

**ARTICLES OF INCORPORATION**

**of**

**BIOTEST AKTIENGESELLSCHAFT**

**in Dreieich**

**I.**

**General Provisions**

**§ 1**

**Corporate name and seat; Term**

- (1) The Company is a stock corporation with the corporate name

Biotest Aktiengesellschaft.

- (2) The corporate seat of the Company is at Dreieich/Germany.
- (3) The Company is incorporated for an indefinite term.

**§ 2**

**Object of the Company**

- (1) The object of the Company is, in particular, by using the trademark “Biotest”, the development, manufacture and sale of biological, chemical, pharmaceutical, human and veterinary medical, cosmetic and dietary products, as well as of receptacles, equipment, machinery and accessories for medicinal, pharmaceutical and analytical purposes and research in these areas, and activities (in particular, research,

development, manufacture and sale) in the areas of pest management and plant breeding, the examination and keeping clean of soil, water and air, as well as in the area of products, materials and technologies used in space travel.

- (2) The Company may enter into all transactions which are suitable of promoting its object directly or indirectly or are otherwise related to its object. The Company may, in particular, incorporate, acquire, or acquire capital interests in, business enterprises of the same type or in related industries at home or abroad and may establish branch offices.

### **§ 3**

#### **Announcements**

Any announcements by the Company will be made in the Electronic Federal Gazette [*Bundesanzeiger*].

## **II.**

### **Stated Capital and Shares**

#### **§ 4**

#### **Stated capital**

- (1) The stated capital is EUR 30,025,152.00.

- (2) The stated capital is divided into

6,595,242 ordinary shares

and

5,133,333 non-voting preferred shares.

- (3) The terms and conditions in relation to preferred shares are set out in §§ 21 and 25 below. The issue of additional preferred shares, participation certificates, bonds with warrants, convertible bonds and similar instruments ranking equally with, or before, the non-voting preferred shares in circulation from time to time at the time of the distribution of the profit and/or the corporate assets, does not require the consent by the preferred shareholders.
- (4) In the case of a capital increase, the distribution of profits may be provided for in derogation of § 60 German Stock Corporation Act [*Aktiengesetz*].
- (5) The management board is authorized, with the consent by the supervisory board, to increase the Company's stated capital up to May 19, 2010, once or several times, by up to EUR 694,848.00 against the issue of new ordinary bearer shares and/or new non-voting preferred bearer shares, against contributions in cash or in kind (authorized capital). § 139, section 2 German Stock Corporation Act remains unaffected. The shareholders shall be granted a subscription right in that respect.
  - (a) If ordinary bearer shares and preferred bearer shares are issued in accordance with the previous proportion of the two classes of shares to each other, the subscription right of holders of one class of shares will be excluded in relation to shares of the other class.
  - (b) The management board is also authorized, with the consent by the supervisory board, to exclude fractional amounts from the shareholders' subscription right.
  - (c) The management board is also authorized, with the consent by the supervisory board, to exclude the shareholders' subscription right, if the capital increase against cash contributions does not exceed 10% of the stated capital and the issue price does not substantially fall below the stock exchange price of the shares of the relevant class, as defined in the first sentence of § 203, section 1, in conjunction with the fourth sentence of § 186, section 3, German Stock Corporation Act.

- (d) The management board is also authorized, with the consent by the supervisory board, to exclude the shareholders' subscription right in the event of capital increases against contributions in kind, in particular, of business enterprises, parts of business enterprises, or capital interests in business enterprises, or in the context of mergers of business enterprises, as well as of other assets, including, without limitation, loans payable and other liabilities.

The management board is authorized, with the consent by the supervisory board, to determine the contents of the rights embodied in the share certificates, as well as the terms of the issue of the shares. The supervisory board may adjust the version of the articles of incorporation following the implementation in whole or in part of the capital increase from the authorized capital or following the expiry of the time limit regarding the authorization in line with the scope of the capital increase from the authorized capital.

