

**– CONVENIENCE TRANSLATION ONLY –**

**Joint Report**

**by the Management Board of Cherry SE, Munich,  
and the Management of Cherry Peripherals GmbH, Munich,**

**according to section 293a German Stock Corporation Act on the conclusion and con-  
tents of the**

**Profit and Loss Transfer Agreement of 20 March 2023**

**between Cherry SE, Munich  
and Cherry Peripherals GmbH, Munich**

## I. Preliminary remark

The management board of Cherry SE with its registered office in Munich, registered in the Commercial Register of Munich Local Court under HRB 280912 (also referred to below as the “**Controlling Company**”), and the management of Cherry Peripherals GmbH with its registered office in Munich, registered in the Commercial Register of Munich Local Court under no. HRB 280487 (also referred to below as the “**Controlled Company**”), hereby jointly submit the following report pursuant to section 293a of the German Stock Corporation Act (*Aktiengesetz*, AktG) (also referred to below as the “**Agreement Report**”) regarding the Profit and Loss Transfer Agreement (*Gewinnabführungsvertrag*) dated 20 March 2023 between the Controlling Company and the Controlled Company (also referred to below as the “**Agreement**”). The Agreement is attached to the Agreement Report as **Annex 1**. The purpose of the Agreement Report is to inform the Controlling Company’s shareholders in preparation for the Annual General Meeting of the Controlling Company on 17 May 2023.

## II. Introduction

The Agreement between the Controlled Company, as the company transferring its profits, and the Controlling Company, as the other party to the contract, was signed on 20 March 2023 by the Controlled Company’s management and the Controlling Company’s management board. In the Agreement the Controlled Company agrees to transfer its entire profits to the Controlling Company. The Controlling Company itself agrees to assume the Controlled Company’s losses. The Agreement requires the consent of the Controlling Company’s general meeting and the consent of the Controlled Company’s shareholders’ meeting in order to be effective. The Annual General Meeting of the Controlling Company will be holding a resolution on whether to approve the Agreement on 17 May 2023. The shareholders’ meeting of the Controlled Company will subsequently hold a resolution on whether to approve the Agreement.

The Agreement will become effective when its existence is entered in the commercial register at the Local Court Munich at the registered office of the Controlled Company. The duty to transfer profits and to assume losses will, however, apply from the commencement of the financial year in which the Agreement becomes effective.

## III. Parties to the Agreement

The parties to the Agreement are Cherry SE, as the Controlling Company, and Cherry Peripherals GmbH, as the Controlled Company.

### 1. Controlling Company

The Controlling Company is a European company (*Societas Europaea*, SE) incorporated under German law with its registered office in Munich. It is registered in the Commercial Register of Munich Local Court under HRB 280912. The Controlling Company was founded in the 2019 financial year as Cherry AcquiCo GmbH and activated in the 2020 financial year by economic re-establishment. With effect from

19 April 2021, Cherry Holding GmbH with registered office in Auerbach was merged into the Controlling Company. With effect from 20 April 2021, the business name of the Controlling Company was subsequently changed to Cherry Holding GmbH. With effect from 2 June 2021, the Controlling Company was converted into a stock corporation under the business name Cherry AG by way of a change of legal form. The general meeting of Cherry AG on 8 June 2022 resolved on the conversion into an SE by way of a change of legal form in accordance with the Terms of Conversion dated 8 April 2022. On 13 December 2022, the conversion into the legal form of an SE became effective upon registration in the commercial register.

The Controlling Company has the function of a holding company. As the ultimate parent company of the Cherry Group, the Controlling Company holds direct and indirect interests in a total of thirteen subsidiaries of the Controlling Company. These comprise three direct and two indirect subsidiaries in Germany and eight indirect subsidiaries outside Germany. All subsidiaries are wholly owned, and a total of twelve of these subsidiaries have operating activities.

The Cherry Group is a globally operating manufacturer of high-end mechanical keyboard switches and computer input devices such as keyboards, mice, and headsets for applications in the worlds of gaming, e-sports, office and hybrid workplaces, industry, and healthcare. Since it was founded in 1953, the Cherry Group has been synonymous with innovative, high-quality products developed specifically to meet the various needs of its customers.

