

# The Articles of Association

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**K+S Aktiengesellschaft  
Kassel**

German version approved by the  
Annual General Meeting on 11 May 2011.  
The German version is binding.



**Experience growth.**

## **Section I General Provisions**

### Article 1

#### **Business Name and Registered Office**

- (1) The Company operates under the business name K+S Aktiengesellschaft.
- (2) The registered office of the Company is located in Kassel.

### Article 2

#### **Objects**

- (1) The objects of the Company consist in: the extraction, processing and sale of potassium salt and rock salt as well as other minerals, including related main and secondary products; the use of underground cavities created as a result of mining operations; the re-utilisation and removal of waste; the production and sale of fertilizer mixtures and various types of chemical products; trading in all the aforementioned minerals and products; the management and exploitation of real property, and the execution of all such transactions and measures that may appear necessary for or conducive to the accomplishment of the Company's objects.
- (2) The Company is authorized to establish branches within Germany and outside it as well as to lease, buy and form other undertakings and to acquire interests in them.

### Article 3

#### **Announcements and Transfer of Information<sup>1</sup>**

Corporate notices are published in the electronic Federal Gazette (*Bundesanzeiger*).<sup>2</sup> The company has the right to provide information to shareholders also by way of remote data transmission.<sup>3</sup>

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<sup>1</sup> Heading revised by approval of the Annual General Meeting on 11 May 2011.

<sup>2</sup> Article 3 sentence 1 changed by approval of the Annual General Meeting on 10 May 2006.

<sup>3</sup> Article 3 sentence 2 added by approval of the Annual General Meeting on 11 May 2011.

#### Article 4

#### **Share Capital and Shares<sup>4</sup>**

(1) The share capital amounts to € 191,400,000.00 and is divided into 191,400,000 shares, which have an equal share in the share capital of the Company.<sup>5</sup> The right of shareholders to request the individual certification of their shares is excluded.

(2) The shares are registered shares. If in the case of a capital increase, the resolution on the capital increase does not stipulate, whether the new shares are to be bearer shares or registered shares, they shall be registered shares.<sup>6</sup>

(3) The form and content of share certificates as well as of profit participation certificates and of renewal coupons are determined by the Board of Executive Directors and approved by the Supervisory Board.

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<sup>4</sup> Article 4 paragraph 4 deleted after passage of time by approval of the Supervisory Board on 11 May 2011.

<sup>5</sup> Article 4 paragraph 1 sentence 1 changed last by approval of the Annual General Meeting on 11 May 2011.

<sup>6</sup> Article 4 paragraph 2 revised by approval of the Annual General Meeting on 11 May 2011.

## **Section II Constitution**

### **A. Board of Executive Directors**

#### Article 5

##### **Composition, Term of Office**

(1) The Board of Executive Directors consists of at least two members.

(2) Members of the Board of Executive Directors are appointed by the Supervisory Board, which also determines their number. The Supervisory Board may designate a member of the Board of Executive Directors to act as chairman.

(3) Resolutions of the Board of Executive Directors are adopted by a majority of votes cast unless a larger majority is required by law. In the case of resolutions adopted by a simple majority, the chairman of the Board of Executive Directors has a casting vote in the event of a tied vote, provided that the Board of Executive Directors consists of more than two people.

#### Article 6

##### **Representation of the Company**

(1) The Company is represented by two members of the Board of Executive Directors acting jointly or by one board member acting together with the holder of a commercial power of attorney [*Prokurist*].

(2) A general power of commercial representation [*Prokura*] may only be issued in the form of the power of procuration [*Gesamtprokura*].

### **B. The Supervisory Board**

#### Article 7

##### **Position and Responsibility**

(1) The Supervisory Board performs its functions in accordance with the Articles of Association and its rules of procedure. Its members are duty bound by the same rights and obligations in respect of the good of the Company and are not bound by specific assignments and instructions.

