

Complete text of **Memorandum and  
Articles of Association of  
GILDEMEISTER Aktiengesellschaft  
Bielefeld**

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## **§ 1**

- (1) The name of the company is GILDEMEISTER Aktiengesellschaft.
- (2) The registered office of the company is in Bielefeld.

## **§ 2**

- (1) The object of the company is the manufacture, purchase and sale of machine tools and other machines and devices, the equipment and installation thereof, as well as the treatment and processing of metals and plastics.
- (2) The company is entitled to establish branches, to participate in other companies, to acquire and found similar companies, as well as to conduct any other business activities which are conducive to the furtherance of the business purposes of the company.

## **§ 3**

The financial year corresponds to the calendar year.

## **§ 4**

The company shall publish its announcements in the electronic Federal Bulletin.

## **§ 5**

- (1) The share capital of the company amounts to € 118,513,207.80 (in words: one hundred and eighteen million five hundred and thirteen thousand two hundred and seven Euros and eighty cents).
- (2) It is divided into 45,582,003 individual share certificates issued in the name of the bearer. The right of the shareholders for the certificated evidence of their shares is excluded.
- (3) The Management Board is authorised, with the consent of the Supervisory Board, to increase the share capital by up to € 50,073,300.00 in nominal terms during the period until 15 May 2010 by issuing new bearer shares for contributions in cash and/or in kind (authorised capital). This authority can be exercised once or, in partial amounts, repeatedly.

The new shares may be taken over by one or more banks designated by the Management Board with the obligation to offer them to the shareholders for subscription (indirect subscription right).

With respect to a partial amount of € 5,000,000.00, the Management Board is authorised to issue shares to employees of the company and of enterprises affiliated with the company. To this extent, the statutory subscription right of shareholders is excluded.

In addition, the Management Board is authorised, with the consent of the Supervisory Board, to exclude the shareholders' statutory subscription rights in the case of:

- a) a capital increase through contribution in kind so as to acquire, in suitable cases, enterprises, or any units or operations thereof, or any shareholdings therein, by the granting of shares,
- b) to the extent required for dilution protection purposes, in order to grant the bearers of warrants or the creditors of convertible bonds issued by the company or its associated companies a subscription right to new shares to the extent they would be entitled to following the exercising of the option or conversion right or the fulfilment of conversion obligations, within the scope of the authorisation of the Board by the general meeting of shareholders.
- c) to exclude any residual amounts from the subscription right, and
- d) a capital increase through cash contribution, if the issue price of the new shares is not significantly lower than the stock market price at the time the issue price is finally determined by the Management Board within the meaning of section 203 paragraphs 1 and 2, section 186 paragraph 3 sentence 4 of the German Companies Act (AktG) and the prorated amount of the share capital relating to the new shares that are subject to the subscription right exclusion does not exceed in aggregate 10% of the share capital at the time the new shares are issued. The upper limit of 10% of the share capital includes shares that are sold within the term of the authorised capital with exclusion of the shareholders' subscription rights pursuant to section 71 paragraph 1, no. 8 sentence 5 and section 186 paragraph 3 sentence 4 of the German Companies Act (AktG), and shares with respect to which a conversion right or option right or a conversion obligation or option obligation due to warrant and/or convertible bonds exists, which were issued by virtue of authorisation of the general meeting of shareholders of 14 May 2004 with exclusion of the subscription right pursuant to section 221 paragraph 4 and section 186 paragraph 3 sentence 4 of the German Companies Act (AktG).

The Management Board is authorised, with the consent of the Supervisory Board, to decide on further details for the capital increase and its implementation.

- (4) The registered capital may be conditionally increased by up to € 37,500,000.00 through the issuance of up to 14,423,076 new no par bearer shares (conditional capital). The conditional capital increase facilitates the granting of new no par bearer shares to the holders of option or convertible bonds, which are issued by the Company (or one of the group companies under management of the Company) in return for cash payment on the basis of the authorization granted pursuant to the resolution under Agenda Item 7 of the Annual General Meeting dated 15 May 2009 and which grant a conversion or option right to the holder to new no par bearer shares or stipulate a conversion duty.

