

## **CONVENIENCE TRANSLATION ONLY**

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### **Cherry AG, Munich**

Change in legal form to a European company (Societas Europaea, SE) under the name of Cherry SE, Munich

Report on the audit of capital coverage in accordance with Article 37(6) SE Regulation

25 April 2022

Ernst & Young GmbH  
Wirtschaftsprüfungsgesellschaft

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List of abbreviations used

EUR	Euro
Cherry AG	Cherry AG, Munich
Cherry SE	Cherry SE, Munich
Cherry Group	Cherry AG, Munich, including its subsidiaries
Company	see Cherry AG
IDW	Institute of Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland e.V.)
IDW RS HFA 10	IDW accounting opinion: <i>Application of the Principles of IDW S 1 in the Valuation of Investments and Other Company Shares for the Purposes of Financial Statements under Commercial Law</i> (as of 29 November 2012).
IDW S 1	IDW Standard: <i>Principles for the Performance of Company Valuations</i> (IDW S 1 in the version dated 2 April 2008)
SE	Societas Europaea (European public limited-liability company)
SE Regulation	Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

**A. ENGAGEMENT AND EXECUTION OF THE ENGAGEMENT**

Cherry AG (hereinafter also “Company” or “Cherry AG”) with registered seat in Munich, registered with the commercial register of the Munich local court under HRB 266697, intends to convert its legal form to that of a European public limited-liability company (Societas Europaea or SE) with the company name Cherry SE (hereinafter “Cherry SE”) in accordance with Article 2(4) in conjunction with Article 37 SE Regulation.

Before gaining the consent of the General Meeting to the conversion, in accordance with Article 37(6) SE Regulation an independent expert must certify that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the statutes (“adequate capital coverage”).

In this context, at the request of Cherry AG and its Management Board, the chairmen of the 5th Division for Commercial Matters at Munich Regional Court I appointed us, by decision of 3 February 2022, as independent experts in accordance with Article 37(6) SE Regulation in conjunction with sections 60 and 10 German Conversion Act (*UmwG*).

In our engagement agreement dated 15 February 2022, Cherry AG instructed us to audit the fair value of the nominal amount of the subscribed capital plus those reserves which must not be distributed under the law or the statutes and to produce a certificate of the fair value of the net assets.

We conducted the audit from February to April 2022. Our work is based on the status of knowledge of 25 April 2022. In conducting the audit we had access to the following key documents:

- ▶ Financial statement of Cherry AcquiCo GmbH, Munich for the financial year 2020 and the financial statement of Cherry AG, Munich for the financial year 2021;
- ▶ Consolidated financial statements of Cherry AcquiCo GmbH, Munich, and of Cherry Holding GmbH, Auerbach, for the financial year 2020 and the consolidated financial statements of Cherry AG, Munich, for the financial year 2021;
- ▶ Mid-term planning of Cherry Group for the years 2022 to 2026;
- ▶ Terms of Conversion for the change of legal form of Cherry AG with its seat in Munich into the legal form of a European company (notarized version dated 8 April 2022, deed roll number H 1549/2022 of the notary Sebastian Herrler, Munich)

- ▶ Draft Conversion Report of the Management Board of Cherry AG on the change of legal form of Cherry AG with its seat in Munich into the legal form of a European company version dated 21 April 2022;
- ▶ Articles of Association of Cherry AG in the version dated 23 June 2021;
- ▶ Articles of Association of Cherry SE in the version of the Annex to the Terms of Conversion in the notarized version dated 8 April 2022 (deed roll number H 1549/2022 of the notary Sebastian Herrler, Munich);
- ▶ Company's valuation observations regarding the corporate value of Cherry AG including its holdings; and
- ▶ Various other financial and legal supporting documentation.

Additional information was willingly provided to us by the Management Board of Cherry AG and the employees it instructed.

We performed our audit on the basis of the information, documents and workings of Cherry AG. We did not perform any independent valuation work.

In performing our audit, we observed the *Principles for the Performance of Company Valuations* in accordance with Standard S 1 as amended on 2 April 2008 by the Institute of Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland e.V.). (IDW S 1 in the version of 2 April 2008) as well as the IDW opinion *Application of the Principles of IDW S 1 in the Valuation of Investments and Other Company Shares for the Purposes of Financial Statements under Commercial Law* (IDW RS HFA 10), as this is a change of legal form in which creditor protection and debt coverage potential are to be taken into account.

The Management Board of Cherry AG has given us a letter of representation to the effect that all information relevant to the preparation of this audit has been made available to us accurately and in full.

We did not perform our own auditing procedures within the meaning of section 316 onwards of the German Commercial Code. These were not part of our engagement.

The General Terms and Conditions for auditors and audit companies as of 1 January 2017 issued by the Institute of Auditors in Germany (*Institut der Wirtschaftsprüfer in Deutschland e.V.*), attached as an annex, are authoritative for the performance of the engagement and our responsibility and liability, also in relation to third parties. Accordingly, under No. 9 of the General Terms and Conditions, an upper liability limit of EUR 4 million or EUR 5 million applies to our services.

This statement is for the information of Cherry AG as well as submission to the Commercial Register and may not be used for any other purpose, and in particular may not be passed on to third parties. Disclosures and acts in connection with the preparation and consummation of the general meeting for the intended change in legal form as well as disclosure to the competent Court of Register is excluded from this restriction. Please note that we do not assume any obligation, responsibility or duty of care for the contents of our report, even in the case of a legally required disclosure or provision to third parties, unless expressly agreed otherwise in our engagement agreement. If third parties use the contents of our report in any way, they do so on their own responsibility.

The following figures are always shown in rounded form. Since the calculations were done using the exact, unrounded figures, there may be rounding-related discrepancies in the addition or subtraction of the figures due to the presentation.

**B. SUBJECT OF THE CHANGE OF LEGAL FORM**

I. Change of legal form to an SE

In the Terms of Conversion in accordance with Article 37(4) SE Regulation regarding the conversion of the legal form of Cherry AG to the legal form of SE under the name of Cherry SE, the change of legal form is explained as follows: “The conversion into the legal form of an SE is intended to reflect the importance of Cherry AG’s European and global business activities and to strengthen Cherry AG’s positioning as an international and European company. Through the change of legal form, Cherry AG can continue the growth and the established corporate structure with a dual administration system in the modern and European legal form of the SE.”

The conversion of Cherry AG into the legal form of an SE does not lead to the dissolution of Cherry AG or the formation of a new legal entity. No transfer of assets takes place due to the preservation of the identity of the legal entity. The company will continue to exist in the legal form of Cherry SE. The shareholders’ stakes in the company also continue unchanged due to the preservation of the identity of the legal entity.

The registered share capital of Cherry AG on the Conversion Date (currently EUR 24,300,000.00) and as divided on that date into no-par-value bearer shares (currently 24,300,000 of these) will become the share capital of Cherry SE.

The people and companies who are shareholders of Cherry AG on the Conversion Date will become shareholders in Cherry SE to the same extent and with the same number of no-par-value bearer shares in the share capital of Cherry SE as they directly hold in the share capital of Cherry AG on the Conversion Date. The arithmetical share of each no-par-value share in the share capital (currently EUR 1.00) will remain as it is on the Conversion Date.

The conversion will become effective upon its registration in the Commercial Register of the company and this day is the Conversion Date. The Conversion Date is not yet known as of the date of this Opinion, due to the employee consultation procedure which is to be carried out and the adoption of resolutions of the general meeting of Cherry AG, which is scheduled for 8 June 2022.

The registered office of Cherry SE will remain in Munich, Germany, where its administrative headquarters is also located.



## II. Legal background

Cherry AG has its registered office in Munich and has been entered in the Commercial Register of Munich Local Court under number HRB 266697 since 2 June 2021. The company was created by shareholder resolution on 25 May 2021 through a change of legal form from Cherry Holding GmbH (formerly Cherry AcquiCo GmbH), Munich (Munich local court HRB 263478).

With effect as of 30 September 2020, Cherry AcquiCo GmbH acquired all assets, liabilities and employees of Cherry Holding GmbH, Auerbach (Amberg local court, HRB 5974), including all of its subsidiaries by way of a share purchase. Upon registration on 19 April 2021, the previous subsidiary Cherry Holding GmbH, Auerbach, was merged with the parent company Cherry AcquiCo GmbH retroactively as of 1 January 2021. In this merger, Cherry AcquiCo GmbH was re-named Cherry Holding GmbH.

The Articles of Association of the Company in the version currently valid are dated 23 June 2021. The domestic business address is Einsteinstrasse 174, c/o Design Offices Bogenhausen, 81677 Munich, Germany.

The registered share capital of Cherry AG is EUR 24,300,000.00 and is divided into 24,300,000 no-par-value bearer shares (shares without par value) with an arithmetical share of EUR 1.00 per share in the share capital.

The financial year is the calendar year.

Cherry AG together with its subsidiaries is a globally operating manufacturer of computer input devices and high-end switches for mechanical keyboards. The Company has been listed since 29 June 2021 and its shares are traded on the Regulated Market of Frankfurt Stock Exchange with additional follow-on admission obligations in the Prime Standard subsection. The shares are also traded over the counter on the stock exchanges of Berlin, Dusseldorf, Hamburg, Hannover, Munich and Stuttgart and tradable via the XETRA electronic trading platform of Deutsche Börse AG.

The business purpose of the Company is holding, managing, acquiring and selling investments in other companies, in particular in companies that operate directly or indirectly in the field of 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 and other systems and software, as well as the provision of services not subject to authorisation (including administrative and management services) for other companies, including group companies, also in the areas of finance, human resources, IT,

controlling, data privacy, materials management, order management, logistics and warehouse management, strategic and operational purchasing and procurement as well as customer service.

Cherry AG is the holding company of the Cherry Group and, on 31 March 2022, had a total of nine direct and indirect subsidiaries in Germany and other countries, with the operating activities being carried out by seven of these subsidiaries.

## III. Financial background

## 1. Financial position of Cherry AG

The balance sheets of Cherry AG (unconsolidated financial statements under commercial law) at 31 December 2019, 31 December 2020 and 31 December 2021 are as follows, in accordance with the annual financial statements with unqualified audit opinions.

The figures as of 31 December 2019 and 31 December 2020 are derived from the financial statement as of 31 December 2020 of Cherry AcquiCo GmbH, which was re-named to Cherry Holding GmbH with its seat in Munich later on and thereafter changed its legal form into Cherry AG. Cherry AcquiCo was founded in 2019 and started to conduct its business in 2020. Therefore, the comparability of the financial year 2019 and the financial years 2020 and 2021 is limited.

<i>Currency: € 000</i>	<b>Dez19A</b>	<b>Dez20A</b>	<b>Dez21A</b>
Inangible assets	-	-	52
Property, plant and equipment	-	-	40
Financial assets	-	225,392	216,244
<b>Fixed assets</b>	-	<b>22,392</b>	<b>216,336</b>
Trade accounts receivable	-	-	23
Receivables from affiliated companies	-	911	26,926
Other assets	-	-	139
Cash in hand, bank balances	25	-	89,373
<b>Current assets</b>	<b>25</b>	<b>911</b>	<b>116,461</b>
<b>Prepaid expenses and deferred income</b>	-	<b>2,327</b>	<b>443</b>
<b>Assets</b>	<b>25</b>	<b>228,630</b>	<b>333,240</b>
Subscribed capital	25	36	24,300
Capital reserves	-	150,257	263,593
Losses brought forward	-	-	(3,935)
Net profit/loss for the year	(0)	(3,935)	(2,251)
<b>Equity</b>	<b>25</b>	<b>146,358</b>	<b>281,707</b>
Provisions for pensions and similar obligations	-	-	133
Tax provisions	-	-	828
Other provisions	-	820	795
<b>Provisions</b>	-	<b>820</b>	<b>1,756</b>
Liabilities to banks	-	81,400	45,000
Trade accounts payable	-	52	567
Liabilities to affiliated companies	-	-	3,272
Other liabilities	-	-	938
<b>Liabilities</b>	-	<b>81,452</b>	<b>49,777</b>
<b>Liabilities and equity</b>	<b>25</b>	<b>228,630</b>	<b>333,240</b>

Due to the holding function of the Company, the fixed assets are largely financial assets. The increase of financial assets in the financial year 2020 results from the share purchase of Cherry Holding GmbH, Auerbach, including its subsidiaries.

As at 31 December 2021, the financial assets include the shares in the affiliated companies Cherry Europe GmbH, Auerbach, and Cherry Digital Health GmbH, Munich. As of 31 December 2020, the financial assets also include loans to affiliated companies of EUR 5.4 million.

The current assets as at 31 December 2021 mainly relate to receivables from affiliated companies as well as cash in hand and banks balances. Receivables from affiliated companies include trade accounts receivable of EUR 1.0 million and, in particular, financial receivables.

The cash and bank balances of EUR 89.4 million as at 31 December 2021 are mainly due to the IPO on 29 June 2021 and the cash inflows from it.

Cherry AG's equity as at 31 December 2021 was EUR 281.7 million. This is mainly made up of the subscribed capital of EUR 24.3 million and the capital reserve of EUR 263.6 million. The increase in the subscribed capital and the capital reserve compared to the previous year is mainly due to the implementation of capital increases and the payments into the capital reserve as part of the IPO in late June 2021. The Company also has a balance sheet loss carried forward (EUR 3.9 million) and a net loss for the financial year 2021 (EUR 2.3 million). The balance sheet loss as at 31 December 2021 relates to the net losses of the last two financial years and stem in particular from the initial losses of the Company, which are due to the foundation and reorganisation of the Company.

The liabilities relate primarily to liabilities to banks. In the course of the acquisition of the shares in Cherry Holding GmbH, Auerbach, including its subsidiaries by Cherry AcquiCo GmbH (later on re-named Cherry Holding GmbH with its seat in Munich and thereafter changed its legal form into Cherry AG), a loan was taken out in the financial year 2020 in the nominal amount of EUR 80 million. As part of the IPO, this purchase price loan was repaid in full as of 30 June 2021.

As part of the IPO, a new credit line of EUR 55.0 million was agreed with UniCredit Bank AG on 29 June 2021, EUR 10.0 million of which is earmarked as a current account overdraft but had not been drawn on as at 31 December 2021. As at 31 December 2021, EUR 45.0 million of the credit line had been utilised, which is to be used to finance inorganic growth.

The liabilities to affiliated companies as at 31 December 2021 relate in particular to loans (EUR 3.0 million).

## 2. Earnings situation of Cherry AG

The P&L accounts of Cherry AG (unconsolidated P&L under commercial law) are as follows for the financial years 2019 to 2021 in accordance with the financial statements bearing unqualified audit opinions.

The figures for the financial years 2019 and 2020 are derived from the financial statement as of 31 December 2020 of Cherry AcquiCo GmbH, which was re-named to Cherry Holding GmbH with its seat in Munich later on and thereafter changed its legal form into Cherry AG. Cherry AcquiCo was founded in 2019 and started to conduct its business in 2020. Therefore, the comparability of the financial year 2019 and the financial years 2020 and 2021 is limited.

<i>Currency: € 000</i>	<b>GJ19A</b>	<b>GJ20A</b>	<b>GJ21A</b>
Sales revenue	-	-	-
Other operating income	-	5	10,946
Personnel expense	-	-	(6,108)
Depreciation and amortisation	-	-	(50)
Other operating expenses	(0)	(2,151)	(12,335)
<b>Earnings before interest and tax (EBIT)</b>	<b>(0)</b>	<b>(2,146)</b>	<b>(7,547)</b>
Income from profit transfer	-	-	19,474
Income from loans of financial assets	-	27	-
Interest and similar expenses	-	(1,816)	(13,796)
<b>Earnings before tax (EBT)</b>	<b>(0)</b>	<b>(3,935)</b>	<b>(1,869)</b>
Tax on income and earnings	-	-	(382)
<b>Net profit/loss for the year</b>	<b>(0)</b>	<b>(3,935)</b>	<b>(2,251)</b>

As a holding company, Cherry AG carries out no operational tasks within the group and generates no turnover. The earnings situation in the financial year 2021 was determined largely by the group IPO on 29 June 2021.

The other operating income of EUR 10.9 million in the financial year 2021 is mainly related to the Company's IPO of the. Pursuant to a so-called cost sharing agreement with Cherry TopCo S.à r.l., certain costs of the IPO of Cherry AG were reimbursed by the shareholders.

The personnel expenses relate to administrative employees who transferred from Cherry Europe GmbH and new hires during the financial year 2021. The Company did not employ any of its own employees in the financial year 2020.

The other operating expenses in the financial year 2021 (EUR 12.3 million) are mainly due to the IPO and the resulting expense items.

Income from profit transfer (EUR 19.5 million) includes income from the profit transfer agreement with the affiliated company Cherry Europe GmbH. The interest and similar expenses (EUR 13.8 million) in the financial year 2021 mainly come from interest paid on bank loans and from the early repayment penalty for the purchase price loan repaid early as of 30 June 2021, which had a significant impact of EUR 7.8 million on the Company's net result for the year.

Overall, the Company had a net loss of EUR 3.9 million and EUR 2.3 million for the financial years 2020 and 2021 respectively, mainly due to the initial losses of the Company that arose in the course of the foundation and reorganisation, as well as the IPO and the resulting expense items.

Cherry AG's stakes in its subsidiaries (jointly "Cherry Group") have a significant influence on the consolidated group earnings and are therefore also of major importance for the Company's earnings power. We have therefore presented below the evolution of the Cherry Group's earnings position for the financial years 2019 to 2021. The figures are taken from the audited IFRS consolidated financial statements.

The 2020 financial year of Cherry AcquiCo GmbH (re-named to Cherry Holding GmbH with its seat in Munich later on and thereafter changed its legal form into Cherry AG) mainly comprises the operative business from October to December 2020 and is therefore only comparable with the 2021 financial year of Cherry AG to a limited extent. Therefore, we have also presented the audited consolidated financial statements of Cherry Holding GmbH, Auerbach, which can be used as points of comparison for the same periods in the prior years.

