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# MARLEY SPOON

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## Annual General Meeting of Marley Spoon AG to be held on Tuesday, 31 May 2022 at 9:00am (CEST) / 5:00pm (AEST)

Dear CDI-holder,

You are invited to attend the annual general meeting of Marley Spoon AG ("Company") (ASX:MMM) to be held on Tuesday, 31 May 2022 at 9:00am (CEST) / 5:00pm (AEST) ("AGM").

The AGM will be held at the premises of the Company's notary at Dentons Europe LLP, Markgrafenstraße 33, Berlin, 10117 Germany. CDI-holders may apply by no later than 24 May 2022 midnight (CEST) / 25 May 2022, 8:00 a.m. (AEST) for the AGM to be webcast live over the internet. If you make such an application, you will be sent a link and confidential access data with which you will be able to access the online transmission of the AGM. Detailed instructions are provided in Sec. IV and V of the notice of meeting.

Recent legislative changes to the *Corporations Act 2001* effective 1 April 2022 enables the Company to provide documents relating to security holder meetings to be sent by electronic means unless you request a copy to be physically mailed to you.

We encourage you to elect to receive communications and securityholder notices, for example meeting documents and annual reports, electronically. You can make a standing election to receive some or all of your securityholder communications in physical or electronic form.

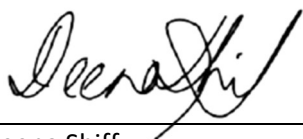
To review or update your current communication preference simply log on to our share registry's website [investorcentre.linkmarketservices.com.au](https://investorcentre.linkmarketservices.com.au). You will need your portfolio log in details or your Securityholder Reference Number (SRN) or Holder Identification Number (HIN) and select the *Communications* tab at the top of the page.

- You are able to access the notice of meeting online at the Company's website, <https://ir.marleyspoon.com/investor-centre/?page=general-meetings>.
- A complete copy of the notice of meeting and the CDI voting instruction form has also been posted on the Company's ASX market announcements page (<https://ir.marleyspoon.com/investor-centre/?page=asx-announcements>).

You can lodge your proxy vote online via the share registry's website [investorcentre.linkmarketservices.com.au](https://investorcentre.linkmarketservices.com.au). Once logged in, click on the "Vote" tab. If you prefer not to lodge your vote online, please complete the CDI Voting Instruction Form attached to the Notice of Meeting, which can be located via the above links.

As a valued CDI-holder in the Company, we look forward to your participation in the AGM.

Yours sincerely,



Deena Shiff

Chairman

# MARLEY SPOON

**Invitation and Agenda for the**

**2022 Annual General Meeting of**

**Marley Spoon AG,**

with its registered seat in Berlin, Germany, registered with the commercial register of  
the Local Court of Charlottenburg under HRB 195994 B (the “**Company**”),

**on May 31, 2022**

## **Executive Summary**

*The Notice of Meeting for the Marley Spoon 2022 AGM contains the following items:*

- **Agenda items 13 and 14: Converting the Company into a European company (Societas Europaea, SE) under the name “Marley Spoon SE”**

*Adopting the legal form of a European Company (SE) will provide an appropriate and flexible corporate structure for the Company as a growth company with a pan-European/international employee base. The Company will maintain its legal or economic identity and will continue to have its registered seat in Berlin, Germany. The corporate governance and structure of Marley Spoon SE will essentially be identical to the current corporate governance and structure of Marley Spoon AG. In particular, Marley Spoon SE will retain its current two-tier board structure, consisting of the Management Board and the Supervisory Board, with the current executive and non-executive directors, including the chairman, continuing their offices. The respective resolution proposals can be found under agenda items 13 and 14 of the NOM and the respective reports of the management referred to therein.*

- **Agenda items 6, 8 and 11: Optimised share-to-CDI ratio**

*The optimised share-to-CDI ratio shall be implemented by way of a technical capital increase from company funds and the issuance of new shares by the factor 100 under a simultaneous decrease of the share to CDI transmutation ratio by a factor of 100, i.e., from 1,000:1 to 10:1. The key rationale is to provide the Company with a share to CDI transmutation ratio more aligned with common market practice of other foreign companies listed at the ASX. Also, the proposed share capital will be more aligned with common market practice for publicly listed companies of the Company's size and set-up in Germany. No cash contributions by shareholders / CDI holders will be required. Rather, the increase will be made by rebooking the Company's capital reserves into the nominal share capital. The capital increase is akin to a share split under Australian law, is not dilutive and does not impact the economic shareholding of investors. The new share capital will amount to EUR 29,195,800.00 and will be divided into 29,195,800 shares. The number of CDIs traded at the ASX will stay the same (i.e., ~292 million) as the transmutation ratio is decreased accordingly to 10:1. Existing capital authorisations will be technically adjusted in adoption of the capital increase, but without any impact and consequences on their respective content. The respective resolution proposals can be found under agenda items 6, 8 and 11 of the NOM and the respective reports of the management referred to therein.*

- **Agenda Items 7 and 12: Authorised Capital and authorisation to acquire and use treasury shares / CDIs**

*To provide the Company with sufficient flexibility, the existing Authorised Capital 2021/I (following its partial use in 2021) is proposed to be cancelled and replaced by a new, albeit identical Authorised Capital 2022/I. The new Authorised Capital 2022/I continues to provide standard exclusion of shareholder subscription rights. Furthermore, the Company shall be authorised to acquire and use treasury shares / CDIs, in particular, amongst others, for the fulfilment of equity-based incentive programs and/or M&A activities. The respective resolution proposals can be found under agenda items 7 and 12 and the respective reports of the management referred to therein.*

- **Agenda items 5, 9 and 10: New Share Option and Restricted Stock Unit Programs**

*A new Share Option Program 2022 and new Restricted Stock Unit Programs 2022 shall be implemented with terms economically comparable to the programs approved at the 2021 AGM. Providing equity-based incentives is a vital tool to attract and retain highly talented people, in particular in times of tightening labour markets and wage inflation. The volume of the new programs makes full use of the pool of shares which are available for equity-based incentive programs under German stock corporation law. The respective resolution proposals can be found under agenda items 5, 9 and 10 and the respective reports of the management referred to therein.*

- **Other Agenda Items**

*Standard recurring AGM agenda items under German stock corporation and Australian law/ASX listing rules can be found under agenda items 1 to 4 and 15 to 18, e.g., discharge of directors, appointment of auditor, etc.*

We hereby invite the shareholders of our Company to the

**2022 Annual General Meeting**

on May 31, 2022, at 9:00 a.m. (CEST) / 5:00 p.m. (AEST),

in the premises of the Company's notary at

Dentons Europe LLP

Markgrafenstraße 33

Berlin, 10117

Germany

**I.**

**Agenda**

- 1. Presentation of the approved individual financial statements of Marley Spoon AG as of December 31, 2021 and of the consolidated financial statements as of December 31, 2021 as adopted by the Supervisory Board, the combined management report of Marley Spoon AG and the Marley Spoon group, including the Supervisory Board Report for the financial year 2021**

The Supervisory Board has adopted the individual financial statements and the consolidated financial statements of Marley Spoon AG for the financial year 2021, prepared by the Management Board. The individual financial statements of Marley Spoon AG are thus approved. It is therefore not intended, nor is it necessary, for the Annual General Meeting to pass a resolution on this agenda item 1. Instead, these documents shall merely be made accessible to the Annual General Meeting and shall be explained by the Management Board or, in the case of the Supervisory Board Report, by the Supervisory Board. As part of their right to information, shareholders shall have the opportunity to ask questions regarding the submitted documents.

The aforementioned documents can be inspected at the business premises of the Company, Paul-Lincke-Ufer 39-40, 10999 Berlin, Germany, and are available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. They will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge. In addition, they will be available at the Annual General Meeting and will also be explained there in more detail.

- 2. Resolution on the discharge of the members of the Management Board for the financial year 2021**

The Management Board and the Supervisory Board propose that the officiating members of the Management Board in the financial year 2021 be discharged for that financial year.

### **3. Resolution on the discharge of the members of the Supervisory Board for the financial year 2021**

The Management Board and the Supervisory Board propose that the officiating members of the Supervisory Board in the financial year 2021 be discharged for that financial year.

### **4. Resolution on the appointment of the auditor for the individual financial statements and the consolidated financial statements for the financial year 2022, as well as for any review of interim financial statements and interim management reports during the financial year 2022**

The Supervisory Board proposes to appoint Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, registered seat: Stuttgart, office: Hamburg, Germany,

- a) as the auditor for the individual financial statements and the consolidated financial statements for the financial year 2022, and
- b) as the auditor for any review of interim financial statements and interim management reports during the financial year 2022.

### **5. Resolution on the authorisation to grant subscription rights to members of the Management Board (*Vorstand*) of the Company as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company ("Share Option Program 2022") and on the creation of a Conditional Capital 2022/I, as well as the corresponding amendment of the Constitution**

The Company's remuneration framework is designed to attract, motivate and retain high calibre-executives and employees to ensure delivery of the business strategy. The framework is designed to ensure that remuneration is market competitive, performance-based, consistent, transparent and aligned with shareholders' interests. Revenue growth, operating efficiency and profitability are components of the framework's design.

Since the Company is incorporated in Germany and its CDIs are listed on ASX, both German-law and Australian-law principles must be observed by the Company. To aid the Company's shareholders to better understand some of the German legal principles governing its remuneration framework, the Company provides the following summary of the key remuneration components of the key management personnel, including the Management Board members (under I. below) and a summary of the key components of the Share Option Program 2022 (under II. below):

#### *I. Summary of the key remuneration components of the key management personnel, including the Management Board members:*

The Company's key management personnel ("KMP"), including the Management Board members, are remunerated on the following basis:

- capability, experience and performance,
- recognition for contribution to operational performance,
- achieving key financial outcomes,
- sustained growth in shareholder return, and
- key non-financial drivers of value such as innovation and culture.