The Cherry Group has its operational headquarters in Auerbach in the Upper Palatinate region of Bavaria and employed 490 people as of December 31, 2022 in production facilities in Germany (Auerbach), China (Zhuhai) and Austria (Vienna) as well as in several sales offices in Germany (Munich, Auerbach, Pegnitz), France (Paris), USA (Kenosha), China (Shanghai), Taiwan (Taipei) and Hong Kong. The Cherry Group is also represented by its own sales teams in England and Sweden.

The Cherry Group's commercial activities can be divided into two key business areas: GAMING and PROFESSIONAL, which each consolidate different business units. The GAMING business area comprises business with mechanical switches ("Components") as well as the sale of its own gaming peripherals ("Gaming Devices"). The PROFESSIONAL business area comprises business with peripherals for use in office and industrial applications ("Peripherals") as well as safe, hygienic peripherals for the digital healthcare sector ("Digital Health").

The Components business unit is already celebrating its 40<sup>th</sup> anniversary in the 2023 financial year. In 1983, the Cherry Group invented the first mechanical switches for keyboards and has since been a leading supplier of these components. Cherry Europe GmbH, a direct subsidiary of the Controlling Company, manages development, production, and sales from its operational headquarters in Auerbach. Cherry Group's products are manufactured on various automatic assembly machines of different technological generations and capacities. The Cherry Group ensures

compliance with its own quality requirements via testing procedures integrated in its production processes. The switches are sold primarily to globally operating vendors of gaming peripherals using a B2B marketing approach and supplied via distribution warehouses located in Auerbach and Hong Kong. The Cherry Group's exceptional level of brand recognition in the market for mechanical keyboard switches enables it to pursue a pull strategy by having the world's leading peripherals suppliers recommend its switch technology to their end customers.

The Cherry Group also offers a wide range of its own PC gaming peripherals, including keyboards, mice, and headsets – all precisely tailored to meet the needs of professional users in the worlds of gaming and e-sports. The Cherry Group's products are manufactured at the Group's plant in Zhuhai (China) using almost fully automated assembly equipment and processes. The Cherry Group's in-house developed gaming peripherals are primarily sold via distributors and online platforms in the major gaming markets of Asia. In the 2022 financial year, the geographical focus was on China as the largest single market as well as on South Korea. Cherry Group was also present in other Southeast Asian markets such as Indonesia, Malaysia, and Hong Kong as well as Australia.

The PROFESSIONAL business area offers peripherals that have been specially developed for both (hybrid) office use and industrial applications. The corresponding devices for this user group essentially include keyboards, mice, desktop combinations, PoS devices, and secure input devices. These peripherals are manufactured on the basis of Cherry Group specifications, designs, and quality requirements by selected production partners abroad or at the Cherry Group's own manufacturing facilities in Zhuhai, China. The entire product portfolio for (hybrid) office workstation applications comprises a larger number of different products in numerous colour and country variants. Using a B2B approach, Cherry Group's products are mainly sold by regional and national distributors in Europe, the USA, and Asia, who resell them to end users both online and offline via various sales channels (sub-distributors, resellers, systems houses, retailers, and e-tailers). Cherry E-Commerce GmbH, an indirect subsidiary of the Controlling Company with its shares directly held by the Controlled Company, also sells the products using a B2C approach via major e-commerce platforms such as Amazon and other online marketplaces.

Finally, within its PROFESSIONAL business area, the Cherry Group focuses on developing, manufacturing, and selling innovative, tamper-proof peripherals capable of a wide range of functions for workstations in the digital healthcare sector. Cherry Group has been approved as one of only two providers of systems for connecting to the German telematics infrastructure (TI) in the healthcare sector. The Cherry Group's eHealth Terminal ST-1506 is certified by the German Federal Office for Information Security (BSI) and distributed via specialized systems integrators to all TI user groups such as hospitals, doctors' surgeries, pharmacies, and other user groups. The SMD circuit boards are manufactured and the terminal devices assembled at the production site of Theobroma Systems Design und Consulting GmbH, an indirect subsidiary of the Controlling Company, in Vienna, Austria. The market for telematics

infrastructure in the German healthcare sector presents a high barrier to market entry for potential competitors due to its strict security and certification requirements. The Cherry Group is also represented by Active Key GmbH, an indirect subsidiary of the Controlling Company, in the market segment for hygienic, washable keyboards and mice.