	Cherry Holding GmbH, Auerbach	Cherry Holding GmbH, Auerbach	Cherry AcquiCo GmbH, München	Cherry AG, München
<i>Currency: € 000</i>	<b>GJ19A</b>	<b>GJ20A</b>	<b>GJ20A</b>	<b>GJ21A</b>
Sales revenues	114,723	130,204	36,256	168,526
Production costs	(71,301)	(79,370)	(28,314)	(99,673)
<b>Gross profit on sales</b>	<b>43,422</b>	<b>50,834</b>	<b>7,942</b>	<b>68,853</b>
Marketing and distribution costs	(11,785)	(12,025)	(4,398)	(16,929)
R&D costs	(4,530)	(4,526)	(1,243)	(6,103)
Administrative costs	(7,227)	(9,615)	(3,164)	(17,796)
Other operating income	359	1,013	318	2,867
Other operating expenses	(1,873)	(699)	(5,708)	(3,274)
<b>Operating earnings before interest and tax (EBIT)</b>	<b>18,366</b>	<b>24,982</b>	<b>(6,253)</b>	<b>27,618</b>
Net financial income	(1,062)	(695)	(2,172)	(14,125)
<b>Earnings before tax (EBT)</b>	<b>17,304</b>	<b>24,287</b>	<b>(8,425)</b>	<b>13,493</b>
Tax on income and earnings	(4,789)	(6,750)	854	(4,208)
<b>Consolidated net profit/loss</b>	<b>12,515</b>	<b>17,537</b>	<b>(7,571)</b>	<b>9,287</b>

The Cherry Group generated turnover of EUR 168.5 million in the financial year 2021. This was divided between the business segments of Gaming at EUR 82.8 million (49.1%) and Professional at EUR 85.7 million (50.9%). The Gaming segment comprises the business in mechanical switches and peripherals for gaming PCs, while the Professional segment comprises the business in PC

peripherals for use in office or industrial applications and the business in safe and hygienic peripheral devices for the healthcare sector.

The Cherry Group generates most of its third party revenue abroad. The increase in revenue compared to prior years is mainly due to new product launches in both business segments, entry into the e-commerce market with office peripherals and the first consolidation of Active Key GmbH with its seat in Munich (Munich local court, HRB 263806) in the 2021 financial year.

The manufacturing costs include in particular the cost of raw materials, supplies and purchased goods (EUR 64.3 million in the financial year 2021).

Personnel expense was EUR 36.5 million in the reporting period (prior year: EUR 26.8 million at Cherry Holding GmbH with its seat in Auerbach). The increase is mainly due to a higher number of employees (554, prior year: 496), especially in sales and marketing, production, and product management and development. Personnel expense is allocated to the corresponding cost items in accordance with the cost of sales method.

R&D costs in the financial year 2021 were EUR 6.1 million (prior year: EUR 4.5 million at Cherry Holding GmbH with its seat in Auerbach), of which EUR 2.0 million were allocated to "Gaming" and EUR 4.1 million to "Professional". In addition, in the financial year 2021 inhouse development expenses of EUR 2.6 million were capitalised as intangible fixed assets.

Other operating income in the financial year 2021 (EUR 2.9 million) include in particular income from charging on costs related to the IPO which were initially paid by Cherry AG. In a so called cost sharing agreement with Cherry TopCo S.à.r.l., costs related to the IPO were divided up among the shareholders.

Other operating expenses in the financial year 2021 (EUR 3.3 million) result mainly from the costs related to the IPO which could not be allocated directly to the procurement of equity and thus were not offset against the capital reserve.

The financial result in the financial year 2021 mainly relates to interest expenses and similar expenses, which mainly relate to interest expenses from the purchase price loan of Cherry AG (EUR 14.7 million).

Overall, the Cherry Group reports a net profit of EUR 9.3 million for the financial year 2021. The decline in comparison to the consolidated net income of Cherry Holding GmbH, Auerbach, in the financial year 2020 is mainly due to the IPO-related costs and the resulting expense items.



### C. SUBJECT AND SCOPE OF THE AUDIT

The subject and scope of the audit of capital coverage result from Article 37(6) SE Regulation. Accordingly, one or more independent experts must certify that the company which is changing its legal form has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the statutes of the SE. The reserves which must not be distributed include the statutory reserve according to section 272(3) sentence 2 German Commercial Code (section 150(1) and (2) German Stock Corporation Act) plus the capital reserve according to section 272(2) nos. 1 to 3 German Commercial Code (section 150(3) and (4) German Stock Corporation Act) as well as any amounts blocked from distribution due to the utilisation of commercial-law accounting and valuation rules under section 268(8) German Commercial Code.

The equity shown in the balance sheet of Cherry AG as of 31 December 2021 and the equity on which the audit of capital coverage is based is composed as follows:

<b>Equity</b> <i>Currency: € 000</i>	<b>Individual values</b>	<b>Balance sheet disclosure as of 31 Dec. 2021</b>	<b>Subject of the audit</b>
I. Subscribed capital	24,300	24,300	24,300
II. Capital reserves		263,593	
per sec. 272(2) nos. 1-3 German Commercial Code	163,337		163,337
per sec. 272 (2) no. 4 German Commercial Code	100,256		
III. Losses brought forward	(3,935)	(3,935)	
IV. Net loss for the year	(2,251)	(2,251)	
	<b>281,707</b>	<b>281,707</b>	<b>187,637</b>

The capital on which the audit of capital coverage is based within the meaning of Article 37(6) SE Regulation comprises the subscribed capital plus those reserves which must not be distributed under the law or the statutes and is approx. EUR 187.6 million as at 31 December 2021.

In the Cherry AG balance sheet as of 31 December 2021, capital reserves of EUR 263,593,000 are reported, of which EUR 163,337,000 is to be allocated to capital reserves according to section 272(2) nos. 1-3 German Commercial Code and EUR 100,256,000 to the capital reserves according to section 272(2) no. 4 German Commercial Code. The reserves which must not be distributed are therefore EUR 163,337,000 as of 31 December 2021.

There are no statutory reserves and reserves blocked by the statutes in accordance with section 266(3) A. III no. 1 or section 266(3) A. III no. 3 German Commercial Code.

There was no requirement to form a statutory reserve in accordance with section 150 German Stock Corporation Act because the Company had sufficient capital reserves in accordance with section 272(2) nos. 1-3 German Commercial Code. There are no reserves which must not be distributed in accordance with section 268(8) German Commercial Code.

As of 31 December 2021 there is a restriction on distribution relating to the difference of EUR 366 between the 7-year and 10-year average interest rate of pension provisions in accordance with section 253(6) German Commercial Code. The reserves remaining after distribution must equal at least this difference. The amounts with restricted distribution in this context are well below the subscribed capital plus the reserves not to be distributed.

During the audit it must therefore be examined whether Cherry AG which is changing its legal form has net assets of at least EUR 187.6 million.

In principle, the day of registration in the Commercial Register is the relevant valuation date. Where this date is known, the minimum value of capital coverage can be determined as of that date. In this case the capital within the meaning of Article 37(6) SE Regulation can be derived from the audited balance sheet as at 31 December 2021. The Company confirmed to us that as at 25 April 2022 no material changes had occurred and the capital within the meaning of Article 37(6) SE Regulation is still EUR 187.6 million.

## D. DETERMINATION OF NET ASSET VALUE

### I. Valuation principles and methods applied

Conversion into an SE requires, according to Article 37(6) SE Regulation, that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the statutes. Neither Article 37(6) SE Regulation nor other provisions of the SE Regulation specify the method for to be used calculating or auditing the capital coverage.

Due to a lack of express instructions on how to perform the valuation, the general principles of company valuation are to be observed (see report on 57th to 61st session of the Company Valuation Working Party of the German Institute of Auditors, reproduced in *IDW-Fachnachrichten* no. 1/2/1997, page 33).

These are reflected in the statements of the Institute of Auditors in Germany (IDW), especially in the IDW Standard 1 (IDW S 1): *Principles of Conducting Company Valuations* and the IDW opinion *Application of the Principles of IDW S 1 in the Valuation of Investments and Other Company Shares for the Purposes of Financial Statements under Commercial Law* (IDW RS HFA 10).

According to IDW S 1, the value of a company is determined by the present value of the net inflows associated with ownership of the company to the company's owners, with the assumption of exclusively financial objectives. To determine this present value, a capitalisation rate is used representing the return on an alternative investment is appropriate for investment in the company to be valued. Accordingly, the enterprise value is derived only from its earning power, i.e. its ability to generate financial surpluses for the company owners.

This value is generally derived from the financial surpluses to be generated if the company continues as a going concern and any non-operating assets are sold (future earnings value). Only if the present value of the financial surpluses generated upon liquidation of the entire company (liquidation value) exceeds the going-concern value does the liquidation value come into consideration as the enterprise value. The liquidation value thus forms the lower limit of the enterprise value.

We based our audit activities regarding the capital coverage both on valuation considerations of Cherry AG's Management Board, evidence of net assets under commercial law (at book values) and evidence of enterprise value derived on a market basis using the market capitalisation of Cherry AG. We supplemented our audit activities with sampling using market-based multiples and an indicative capitalised earnings valuation based on IDW S 1 in conjunction with

IDW RS HFA 10 using the mid-term planning Cherry AG provided us for the years from 2022 onwards.

## **II. Valuation considerations of Cherry AG's Management Board**

Cherry AG's Management Board used for its fair value and valuation considerations, among other things, the current public listing of the Cherry shares on the capital markets and the valuations carried out as of 31 December 2021 as part of the IFRS Impairment Test in connection with the consolidated financial statements of Cherry AG.

We reviewed the valuation considerations we were given. The enterprise value (by means of an equity value) derived from the capital markets as well as from the valuations as part of the Impairment Tests is above the minimum value of EUR 187.6 million necessary for capital coverage.

## **III. Audit of capital to be certified based on net assets under commercial law**

We used the audited annual financial statements as at 31 December 2020 and 2021 to audit the capital coverage by net assets under commercial law. Based on the balance sheet as at 31 December 2021, the net assets under commercial law (book value of the equity) total EUR 282 million. The Company has confirmed to us there have been no material changes in share capital and the capital reserve as at 25 April 2022. Material changes in equity as at 31 March 2022 relate to the annual earnings generated in Q1 2022.

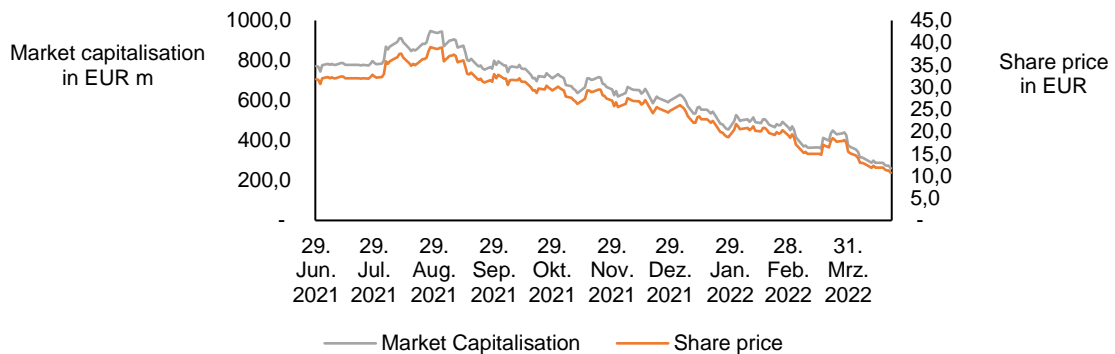
The interim result is that the capital within the meaning of Article 37(6) SE Regulation of EUR 187.6 million is at least covered by the net assets of Cherry AG for accounting purposes. The Company's Management Board assumes based on the planning for Cherry AG (individual enterprise) that there will be a positive net result for the financial year 2022 compared to the financial year 2021, and thus the reported balance sheet loss will be reduced in future. The Company's Management Board is also planning further positive profit contributions for the Cherry Group in the years from 2022 onwards.

## **IV. Audit of capital to be certified based on market capitalisation**

Cherry AG's shares are admitted for trading on the Frankfurt Stock Exchange. The shares are also included in over-the-counter trading on the Berlin, Dusseldorf, Hamburg, Hanover, Munich and Stuttgart stock exchanges and are tradable via the XETRA electronic trading platform of

Deutsche Börse AG. The registered share capital of Cherry AG is EUR 24,300,000.00 and is divided into 24,300,000 no-par-value bearer shares (shares without a nominal value) each representing EUR 1.00 of the registered share capital.

The graph below shows the progress of market capitalisation of Cherry AG from 29 June 2021 to 22 April 2022.



Source: S&P Capital IQ, EY Analysis.

The share price is the price shares in equity are traded at on public markets. The share price multiplied by the shares issued is the market capitalisation of a company accordingly the market valuation of Cherry AG's equity.

Valued at the day rate of the shares on 22 April 2022, the current market capitalisation of Cherry AG (equity) is EUR 260 million (calculated from 24,300,000 registered shares and the share price on 22 April 2022 of EUR 10.70). The market valuation of the equity is thus well above the capital to be certified within the meaning of Article 37(6) SE Regulation of EUR 187.6 million.

We also checked the current share price on 25 April 2022 at 2.51pm CEST. It is EUR 10.30 and thus corresponds to a market capitalisation of EUR 250 million which is also higher than the capital to be certified within the meaning of Art 37(6) SE Regulation.

The current share price on 25 April 2022 equals the lowest share price since the start of trading on 29 June 2021. The minimum value required for the capital coverage test is also exceeded on the basis of the lowest share price.

As there are no indications the market listing of Cherry AG should be considered unrepresentative due to share market price manipulation or market narrowness within the meaning of Section 5 of the Offer Regulation of the German Securities Acquisition and Takeover Act, the market capitalisation determined on the basis of the stock market quotation can be used as an estimate

by investors and the capital market of the market value of the equity of Cherry AG. It can therefore be assumed that the market capitalisation corresponds to the equity value of Cherry AG determined on the market and that this value can be used to audit the capital to be certified.

The interim result is that the market capitalisation as of 25 April 2022 exceeds the minimum figure for capital to be certified amounting to EUR 187.6 million and thus supports the fair value of the subscribed capital plus those reserves which must not be distributed under the law or the statutes.

#### **V. Audit of capital to be certified based on capitalised earnings value**

The past and future business development of the Cherry Group, from which the future financial earnings can be derived, represent an important indicator for the review of capital coverage at Cherry AG.

We therefore performed an indicative capitalised earnings value based on the forecast we were provided with. This procedure is common in valuation practice and expressly listed in IDW S 1 as one of several possible and accepted valuation methods (see IDW S 1, no. 99 onwards).

According to this methods, the financial earnings accruing to the company owners in the future represent the earnings to be discounted. The future earnings are derived from the projected annual net earnings. The discounting of the financial earnings is done by using cost of equity (see IDW S 1, no. 102 onwards).

The future earnings situation of Cherry AG is characterised by the planned development of its own operational activities and also by the direct subsidiaries. It is documented in the current mid-term planning for Cherry Group approved by the supervisory board. The planning covers a 5-year period (2022 to 2026) and assumes positive EBITDA, EBIT and consolidated group earnings for all planning years.

The mid-term planning assumes rising revenues and a steady increase in operating profit. A rising net profit margin is also expected in the planning period. The growth in turnover and profit is generated especially by price increases for existing products and higher prices for new products (with improved functionality) along with higher gross margins. Pay rises, costs of stock exchange listing and rising energy, administration and marketing costs, for example, are also taken into account in the mid-term planning.

The Company also assumes in the mid-term planning a further rise in the number of employees up to the financial year 2026, especially in Auerbach and China. The mid-term planning does not contain any new acquisitions.

The Company itself is not directly affected by the war between Russia and Ukraine. There are no customer or supplier relationships that could influence the operational business of the Cherry Group. However, it is expected that the effects of the crisis on world markets could affect the Cherry Group indirectly via falling customer demand and directly via rising prices for raw materials and energy. The mid-term planning was produced before March 2022 and thus does not show any possible effects of the conflict.

In the Gaming business segment, the Management Board expects in the financial year 2022 a low single-digit growth in turnover with a lower (adjusted) EBITDA margin due to macroeconomic, time-limited increases in material prices, freight costs and one-off marketing spending to expand in the Asia-Pacific region. In the Professional business segment, the Management Board expects higher growth in turnover in the financial year 2022 than in the Gaming business segment, which along with the further targeted addition to the product portfolio in the Peripherals area, will be mainly characterised by the selective expansion of sales channels, especially e-commerce via large online marketplaces in Europe and the USA in the second half of the year.

As set out in the Management Report 2021, due to uncertainties related to the Covid-19 pandemic and the war in Ukraine the Management Board expects for the financial year 2022 a turnover of approx. EUR 170 million to EUR 190 million with an adjusted EBITDA margin of 23% to 26% for the Cherry Group. In the mid-term planning, slightly higher turnover is assumed for the Cherry Group in the financial year 2022 as well as an adjusted EBITDA margin of approx. 25%. According to the Management Report 2021, the Management Board expects for the financial year 2023 two-digit growth in turnover and an increase in the adjusted EBITDA margin, which in turn is also reflected in the present mid-term planning of Cherry Group. The present mid-term planning can therefore be used for the indicative capitalised earnings valuation of Cherry AG.

We derived the earnings to be discounted from the Cherry Group's mid-term planning for the years 2022 to 2026. The sustainably expected result to be discounted for the years 2027 onwards (Perpetual Annuity) was determined by extrapolating the planned results and taking current global economic events into account. In accordance with IDW RS HFA 10, all elements of the earnings to be capitalised were taken into account with all earnings-related corporate taxes to reduce the earnings, i.e. essentially trade tax, corporation tax and solidarity surcharge).

To determine the value of Cherry AG's equity, the future net earnings were discounted with market-standard costs of capital as of the valuation date 25 April 2022. From 2027 onwards, when reporting the Perpetual Annuity a growth rate of 1.0% was applied. The calculation of the

cost of capital was done on a market basis according to a currently common procedure (Capital Asset Pricing Model). The valuation parameters for the cost of capital were a base interest rate of 0.4%, a beta of 0.9 (unlevered beta of the peer group, also used for the purposes of annual impairment testing of the Cherry Group, regressed over a period of 2 years), plus a market risk premium of 7.5%. The unlevered beta of Cherry AG regressed over a period of 2 years is also 0.9, which confirms the relevance of the peer group. All interest parameters have been calculated according to the methods and data sources recognised in the relevant case law (Svensson curve from the Bundesbank, market data of S&P Capital IQ).

Ultimately, the validation using a future success-based valuation as of the valuation date 25 April 2022 also leads to a figure above the minimum figure for the capital to be certified amounting to EUR 187.6 million and thus supports the statement on the fair value of the subscribed capital plus the reserves which must not be distributed under the law or the statutes.

#### **VI. Audit of capital to be certified via multiple-based valuation method**

As a supplementary market price-oriented test for the capital coverage, we carried out a multiple-based valuation.