The new shares shall be issued at the option price or conversion price to be determined in accordance with the authorization resolution described above.

The capital increase may be carried out only to the extent necessary for the holders of the option rights or conversion rights or those obligated to convert bonds or exercise options to utilize their option rights or conversion right or, to the extent they are obligated to convert bonds or exercise options, they discharge their conversion/option exercise duty and pre-existing shares or the cash payments are not utilized.

The new shares, which are issued on the basis of the exercising of the option right or conversion right or the discharging of the conversion duty or option duty shall participate in profits from the beginning of the financial year in which they are formed.

## § 6

The form of the shares, bonds, dividend and interest warrants is determined by the Management Board in accordance with the Supervisory Board.

## § 7

- (1) The Management Board is composed of several members, including a Management Board member who is responsible for personnel and social matters (Director of Labour Relations).
- (2) The Supervisory Board appoints the Management Board members, specifies their number and organizes the allocation of duties. It can also appoint a Management Board Chairman.

## § 8

- (1) The company is represented by two Management Board members or jointly by one Management Board member and a prokurist (holder of a special statutory authority).
- (2) The Supervisory Board can decide that individual Management Board members shall have sole representation of the company.

## § 9

- (1) As stipulated by § 96 subsection 1 AktG in connection with §§ 7, 15 MitbestG (Codetermination Act), the Supervisory Board is composed of 12 members. The Supervisory Board members are elected by the General Meeting of Shareholders and remain in office until the end of the General Meeting of Shareholders which passes formal approval of the directors' report for the fourth financial year following commencement of the term of office. In this case, the financial year in which the term of office commences, is not taken into account.

The election of the employee representatives in the Supervisory Board is conducted in accordance with the legislation on codetermination of employees (MitbestG); they are elected for the same term as the Supervisory Board members elected by the General Meeting of Shareholders.

- (2) If, in the absence of a substitute member, a Supervisory Board member is elected to replace a member retiring prematurely, he shall hold office for the remainder of the term of office of the retiring member.

## § 10

- (1) Immediately after entering into its term of office, the Supervisory Board shall hold a meeting, to which the members have been invited in writing, to elect, following the procedure stipulated in § 27 MitbestG, a Supervisory Board Chairman and a Deputy Chairman from amongst its members for its term of office, as well as members who shall belong to the committee in accordance with § 27 subsection 3 MitbestG.

If the Supervisory Board Chairman or the Deputy Chairman retires prior to the end of the term of office, any individual Supervisory Board member can demand that an election is held immediately to replace the retiring member. This also applies if the Supervisory Board Chairman or the Deputy Chairman is prevented from fulfilling his duties for a long period of time.

The Supervisory Board can appoint further deputies to the Chairman from amongst its members subject to a simple majority of the votes cast.

- (2) The Supervisory Board meeting is called by the Supervisory Board Chairman.

- (3)** The Supervisory Board is competent to pass a resolution if all the members have been sent prior notification to the address last given by them and if at least half of the total number of members required to form the Supervisory Board participate in passing the resolution. Resolutions passed by the Supervisory Board, even if they are passed without calling a meeting in accordance with clause (4), shall always be subject to a simple majority of the votes cast unless otherwise provided for by legislation or the Memorandum and Articles of Association. The ballot procedure and agenda are determined by the Chairman.

If there is a tie in the Supervisory Board ballot, any individual Supervisory Board member is entitled to demand a new ballot on the same subject matter; this new ballot is to be preceded by another deliberation on the matter. If there is also a tie in the new ballot, the Supervisory Board Chairman shall have two votes.

§ 108 subsection 3 AktG is also applicable to the second vote cast by the Supervisory Board Chairman.