The statutory objects of the Controlling Company's business are:

The holding, management, acquisition and sale of participations in other companies, in particular in companies which are directly or indirectly engaged in the development and design, manufacture, distribution, import and export of computer input devices, mechanical switches and hardware as well as IT-based and IT-supporting products and peripheral devices, including security systems and other systems and software, as well as the provision of services (including the provision of administrative and management services) which are not subject to authorization to other companies and including Group companies, inter alia in the areas of Finance, Human Resources, IT, Controlling, Data Protection, Materials Management, Order Management, Logistics & Warehouse management, strategic and operative Purchasing and Procurement as well as Customer Service department.

The Controlling Company is entitled to perform all acts, take all steps and conduct all kind of transactions which relate to the object of the company or which is appropriate to directly or indirectly further the attainment of the object of the company. In particular, the company may also assume the position of general partner in companies. It may also establish or acquire enterprises in Germany or abroad and participate in such enterprises as well as manage such enterprises or confine itself to the management of its participation. It can completely or partially have its operations, including the participations it holds, conducted by affiliated companies or transfer or outsource its operations to such affiliated companies and may conclude intercompany agreements. The Controlling Company may also establish branch offices and permanent establishments in Germany and abroad. It may limit its activity to a part of the areas designated in the subsection above.

The Controlling Company's share capital amounts to EUR 24,300,000.00 and at the time of submission of this Agreement Report it is divided into 24,300,000 ordinary bearer shares in the form of no-par value bearer shares. Each share carries one vote in the general meeting.

All shares in the Controlling Company are traded on the Regulated Market of Frankfurt Stock Exchange in the Prime Standard sub-segment under ISIN DE000A3CRRN9 and WKN A3CRRN. The shares can furthermore be traded in over-the-counter trading on the Berlin, Dusseldorf, Hamburg, Hanover, Munich and Stuttgart stock exchanges and via the XETRA electronic trading platform of Deutsche Börse AG.

Subject to the approval of the supervisory board, the management board of the Controlling Company is authorised to increase the share capital of the Controlling

Company by a maximum of EUR 10,000,000.00 through the issuance of up to 10,000,000 new no-par value bearer shares in return for contributions in cash and/or in kind until 10 June 2026 (Authorised Capital 2021/I).

The share capital of the Controlling Company is conditionally increased by up to EUR 10,000,000.00, divided into up to 10,000,000 no-par value bearer shares (Conditional Capital 2021/I). The Conditional Capital 2021/I is to be used to grant shares when option or conversion rights are exercised and when fulfilling option or conversion obligations towards the holders of convertible bonds and/or bonds with warrants, profit participation rights and/or participating bonds (or a combination of these instruments) issued up to 22 June 2026 on the basis of the resolution of the general meeting of 23 June 2021 authorising this.

Article 7(1) of the Controlling Company's articles of association states that the Controlling Company's management board consists of one or more persons. The supervisory board determines the number of management board members. According to Article 8(2) of the Controlling Company's articles of association, the Controlling Company is represented by the management board. At the time of submission of this Agreement Report, the Controlling Company's management board consists of two members: Oliver Kaltner and Dr Udo Streller. If only one management board member is appointed, that member will represent the Controlling Company alone. If several management board members are appointed, the Controlling Company will be represented by two management board members jointly or by one management board member together with a person holding general commercial power of representation (*Prokurist*).

Article 10(1) of the Controlling Company's articles of association states that the Controlling Company's supervisory board consists of seven members who are elected by the general meeting. At the time of submission of this Agreement Report, the Controlling Company's supervisory board consists of the following members: Marcel Stolk (Chairman), James Burns, Joachim Coers, Heather Faust, Steven M. Greenberg, Tariq Osman and Dino Sawaya.

The Controlling Company employed a total of 79 employees as at 31 December 2022.

The Controlling Company has unlimited liability for corporate income tax and trade tax in Germany.

The Controlling Company's financial year is the calendar year.