We derived the underlying multiples (trading multiples) based on similar listed companies (peer group). The multiples are determined based on the ratio of the business values of the peer group companies to their performance indicators, afterwards the resulting multiples are applied to the company to be valued. The business values are the sum of the observed market capitalisation of the peer group companies and the market value of their debt capital on a certain observation date. By using capital market data, the multiple reflects the aggregated assessment of market players regarding long-term earnings expectations and entrepreneurial risk.

We analysed EBITDA and EBIT multiples as part of our validation calculations. In doing so, we used the key financial indicators of the Cherry Group. The applied peer group is consistent with the peer group used for impairment testing purposes at the Company.

As part of the plausibility checks, we determined ranges for the overall business values on the basis of median and average multiples and corresponding reference values for the years 2021 to 2024. The ranges for the overall business values based on the median and average multiples were reduced by the market value of the net financial debt of the Cherry Group as at 31 December 2021.

As a result, the valuation based on EBITDA and EBIT multiples for the years 2021 to 2024 exceeds the minimum amount of capital to be certified amounting to EUR 187.6 million in each case and



thus also supports the statement on the fair value of the subscribed capital plus the reserves which are not to be distributed by law or by the statutes.

#### **VII. Valuation date**

In principle, the day of registering an entry in the commercial register is the relevant valuation date. If this date is known, the net asset value can be determined as of this date.

In the case at hand, we used 25 April as the technical valuation date for our analyses. In this regard it should be noted that a valuation of the net assets as of the date of the General Meeting and the registration is above the value determined as of 25 April 2022 due to the compounding to be performed to that date, provided that in the meantime no incidents or developments have occurred which negatively influence the substance or future earnings power of the operational business. That was confirmed in writing by the Management Board in the letter of representation we obtained. As no compounding (increasing value) was necessary in the case at hand for assessing the fair value of the net assets, we opted not to compound the value.

#### **VIII. Assessment of capital coverage**

Following our audit, we conclude that the analyses based on the market capitalisation, an indicative capitalised earnings valuation as well as a multiple-based valuation show that at least the minimum level of capital to be certified amounting to EUR 187.6 million is achieved.

E. SUMMARISED AUDIT RESULT

In accordance with our engagement we audited the capital coverage in accordance with Article 37(6) SE Regulation.

According to the final results of our dutiful audit in accordance with Article 37(6) SE Regulation based on the documents presented to us and the information and evidence given, using as a basis the observations and methodology described in this report, we confirm that Cherry AG, Munich, has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the statutes.

Düsseldorf, 25 April 2022

Ernst & Young GmbH  
Wirtschaftsprüfungsgesellschaft

(signed)  
Andreas Siebel  
Wirtschaftsprüfer  
(*German Public Auditor*)

(signed)  
Katja Schallenberg  
Steuerberaterin  
(*German Tax Advisor*)

## **Annex 1**

Terms of Conversion for the change of legal form of Cherry AG with its seat in Munich into the legal form of a European company (notarized version dated 8 April 2022, deed roll number H 1549/2022 of the notary Sebastian Herrler, Munich)

– **CONVENIENCE TRANSLATION ONLY** –

**DRAFT TERMS OF CONVERSION**

regarding the change in legal form of

**Cherry AG**

with its registered office in Munich

to the legal form of a European company (*Societas Europaea, SE*)

**Preamble**

- (A) Cherry AG is a stock corporation (*Aktiengesellschaft*) incorporated under German law with its registered office in Munich, entered in the commercial register of Munich Local Court under HRB 266697 (hereinafter “**Cherry AG**”). The head office of Cherry AG is located in Munich and the registered business address of Cherry AG is Einsteinstrasse 174, c/o Design Offices Bogenhausen, 81677 Munich.
- (B) The registered share capital of Cherry AG is EUR 24,300,000.00 and is divided into 24,300,000 no-par value bearer shares (shares without a nominal value) each proportionally representing EUR 1.00 of the registered share capital. The shares of Cherry AG (ISIN DE000A3CRRN9) have been traded on the Regulated Market of the Frankfurt Stock Exchange with additional post-admission obligations in the Prime Standard sub-segment since 29 June 2021. The shares are also included in over-the-counter trading on the Berlin, Dusseldorf, Hamburg, Hanover, Munich and Stuttgart stock exchanges and are tradable via the XETRA electronic trading platform of Deutsche Börse AG.
- (C) Cherry AG is the group parent company and, at the time these Draft Terms of Conversion are notarised, has nine (9) direct and indirect subsidiaries (Cherry AG with its subsidiaries collectively referred to as the “**Cherry Group**”). The Cherry Group is a globally operating manufacturer of computer input devices and high-end switches for mechanical keyboards. The business focuses on mechanical keyboard switches for gaming keyboards and various computer input devices which are used in a number of applications, mainly in the gaming, offices, industry and cybersecurity sectors as well as in solutions for the healthcare sector. Since it was founded in 1953, the Cherry Group with its two divisions, Gaming and Professional, has been synonymous with innovative, high-quality products developed specifically to meet the needs of its

customers. The Professional business unit comprises mainly keyboards, mice and keyboard/mouse combinations equipped with multiple features. The business unit primarily addresses customers in the Cherry Group's home market Germany as well as customers in France, the UK and the USA.

- (D) In this context, Cherry AG assumes the function of a managing holding company. The business purpose of Cherry AG according to Article 2(1) of the Articles of Association of Cherry AG ("**AG Articles**") in addition to holding, management, acquisition and sale of participations in other companies, also the provision of services not subject to authorization. This includes in particular administrative and management services, including in the areas of finance, human resources, IT, controlling, data protection, materials management, order management, logistics and warehouse management, strategic and operative purchasing and procurement and customer services. A total of nine (9) direct and indirect subsidiaries of Cherry AG are located in Germany and in the countries the Cherry Group does business in. The operational business activities are carried out by seven (7) of these subsidiaries. The operational headquarters of the Cherry Group are located in Auerbach in der Oberpfalz, Germany.

The indirect subsidiaries of Cherry AG include CHERRY S.A.R.L., a limited liability company (*Société à responsabilité limitée*) under the laws of France, registered in the Paris Commercial Register (*Registre du commerce et des sociétés Paris*) under No. 325 868 438 with registered business address 52 Boulevard de Sébastopol, 75003 Paris, France (hereinafter "**Cherry S.à.r.l.**"). All shares in Cherry S.à.r.l. have been held by Cherry Europe GmbH with its registered office in Auerbach, registered in the Commercial Register of Amberg Local Court under HRB 5729 (hereinafter "**Cherry Europe GmbH**"), since 1 January 2016. All shares in Cherry Europe GmbH have been initially held directly by Cherry Holding GmbH with its registered office in Auerbach, registered in the commercial register of Amberg Local Court under HRB 5974, since 14 November 2016 (initially under the name of GENUI Fünfte Beteiligungsgesellschaft mbH; hereinafter "**Cherry Holding**"). When the merger took effect on 19 April 2021, Cherry Holding as the transferring legal entity merged with the subsequent Cherry AG (at the time still in its previous legal form of a limited liability company (*GmbH*) under the name of Cherry Holding GmbH or before that, Cherry AcquiCo GmbH), which thus holds all shares in Cherry Europe GmbH as sole shareholder. Cherry AG thus indirectly holds 100% of the capital and voting rights in Cherry S.à.r.l. and thus exercises a controlling influence over Cherry S.à.r.l. Cherry AG has therefore had a subsidiary, Cherry S.à.r.l., in another European Union Member State (the Member States of the European Union and the other contracting states of the European Economic Area hereinafter referred to collectively as the "**Member States**") for more than two years. Thus, Cherry AG fulfils the requirements of Article 2(4) of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (*Societas Europaea*, hereinafter "**SE**"), as amended ("**SE Regulation**"), for a conversion into an SE pursuant to Article 37 SE Regulation.

- (E) It is intended to convert Cherry AG into the legal form of an SE without transferring the registered office in Munich. The legal form of the SE is the only legal form under European law available to a listed company with its registered office in Germany. The change of the legal form into an SE is intended to express the importance of the European and global business activities of Cherry AG and to strengthen the positioning of Cherry AG as an international and European company. Through the change of the legal form, Cherry AG can continue the growth and the established structure under company law with a two-tier management system in the modern and European legal form of the SE.

NOW, THEREFORE, the Management Board of Cherry AG establishes the following Draft Terms of Conversion pursuant to Article 37(4) SE Regulation (the above Preamble to these Draft Terms of Conversion forms a constituent part thereof):

**1. Change in the legal form of Cherry AG to Cherry SE**

- 1.1 Pursuant to Article 2(4) and Article 37 SE Regulation, Cherry AG will be converted into a European company (*Societas Europaea*, SE).
- 1.2 Pursuant to Article 37(2) SE Regulation, this change in legal form to an SE may not result in the winding up of Cherry AG or in the creation of a new legal person. Rather, Cherry AG will continue to exist in the legal form of an SE and, due to the preservation of the identity of the legal entity, no transfer of assets will take place.
- 1.3 The shareholders' holdings in Cherry AG will continue unchanged. Furthermore, the change in legal form will have no effect on the stock exchange listing of Cherry AG and the trading of the shares on the stock exchange. Shareholders who object to the change in legal form will not be offered any cash compensation because such an offer is not provided for by law.
- 1.4 Cherry SE will, like Cherry AG, have a two-tier management system, consisting of a Management Board (see clause 6) and a Supervisory Board (see clause 7).
- 1.5 Pursuant to Article 16(1) SE Regulation, the change in legal form takes effect upon registration in the Commercial Register of Munich Local Court, which has jurisdiction for Cherry AG ("**Conversion Date**").

**2. Company name, registered office, registered share capital and shareholder structure of Cherry SE**

- 2.1 The name of the SE is "Cherry SE".
- 2.2 The registered office of Cherry SE will continue to be located in Munich, Germany. The head office of Cherry SE will also continue to be located in Munich, Germany, and the business address of Cherry SE will continue to be Einsteinstrasse 174, c/o Design Offices Bogenhausen, 81677 Munich, Germany.

- 2.3 The entire registered share capital of Cherry AG in the amount existing on the Conversion Date (currently EUR 24,300,000.00) and in the division existing on the Conversion Date (currently 24,300,000 no-par value shares) into no-par value bearer shares without a nominal value will become the registered share capital of Cherry SE.
- 2.4 The persons and companies that are shareholders of Cherry AG on the Conversion Date will become shareholders of Cherry SE as a result of the change of the legal form, namely to the same extent and with the same number of no-par value bearer shares in the share capital of Cherry SE as they hold in the share capital of Cherry AG directly on the Conversion Date. The notional amount of each no-par value share in the share capital (currently EUR 1.00) will remain as it exists directly on the Conversion Date.
- 2.5 The shares of Cherry AG are recorded in global share certificates. These will be replaced by global share certificates in the name of Cherry SE following the effectiveness of the change of the legal form.

### **3. Articles of Association and capital of Cherry SE**

- 3.1 Cherry SE will receive the Articles of Association (“**SE Articles**”) that are attached to these Draft Terms of Conversion as an **Annex**, which form a constituent part of these Draft Terms of Conversion. In the event of any discrepancy or contradiction between the English version and the German version of the SE Articles, the German version will prevail over the English version.
- 3.2 The amount of registered share capital and the division of the registered share capital of Cherry SE into no-par value shares pursuant to Article 4(1) and Article 4(2) of the SE Articles on the Conversion Date correspond to the amount of registered share capital and the division of the registered share capital of Cherry AG into no-par value shares pursuant to Article 4(1) and Article 4(2) of the AG Articles.
- 3.3 On the Conversion Date, the authorised capital (Authorised Capital; entered in the commercial register as Authorised Capital 2021/I) of Cherry AG still existing in an amount of EUR 10,000,000.00 pursuant to Article 4(3) of the AG Articles at the time of the preparation of these Draft Terms of Conversion will be converted into Authorised Capital 2021/I of Cherry SE in the amount existing on the Conversion Date by Article 4(3) of the SE Articles and the amount of the Authorised Capital 2021/I of Cherry SE will then correspond pursuant to Article 4(3) of the SE Articles to the amount of the still existing Authorised Capital pursuant to Article 4(3) of the AG Articles.
- 3.4 Furthermore, on the Conversion Date, the conditional capital (Conditional Capital; entered in the commercial register as Conditional Capital 2021/I) of Cherry AG existing on the Conversion Date in an amount of EUR 10,000,000.00 pursuant to Article 4(4) of the AG Articles at the time of the preparation of these Draft Terms of Conversion will be converted into Conditional Capital of Cherry SE in the amount existing on the Conversion Date by Article 4(4) of the SE Articles and the amount of the Conditional Capital 2021/I of Cherry SE will then correspond to the amount of the

existing Conditional Capital pursuant to Article 4(4) of the AG Articles in accordance with Article 4(4) of the SE Articles.

- 3.5 Any and all changes prior to the Conversion Date regarding the amount and division of the registered share capital of Cherry AG or the existing authorised or conditional capital based on prior utilisations thereof also apply to Cherry SE.
- 3.6 The Supervisory Board of Cherry AG (and in the alternative the Supervisory Board of Cherry SE) is authorised and at the same time instructed to make any amendments to the version of the SE Articles attached as an Annex which are necessary so that the capital ratios of Cherry AG set out in Article 4 of the AG Articles immediately prior to the Conversion Date are accurately reflected in Article 4 of the SE Articles for Cherry SE, prior to the application of Cherry SE for registration in the commercial register of the competent Munich Local Court.

#### **4. Continued validity of resolutions of the General Meeting of Cherry AG**

- 4.1 The authorisation granted by the extraordinary General Meeting of Cherry AG on 23 June 2021 (Deed Roll No. H 2719/21 of notary Sebastian Herrler, Munich) under agenda item 2a) to issue bearer or registered option bonds and/or convertible bonds, profit rights and/or profit bonds (or a combination of these instruments) (together "**Bonds**") in a total nominal amount of up to EUR 400,000,000.00 with the possibility to exclude subscription rights ("**Bond Authorisation**") is valid until 22 June 2026 inclusive. Provided that the conversion of Cherry AG into the legal form of an SE has taken place by this date, the Bond Authorisation will thus continue to apply to the Management Board of Cherry SE to the extent that it exists on the Conversion Date and has not been utilised. In order to service claims arising from the Bonds issued under the Bond Authorisation, the extraordinary General Meeting of Cherry AG of 23 June 2021 created the Conditional Capital under agenda item 2b), which exists in an amount of EUR 10,000,000.00 in accordance with Article 4(4) of the AG Articles at the time of the preparation of these Draft Terms of Conversion. The Conditional Capital will become the Conditional Capital 2021/I of Cherry SE in the amount existing at the Conversion Date by virtue of Article 4(4) of the SE Articles.
- 4.2 The authorisation granted by the extraordinary General Meeting of Cherry AG on 23 June 2021 (Deed Roll No. H 2719/21 of notary Sebastian Herrler, Munich) under agenda item 3 to acquire and use treasury shares in accordance with section 71(1) no. 8 of the German Stock Corporation Act (*Aktiengesetz, AktG*), including the authorisation to redeem acquired treasury shares and to reduce capital and to exclude subscription rights ("**Authorisation Resolution**") applies until 22 June 2026. Provided that the conversion of Cherry AG into the legal form of an SE has taken place by this date, the Authorisation Resolution will thus also continue to apply to the Management Board of Cherry SE to the extent that it exists on the Conversion Date and has not been utilised.



- 4.3 Furthermore, all other resolutions of the General Meeting of Cherry AG continue to apply unchanged to Cherry SE, to the extent that they have not yet been implemented on the Conversion Date.

## **5. Corporate bodies of Cherry SE, two-tier system**

Pursuant to Article 6(1) of the SE Articles, Cherry SE will have a two-tier management system consisting of a “management organ” (Management Board) within the meaning of point (b) of Article 38, Article 39(1) SE Regulation and a “supervisory organ” (Supervisory Board) within the meaning of point (b) of Article 38, Article 40(1) SE Regulation. Pursuant to Article 6(2) of the SE Articles, the corporate bodies of Cherry SE are therefore, as to date at Cherry AG, the Management Board, the Supervisory Board and the General Meeting.

## **6. Management Board**

- 6.1 Pursuant to Article 7(1) of the SE Articles, the Management Board of Cherry SE will continue to consist of one or more persons and the number of members of the Management Board of Cherry SE will be determined by the Supervisory Board.
- 6.2 Notwithstanding the decision-making competence of the future Supervisory Board of Cherry SE pursuant to Article 39(2) SE Regulation, it is to be assumed that the current members of the Management Board of Cherry AG will be appointed as members of the Management Board of Cherry SE. The current members of the Management Board of Cherry AG are:
- a) Rolf Unterberger (Chairman of the Management Board),
  - b) Bernd Wagner, and
  - c) Dr Udo Streller.

## **7. Supervisory Board**

- 7.1 The offices of the elected members of the Supervisory Board of Cherry AG end upon the change of the legal form taking effect on the Conversion Date.
- 7.2 Pursuant to Article 10(1) of the SE Articles, the Supervisory Board of Cherry SE will continue to consist of seven (7) members. All members will continue to be representatives of the shareholders pursuant to the second half of the first sentence of section 96(1) of the German Stock Corporation Act and as to date elected by the General Meeting pursuant to the first sentence of section 101(1) of the German Stock Corporation Act.
- 7.3 Pursuant to Article 10(2) of the SE Articles, the members of the Supervisory Board of Cherry SE are, unless otherwise specified at the time of their election, appointed until the end of the General Meeting that adopts a resolution on the formal approval of the members’ actions for the fourth fiscal year following the commencement of their

term of office, however, for no more than six (6) years. The fiscal year in which the term of office begins is not included in this calculation. Re-elections are permissible. The term of office of the members of the first Supervisory Board ends at the end of the General Meeting that adopts a resolution on the formal approval of the members' acts for the first fiscal year of Cherry SE.

7.4 It is provided for that the members of the first Supervisory Board of Cherry SE will be elected by the General Meeting on 8 June 2022 that resolves on the approval of the change in the legal form of Cherry AG into Cherry SE. Under agenda item 10, the current members of the Supervisory Board of Cherry AG,

- a) James Burns (currently Deputy Chairperson of the Supervisory Board of Cherry AG),
- b) Joachim Coers
- c) Heather Faust
- d) Steven M. Greenberg
- e) Tariq Osman
- f) Dino Sawaya, and
- g) Marcel Stolk (currently Chairperson of the Supervisory Board of Cherry AG)

will be proposed to this General Meeting for election as members of the first Supervisory Board of Cherry SE.

To the extent that the members of the first Supervisory Board of Cherry SE are not elected by the General Meeting of Cherry AG on 8 June 2022 or subsequently resign, their appointment will be made by the competent court upon request.