The compensation and reward framework of the Management Board members, amongst which is the Chief Executive Officer of the Company (“CEO”), has two components:

(i) Fixed remuneration

A fixed remuneration paid in cash in monthly instalments.

(ii) At-risk remuneration

A participation in the Company’s Share Option Programs that were resolved in previous general meetings and including the Share Option Program 2022 resolved under this agenda item 5 a).

Share Options are granted annually and generally measured over two years, whereby one Share Option is equal to the number of CDIs corresponding to one share of the Company, currently one share equals 1,000 CDIs and thus one Share Option currently equals 1,000 CDIs. In accordance with German stock corporation law, the Share Option Programs contain Performance Targets which are tested over a period of generally two financial years. However, the Share Options cannot be exercised under German law until after a four-year waiting period (following the grant of the Share Options). Further, the vesting of the Share Options occurs in instalments over the course of the four-year waiting period. The previous Share Option Programs at the Company and the Share Option Program 2022 therefore qualify as a long-term incentive plan.

Currently, there is no short-term incentive plan for Management Board members or other employees. The Company has focused on retaining cash for investment in growth and operational improvements, and rewards employees with equity rather than short-term cash incentives. Also, the Management Board members cannot participate in the Company’s Restricted Stock Unit Programs that were resolved in the previous general meeting and the RSUP 2022/I and RSUP 2022/II proposed under below agenda items 9 and 10, respectively.

*II. Summary of the key components of the Share Option Program 2022:*

Apart from the Management Board members, appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company will be eligible to participate in the Share Option Program 2022.

Its key terms are summarized below:

• **Size of the Share Option pool and allocation of Share Options**

The 2,500 Share Options are allocated between the following two groups of beneficiaries:

- 1,800 Share Options may be allocated to Group 1 (Management Board members) by the Supervisory Board.
- 700 Share Options may be allocated to Group 2 (appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad as well as other members of the senior leadership team or senior managers of the Company) by the Management Board

• **The choice of Performance Measures**

Two of the following three performance measures must be allocated for each group of beneficiaries and stretch performance targets must be determined:

- Net Revenue Growth – to focus on topline growth of the Company;
- Contribution Margin – to drive cost effective operational improvements to drive scale, ensuring revenue growth is higher than cost of goods sold and fulfilment expenses;
- Operating EBITDA Margin – to focus on the path to profitability.

With respect to each of the Performance Measures, the Supervisory Board with respect to Group 1 Participants and the Management Board with respect to Group 2 Participants retain reasonable discretion to review and adjust the Performance Targets to ensure there is neither a material advantage nor disadvantage due to matters that affect the Performance Measures and/or Performance Targets (for example, by adjusting for one-off items or significant changes to the business, e.g. due to acquisitions or disposals).

#### • **Weighting of Performance Measures**

Weighting between the performance measures is set and must be at least 30% for each measure. No performance measure may be weighted at more than 70%.

#### • **Calculating the exercise price**

The exercise price is calculated based on the volume-weighted 30 calendar day average price of the Company's CDIs on the ASX prior to the date of the grant.

#### • **Waiting Period and Vesting Schedule**

In accordance with German stock corporation law a four-year waiting period must have elapsed before Share Options may be exercised. Generally, the vesting schedule ("**Vesting Schedule**") shall be as follows:

Year 1 - 10%

Year 2 - 20%

Year 3 - 30%

Year 4 - 40%

It is noted that the Management Board and the Supervisory Board, as the case may be, retain discretion in respect of the Vesting Schedule and may alter the schedule so that Share Options vest over a three-year period rather than a four-year period.

However, the Management Board and the Supervisory Board each have the discretion to accelerate vesting for good leavers. A leaver's Share Options that do not vest are forfeited.

The Management Board and the Supervisory Board propose that the general meeting resolves as follows:

#### **a) Authorisation to grant Share Options with subscription rights for Shares of the Company**

The Share Option Program 2022 shall comprise a total of up to 2,500 Share Options (as defined below):

The Supervisory Board is authorised to grant, on one or more occasions until and including May 30, 2027 ("**Authorisation Period**"), 1,800 subscription rights ("**Share Options**") for up to 1,800 no-par-value registered shares of the Company (akin to fully paid ordinary shares) ("**Shares**") or the corresponding number of CDIs (as defined below) (currently 1,800,000) to members of the Management Board of the Company, including the CEO (each a "**Group 1 Participant**" and together "**Group 1**

**Participants**”). With respect to the CEO, any grant of Share Options is subject to approval by the general meeting.

The Management Board is authorised, with the consent of the Supervisory Board, to grant, on one or more occasions until and including May 30, 2027 (equally “**Authorisation Period**”), 700 subscription rights (equally “**Share Options**”) for up to 700 no-par-value registered shares of the Company (akin to fully paid ordinary shares) (equally “**Shares**”) or the corresponding number of *CHESS Depositary Interests* over Shares of the Company in the form of *CHESS Units of Foreign Securities* (“**CDIs**”) (currently 700,000), with one CDI currently being a unit of beneficial ownership in 0.001 Share that is held in trust for the respective CDI holder by a depositary nominee and being listed with the Australian Securities Exchange (ASX Limited, ACN 008 624 691, the “**ASX**”) to (i) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (ii) other members of the senior leadership team or senior managers of the Company (each a “**Group 2 Participant**” and together “**Group 2 Participants**” and together with the Group 1 Participants the “**Participants**”).

One Share Option grants one subscription right to acquire one Share of the Company (or, at the discretion of the Company, the corresponding number of CDIs representing one Share in the Company (currently 1,000)) at a certain Exercise Price. The shareholders of the Company are not entitled to subscription rights for such Shares. If Share Options are forfeited during the Authorisation Period due to the termination of the service or the employment relationship with the Company or an affiliated company or for other reasons, a corresponding number of Share Options may be returned to the share pool for re-issuance to other Participants within the respective group.

The granting of Share Options, their exercise and the settlement of exercised Share Options is subject to the following provisions:

(i) Participants and allocation

The total volume of subscription rights (up to 2,500) shall be allocated among the two groups of Participants as follows:

- The Group 1 Participants together receive up to a maximum of 1,800 Share Options and the subscription rights resulting therefrom;
- the Group 2 Participants together receive up to a maximum of 700 Share Options and the subscription rights resulting therefrom.

Where a Participant belongs to several groups, they will receive Share Options exclusively due to their membership to one group. The group membership is determined by the Management Board of the Company, and to the extent members of the Management Board are concerned, by the Supervisory Board of the Company. The Participants within each group and the numbers of Share Options to be granted may vary during the Authorisation Period of the Share Option Program 2022 and are determined by the Management Board to the extent Group 2 Participants are concerned, and by the Supervisory Board to the extent Group 1 Participants are concerned.

(ii) Grant Periods, Terms and Conditions

Share Options can be granted to Participants in tranches within the Authorisation Period on one or several occasions during each financial year (each such granted tranche a “**Share Option Grant**”). Share Option Grants are to be granted as per a date within a four-week period commencing on the third working day after the publication of the financial results of either (i) the previous financial year, (ii) the



previous financial half year or (iii) the previous financial quarter, if and for as long as the Company is required to publish financial results on a quarterly basis (each referred to as the “**Grant Period**”).

The grant date for Share Options shall be the date within a Grant Period on which the Participant is made the offer concerning the granting of Share Options as stipulated in the respective grant letter, irrespective of the point in time the offer is accepted (the “**Grant Date**”).

To the extent Share Options are granted to Group 1 Participants, the relevant Vesting Schedule and further provisions are determined by the Supervisory Board of the Company, and to the extent Group 2 Participants are concerned, by the Management Board of the Company (collectively referred to as the “**Terms and Conditions**”).

(iii) Vesting Schedule, Waiting Period, Expiry, Exercise Periods

In addition to the achievement of certain Performance Targets (i.e., performance vesting), Share Options are subject to vesting over time (the “**Vesting Schedule**”).

Share Options are only to be exercised after the Waiting Period End Date. The waiting period of any Share Option Grant begins on the specified Grant Date and ends no earlier than at the end of the Grant Date’s fourth anniversary (the “**Waiting Period End Date**”).

Share Options can only be exercised until the Expiry Date. The expiry period of any Share Option Grant begins on Waiting Period End Date and ends at the end of the Waiting Period End Date’s third anniversary (the “**Expiry Date**”). Share Options that are not exercised until the Expiry Date are forfeited without compensation.

Between the Waiting Period End Date and the Expiry Date, Share Options can be exercised by Participants, in accordance with legal requirements, within a four-week period commencing on the third working day after the publication of the financial results of (i) the previous financial year or (ii) the previous financial half year (each referred to as the “**Exercise Period**”). The Exercise Period can be appropriately extended by the Management Board of the Company to the extent Group 2 Participants are concerned or, to the extent Group 1 Participants are concerned, by the Supervisory Board, in particular, if legal provisions prohibit the exercise of Share Options during the respective Exercise Period.

(iv) Performance Targets

Notwithstanding the Vesting Schedule and the Waiting Period, Share Options shall be granted subject to the achievement of certain targets (each a “**Performance Target**” and together the “**Performance Targets**”) determined in relation to certain financial performance measures (each a “**Performance Measure**” and together the “**Performance Measures**”) which are to be tested over a period of either one or two financial years at the discretion of the Management Board and the Supervisory Board, as the case may be, commencing on 1 January of the financial year in which the Share Options are to be granted (the “**Performance Period**”).

