

## ARTICLES OF ASSOCIATION

of

### **HORNBACH Holding AG & Co. KGaA**

#### **I. General Provisions**

##### **§ 1**

##### **Company Name, Domicile, Duration**

- (1) The name of the company is:

**HORNBACH Holding AG & Co. KGaA**

- (2) The company domicile is in 67433 Neustadt an der Weinstrasse.  
(3) The company is not limited to any specified period in respect of its duration.

##### **§ 2**

##### **Company Object**

- (1) The company has as its object the management of a retail, service and real estate group, which pursues and/or is entitled to pursue activities in the following specific areas:

- (a) construction, acquisition and/or operation of large-scale retail stores, especially DIY and home improvement stores, with or without garden centers, garden stores, specialist stores, and other specialist retail stores;
- (b) similar and other retail and wholesale activities;
- (c) manufacturing and processing of products to be sold in the retail stores;
- (d) administration of assets and acquisition, management and disposal of investments in companies in Germany and abroad;
- (e) performance of management and other services for subsidiaries and other companies in which the company holds a participating interest;
- (f) acquisition, development, planning, construction, utilization, management, disposal and/or other use of pieces of land either built or not, and leasehold rights.

Said activities may be pursued both by the company itself, as well as by its subsidiaries and participating interests; such activities may also be assigned to such companies.

- (2) The company is entitled to acquire participating interests in other companies in Germany and abroad, as well as to assign participating interests to other companies, to acquire and/or found, as well as to dispose of or discontinue, such companies, to found branch outlets in Germany and abroad, to conclude fiscal unity and profit transfer agreements, as well as company agreements of all kinds, and to transact all business and take all measures deemed suitable to promote the company's object whether directly or

indirectly, or which are otherwise deemed relevant in this respect.

### § 3

#### **Announcements and Information**

- (1) In the absence of any mandatory legal requirements to the contrary, announcements made by the company are published solely in the Federal Official Gazette.
- (2) The company is authorized to the extent permitted by law to communicate information to its shareholders by way of data telecommunications.

## II.

### **Share Capital and Shares**

### § 4

#### **Share Capital, Profit Participation in Event of Capital Increase**

- (1) The company's share capital amounts to € 48,000,000.00. It is divided into 16,000,000 no-par ordinary shares.
- (2) In the event of any capital increase, the determination of profit participation may deviate from the requirements of § 60 of the German Stock Corporation Act (*Aktiengesetz – AktG*).
- (3) The General Partner is authorized until July 7, 2026, subject to approval by the Supervisory Board, to increase the company's share capital in full or in part, on one or several occasions, by a total amount of up to € 9,600,000.00 by issuing up to 3,200,000 new no-par bearer shares in return for cash contributions or contributions in kind (Authorized Capital 2021).

The aggregate total of the shares issued by utilization of Authorized Capital 2021 and of the shares that are issued, may be issued, or have to be issued during the term of this utilization in order to satisfy conversion and/or option rights or to meet conversion or option obligations in connection with bonds furnished with option and/or conversion rights or obligations (or a combination of these instruments) may not exceed a total amount of share capital of € 9,600,000.00 (corresponding to 20% of share capital).

Shareholders are generally granted subscription rights. These statutory subscription rights may also be granted in such a way that the new shares are taken over in full or in part by a bank or consortium of banks stipulated by the General Partner that is or are obliged to offer these for subscription by the company's shareholders.