## **§ 5**

### **Shares**

- (1) The shares are no-par value shares and are made out to the bearer.
- (2) If the resolution on a capital increase does not contain a provision as to whether the new shares are to be made out to the bearer or are to be registered shares, the shares will likewise be made out to the bearer.
- (3) The form of the shares and of the profit participation certificates and renewal coupons will be determined by the management board in agreement with the supervisory board. The same applies to bonds and interest coupons and other instruments issued by the Company. A certificate (global certificate) may be issued for several shares. Shareholders have no claim to a certification of their shares.

**III.**

**Organization of the Company**

**§ 6**

**Corporate bodies; Advisory board**

(1) The Company has the following corporate bodies:

- A. the management board;
- B. the supervisory board;
- C. the general meeting.

(2) The Company may appoint an advisory board.

**A. The Management Board**

**§ 7**

**Composition and management**

(1) The management board may consist of one person or several persons.

(2) The supervisory board shall appoint the members of the management board and determine their number. The supervisory board may appoint a member of the management board as chairman or spokesman of the management board. The supervisory board may appoint substitute members of the management board.

(3) The management board shall manage the Company on its own responsibility and shall adopt rules of procedure. The management board as a whole shall take decisions regarding all questions of fundamental or material importance by a simple majority. If a member of the management board has been appointed as chairman of the board, such member will have a casting vote in the event of an equality of votes in relation to resolutions by the management board. No resolutions may be passed against the

chairman's vote.

- (4) Unless provided otherwise by the supervisory board or its chairman in an individual case, the members of the management board will attend meetings of the supervisory board with an advisory vote.

## § 8

### **Representation of the Company**

- (1) The Company is legally represented by two members of the management board, or by one member of the management board together with an authorized representative [*Prokurist*]. If only one member of the management board has been appointed, the company will be represented by such member alone.
- (2) The supervisory board may authorize all or individual members of the management board to represent the Company alone and/or exempt them from the restrictions of § 181 German Civil Code within the limits set by the law (§ 112 German Stock Corporation Act).

## **B. The Supervisory Board**

## § 9

### **Composition of supervisory board; Election and dismissal of supervisory board members and substitute members; Term of office**

- (1) The supervisory board consists of six members.
- (2) The members of the supervisory board will be elected for the period until the end of the general meeting, which resolves on the formal approval of the actions taken by the management board for the fourth fiscal year from the commencement of the term of

office. The fiscal year, in which the term of office commenced, will not be counted. The term of office is renewable.

- (3) In the context of the elections of the shareholders' representatives for the supervisory board and substitute members (if any), the chairman of the general meeting is entitled to have votes cast on the basis of a list of proposed candidates submitted by the administration or shareholders. If substitute members are elected in a list, unless provided otherwise at the election, they will replace any prematurely retiring members of the supervisory board elected by the shareholders in the order of their appointment. If a member of the supervisory board is elected to replace a retiring member, such member's term of office will be the residual term of office of the retiring member. If a substitute member replaces a retiring member, such member's term of office will expire - if a new election is made in the next, or the next but one, general meeting following the occurrence of the substitution - at the end of such general meeting; otherwise, it will expire upon the expiry of the residual term of office of the retiring member.
- (4) A member of the supervisory board who is prevented from attending a meeting may authorize a substitute member of the supervisory board in writing to attend a meeting of the supervisory board in his or her stead. The member of the supervisory board who has so authorized another person to attend a meeting of the supervisory board shall oblige that person, by a contract with protective effect in favor of the Company, to maintain secrecy in relation to confidential information, as well as trade and business secrets, of which such person becomes aware at the meeting of the supervisory board.
- (5) Each member of the supervisory board, and each substitute member, may resign from his or her office at any time on one month's notice by a written declaration to the chairman of the supervisory board. That notice period does not apply to members and substitute members elected by the employees.

