

## EXPLANATORY REPORT OF THE BOARD OF EXECUTIVE DIRECTORS ON THE INFORMATION IN ACCORDANCE WITH SECTION 289A (1) AND SECTION 315A (1) OF THE GERMAN COMMERCIAL CODE (HGB)

As the information to be disclosed in respect of items 1 to 6 of Section 289a (1) and Section 315a (1) of the German Commercial Code (HGB) in the Combined Management Report of K+S AKTIENGESELLSCHAFT and the K+S GROUP (2017 Annual Report, page 69) speaks for itself, we limit ourselves here to providing the following explanations in accordance with Section 176 (1) (1) German Stock Corporations Act (AktG):

### ITEM 7: BOARD OF EXECUTIVE DIRECTORS' POWERS REGARDING THE OPTION TO ISSUE OR BUY BACK SHARES

#### AUTHORISATION TO CREATE NEW AUTHORISED CAPITAL OR AUTHORISED CAPITAL II WITH THE OPTION TO EXCLUDE SHAREHOLDERS' SUBSCRIPTION RIGHTS

The Board of Executive Directors was authorised by the Annual General Meeting on 12 May 2015 to increase the Company's share capital, with the consent of the Supervisory Board, by a total of € 19,140,000.00, in one lump sum or several partial amounts at different times, by issuing a maximum of 19,140,000 new registered shares (authorised capital) in return for cash and/or non-cash contributions during the period to 11 May 2020. The Board of Executive Directors was further authorised on 11 May 2016 to increase the Company's share capital, with the consent of the Supervisory Board, by a total of € 19,140,000.00, in one lump sum or several partial amounts at different times, by issuing a maximum of 19,140,000 new registered shares (authorised capital II) in return for cash and/or non-cash contributions during the period to 10 May 2021. Shareholders are generally offered the right to subscribe when increasing capital from the authorised capital or authorised capital II respectively. The new shares can be acquired by a financial institution determined by the Board of Executive Directors with the obligation that they must be offered to the shareholders for subscription (indirect subscription right).

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The Board of Executive Directors is authorised, both for the authorised capital and for the authorised capital II, with the consent of the Supervisory Board, to exclude the

shareholders' statutory right to subscribe up to a proportionate amount of the share capital of € 19,140,000.00 (corresponding to 19,140,000 no-par value shares) in the following cases:

- + For fractional amounts that arise as a consequence of the right to subscribe.
- + In the case of capital increases in return for cash contributions up to a proportionate amount of the share capital of € 19,140,000.00 (corresponding to 19,140,000 no-par value shares) if the issue price of the new shares is not significantly less than the stock exchange price of already listed shares of the same type and structure on the date when the issue price is finally agreed.
- + In the case of capital increases in return for non-cash contributions up to a proportionate amount of the share capital of € 19,140,000.00 (corresponding to 19,140,000 shares) if the new shares are to be used as consideration in the acquisition of an undertaking or an interest in an undertaking by the Company.
- + In order to implement a scrip dividend where the shareholders are asked to offer their dividend claim, in full or in part, as a non-cash contribution in return for new shares in the Company.

The Board of Executive Directors may only make use of the authorisations described above to exclude the right to subscribe insofar as the proportionate amount of the total shares issued with exclusion of the right to subscribe does not exceed 10 % of the share capital (10 % ceiling), neither on the date of the resolution regarding these authorisations nor on the date they are respectively exercised. If other authorisations to issue or sell Company shares or to issue rights are exercised, which enable or obligate the acquisition of Company shares, during the term of the authorised capital or authorised capital II until their respective utilisation thus excluding the right to subscribe, this must be credited against the 10 % ceiling referred to above.

The Board of Executive Directors is authorised to determine the further details of capital increases from the authorised capital or the authorised capital II with the consent of the Supervisory Board.