The General Partner is authorized, subject to approval by the Supervisory Board, to exclude shareholders' statutory subscription rights in the following cases:

- in the event of a capital increase executed in return for contributions in kind, in particular in order to acquire companies, sections of companies, or shareholdings in companies or other assets, or claims to acquire assets, including receivables due from the company or its shareholdings;
- in the event of capital increases executed in return for cash contributions provided that the issue amount of new shares issued to the exclusion of subscription rights pursuant to § 186 (3) Sentence 4 AktG does not fall materially short of the stock market price of shares already listed in the same

class and furnished with the same rights/obligations and that the prorated share of share capital attributable to the aggregate total of new shares to be issued to the exclusion of subscription rights pursuant to § 186 (3) Sentence 4 AktG does not exceed 10% of share capital at the time at which this authorization takes effect or at the time at which this authorization is exercised. Shares issued or sold with direct or corresponding application of § 186 (3) Sentence 4 AktG during the term of this authorization through to the time at which it is exercised are imputed to this 10% limit of share capital; shares that may or must be issued by the company to satisfy conversion or option rights or to meet conversion or option obligations in connection with bonds with option and/or conversion rights or obligations (or a combination of these instruments) are also imputed provided that such bonds were issued to the exclusion of shareholders' subscription rights with corresponding application of § 186 (3) Sentence 4 AktG during the term of this authorization through to the time at which it is exercised;

- to offer new shares for subscription as employee shares by employees at the company and/or its subsidiaries up to a total volume of € 1,000,000.00;
- to avoid any residual amounts;
- to the extent required to grant subscription rights to bearers or creditors of conversion and/or option rights and/or the bearers or creditors of bonds furnished with conversion obligations issued or to be issued by the company or by a German or foreign company in which the company directly or indirectly holds a majority of the votes and capital to the extent to which they would be entitled having exercised their conversion and/or option rights or met their conversion obligations.

Including other company shares sold or issued to the exclusion of subscription rights during the term of Authorized Capital 2021 or to be issued on the basis of bonds issued to the exclusion of subscription rights after July 8, 2021, the aggregate total of shares issued to the exclusion of shareholders' subscription rights on the basis of Authorized Capital 2021 may not exceed an arithmetic share of 20% of share capital either at the time at which this authorization takes effect or at the time at which this authorization is utilized.

The General Partner is authorized, subject to approval by the Supervisory Board, to lay down the further details for the capital increase and its execution, and in particular the contents of the rights attributable to the shares and the conditions governing their issue, including any profit participation that diverges from § 60 (2) AktG. The Supervisory Board is authorized to amend the company's Articles of Association as appropriate, and particularly in respect of the amount of share capital and number of existing no-par shares, following the full or partial utilization of the authorized capital, or following its expiry.

- (4) The company's share capital is conditionally increased by up to € 4,800,000.00 by issuing up to 1,600,000 new, no-par bearer shares (Conditional Capital 2023/I). This conditional capital increase serves to grant shares to the bearers or creditors of convertible and/or warrant bonds that were or are issued on the basis of the authorization provided by resolution of the Annual General Meeting on July 7, 2023 under Agenda Item 9 by the company or a domestic or foreign company in which the company directly or indirectly holds a majority of the votes and capital in the period up to (and including) July 6, 2028. The conditional capital increase is only executed to the extent that conversion or option rights resulting from the aforementioned bonds were or are actually utilized or the conversion obligations from such bonds were or are met and only to the extent that other means have not been drawn on or are not drawn on to satisfy the resultant obligations. New shares are issued at the conversion or option price to be stipulated in each case on the basis of the aforementioned resolution adopted by the Annual General Meeting on July 7, 2023. The new shares participate in profit from the beginning of the financial year in which they arise due to exercising of the respective conversion or option rights or fulfillment of the conversion obligations;

diverging from this, to the extent permitted by law and subject to approval by the Supervisory Board, the General Partner may stipulate that the new shares participate in profit from the beginning of the financial year for which no resolution concerning the appropriation of net profit has yet been adopted by the Annual General Meeting at the time at which the conversion or option rights are exercised or the conversion obligations met. The General Partner is authorized to stipulate further details relating to the execution of the conditional capital increase.