The Controlling Company (as Cherry AcquiCo GmbH) did not carry on any business in the 2019 financial year and was only activated by economic re-establishment in the 2020 financial year. In the 2020 financial year, the Controlling Company's annual accounts showed an annual deficit in the amount of TEUR -3,935 which was reduced to TEUR -2,251 in the 2021 financial year. The Controlling Company's consolidated financial statements report a consolidated result of TEUR 7,571 for the 2020 financial year and TEUR 9,287 for the 2021 financial year.

In the financial year most recently ended on 31 December 2022, the Controlling Company generated an annual deficit of TEUR -4,565. The consolidated financial statements of the Controlling Company report a consolidated result of TEUR -35,728 for the 2022 financial year.

The Controlling Company's balance sheet reports a consolidated balance sheet total of TEUR 379,066 as at 31 December 2022. Equity amounted to TEUR 251,826, with an equity ratio of around 66.4% on 31 December 2022.

## 2. Controlled Company

The Controlled Company is a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under German law with its registered office in Munich. It is registered in the Commercial Register of Munich Local Court under HRB 280487.

The statutory objects of the Controlled Company's business are:

The development, manufacture and distribution of mechanical switches, IT peripherals, security systems, software, their import and export and the trade in purchased IT peripherals, security systems, software, the provision of development and service activities in the field of IT.

The Controlled Company may conduct all transactions and perform all actions, that are suitable to directly or indirectly serve the purpose of the company, including the acquisition of participations in other companies and establishing branches in Germany and abroad.

The Controlled Company was established as heptus 501 GmbH on 24 November 2022 as a shelf company, which was activated through economic re-establishment in December 2022. The business name of the Controlled Company was changed to Cherry Peripherals GmbH with effect from 13 December 2022. The Controlled Company has a share capital of EUR 25,100.00. The Controlling Company is the sole shareholder of the Controlled Company.

According to Article 6(1) of the Controlled Company's articles of association, the Controlled Company has one or more managing directors (*Geschäftsführer*). At the time of submission of this Agreement Report, the Controlled Company's management consists of the sole managing director Dr Udo Streller.

If only one managing director is appointed, then the director will represent the Controlled Company alone pursuant to Article 6(1) of the Controlled Company's articles of association. If several managing directors are appointed, then the Controlled Company will be represented by two managing directors or by one managing director together with a person holding general commercial power of representation (*Prokurist*). The shareholders' meeting can grant individual managing directors the right to represent the company alone. In the same way, all managing directors or individual managing directors can be exempted from the restrictions of section 181 German

Civil Code (*Bürgerliches Gesetzbuch*, BGB) so that they have unlimited authority to represent the company when performing legal transactions with themselves or as a representative of a third party. The managing director in office at the time of submission of this Agreement Report is exempted from the prohibition of multiple representation under section 181, second alternative of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).

The Controlled Company did not have any employees as at 31 December 2022.

The Controlled Company has unlimited liability for corporate income tax and trade tax in Germany.

The Controlled Company was founded as heptus 501 GmbH as a shelf company by registration with the commercial register on 24 November 2022, which was only activated through economic re-establishment in December 2022. It was not operationally active in the 2022 financial year, so that no approved annual financial statements and management reports are available for the Controlled Company.

Subject to the occurrence of unexpected events and based on the current scope of business activities, the management of the Controlled Company expects a slightly positive result of the Controlled Company for the financial years 2023 through 2026.

#### **IV. Legal and commercial reasons for entering into the Profit and Loss Transfer Agreement**

The Controlling Company holds all the shares in the Controlled Company. This means that entering into a profit and loss transfer agreement provides the possibility of establishing a tax group between the Controlling Company and the Controlled Company for both corporate income and trade tax purposes. Due to the tax group relationship, the Controlled Company's income will be directly attributed to the Controlling Company for the purposes of corporate income tax and trade tax. Consequently, positive and negative results within the tax group can be offset for tax purposes at the level of the Controlling Company. This can lead to tax advantages, depending on the tax situation of the companies included in the tax group in terms of their results. Without a profit and loss transfer agreement, offsetting earnings for tax purposes in this way is not possible; profits of the Controlled Company could at best be distributed to the Controlling Company by way of a profit distribution. In this case, according to current tax law 5% of the profits distributed would in principle be subject to corporate income tax and trade tax at the Controlling Company.