As a result of the option granted by the Board of Executive Directors to implement a capital increase with limited exclusion of the right to subscribe with the approval of the Supervisory Board until 11 May 2020 (authorised capital) or 10 May 2021 (authorised capital II), the Company will be given a wide-

spread instrument with the help of which, for example, fast and flexible use can be made of the opportunities that present themselves to make acquisitions. The Board of Executive Directors will only make use of this option if there is an appropriate ratio between the value of the new shares and the value of the consideration.

#### **AUTHORISATION TO ISSUE CONVERTIBLE BONDS AND BONDS WITH WARRANTS WITH THE OPTION TO EXCLUDE SHAREHOLDERS' SUBSCRIPTION RIGHTS WHILE SIMULTANEOUSLY CREATING CONDITIONAL CAPITAL**

##### **Authorisation to issue convertible bonds and bonds with warrants**

The Board of Executive Directors is authorised until 11 May 2020, with the consent of the Supervisory Board, to issue bearer and/or registered convertible bonds and/or warrant linked bonds ('bonds') on one or more occasions, with an aggregate nominal value of up to € 750,000,000.00 with or without a limited term, and to issue or impose conversion rights or obligations on the holders or creditors of bonds, or warrants on shares in the Company with a proportionate amount of the share capital of up to a total of € 19,140,000.00, as set out in greater detail in the terms and conditions of the convertible or warrant-linked bonds. The proportionate amount of the share capital represented by the shares to be issued upon conversion may not exceed the nominal amount of the bonds.

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In addition to euros, bonds may also be issued in the legal tender of any OECD country, limited to the corresponding euro counter-value at the time of issuing the bond. Bonds may also be issued by group companies of the Company; in this case, the Board of Executive Directors is authorised to act as guarantor for the bonds on behalf of the Company and to grant or impose conversion rights or obligations or warrants on shares in the Company to/upon the holders or creditors of such bonds. The bond issues may be subdivided into equivalent debentures in each case.

The Company's shareholders are generally entitled to subscription rights to bonds. The bonds can also be acquired by one or more financial institutions with the obligation that they must be offered to the Company's shareholders for subscription.

The Board of Executive Directors is however authorised with the approval of the Supervisory Board to exclude subscription rights, in full or in part, in the following cases:

- + If bonds are issued against cash and if the issue price is not substantially lower than the theoretical market value of the bonds calculated in accordance with recognised actuarial methods. However, exclusion of subscription rights only applies to bonds with conversion rights or obligations or warrants on shares representing a proportionate amount of the share capital of up to 10% of the share capital as of the date of the resolution or, if the amount of the share capital is lower at that time, on the date when the authorisation is exercised. The maximum limit of 10% of the share capital is reduced by the proportionate amount of the share capital amount attributable to shares issued during this authorisation period in connection with another increase in capital where subscription rights are excluded in direct or indirect application of Section 186(3) sentence 4 of the AktG. The maximum limit of 10% of the share capital is also reduced by the proportionate amount of the share capital attributable to own shares, which are sold by the Company during this authorisation period, where subscription rights are excluded in direct or indirect application of Section 186(3) sentence 4 of the AktG.
- + If and insofar as this is necessary in order to grant the bearers of convertible bonds or warrants in respect of shares in the Company or the creditors of convertible bonds provided with conversion obligations, a right to subscribe to the extent to which they would be entitled following the exercising of these rights or the fulfilment of the conversion obligations.
- + In order to exempt fractional amounts from the shareholders' right to subscribe, which are a consequence of the subscription ratio.
- + Insofar as the bonds are issued in connection with the acquisition of undertakings, interests in undertakings, or parts of undertakings in exchange for non-cash considerations, provided the value of the consideration is adequate in relation to the value of the bonds.

The authorisations described above to exclude the right to subscribe only apply to bonds with conversion rights or obligations or warrants on shares representing a proportionate amount of the share capital of up to 10% of the share capital as of the date of the resolution or, if the amount of the share capital is lower at that time, on the date when the authorisation is exercised.