The Supervisory Board is authorized to amend the wording of § 4 of the company's Articles of Association in accordance with the issue of new shares from Conditional Capital 2023/I. The same applies to the extent that the authorization to issue warrant and/or convertible bonds pursuant to the resolution adopted by the Annual General Meeting on July 7, 2023 has not been exercised during the term of such authorization or the corresponding option rights, conversion rights, or conversion obligations have lapsed due to expiry or otherwise.

## **§ 5 Shares**

- (1) The shares are individual bearer shares.
- (2) Should the resolution adopted for any capital increase not stipulate whether the new shares are bearer shares or registered shares, such shares will also be bearer shares.
- (3) The General Partner determines the form and contents of the share certificates and profit participation and renewal coupons with the approval of the Supervisory Board. The same applies to bonds and interest and option coupons, profit participation certificates and similar instruments issued by the company. A certificate (global certificate) may be issued for holdings of several shares. Shareholders are not entitled to request securitization of their shareholdings, unless the rules applicable to a market to which the shares are admitted render securitization necessary.

**III.**  
**Company Organization**

**§ 6**  
**Governing Bodies**

The governing bodies of the company are:

- (a) the General Partner;
- (b) the Supervisory Board;
- (c) the Annual General Meeting.

**A. General Partner**

**§ 7**  
**General Partner, Special Contribution, Legal Relationships, Withdrawal**

- (1) The General Partner is HORNBACH Management AG, which is domiciled in 76855 Annweiler am Trifels.
- (2) The General Partner has not made any special contribution. It does not hold any interest in the profits, losses or assets of the company.
- (3) The General Partner must withdraw from the company if
  - (a) the General Partner is no longer held directly or indirectly by (a minimum of) 50% plus one share by a legal or natural person directly or indirectly holding more than 10% of the share capital in HORNBACH Holding AG & Co. KGaA pursuant to § 17 (1) of the AktG;
  - (b) more than 50% of the shares in the General Partner are acquired directly or indirectly by a legal or natural person which does not submit a takeover bid or mandatory offer pursuant to the provisions of the German Securities Acquisition and Takeover Act (*Wertpapierübernahmegesetz – WpÜG*) to the limited shareholders of HORNBACH Holding AG & Co. KGaA within six months of such acquisition entering into effect. The consideration to be offered to the limited shareholders must at a minimum correspond to the minimum consideration to be offered pursuant to § 31 (1) WpÜG in conjunction with § 5 of the Ordinance relating to the contents of the offer document, the consideration payable in the case of takeover bids and mandatory offers and exemption from the obligation to publish and to make an offer (*WpÜG-Angebotsverordnung – WpÜG-AV*), taking into account prior acquisitions pursuant to § 4 WpÜG-AV. This does not affect any statutory obligation to submit a takeover bid or mandatory offer.

This does not affect any statutory grounds for withdrawal from the partnership.

- (4) If the General Partner withdraws from the company or is likely to do so in the foreseeable future, the Supervisory Board has the right and the obligation to appoint as a new General Partner without undue delay, or at the date on which the General Partner withdraws from the company, a corporation whose shares are held in their entirety by the company. If the General Partner withdraws from the company and no such new General Partner is appointed at the same time, the company will continue to be operated

solely by the limited shareholders on a transitional basis. In such cases, the Supervisory Board must request without undue delay the appointment of an interim representative to represent the company until such time as a new General Partner is appointed pursuant to sentence 1 above. The Supervisory Board is authorized to correct the wording of the Articles of Association to reflect the change in General Partner.

- (5) In the event the company is continued pursuant to § 7 (4) of the Articles of Association or in instances where almost all shares in the General Partner are held directly or indirectly by the company, an extraordinary general meeting or the next Annual General Meeting will resolve on changing the company's legal form to that of a German stock corporation (*Aktiengesellschaft – AG*). A simple majority of the votes cast is sufficient for the resolution on this change of legal form. The General Partner is obliged to consent to any such resolution on a change of legal form by the Annual General Meeting.