Before 31 March of the financial year in which tranches of Share Options are to be granted, the Supervisory Board with respect to Group 1 Participants and the Management Board with respect to Group 2 Participants shall, each at their own reasonable discretion, (i) select two out of the following three Performance Measures, (ii) weigh the two selected Performance Measures and (iii) determine the Performance Targets to be achieved over the respective Performance Period. In selecting the Performance Measures, weighting the selected Performance Measures and determining the respective Performance Targets, the Supervisory Board and the Management Board are to be guided by the goal of sustainable development of the Company.

With respect to each of the Performance Measures, the Supervisory Board with respect to Group 1 Participants and the Management Board with respect to Group 2 Participants retain reasonable discretion to review and adjust the Performance Targets to ensure there is neither a material advantage nor disadvantage due to matters that affect the Performance Measures and/or Performance Targets (for example, by adjusting for one-off items or significant changes to the business, e.g. due to acquisitions or disposals).

(a) Net Revenue Growth

The Performance Measure “Net Revenue Growth” means the annual growth rate of net revenue of the Company consistent with the net revenue disclosed when reporting the Company’s annual results (“**Net Revenue**”).

(b) Contribution Margin

The Performance Measure “Contribution Margin” (“**CM**”) means gross profit less fulfillment expenses, consistent with the gross profit and the fulfillment expenses disclosed when reporting the Company’s annual results, expressed as a percentage of Net Revenue.

(c) Operating EBITDA Margin

The Performance Measure “Operating EBITDA Margin” means the Operating EBITDA disclosed when reporting the Company’s annual results, expressed as a percentage of Net Revenue.

(d) Weighting of the Performance Measures

The Supervisory Board for Group 1 Participants and the Management Board, upon approval of the Supervisory Board, for Group 2 Participants shall determine, at its reasonable discretion, the weighting of the selected Performance Measures for each individual tranche of Share Options (the respective weighting is referred to as “**Weight**”). No selected Performance Measure may have a Weight of more than 70% within each individual grant of Share Options.

(e) Determination of Performance Targets

Within each of the selected Performance Measures, three Performance Targets shall be determined:

- (i) A minimum Performance Target (“**Threshold**”). If the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a “**Performance Factor**” of 0.5 when calculating the exercisable Share Options. For the avoidance of doubt, unless the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of zero when calculating the exercisable Share Options. If the Threshold is exceeded but the Target is not achieved, the Performance Factor will be linearly increased when calculating the exercisable Share Options;
- (ii) A target Performance Target (“**Target**”). If the Target is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.0 when calculating the exercisable Share Options. If the Target is exceeded but the Stretch is not achieved, the Performance Factor will be linearly increased when calculating the exercisable Share Options;
- (iii) A maximum Performance Target (“**Stretch**”). If the Stretch is achieved or exceeded, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.25 when calculating the exercisable Share Options.

The number of exercisable Share Options per grant is calculated as follows: For each selected Performance Measure, the number of granted Share Options is multiplied by the Weight of the respective Performance Measure and further multiplied by the achieved Performance Factor. Subsequently, the results are added up.

$$(granted\ Share\ Options * Weight\ Performance\ Measure_1 * Performance\ Factor_1) + (granted\ Share\ Options * Weight\ Performance\ Measure_2 * Performance\ Factor_2) = exercisable\ Share\ Options$$

The number of exercisable Share Options may not exceed 125% of the granted Share Options (quantity cap).

If no integral amount of exercisable subscription rights results, the amount of the exercisable subscription rights is determined by rounding according to commercial principles. A subscription to fractional Shares is excluded; a potential settlement of fractional amounts does not occur.

The following examples illustrate the above stipulations – assuming that all other exercise conditions are fulfilled:

**Example 1:** 100 Share Options are granted. Net Revenue Growth and CM are selected as Performance Measures. The Weight of Net Revenue Growth is determined at 60%, the Weight of CM at 40%. For Net Revenue Growth the Target was achieved over the Performance Period, for CM even the Stretch.

$$(100 * 60\% * 1.0) + (100 * 40\% * 1.25) = 110\ exercisable\ Share\ Options$$

**Example 2:** 200 Share Options are granted. Net Revenue Growth and Operating EBITDA Margin are selected as Performance Measures. The Weight of Net Revenue Growth is determined at 30%, the Weight of Operating EBITDA Margin at 70%. For Net Revenue Growth the Threshold was not achieved, however for Operating EBITDA Margin the Target was achieved.

$$(200 * 30\% * 0) + (200 * 70\% * 1.0) = 140\ exercisable\ Share\ Options$$

#### (v) Exercise Price

In the case of an exercise of Share Options, the Exercise Price has to be paid by the Participant for each Share subscribed. The “**Exercise Price**” per Share equals the volume-weighted 30 calendar day average price of the Company’s CDIs on the ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price and as determined by the Management Board) until the Grant Date (inclusive) and exchanged from Australian Dollar (“**AUD**”) into Euro (“**EUR**”) at the European Central Bank’s closing exchange rate on the Grant Date, multiplied by the applicable ratio of CDIs to Shares in the Company (in accordance with the actual ratio where 1,000 CDIs represent 1 Share: multiplied by 1,000). The minimum Exercise Price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 German Stock Corporation Act (*Aktiengesetz*, “**AktG**”) of currently EUR 1.00.

#### (vi) Settlement of Exercised Share Options by the Company

The Company may elect to fulfil exercised Share Options by either of the following options (each a “**Settlement Option**” and together the “**Settlement Options**”): (aa) issuing new Shares using the Conditional Capital 2022/I, which is proposed for resolution under the following para. b) (the “**Default Settlement Option**”), (bb) delivering treasury Shares or treasury CDIs, (cc) a cash settlement by paying an amount in cash which equals the value of the Shares on the last day of the respective Exercise Period less the Exercise Price, (dd) granting CDIs over new Shares, or (ee) any combination of the Settlement Options in (aa) through (dd).

To facilitate the settlement, the Participants shall commit themselves vis-à-vis the Company to transfer the respective Shares to be issued to them from the Conditional Capital 2022/I, which is yet to be resolved, immediately after their issuance to CHESS Depository Nominees Pty Ltd, ACN 071 346 506, with business address: 20 Bridge Street, Sydney NSW 2000, Australia (“CDN”), with CDN to hold the Shares pursuant to the ASX Settlement Operating Rules in trust and such number of CDIs to be allocated to the respective Participant, instead of Shares, as corresponds to the beneficial ownership of the Shares, for as long as CDIs are quoted by the ASX.

To the extent Share Options are granted to Group 1 Participants, the settlement option or combination of settlement options is elected by the Supervisory Board of the Company, and to the extent Group 2 Participants are concerned, by the Management Board of the Company.

(vii) Restrictions in the event of extraordinary developments

In the event of extraordinary developments, the Supervisory Board of the Company is authorised, at its reasonable discretion, to restrict the exercise of Share Options granted to Group 1 Participants. A restriction may be necessary specifically to ensure the appropriateness of remuneration as defined under Section 87 para. 1 s. 1 AktG.

In the event of extraordinary developments, the Management Board of the Company (upon approval of the Supervisory Board) is authorised, at its reasonable discretion, to restrict the exercise of Share Options granted to Group 2 Participants. A restriction may be necessary specifically to ensure that the total remuneration of the individual Participant is proportionate to the tasks and performance of the respective Participant and does not exceed the usual remuneration without special reason.

(viii) Individual right

The Share Options are not legally transferable but are inheritable. A transfer is also allowed for the fulfilment of legacies. Share Options may only be exercised by the respective Participant or his/her heirs or legatees. If Share Options can no longer be exercised in accordance with the above provisions, they will be forfeited without replacement or compensation. The provision authorising the re-issue of forfeited Share Options to Participants remains unaffected.

(ix) Anti-dilution protection

The Terms and Conditions may contain customary anti-dilution protection clauses based upon which the economic value of the Share Options in accordance with the regulations in Section 216 para. 3 AktG can be essentially protected, particularly by taking into account potential share splits, capital increases from company funds by issuing new Shares, or other measures with similar effects when determining the number of Shares to be issued for each Share Option.

(x) Dividend rights

The new Shares are entitled to dividends from the beginning of the financial year in which the Share Option is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted.

(xi) Authorisation to determine further details

The further details with respect to the granting and fulfilment of obligations resulting from Share Options for the issuance of Shares from the Conditional Capital 2022/I and the further Terms and Conditions are determined by the Supervisory Board of the Company to the extent Group 1 Participants are

concerned, or by the Management Board of the Company to the extent Group 2 Participants are concerned.

In particular, the further provisions shall include the decision to make use of the authorisation to grant Share Options and issue annual tranches of Share Options on one or repeated occasions as well as provisions on the execution of the Share Option Program 2022 and the annual tranches and the method of granting and exercising Share Options, the granting of Share Options to individual Participants, the determination of the Grant Date within the respective Grant Period as well as provisions on the exercisability in special cases, particularly in the case the service or employment relationship with the Participants ends in the event of death, withdrawal of an affiliated company, business or operating segment from the Marley Spoon group, or in the case of a change of control, the conclusion of an affiliation agreement or delisting, or to meet legal requirements and relating to vesting.

The Company is also authorised to deviate from the provisions of this resolution in the case of its application to Group 2 Participants as far as it is, with regard to the content of this resolution, not mandatory pursuant to German stock corporation law that the general meeting adopts the resolution or to the extent this resolution exceeds the minimum requirements of German stock corporation law.