Marcel Stolk and James Burns intend to stand for re-election as Chairperson of the Supervisory Board and Deputy Chairperson of the Supervisory Board, respectively, if they are elected.

7.5 Subject to a deviating resolution of the General Meeting of Cherry AG or any other court appointment, the first Supervisory Board of Cherry SE will therefore consist of:

- a) James Burns,
- b) Joachim Coers,
- c) Heather Faust,
- d) Steven M. Greenberg,

- e) Tariq Osman,
- f) Dino Sawaya, and
- g) Marcel Stolk.

## **8. Special rights and special benefits**

- 8.1 To the extent that third parties have rights to shares in Cherry AG, these rights to the shares in the company will continue in the new legal form of the SE.
- 8.2 Beyond the shares referred to in clause 2.4 and clause 3.2, no rights will be granted to persons within the meaning of section 194(1) no. 5 German Reorganisation Act and/or points (f) and (g) of Article 20 SE Regulation and no measures are provided for these persons.
- 8.3 Attention is drawn to the following as a precaution:
  - 8.3.1 Special rights (e.g. conversion, option or profit rights) of holders of securities other than shares remain unaffected due to the continuity principle and the special rights continue unchanged in the legal form of the SE. No special measures are provided for holders of such rights.
  - 8.3.2 Notwithstanding the competence of the future Supervisory Board of Cherry SE, it is to be assumed that the current members of the Management Board of Cherry AG will be appointed as members of the Management Board of Cherry SE (see clause 6).
  - 8.3.3 The current members of the Supervisory Board of Cherry AG are to be proposed for election as members of the first Supervisory Board of Cherry SE. In the event of the new election as members of the first Supervisory Board of Cherry SE, the current Chairperson of the Supervisory Board, Marcel Stolk and the current Deputy Chairperson of the Supervisory Board, James Burns, are to be proposed again as the Chairperson and Deputy Chairperson of the Supervisory Board respectively (see clause 7).
  - 8.3.4 The court-appointed independent expert within the meaning of Article 37(6) of the SE Regulation, Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, was the auditor of the financial statements and consolidated financial statements of Cherry AG or Cherry Holding GmbH respectively from the 2019 fiscal year until the 2021 fiscal year. It is intended to propose Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft with its registered office in Stuttgart, Essen branch, also to the General Meeting which will resolve on 8 June 2022 on the approval of the conversion of Cherry AG to Cherry SE by way of change of legal form, for selection as auditor of the financial statements and consolidated financial statements of Cherry AG and the future Cherry SE respectively. For its

work, the court-appointed independent expert receives remuneration from the company at standard market rates.

- 8.4 Apart from this, no special benefits are granted to persons within the meaning of section 194(1) no. 5 German Reorganisation Act and/or points (f) and (g) of Article 20(1) SE Regulation and no measures are provided for these persons.

## 9. Negotiations on employee involvement

- 9.1 In the context of the conversion of Cherry AG into the legal form of an SE, the Management Board of Cherry AG will conduct a negotiation procedure in accordance with the German Act on the Involvement of Employees in a European Company (SE Involvement Act, "**SEBG**"). The subject of the negotiations is the involvement of employees in the SE. In this context, employee involvement means any procedure, including information, consultation and participation, by which the employee representatives can influence the decision-making of the SE (section 2(8) SEBG). The objective of the negotiations is the conclusion of a written agreement on the involvement of employees in Cherry SE ("**Involvement Agreement**"). The Management Board will conduct the negotiations with the "special negotiating body" of the employees of Cherry AG and its subsidiaries and establishments in the Member States ("**SNB**") to be formed for these purposes (section 4(1) SEBG).

- 9.2 The negotiations may alternatively lead to the following outcomes:

- 9.2.1 An Involvement Agreement is concluded by the Management Board of Cherry AG and the SNB.

In this case, the involvement rights of the employees of Cherry SE will be governed by this Involvement Agreement. In this context, section 21 SEBG stipulates certain minimum contents for the Involvement Agreement. Minimum contents of the Involvement Agreement include the following:

- 9.2.1.1 Determining the scope of the Involvement Agreement (including the companies and establishments located outside the territory of the Member States, insofar as these are included in the scope of the Involvement Agreement).
- 9.2.1.2 In the event that the parties agree to establish an SE works council,
- a) determining its composition, the number of its members and allocation of seats including the effects of significant changes in the number of employees employed in the SE,
  - b) determining of the powers and the procedure for informing and consulting the SE works council,

- c) determining the frequency of its meetings and the financial and material resources to be made available, and
- d) determining the date on which the Involvement Agreement enters into force and its term and furthermore determining the cases in which the Involvement Agreement is to be renegotiated including determining the procedure to be applied for this.

9.2.1.3 In the event that an SE works council is not established, determining the implementation modalities of the procedure or procedures for informing and consulting employees.

In addition to the minimum contents, the Involvement Agreement can contain further provisions in accordance with section 21(3) to (5) SEBG.

Irrespective of this, however, the Involvement Agreement must observe the limits of section 21(6) SEBG, which requires that the Involvement Agreement must ensure at least the same extent with regard to all components of employee involvement as exists at Cherry AG as the legal entity changing its legal form.

9.2.2 No agreement is reached in the negotiation procedure within the statutory negotiation period, which is six months from the establishment of the SNB in accordance with section 20 SEBG and can be extended to twelve months by mutual agreement.

In this case, the statutory standard rules pursuant to sections 22 et seqq. SEBG apply. Accordingly, pursuant to section 2(1) no. 2 SEBG, an SE works council would have to be established at Cherry SE in accordance with section 23 SEBG, the task of which would be to ensure that the employees in the SE are informed and consulted. It would be responsible for matters concerning the SE itself, one of its subsidiaries or one of its establishments in a Member State or which go beyond the powers of the competent bodies at the level of the individual Member State (section 27 SEBG). The SE works council would have to be informed and consulted at least once per calendar year in a joint meeting about the development of the business situation and the prospects of Cherry SE (section 28 SEBG). In addition, the SE works council would have to be informed and consulted about extraordinary circumstances that have a significant impact on the interests of employees, also during the course of the year (section 29 SEBG).

However, the provisions on employee co-determination by operation of law pursuant to sections 35 to 38 SEBG would not apply in the present case, because the special requirement pursuant to section 34(1) no. 1 SEBG is not fulfilled, since no provision on employee co-determination in the Supervisory Board of Cherry AG applied in Cherry AG prior to the change of the legal form.

Therefore, in this case, the Supervisory Board of Cherry SE would continue to consist only of shareholder representatives, just like the Supervisory Board of Cherry AG.

Pursuant to section 25, first sentence SEBG, the management of Cherry SE would have to review every two years whether changes have occurred in the SE, its subsidiaries or establishments and whether these changes require a different composition of the SE works council. In addition, four years after its establishment, the SE works council would have to adopt a resolution on whether an Involvement Agreement should be negotiated or whether the previous arrangement should continue to apply (section 26(1) SEBG).

9.2.3 The SNB resolves pursuant to section 16(1) SEBG not to enter into negotiations or to break off negotiations that have begun.

Such a resolution would terminate the negotiation procedure without the statutory standard rules applying, so that no SE works council would have to be established at Cherry SE (see section 16(2) SEBG). In this case, the Supervisory Board of Cherry SE would continue to consist only of representatives of the shareholders, as is the case with the Supervisory Board of Cherry AG.

9.3 Pursuant to Article 12(2) SE Regulation, Cherry SE can only be registered in the commercial register and the change of the legal form can therefore only become effective if either the Involvement Agreement has been concluded or the SNB has adopted a resolution not to enter into or to terminate negotiations or the negotiation period has expired without an agreement having been reached on the Involvement Agreement.

9.4 The Management Board of Cherry AG initiated the procedure for the involvement of employees in Cherry SE on 18 January 2022 in accordance with the provisions of the SEBG by letter to inform the employees or the employee representatives of Cherry AG, the affected subsidiaries and establishments about the intended conversion and request the formation of the SNB. The letter provided in particular information pursuant to section 4(3) SEBG, i.e. the identity and structure of Cherry AG, its affected subsidiaries and affected establishments and their distribution among the Member States referred to in section 9.5, the employee representative bodies existing at these subsidiaries and establishments, the number of employees employed (both in total and differentiated by companies and establishments) as well as the number of employees entitled to co-determination rights in the corporate bodies of these companies.

9.5 The SNB is comprised of employee representatives from all Member States. The formation and composition of the SNB is in principle governed by German law (sections 4 to 7 SEBG). The allocation of the seats on the SNB to the Member States is governed by section 5(1) of the SEBG for the establishment of an SE with its registered office in Germany. Each Member State in which the Cherry Group has

employees receives at least one seat on the SNB. The number of seats allocated to a Member State increases by one seat each time the number of employees in that Member State exceeds the thresholds of 10%, 20%, 30%, etc., in each case in relation to the total number of employees of the Cherry Group employed in all Member States.

According to these requirements and on the basis of the number of employees of the Cherry Group in the Member States at the time the employees or employee representatives were informed on 18 January 2022, the Member States will have a total of 13 seats, which will be allocated as follows:

<b>Member State</b>	<b>Number of employees</b>	<b>Percentage of employees (rounded) in relation to the total number of employees in all Member States</b>	<b>Number of seats on SNB</b>
Germany	407	91.46%	10
Sweden	1	0.22%	1
France	4	0.90%	1
Austria	33	7.42%	1
<b>Total:</b>	<b>445</b>	<b>100%</b>	<b>13</b>

9.6 The election or appointment of the members of the SNB from the individual Member States was carried out in accordance with the respective Member State provisions implementing Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

9.6.1 In Germany, the members of the SNB were elected in accordance with section 8 SEBG by an election committee in a direct and secret vote. Since only one corporate group, the Cherry Group, is involved in setting up Cherry SE and there is no group works council or general works council, the election committee in accordance with the first sentence of section 8(2) SEBG was made up of the members of the works council formed in the joint operation between Cherry AG and Cherry Europe GmbH. This works council also represented the remaining domestic establishments and companies of the Cherry Group in accordance with the second sentence of section 8(2) SEBG because there were no other domestic works councils. In accordance with the second sentence of section 8(1) SEBG in conjunction with section 6(3) SEBG, three members of the SNB who are themselves union members were to be elected at the suggestion of IG Metall as the union represented in the Cherry Group. In addition, in accordance with the fifth and sixth sentences of section 8(1), SEBG in conjunction with section 6(4) SEBG, one member of the SNB was to be elected from among the managerial employees at the suggestion of the managerial spokesmen's committee or, if there is none, the managerial employees. No

candidates were proposed for election from among the managerial employees and therefore, an election from among the managerial employees could not take place due to the lack of candidates to be elected. Thus, the election committee elected the following members of the SNB in Germany on 17 March 2022 in a direct and secret vote:

<b>Member of SNB</b>	<b>Substitute member</b>
Horst Ott (representative IG Metall)	Udo Fechtner (representative IG Metall)
Sabrina Feige (representative IG Metall)	Sebastian Volk (representative IG Metall)
Undine Memmler (representative IG Metall)	Ralf Götz (representative IG Metall)
Reinhard Leipold (Cherry Europe GmbH)	Substitute members for all elected full members in the following order:  1. Peter Kraus (Cherry Europe GmbH)  2. Heidi Hofmann (Cherry AG)  3. Hans Peter Klein (Cherry Europe GmbH)
Elke Deinzer (Cherry AG)	
Sebastian Schraml (Cherry Digital Health GmbH)	
Bernhard Frohnhöfer (Cherry Europe GmbH)	
Michael Pospischil (Cherry Europe GmbH)	
Jörg Wimmer (Cherry Europe GmbH)	
Andreas Härtel (Cherry Digital Health GmbH)	

9.6.2 In Sweden, one member of the SNB was to be elected in accordance with the rules of sections 17-18 of the Swedish Act on Employee Co-Determination in the European Company (*Sw. Lag (2004:559) om arbetstagarinflytande i europabolag*). No member of the SNB was elected or appointed in Sweden within the time limit of ten (10) weeks following the initiation of the negotiation procedure pursuant to the first sentence of section 11(1) SEBG. The Swedish seat has therefore remained unoccupied to date.



- 9.6.3 In France, one member of the SNB was to be elected directly by the employees in accordance with Article L. 2352-6 and Article D. 2352-11 of the French Labour Code (*Code du travail*). No member of the SNB was elected or appointed in France within the time limit of ten (10) weeks following the initiation of the negotiation procedure pursuant to the first sentence of section 11(1) SEBG. The French seat has therefore remained unoccupied to date.
- 9.6.4 In Austria, a member is generally appointed to the SNB from among the works council members in accordance with section 217 Employee Representation Act (*ArbVG*) by resolution of the works committee; if there is no works committee, the works council performs this task. However, since the relevant Austrian subsidiary of Cherry AG currently has no employee representation body, the appointment of a member for Austria to the SNB was not possible. The Austrian seat has therefore remained unoccupied to date.
- 9.6.5 Based on the elections in the relevant Member States, in line with the currently applicable provisions the SNB is made up of a total of 10 members. In accordance with the second sentence of section 11(2) SEBG, the negotiation procedure also takes place if the time limit for the election or appointment of the members of the SNB is exceeded due to reasons that the employees are responsible for. If and to the extent that members of the SNB are elected or appointed following the expiration of the time limit, they are eligible to participate in the negotiation procedure at any time pursuant to the second sentence of section 11(2) SEBG.
- 9.7 If such changes in the structure or number of employees of Cherry AG, the affected subsidiaries or the affected establishments occur during the activity of the SNB that would change the specific composition of the SNB, the SNB is to be newly constituted to reflect this pursuant to section 5(4), first sentence SEBG. Up until the date of the signing of these Draft Terms of Conversion, the activity of the SNB has not yet started.
- 9.8 Within the period of ten (10) weeks after receipt of the employee information letter as provided for in section 11(1), first sentence SEBG, the Management Board of Cherry AG was informed or was aware, without undue delay after the election, of the names of all members of the SNB from Germany. In Sweden, France and Austria, no members of the SNB were elected and thus, no information was provided to the Management Board of Cherry AG in this regard. The Management Board informed the local works and company management teams and existing employee representation bodies about the German SNB member details it had been informed of as well as about the fact that no members of the SNB had been elected in the other Member States.
- 9.9 The Management Board of Cherry AG invited the SNB members in a letter dated 30 March 2022, which was sent to the elected members of the SNB on 31 March 2022, to their inaugural meeting, which is planned to take place on 13 April 2022. On the inauguration day, negotiations start between the Management Board of Cherry

AG and the SNB about entering into an Involvement Agreement. A period of six months for negotiation is provided for in principle in section 20(1) SEBG. The negotiations have not yet started at the time of notarisation of these Draft Terms of Conversion.

9.10 The costs incurred by the formation and activities of the SNB are borne by Cherry AG and, after the Conversion Date, by Cherry SE.

## **10. Other consequences for employees and their representatives**

10.1 Apart from the future involvement of the employees in Cherry SE as described in section 9 above, the change in legal form will have no effect on the involvement rights of the employees of Cherry AG or the Cherry Group.

10.2 The employment relationships of the employees of Cherry AG and the Cherry Group will remain unaffected by the change in legal form into an SE and all rights and obligations of the employees under these existing employment relationships will continue to exist unchanged. Since the conversion into the legal form of an SE does not involve a change of legal entity, there is no transfer of an undertaking with regard to the employees of Cherry AG and section 613a German Civil Code does not apply to the change in legal form.

10.3 The employees of the Cherry Group as a whole are not affected by a transfer of their employment relationship as a result of the conversion of Cherry AG into the legal form of an SE. Also, all rights and obligations of the employees of the affected subsidiaries or the affected establishments arising from the existing employment relationships remain unaffected by the change in the legal form.

10.4 The existence, composition and term of office of employee representative bodies at the level of the establishment or company will not be affected by the change in legal form. A European works council has not been formed at the Cherry Group and therefore does not cease to exist as a result of the change in the legal form pursuant to section 47(1) no. 2 SEBG. Existing collective agreements are also not affected by the change in legal form.

10.5 In connection with or due to the conversion into the legal form of an SE, no further measures are envisaged that will have consequences for the employees and their representative bodies.

## **11. Auditors**

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, with registered office in Stuttgart, Essen branch, are appointed as the auditors of the financial statements and the consolidated financial statements for the first fiscal year of Cherry SE and, in the event of a review of additional interim financial information to be prepared until the Annual General Meeting in the fiscal year following the first fiscal year of Cherry SE, as the auditors for such review. The first fiscal year of Cherry SE is the calendar year

in which the change of legal form of Cherry AG into Cherry SE is entered in the commercial register of Munich Local Court with jurisdiction for Cherry AG.

## **12. Costs**

Cherry AG bears the costs incurred in connection with the notarisation of these Draft Terms of Conversion as well as their preparation and implementation up to the amount of EUR 400,000.00 stipulated in Article 25(2) of the SE Articles.

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**Annex to the Draft Terms of Conversion  
regarding the change in legal form of  
Cherry AG  
with its registered office in Munich  
to the legal form of a European company (*Societas Europaea, SE*)  
– Articles of Association of Cherry SE –**

**Satzung der Cherry SE /  
Articles of Association of Cherry SE**

*DEUTSCHE FASSUNG*

**Satzung  
der  
Cherry SE**

**I.  
Allgemeine Bestimmungen**

**§ 1  
Firma und Sitz**

- (1) Die Firma der Gesellschaft lautet  
**Cherry SE.**
- (2) Die Gesellschaft hat ihren Sitz in  
München, Deutschland.

**§ 2  
Gegenstand des Unternehmens**

- (1) Gegenstand des Unternehmens ist das Halten, Verwalten, der Erwerb und die Veräußerung von Beteiligungen an anderen Unternehmen, insbesondere an Unternehmen, die direkt oder indirekt auf dem Gebiet der Entwicklung und des Designs, der Herstellung, des Vertriebs sowie des Im- und Exports von Computer-Eingabegeräten, mechanischen Schaltern und Hardware sowie von IT-basierten und IT-unterstützenden Produkten und Peripherie-Geräten, einschließlich Sicherheits- und sonstigen Systemen und Software tätig sind, sowie die Erbringung von nicht erlaubnispflichtigen Dienstleistungen (einschließlich Verwaltungs- und Managementleistungen) für andere

*ENGLISH TRANSLATION*

**Articles of Association  
of  
Cherry SE**

**I.  
General Provisions**

**§ 1  
Company Name and Registered Seat**

- (1) The name of the Company is  
**Cherry SE.**
- (2) The seat of the Company is Munich,  
Germany.