## § 8

### **Management and Representation of the Company, Reimbursement of Expenses and Remuneration**

- (1) The company is represented by the General Partner. The Supervisory Board represents the company vis-à-vis the General Partner.
- (2) The General Partner is responsible for managing the company. The General Partner's managerial powers also extend to extraordinary business measures. The shareholders' right to object to extraordinary business measures pursuant to § 164 Sentence 1 of the German Commercial Code (*Handelsgesetzbuch – HGB*) at the Annual General Meeting is excluded.
- (3) In return for managing the company and assuming liability for the company, the General Partner receives annual compensation (regardless of the partnership's profits/losses) amounting to 5% of the General Partner's share capital. Any and all outlays in connection with managing the business of the company, including the remuneration paid to members of its governing bodies, will be reimbursed to the General Partner. The General Partner will generally invoice its expenses each month and may require advances. All payments received by the General Partner pursuant to this subsection will be deemed as an expense incurred by the company in relation to the shareholders, notwithstanding any tax regulations to the contrary. To protect its interests, the company maintains a financial loss liability insurance policy for its directors, officers, and senior management. This policy also covers the General Partner and its directors, officers, and senior management, who are co-insured.

## **B. Supervisory Board**

### § 9

#### **Composition of Supervisory Board, Election of Supervisory Board Members and Substitute Members, Term of Office**

- (1) The Supervisory Board consists of six members. To the extent any applicable statutory provisions require any other number of members, the Supervisory Board will have that number of members.

- (2) Unless a shorter term of office is stipulated upon their election, Supervisory Board members are elected for the period through to the conclusion of the Annual General Meeting formally approving their actions for the fourth financial year after the beginning of their term in office. The financial year in which the term in office begins is not counted in this calculation. Re-election is permitted.
- (3) Where substitute members are elected as shareholder representatives to the Supervisory Board, they replace any shareholder representative Supervisory Board members prematurely retiring from office in the order in which they are appointed, unless otherwise stipulated upon their election. Where a Supervisory Board member is elected to replace a retiring member, his or her term in office is equivalent to the remainder of the term in office of the retiring member. Where a substitute member replaces a retiring member, his or her term in office expires upon the conclusion of the next Annual General Meeting following such substitution, or the next but one, should such Annual General Meeting hold a by-election to replace the retiring member; otherwise, the term in office ends upon the expiry of the remaining term in office of the retiring member.
- (4) Each Supervisory Board member and each substitute member may step down from his or her position with one month's notice by notifying the General Partner and the Supervisory Board Chair accordingly in writing. This notice period does not apply for members and substitute members elected by employees. The Supervisory Board Chair submits notice of his or her retirement to the General Partner and to his or her deputy.

#### **§ 10**

##### **Chair, Deputy Chair**

- (1) At a meeting held directly after the Annual General Meeting at the end of which its term in office begins, with no separate invitation being required for such meeting, the Supervisory Board elects a Chair and a Deputy Chair from among its number for the term in office of each member thereby elected. Where the Chair or a Deputy Chair retires from the Supervisory Board prior to the conclusion of his or her term in office, the Supervisory Board must immediately hold a new election for the remaining term in office of the retiring member.
- (2) Declarations of intent on the part of the Supervisory Board and its Committees may be submitted on behalf of the Supervisory Board by the Supervisory Board Chair or his or her Deputy Chair.

#### **§ 11**

##### **Supervisory Board Meetings and Adoption of Resolutions**

- (1) Supervisory Board resolutions are generally adopted at meetings. Supervisory Board meetings are generally held in person. Meetings are convened by the Chair, stating the agenda items, by way of written notification issued three weeks in advance. When convening the meeting, the Chair may stipulate that it be held by way of a teleconference or video conference. Furthermore, in urgent cases he or she may curtail the three-week notice period and, where appropriate, convene the meeting verbally, by telephone, facsimile, or another electronic means of communication (e.g. by e-mail). The three-week notice period does not apply for meetings convened pursuant to § 110 (1) and (2) AktG.
- (2) The Supervisory Board has a quorum when at least half of the total number of members of which it has to consist, and a minimum of three members, including the Chair or Deputy Chair, attend or participate in the meeting. Members submitting written voting instructions via another Supervisory Board member

or other person entitled to participate in the meeting are also counted as present. The Supervisory Board adopts resolutions on the basis of simple majorities, unless otherwise required by law or the Articles of Association. In the event of a parity of votes, the vote of the Chair of the meeting is decisive. The Chair of the meeting determines the voting procedure.