If bonds with conversion rights are issued, creditors may exchange their bonds against shares in the Company in accordance with the bond terms and conditions. The

exchange ratio is calculated by dividing the nominal amount of a bond by the conversion price determined for a new share in the company. The exchange ratio can also be calculated by dividing the issue price of a bond that is below the nominal amount by the conversion price determined for a new share in the company. The exchange ratio can be rounded up or down to the next whole number in each case; a premium to be paid in cash can also be determined. Moreover, provision can be made for fractional amounts to be combined and/or settled in cash. The proportionate amount of the share capital represented by the shares to be issued per bond may not exceed the nominal amount of the bond.

If warrant-linked bonds are issued, one or more warrants will be attached to each bond, which authorise the holder to subscribe to shares in the Company, as set out in greater detail in the warrant terms and conditions to be defined by the Board of Executive Directors. The proportionate amount of the share capital represented by the shares to be issued per bond may not exceed the nominal amount of the warrant-linked bond.

The respective conversion or option price for a share in the Company (subscription price) must correspond to either (a) at least 80% of the weighted average stock exchange price of K+S shares in the XETRA computer trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange during the last ten trading days prior to the day on which the Board of Executive Directors adopts the resolution to issue the convertible or warrant-linked bonds, or (b) at least 80% of the weighted average stock exchange price of K+S shares in the XETRA computer trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange during the days on which subscription rights are traded on the Frankfurt Stock Exchange, with the exception of the last two days of subscription rights trading.

For warrant-linked bonds or bonds with conversion rights, or obligations, the warrants or conversion rights, or obligations, can be adjusted to preserve value in the event of a dilution in the value of the warrants or conversion rights, or obligations, in accordance with the bond terms and conditions, notwithstanding Section 9(1) of the AktG, insofar as the adjustment is not already stipulated by law. Moreover, the bond terms and conditions may make provision for a value-preserving adjustment of the warrants or conversion rights/obligations in the event of a capital reduction or other extraordinary measures

or events (such as a third party obtaining control, unusually large dividends).

The bond terms and conditions may also make provision for a conversion obligation at the end of the term (or an earlier date) or for the Company's right to grant shares in the Company, in full or in part, in lieu of payment of the amount due to the creditors of the bonds at the time of final maturity of bonds with conversion rights or warrants (this also includes maturity on account of termination). The bond terms and conditions may also stipulate in each case at the Company's discretion that instead of being converted into new shares from conditional capital, warrant-linked or convertible bonds may be converted into existing shares in the Company or that the warrant can be fulfilled by providing such shares.

Finally, the bond terms and conditions may make the provision that in the event of a conversion, the Company will not grant shares in the Company to the party entitled to the conversion, but will make a payment, which for the number of shares to be supplied alternatively, corresponds to the weighted average stock exchange price of K+S shares in the XETRA computer trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange during the ten trading days following the declaration of the conversion or exercise of the warrant.

The Board of Executive Directors is authorised, in the context of the requirements described above, with the approval of the Supervisory Board, to define the further details of the issue and structure of the convertible and/or warrant-linked bonds, particularly interest rate, issue price, term, denomination, dilution protection, and the conversion or warrant period or to define these in consultation with the corporate bodies of the holding companies issuing the convertible and/or warrant-linked bonds.

#### Conditional capital increase

The share capital is increased by up to € 19,140,000.00 by issuing up to 19,140,000 bearer shares with no par value (conditional capital). The purpose of the conditional capital increase is to grant no-par value shares to the holders or creditors of bonds, which are issued by the Company or group companies of the Company in accordance with the above authorisation before 11 May 2020. New no-par value shares will be issued at the conversion or option price to be determined in each case as described above.