There is no economically reasonable alternative to entering into the Profit and Loss Transfer Agreement. According to the first sentence of section 14(1) of the German Corporate Income Tax Act (*Körperschaftsteuergesetz*, KStG) in conjunction with the first sentence of section 17(1) of the German Corporate Income Tax Act and the second sentence of section 2(2) of the German Trade Tax Act (*Gewerbsteuergesetz*, GewStG), entering into the Profit and Loss Transfer Agreement is a mandatory requirement for a corporate income and trade tax group between the Controlled



Company and the Controlling Company. The tax advantages explained above can only be realised through the Profit and Loss Transfer Agreement.

In particular, a change the Controlled Company's legal form into a partnership does not lead to an equivalent result for tax purposes, since the Controlled Company's income would be subject to taxation at the level of the partnership for trade tax purposes, whereas in the case of a tax group it is taxable at the level of the Controlling Company and can be offset there against any negative income of the Controlling Company.

Merging the Controlled Company into the Controlling Company is also not a preferable alternative because the Controlled Company would then lose its legal independence. Such a change in the legal organisation of the Cherry Group is currently not intended.

Additionally entering into a control agreement was not necessary from a tax point of view and also because of the sufficient possibilities to influence the Controlled Company due to the Controlling Company's status as sole shareholder. The shareholders' meeting of the Controlled Company has a right to issue instructions to its management.

## **V. Explanations on the contents of the Agreement**

The Agreement involves a profit and loss transfer agreement within the meaning of section 291(1), first sentence, second alternative German Stock Corporation Act that can be entered into on a private contractual basis. It requires the approval of the general meeting of the Controlling Company and the shareholders' meeting of the Controlled Company. Its existence has to be entered in the commercial register of the Local Court Munich responsible for the Controlled Company.

The contents of the Agreement are based on the statutory requirements in section 291 onwards of the German Stock Corporation Act and are essentially limited to the necessary provisions, supplemented by terms arising from the requirements for recognition of the desired income tax group.

The following should be noted with regard to the individual terms of the Agreement:

### **1. Profit transfer (clause 1 of the Agreement)**

Clause 1(1) of the Agreement contains the obligation characteristic of a profit and loss transfer agreement for the Controlled Company to transfer its entire profits to the other party to the contract. The Controlled Company agrees to transfer its entire profits to the Controlling Company in accordance with paragraph 2 (subject to other retained earnings created and dissolved in accordance with clause 2). The transfer of profits pursuant to the first sentence of section 14(1) of the German Corporate Income Tax Act in conjunction with the first sentence of section 17(1) of the German

Corporate Income Tax Act is essential for the tax group between the Controlled Company and Controlling Company to be effective.

The scope of the profit transfer is described in more detail in clause 1(1), (2) and (3) of the Agreement. In this respect, clause 1(1) and (4) of the Agreement state that section 301 German Stock Corporation Act applies as appropriate and by analogy. The latest applicable provision in section 301 German Stock Corporation Act regarding the maximum value of the profits transferred is incorporated into the Agreement by analogy, i.e. by dynamic reference. This dynamic reference takes into account possible future changes in the items to be deducted in section 301 German Stock Corporation Act.

According to section 301 of the version of the German Stock Corporation Act currently in force, a company can transfer no more than the net profit for the year arising before profits are transferred, less any loss carried forward from the previous year, the amount that has to be allocated to the statutory reserves under section 300 of the German Stock Corporation Act and the amount excluded from distributions under section 268(8) German Commercial Code (*Handelsgesetzbuch*, HGB), as its profits.

The income tax group in principle requires the entire profits of the Controlled Company to be transferred; creating revenue reserves from the earnings generated by the Controlled Company is only permitted under certain circumstances. According to the first sentence of clause 1(2) of the Agreement, the Controlled Company may only place amounts from the annual net profits in other retained earnings within the meaning of section 272(3) German Commercial Code with the approval of the Controlling Company to the extent permitted under commercial law and economically justified based on reasonable commercial judgement. This wording is based on the wording of section 14(1), first sentence, no. 4 German Corporate Income Tax Act in conjunction with section 17(1), first sentence German Corporate Income Tax Act. There must be a specific reason for creating the reserves. The profits to be transferred by the Controlled Company to the Controlling Company are then reduced by this amount.