- (3) Outside of meetings, resolutions may be adopted in writing, by telephone, facsimile, or another electronic means of communication (e.g. by e-mail) or a combination of these channels.
- (4) For each meeting of the Supervisory Board, a set of written minutes must be prepared, signed by the Chair of the meeting, and filed in the company's records. The minutes should include the place and date of the meeting, the names of the participants, the agenda items, the main contents of the discussions, and the resolutions adopted by the Supervisory Board. The same requirements apply by analogy to resolutions adopted outside of meetings.

## **§ 12**

### **Rights and Obligations of the Supervisory Board**

- (1) The Supervisory Board has rights and obligations arising from applicable legal provisions and the Articles of Association.
- (2) The Supervisory Board must monitor the management of the business by the General Partner. The Supervisory Board may inspect and review the books and records of the company, as well as its assets.
- (3) The General Partner is required to report to the Supervisory Board on a regular basis. Moreover, the Supervisory Board may request reports on significant matters, including commercial transactions known to the General Partner involving an affiliated company, if such transactions might materially affect the company's position.
- (4) If the company holds an interest in the General Partner, all rights of the company arising from and in connection with that interest (e.g., voting rights, rights to receive information, etc.) will be exercised by the Supervisory Board.

## **§ 13**

### **Duty of Confidentiality and Responsibility of Supervisory Board Members**

Supervisory Board members must maintain confidentiality in respect of confidential information and company secrets, and specifically as to operating or business secrets of which they gain awareness on account of their activity on the Supervisory Board. Should a Supervisory Board member wish to pass on to third parties items of information for which it cannot be excluded with certainty that they are confidential or involve company secrets, such member must inform the Supervisory Board Chair in advance, and give him or her opportunity to state his or her position. Supervisory Board members who breach this duty bear joint and several liability to reimburse the company for any damages arising as a result.



## **§ 14**

### **Supervisory Board Committees**

To the extent permitted by law or the Articles of Association, the Supervisory Board may assign duties and rights incumbent on it to its Chair, individual members, or committees formed from among its number. Where the Supervisory Board Chair is a member of a committee, his or her vote will be decisive in the event of any parity of votes. The same applies by analogy to the Deputy Chair of the Supervisory Board. The Supervisory Board may otherwise also lay down the procedures to be adopted in any committees, or assign responsibility for the adoption of such to the specific committee itself.

## **§ 15**

### **Participation in the Annual General Meeting**

- (1) Supervisory Board members are entitled and obliged to participate in shareholders' Annual General Meetings. The General Partner is obliged to forward the agenda of the Annual General Meeting and any related submissions to the Supervisory Board in good time ahead of the meeting.
- (2) The General Partner is obliged to notify the Supervisory Board in writing of the resolutions adopted by the Annual General Meeting.

## **§ 16**

### **Code of Procedure**

The Supervisory Board has a self-imposed Code of Procedure within the framework permitted by law and consistent with the requirements of these Articles of Association.