- (4)** A resolution can also be passed at the request of the Chairman by voting in writing, by post or by telephone, provided no objections are raised by any of the members to this form of voting. Such resolutions shall be confirmed by the Chairman in writing and recorded in the minutes on the deliberations of the following meeting.
- (5)** The Chairman makes the declaration of intention of the Supervisory Board and the committees. If the Deputy Chairman assumes the duties of the Chairman, he is not obliged to provide proof to third parties that the Chairman has been prevented from fulfilling his duties.
- (6)** The Supervisory Board is authorized to form committees from amongst its members and to determine their duties. The committees can be assigned the right to take decisions insofar as this is permitted by law.
- (7)** In other respects, the Supervisory Board shall determine its own rules of procedure.
- (8)** The Supervisory Board is authorized to adopt amendments to the Memorandum and Articles of Association only if they concern the wording thereof.

## § 11

- (1) Without prejudice to the power conferred on the Supervisory Board by law or by the Memorandum and Articles of Association, the following actions require its approval:
- a) the appointment of fully authorized representatives and prokurists;
  - b) the engagement of employees who receive a fixed annual salary which exceeds the limit determined by the Supervisory Board or whose employment is not subject to termination for over three years;
  - c) the authorization of shares in the profit and of retirement pensions for employees of the company;
  - d) the purchase and sale of real property and the mortgaging thereof;
  - e) the establishment and cessation of branches;
  - f) the participation in other companies, including the acquisition of shares or equity interests in other companies and the disposal thereof;
  - g) the conclusion and termination of company and joint venture agreements.
- (2) The Supervisory Board can also determine other business operations which require its approval.

## § 12

- (1) Every member shall receive – subject to the provisions of para. 3 hereinafter – in addition to the reimbursement of his expenses and including the value-added tax (VAT) applicable to the Supervisory Board compensation, a fixed remuneration of € 24,000.00, which shall be payable at the end of the financial year.
- (2) This compensation shall increase in each case – subject to the provisions of para. 3 below – in line with the long-term success, by € 250.00 for each € 0.01 of average earnings per share for the financial year and for the two previous financial years. The earnings per share is the undiluted earnings per share calculated on the basis of the Company's consolidated financial statements pursuant to the applicable version of IAS 33 (International Accounting Standards).

This portion of the compensation is payable after the Annual General Meeting at which a resolution on the ratification of the acts of the Supervisory Board for the respective financial year is passed. It shall be paid



only if the average earnings per share for the financial year and the two previous financial years equals at least € 0.15.

This portion of the compensation is limited to € 24,000.00 p.a. for each member of the Supervisory Board.

- (3) The chairman of the Supervisory Board shall receive 2½ times and each deputy shall receive 1½ times the compensation set forth in para. 1 and 2. The limitation of compensation set forth in the foregoing para. 2 shall increase accordingly.
- (4) Members of committees – with the exception of the committee governed by § 27 para. 3 of the Co-Determination Act [Mitbestimmungsgesetz] and the nomination committee – shall receive an additional fixed remuneration of € 12,000.00 for every committee membership, and furthermore, committee chairmen shall receive an additional fixed remuneration of € 12,000.00 for each chairmanship and deputy chairman of committees shall receive an additional € 6,000.00 for each deputy chairmanship. The compensation pursuant to the foregoing sentence 1 is payable annually at the end of the financial year.
- (5) Members of the Supervisory Board and committee members who were Supervisory Board members or committee members merely for a portion of the financial year shall receive compensation on a pro rata temporis basis.
- (6) The Company may take out liability insurance to the benefit of the members of the Supervisory Board to cover the statutory liability of the members of the Supervisory Board. Furthermore, it may take out legal protection insurance to cover the risks of prosecution and defense arising in connection with the Supervisory Board work conducted by the members of the Supervisory Board.
- (7) This provision shall apply for the first time for financial year 2009.