Subject to the approval by the required majority of the resolution to increase the nominal share capital under agenda item 6 below (the “**Capital Increase Approval**”) and registration of the Capital Increase Approval with the competent commercial register (the “**Capital Increase Registration**”), the above authorisation allows for the granting of up to 180,000 Share Options to Group 1 Participants and of up to 70,000 Share Options to Group 2 Participants; for the remainder, the above authorisation remains unaffected thereby. Following the Capital Increase Registration, the Conditional Capital 2022/I to be resolved under b) and c) below will automatically be adjusted by operation of law pursuant to Section 218 sentence 1 AktG and will amount to up to EUR 250,000.00 (in words: two hundred and fifty thousand Euros) by issuance of up to 250,000 new Shares.

#### **b) Conditional Capital 2022/I**

The share capital of the Company is conditionally increased by up to EUR 2,500.00 (in words: two thousand five hundred Euros) by issuing up to 2,500 new Shares, i.e., no-par-value registered shares of the Company (“**Conditional Capital 2022/I**”). The Conditional Capital 2022/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation under para. a) above. The Shares will be issued from the Conditional Capital 2022/I at the Exercise Price determined in accordance with para. a)(v) above of the above authorisation. The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in para. a)(vi) above. The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

### c) Amendment of the Constitution

Section 3 of the Constitution is supplemented by a new paragraph 17. The new Section 3 para. 17 of the Constitution shall be worded as follows:

*“(17) In accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a), the share capital of the Company is conditionally increased by up to EUR 2,500.00 (in words: two thousand five hundred Euros) by issuing up to 2,500 new no-par-value registered shares of the Company (“**Conditional Capital 2022/I**”). The Conditional Capital 2022/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a). The Shares will be issued from the Conditional Capital 2022/I at the Exercise Price determined in accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.”*

### d) Instruction of the Management Board

The Management Board is instructed to file the Conditional Capital 2022/I and the corresponding amendment of Section 3 of the Constitution, as resolved under b) and c) above for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, prior to the Capital Increase Registration, subject to the Conditional Capital 2022/I and the corresponding amendment of Section 3 of the Constitution being registered with the commercial register prior to the Capital Increase Registration.

## 6. Resolution to increase share capital by converting existing capital reserves into registered share capital and corresponding amendment of Section 3 of the Constitution

The current registered share capital of Marley Spoon AG amounts to EUR 291,958.00 and is divided into 291,958 no-par-value shares with a proportionate amount in the share capital of EUR 1.00 per share. The current share to CDI transmutation ratio is 1:1,000, i.e., one CDI being a unit of beneficial ownership in 0.001 share of the Company, equating to 291,958,000 CDIs currently on issue.

In conjunction with the Company’s proposed conversion to a German registered European company (*Societas Europaea* or “SE”) (see agenda item 13), the Company is proposing to increase its share capital from company funds by a factor of 100 by converting existing capital reserves into registered share capital (“**Capital Increase**”) and simultaneously decrease its current share to CDI transmutation ratio by a factor of 100 (“**Ratio Change**”), i.e., to 1:10. The proposed Capital Increase and Ratio Change will

provide the Company with a share capital more aligned with common market practice for public companies of the Company's size and registered in Germany and a transmutation ratio more aligned with common market practice of companies listed on the ASX.

The proposed Capital Increase is akin to a share split under Australian law meaning it is neither dilutive nor otherwise impacting the economic shareholding of investors in the Company. The Capital Increase is achieved by the Company increasing its nominal share capital from company funds namely, by converting existing capital reserves of EUR 28,903,842.00 into 28,903,842 new shares in the Company. No cash contributions by shareholders and/or CDI-holders are required and the Capital Increase does not impact the cash reserves of the Company.

The new shares will rank *pari passu* and will be issued to CHESS Depositary Nominees Pty Ltd (CDN) as the legal owner of the currently issued shares in the Company. For each share currently held by CDN, CDN will receive 99 new shares. Following the Capital Increase, the share capital of the Company will equal EUR 29,195,800.00 and will be divided into 29,195,800 shares, all of which will be held by CDN. Given that all security holders will participate in the Capital Increase on a pro rata-basis, the existing proportionate holdings in the Company will remain unchanged.

To retain the current CDI holding structure (in a manner which should not of itself effect the value represented by each price CDIs) the Company will decrease the existing share to CDI transmutation ratio of 1:1,000 to 1:10 by reducing the notional number of CDIs (technically 29,195,800,000 following the Capital Increase) by 100, i.e., the total number of CDIs is reduced to match the current number of 291,958,000 CDIs. The Company will undertake the change in the transmutation ratio in parallel with the Capital Increase.

The cumulative effect of the Capital Increase and Ratio Change is that the number of CDIs on issue does not change and by extension the value per CDI does not change as a result, the number and expected value of a CDI-holder's CDIs immediately before and immediately after the Capital Increase and Ratio Change will be the same. Thus, for CDI-holders nothing will change by the Capital Increase and the Ratio Change, except that instead of 1,000 CDIs providing beneficial ownership over one share, these 1,000 CDIs will provide beneficial ownership over 100 shares in the Company – which will be the same for every CDI-holder on a pro-rata basis.

The Capital Increase and Ratio Change will become effective on the date of the Capital Increase Registration, expected to be mid-June. The Company will update the market on the date of the Capital Increase Registration as the registration progresses.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

- a) The share capital of the Company from currently EUR 291,958.00, which is divided in 291.958 no-par-value registered shares with a fractional amount of the nominal share capital of EUR 1.00 per share, is increased pursuant to Sections 207 et seqq. AktG by EUR 28,903,842.00 to EUR 29,195,800.00 from company funds, by transformation of a partial amount of EUR 28,903,842.00 out of the capital reserve of EUR 181,972,279.00, which is shown in the balance sheet of the Company as of December 31, 2021, which was approved and granted an unqualified auditor's audit certificate by Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Stuttgart, into nominal share capital. The capital increase is realized by the issuance of 28,903,842 new registered no-par-value shares with a fractional amount of the nominal share capital of EUR 1.00 per share. The shareholders are entitled to the new shares at a ratio of 1:99. The new

shares are entitled to profit participation from the beginning of the fiscal year 2022. The Management Board of the Company is authorised to determine the further details of the capital increase.

- b) If the Capital Increase Approval is obtained, Section 3 para. 1 sentence 1 of the Constitution shall be restated as follows:

*“(1) The share capital of the Company is EUR 29,195,800.00 (in words: twenty-nine million one hundred ninety-five thousand and eight hundred Euros).”*

*“(2) The share capital of the Company is divided into 29,195,800 no-par-value shares (shares without nominal value).”*

Section 3 para. 1 sentence 2 of the Constitution remains unchanged.

- c) Subject to the Capital Increase Approval and the Capital Increase Registration, the existing conditional capitals are adjusted by operation of law pursuant to Section 218 sentence 1 AktG. Regarding Marley Spoon AG, this is case for the Conditional Capital 2018/II pursuant to Section 3 para. 5 of the Constitution, for the Conditional Capital 2019/III pursuant to Section 3 para. 8 of the Constitution, for the Conditional Capital 2020/II pursuant to Section 3 para. 12 of the Constitution and for the Conditional Capital 2021/I pursuant to Section 3 para. 14 of the Constitution. That way, it is ensured that rights from the underlying authorisations can be serviced in shares of the Company from the respective conditional capital already created for the respective purpose.

The Supervisory Board is authorised to amend the wording of the Constitution to reflect these circumstances, which have changed by operation of law. In particular, the Supervisory Board is authorised to amend the wording of Section 3 para. 5, 8, 12 and 14 of the Constitution to reflect the increase in conditional capital by operation of law and to make all other amendments to the Constitution in connection therewith which relate only to the wording.

- d) The Management Board is instructed to file the Capital Increase Approval and the corresponding amendments of Section 3 para. 1 and 2 of the Constitution, as resolved under a) and b) above, for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, provided the Capital Increase Approval is entered first, followed by the amendment to the Constitution to reflect the increase in the contingent capitals under c) above.

**7. Resolution on the cancellation of the existing Authorised Capital 2021/I and the creation of an Authorised Capital 2022/I, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Section 3 para. 3 of the Constitution**

Since the Company is incorporated in Germany and its CDIs are listed on ASX, both German-law and Australian-law principles must be observed by the Company. To aid the Company's shareholders to better understand some of the German legal principles governing its capital structure, the Company provides the following overview of capital, assuming that all resolutions proposed at the Annual General Meeting on May 31, 2022 are approved.



As of the date of this invitation, the registered share capital of the Company is EUR 291,958,00. In addition, the Company has two different classes of dilutive capital: conditional capital and authorised capital, each in accordance with German law. Conditional capital is used by the Company to issue Shares for distinct purposes such as share option programs and convertible bonds. Shareholder subscription rights are excluded by law. Authorised capital provides the Company with flexibility to issue Shares against contributions in cash and/or in kind. Shareholder subscription rights can be excluded. Assuming that all resolutions relating to capital put to this Annual General Meeting on May 31, 2022 are approved, the Company will have the following **conditional capitals** with the respective purpose in place (pre and post the Capital Increase as proposed under agenda item 6):

<b>Name of conditional capital</b>	<b>Single purpose for which shares may be issued under the respective conditional capital</b>	<b>Number of shares by which the share capital is conditionally increased (<u>pre</u> Capital Increase)</b>	<b>Number of shares by which the share capital is conditionally increased (<u>post</u> Capital Increase)</b>
Conditional Capital 2018/II (existing)	To issue shares to settle Share Options under the Share Option Program 2018 (SOP 1)	4,105	410,500
Conditional Capital 2019/III (existing)	To issue shares to settle Share Options under the Share Option Program 2019 (SOP 2)	7,000	700,000
Conditional Capital 2020/II (existing)	To issue shares to settle Share Options under the Share Option Program 2020 (SOP 3)	6,332	633,200
Conditional Capital 2021/I (existing)	To issue shares to settle Share Options under the Share Option Program 2021 (SOP 4)	2,165	216,500
Conditional Capital 2022/I (newly proposed)	To issue shares to settle Share Options under the Share Option Program 2022 (SOP 5)	2,500	250,000
<b><u>Total:</u></b>	<b><u>n.a.</u></b>	<b><u>22,102</u></b>	<b><u>2,210,200</u></b>