## **§ 17**

### **Supervisory Board Remuneration**

- (1) In addition to the reimbursement of his or her expenses, each Supervisory Board member receives fixed remuneration of € 40,000 payable retrospectively on the day after the Annual General Meeting adopting the annual financial statements for the respective financial year. The Chair receives twice and the Deputy Chair one-and-a-half times the fixed remuneration. Supervisory Board members also sitting on a Supervisory Board committee receive additional fixed committee remuneration, amounting to € 18,000 for the Audit Committee and to € 8,000 for each other committee, retrospectively payable together with the fixed remuneration pursuant to Sentence 1. Supervisory Board members chairing a Supervisory Board committee receive twice the respective committee membership remuneration.
- (2) Supervisory Board members only sitting on the Supervisory Board for part of a financial year receive proportionately lower remuneration on a pro rata temporis basis. Corresponding provisions apply for remuneration pursuant to Paragraph 1, Sentence 2 and fixed committee membership remuneration pursuant to Paragraph 1, Sentences 3 and 4 should the respective member retire from the Supervisory Board, or from the respective function while remaining in the Supervisory Board.

- (3) Sales tax is refunded by the company to the extent that Supervisory Board members are entitled to charge the company separately for sales tax and exercise this right. Furthermore, the company pays or reimburses the Supervisory Board member for any employer contributions to social insurance incurred under foreign legislation due to the member's activity on the Supervisory Board.
- (4) To protect its interests, the company maintains an appropriate financial loss liability insurance policy for its directors, officers, and senior management. This policy also covers Supervisory Board members, who are co-insured at the company's expense.

### **C. Annual General Meeting**

#### **§ 18**

##### **Location of Annual General Meeting**

The Annual General Meeting is held at the company's domicile, at the domicile of a German stock exchange, within a radius of 50 km of the company's domicile, or within a radius of 15 km of the domicile of a German stock exchange.

#### **§ 19**

##### **Convening of Annual General Meeting**

The Annual General Meeting is convened by the General partner; this does not affect the statutory rights of the Supervisory Board and a minority of limited shareholders to convene the Annual General Meeting.

#### **§ 19a**

##### **Virtual Annual General Meeting**

The General Partner is authorized to hold an Annual General Meeting of the company without physical attendance by shareholders or their authorized representatives at the venue of the Annual General Meeting (virtual Annual General Meeting). The authorization provided in Sentence 1 is valid for a two-year period subsequent to entry of this § 19a in the Commercial Register by amendment to the Articles of Association.

#### **§ 20**

##### **Participation Entitlement**

- (1) Only those shareholders that register and submit documentary proof of their shareholding are entitled to participate in the Annual General Meeting and exercise their voting rights. The registration and documentary proof must be received by the company at the address stated for this purpose in the invitation

no later than six days before the Annual General Meeting. Neither the date of receipt of the registration nor the date of the Annual General Meeting are included in the calculation of the registration deadline.

- (2) A certification of the shareholder's shareholding issued in text form in German or English by the accounting financial institution is deemed to represent adequate proof of entitlement pursuant to Paragraph 1. The documentary proof must be valid as of the beginning of the 21<sup>st</sup> day prior to the Annual General Meeting.
- (3) The company is entitled to request further appropriate proof should it harbor any doubts as to the correctness or authenticity of the certification. Should such proof not be provided, or not in suitable form, then the company is entitled to reject the shareholder in question.

#### **§ 20a**

##### **Virtual Participation of Supervisory Board Members**

Members of the Supervisory Board are permitted to participate in the Annual General Meeting by video and audio transmission on an exceptional basis in cases in which, due to legal or health-related restrictions or due to their place of work or residence being located abroad, it is not possible for them to attend the meeting in person, or only at considerable expense, or when the Annual General Meeting is held as a virtual Annual General Meeting without physical attendance by shareholders or their authorized representatives at the venue of the Annual General Meeting.

#### **§ 21**

##### **Chairing of the Annual General Meeting**

- (1) The Annual General Meeting is chaired by the Supervisory Board Chair or, should he or she be unavailable, by another member of the Supervisory Board he or she selects. Should none of these persons assume the chair, the Meeting Chair is elected by the Annual General Meeting, with such election being overseen by the oldest Supervisory Board member present.
- (2) The Meeting Chair chairs the meeting, determines the order in which the agenda items are addressed and the voting procedures to be adopted.
- (3) The Meeting Chair may impose a suitable limit on the time allocated for shareholders to pose questions and make statements. In particular, either at the beginning of or in the course of the Annual General Meeting he or she is also entitled to set a suitable timeframe for the duration of the entire Annual General Meeting, for individual agenda items, or for individual statements and questions.