The conditional capital increase will be implemented only insofar as the holders or creditors of conversion rights or warrants from bonds, which were issued by the Company or a group company before 11 May 2020 based on the authorising resolution of the Annual General Meeting held on 12 May 2015, exercise their conversion rights or warrants; or as the holders or creditors of the convertible bonds with conversion obligation, which were issued by the Company or a group company before 11 May 2020 based on the authorising resolution of the Annual General Meeting held on 12 May 2015, who are required to convert, fulfil their conversion obligation; or if the Company elects before 11 May 2020, based on the authorising resolution of 12 May 2015, to grant shares in the Company, in full or in part, in lieu of payment of the amount due; and if no cash settlement is made or own shares are used to settle such claims. New no-par value shares are eligible to participate in the profits from the beginning of the financial year during which they are created through the exercise of conversion rights or warrants or through the fulfilment of conversion obligations; in deviation from this, the Board of Executive Directors may determine, with the consent of the Supervisory Board, that new no-par value shares are eligible to participate in the profits from the beginning of the financial year, in respect of which the Annual General Meeting has not yet adopted a resolution regarding the appropriation of the balance sheet profit at the time when the conversion rights or warrants are exercised or the conversion obligations are fulfilled. The Board of Executive Directors is authorised with the consent of the Supervisory Board to determine the additional content of share rights and further details of the implementation of a conditional capital increase.

In addition to the traditional options for raising outside and equity capital, issuing convertible bonds and/or warrant-linked bonds can also provide an opportunity to take advantage of attractive financing alternatives on the capital markets depending on the market situation. The Board of Executive Directors believes that it is in the Company's interests that this financing option is also available to the Company. Issuing convertible bonds and/or warrant-linked bonds makes it possible to raise capital under attractive conditions. The conversion and/or option premiums achieved benefit the Company's capital base thereby enabling it to take advantage of more favourable financing opportunities. The other possibility provided for, in addition to the granting of conversion rights and/or warrants, to create conversion obligations, widens the scope for structuring this financ-

ing instrument. The authorisation provides the Company with the necessary flexibility to place the bonds itself or through direct or indirect holding companies. The option to exclude the right to subscribe allows the Company to make rapid use of advantageous stock exchange situations and to place bonds on the market quickly and flexibly under attractive conditions.

#### **AUTHORISATION TO ACQUIRE AND USE OWN SHARES WITH THE OPTION TO EXCLUDE SHAREHOLDERS' RIGHT TO SUBSCRIBE**

The Board of Executive Directors is authorised to acquire own shares representing no more than 10% of the total no-par value shares comprising the share capital of K+S AKTIENGESELLSCHAFT until 11 May 2020. At no time may the Company hold more than 10% of the total number of no-par value shares comprising its share capital. Acquisition will be made via the stock exchange by means of a public offer to buy addressed to all shareholders or by way of a public call to shareholders to submit offers for sale. In the event of a purchase effected on a stock exchange, the purchase price per share (excluding acquisition costs) must not exceed or undercut the relevant stock exchange price by more than 10%; the relevant stock exchange price will be the price of the K+S share in the XETRA computerised trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange, determined by the opening auction on the day of purchase. In the event of a purchase by means of an offer to buy addressed to all shareholders, the purchase price offered per share (excluding acquisition costs) must not exceed or undercut the relevant stock exchange price by more than 10%; the relevant stock exchange price will be the weighted average stock exchange price of K+S shares in the XETRA computer trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange during the last ten trading days prior to the publication of the offer to buy. In the event of a call to shareholders to submit offers for sale, the purchase price offered per share (excluding acquisition costs) must not exceed or undercut the relevant stock exchange price by more than 10%; the relevant stock exchange price will be the weighted average stock exchange price of K+S shares in the XETRA computer trading system (or any functionally comparable successor system replacing it) at the Frankfurt Stock Exchange during the last ten trading days prior to the publication of the call to shareholders to submit offers for sale. In the event of acquisition by means of a public offer to buy addressed to

all shareholders or by way of a public call to shareholders to submit offers for sale, the volume of the offer or call can be limited. If the overall subscription to this offer or the offers for sale exceed this volume, shares must be acquired on allocation basis. Provision may be made for preferential acceptance of small quantities of up to 100 shares offered for sale per shareholder.