Assuming that all resolutions relating to capital put to this Annual General Meeting on May 31, 2022 are approved, the Company will have the following **authorised capitals** with the respective purpose in place (pre and post the Capital Increase proposed under agenda item 6):

<b>Name of authorised capital</b>	<b>Main purpose for which shares may be issued under the authorised capital</b>	<b>Number of shares by which the share capital may be increased (<u>pre</u> Capital Increase)</b>	<b>Number of shares by which the share capital may be increased (<u>post</u> Capital Increase)</b>
Authorised Capital 2021/II (existing)	RSUP 2021/I	4,000	400,000
Authorised Capital 2021/III (existing)	RSUP 2021/II	2,000	200,000

Name of authorised capital	Main purpose for which shares may be issued under the authorised capital	Number of shares by which the share capital may be increased ( <u>pre</u> Capital Increase)	Number of shares by which the share capital may be increased ( <u>post</u> Capital Increase)
Authorised Capital 2022/I (replacement)	<ul style="list-style-type: none"> <li>- Capital increase with subscription rights</li> </ul> <i>Subscription rights may be excluded in the following cases:</i> <ul style="list-style-type: none"> <li>- Exclusion of fractional shares</li> <li>- a capital increase against cash contributions, provided that the issue price of the new Shares / CDIs is not significantly lower than the stock exchange price of the Shares / CDIs of the Company already listed (max. 10% of the share capital)</li> <li>- to grant new Shares to holders or creditors of Bonds</li> <li>- in the event of a capital increase against contributions in kind</li> </ul>	138,886	13,888,600
Authorised Capital 2022/II (newly proposed)	RSUP 2022/I	1,000	100,000
Authorised Capital 2022/III (newly proposed)	RSUP 2022/II	93	9,300
<b>Total:</b>	<b><u>n.a.</u></b>	<b><u>145,979</u></b>	<b><u>14,597,900</u></b>

As of the date of this invitation, the Authorised Capital 2021/I of the Company amounts to EUR 106,517.00. To provide the Company with sufficient flexibility, the existing Authorised Capital 2021/I will be cancelled and replaced by a new Authorised Capital 2022/I – to become effective following the Capital Increase Registration– in the aggregate amount of EUR 13,888,600.00; should the Capital Increase Approval not be obtained, the Authorised Capital 2022/I shall amount to EUR 138,886.00. The previous authorisations to exclude shareholder subscription rights – to the extent they are still required under the Authorised Capital 2022/I – shall be maintained. The Authorised Capital 2022/I shall, in particular, enable the Company to quickly and flexibly cover its financial requirements in the framework of its business purpose, and to swiftly seize arising market opportunities and strategic options.

Under the Authorised Capital 2022/I, the Management Board shall be authorised, amongst others, to exclude in specific cases, with the consent of the Supervisory Board, the subscription rights of the existing shareholders, also including the cases hitherto provided for by the Authorised Capital 2021/I, to the extent this is still required.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

**a) Cancellation of the Authorised Capital 2021/I**

The authorisation of the Management Board contained in Section 3 para. 3 of the Constitution (Authorised Capital 2021/I) is cancelled, taking effect with the point in time of the registration of the Authorised Capital 2022/I, as proposed in the resolution hereafter under para. b) and c) and, as the case may be, e) being registered with the commercial register of the Local Court of Charlottenburg, which is competent for the Company.

**b) Authorised Capital 2022/I**

The Management Board is authorised until May 30, 2027 (“**Authorised Capital 2022/I Term**”), to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 13,888,600.00 (in words: thirteen million eight hundred eighty-eight thousand six hundred Euros) by issuing up to 13,888,600 new no-par-value registered shares against contributions in cash and/or in kind (“**Authorised Capital 2022/I**”).

In principle, the shareholders are to be offered subscription rights with respect to such Shares. The Shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the Shares to the shareholders of the Company. In addition, the Shares can be subscribed by the Trustee (as defined below) with the obligation to hold the Shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those Shares, such number of CDIs, as corresponds to the new Shares.

The Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2022/I

- (i) in order to exclude fractional amounts from the subscription right;
- (ii) in the event of a capital increase against cash contributions, provided that the issue price of the new Shares / CDIs is not significantly lower than the stock exchange price of the Shares / CDIs of the Company already listed. However, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the Shares issued, in accordance with Section 186 para. 3 sentence 4 AktG, under this authorisation to exclude shareholders’ subscription rights shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2022/I comes into effect or – in the case the registered share capital of the Company is lower – at the time the Authorised Capital 2022/I is exercised (the “**10% Placement Threshold**”). Towards the 10% Placement Threshold shall also count (a) any treasury Shares that are sold during the Authorised Capital 2022/I Term on the basis of an authorisation to sell treasury Shares according to Sections 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG, provided that the shareholders’ subscription rights for such treasury Shares are excluded, (b) any Shares that are issued during the Authorised Capital 2022/I Term to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the “**Bonds**”), provided that such Bonds are issued subject to the exclusion of the shareholders’ subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG; and (c) any Shares that are issued during the Authorised Capital 2022/I Term on the basis of other capital measures, provided that such Shares are issued subject to the exclusion of the

shareholders' subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG;

- (iii) to the extent necessary in order for the Company to be able to (a) grant new Shares of the Company to holders or creditors of bonds that will be issued by the Company or its subordinated group companies upon exercise of their conversion or option rights or fulfilment of their conversion or option obligations, and (b) grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations, that will be issued by the Company or its subordinated group companies, a subscription right to new Shares in the amount to which they would be entitled as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;
- (iv) in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.

The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new Shares with the obligation to hold the Shares in trust and with the obligation for the Company to allocate a corresponding number of CDIs to the respective beneficial owners instead of the Shares.

The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed financial years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed.

The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2022/I or upon expiry of the Authorised Capital 2022/I Term.

### c) Amendment to the Constitution

Section 3 para. 3 of the Constitution of the Company is correspondingly amended and restated in its entirety as follows:

*“(3) The Management Board is authorised until May 30, 2027, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 13,888,600.00 (in words: thirteen million eight hundred eighty-eight thousand six hundred Euros) by issuing up to 13,888,600 new no-par-value registered shares against contribution in cash and/or in kind (“**Authorised Capital 2022/I**”).*

*In principle, the shareholders are to be offered subscription rights with respect to such shares. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 of the German Stock Corporation Act (Aktiengesetz, “**AktG**”) with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee (in each case the “**Trustee**”) with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CHESS Depository Interests (“**CDIs**”), e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares.*

*The Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2022/I*

- (i) in order to exclude fractional amounts from the subscription right;*
- (ii) in the event of a capital increase against cash contributions, provided that the issue price of the new shares / CDIs is not significantly lower than the stock exchange price of the shares / CDIs of the Company already listed. However, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares issued, in accordance with Section 186 para. 3 sentence 4 AktG, under this authorisation to exclude shareholders' subscription rights shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2022/I comes into effect or – in the case the registered share capital of the Company is lower – at the time the Authorised Capital 2022/I is exercised (the “**10% Placement Threshold**”). Towards the 10% Placement Threshold shall also count (a) any treasury shares that are sold during the Authorised Capital 2022/I term on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG, provided that the shareholders' subscription rights for such treasury shares are excluded, (b) any shares that are issued during the Authorised Capital 2022/I term to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the “**Bonds**”), provided that such Bonds are issued subject to the exclusion of the shareholders' subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG, and (c) any shares that are issued during the Authorised Capital 2022/I term on the basis of other capital measures, provided that such shares are issued subject to the exclusion of the shareholders' subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG;*
- (iii) to the extent necessary in order for the Company to be able to (a) grant new shares of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon exercise of their conversion or option rights or fulfilment of their conversion or option obligations, and (b) grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations, that will be issued by the Company or its subordinated group companies, a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;*
- (iv) in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.*

*The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new shares with the obligation to hold the shares in trust and with the obligation for the Company to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.*

*The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of*

*the profit participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed financial years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed.*

*The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2022/I or upon expiry of the Authorised Capital 2022/I term.”*

**d) Instruction of the Management Board**

The Management Board is instructed to file the Authorised Capital 2022/I and the corresponding amendment of Section 3 para. 3 of the Constitution, as resolved under c) above, as well as the concurrent cancellation of the existing Authorised Capital 2021/I, as resolved under a) above, only for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, together with the Capital Increase Approval provided that the amendment of Section 3 para. 3 of the Constitution shall only be registered with the commercial register if the Capital Increase Approval has previously been or is simultaneously registered with the commercial register.

**e) Authorised Capital 2022/I and amendment to the Constitution where the Capital Increase Approval is not obtained**

If the Capital Increase Approval is not obtained under agenda item 6, the following shall apply:

- Sentence 1 of the resolution under b) above shall read as follows:

The Management Board is authorised until May 30, 2027 (“**Authorised Capital 2022/I Term**”), to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 138,886.00 (in words: one hundred thirty-eight thousand eight hundred eighty-six Euros) by issuing up to 138,886 new no-par-value registered shares against contributions in cash and/or in kind (“**Authorised Capital 2022/I**”).

The remaining resolution under b) shall remain unchanged.