(2) The Supervisory Board determines its own rules of procedure, which can also contain provisions supplementing those laid down in the Articles of Association.

## Article 8

### **Composition, Election, Term of Office**

(1) The composition of the Supervisory Board complies with the provisions of the law.<sup>7</sup> Supervisory Board members are elected to serve for a term of office lasting until the end of the General Shareholders Meeting that resolves on the discharge from liability for the fourth financial year following the commencement of the term of office, excluding the financial year in which the term of office commenced.

(2) The General Shareholders Meeting may, at the time it appoints Supervisory Board members, also appoint a replacement member, who, in the event that a Supervisory Board member leaves office before the expiry of his term of office, will replace such outgoing member in the order of precedence to be determined at the time of the election.

(3) If there is no replacement for a member who leaves office, a replacement member is elected to serve for the remaining term of office of the outgoing member.

## Article 9

### **Resignation from Office, Removal**

(1) Any member of the Supervisory Board can tender his resignation upon serving one month's notice in writing.

(2) A member elected by the General Shareholders Meeting can be removed before the expiry of his term of office by a resolution of the General Shareholders Meeting that has been passed by a three-quarters majority of the capital represented at it.<sup>8</sup>

## Article 10

### **Chairman, Committees**

(1) Each time it is elected, the Supervisory Board elects a chairman and a deputy chairman, with their election and removal governed by the provisions contained in Article 27.1 and 27.2 of the German Co-Determination Act [*MitbestG*]. Replacement elections are held as soon as any such office needs to be filled. The deputy chairman is only vested with the rights and obligations assumed by the chairman if the latter is indisposed unless the law or the Articles of Association stipulate otherwise.<sup>9</sup>

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<sup>7</sup> Article 8 paragraph 1 sentence 1 changed by approval of the Annual General Meeting on 7 May 2003.

<sup>8</sup> Article 9 paragraph 2 changed by approval of the Annual General Meeting on 9 May 2001.

<sup>9</sup> Article 10 paragraph 1 sentence 3 changed by approval of the Annual General Meeting on 9 May 2001.

(2) As soon as the chairman and his deputy have been elected, the Supervisory Board is required to form the committee contemplated by Article 27.3(1) of the *MitbestG*.

(3) The Supervisory Board may also form further committees from among its members. Supervisory Board decision-making powers may be transferred to such committees to the extent permitted by law.

## Article 11

### **Convening of Meetings, Quorum**

(1) The convening of Supervisory Board meetings and the determination of their venue is the responsibility of the chairman, or of the deputy chairman if the chairman is indisposed.<sup>10</sup> Invitations are issued in writing and are to provide a two-week notice period. The individual agenda items are to be set out so precisely as to facilitate a written vote. In urgent cases, the notice period can be reduced.

(2) The Supervisory Board is only quorate if, after all the members have been invited, at least half of its members participate in voting on a resolution. Unless the law stipulates otherwise, resolutions require a majority of votes cast. Should a Supervisory Board member abstain from voting, he is deemed to be a participant in voting on a resolution although the abstention is not counted as a vote cast. In the event of a tied vote on the Supervisory Board, the chairman of the Supervisory Board has two votes should a second round of voting on the same issue produce a tied vote once again.

(3) Supervisory Board members who are not in attendance may participate in Supervisory Board voting by submitting their votes in writing through another member of the Supervisory Board. This also applies to the chairman of the Supervisory Board with respect to his second vote.

(4) The chairman, or the deputy chairman if the chairman should be indisposed, can effect the adoption of Supervisory Board resolutions by obtaining declarations in writing, or by facsimile transmission, telegraph, or telephone, provided that no member lodges an objection to such procedure being employed within an appropriate period of time not exceeding one week and as determined by the chairman, or by the deputy chairman if the chairman should be indisposed.<sup>11</sup>

(5) Members of the Board of Executive Directors may attend the meetings of the Supervisory Board in an advisory capacity save where their personal matters are the subject of consultation.