#### **§ 22**

##### **Voting Rights, Voting Procedures**

- (1) Each individual ordinary share entitles its bearer to one vote at the Annual General Meeting.
- (2) The Annual General Meeting adopts resolutions on the basis of a simple majority of the votes cast and,

where a majority of capital is required, on the basis of a simple majority of the share capital represented upon the adoption of such resolution, unless mandatory requirements of the relevant laws or the Articles of Association stipulate otherwise.

- (3) When the first round of voting in elections does not produce a simple majority, a second round of voting is held for those two individuals achieving the highest number of votes. In the event of the same numbers of votes being cast in the second round of voting, the Chair of the Annual General Meeting, provided that he or she is an ordinary shareholder, otherwise the oldest ordinary shareholder in terms of age among the Supervisory Board members elected by the Annual General Meeting, failing that the oldest ordinary shareholder in terms of age participating in the election, will determine the outcome of the election.
- (4) The resolutions of the Annual General Meeting require the consent of the General Partner if they relate to matters which require the consent of the general and limited partners in a limited partnership.

If the resolutions of the Annual General Meeting require the consent of the General Partner, the General Partner will declare at the Annual General Meeting whether it consents to or rejects the resolutions. Such declarations must be recorded in the minutes to the Annual General Meeting.

#### **§ 23**

#### **Annual General Meeting**

The Annual General Meeting is held within the first eight months of each financial year. It resolves in particular on the adoption of the annual financial statements and the utilization of unappropriated net profit (in accordance with § 25 of the Articles of Association), the election of the auditor, the approval of the General Partner and the Supervisory Board and, if applicable, the election of Supervisory Board members. Proposals of candidates for election as Supervisory Board members to represent shareholders are submitted to the Annual General Meeting not by the Supervisory Board as a whole, but rather only by those members of the Supervisory Board elected by shareholders.

### **IV. Annual Financial Statements and Appropriation of Profit**

#### **§ 24**

#### **Financial Year**

The financial year begins on March 1 and ends on the final day of February in each calendar year.

#### **§ 25**

#### **Annual Financial Statements and Appropriation of Profit**

- (1) The General Partner must prepare the annual financial statements and management report for the previous financial year within the first three months of the financial year and, where appropriate, the consolidated financial statements and group management report for the previous financial year within the first five

months of the financial year – to the extent the relevant statutory provisions do not stipulate shorter preparation deadlines – and forward these documents to the Supervisory Board together with the proposed utilization of unappropriated net profit. When drawing up the annual financial statements, the General Partner may transfer a portion not to exceed half of the net profit for the year to other revenue reserves. This requirement does not affect the statutory duties of submission to the auditors.

- (2) The Supervisory Board engages the auditor to conduct the audit. The General Partner is provided with the opportunity to comment on the report of the auditor before it is submitted to the Supervisory Board.
- (3) The annual financial statements are adopted by resolution of the Annual General Meeting with the approval of the General Partner.
- (4) The Annual General Meeting also resolves on the utilization of unappropriated net profit.

## **V. Concluding Provisions**

### **§ 26**

#### **Amendments to Articles of Association by Supervisory Board**

The Supervisory Board is authorized to amend the Articles of Association to the extent that such amendments only affect the respective wording. This provision does not affect any further authorization arising from other provisions of these Articles of Association or special resolutions by the Annual General Meeting.

### **§ 27**

#### **Severability, Omissions**

Should any current or future provision of these Articles of Association be or subsequently become legally invalid or unenforceable, either in full or in part, this will not otherwise affect the validity of the Articles of Association. The same applies should any omission be identified in the Articles of Association. The next Annual General Meeting will resolve to amend the Articles of Association in order to render them effective and enforceable or to remedy any omissions.