- The resolution under c) above regarding sentence 1 of Section 3 para. 3 of the Constitution of the Company shall read as follows:

*“(3) The Management Board is authorised until May 30, 2027, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 138,886.00 (in words: one hundred thirty-eight thousand eight hundred eighty-six Euros) by issuing up to 138,886 new no-par-value registered shares against contributions in cash and/or in kind (“**Authorised Capital 2022/I**”).”*

The remaining resolution under c) shall remain unchanged.

- The resolution under d) above shall not apply.

**8. Resolution on the adjustment of the existing Authorised Capital 2021/II and Authorised Capital 2021/III the corresponding amendment of Section 3 para. 15 and Section 3 para. 16 of the Constitution**

Subject to the Capital Increase Approval and the Capital Increase Registration, the Authorised Capital 2021/II and Authorised Capital 2021/III currently existing at the Company shall be adjusted accordingly. To that end, the relevant amounts of the authorisations shall be adjusted upon the Capital Increase Registration; all other terms of the Authorised Capital 2021/II and Authorised Capital 2021/III, in particular the term and purpose, remain unchanged.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

- a) Section 3 para. 15 of the Constitution shall on the Capital Increase Registration be restated as follows:

*“(15) The Management Board is authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company’s registered share capital by up to EUR 400,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 400,000 new no-par-value registered shares (“**Authorised Capital 2021/II**”). The subscription rights of shareholders are excluded. The Authorised Capital 2021/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2021/I (RSUP 2021/I) exclusively to the following “**RSUP 2021/I Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2021/I Beneficiaries’ claims against the Company under the RSUP 2021/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.”*

- b) Section 3 para. 16 of the Constitution shall on the Capital Increase Registration be restated as follows:

*“(16) The Management Board is authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company’s registered share capital by up to EUR 200,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 200,000 new no-par-value registered shares (“**Authorised Capital 2021/III**”). The subscription rights of shareholders are excluded. The Authorised Capital 2021/III serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and*

*conditions of the second Restricted Stock Unit Program of the Company 2021/II (RSUP 2021/II) exclusively to the following “RSUP 2021/II Beneficiaries”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2021/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.”*

- c) The Management Board is instructed to file the adjustments of the Authorised Capital 2021/II and the Authorised Capital 2021/III and the corresponding amendments of Section 3 para. 15 and Section 3 para. 16 of the Constitution, as resolved under a) and b) above, only for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, together with the Capital Increase Approval, provided that the amendments of Section 3 para. 15 and Section 3 para. 16 of the Constitution shall only be registered with the commercial register if the Capital Increase Approval has previously been or is simultaneously registered with the commercial register.
- d) The Management Board and the Supervisory Board, as the case may be, are authorised and instructed to adjust the terms and conditions of the underlying RSUP 2021/I and RSUP 2021/II on the Capital Increase Registration.

**9. Resolution on the creation of an Authorised Capital 2022/II under exclusion of subscription rights for the purpose of serving “Restricted Stock Units” to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as to full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the Restricted Stock Unit Program 2022/I of the Company and on the respective amendment of Section 3 para. 18 of the Constitution**

An attractive and competitive incentive and remuneration program is essential for the Company’s ability to attract and retain high calibre talent and reward outstanding performance. The success of its incentive and remuneration program depends on the Company having a set of both long-term as well as more short-term equity-based schemes in place. Programs designed around Restricted Stock Units can be used for either purpose. Therefore, the Company intends to establish two separate Restricted Stock Unit Programs (“RSUPs”) for non-KMPs as follows:



- RSUP 2022/I – a long term incentive, performance-based program for non-KMPs under which eligible employees are issued securities enabling them to participate in the Company’s growth and success. Following the Capital Increase Registration, the available securities will be 100,000 Shares underlying the RSUs (see below in this agenda item 9 for details); this RSUP has features similar to the Share Option Program 2022 (see agenda item 5);
- RSUP 2022/II – a short-term incentive and retention program for non-KMPs with a pool of – following the Capital Increase Registration 6 – 9,300 Shares underlying the RSUs (see agenda item 10 for details); this RSUP has features similar to traditional employee share option programs.

The RSUP 2022/I will serve as the Company’s long-term incentive program for its non-KMP employees, whilst the Share Option Program 2022 proposed under agenda item 5 above will serve as the Company’s long-term incentive program for, in particular, Management Board members. As such, the parameters of the RSUP 2022/I and the Share Option Program 2022 will largely be the same, in particular, similar Performance Measures will apply to the RSUP 2022/I as are applicable to Share Options. With respect to each of the Performance Measures, the Management Board retains reasonable discretion to review and adjust the Performance Targets to ensure there is neither a material advantage nor disadvantage due to matters that affect the Performance Measures and/or Performance Targets (for example, by adjusting for one-off items or significant changes to the business, e.g., due to acquisitions or disposals).

The persons eligible to receive RSUs under the RSUP 2022/I are: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts (together the “**RSUP 2022/I Beneficiaries**”). Persons employed under so-called employer of record contracts have an ongoing contract and perform work equivalent to that of employees. The reason these persons are not employees is structural. For the avoidance of doubt, members of the Management Board, including the CEO, as well as appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad are not eligible to participate in the RSUP 2022/I due to German stock corporation law restrictions.

Pursuant to the planned RSUP 2022/I, the Management Board shall be allowed to grant RSUs to RSUP 2022/I Beneficiaries, which – if certain performance targets and other requirements are met – grant the RSUP 2022/I Beneficiaries a claim against the Company for a cash payment depending on the stock exchange price of the Shares and respectively the CDIs of the Company. However, the terms and conditions of the RSUP 2022/I shall grant a substitution right of the Company, permitting it to fulfill the payment claims of RSUP 2022/I Beneficiaries, in full or in part, by delivering Shares or CDIs instead of cash. In order for the Company to be able to issue new Shares or CDIs in such case, and to fulfill the payment claims of the respective beneficiaries when due, a new authorised capital (“**Authorised Capital 2022/II**”) shall be created.

The Management Board and the Supervisory Board therefore propose to resolve as follows:

**a) Creation of an Authorised Capital 2022/II under exclusion of subscription rights**

The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including) to increase the Company’s registered share capital by up to EUR 100,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 100,000 new

no-par-value registered shares (**Authorised Capital 2022/II**). The subscription rights of shareholders are excluded.

The Authorised Capital 2022/II serves the purpose of delivering Shares of the Company against the contribution of payment claims resulting from RSUs in order to fulfil RSUs that were granted in accordance with the terms and conditions of the RSUP 2022/I exclusively to the RSUP 2022/I Beneficiaries.

The Shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the Shares to the shareholders of the Company. In addition, the Shares can be subscribed by the Trustee with the obligation to hold the Shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those Shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new Shares, with one CDI currently being a unit of beneficial ownership in 0.001 Share of the Company. The issue price of the new Shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including the contribution of RSUP 2022/I Beneficiaries' claims against the Company under the RSUP 2022/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

#### **b) Amendment of Section 3 of the Constitution of the Company**

Section 3 of the Constitution of the Company shall be supplemented by a new paragraph 18 as follows:

*“(18) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company’s registered share capital by up to EUR 100,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 100,000 new no-par-value registered shares (“**Authorised Capital 2022/II**”). The subscription rights of shareholders are excluded. The Authorised Capital 2022/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2022/I (RSUP 2022/I) exclusively to the following “**RSUP 2022/I Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2022/I Beneficiaries’ claims against the Company under the RSUP 2022/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.”*

**c) Instruction of the Management Board**

The Management Board is instructed to file the Authorised Capital 2022/II and the corresponding amendment of Section 3 of the Constitution, as resolved under b) above only for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, together with the Capital Increase Approval, provided that the corresponding amendment of Section 3 of the Constitution shall only be registered with the commercial register if the Capital Increase Approval has previously been or is simultaneously registered with the commercial register.

**d) Authorised Capital 2022/II and amendment to the Constitution if the Capital Increase Approval is not obtained**

If the Capital Increase Approval under agenda item 6 is not obtained, the amount of the Authorised Capital 2022/II as proposed above shall be adjusted accordingly, i.e., divided by a factor of 100 (being equal to the proposed Capital Increase), and the following shall apply:

- Sentence 1 of the resolution under a) above shall read as follows:

The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including) to increase the Company's registered share capital by up to EUR 1,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 1,000 new no-par-value registered shares (Authorised Capital 2022/II).

The remaining resolution under a) shall remain unchanged.

- The resolution under b) above regarding sentence 1 of Section 3 para. 18 of the Constitution of the Company shall read as follows:

*“(18) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 1,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 1,000 new no-par-value registered shares (“**Authorised Capital 2022/II**”).”*

The remaining resolution under b) shall remain unchanged.

- The resolution under c) above shall not apply.

**10. Resolution on the creation of an Authorised Capital 2022/III under the exclusion of subscription rights for the purpose of serving “Restricted Stock Units” to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the Restricted Stock Unit Program 2022/II of the Company and on the respective amendment of Section 3 para. 19 of the Constitution**

To complement the RSUP 2022/I, the Company seeks to establish a “Restricted Stock Unit Program II” (the “**RSUP 2022/II**”) which shall serve as the Company's short-term incentive and retention scheme.

The RSUP 2022/II will serve as an additional feature in the Company's remuneration framework structured to attract and retain high calibre talent and reward outstanding leadership and performance.

The persons eligible to receive RSUs under the RSUP 2022/II are: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts (together the "**RSUP 2022/II Beneficiaries**"). Persons employed under so-called employer of record contracts have an ongoing contract and perform work equivalent to that of employees. The reason these persons are not employees is merely structural. For the avoidance of doubt, members of the Management Board of the Company, including the CEO, as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad are not eligible to participate in the RSUP 2022/II due to German stock corporation law restrictions.