(6) Declarations of intent on behalf of the Supervisory Board are made by the chairman or by the deputy chairman if the chairman is indisposed.<sup>12</sup>

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<sup>10</sup> Article 11 paragraph 1 sentence 1 changed by approval of the Annual General Meeting on 9 May 2001.

<sup>11</sup> Article 11 paragraph 4 changed by approval of the Annual General Meeting on 9 May 2001.

<sup>12</sup> Article 11 paragraph 6 changed by approval of the Annual General Meeting on 9 May 2001.

## Article 12

### **Supervisory Board Remuneration, reimbursement of out-of-pocket expenses<sup>13</sup>**

(1) In addition to the reimbursement of expenses and any value-added tax incurred in connection with a member of the Supervisory Board receives annual fixed remuneration of € 55,000 as well as annual variable remuneration that is determined in the following way by the amount of the total return on investment achieved by the K+S Group in the respective financial year and determined on the basis of the certified consolidated financial statements: the prerequisite for the claim to payment of variable remuneration is the achievement of a minimum return; this corresponds to 115 % of the underlying percentage of capital costs before taxes of the K+S Group in the financial year concerned in the certified consolidated financial statements; on the achievement of the minimum return, a member of the Supervisory Board receives variable remuneration of € 15,000; for each percentage point by which the total return on investment exceeds the minimum return, a member of the Supervisory Board receives further variable remuneration of € 1,500. The variable remuneration is limited to maximum € 45,000 per year.

(2) The chairman of the Supervisory Board receives twice this amount and the deputy chairman receives one and a half times the remuneration defined in paragraph 1.

(3) For their activity on the Audit Committee of the Supervisory Board, each member receives further remuneration of € 7,500 per year. The chairman of this committee will receive twice this amount and the deputy chairman will receive one and a half times the amount of such additional remuneration.

(4) The Company shall pay an attendance fee of € 500 to each member of the Supervisory Board for attending meetings of the Supervisory Board or of a Supervisory Board committee to which they belong, but in the event of more than one meeting being attended on one day a maximum of € 1,000 per day will be paid.

(5) The members of the Supervisory Board are entitled to the reimbursement from the Company of any expenses necessary and reasonable for the performance of their duties. Furthermore, they are entitled to the reimbursement of any VAT to be paid as a consequence of their activities in the capacity of Supervisory Board members.

(6) The provisions of this Article 12 will apply for the first time to the remuneration to be paid for financial year 2009.

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<sup>13</sup> Article 12 changed by approval of the Annual General Meeting in 13 May 2009.

## Article 13

### **Confidentiality**

(1) Supervisory Board members are required to keep secret all confidential information and company secrets, namely, business and commercial secrets, of which they have become apprised while serving on the Supervisory Board.

(2) On the termination of office, every Supervisory Board member in the possession of confidential company documents must return those to the Company.

## **C. General Shareholders Meeting:**

### Article 14

#### **Venue<sup>14</sup>**

The General Shareholders Meetings takes places at the Company's registered office or at another location in the Federal Republic of Germany that is situated no more than 200 km from the registered office.

### Article 15

#### **Right of Participation<sup>15</sup>**

Those shareholders are entitled to attend the Annual General Meeting and to exercise the voting right who

- a) have applied for attendance in time and
- b) are entered in the share register for the shares for which the application to attend was submitted.

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<sup>14</sup> Article 14 changed by approval of the Annual General Meeting on 13 May 2009.

<sup>15</sup> Article 15 changed last by approval of the Annual General Meeting on 11 May 2011.

## Article 16

### **Chairing of the General Shareholders Meeting**

(1) The General Shareholders Meeting is generally chaired by a member of the Supervisory Board drawn from among those members elected by the General Shareholders Meeting. If no Supervisory Board member elected by the General Shareholders Meeting assumes the chair, a chairman is elected by the General Shareholders Meeting.