**§ 2  
Object of the Company**

- (1) The purpose of the Company is 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

Unternehmen einschließlich Konzerngesellschaften unter anderem auf dem Gebiet Finance, Human Resources, IT, Controlling, Datenschutz, Materialwirtschaft, Auftragsverwaltung, Logistik und Lagermanagement, strategischer und operative Einkauf und Beschaffung sowie Kundendienst.

- (2) Die Gesellschaft ist zu allen Handlungen und Maßnahmen berechtigt und kann alle Geschäfte betreiben, die mit dem Gegenstand des Unternehmens zusammenhängen oder ihm unmittelbar oder mittelbar zu dienen geeignet sind. Insbesondere darf die Gesellschaft auch die Stellung als persönlich haftende Gesellschafterin in Gesellschaften übernehmen. Sie kann auch andere Unternehmen im In- und Ausland gründen, erwerben und sich an ihnen beteiligen sowie solche Unternehmen leiten oder sich auf die Verwaltung der Beteiligung beschränken. Sie kann ihren Betrieb, auch von ihr gehaltene Beteiligungen, ganz oder teilweise durch verbundene Unternehmen führen lassen oder auf solche übertragen oder auslagern sowie Unternehmensverträge abschließen. Die Gesellschaft darf auch Zweigniederlassungen und Betriebsstätten im In- und Ausland errichten. Sie kann ihre Tätigkeit auf einen Teil der in Absatz (1) bezeichneten Arbeitsgebiete beschränken.

### **§ 3**

#### **Bekanntmachungen**

- (1) Bekanntmachungen der Gesellschaft erfolgen im Bundesanzeiger. Sofern gesetzlich zwingend eine andere Bekanntmachungsform erforderlich ist,

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.

- (2) The Company is entitled to perform all acts and take all steps and conduct all kind of transactions which relate to the object of the Company or which are 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. The Company 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 it may conclude intercompany agreements. The Company may also establish branch offices and permanent establishments in Germany and abroad. The Company may limit its activity to a part of the areas designated in paragraph (1).

### **§ 3**

#### **Announcements**

- (1) Notices of the Company shall be published in the Federal Gazette. If another form of notice is required by mandatory provisions of law, such

tritt an die Stelle des Bundesanzeigers diese Bekanntmachungsform.

- (2) Informationen an die Aktionäre der Gesellschaft können, soweit gesetzlich zulässig, auch im Wege der Datenfernübertragung übermittelt werden.

## II. Grundkapital und Aktien

### § 4 Grundkapital

- (1) Das Grundkapital der Gesellschaft beträgt EUR 24.300.000,00 (in Worten: Euro vierundzwanzig Millionen dreihunderttausend).

Das Grundkapital der Cherry SE wurde in Höhe von EUR 24.300.000,00 (in Worten: Euro vierundzwanzig Millionen dreihunderttausend) im Wege der Umwandlung der im Handelsregister des Amtsgerichts München unter HRB 266697 eingetragenen Cherry AG mit Sitz in München erbracht.

Das Grundkapital der Cherry AG wurde in Höhe von EUR 2.000.000,00 (in Worten: Euro zwei Millionen) durch Formwechsel gemäß §§ 190 ff. UmwG der im Handelsregister des Amtsgerichts München unter HRB 263478 eingetragenen Cherry Holding GmbH mit Sitz in München erbracht.

- (2) Das Grundkapital ist eingeteilt in

form shall replace the notice in the Federal Gazette.

- (2) Notices to the shareholders of the Company may, to the extent permitted by law, also be communicated by data transmission.

## II. Registered Share Capital and Shares

### § 4 Registered Share Capital

- (1) The registered share capital of the Company amounts to EUR 24,300,000.00 (in words: Euro twenty-four million three hundred thousand).

The registered share capital of Cherry SE has been provided in the amount of EUR 24,300,000.00 (in words: Euro twenty-four million three hundred thousand) by way of conversion of Cherry AG with registered seat in Munich, registered with the commercial register of the local court of Munich under registration number HRB 266697.

The registered share capital of Cherry AG has been provided in the amount of EUR 2,000,000.00 (in words: Euro two million) by way of conversion of Cherry Holding GmbH with registered seat in Munich, registered with the commercial register of the local court of Munich under registration number HRB 263478 pursuant to Sec. 190 et seqq. German Transformation Act (*Umwandlungsgesetz – UmwG*).

- (2) The registered share capital is divid-

24.300.000 (in Worten: vierundzwanzig Millionen dreihunderttausend) Stückaktien (Aktien ohne Nennbetrag).

- (3) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum 10. Juni 2026 mit Zustimmung des Aufsichtsrats um bis zu EUR 10.000.000,00 durch Ausgabe von bis zu 10.000.000 neuen, auf den Inhaber lautenden Stückaktien gegen Bar- und/oder Sacheinlagen zu erhöhen (Genehmigtes Kapital 2021/I). Von der Ermächtigung kann einmal oder mehrmals in Teilbeträgen, insgesamt aber nur bis zur Grenze von EUR 10.000.000,00 Gebrauch gemacht werden. Den Aktionären steht grundsätzlich ein Bezugsrecht zu. Bei Kapitalerhöhungen gegen Bareinlagen können die Aktien auch von durch den Vorstand bestimmten Kreditinstituten oder Unternehmen im Sinne von § 186 Abs. 5 Satz 1 Aktiengesetz (AktG) mit der Verpflichtung übernommen werden, sie den Aktionären zum Bezug anzubieten.

Der Vorstand ist jedoch ermächtigt, mit Zustimmung des Aufsichtsrats das Bezugsrecht der Aktionäre in den folgenden Fällen auszuschließen:

- um etwaige Spitzenbeträge von dem Bezugsrecht auszunehmen;
- um das Grundkapital gegen Sacheinlagen zu erhöhen, insbesondere zum Zwecke von Unternehmenszusammenschlüssen oder des Erwerbs von Unternehmen, Unternehmensbeteiligungen, Teilen von Unternehmen, gewerblichen Schutzrech-

ed into 24,300,000 (in words: twenty four million three hundred thousand) no-par value shares (shares without a nominal value).

- (3) Subject to the approval of the Supervisory Board, the Management Board shall be authorised to increase the Company's share capital 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 or in kind until 10 June 2026 (Authorised Capital 2021/I). This authorisation may be exercised once or several times in partial amounts but only up to a maximum cap of EUR 10,000,000.00. The shareholders shall generally be awarded subscription rights. In the event of a capital increase in exchange for cash, the shares may be transferred to financial institutions or companies within the meaning of Sec. 186 para. 5 sentence 1 of the German Stock Corporation Act (*Aktiengesetz – AktG*) chosen by the Management Board with the obligation to offer them for subscription by the shareholders.

However, subject to Supervisory Board approval, the Management Board shall be authorised to exclude shareholders' subscription rights in the following cases:

- to exclude fractional amounts from the subscription right;
- to increase the share capital against contributions in kind, including for the purposes of business combinations or acquisitions of companies, company assets, operations or shares in companies, industrial property rights (e.g. patents, utility mod-



ten (wie z. B. Patenten, Gebrauchsmustern, Marken oder hierauf gerichteten Lizenzen) oder sonstigen Produktrechten;

- bei Kapitalerhöhungen gegen Bareinlagen, wenn der auf die neuen Aktien, für die das Bezugsrecht ausgeschlossen wird, insgesamt entfallende anteilige Betrag 10 % des Grundkapitals weder im Zeitpunkt des Wirksamwerdens dieser Ermächtigung noch im Zeitpunkt der Ausübung dieser Ermächtigung übersteigt und der Ausgabebetrag der neuen Aktien den Börsenpreis der bereits börsennotierten Aktien gleicher Ausstattung zum Zeitpunkt der endgültigen Festlegung des Ausgabe-preises nicht wesentlich unterschreitet. Auf diese Höchstgrenze von 10 % des Grundkapitals ist der anteilige Betrag des Grundkapitals anzurechnen, der auf Aktien der Gesellschaft entfällt, die während der Laufzeit des genehmigten Kapitals unter Ausschluss des Bezugsrechts der Aktionäre gemäß §§ 71 Abs. 1 Nr. 8 Satz 5, 186 Abs. 3 Satz 4 AktG als eigene Aktien veräußert werden, sowie der auf Aktien entfällt im Hinblick auf welche ein Wandlungsrecht oder Optionsrecht oder eine Wandlungspflicht oder eine Optionspflicht aufgrund von Options- und/oder Wandelschuldverschreibungen besteht, die seit Erteilung dieser Ermächtigung unter Ausschluss des Bezugsrechts der Aktionäre gemäß §§ 71 Abs. 1 Nr. 8 Satz 5, 186 Abs. 3 Satz 4 AktG ausgegeben worden sind.

els, trademarks or licenses there-to) or other product rights;

- capital increases in return for cash as long as the value of the new shares for which subscription rights are excluded does not exceed 10 % of the share capital either at the point in time at which this authorisation enters into effect or at the point in time at which this authorisation is exercised and the issue price of the new shares is not significantly below the stock market quotation of the shares of the same class that are already listed at the point in time at which the final issue price is determined. The proportionate amount of the share capital attributable to the shares of the Company sold as treasury stock during the term of the authorised capital under exclusion of shareholder subscription rights in accordance with Sec. 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG as well as shares in view of which a conversion right or option right or an obligation to convert or to opt on the basis of warrant bonds and/or convertible bonds exists which have been issued since the granting of this authorization under exclusion of shareholder subscription rights in accordance with Sec. 221 para. 4, 186 para. 3, sentence 4 AktG shall be counted against this cap of 10 % of the capital share.

Der Vorstand ist ferner ermächtigt, die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung mit Zustimmung des Aufsichtsrats festzulegen. Der Aufsichtsrat ist ermächtigt, nach vollständiger oder teilweiser Ausnutzung des Genehmigten Kapitals 2021/I oder Ablauf der Frist für die Ausnutzung des Genehmigten Kapitals 2021/I die Fassung der Satzung entsprechend anzupassen.

- (4) Das Grundkapital ist um bis zu EUR 10.000.000,00, eingeteilt in bis zu 10.000.000 auf den Inhaber lautende Stückaktien, bedingt erhöht (Bedingtes Kapital 2021/I). Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, wie die Inhaber oder Gläubiger von Options- oder Wandlungsrechten oder die zur Wandlung/Optionsausübung Verpflichteten aus gegen Bareinlage oder Sacheinlage ausgegebenen Options- und/oder Wandelschuldverschreibungen, Genussrechten und/oder Gewinnschuldverschreibungen (oder Kombinationen dieser Instrumente), die von der Gesellschaft oder einem nachgeordneten Konzernunternehmen der Gesellschaft aufgrund der Ermächtigung des Vorstands durch Hauptversammlungsbeschluss vom 23. Juni 2021 bis zum 22. Juni 2026 ausgegeben oder garantiert werden, von ihren Options- oder Wandlungsrechten Gebrauch machen oder, soweit sie zur Wandlung/Optionsausübung verpflichtet sind, ihre Verpflichtung zur Wandlung/Optionsausübung erfüllen oder soweit die Gesellschaft ein Wahlrecht ausübt, ganz oder teilweise anstelle der Zahlung des fälligen Geldbetrags Aktien der Gesellschaft zu gewähren. Die bedingte Kapital-

Subject to the approval of the Supervisory Board, the Management Board is authorised to determine the further details of the implementation of an authorised capital. The Supervisory Board is authorised to adjust the wording of the Articles of Association after the full or partial exercise of the Authorised Capital 2021/I or after the expiration of the authorisation period.

- (4) The share capital 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 – *bedingtes Kapital*). The conditional capital increase shall only be executed insofar as the holders or creditors of option or conversion rights or those with conversion/option obligations arising from option and/or convertible bonds, participation rights and/or participating bonds (or combinations of these instruments) issued or guaranteed by the company or a subordinate Group company in return for contributions in cash or in kind, based on the authorisation of the Management Board adopted by the General Meeting of 23 June 2021 until 22 June 2026, exercise their option or conversion rights or, insofar as they are obligated for conversion/to exercise options, fulfil their obligation for conversion/exercise of options, or insofar as the company exercises an option to provide shares of the company in lieu of paying the cash amount due, in whole or in part. The conditional capital increase shall not be executed insofar as a cash settlement is provided or treasury shares, shares from the authorised capital or shares of another listed company are

erhöhung wird nicht durchgeführt, soweit ein Barausgleich gewährt wird oder eigene Aktien, Aktien aus genehmigtem Kapital oder Aktien einer anderen börsennotierten Gesellschaft zur Bedienung eingesetzt werden. Die Ausgabe der neuen Aktien erfolgt zu dem nach Maßgabe des vorstehend bezeichneten Ermächtigungsbeschlusses jeweils zu bestimmenden Options- oder Wandlungspreis. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem sie entstehen, am Gewinn teil; soweit rechtlich zulässig, kann der Vorstand mit Zustimmung des Aufsichtsrats die Gewinnbeteiligung neuer Aktien hiervon und von § 60 Abs. 2 Satz 3 AktG abweichend, auch für ein bereits abgelaufenes Geschäftsjahr, festlegen.

Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Durchführung der bedingten Kapitalerhöhung festzusetzen. Der Aufsichtsrat ist ermächtigt, die Fassung der Satzung entsprechend der jeweiligen Ausnutzung des Bedingten Kapitals 2021/I neu zu fassen. Entsprechendes gilt für den Fall der Nichtausnutzung der Ermächtigung zur Ausgabe von Options- und/oder Wandelschuldverschreibungen, Genussrechten und/oder Gewinnschuldverschreibungen (oder Kombinationen dieser Instrumente) nach Ablauf des Ermächtigungszeitraums sowie für den Fall der Nichtausnutzung des Bedingten Kapitals 2021/I nach Ablauf der Fristen für die Ausübung von Options- oder Wandlungsrechten oder für die Erfüllung von Options- oder Wandlungspflichten.

used for the fulfilment. The issue of the new shares is effected at the option or conversion price in each case to be determined in accordance with the authorisation resolution set forth above. The new shares participate in profits from the beginning of the financial year in which they are created; to the extent legally permissible, the Management Board may, with the consent of the Supervisory Board, determine the profit participation of new shares in deviation from the foregoing and from Sec. 60 para. 2 sentence 3 AktG, also for a financial year that has already expired.

The Management Board is authorised, with the approval of the Supervisory Board, to determine the further details of the implementation of the conditional capital increase. The Supervisory Board is authorised to adjust the wording of the Articles of Association in accordance with the respective utilisation of the Conditional Capital 2021/I. The same shall apply in the event that the authorisation for the issue of options and/or convertible bonds, participation rights and/or participating bonds (or combinations of these instruments) has not been utilised after the term of the authorisation has expired, as well as in the event that the Conditional Capital 2021/I has not been utilised after the periods for the exercise of option or conversion rights or, respectively, for the fulfilment of option or conversion obligations have expired.

**§ 5  
Aktien**

- (1) Die Aktien lauten auf den Inhaber.
- (2) Ein Anspruch der Aktionäre auf Verbriefung ihrer Anteile ist ausgeschlossen, soweit dies gesetzlich zulässig ist. Die Sammelurkunde ist bei einer der in § 10 Abs. 1 Satz 2 Nr. 2 lit. a-c AktG genannten Stellen zu hinterlegen. Die Gesellschaft ist berechtigt, Aktienurkunden auszustellen, die einzelne Aktien (Einzelaktien) oder mehrere bzw. alle Aktien (Sammelaktien) verkörpern. Ein Anspruch der Aktionäre auf Ausgabe von Gewinnanteil- und Erneuerungsscheinen ist ausgeschlossen.
- (3) Die Form und den Inhalt von Aktienurkunden, etwaigen Gewinnanteils- und Erneuerungsscheinen setzt der Vorstand fest. Das Gleiche gilt für Schuldverschreibungen und Zins-scheine.
- (4) Bei einer Erhöhung des Grundkapitals kann die Gewinnbeteiligung neuer Aktien abweichend von § 60 Abs. 2 AktG bestimmt werden.

**III.  
Verfassung der Gesellschaft**

**§ 6  
Dualistisches System, Organe der Gesellschaft**

- (1) Die Gesellschaft ist nach dem dualistischen System strukturiert.
- (2) Organe der Gesellschaft sind:
  - (a) der Vorstand,

**§ 5  
Shares**

- (1) The shares are bearer shares.
- (2) As far as legally permissible, the right of shareholders to receive share certificates shall be excluded. The global certificate shall be deposited with one of the offices mentioned in Sec. 10 para. 1 2<sup>nd</sup> sentence no. 2 lit. a-c AktG. The Company is entitled to issue share certificates representing individual shares (individual share certificates) or several or all shares (global share certificates). The shareholders shall have no claim to the issue of dividend or renewal coupons.
- (3) Form and content of share certificates as well as dividend and renewal coupons, if any, are determined by the Management Board. The same applies with regard to bonds and interest coupons.
- (4) In the case of a capital increase, participation in profits of the new shares may be determined in derogation of Sec. 60 para. 2 AktG.

**III.  
Organisation of the Company**

**§ 6  
Two-Tier System, Corporate Bodies of the Company**

- (1) The Company has a two-tier structure.
- (2) The Company's corporate bodies are:
  - (a) the Management Board,

- (b) der Aufsichtsrat,
- (c) die Hauptversammlung.

- (b) the Supervisory Board,
- (c) the General Meeting of Shareholders.

## **1. Vorstand**

## **1. Management Board**

### **§ 7**

#### **Zusammensetzung und Geschäftsordnung**

### **§ 7**

#### **Composition and Rules of Procedure**

- (1) Der Vorstand besteht aus einer oder aus mehreren Personen. Der Aufsichtsrat bestimmt die Zahl der Mitglieder des Vorstands.
- (2) Der Aufsichtsrat kann einen Vorsitzenden des Vorstands sowie einen stellvertretenden Vorsitzenden ernennen.
- (3) Die Bestellung von Vorstandsmitgliedern, der Abschluss der Anstellungsverträge und der Widerruf der Bestellung sowie die Änderung und Beendigung der Anstellungsverträge erfolgen durch den Aufsichtsrat. Der Aufsichtsrat kann für den Vorstand eine Geschäftsordnung erlassen.
- (4) Die Vorstandsmitglieder werden vom Aufsichtsrat für einen Zeitraum von höchstens fünf (5) Jahren bestellt. Wiederbestellungen sind zulässig.