Just like with the RSUP 2022/I, the Management Board is responsible for determining eligibility to the RSUP 2022/II and for granting RSUs to the RSUP 2022/II Beneficiaries. In addition, the issuance of RSUs under the RSUP 2022/II to employees of a group entity will require the consent of the Supervisory Board.

Pursuant to the planned RSUP 2022/II, the Management Board shall be allowed to grant RSUs to RSUP 2022/II Beneficiaries, which – if certain requirements are met – grant the RSUP 2022/II Beneficiaries a claim against the Company for a cash payment depending on the stock exchange price of the Shares and respectively the CDIs of the Company. However, the terms and conditions of the RSUP 2022/II shall grant a substitution right to the Company, permitting it to fulfil the payment claims of RSUP 2022/II Beneficiaries, in full or in part, by delivering Shares or CDIs instead of cash. In order for the Company to be able to issue new Shares or CDIs in such case, and to fulfill the payment claims of the respective beneficiaries when due, a new authorised capital ("**Authorised Capital 2022/III**") shall be created.

The Management Board and the Supervisory Board therefore propose to resolve as follows:

**a) Creation of an Authorised Capital 2022/III under exclusion of subscription rights**

The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including) to increase the Company's registered share capital by up to EUR 9,300.00 against cash contributions and/or contributions in kind once or several times by issuing up to 9,300 new no-par-value registered shares (Authorised Capital 2022/III). The subscription rights of shareholders are excluded.

The Authorised Capital 2022/III serves the purpose of delivering Shares of the Company against the contribution of payment claims resulting from RSUs in order to fulfil RSUs that were granted in accordance with the terms and conditions of the RSUP 2022/II exclusively to the RSUP 2022/II Beneficiaries.

The Shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the Shares to the shareholders of the Company. In addition, the Shares can be subscribed by the Trustee with the obligation to hold the Shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those Shares, such number of CDIs. The issue price of the new Shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including the contribution of RSUP 2022/II Beneficiaries' claims against the Company under the RSUP 2022/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of

the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

#### **b) Amendment of Section 3 of the Constitution of the Company**

Section 3 of the Constitution of the Company shall be supplemented by a new paragraph 19 as follows:

*“(19) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company’s registered share capital by up to EUR 9,300.00 against cash contributions and/or contributions in kind once or several times by issuing up to 9,300 new no-par-value registered shares (“**Authorised Capital 2022/III**”). The subscription rights of shareholders are excluded. The Authorised Capital 2022/III serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the second Restricted Stock Unit Program of the Company 2022/II (RSUP 2022/II) exclusively to the following “**RSUP 2022/II Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFs (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2022/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.”*

#### **c) Instruction of the Management Board**

The Management Board is instructed to file the Authorised Capital 2022/III and the corresponding amendment of Section 3 of the Constitution, as resolved under b) above only for registration with the commercial register of the Local Court of Charlottenburg, which is competent for the Company, together with the Capital Increase Approval, provided that the corresponding amendment of Section 3 of the Constitution shall only be registered with the commercial register if the Capital Increase Approval has previously been or is simultaneously registered with the commercial register.

#### **d) Authorised Capital 2022/III and amendment to the Constitution if the Capital Increase Approval is not obtained**

If the Capital Increase Approval under agenda item 6 is not obtained, the amount of the Authorised Capital 2022/III as proposed above shall be adjusted accordingly, i.e., divided by a factor of 100 (being the proposed Capital Increase), and the following shall apply:

- Sentence 1 of the resolution under a) above shall read as follows:

The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including) to increase the Company’s registered share capital by up to EUR 93.00 against

cash contributions and/or contributions in kind once or several times by issuing up to 93 new no-par-value registered shares (Authorised Capital 2022/III).

The remaining resolution under a) shall remain unchanged.

- The resolution under b) above regarding sentence 1 of Section 3 para. 19 of the Constitution of the Company shall read as follows:

*“(19) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company’s registered share capital by up to EUR 93.00 against cash contributions and/or contributions in kind once or several times by issuing up to 93 new no-par-value registered shares (“**Authorised Capital 2022/III**”).”*

The remaining resolution under b) shall remain unchanged.

- The resolution under c) above shall not apply.

#### **11. Resolution on the adjustment of the authorisations regarding the Share Option Program 2018, Share Option Program 2019, Share Option Program 2020 and Share Option Program 2021**

Subject to the Capital Increase Approval and the Capital Increase Registration, the authorisations regarding the Share Option Program 2018, Share Option Program 2019, Share Option Program 2020 and Share Option Program 2021 currently existing at the Company shall be adjusted accordingly. To that end, the relevant number of Share Options granted under such authorisations shall be modified as the respective underlying conditional capitals are adjusted automatically by operation of law pursuant to Section 218 sentence 1 AktG. The number of CDIs to be granted upon exercise of such Share Options will not change as a consequence of the Capital Increase (see agenda item 6).

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

- a) The authorisation of the general meeting of June 5, 2018 under agenda item 3, lit. a) regarding the Stock Option Program 2018 I is adjusted in such a way that the number of share options and shares is multiplied by the factor of the Capital Increase, i.e., 100.
- b) The authorisation of the general meeting of May 24, 2019 under agenda item 6, lit. a) regarding the Stock Option Program 2019 is adjusted in such a way that the number of share options and shares is multiplied by the factor of the Capital Increase, i.e., 100.
- c) The authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a) regarding the Stock Option Program 2020 is adjusted in such a way that the number of share options and shares is multiplied by the factor of the Capital Increase, i.e., 100.
- d) The authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a) regarding the Stock Option Program 2021 is adjusted in such a way that the number of share options and shares is multiplied by the factor of the Capital Increase, i.e., 100.

- e) The above resolutions under a) through d) shall become effective upon the Capital Increase Registration.

## **12. Resolution pursuant to Section 71 para. 1 no. 8 AktG on an authorisation regarding the acquisition and the use of treasury shares / treasury CDIs, also with a potential exclusion of subscription rights**

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

### **a) Creation of an acquisition authorisation**

The Management Board is authorised until May 30, 2027, with the approval of the Supervisory Board, to acquire treasury shares of the Company up to the lower of a total of 10% of the share capital (i) existing at the time the resolution becomes effective or (ii) existing at the time the authorisation is exercised. The treasury shares acquired on the basis of this authorisation, together with other treasury shares held by the Company or attributable to it in accordance with Sections 71d and 71e AktG, may at no time account for more than 10% of the Company's share capital. The acquisition may also be carried out by dependent group companies of the Company within the meaning of Section 17 AktG or by third parties for its or their account.

This authorisation may also be exercised by a group company or by third parties for the account of the Company or a group company. The authorisation may be exercised for all legally permissible purposes, in particular in pursuit of one or more of the purposes set out under c) (1) to (5) below. Trading in treasury shares may not take place. The authorisation may be exercised in whole or in part, in the latter case also several times. The treasury shares may be acquired within the authorisation period up to the maximum acquisition volume in partial tranches spread over different acquisition dates.

### **b) Manner of acquiring treasury shares**

The acquisition shall be made in compliance with the principle of equal treatment (Section 53a AktG) at the discretion of the Management Board (i) via the stock exchange or (ii) by means of a public purchase offer addressed to all shareholders or (iii) by means of a public invitation to shareholders to submit offers for sale (the acquisition pursuant to (ii) and (iii) hereinafter **"Public Purchase Offer"**).

#### **aa) Acquisition via the stock exchange**

If the treasury shares are acquired via the stock exchange, the purchase price paid by the Company per share (excluding incidental acquisition costs) may not be more than 10% higher or lower than the relevant volume-weighted average price of the Company's shares during the last five trading days prior to the date on which the obligation to acquire the treasury shares is entered into.

#### **bb) Acquisition of treasury shares by means of a Public Purchase Offer**

If the treasury shares are acquired by means of a Public Purchase Offer, the Company may specify a fixed purchase price or a purchase price range per treasury share (excluding incidental acquisition costs) within which it is prepared to acquire treasury shares. In the Public Purchase Offer, the Company may specify a period for the acceptance or submission of offers and the possibility and conditions for adjusting the purchase price range during the period in the event of not merely insignificant changes in the relevant share price. In the event of a purchase price range, the purchase price shall

be determined on the basis of the selling prices stated in the shareholders' acceptance or tender declarations and the purchase volume determined by the Management Board after the end of the offer period.

- (1) In the event of a Public Purchase Offer by the Company, the purchase price offered or the purchase price range per treasury share (excluding incidental costs) may not be more than 10% higher or lower than the relevant volume-weighted average price of the Company's shares during the last five trading days prior to the date of the public announcement of the offer. In the event of an adjustment of the purchase price range by the Company, the last five stock exchange trading days prior to the public announcement of the adjustment shall be taken as a basis.
- (2) In the event of an invitation to shareholders to submit offers for sale, the purchase price (excluding incidental acquisition costs) per treasury share determined on the basis of the offers submitted may not be more than 10% higher or lower than the relevant volume-weighted average price of the Company's shares during the last five trading days prior to the date of publication of the invitation to submit offers for sale.