## **VI. Continuance of Provisions from the Articles of Association of Hornbach Holding Aktiengesellschaft**

### **§ 28**

#### ***Contribu- tion in Kind***

- (1) *The founders are the sole shareholders in Hornbach OHG, based in Bornheim. They contribute the company operated by this commercial partnership, together with all of its assets and liabilities, all*

other rights, and in particular the right to maintain the company name, to the stock corporation by way of a corporate reorganization pursuant to § 41 (1) Sentence 2 No. 2 of the German Corporate Reorganization Act (Umwandlungsgesetz – UmwG). The contribution is subject to the requirement that from March 1, 1987 onwards the company's transactions are deemed to be executed on the account of the stock corporation.

- (2) The volume of assets contributed is apparent from the balance sheet of the commercial partnership as of February 28, 1987.
- (3) All rights and obligations on the part of the commercial partnership in connection with employment contracts are also transferred to the newly founded stock corporation, unless any employee draws on any rights of objection to which he or she is entitled.
- (4) In return for this contribution in kind, the stock corporation grants the shareholders in Hornbach OHG, as its founders, the following shares in respect of the balance sheet as of February 28, 1987 underlying the corporate reorganization:

Otmar Hornbach, Bornheim 210,000 ordinary shares

with a par value each of DM 50.00,  
total par value

DM 10,500,000.00

and

120,000 non-voting preference shares  
with a par value each of DM 50.00,

total par value

DM 6,000,000.00

total

DM 16,500,000.00

Albert Wilhelm Hornbach, Bornheim;

190,000 ordinary shares

with a par value each of DM 50.00,

total par value

DM 9,500,000.00

and

80,000 non-voting preference shares  
with a par value each of DM 50.00,

total par value

DM 4,000,000.00

total

DM 13,500,000.00

total amount of share capital

DM 30,000,000.00

- (5) *The total par value of the shares granted in return for the assets contributed is equivalent to a partial sum of the same amount in the credit balances reported on the capital accounts of the shareholders in the commercial partnership in the balance sheet underlying the corporate reorganization. The corporate reorganization is therefore based on carrying amounts. The partial amounts on the capital accounts in the aforementioned reorganization balance sheet in excess of the total par value of the shares granted to each individual founder remain as loan receivables on the part of the respective shareholder due from the reorganized Hornbach Aktien-gesellschaft. The loans bear interest at 6% per annum starting on March 1, 1987. They may be requested or repaid by either party at any time without any notice period being required.*

#### **§ 29**

##### ***Costs of Foundation / Transformation***

- (1) *The total expenses incurred for the foundation and reorganization, especially transaction taxes (namely company taxes, stock exchange turnover tax, land acquisition tax), notary public expenses, formation audit and advisory expenses, court expenses, publication expenses, and all other transaction taxes, expenses, and costs, arising upon execution of § 28 of the Articles of Association (Contribution in Kind) are borne by Hornbach Aktiengesellschaft.*
- (2) *These total expenses are estimated at DM 3,000,000.00, plus any sales tax (VAT) incurred in accordance with legal requirements.*

#### **VII. Declaration of Change of Legal Form, Contribution of Share Capital, Costs of Formation**

#### **§ 30**

##### **Declaration of Change of Legal Form, Contribution of Share Capital**

The share capital existing upon the transformation of the company into a German partnership limited by shares was contributed by the entity of previous legal form, Hornbach Holding Aktiengesellschaft, which is domiciled in Neustadt an der Weinstrasse, by virtue of the change of the legal form.

#### **§ 31**

##### **Costs of Forming the Company**

The formation costs relating to the transformation of Hornbach Holding Aktiengesellschaft into HORNBACK Holding AG & Co. KGaA, totaling up to €2,960,000, are borne by the company.