- (1) The Management Board consists of one or more members. The number of members of the Management Board shall be determined by the Supervisory Board.
- (2) The Supervisory Board may appoint a chairperson as well as a deputy chairperson of the Management Board.
- (3) The Supervisory Board is responsible for the appointment of members of the Management Board, the conclusion of their employment contracts and the revocation of appointments as well as for the change and termination of their employment contracts. The Supervisory Board may adopt Rules of Procedure for the Management Board.
- (4) The members of the Management Board are appointed by the Supervisory Board for a maximum term of five (5) years. Reappointments are permissible.

### **§ 8**

#### **Geschäftsführung und Vertretung der Gesellschaft**

### **§ 8**

#### **Management and Representation of the Company**

- (1) Der Vorstand leitet die Gesellschaft in eigener Verantwortung. Er hat die Geschäfte der Gesellschaft nach Maßgabe der Gesetze, der Satzung

- (1) The Management Board shall manage the Company in its own responsibility. It manages the Company in accordance with the law, the Articles

und der Geschäftsordnung für den Vorstand zu führen. Unbeschadet der Gesamtverantwortung des Vorstands leitet jedes Vorstandsmitglied den ihm durch die Geschäftsordnung zugewiesenen Geschäftsbereich selbständig.

- (2) Ist nur ein Vorstandsmitglied bestellt, so vertritt es die Gesellschaft allein. Sind mehrere Vorstandsmitglieder bestellt, so wird die Gesellschaft durch zwei Vorstandsmitglieder gemeinschaftlich oder durch ein Vorstandsmitglied gemeinsam mit einem Prokuristen vertreten.
- (3) Der Aufsichtsrat kann alle oder einzelne Vorstandsmitglieder generell oder für den Einzelfall vom Verbot der Mehrfachvertretung gemäß § 181 2. Alternative des Bürgerlichen Gesetzbuchs (BGB) befreien; § 112 AktG bleibt unberührt.

### § 9

#### Zustimmungspflichtige Geschäfte und Maßnahmen

- (1) Der Vorstand darf folgende Geschäfte und Maßnahmen nur nach vorheriger Zustimmung des Aufsichtsrats vornehmen:
  - Wesentliche Änderungen, Erweiterungen oder Beschränkungen des Geschäftszweiges der Gesellschaft oder die Aufnahme neuer vom bisherigen Produkt-, Leistungs- und Vertriebsprogramm wesentlich abweichenden

of Association and the Rules of Procedure for the Management Board. Notwithstanding the joint responsibility of the Management Board, the individual board members manage their respective business segments according to the Rules of Procedure on their own responsibility.

- (2) If only one member of the Management Board is appointed, such member solely represents the Company. If the Management Board consists of several members, it is represented either jointly by two members of the Management Board or by one member of the Management Board together with a person holding general commercial power of representation (*Prokurist*).
- (3) The Supervisory Board may generally or in specific cases issue an exemption to all or to specific members of the Management Board from the prohibition to represent more than one party pursuant to Sec. 181 2nd alternative of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*); Sec. 112 AktG remains unaffected.

### § 9

#### Transactions and Measures requiring approval

- (1) The Management Board may only implement the following measures and transactions after prior approval of the Supervisory Board:
  - Material changes, expansion or reductions in the line of business of the Company or entry into new lines of business substantially deviating from the previous range of products and services offered and distribution

der Geschäftszweige;

- Abschluss, Änderung und Beendigung von Joint-Venture-Verträgen, Kooperationsverträgen, Rahmenvereinbarungen, Unternehmensverträgen im Sinne von §§ 291 ff. AktG (einschließlich Verträgen über stille Beteiligungen) oder partiari-schen Darlehen; und
- Erteilung und Widerruf von Prokuren sowie von Handlungsvoll-machten für den gesamten Ge-schäftsbetrieb.

- (2) Der Aufsichtsrat kann über die in § 9 Absatz (1) genannten Geschäfte und Maßnahmen hinaus in der Ge-schäftsordnung für den Vorstand o-der in der Geschäftsordnung des Aufsichtsrats oder durch Beschluss weitere Arten von Geschäften und Maßnahmen bestimmen, die seiner Zustimmung bedürfen.
- (3) Der Aufsichtsrat kann die Zustim-mung zu einem bestimmten Kreis von Geschäften widerruflich allge-mein oder für den Fall, dass das ein-zelne Geschäft bestimmten Anforde-rungen genügt, im Voraus erteilen.

## 2. Aufsichtsrat

### § 10

#### Zusammensetzung, Wahlen, Amtsdauer

- (1) Der Aufsichtsrat besteht aus sieben (7) Mitgliedern, die von der Haupt-versammlung gewählt werden.
- (2) Die Mitglieder des Aufsichtsrats werden vorbehaltlich einer ander-

paths used;

- conclusion, change and termina-tion of joint venture agree-ments, cooperation agreements, framework agreements, inter-company agreements in the meaning of §§ 291 et seqq. AktG (including agreements regarding silent participations) or profit participation loans; and
- granting or withdrawal of *Proku-rists* or holders of general pow-ers of attorney.

- (2) In addition to the transactions and measures mentioned in § 9 para-graph (1), the Supervisory Board can determine further kinds of transac-tions or measures that require its approval in the Rules of Procedure for the Management Board or the Rules of Procedure of the Superviso-ry Board or by resolution.
- (3) The Supervisory Board may give rev-ocable consent in advance to a cer-tain group of transactions in general or to individual transactions that meet certain requirements.

## 2. Supervisory Board

### § 10

#### Composition, Elections, Term of Office

- (1) The Supervisory Board shall consist of seven (7) members which are elected by the General Meeting.
- (2) Unless otherwise specified at the time of their election, the members

weitigen Festlegung der Amtszeit bei der Wahl durch die Hauptversammlung bis zur Beendigung der Hauptversammlung bestellt, die über die Entlastung für das vierte Geschäftsjahr nach dem Beginn der Amtszeit beschließt, längstens jedoch für sechs (6) Jahre. Das Geschäftsjahr, in welchem die Amtszeit beginnt, wird hierbei nicht mitgerechnet. Die Amtszeit des ersten Aufsichtsrats läuft bis zur Beendigung der Hauptversammlung, die über die Entlastung für das erste Geschäftsjahr der Cherry SE beschließt. Wiederbestellungen sind zulässig.

- (3) Eine Nachwahl für ein vor Ablauf der Amtszeit ausgeschiedenes Mitglied erfolgt für den Rest der Amtszeit des ausgeschiedenen Aufsichtsratsmitglieds, soweit die Hauptversammlung die Amtszeit des Nachfolgers nicht nach vorstehendem Absatz (2) abweichend bestimmt. Entsprechendes gilt, falls eine Nachwahl wegen Wahlanfechtung notwendig wird.
- (4) Jedes Aufsichtsratsmitglied kann sein Amt auch ohne wichtigen Grund durch schriftliche Erklärung gegenüber dem Vorsitzenden des Aufsichtsrates – oder, im Falle einer Amtsniederlegung durch den Vorsitzenden, seinem Stellvertreter – mit einer Frist von einem Monat niederlegen. Der Aufsichtsratsvorsitzende oder, im Falle der Niederlegung durch den Aufsichtsratsvorsitzenden, sein Stellvertreter kann die Frist abkürzen oder auf die Einhaltung der Frist verzichten.

of the Supervisory Board are elected by the General Meeting for a period terminating at the end of the General Meeting that resolves on the formal approval of the members' acts for the fourth fiscal year following the commencement of their term of office, however, for no more than six (6) years. The fiscal year in which the term of office begins shall not be included in this calculation. The term of the members of the first Supervisory Board shall end at the end of the General Meeting that resolves on the formal approval of the members' acts for the first fiscal year of Cherry SE. Reappointments are permissible.

- (3) For members of the Supervisory Board who leave office before the end of their term a successor shall be elected for the remaining term of the member who has left office unless the General Meeting specifies a shorter term for such successor according to paragraph (2). The same applies if a successor has to be elected due to a challenge of the election.
- (4) Each member of the Supervisory Board may resign from office even without good cause with one month written notice issued to the chairperson of the Supervisory Board or, in case of a resignation by the chairperson, to his/her deputy. The chairperson of the Supervisory Board or, in case of a resignation by the chairperson, his/her deputy, can consent to a shortening or to a waiver of this period.



## § 11

### Vorsitzender und Stellvertreter

- (1) Der Aufsichtsrat wählt aus seiner Mitte einen Vorsitzenden und einen Stellvertreter. Die Wahl erfolgt unmittelbar im Anschluss an die Hauptversammlung, in der die Aufsichtsratsmitglieder der Aktionäre neu gewählt worden sind; zu dieser Sitzung bedarf es keiner besonderen Einladung. Die Amtszeit des Vorsitzenden und des Stellvertreters entspricht, soweit nicht bei der Wahl eine kürzere Amtszeit bestimmt wird, ihrer Amtszeit als Mitglied des Aufsichtsrats.
- (2) Scheidet der Vorsitzende oder sein Stellvertreter vorzeitig aus diesem Amt aus, so hat der Aufsichtsrat jeweils unverzüglich eine Neuwahl vorzunehmen.
- (3) Der Stellvertreter des Vorsitzenden hat vorbehaltlich anderweitiger Regelungen des Gesetzes oder in dieser Satzung in allen Fällen, in denen er bei Verhinderung des Vorsitzenden in dessen Stellvertretung handelt, die gleichen Rechte wie der Vorsitzende. § 14 Absatz (6) bleibt unberührt.
- (4) Willenserklärungen des Aufsichtsrats werden namens des Aufsichtsrats durch den Vorsitzenden abgegeben. Der Vorsitzende ist ermächtigt, Erklärungen für den Aufsichtsrat entgegenzunehmen.

## § 12

### Rechte und Pflichten des Aufsichtsrats

- (1) Der Aufsichtsrat hat alle Aufgaben und Rechte, die ihm durch Gesetz

## § 11

### Chairperson and Deputy Chairperson

- (1) The Supervisory Board elects from its midst a chairperson and a deputy chairperson. The election shall take place following the General Meeting that has elected the new members of the Supervisory Board of the shareholders; no special invitation is necessary for this meeting. The term of office of the chairperson and his deputy corresponds to their term of office as members of the Supervisory Board unless a shorter period is determined at the time of their election.
- (2) If the chairperson or his deputy leaves such office before the end of his term, the Supervisory Board shall conduct a new election without undue delay.
- (3) In all cases in which the deputy acts on behalf of the chairperson in the absence of the chairperson, he has the same rights as the chairperson unless otherwise provided by law or in these Articles of Association. § 14 paragraph (6) shall remain unaffected.
- (4) Declarations of the Supervisory Board are made in the name of the Supervisory Board by the chairperson. The chairperson is authorized to accept declarations on behalf of the Supervisory Board.

## § 12

### Rights and Obligation of the Supervisory Board

- (1) The Supervisory Board shall have all rights and obligations assigned to it by law and by these Articles of Asso-

und die Satzung zugewiesen werden.

- (2) Der Aufsichtsrat ist befugt, Änderungen der Satzung zu beschließen, die nur deren Fassung betreffen.

### **§ 13**

#### **Geschäftsordnung und Ausschüsse**

- (1) Der Aufsichtsrat gibt sich eine Geschäftsordnung im Rahmen der gesetzlichen Vorschriften und der Bestimmungen dieser Satzung.
- (2) Der Aufsichtsrat kann nach Maßgabe der gesetzlichen Vorschriften Ausschüsse bilden. Soweit das Gesetz oder die Satzung es zulassen, kann der Aufsichtsrat ihm obliegende Aufgaben, Entscheidungsbefugnisse und Rechte auf seinen Vorsitzenden, einzelne seiner Mitglieder oder aus seiner Mitte gebildete Ausschüsse übertragen. Zusammensetzung, Befugnisse und Verfahren der Ausschüsse werden vom Aufsichtsrat festgelegt.

### **§ 14**

#### **Sitzungen und Beschlussfassung des Aufsichtsrats**

- (1) Die Sitzungen des Aufsichtsrats werden vom Vorsitzenden unter Einhaltung einer Frist von mindestens vierzehn Tagen einberufen, wobei der Tag der Absendung der Einladung und der Tag der Sitzung nicht mitgerechnet werden. Die Einberufung kann schriftlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel erfolgen. Der Vorsitzende kann diese Frist in dringenden Fällen abkürzen

ciation.

- (2) The Supervisory Board is entitled to resolve amendments to the Articles of Association if such amendments only relate to the wording.

### **§ 13**

#### **Rules of Procedure and Committees**

- (1) The Supervisory Board shall adopt Rules of Procedure for the Supervisory Board in accordance with the law and the provisions of these Articles of Association.
- (2) The Supervisory Board can set up committees in accordance with the law. To the extent permitted by law or by these Articles of Association, the Supervisory Board may delegate any of its duties, decision-making powers and rights to its chairperson, to one of its members or to committees established from among its members. The Supervisory Board shall determine the composition, competencies and procedures of the committees.

### **§ 14**

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

- (1) The meetings of the Supervisory Board shall be called at least fourteen days in advance by the chairperson of the Supervisory Board, not including the day on which the invitation is sent and the day of the meeting itself. Notice of meetings may be given in writing, by telefax, by e-mail or any other customary means of communication. In urgent cases the chairperson may shorten this period and may call the meeting

und die Sitzung mündlich oder fernmündlich einberufen. Im Übrigen gelten hinsichtlich der Einberufung der Sitzungen des Aufsichtsrats die gesetzlichen Bestimmungen sowie die Regelungen der Geschäftsordnung für den Aufsichtsrat.

- (2) Die Sitzungen des Aufsichtsrats werden vom Vorsitzenden geleitet.
- (3) Beschlüsse des Aufsichtsrats werden in der Regel in Sitzungen gefasst. Auf Anordnung des Vorsitzenden oder mit Zustimmung aller Mitglieder des Aufsichtsrats können Sitzungen auch in Form einer Telefonkonferenz oder mittels sonstiger elektronischer Kommunikationsmittel (insbesondere Videokonferenz) abgehalten und einzelne Aufsichtsratsmitglieder telefonisch oder mittels elektronischer Kommunikationsmittel (insbesondere Videoübertragung) zugeschaltet werden; in diesen Fällen kann die Beschlussfassung im Wege der Telefonkonferenz oder mittels sonstiger elektronischer Kommunikationsmittel (insbesondere Videokonferenz) erfolgen. Abwesende bzw. nicht an der Konferenzschaltung teilnehmende oder zugeschaltete Aufsichtsratsmitglieder können auch dadurch an der Beschlussfassung des Aufsichtsrats teilnehmen, dass sie schriftliche Stimmabgaben durch ein anderes Aufsichtsratsmitglied überreichen lassen. Als schriftliche Stimmabgabe gilt eine in Textform übermittelte Stimmabgabe. Darüber hinaus können sie ihre Stimme auch nachträglich innerhalb einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel abgeben. Ein Recht zum Widerspruch gegen die vom

orally or by telephone. In all other respects regarding the calling of Supervisory Board meetings the rules provided by law as well as by the Rules of Procedure of the Supervisory Board shall apply.

- (2) Meetings of the Supervisory Board are chaired by the chairperson.
- (3) Resolutions of the Supervisory Board shall generally be passed in meetings. At the order of the chairperson or with the consent of all Supervisory Board members, the meetings of the Supervisory Board may also be held in the form of a telephone conference or by other electronic means of communication (especially by video conference); individual members of the Supervisory Board may be connected to the meetings via telephone or by other electronic means of communication (especially by video link); in such cases resolutions may also be passed by way of the telephone conference or by other electronic means of communication (especially by video conference). Absent members of the Supervisory Board or members who do not participate in, or are not connected to, the telephone or video conference can also participate in the passing of resolutions by submitting their votes in writing through another Supervisory Board member. Votes in writing means a vote which is submitted in text form. In addition, they may also cast their vote following the meeting within a reasonable period as determined by the chairperson of the Supervisory Board by telefax, by e-mail or any other customary means of communication. Objections to the form of voting determined by the

Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.

- (4) Beschlussfassungen können auch außerhalb von Sitzungen (im Sinne von § 14 Absatz (3)) schriftlich, per Telefax, per E-Mail oder mittels sonstiger vergleichbarer Kommunikationsmittel sowie in Kombination der vorgenannten Formen erfolgen, wenn der Vorsitzende des Aufsichtsrats dies unter Beachtung einer angemessenen Frist anordnet oder sich alle Aufsichtsratsmitglieder an der Beschlussfassung beteiligen. Mitglieder, die sich bei der Beschlussfassung der Stimme enthalten, nehmen in diesem Sinne an der Beschlussfassung teil. Ein Recht zum Widerspruch gegen die vom Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.
- (5) Der Aufsichtsrat ist beschlussfähig, wenn mindestens die Hälfte der Mitglieder, aus denen der Aufsichtsrat zu bestehen hat und in jedem Fall aber mindestens drei Mitglieder an der Beschlussfassung teilnehmen. Abwesende bzw. nicht telefonisch oder über elektronische Kommunikationsmittel (insbesondere Videokonferenz) teilnehmende oder zugeschaltete Aufsichtsratsmitglieder, die nach Maßgabe von § 14 Absatz (3) bzw. Absatz (4) ihre Stimme abgeben, sowie Mitglieder, die sich bei der Beschlussfassung der Stimme enthalten, nehmen in diesem Sinne an der Beschlussfassung teil.
- (6) Beschlüsse des Aufsichtsrats werden, soweit das Gesetz nicht zwingend etwas anderes bestimmt, mit einfacher Mehrheit der abgegebenen Stimmen gefasst. Stimmenthaltungen gelten in diesem Sinne nicht als abgegebene Stimmen. Ergibt eine

chairperson are not permitted.

- (4) Resolution may also be adopted outside of meetings (within the meaning of § 14 paragraph (3)) in writing, by telefax or by e-mail or any other comparable means of communication, whereas the aforementioned forms may also be combined, at the order of the chairperson of the Supervisory Board if preceded by reasonable notice or if all members of the Supervisory Board participate in the adoption of the resolution. Members who abstain from voting are considered to take part in the resolution. Objections to the form of voting determined by the chairperson are not permitted.
- (5) The Supervisory Board has a quorum if at least half of the members of which it has to consist and in any event at least three members take part in the voting. Absent members of the Supervisory Board or members who do not participate or are connected via telephone or via other electronic means of communication (especially via video conference) and who cast their vote in accordance with § 14 paragraph (3) or paragraph (4) as well as members who abstain from voting are considered to take part in the voting for this purpose.
- (6) Unless otherwise provided by mandatory law, resolutions of the Supervisory Board are passed with a simple majority of the votes cast. Abstentions in a vote shall not count as a vote cast in this case. If a voting in the Supervisory Board results in a tie,

Abstimmung im Aufsichtsrat Stimmengleichheit, so kann jedes Aufsichtsratsmitglied eine erneute Abstimmung über denselben Gegenstand verlangen. Ergibt auch die erneute Abstimmung Stimmengleichheit, gibt die Stimme des Aufsichtsratsvorsitzenden den Ausschlag. Dem Stellvertreter steht dieses Recht nicht zu.