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Furthermore, the Board of Executive Directors is authorised, with the consent of the Supervisory Board, to sell shares in the Company, which are or were acquired based on the authorisation above or authorisation previously granted by the Annual General Meeting pursuant to Section 71(1) sentence 8 of the AktG, on the stock exchange or via a public offer addressed to all shareholders. In the following cases, shares may be disposed of by other means and thus with the exclusion of the shareholders' right to subscribe:

- + Disposal against payment of a cash sum that is not significantly below the relevant stock exchange price;
- + Issue of shares as consideration for the purpose of acquiring undertakings, parts of undertakings or interests in undertakings;
- + Servicing of convertible bonds and bonds with warrants, which have been issued on the basis of authorisation given by the Annual General Meeting.

The authorisation to exclude the right to subscribe applies in respect of all shares representing a proportionate amount of the share capital of up to 10% of the share capital when the resolution is adopted or if the amount of the share capital is lower at that time, on the date when the authorisation is exercised. If use is made of other authorisations to issue or sell Company shares or to issue rights, which enable or obligate the acquisition of Company shares, during the term of this authorisation to acquire own shares, thus excluding the right to subscribe, the total number of shares issued or sold where the right to subscribe is excluded must not exceed 10% of the share capital.

Finally, the Board of Executive Directors is authorised, with the consent of the Supervisory Board, to withdraw shares in the Company from circulation, which are or were acquired based on the authorisation above or authorisation previously granted by the Annual General Meeting pursuant to Section 71(1) sentence 8 of the AktG, without the Annual General Meeting having to pass a further resolution on such withdrawal. Shares must be withdrawn from circulation in accor-

dance with Section 237(3) sentence 3 of the AktG without a capital reduction in such a way that withdrawal results in an increase in the proportion of remaining no-par value shares in the share capital pursuant to Section 8(3) of the AktG. The Board of Executive Directors is authorised pursuant to Section 237(3) sentence 3 clause 2 of the AktG to adjust the number of shares indicated in the Articles of Association.

The authorisations to purchase own shares as well as to dispose of them and withdraw them from circulation may be exercised in full or in part each time and on several occasions in the latter case. The authorisation granted by the Annual General Meeting to the Board of Executive Directors to purchase a limited number of own shares in the Company is a common instrument available in many companies. The ability to resell own shares, puts the Company in a position to, for example, gain long-term investors in Germany and abroad or to finance acquisitions flexibly. Moreover, it will also enable the Company to use shares for servicing convertible and warrant-linked bonds. It may be advisable to use own shares in full or in part instead of new shares from a capital increase to fulfil conversion rights or warrants. Using own shares rules out any dilution of shareholder interests that would occur if conditional capital were used. The continued option to withdraw own shares from circulation is also a common alternative, the use of which is in the interest of the Company and its shareholders.

#### ITEM 8: SIGNIFICANT AGREEMENTS THAT APPLY IN THE EVENT OF A CHANGE OF CONTROL RESULTING FROM A TAKEOVER BID

In 2013, K+S concluded a syndicated credit line for € 1 billion. All loans drawn against this line of credit will become due and payable immediately and the entire credit line will become redeemable in accordance with the loan terms and conditions if one person acting alone or more persons acting jointly acquire control over K+S AKTIENGESELLSCHAFT. Also in the case of the bonds issued by K+S AKTIENGESELLSCHAFT, as well as the promissory notes issued, the respective creditors have the right, in the event of a change of control, to terminate the bonds or promissory notes that have not yet been redeemed.

The provisions in credit agreements and bond conditions agreed in the event of a change of control are routine and reasonable from the perspective of protecting the legitimate interests of the creditors.

**ITEM 9: AGREEMENTS CONCLUDED WITH THE  
BOARD OF EXECUTIVE DIRECTORS OR  
EMPLOYEES CONCERNING COMPENSATION IN  
THE EVENT OF A TAKEOVER BID**

Agreements of this type exist with the members of the Board of Executive Directors of K+S AKTIENGESELLSCHAFT and are explained in detail in the Remuneration Report on page 122. The existing compensation agreements with the members of the Board of Executive Directors take into appropriate consideration both the legitimate interests of those concerned and of the Company and its shareholders.