### § 13

- (1) The Management Board shall submit, immediately after preparation, the annual financial statements and annual management report as well as the consolidated financial statements and consolidated management report to the Supervisory Board and auditor. At the same time, the Management Board shall submit to the Supervisory Board its proposal to be put forward to the General Meeting of Shareholders on the appropriation of the net profit. The Supervisory Board shall audit the documentation submitted by the Management Board. On receipt of the Supervisory Board report on the result of the audit, the Management Board shall immediately call an ordinary General Meeting of Shareholders.

- (2) On approving the annual financial statements, the Management Board and Supervisory Board are authorized to allocate, after deduction of the amounts to be allocated to the statutory reserve, up to 75% of the annual net income remaining to other revenue reserves (§ 266 subsection 3 A. III. no. 4 HGB [Commercial Code]). The allocation of more than half of the net income is not permissible if the other reserves were to exceed half of the share capital after allocation.
- (3) The ordinary General Meeting of Shareholders shall take place in the first eight months of each financial year.

#### **§ 14**

The General Meeting of Shareholders is convened in accordance with statutory provisions either by the Management Board or by the Supervisory Board. It takes place at the registered office of the company (Bielefeld). The General Meeting of Shareholders shall be convened no later than 30 days prior to the date by which the shareholders are to be given advance notice thereof.

#### **§ 15**

- (1) Each individual share certificate entitles the holder to one vote.
- (2) Shareholders who wish to participate in the General Meeting of Shareholders or to exercise their right to vote shall give due notice thereof prior to the meeting. Notification shall be in writing and in the German or English language.
- (3) The shareholders shall also provide proof of their right to participate in the General Meeting of Shareholders and of their right to vote. In this case, written proof of their share ownership provided by the bank or financial services institution in which it is deposited is sufficient. Proof is to be provided in the German or English language.
- (4) The resolutions are passed by the General Meeting of Shareholders subject to a simple majority of votes and, insofar as a majority of the share capital is required, subject to a simple majority of the share capital, unless otherwise required by law. In the case of a tie in the voting, the motion proposed shall be deemed denied.
- (5) The Chairman shall determine the voting procedure. He can decide to change the order of the subject matter of the meeting. The Chairman can impose a reasonable time limit on the right of the shareholders to put questions or speak. In particular, he is authorized to set a reasonable time limit at the beginning or in the course of the General Meeting of Shareholders for the entire course of the General Meeting of Shareholders, for an individual subject on the agenda or for an individual speaker.

- (6) If, in the case of an election, no majority is obtained on the first ballot, the two candidates who obtained most votes shall be short-listed for a second ballot. In the case of a tie, it shall be decided by drawing lots.
- (7) The right to vote can be exercised by duly authorized persons. Authorization requires written form. The company can decide that authorizations may be granted in written form. The particulars for the authorizations granted in written form are published, together with the invitation to attend the General Meeting of Shareholders, in newspapers authorized to publish company announcements.

## **§ 16**

The General Meeting of Shareholders is chaired by the Supervisory Board Chairman or another Supervisory Board member appointed by him. In the event that neither the Supervisory Board Chairman nor a Supervisory Board member appointed by him takes the chair, the Chairman of the General Meeting of Shareholders shall be elected subject to a simple majority of the votes cast from amongst the attending Supervisory Board members of the equity holders.

The shareholders meeting may be broadcast in whole or in part in sound and image, and may be recorded. The broadcast may occur in a form which gives unlimited access to the public. The details are regulated by the board of directors (with approval of the supervisory board) as well as – during the shareholders meeting – by the chairperson. If a public broadcast is to take place, this and the relevant details need to be announced on the invitation to the shareholders meeting.

## **§ 17**

- (1) Insofar as the General Meeting of Shareholders does not decide on different appropriation, the net profit shall be divided between the shareholders.
- (2) If new shares are issued, commencement of the entitlement to profit can diverge from the relevant statutory provision.

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