Association, if the chairman is prevented. The second deputy chairman has these rights only if the chairman and the first deputy chairman are prevented. This is without prejudice to Section 29 (2) sent. 3 and Section 31 (4) sent. 3 of the German Codetermination Act.

### **§ 9 Meetings and decisions of the Supervisory Board, rules of procedure**

1. Meetings of the Supervisory Board are convened by the chairman with two weeks' notice as often as required by law or the business. When calculating the period, the date on which the invitation is posted and the date on which the meeting is held are not included in the calculation. In urgent cases the chairman can shorten the period.
2. The Supervisory Board has a quorum if the members have been invited in writing, by fax or by e-mail at the last notified address and at least half of the members of which it must consist in total take part in the decision-making in person, by casting their votes in writing, by fax, by e-mail or by telephone. The chairman of the Supervisory Board presides over the meeting. The chairman determines the course of the meeting and the type of voting.
3. Decisions can also be taken in writing, by telephone and using similar voting methods

(e.g. fax, e-mail, video conference) or a combination of these forms without convening a meeting, if the chairman of the Supervisory Board orders this. This also applies for repeated voting procedures in accordance with Section 29 (2) sent. 1 and Section 31 (4) sent. 1 of the German Codetermination Act.

4. The decisions of the Supervisory Board are taken by a simple majority, unless a different majority is prescribed as mandatory by law. In case of a tie in the votes, the vote of the chairman in office shall be decisive pursuant to Section 29 (2) and Section 31 (4) of the German Codetermination Act; each member of the Supervisory Board may demand renewed voting in accordance with these provisions.
5. If not all members of the Supervisory Board are present during the decision-making and the absent members of the Supervisory Board do not have their written votes handed over, the decision shall be postponed upon application by at least two members of the Supervisory Board who are present. In case of postponement, the renewed decision-making takes place at the next regular meeting, unless a special Supervisory Board meeting is convened. A repeated demand for postponement by a minority is not permitted for the renewed decision-making.
6. If the chairman of the Supervisory Board takes part in the meeting or an attending Supervisory Board member is in possession of his vote cast in writing, paragraph 5 shall not apply if the same number of shareholder representatives and employee representatives attend in person or participate in the decision-making by casting votes in writing or if any inequality is compensated by individual members of the Supervisory Board not taking part in the decision-making.
7. Persons who belong neither to the Supervisory Board nor the Management Board may attend Supervisory Board meetings as experts or persons providing information for discussions on individual items of the agenda with the approval of the Supervisory Board.
8. The Supervisory Board shall establish rules of procedure for itself in accordance with mandatory statutory provisions and as determined by these Articles of Association.
9. Declarations of intent of the Supervisory Board are submitted by the chairman in the name of the Supervisory Board.

## **§ 10 Committees of the Supervisory Board**

The Supervisory Board is authorised to set up one or more committees from its midst. This is without prejudice to Section 27 (3) of the German Codetermination Act. For the purposes of this provision, the first deputy chairman of the Supervisory Board is a deputy. The Supervisory Board determines the tasks, powers and procedures of the committees. As far as permitted by law, it is also possible to transfer the powers of the Supervisory Board to the committees. § 9 par. 3 and 4 apply to decisions taken by committees unless otherwise provided by mandatory statutory provisions; § 9 par. 5 and 6 are not applicable.

## **§ 11 Business transactions requiring approval**

The Management Board requires the approval of the Supervisory Board for the following transactions:

- a. Stipulation of company and group planning, including investment, financial and personnel plans, and decisions on changes to this planning and these

plans and sub-plans.

- b. Take-over, purchase or sale of companies or business shares (object of purchase) by the Company or by a company belonging to the Group if the price for the take-over, purchase or sale or the total assets of the object of purchase exceed 1 % of the consolidated total assets.
- c. Appointment and dismissal of members of the Management Board / managing directors at Group companies whose sub-group performance exceeds 15 % of the total Group revenues. The allocated share of the total Group revenues as shown in the last Group management report at the time when passing a resolution on the appointment or dismissal is relevant.
- d. Stipulation of the total amount of management bonuses and bonuses for employees.

The Supervisory Board may determine further transactions requiring approval in the rules of procedure for the Management Board.