Other retained earnings according to section 272(3) German Commercial Code that are set aside during the term of the Agreement are to be dissolved at the request of the Controlling Company and to be transferred as profit under the provision in clause 1(2), second sentence of the Agreement. Clause 1(3) of the Agreement states that transferring amounts from the dissolution of other retained profits and from profits carried forward created from or arising from profits which were generated before the financial year in which the Agreement becomes effective and capital reserves within the meaning of section 272(2) German Commercial Code created before or during the term of the Agreement is excluded. The distribution of profits from the dissolution of such pre-contractual other retained earnings and such capital reserves created under section 272(2) German Commercial Code before or during the term of the Agreement outside the Agreement is permitted.

The provisions agreed under clause 1 of the Agreement correspond to the typical provisions regarding compensation for losses contained in profit and loss transfer agreements and are based closely on the statutory provisions.

## **2. Assumption of losses (clause 2 of the Agreement)**

The transfer of profits corresponds to the Controlling Company's obligation provided for under the law on public limited companies in section 302 German Stock Corporation Act to compensate losses at the Controlled Company. Under section 302 German Stock Corporation Act, an assumption of losses is the mandatory consequence of a profit and loss transfer agreement.

As a result of the obligation to compensate losses, the Controlling Company effectively bears the economic risk of the Controlled Company (see Part A.III.2 above of this Agreement Report regarding the economic situation of the Controlled Company). This ensures that the balance sheet equity of the Controlled Company existing at the time the Agreement becomes effective is not reduced during the term of the Agreement. This obligation to offset losses serves to safeguard the pecuniary interests of the Controlled Company, its shareholders and creditors during the existence of the Agreement.

According to clause 2 of the Agreement, the provisions of section 302 German Stock Corporation Act, as amended from time to time, apply to the requirement to assume any losses. Section 17(1), second sentence, no. 2 German Corporate Income Tax Act provides that it is essential that the assumption of losses is agreed by reference to the provisions of section 302 German Stock Corporation Act, as amended from time to time, so that the tax group between the Controlled Company and the Controlling Company is effective.

Under the version of section 302(1) German Stock Corporation Act in force at the time this Agreement Report is submitted, the Controlling Company's obligation to assume losses only applies to the extent that a net loss for the year which would otherwise arise is not offset by withdrawing amounts from other revenue reserves that were allocated to them during the term of the Agreement. Thus if other revenue reserves were formed during the term of the Agreement, they may be released in order to offset losses in subsequent years instead of the Controlling Company making compensation payments to offset these losses.

The provisions agreed under clause 2 of the Agreement correspond to the typical provisions regarding compensation for losses contained in profit and loss transfer agreements and are based closely on the statutory provisions.

## **3. Due dates, advance payments (clause 3 of the Agreement)**

Under clause 3(1) sentence 1 of the Agreement the obligation to transfer profits or compensate losses arises on the Controlled Company's balance sheet date (currently

31 December) and is due on this date. The claim shall bear interest at arm's length pursuant to clause 3(1) sentence 2.

Clause 3(2) specifies that the Controlling Company may claim advance payments towards a transfer of profits to which the Controlling Company is expected to be entitled for the financial year prior to the due date, provided that the Controlled Company's liquidity permits such advance payments. The Controlled Company may claim advance payments towards a net loss expected to be compensated for the financial year to the extent that it requires such advance payments considering its liquidity. Possible advance payments are to be offset against the value of the profit transfer actually due or the net loss for the year actually to be compensated. If and to the extent that the advance payments exceed these actual claims, this difference is to be reimbursed by the recipient of the advance payments.

**4. Compensation and settlement by analogy with sections 304 et seq. German Stock Corporation Act (clause 4 of the Agreement)**

According to clause 4 of the Agreement, compensation or settlement by analogy with sections 304 et seq. German Stock Corporation Act to external shareholders will not take place as the Controlled Company does not have any external shareholders.