**§ 9 (a)**

**Right to send members to the supervisory board**

- (1) If the supervisory board consists of six members, OGEL GmbH, with its corporate seat at Frankfurt am Main/Germany, may send one of the members of the supervisory board representing the shareholders, once and so long as OGEL GmbH holds an interest in the Company of at least 25 percent of its ordinary shares.
- (2) If the supervisory board does not consist of six members, but of a higher number of members, OGEL GmbH may send a second member of the supervisory board representing the shareholders, once and so long as OGEL GmbH holds an interest in the Company of at least 30 percent of its ordinary shares.
- (3) Notwithstanding its voting right, the reduction of the number of supervisory board members to six, or three, members by a resolution by the general meeting amending these articles of association does not require the consent by OGEL GmbH as holder of the right to send members as per sections (1) and (2) above.
- (4) The right to send members as per sections (1) and (2) above will continue to exist, so long as OGEL GmbH is controlled by one member of the founding family, Schleussner, or by several members of the founding family Schleussner jointly, in accordance with § 17 German Stock Corporation Act, it being understood that a qualification of the respective family members as a business enterprise within the meaning of §§ 15 et seq. German Stock Corporation Act is not relevant in that respect. The "founding family Schleussner" consists of Dr. Hans Schleussner, Renate Schleussner, Dr. Cathrin Schleussner and Dr. Martin Schleussner; it does not consist of their heirs.

**§ 10**

**Chairman; Deputy chairman**

- (1) Immediately following the end of the general meeting, upon the end of which its term of office commences, the supervisory board shall elect from among its members, at a meeting to be held without an express invitation, a chairman and a deputy chairman for the term of office of the respective elected person as a member of the supervisory board. If the chairman or deputy chairman resigns before the end of his or her term of office, the supervisory board shall, without undue delay, carry out a new election for the residual term of office of the resigning person.
- (2) Declarations of intention by the supervisory board and its committees are made in the name of the supervisory board by the chairman of the supervisory board or his or her deputy, respectively.

**§ 11**

**Meetings of the supervisory board; Passing of resolutions**

- (1) Resolutions by the supervisory board are passed at meetings. Meetings are convened by the chairman in writing with three weeks' notice, stating the topics of the meeting. The chairman may shorten that time limit in urgent cases and may, if necessary, convene meetings orally, by telex, cable, telephone, electronic means, or fax. The time limit of three weeks does not apply to the convening of meetings pursuant to § 110, section 1 German Stock Corporation Act.
- (2) The supervisory board will have a quorum if at least half of its members, of which it is required to be composed, at least, however, three members including the chairman or his or her deputy, are present at the meeting. Members who have their written votes cast by another member of the supervisory board or another eligible person will also be deemed present. Unless provided otherwise by the law or the articles of incorporation, the supervisory board passes its resolutions with a simple majority of the votes cast. In the event of an equality of votes, the chairman will have a casting

vote; in the event of an election, the decision will be made by drawing lots.

- (3) The chairman will determine the method of voting. Votes cast in writing, by telex, cable, telephone, electronic means, or fax will only be admissible if none of the members of the supervisory board objects thereto within a reasonable time limit set by the chairman. The provisions of the foregoing paragraph apply also to votes cast in such manner.
- (4) Minutes shall be taken for each meeting of the supervisory board; those minutes shall be signed by the chairman of the meeting and shall be filed by the Company. The minutes must state the place and date of the meeting, the persons attending, the items on the agenda, the gist of the discussions and the resolutions by the supervisory board.

## § 12

### **Duty to observe secrecy and responsibilities of the members of the supervisory board**

The members of the supervisory board shall observe secrecy in relation to any confidential information and secrets of the Company, viz., trade and business secrets, of which they have become aware as a result of their activities on the supervisory board.

If a member of the supervisory board wishes to disclose any information to third parties, in respect of which information it cannot definitely be excluded that the information is confidential or relates to secrets of the Company, such member shall notify the chairman of the supervisory board in advance and shall give the chairman an opportunity to make comments. Members of the supervisory board, who violate their duty, shall compensate the Company for any resultant damage as joint and several debtors.