## **§ 12 Amendments to the wording of these Articles of Association**

The Supervisory Board is authorised to decide to make amendments and supplements which only affect the wording of these Articles of Association.

## **§ 13 Remuneration for the Supervisory Board**

1. In addition to the reimbursement of his cash outlays and any value-added tax charged to him for his tasks on the Supervisory Board, each member of the Supervisory Board receives a fixed remuneration of EUR 18,000 payable in the month of December of the fiscal year.
2. The chairman receives twice this amount, his deputy one-and-a-half times this remuneration according to par. 1.
3. The amounts stated in par. 1 are increased by 10 % for each membership in one of the Supervisory Board's committees. This requires that the respective committee held at least two meetings in the fiscal year. Membership in the Negotiating Committee according to Section 27 (3) of the German Codetermination Act is excepted from this rule on remuneration.
4. Changes on the Supervisory Board and/or in its committees are taken into account in due proportion to the term of office served when calculating the remuneration. In this connection periods are rounded up or down to full months according to commercial rules.

## **§ 14 Duty to maintain secrecy by members of the Supervisory Board**

1. Members of the Supervisory Board must maintain secrecy on confidential information and secrets of the Company, namely company or business secrets, of which they gain knowledge in the course of their work. In particular, the members of the Supervisory Board are obliged to maintain secrecy on confidential reports received and confidential discussions.

2. If a member of the Supervisory Board intends to disclose information to third parties, he must notify the Supervisory Board thereof in advance, stating the persons who are to receive the information. Prior to disclosing the information, the Supervisory Board must be given the opportunity to state whether disclosing the information is compatible with par. 1. The statement is made by the chairman.

## **Section V**

### **Annual General Meeting**

#### **§ 15 Place and convocation**

1. The Annual General Meeting is held at the headquarters of the Company, at a location within a radius of 100 km of the headquarters of the Company or at a German stock exchange. It is convened by the Management Board or, in the cases prescribed by law, by the Supervisory Board.
2. Unless otherwise stipulated by law, the Annual General Meeting shall be convened at least thirty days prior to its scheduled date. The period of notice shall be extended by the number of days allowed for registration (§16 par. 1 of the Articles of Association).
4. The Management Board is authorized to permit video and audio transmission of the Annual General Meeting.

#### **§16 Right of attendance**

1. Only shareholders who have registered their attendance in text form at the office stated in the invitation to the Annual General Meeting and furnished proof of their right subject to § 16 par. 2 at least six days before the date of the Annual General Meeting are entitled to attend the Annual General Meeting and exercise their voting right. The date of the Annual General Meeting and the date of receipt are not to be counted.
2. Shareholders must furnish proof of their right to attend the Annual General Meeting and to exercise their voting rights. For this purpose it is necessary to furnish documentary proof of their shareholding issued in the form of a text by the bank or financial institution maintaining the securities account. This documentation must be written in German or English, refer to the shareholding at the point in time named by law (Section 123 (3) sent. 3 of the German Corporation Act) and be received by the office defined in the invitation to the Annual General Meeting at least six days before the date of the Annual General Meeting. The date of the Annual General Meeting and the date of receipt are not to be counted. The Company is entitled to demand additional, more suitable proof if there are any doubts about the accuracy or authenticity of the documentary proof. If there are any doubts about this also or if no proof is furnished, the Company can reject the shareholder's right to attend the Annual General Meeting and to exercise his voting rights.
3. Voting rights can be exercised by authorized representatives. The granting and revocation of the authorization and furnishing proof of the authorization to the Company must be in text form. The notification convening the meeting may specify a relaxation of the text form. Section 135 of the German Stock Corporation Act remains unaffected. If a shareholder authorizes more than one person, the Company may reject one or more of these.

5. The Company can appoint one or more proxies to exercise shareholders' voting rights based on the latter's instructions. The details, in particular concerning formal requirements and periods for the granting and revocation of authorisations are announced when the respective Annual General Meeting is convened.