**5. Effective date, term of the Agreement (clause 5 of the Agreement)**

Clause 5(1) of the Agreement starts by making clear that the Agreement requires the approval of the shareholders' meeting of the Controlled Company and the general meeting of the Controlling Company in order to be effective.

According to clause 5(2) of the Agreement, the Agreement will become effective upon being entered in the commercial register responsible for the Controlled Company and will then apply for the entire financial year running at the time of entry in the commercial register.

The remaining text of the Agreement contains provisions on the term and termination of the Agreement. Clause 5(3) of the Agreement states that the Agreement is entered into for an unlimited period of time. According to clause 5(4) of the Agreement, it can be terminated both by the Controlling Company and by the Controlled Company with due notice observing a notice period of three (3) months to the end of a financial year of the Controlled Company, but no earlier than at the end of the financial year after the expiry of which the minimum tax term of a profit and loss transfer agreement prescribed in section 14(1) no. 3 of the German Corporate Income Tax Act required for recognition of the corporate income and trade tax group has been fulfilled (according to the current legal situation five (5) years (60 months)), calculated from the start (00.00 hours) of the financial year in which the Agreement became effective by being registered in the commercial register responsible for the Controlled Company ("Minimum Term"). If the Agreement is registered in the financial year commencing on 1 January 2023, the Minimum Term will expire at the close (midnight) of 31 December 2027 or, if no financial year of the Controlled Company ends

on that date, at the close of the financial year in progress on that date. This ensures that the minimum term required for recognition of a tax group relationship is complied with.

Clause 5(5) states that this is without prejudice to the right to terminate for cause without observing a notice period. The Controlling Company is in particular but not exclusively entitled to terminate for cause if the recognition of the Agreement for tax purposes is denied with legally binding effect by a tax notice or judgment or is in danger of being denied on the basis of administrative orders, the Controlling Company no longer holds a majority of the equity capital or voting rights in the Controlled Company, good cause within the meaning of Guideline 14.5(6) German Corporate Income Tax Guidelines (*Körperschaftsteuer-Richtlinien*, KStR) or of an equivalent provision which is applicable at the time of termination of the Agreement otherwise exists, or an external shareholder holds an interest in the Controlled Company for the first time in analogy with section 307 German Stock Corporation Act as amended. Alongside this there is the possibility to give early notice for cause without observing a notice period, as set out in section 297 German Stock Corporation Act and contained in section 14(1), first sentence, no. 3, second sentence German Corporate Income Tax Act in conjunction with the section 17(1), first sentence German Corporate Income Tax Act, which cannot be excluded by contract.

Clause 5(6) of the Agreement defines that any notice of termination of the Agreement must be made in writing and signed. If the Agreement ends, the Controlling Company is required to provide the Controlled Company's creditors with security in line with section 303 German Stock Corporation Act (clause 5(7) of the Agreement).

## **6. Contract amendment (clause 6 of the Agreement)**

According to clause 6 of the Agreement, any amendments or additions to the provisions of the Agreement, including the clause regarding signed written form, must be in writing and signed in order to be effective.

## **7. Final provisions (clause 7 of the Agreement)**

Clause 7(1) of the Agreement contains a typical "severability clause" and is intended to ensure that the Agreement is upheld if any of the provisions of the Agreement should be or become ineffective or void, whether in part or in whole, or if it should contain any omissions. The contractual provision concerned is to be replaced with another provision which comes as close as possible to the intended purpose.

Clause 7(2) makes clear that references to statutory provisions refer to the latest version of the relevant statutory provisions unless otherwise explicitly agreed in the Agreement.

**VI. No special consequences of the Agreement for the shareholders' holdings**

Apart from the Controlling Company's obligation to assume losses, there are no special consequences for the holdings of the Controlling Company's shareholders, since in the absence of any external shareholders at the Controlled Company the Controlling Company in particular is not liable for any compensation or settlement payments.

**VII. No review of the Agreement**

As the Controlling Company is the Controlled Company's sole shareholder, the Agreement did not have to be reviewed by one or more expert auditors as contract auditors in accordance with section 293b(1) German Stock Corporation Act. Such a review therefore did not take place and will not take place.

**The summary assessment of the Agreement shows that the Agreement is advantageous for both Cherry SE as Controlling Company and Cherry Peripherals GmbH as Controlled Company.**