**§ 13**

**Committees of the supervisory board**

Provided that the law or the articles of incorporation so permit, the supervisory board may assign individual functions and rights incumbent on it to individual of its members or to the committees appointed from among its members. In the event of an equality of votes, the chairman of the relevant committee will have a casting vote. This applies to the deputy chairman of the supervisory board *mutatis mutandis*. The supervisory board may establish the procedures in relation to any committees or have the relevant committee establish procedures itself.

**§ 14**

**Right to attend general meetings**

- (1) The members of the supervisory board have a right to attend the general meetings of the shareholders. The management board shall send to the members of the supervisory board the agenda of the general meeting and any motions in a timely manner. The management board or the supervisory board shall submit suggestions regarding each item on the agenda to be resolved on by the general meeting; suggestions regarding the election of the members of the supervisory board by the shareholders will not be submitted to the general meeting by the supervisory board as a whole, but only by the members of the supervisory board elected by the shareholders.
- (2) The management board shall notify the supervisory board in writing of the resolutions passed by the general meeting.

**§ 15**

**Rules of procedure**

The supervisory board shall adopt rules of procedure in line with the relevant provisions of the law and these articles of incorporation.

**§ 16**

**Compensation of supervisory board members**

- (1) In addition to a reimbursement of the expenses incurred by them, the members of the supervisory board shall be paid:
  - (a) fixed annual remuneration in the amount of EUR 15,000, payable following the expiry of a fiscal year; and
  - (b) variable annual remuneration. Each member of the supervisory board will receive for the expired fiscal year remuneration in the amount of EUR 1,000, subject to a maximum of EUR 10,000, for each EUR 0.01 of dividends distributed, which exceed EUR 0.24 per ordinary share.
- (2) The chairman of the supervisory board will receive 2.5 times the amount, and his or her deputy will receive 1.5 times the amount, of the total remuneration (fixed and variable remuneration as per paragraphs (a) and (b) of section (1) above). For their activities in a committee of the supervisory board, each member of a committee will receive annual remuneration, payable following the expiry of a fiscal year, of EUR 3,000 for an ordinary member and EUR 5,000 for a chairman, of a committee.
- (3) Members of the supervisory board who are members for part of a fiscal year only will receive lower remuneration on a *pro rata temporis* basis.
- (4) VAT will be reimbursed by the Company, if the members of the supervisory board are entitled to invoice VAT to the Company separately, and exercise that right.

**C. General Meeting**

**§ 17**

**Place of general meeting**

General meetings are held at the Company's corporate seat. General meetings may also be held at the location of a German stock exchange.

**§ 18**

**Convening of general meetings**

- (1) General meetings are convened by the management board or the supervisory board.
- (2) Unless a shorter time limit is admissible by operation of law, general meetings must be convened at least 30 days before the date, until which the shareholders are required to sign up for the general meeting.

**§ 19**

**Attendance at general meetings**

All shareholders are entitled to attend general meetings; only those ordinary shareholders who have provided the Company with evidence of their eligibility to attend general meetings, or to exercise their voting right, in accordance with the provisions of the following three sentences are entitled to exercise a voting right. As evidence of the eligibility to attend general meetings, or to exercise a voting right, a written certificate regarding the shareholding by a institution licensed to hold securities in safekeeping is required, and sufficient; such certificate must be in German or English. In the convening notice, additional languages, in which the certificate may be prepared, as well as other institutions allowed to prepare the certificate, can be permitted. The certificate must refer to the time prior to the general meeting fixed by operation of law, and must be received by the Company at the address advised

therefor within the statutory time limit prior to the general meeting.