### **§ 17 Chairmanship at the Annual General Meeting**

1. The chairman of the Supervisory Board presides over the Annual General Meeting, or if he is prevented, another shareholders' representative on the Supervisory Board to be appointed by the Supervisory Board who is appointed for this purpose in advance for an individual case or for a number of cases. If both the chairman and the Supervisory Board member appointed by the Supervisory Board are prevented, the chairman is elected by the Annual General Meeting.
2. The chairman directs the meeting. He determines the order in which the items on the agenda are discussed as well as the type and sequence of voting procedures. He determines the sequence of the speakers and the treatment of the items on the agenda and can, as far as legally admissible, decide to combine related subjects of decisions to form one item on which a decision is taken and stipulate reasonable restrictions to speaking times and question times for the entire course of the Annual General Meeting, for individual items on the agenda and for individual speakers at the beginning or during the course of the Annual General Meeting and, as far as required to hold the Annual General Meeting in an orderly fashion, order that a debate is brought to an end.

### **§ 18 Decision-making**

1. At the Annual General Meeting one vote is granted for each no-nominal-value share.
2. The Annual General Meeting takes its decisions with a simple majority of the votes cast and – if a capital majority is required – with a simple majority of the share capital carrying voting rights represented during the decision-making, unless the law or these Articles of Association prescribe otherwise as mandatory. In case of a tie in the votes, a motion is considered to be rejected. Abstentions from voting are deemed to be votes not cast.
3. If a simple majority is not achieved when voting for the first time, the two people who received the highest number of votes shall be put on a short list and a second voting procedure carried out. The person on this short list who then receives the highest number of votes wins.
4. The Management Board is authorized to stipulate that shareholders may also cast their votes in writing or by electronic communication (postal vote) without taking part in the meeting.

## **Section VI**

### **Annual financial statements**

#### **§ 19 Annual financial statements**

The Management Board shall prepare the annual financial statements of the Company,

the consolidated financial statements, the Company Management Report and the Group Management Report within the statutory periods and immediately submit them to the auditors and to the Supervisory Board, whereby the proposal which the Management Board intends to submit to the Annual General Meeting for the appropriation of the net earnings available for distribution shall also be submitted to the latter.

## **§ 20 Regular Annual General Meeting**

The Annual General Meeting which decides on the formal approval of the actions of the Management Board and the Supervisory Board, the appropriation of the net earnings available for distribution, the election of the auditors and, if applicable, the adoption of the annual financial statements (Regular Annual General Meeting) is held within the first eight months of each fiscal year.

## **§ 21 Appropriation of the net earnings available for distribution**

1. The Annual General Meeting decides on the appropriation of the net earnings available for distribution. At least 50 % of the net earnings available for distribution or – if this amount is higher and its distribution is legally permitted – 20 % of the Group's net profit for the year are to be distributed to the shareholders, unless the Annual General Meeting decides to pay a lower dividend by a majority of 80 % of the votes cast.
2. After the end of a fiscal year, the Management Board may pay an interim dividend to the shareholders in compliance with Section 59 of the German Corporation Act with the approval of the Supervisory Board.

## **§ 22 Reserves**

1. If the Management Board and the Supervisory Board adopt the annual financial statements, they may transfer amounts not exceeding half of the net profit for the year to revenue reserves.
2. If the Annual General Meeting adopts the annual financial statements, half of the net profit for the year may be transferred to revenue reserves.
3. When calculating the share of the net profit for the year to be transferred to other revenue reserves according to par. 1 or 2, amounts which are to be transferred to the statutory reserve and a loss carried forward shall be deducted in advance.

## **Section VII**

### **Final provisions**

## **§ 23 Non-cash contribution**

Bauer Spezialtiefbau GmbH, Schrobenhausen, has contributed a EUR 10,123,579.24 shareholding in Schachtbau Nordhausen GmbH and a EUR 1,923,480.05 shareholding in SPESA Spezialbau und Sanierung GmbH, both headquartered in Nordhausen, to the Aktiengesellschaft (public limited company) as a non-cash contribution and in return has received shares at a nominal value and for an issuing amount of EUR 1,913,765.51.

## **§ 24 Formation expenses**

The Aktiengesellschaft shall pay the costs entailed in the formation up to a total amount of EUR 76,693.78.

## **§ 25 Partial invalidity**

The invalidity of provisions of these Articles of Association shall not affect the validity of the remaining provisions. Invalid provisions shall be replaced by valid provisions, the legal consequences of which most closely approximate the commercial aim intended by the parties concerned.