- (7) Über die Beschlüsse und Sitzungen des Aufsichtsrats (im Sinne von § 14 Absatz (3)) sowie über in diesen Sitzungen verabschiedete Beschlüsse sind Niederschriften zu fertigen, die vom Vorsitzenden zu unterzeichnen sind. Beschlüsse außerhalb von Sitzungen (im Sinne von § 14 Absatz (4)) werden vom Vorsitzenden schriftlich festgehalten und allen Aufsichtsratsmitgliedern zugeleitet.

### **§ 15 Vergütung**

- (1) Jedes Mitglied des Aufsichtsrats erhält eine jährliche feste Vergütung von EUR 45.000,00. Abweichend von Satz 1 erhält der Vorsitzende des Aufsichtsrats eine jährliche feste Vergütung von EUR 90.000,00 und der Stellvertreter eine jährliche feste Vergütung von EUR 67.500,00.
- (2) Der Vorsitzende des Prüfungsausschusses erhält eine zusätzliche jährliche feste Vergütung von EUR 25.000,00. Der Vorsitzende des Nominierungsausschusses und der Vorsitzende des Personal- und Vergütungsausschusses erhalten jeweils zusätzlich eine jährliche feste Vergütung von EUR 15.000,00. Jedes Mitglied des Aufsichtsrats, das Mitglied

every Supervisory Board member is entitled to request a second vote on the same issue. If the second vote also results in a tie, the vote of the chairperson of the Supervisory Board is decisive. The deputy chairperson's vote shall not be decisive.

- (7) Minutes shall be taken of the resolutions and meetings of the Supervisory Board (in the meaning of § 14 paragraph (3)) and the resolutions adopted in such meetings which shall be signed by the chairperson. Resolutions which were adopted outside meetings (within the meaning of § 14 paragraph (4)) have to be recorded by the chairperson in writing and shall be made available to all members.

### **§ 15 Compensation**

- (1) Every Supervisory Board member shall receive a fixed annual compensation of EUR 45,000.00. In deviation from sentence 1, the Chairperson of the Supervisory Board shall receive fixed annual compensation of EUR 90,000.00 and the deputy shall receive fixed annual compensation of EUR 67,500.00.
- (2) The Chairperson of the Audit Committee receives an additional fixed annual compensation of EUR 25,000.00. The Chairperson of the Nomination Committee and the Chairperson of the Personnel and Compensation Committee each receive an additional fixed annual compensation of EUR 15,000.00. Every member of the Supervisory

des Prüfungsausschusses ist, ohne Vorsitzender zu sein, erhält eine zusätzliche feste jährliche Vergütung von EUR 12.500,00. Jedes Mitglied des Aufsichtsrats, das Mitglied des Personal- und Vergütungsausschusses oder des Nominierungsausschusses ist, ohne Vorsitzender zu sein, erhält eine zusätzliche feste jährliche Vergütung von jeweils EUR 7.500,00.

- (3) Die jährliche Vergütung ist jeweils zum Ablauf des Geschäftsjahres zahlbar und ist dann innerhalb der ersten sechs Wochen des neuen Geschäftsjahres zur Zahlung fällig.
- (4) Mitglieder des ersten Aufsichtsrats sowie Aufsichtsratsmitglieder, die während des laufenden Geschäftsjahres in den Aufsichtsrat, einen Ausschuss oder eine bestimmte Funktion eintreten oder aus dem Aufsichtsrat, einem Ausschuss oder einer bestimmten Funktion ausscheiden, erhalten für jeden angefangenen Monat ihrer Mitgliedschaft bzw. der Wahrnehmung ihrer Funktion ein Zwölftel des betreffenden jährlichen Vergütungsteils.
- (5) Den Mitgliedern des Aufsichtsrats werden die in Ausübung ihres Amtes entstandenen Auslagen und die von ihnen gesetzlich geschuldete Umsatzsteuer erstattet. In Deutschland anfallende Steuern auf die Vergütung, die an Aufsichtsratsmitglieder mit Wohnsitz im Ausland gezahlt wird, werden von dem an das jeweilige Aufsichtsratsmitglied zahlbaren Betrag seitens der Gesellschaft einbehalten und von der Gesellschaft an das zuständige Bundeszentralamt für Steuern (BZSt) deklariert und abge-

Board, who is a member of the Audit Committee without being Chairperson of the Audit Committee, receives an additional fixed annual compensation of EUR 12,500.00. Every member of the Supervisory Board, who is a member of the Personnel and Compensation Committee and/or of the Nomination Committee without being Chairperson in the respective Committee, receives an additional fixed annual compensation of EUR 7,500.00.

- (3) The annual remuneration is payable at the end of each financial year and shall then be paid within the first six weeks of the new fiscal year.
- (4) Members of the first Supervisory Board and members who enter the Supervisory Board, a committee or a particular function or who leave the Supervisory Board, a committee or a particular function shall receive for each beginning month of their membership or performance of their function one twelfth of the relevant annual remuneration.
- (5) The members of the Supervisory Board shall get reimbursement of their expenses incurred in the performance of their office and VAT owed by them under applicable law. German taxes on the remuneration payable to Supervisory Board members having their tax residency outside Germany shall be deducted and withheld by the Company from the amount payable to the relevant supervisory board member and shall be declared and paid by the Company to the relevant Federal tax office

führt.

- (6) Die Mitglieder des Aufsichtsrats werden in eine im Interesse der Gesellschaft von dieser in angemessener Höhe unterhaltene Vermögensschaden-Haftpflichtversicherung für Organmitglieder einbezogen, soweit eine solche besteht. Die Prämien hierfür entrichtet die Gesellschaft.

*(Bundeszentralamt für Steuer, BZSt).*

- (6) The Supervisory Board members shall be included, where existing, in a D&O liability insurance for board members maintained by the Company in the Company's interests that will provide reasonable coverage against financial damages. The premiums for this insurance policy shall be paid by the Company.

### **3. Hauptversammlung**

### **3. General Meeting**

#### **§ 16**

#### **Ort und Einberufung**

#### **§ 16**

#### **Place and Convocation**

- (1) Innerhalb der ersten sechs (6) Monate jedes Geschäftsjahres findet eine ordentliche Hauptversammlung der Aktionäre statt.
- (2) Die Hauptversammlung wird vorbehaltlich der gesetzlichen Einberufungsrechte des Aufsichtsrats und einer Aktionärsminderheit durch den Vorstand einberufen. Die Hauptversammlung findet nach Wahl des einberufenden Organs am Sitz der Gesellschaft, am Sitz einer deutschen Wertpapierbörse oder in einer deutschen Stadt mit mehr als 50.000 Einwohnern statt.
- (3) Die Hauptversammlung ist, soweit gesetzlich keine kürzere Frist zulässig ist, mindestens dreißig (30) Tage vor dem Tag der Hauptversammlung einzuberufen. Diese Einberufungsfrist verlängert sich um die Tage der Anmeldefrist (§ 17 Absatz (2)).

- (1) An annual General Meeting shall be held within the first six (6) months of each fiscal year.
- (2) Subject to any existing legal rights of the Supervisory Board and a minority of the shareholders to convene, the General Meeting shall be convened by the Management Board. It shall be held, at the option of the body convening the General Meeting, either at the registered seat of the Company, at the place of a German stock exchange or in a German city with more than 50,000 inhabitants.
- (3) The General Meeting must be convened, in so far as no shorter period is admissible by law, at least thirty (30) days before the day of the General Meeting. This notice period is extended by the days of the registration period (§ 17 paragraph (2)).

## § 17

### Teilnahme und Ausübung des Stimmrechts

- (1) Zur Teilnahme an der Hauptversammlung und zur Ausübung des Stimmrechts in der Hauptversammlung sind die Aktionäre berechtigt, die sich rechtzeitig angemeldet und ihren Aktienbesitz nachgewiesen haben.
- (2) Die Anmeldung muss der Gesellschaft unter der in der Einberufung hierfür mitgeteilten Adresse mindestens sechs (6) Tage vor der Hauptversammlung zugehen. In der Einberufung kann eine kürzere, in Tagen zu bemessende Frist vorgesehen werden. Der Tag der Hauptversammlung und der Tag des Zugangs sind hierbei nicht mitzurechnen.
- (3) Die Anmeldung muss in Textform (§ 126b BGB) oder auf einem sonstigen, von der Gesellschaft näher zu bestimmenden elektronischen Weg in deutscher oder englischer Sprache erfolgen.
- (4) Der Anteilsbesitz muss durch einen Nachweis des Letztintermediärs in Textform (§ 126b BGB) in deutscher oder englischer Sprache nachgewiesen werden; ein Nachweis des Anteilsbesitzes durch den Letztintermediär gemäß den Anforderungen des § 67c Absatz 3 AktG reicht aus. Der besondere Nachweis über den Anteilsbesitz hat sich auf den Beginn des 21. Tages vor der Hauptversammlung („Nachweistichtag“) zu beziehen und muss der Gesellschaft unter der in der Einberufung hierfür mitgeteilten Adresse mindestens sechs (6) Tage vor der Hauptversammlung zugehen. In der Einberufung kann eine kürzere, in Tagen zu

## § 17

### Attending and Exercise of Voting Right

- (1) All shareholders who have duly submitted notification of attendance and of evidence of shareholding shall be entitled to attend the General Meeting and exercise their voting rights.
- (2) The registration must be received by the Company at the address specified in the convening notice at least six (6) days prior to the day of the General Meeting. The convening notice of the General Meeting may provide for a shorter period to be measured in days. This period does not include the day of the General Meeting and the day of receipt.
- (3) The registration must be in text form (Sec. 126b BGB) or by way of other electronic means as specified by the Company in greater detail in German or English.
- (4) The ownership of the shares must be confirmed by separate confirmation from the final intermediary in text form (Sec. 126b BGB) in German or English; a confirmation that the shares are held from the final intermediary in accordance with the requirements in Sec. 67c paragraph 3 AktG is sufficient. The separate confirmation of the shareholding must refer to the start of the 21st day prior to the General Meeting (“record date”) and be received by the Company at the address specified in the convening notice of the General Meeting at least six (6) days prior to the General Meeting. The convening notice of the General Meeting may



bemessende Frist vorgesehen werden. Der Tag der Hauptversammlung und der Tag des Zugangs sind hierbei nicht mitzurechnen.

- (5) Das Stimmrecht kann durch Bevollmächtigte ausgeübt werden. Die Erteilung der Vollmacht, ihr Widerruf und der Nachweis der Bevollmächtigung gegenüber der Gesellschaft bedürfen der Textform (§ 126b BGB), sofern in der Einberufung keine Erleichterungen bestimmt werden. Die Einzelheiten für die Erteilung der Vollmachten, ihren Widerruf und ihren Nachweis gegenüber der Gesellschaft werden mit der Einberufung der Hauptversammlung bekannt gemacht. § 135 AktG bleibt unberührt.
- (6) Der Vorstand ist ermächtigt vorzusehen, dass Aktionäre ihre Stimmen, ohne an der Hauptversammlung teilzunehmen, schriftlich oder im Wege elektronischer Kommunikation abgeben dürfen (Briefwahl). Der Vorstand ist auch ermächtigt, Bestimmungen zum Umfang und Verfahren der Rechtsausübung nach Satz 1 zu treffen.
- (7) Der Vorstand ist ermächtigt vorzusehen, dass Aktionäre an der Hauptversammlung auch ohne Anwesenheit an deren Ort und ohne einen Bevollmächtigten teilnehmen und sämtliche oder einzelne ihrer Rechte ganz oder teilweise im Wege elektronischer Kommunikation ausüben können (Online-Teilnahme). Der Vorstand ist auch ermächtigt, Bestimmungen zu Umfang und Verfahren der Teilnahme und Rechtsausübung nach Satz 1 zu treffen.

provide for a shorter period to be measured by days. This period does not include the day of the General Meeting and the day of receipt.

- (5) Voting rights may be exercised by proxy. The granting of the proxy, its revocation and the evidence of authority to be provided to the Company must be in text form (Sec. 126b BGB) unless the convening notice provides for a less strict form. Details on the granting of the proxy, its revocation and the evidence to be provided to the Company shall be provided together with the notice convening the General Meeting. Sec. 135 AktG remains unaffected.
- (6) The Management Board is authorized to provide that shareholders may cast their votes in writing or by electronic communication without attending the General Meeting (absentee vote). The Management Board is also authorized to determine the scope and the procedure of the exercising of rights according to sentence 1.
- (7) The Management Board is authorized to provide that shareholders may participate in the General Meeting without being present in person at the place of the General Meeting or being represented and may exercise all or specific shareholders' rights in total or in part by electronic communication (online participation). The Management Board is also authorized to determine the scope and the procedure of the participation and exercising of rights according to sentence 1.

## § 18

### Leitung der Hauptversammlung

- (1) Der Vorsitzende des Aufsichtsrats oder ein von ihm bestimmtes anderes Aufsichtsratsmitglied führt den Vorsitz in der Hauptversammlung (Versammlungsleiter). Für den Fall, dass der Vorsitzende des Aufsichtsrats die Versammlungsleitung nicht übernimmt und er auch kein anderes Aufsichtsratsmitglied bestimmt, das die Versammlungsleitung zu übernehmen bereit ist, wird der Versammlungsleiter durch den Aufsichtsrat gewählt; die gewählte Person muss nicht dem Aufsichtsrat angehören. Wählt der Aufsichtsrat den Versammlungsleiter nicht, so ist dieser durch die Hauptversammlung zu wählen.
- (2) Der Versammlungsleiter leitet die Verhandlungen und regelt den Ablauf der Hauptversammlung. Er kann sich hierbei, insbesondere bei der Ausübung des Hausrechts, der Unterstützung von Hilfspersonen bedienen. Er bestimmt die Reihenfolge der Redner und der Behandlung der Tagesordnungspunkte sowie die Form, das Verfahren und die weiteren Einzelheiten der Abstimmung und kann, soweit gesetzlich zulässig, über die Zusammenfassung von sachlich zusammengehörigen Beschlussgegenständen zu einem Abstimmungspunkt entscheiden.
- (3) Der Versammlungsleiter ist ermächtigt, das Rede- und Fragerecht zeitlich angemessen zu beschränken. Er kann dabei insbesondere Beschrän-

## § 18

### Chair of the General Meeting

- (1) The General Meeting is chaired by the chairperson of the Supervisory Board or by another member of the Supervisory Board appointed by the chairperson (chairperson of the General Meeting). In the event that the chairperson of the Supervisory Board does not take over the position of chairperson of the General Meeting and if he does also not appoint another member of the Supervisory Board who is prepared to take over the position of chairman of the General Meeting, the chairperson of the General Meeting is to be elected by the Supervisory Board; the elected person does not have to be a member of the Supervisory Board. In the event that the Supervisory Board does not elect the chairperson of the General Meeting, the chairperson of the General Meeting is to be elected by the General Meeting.
- (2) The chairperson of the General Meeting chairs the proceedings of the meeting and directs the course of the proceedings at the General Meeting. The chairperson may, particularly in exercising rules of order, make use of assistants. The chairperson shall determine the sequence of speakers and the consideration of the items on the agenda as well as the form, the procedure and the further details of voting; the chairperson may also, to the extent permitted by law, decide on the bundling of factually related items for resolution into a single voting item.
- (3) The chairperson of the General Meeting is authorized to impose a reasonable time limit on the right to ask questions and to speak. In par-

kungen der Redezeit, der Fragezeit oder der zusammengenommenen Rede- und Fragezeit sowie den angemessenen zeitlichen Rahmen für den ganzen Hauptversammlungsverlauf, für einzelne Gegenstände der Tagesordnung und für einzelne Redner zu Beginn oder während des Verlaufs der Hauptversammlung angemessen festlegen; das schließt insbesondere auch die Möglichkeit ein, erforderlichenfalls die Wortmeldeliste vorzeitig zu schließen und den Schluss der Debatte anzuordnen.

### **§ 19**

#### **Übertragung der Hauptversammlung**

- (1) Der Vorstand und der Versammlungsleiter sind jeweils ermächtigt, die Bild- und Tonübertragung der Hauptversammlung zuzulassen. Die näheren Einzelheiten regelt der Vorstand oder der Versammlungsleiter.
- (2) Die Teilnahme von Mitgliedern des Aufsichtsrats an der Hauptversammlung kann in Abstimmung mit dem Versammlungsleiter im Wege der Bild- und Tonübertragung erfolgen, sofern das Aufsichtsratsmitglied seinen Wohnsitz im Ausland hat oder am Tag der Hauptversammlung an der Teilnahme gehindert ist.

### **§ 20**

#### **Stimmrecht**

Jede Aktie gewährt in der Hauptversammlung eine Stimme.

particular, the chairperson may establish at the beginning of or at any time during the General Meeting, a limit on the time allowed to speak or ask questions or on the combined time to speak and ask questions, determine an appropriate time frame for the course of the entire General Meeting, for individual items on the agenda or individual speakers; the chairperson may also, if necessary, close the list of requests to speak and order the end of the debate.

### **§ 19**

#### **Transmission of the General Meeting**

- (1) The Management Board and the chairperson of the General Meeting are each authorized to allow an audio-visual transmission of the General Meeting. The details are determined by the Management Board or by the chairperson of the General Meeting.
- (2) Members of the Supervisory Board may be allowed to participate in the General meeting by means of audio and video transmission in coordination with the chairperson of the General meeting, provided that the members are resident abroad or are unable to attend the General Meeting on the day of the General Meeting.

### **§ 20**

#### **Voting Right**

Each share carries one vote in the General Meeting.

**§ 21**  
**Beschlussfassung**

Beschlüsse der Hauptversammlung werden mit einfacher Mehrheit der abgegebenen Stimmen und, soweit eine Kapitalmehrheit erforderlich ist, mit einfacher Mehrheit des bei der Beschlussfassung vertretenen Grundkapitals gefasst, sofern nicht nach zwingenden gesetzlichen Vorschriften oder dieser Satzung eine höhere Mehrheit erforderlich ist. Für Satzungsänderungen bedarf es, soweit nicht zwingende gesetzliche Vorgaben eine andere Mehrheit vorsehen, einer Mehrheit von zwei Dritteln der abgegebenen Stimmen bzw., sofern mindestens die Hälfte des Grundkapitals vertreten ist, der einfachen Mehrheit der abgegebenen Stimmen. Das in § 103 Abs. 1 Satz 2 AktG vorgesehene Mehrheitserfordernis für die Abberufung von Aufsichtsratsmitgliedern bleibt unberührt.