## **§ 20**

### **Chairman of general meeting**

- (1) The general meeting is presided by the chairman of the supervisory board; if the chairman of the supervisory board is prevented from attending, the general meeting will be presided by another member of the supervisory board named by the chairman. If neither of those persons takes the chair, the chairman will be elected by the general meeting under the direction of the oldest ordinary shareholder present.
- (2) The chairman chairs the meeting, determines the order of the issues to be discussed and the method of voting.

## **§ 20 (a)**

### **Limitation of shareholders' right to speak at general meetings**

- (1) The chairman of the meeting is entitled to limit the time to speak allotted to the shareholders in accordance with the following provisions:
  - (a) If, according to the agenda (including any minority requests pursuant to § 122 German Stock Corporation Act), resolutions are to be passed only with respect to the items: appropriation of the net earnings for the year; formal approval of the actions of the members of the management board; formal approval of the actions of the members of the supervisory board; election of the auditor; and authorization to acquire shares of company stock, or individual of those items, the chairman of the meeting may limit the time to speak allotted to the shareholders such that the duration of the general meeting will not exceed six hours. In calculating the duration of the general meeting, any periods attributable to interruptions of the general meeting, the speech of the management board, and the statements by the chairman of the meeting before

the commencement of the general debate, will not be counted.

- (b) If, according to the agenda (including any minority requests pursuant to § 122 German Stock Corporation Act), resolutions are also to be passed with respect to items other than those referred to in paragraph (a) above, the chairman of the meeting may limit the time to speak allotted to the shareholders such that the duration of the general meeting will not exceed ten hours. The second sentence of paragraph (a) above applies *mutatis mutandis*.
  - (c) The chairman of the meeting may limit the time to speak allotted to a shareholder to 15 minutes per request to speak, and to 10 minutes, if at least three additional speakers have requested to speak at the time when the shareholder was permitted to speak. The chairman of the meeting may limit the total time to speak allotted to one shareholder during the meeting to 45 minutes.
  - (d) The limitations as per paragraphs (a) through (c) above may be directed by the chairman of the meeting at any time, including at the beginning of the meeting.
  - (e) Any limitations as per paragraphs (a) through (d) above are deemed reasonable for the purposes of the second sentence of § 131, section 2 German Stock Corporation Act.
- (2) Notwithstanding the right of the chairman of the meeting to limit the shareholders' right to speak as per section (1) above, the chairman of the meeting may declare the end of the debate at 10.30 p.m. of the date of the meeting and start the voting with respect to the items on the agenda. After the end of the debate has been so declared, no additional questions may be asked.
- (3) The right of the chairman of the meeting to limit the shareholders' right to speak beyond the scope of the provisions of sections (1) and (2) above in accordance with statutory regulations or other principles acknowledged according to court rulings,

remains unaffected by the provisions of sections (1) and (2) above.

**§ 21**

**Voting right; Voting**

- (1) Each ordinary share grants one vote at the general meeting.
- (2) The preferred shareholders have no voting right. If, however, the preferred shareholders have a voting right based on mandatory provisions of the law, each preferred share will grant one vote.
- (3) Unless provided otherwise by mandatory provisions of the law or the articles of incorporation, the general meetings passes its resolutions with a simple majority of the votes cast and, if a capital majority is required, with a simple majority of the stated capital represented at the passing of the resolution.
- (4) If, in the case of elections, a simple majority of the votes is not reached in the first ballot, a second ballot will be conducted between those two persons who were given the highest number of votes. In the event of an equality of the number of votes in the second ballot, if the chairman of the general meeting is an ordinary shareholder, the chairman, and otherwise, the oldest ordinary shareholder among the members of the supervisory board appointed by the shareholders or, alternatively, the oldest ordinary shareholder participating in the ballot, will have a casting vote.

**D. The Advisory Board**

**§ 22**

### **Advisory board**

The management board may, with the consent of the supervisory board, set up an advisory board to advise the management board and to establish closer contacts with science, research, and the economy and may adopt rules of procedure for the advisory board, appoint and dismiss its members, and determine the members' remuneration.