(2) The chairman may determine an order of priority for the considering of business that deviates from that indicated in the agenda. He determines the course of the General Shareholders Meeting in accordance with the provisions of the law, especially with regard to the type, form and order of voting. The chairman may impose a reasonable time restriction on the rights of shareholders to speak and ask questions, and in particular, to impose reasonable time constraints at the beginning of or during the Annual General Meeting in respect of comments on individual agenda items as well as individual questions and statements.<sup>16</sup>

(3) At the behest of the meeting chairman, the proceedings of the General Shareholders meeting can be broadcast by audiovisual means in whole or in part. Such broadcasts can also have a form that is accessible by the general public without restriction. The form that any broadcast will take must be disclosed in the invitation to shareholders.<sup>17</sup>

## Article 17

### **Adoption of Resolutions**

(1) Each share grants the right to one vote at the Annual General Meeting.<sup>18</sup> Shareholders may be represented at the Annual General Meeting by an authorised representative.<sup>19</sup>

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<sup>16</sup> Article 16 paragraph 2 added by approval of the Annual General Meeting on 10 May 2006.

<sup>17</sup> Article 16 paragraph 3 added by approval of the Annual General Meeting on 7 May 2003.

<sup>18</sup> Article 17 paragraph 1 sentence 1 changed by approval of the Annual General Meeting on 13 May 2009.

<sup>19</sup> Article 17 paragraph 1 sentence 2 added by approval of the Annual General Meeting on 13 May 2009.

(2) Resolutions of the General Shareholders Meeting are adopted by a simple majority of the votes cast unless the provisions of the German Stock Corporation Act [*Aktiengesetz*] state otherwise. In those cases where the German Stock Corporation Act also requires a majority of the share capital represented, a simple majority of the share capital represented is sufficient insofar as such majority is acceptable under the law.

(3) The Supervisory Board is authorized to modify the Articles of Association in a manner that only affects the version.

### **Section III**

## **Financial Year, Annual Financial Statements, Ordinary General Shareholders Meeting**

### **Article 18**

#### **Financial Year**

The financial year corresponds to the calendar year.

### **Article 19**

#### **Annual Financial Statements<sup>20</sup>**

(1) Within the first three months of any given financial year, the Board of Executive Directors must prepare annual financial statements and a management report for the preceding financial year, submitting them to the Supervisory Board and auditors without delay. When submitting the annual financial statements and management report, the Board of Executive Directors is required to present to the Supervisory Board the proposal that it intends to put before the General Shareholders Meeting concerning the appropriation of any net surplus.

(2) Within the first five months of any given financial year, the Board of Executive Directors must prepare group annual financial statements and a group management report for the preceding financial year, submitting them to the Supervisory Board and auditors without delay.

### **Article 20**

#### **Ordinary General Shareholders Meeting**

(1) The Ordinary General Shareholders Meeting is held within the first eight months of any given financial year.

(2) Resolutions adopted at the meeting concerning the following in particular: the appropriation of unappropriated net income; the discharge from liability of the members of the Board of Executive Directors and of the Supervisory Board; the appointment of Supervisory Board members, unless the provisions of statute stipulate otherwise, and the approval of the annual financial statements in those case provided for by the law.

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<sup>17</sup> Article 19 changed by approval of the Annual General Meeting on 8 May 2002.

Article 21

**Appropriation of Profits**

(1) Any net surplus is to be distributed among the shareholders unless otherwise appropriated by the General Shareholders Meeting.

(2) Profits are distributed equally among the shareholders in proportion to their shareholdings.

(3) Other forms of entitlement to participate in profits may be determined in connection with new share issues.

(4) The Annual General Meeting may also resolve an in-kind distribution instead of or in addition to a cash distribution.<sup>21</sup>

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<sup>21</sup> Article 21 paragraph 4 added by approval of the Annual General Meeting on 10 May 2006.