**IV.**  
**Jahresabschluss und Gewinnverwendung**

**§ 22**  
**Geschäftsjahr**

Das Geschäftsjahr der Gesellschaft ist das Kalenderjahr.

**§ 23**  
**Jahresabschluss**

- (1) Der Vorstand hat innerhalb der gesetzlichen Fristen den Jahresabschluss und den Lagebericht sowie, soweit gesetzlich vorgeschrieben, den Konzernabschluss und den Konzernlagebericht für das vergangene Geschäftsjahr aufzustellen und diese

**§ 21**  
**Voting**

Resolutions of the General Meeting shall be passed with a simple majority of the votes cast, and, in so far as a majority of the share capital is necessary, with a simple majority of the registered share capital represented at the voting, unless a higher majority is required by mandatory law or by these Articles of Association. Unless mandatory law provides otherwise, amendments to the Articles of Association require a majority of two thirds of the votes cast or, if at least half of the share capital is represented, a simple majority of the votes cast. The majority requirement set out in Sec. 103 para. 1, sentence 2 AktG regarding the removal of Supervisory Board members remains unaffected.

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

**§ 22**  
**Fiscal Year**

The fiscal year of the Company is the calendar year.

**§ 23**  
**Annual Financial Statements**

- (1) Within the statutory terms, the Management Board shall prepare the annual financial statements and the management report as well as, where required by law, the consolidated financial statements and the group management report for the

Unterlagen unverzüglich dem Aufsichtsrat und dem Abschlussprüfer vorzulegen. Zugleich hat der Vorstand dem Aufsichtsrat einen Vorschlag vorzulegen, den er der Hauptversammlung für die Verwendung des Bilanzgewinns machen will.

- (2) Stellen Vorstand und Aufsichtsrat den Jahresabschluss fest, so können sie Beträge bis zur Hälfte des Jahresüberschusses in andere Gewinnrücklagen einstellen. Sie sind darüber hinaus ermächtigt, weitere Beträge bis zu 100% des Jahresüberschusses in andere Gewinnrücklagen einzustellen, solange und soweit die anderen Gewinnrücklagen die Hälfte des Grundkapitals nicht übersteigen und auch nach der Einstellung nicht übersteigen würden.

#### **§ 24**

##### **Gewinnverwendung und ordentliche Hauptversammlung**

- (1) Die Hauptversammlung beschließt alljährlich in den ersten sechs (6) Monaten des Geschäftsjahres über die Verwendung des Bilanzgewinns, über die Entlastung der Mitglieder des Vorstands und des Aufsichtsrats und über die Wahl des Abschlussprüfers (ordentliche Hauptversammlung) sowie in den im Gesetz vorgesehenen Fällen über die Feststellung des Jahresabschlusses.
- (2) Die Anteile der Aktionäre am Gewinn bestimmen sich nach ihren Anteilen am Grundkapital.

preceding fiscal year and submit these documents without undue delay to the Supervisory Board and the auditors. At the same time the Management Board shall submit to the Supervisory Board a proposal for the appropriation of the distributable profit (*Bilanzgewinn*) that shall be brought forward to the General Meeting.

- (2) The Management Board and the Supervisory Board, in adopting the annual financial statements, may allocate sums amounting to up to half of the net profit for the fiscal year to other retained earnings. In addition, they are authorised to allocate up to 100% of the net profit for the fiscal year to other retained earnings as long and as far as the other retained earnings do not exceed half of the registered share capital and would not exceed following such a transfer.

#### **§ 24**

##### **Appropriation of Profits and Ordinary General Meeting**

- (1) The General Meeting resolves annually within the first six (6) months of each fiscal year on the appropriation of the distributable profit (*Bilanzgewinn*), the formal approval of the acts of the members of the Management Board and the Supervisory Board and the election of the auditor (ordinary General Meeting) as well as on the approval of the financial statements to the extent required by law.
- (2) The profit shares attributable to the shareholders are determined in proportion to the shares in the registered share capital held by them.

- (3) Die Hauptversammlung kann anstelle oder neben einer Barausschüttung eine Verwendung des Bilanzgewinns im Wege einer Sachausschüttung beschließen. Sie kann in dem Beschluss über die Verwendung des Bilanzgewinns Beträge in Gewinnrücklagen einstellen oder als Gewinn vortragen.

**V.  
Schlussbestimmungen**

**§ 25  
Formwechselfaufwand**

- (1) Die Kosten des Formwechsels der Gesellschaft in die Rechtsform der Aktiengesellschaft (insbesondere Notar- und Gerichtsgebühren, Kosten der Veröffentlichung, Steuern, Prüfungs- und Beratungskosten) trägt die Gesellschaft bis zu einem Betrag von EUR 150.000,00.
- (2) Die Kosten des Formwechsels der Gesellschaft von der Rechtsform der Aktiengesellschaft in die Rechtsform der Societas Europaea (SE) (insbesondere Notar- und Gerichtsgebühren, Kosten der Veröffentlichung, Prüfungs- und Beratungskosten) trägt die Gesellschaft bis zu einem Betrag von EUR 400.000,00.

**§ 26  
Sprache**

Die deutsche Fassung dieser Satzung ist die allein maßgebliche. Die englische Übersetzung ist rein zu Informationszwecken beigefügt.

- (3) The General Meeting may resolve to distribute the distributable profit by way of a dividend in kind in addition or instead of a cash dividend. The General Meeting may allocate further amounts to retained earnings or carry such amounts forward as profit in the resolution on the appropriation of the distributable profit.

**V.  
Final Provisions**

**§ 25  
Costs of Conversion**

- (1) The costs of the change of the legal form of the Company into a stock corporation (in particular the costs for the notary and the court, costs for publication, taxes, audit costs and costs for consultants) shall be borne by the Company in an amount of up to EUR 150,000.00.
- (2) The costs of the change of the legal form of the Company from a stock corporation into the legal form of a Societas Europaea (SE) (in particular the costs for the notary and the court, costs for publication, audit costs and costs for consultants) shall be borne by the Company in an amount of up to EUR 400,000.00.

**§ 26  
Language**

Only the German version of these Articles of Association shall be relevant. The English translation is added for information purposes only.

## **Annex 2**

General Terms and Conditions of Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft in the version as of October 2021

**Special Engagement Terms**  
**for Assurance and Related Services of**  
**Ernst & Young GmbH**  
**Wirtschaftsprüfungsgesellschaft**

as of 1 October 2019

**Preamble**

These engagement terms of Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft ("*EY GmbH*") supplement and specify the General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as issued by the Institute of Public Auditors in Germany ["Institut der Wirtschaftsprüfer e.V.": IDW] (in the version attached to the engagement agreement/engagement letter) and take precedence over the latter. They are subordinate to any engagement agreement or engagement letter. The engagement agreement/engagement letter together with all enclosures constitutes the "*Entire Engagement Terms*".

**A. Supplementary provisions for audits of financial statements in accordance with Sec. 317 HGB ["Handelsgesetzbuch": German Commercial Code] and comparable audits in accordance with national and international standards on auditing**

EY GmbH will conduct the audit in accordance with Sec. 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the IDW. As such, EY GmbH will plan and design the audit in accordance with professional standards such that misstatements materially affecting the subject of the audit according to the engagement letter are detected with reasonable assurance.

EY GmbH will perform all procedures that it deems necessary under the circumstances to judge in what form the opinion stipulated by Sec. 322 HGB ["Handelsgesetzbuch": German Commercial Code] and German generally accepted standards for the audit of financial statements can be rendered on the subject matter of the audit. EY GmbH will report on the subject matter of the audit as is customary in German professional practice. In order to determine the nature, timing and scope of audit procedures, EY GmbH will review and evaluate the system of internal accounting controls to the extent that it deems necessary, in particular where it serves to ensure proper accounting. As is customary, EY GmbH will conduct audit procedures on a test basis; this entails an unavoidable risk that even material misstatements may not be discovered in an audit performed according to professional standards. Therefore, EY GmbH's audit will not necessarily detect any incidences of fraud or other irregularities. EY GmbH points out that an audit is not designed to detect any incidences of fraud or other irregularities which do not affect the compliance of the subject matter of the audit with the applicable financial reporting framework. Any such matters detected by EY GmbH in the course of the audit will, however, be brought to the attention of EY GmbH's client ("*Client*") immediately.

The above statements on audit objectives and methods apply by analogy to other audits which are performed in accordance with national or international standards on auditing.

It is the responsibility of the legal representatives of the Client to correct material errors in the subject of the audit and to confirm in the representation letter to EY GmbH that the effects of any uncorrected errors that EY GmbH finds in the course of the current engagement are immaterial – both individually and in their entirety – for the subject matter of the audit.

**B. Engagement**

In the course of the engagement and to protect the economic interests of the Client, documents of legal relevance that are directly associated with the Client may be made available to EY GmbH. EY GmbH emphasizes that it assumes no obligation to provide legal advice or a legal review and that this engagement does not include general legal advice; accordingly, the Client should submit any standard wording made available by EY GmbH in connection with the performance of the engagement to its own legal counsel for a conclusive legal review. The Client is responsible for all management decisions relating to the services performed by EY GmbH and the use of the work product and for determining whether the services performed by EY GmbH are appropriate for the Client's own internal purposes.

**C. Access to information**

The Client's management is responsible for ensuring that EY GmbH has unrestricted access to the records, documents and other information necessary for the engagement. The same applies to the presentation of any other information (e.g., annual report, declaration of compliance in accordance with Sec. 161 AktG ["Aktiengesetz": German Stock Corporation Act]) published by the Client together with the financial statements and any accompanying management report. The Client shall provide such information in good time before the auditor's report is issued or as soon as it becomes available. The information provided to EY GmbH by the Client or on behalf of the Client ("*Client Information*") shall be complete.

**D. Involvement of EY Firms and third parties**

EY GmbH may subcontract portions of the services to other members of the global network of EY firms ("*EY Firms*"), as well as to other service providers, who may deal with the Client directly. Nevertheless, EY GmbH alone will be responsible to the Client for the work product relating to the engagement, the performance of the services and any other obligations under the engagement agreement.

Thus the Client may not make a contractual claim or bring proceedings arising from the provision of the services or otherwise based on the engagement agreement against any other EY Firm or EY GmbH's or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("*EY Persons*"). The Client shall make any contractual claim or bring such proceedings only against EY GmbH. EY Firms and EY Persons are entitled to invoke this claim.

In line with current legislation, EY GmbH is entitled, for the purpose of

- (a) rendering services of EY GmbH
- (b) complying with ethical and regulatory requirements
- (c) investigating conflicts of interest
- (d) risk management and quality assurance
- (e) internal accounting as well as rendering other administrative and IT support services

(lit. (a)-(e) collectively "*Purposes of Processing*"), to pass on Client Information to other EY Firms, EY Persons and external service providers of EY GmbH, EY Firms or EY Persons ("*Service Providers*") who may collect, use, transfer, store or otherwise process (collectively "*process*") such data in the various jurisdictions in which they operate (office locations of EY Firms are listed at [www.ey.com](http://www.ey.com)).

EY GmbH is liable to the Client for ensuring that the Client Information remains confidential, regardless of whoever processes it on behalf of EY GmbH.



## E. Intellectual Property Rights

EY GmbH may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that EY GmbH owns in performing the services. Notwithstanding the delivery of any reports, EY GmbH retains all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).

## F. intentionally left blank

## G. Indemnification

The Client shall indemnify EY GmbH against all claims by third parties (including affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external legal costs) arising out of the third party's use of or reliance on any work product disclosed to it by or through the Client or at the Client's request. The Client shall have no obligation hereunder to the extent that EY GmbH has specifically authorized, in writing, the third party's reliance on the work product.

## H. Electronic mail (e-mail)

The parties may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations. The parties acknowledge that sending information and documents in electronic form (in particular by e-mail) entails risks (e.g., unauthorized access by third parties).

No changes may be made to any documents sent by EY GmbH electronically and no documents may be distributed electronically to third parties without the prior written approval of EY GmbH.

## I. Data protection

For the Purposes of Processing mentioned under lit. D, EY GmbH and other EY Firms, EY Persons and Service Providers are entitled to process Client Information attributable to particular persons ("*Personal Data*") in the various jurisdictions in which they operate. The transmission of Personal Data within the global network of Ernst & Young firms is subject to the EY Binding Corporate Rules (available at [www.ey.com/bcr](http://www.ey.com/bcr)). EY GmbH processes Personal Data in accordance with applicable law and ethical requirements, observing in particular national (BDSG: ["Bundesdatenschutzgesetz": German Data Protection Act]) and European data protection regulations. EY GmbH also requires Service Providers that process Personal Data on EY GmbH's behalf to adhere to such requirements.

Client warrants that it has the authority to provide the Personal Data to EY GmbH in connection with the performance of the services and that the Personal Data provided to EY GmbH has been processed in accordance with applicable law.

## J. SmartExporter

In case EY GmbH will use the data extraction tool ("SmartExporter") as set out in Section "A. Scope of service" of the engagement agreement, Client has elected to obtain the data extraction software SmartExporter from Audicon in connection with the provision of audit services to Client by EY GmbH. Client's use of any license key provided to Client is limited to be used in connection with the receipt of such audit services, and is conditional upon Client's acceptance of any terms and conditions that accompany the SmartExporter downloads, as well as the following additional terms.

1. SmartExporter is certified by SAP®. Certificates and other documentation can be downloaded from Audicon's website. SmartExporter is a third party tool, developed and provided by Audicon. Therefore EY GmbH cannot take over a legal liability and responsibility as to the quality of the software or that it will work as intended or be error-free.

2. It is not EY GmbH's intent to recommend or otherwise endorse the use of the software as the only way or solution to extract data relevant for the provision of EY GmbH's services from Client's ERP system. If Client decides that Client does not wish to download and install the software, or does not wish to use it in the manner necessary, please let EY GmbH know and EY GmbH will work together to find an alternative solution.

3. Client agrees that Client will use Client's own skills and judgement in choosing to download and install the SmartExporter software, and that Client will follow Client's own usual internal testing procedures before deploying the software on a productive system.

4. Client agrees that the EY Firms may share Client's contact details with Audicon to permit Audicon to contact Client with updates to the SmartExporter software, including security patches, as necessary.

5. Client agrees that Client will ensure proper licensing of Client's SAP software, and Client acknowledges that depending on the nature of Client's agreement with SAP, SAP may request licensing for indirect use of SAP software.

6. Upon using the license key to activate the software, Client is permitted to use the software solely to enable EY GmbH to provide services to Client under the license granted to EY GmbH by Audicon. Client shall not use the software, or any output of the software (including data extracted using it) for any other purpose.

## K. Scope of application

The provisions contained in the Entire Engagement Terms – including the provision relative to liability – shall also apply to all other future work for the Client unless separate arrangements are made relative to such engagements or they are covered by general agreements, or German or foreign legal or official requirements that are binding for EY GmbH conflict with individual provisions in the Client's favor.

The services of EY GmbH are governed exclusively by the terms and conditions set forth in the Entire Engagement Terms; no other terms and conditions are part of the contractual agreement unless the Client has expressly and specifically agreed otherwise with EY GmbH in writing. The Client's general terms and conditions of purchase, to which reference is made in automated purchase orders, shall not apply even if EY GmbH does not expressly object or EY GmbH begins rendering the services without reservation.

## L. Court of competent jurisdiction

Any dispute relating to the engagement or the services provided thereunder shall be subject to the exclusive jurisdiction of the courts of Stuttgart, Germany, or, at EY GmbH's discretion, (i) the court located where the EY GmbH office that conducted the main part of the work is registered or (ii) the courts located where the Client is registered.

# General Engagement Terms

## for

### Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

#### [German Public Auditors and Public Audit Firms]

#### as of January 1, 2017

#### 1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (*Wirtschaftsprüfer*) or German Public Audit Firms (*Wirtschaftsprüfungsgesellschaften*) – hereinafter collectively referred to as "German Public Auditors" – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties.

#### 2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Proper Professional Conduct (*Grundsätze ordnungsmäßiger Berufsausübung*). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (*betriebswirtschaftliche Prüfungen*), the consideration of foreign law requires an express written agreement.

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obligated to refer the engaging party to changes or any consequences resulting therefrom.

#### 3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor's work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by the German Public Auditor.

#### 4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor's staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Were the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

#### 5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Drafts are non-binding. Except as otherwise agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing. Statements and information of the German Public Auditor outside of the engagement are always non-binding.

#### 6. Distribution of a German Public Auditor's professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor's written consent, unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor's professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

#### 7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (*Textform*) [Translator's Note: *The German term "Textform" means in written form, but without requiring a signature*] without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor's professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor's professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

#### 8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ [Article] 323 Abs 1 [paragraph 1] HGB [German Commercial Code: *Handelsgesetzbuch*], § 43 WPO [German Law regulating the Profession of *Wirtschaftsprüfer*: *Wirtschaftsprüferordnung*], § 203 StGB [German Criminal Code: *Strafgesetzbuch*]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

#### 9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, the liability of the German Public Auditor for claims for damages of any other kind, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: *Produkthaftungsgesetz*], for an individual case of damages caused by negligence is limited to € 4 million pursuant to § 54 a Abs. 1 Nr. 2 WPO.

(3) The German Public Auditor is entitled to invoke demurs and defenses based on the contractual relationship with the engaging party also towards third parties.

(4) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor's negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(5) An individual case of damages within the meaning of paragraph 2 also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(6) A claim for damages expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

## 10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor's report, he may no longer use this auditor's report.

If the German Public Auditor has not issued an auditor's report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor's written consent and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor's report, it may no longer be used. If the engaging party has already made use of the auditor's report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

## 11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing, ongoing tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party
- b) examination of tax assessments in relation to the taxes referred to in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)
- e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing.

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (*Steuerberatungsvergütungsverordnung*) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (*Textform*).

(6) Work relating to special individual issues for income tax, corporate tax, business tax, valuation assessments for property units, wealth tax, as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

- a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;
- b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;
- c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and
- d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

## 12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (*Textform*) accordingly.

## 13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

## 14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (*Verbraucherschlichtungsstelle*) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (*Verbraucherstreitbeilegungsgesetz*).

## 15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.