## **IV.**

### **Annual Financial Statements; Appropriation of the Profit**

#### **§ 23**

##### **Fiscal year; Annual financial statements and appropriation of the profit**

- (1) The fiscal year of the Company is the calendar year.
- (2) In the first three months of a fiscal year, the management board shall prepare the annual financial statements (balance sheet, statement of income, notes), as well as the management report, for the preceding fiscal year and shall submit the same to the supervisory board without undue delay following their preparation. The management board shall at the same time submit to the supervisory board its proposal regarding the resolution by the general meeting on the appropriation of the net earnings for the year.
- (3) The supervisory board and the management board may, by a joint resolution, transfer up to half of the net profit for the fiscal year to other profit reserves.

#### **§ 24**

##### **Regular general meeting**

The regular general meeting is held within the first eight months of a fiscal year. The regular general meeting resolves, in particular, on the appropriation of the net earnings for the year, the election of the auditor, the formal approval of the actions of the members of the management board and the supervisory board, the election of members of the supervisory board and - in the cases provided for by the law - the approval of the annual financial statements.

## § 25

### **Appropriation of the profit**

- (1) A preferred dividend of EUR 0.11 per share will be paid from the net earnings for the year for the non-voting preferred shares (§ 4 above).
- (2) If the net earnings for one fiscal year or several fiscal years are insufficient to make the advance distribution of at least EUR 0.11 per preferred share, the missing amounts will be paid, without interest, from the net earnings for the subsequent fiscal years following the distribution of the profit share on the preferred shares for those fiscal years, and before the distribution of a dividend on ordinary shares. The claim to such subsequent payment forms part of the profit share for the fiscal year, from the net earnings of which the subsequent payment on the preferred shares is made.
- (3) Following the distribution of the preferred dividend of EUR 0.11 per non-voting preferred share (section (1) above) and the subsequent payment of any profit shares in arrears on the preferred shares from previous years (section (2) above), a profit share of up to EUR 0.11 per share will be paid on the preferred shares. Following the distribution of a profit share of EUR 0.11 per preferred share, preferred shares and ordinary shares will participate in a subsequent distribution of profits, in the proportion of their prorated portions of the stated capital, in such a manner that an additional dividend of EUR 0.06 per share will be paid on the preferred shares in addition to the dividend on the ordinary shares.
- (4) If the Company has issued participation certificates, and if the relevant conditions

regarding the participatory rights provide for a claim by the holders of the participation certificates to distributions from the net earnings for the year, the shareholders' claim to such portion of the net earnings for the year will be excluded (§ 58, section 4 German Stock Corporation Act).

**§ 26**

**Partial payments on the net earnings for the year**

Following the expiry of a fiscal year, the management board may, with the consent by the supervisory board, pay a partial dividend to the shareholders within the scope of § 59 German Stock Corporation Act.

**V.**

**Final Provisions**

**§ 27**

**Amendment to the articles of incorporation by the supervisory board**

The supervisory board is authorized to resolve on amendments to the articles of incorporation which relate exclusively to the wording.

**§ 28**

**Partial invalidity**

Should any of the provisions of these articles of incorporation, or a future provision of these

articles of incorporation, be ineffective or impracticable in whole or in part, or lose its effectiveness or practicability in the future, the validity of these articles of incorporation as a whole will not be affected thereby. The same applies, should it turn out that there is a gap in these articles of incorporation. In lieu of any ineffective or impracticable provision, or to fill the gap, a reasonable provision shall apply which - to the fullest extent permitted by law - comes closest to what the shareholders intended, or would have intended in accordance with the intent and purpose of these articles of incorporation, had they considered the issue at the resolution on these articles of incorporation, or the supplement. This will also apply if the ineffectiveness of a provision is based on a degree of performance or time (time limit or fixed date) provided for in these articles of incorporation; in such case, a legally admissible degree of performance or time, which comes closest to what had been intended, shall replace what had been agreed.