The volume of the purchase offer or the invitation to sell may be limited. If the total number of shares tendered to the Company exceeds the total volume of the Company's purchase offer or invitation to sell, consideration or acceptance shall be in proportion to the total volume of the purchase offer or invitation to sell in relation to the total number of shares tendered by the shareholders. In addition, provision may be made for preferential acceptance of small lots of up to 100 shares tendered per shareholder and for rounding in accordance with commercial principles in order to avoid fractional shares. Any further right of shareholders to tender shares is excluded in this respect. The Public Purchase Offer may provide for further conditions.

c) Authorisation for use

The Management Board is authorised, with the approval of the Supervisory Board, to use any treasury shares already held by the Company and the treasury shares acquired on the basis of the above acquisition authorisation for all legally permissible purposes. In addition to a sale on the stock exchange or by means of an offer to all shareholders, in each case in compliance with the principle of equal treatment (Section 53a AktG), the Management Board is authorised, with the approval of the Supervisory Board, to use any treasury shares already held by the Company and the treasury shares acquired on the basis of the above acquisition authorisation also in the following manner:

- (1) They may be offered for acquisition to and/or transferred to third parties against contributions in kind, in particular in connection with business combinations or the acquisition of companies, businesses, parts of businesses or equity interests in companies (including increases in existing shareholdings) as (partial) consideration.
- (2) They may be sold to third parties against payment in cash at a price (excluding incidental costs of realization) which is not significantly lower than the relevant stock exchange price of a share in the Company at the time of sale within the meaning of Section 186 para. 3 sentence 4 AktG.
- (3) They may be used to service purchase obligations or purchase rights to shares in the Company arising from and in connection with convertible bonds or bonds with warrants or profit participation rights with conversion or option rights or conversion or option obligations issued by the Company or one of its group companies.



- (4) They may be offered for acquisition, or transferred, to employees of the Company or of an affiliate within the meaning of Sections 15 et seqq. AktG (“**Affiliate**”) as well as to members of the management of the Company or of an Affiliate, and/or they may be used to fulfil commitments to purchase, or obligations to purchase, shares of the Company which were granted to employees of the Company or an Affiliate as well as to members of the management of the Company or an Affiliate. In particular, they may also be used to service purchase obligations, or purchase rights, to shares in the Company entered, or to be entered, into with employees or members of the management of the Company or an Affiliate within the context of employee participation option programs (including but not limited to the existing Share Option Programs and Restricted Stock Unit Programs of the Company). Insofar as members of the Management Board are beneficiaries, this authorisation applies to the Supervisory Board, which is also responsible for selecting the beneficiaries and determining the volume of shares to be granted to them in each case.
- (5) They may be redeemed (*eingezogen*) and the share capital of the Company be reduced by the portion of the share capital attributable to the redeemed shares without the redemption or its implementation requiring a further resolution by the general meeting under German stock corporation law. The redemption shall result in a capital reduction. In derogation of the foregoing, the Management Board may determine that the share capital shall remain unchanged upon redemption and that instead the redemption shall increase the proportion of the share capital represented by the remaining shares in accordance with Section 8 para. 3 AktG. In this case, the Management Board is authorised to adjust the number of no-par value shares in the Constitution.

The aforementioned authorisations may be exercised in full or in several partial amounts and in pursuit of one or more purposes. The authorisations may also be exercised by dependent companies or companies majority-owned by the Company or by third parties for the account of the Company or companies dependent on the Company or companies majority-owned by the Company.

Shareholders’ subscription rights to the Company’s treasury shares are excluded to the extent that these treasury shares are used in accordance with the above authorisations in items (1) to (4). In addition, the Management Board may, with the approval of the Supervisory Board, exclude shareholders’ subscription rights for fractional amounts in the event of the sale of treasury shares in connection with an offer for sale.

In total, the treasury shares used on the basis of the authorisations under c) (2) and (3) above, insofar as they are issued by analogous application of Section 186 para. 3 sentence 4 AktG (excluding subscription rights in return for cash contributions not significantly below the relevant stock market price), may not exceed 10% of the share capital stock, either at the time the resolution becomes effective or – if this value is lower – at the time this authorisation is exercised. Shares issued or sold by direct or analogous application of Section 186 para. 3 sentence 4 AktG during the period of validity of this authorisation up to this point in time shall be counted towards this limit. Shares issued or to be issued to service convertible/warrant bonds or option rights shall also be counted towards this limit insofar as these bonds are issued during the effectiveness of this authorisation in accordance with Section 186 para. 3 sentence 4 AktG.

d) CHES Depository Interests

To the extent legally permissible, the above authorisation also includes CDIs. For the purpose of this authorisation, references to the Company’s shares shall be read as references to the corresponding number of CDIs per share and references to the holders of shares shall be read as references to

holders of CDIs. Insofar as the above authorisation refers to the stock exchange price of the shares of the Company, this shall apply with regard to CDIs to the relevant price of the CDIs on Australian Securities Exchange (ASX).

- e) The authorisations under a) through d) above shall become effective upon the Capital Increase Registration. Otherwise, the authorisations under a) through d) above shall become effective upon the approval of this agenda item by the general meeting with the required majority.

### **13. Resolution on the approval of the joint merger plan between Marley Spoon AG as acquiring company and MS Holding AG, Klagenfurt, Austria, as transferring company**

The Company is a German stock corporation (*Aktiengesellschaft* or “AG”) registered under German stock corporation law. It is proposed that the Company convert to a German registered European stock corporation (*Societas Europaea* or “SE”) under the name “Marley Spoon SE” (“**Corporate Conversion**”).

The Company believes that the legal form of an SE will provide an appropriate and flexible corporate structure for the Company as a growth company with a pan-European/international employee base. The legal form of an SE is a supranational entity, based on European law for stock corporations with a registered office and head office in a member state. The Company’s online presence covers numerous European countries and is available in different languages and the conversion of the Company into the legal form of a European company aligns with the image of Marley Spoon group as a European and globally oriented company and takes into account the Company’s further targeted growth.

The Corporate Conversion of the Company will be effected by a merger pursuant to Article 2 para. 1 in conjunction with Article 17 para. 2 lit. a) of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

The Company has established a new wholly owned subsidiary, MS Holding AG, Klagenfurt, Austria, (“**MS Austria**”). MS Austria has no assets and is non-operating. The Management Board of Marley Spoon AG and the management board of MS Austria have established a final draft joint merger plan (the “**Joint Merger Plan**”) in respect of the merger process. Under the terms of the Joint Merger Plan and in accordance with German and European stock corporation law, MS Austria as the transferring company will merge into Marley Spoon AG as acquiring company, resulting in the formation of Marley Spoon SE and the dissolution of MS Austria (the “**Merger**”).

#### *Unchanged legal and economic identity*

The Merger will not result in any change in the legal or economic identity of the Company and it will continue to be registered with the commercial register of Berlin-Charlottenburg, Germany.

Under the terms of the Joint Merger Plan, Marley Spoon SE will adopt a new constitution that is compliant with German and European stock corporation law. By approving the resolutions under this item 13, shareholders will be approving the adoption of a new Constitution of Marley Spoon SE which is attached to the Joint Merger Plan. A copy of the new Constitution of Marley Spoon SE highlighting the minor changes against the current Constitution of Marley Spoon AG is contained in **Section III**. below.

### *Corporate Governance and structure*

The corporate governance and structure of Marley Spoon SE is similar to the current corporate governance and structure of Marley Spoon AG. In particular, Marley Spoon SE will retain its current two-tier board structure, consisting of the Management Board and the Supervisory Board, and the responsibilities of those boards will remain the same. There are also no changes to the existing capital structure of the Company.

### *Governing law of Marley Spoon SE*

Marley Spoon AG was incorporated in Germany in the legal form of a German stock corporation (Aktiengesellschaft, AG), and its corporate affairs are predominantly governed by (amongst other things) the Constitution and German company law, in particular the provisions of the German Stock Corporation Act (Aktiengesetz, AktG).

On the Merger becoming effective, Marley Spoon SE will continue to be governed by its constitution and German company law, in particular the provisions of the German Stock Corporation Act. Additionally, certain supplementary European rules will apply to Marley Spoon SE.

The Management Board and the Supervisory Board propose that the general meeting resolves by a majority of 75% as follows:

The Joint Merger Plan is approved. Furthermore, the Merger and the transformation of Marley Spoon AG into the legal form of a European Company (*Societas Europaea*, SE) under the name “Marley Spoon SE” effected by the Merger are approved.

\* \* \*

The text of the Joint Merger Plan including the Constitution of Marley Spoon SE (English convenience translation) is contained in **Section IV.** below and an indicative timetable outlining milestones of the Corporate Conversion process is contained in **Section V.** below. The Joint Merger Plan was submitted to the commercial register of the Local Court of Charlottenburg, which is competent for Marley Spoon AG, for disclosure in accordance with the applicable provisions of German law prior to the present invitation to the shareholders’ meeting of Marley Spoon AG. It is intended that, following the approval by the general meeting, the Joint Merger Plan will be notarized.

## **14. Resolution on elections of members of the first Supervisory Board of Marley Spoon SE**

If the Merger is approved under agenda item 13 and becomes effective, the members of the first Supervisory Board of Marley Spoon SE, are to be elected.

Pursuant to Article 40 para. 2 and para. 3 of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), Section 17 para. 1 of the German Act on Implementing the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Section 8 para. 1 of the Constitution of Marley Spoon SE, the Supervisory Board consists of four members. All Supervisory Board members are to be elected by the general meeting.

It is proposed that the current members of the Supervisory Board of Marley Spoon AG shall also be the members of the first Supervisory Board of Marley Spoon SE.

Pursuant to Section 8 para. 2 of the Constitution of Marley Spoon SE, the Supervisory Board members are elected for a period terminating at the end of the general meeting that resolves on the formal approval

of the Supervisory Board members' acts for the second financial year following the commencement of their term of office, unless otherwise specified at the time of their election. The financial year in which the term of office begins shall not be included in this calculation. The Company's general meeting on June 11, 2021, elected the current members of the Supervisory Board of Marley Spoon AG for a period ending upon conclusion of the general meeting, which resolves on the discharge for financial year 2023. The term of office of the members of the first Supervisory Board of Marley Spoon SE shall run as long as the current term of office of the members of the Supervisory Board of Marley Spoon AG. Based on these provisions, it is expected that the term of the members of the first Supervisory Board of Marley Spoon SE to be elected at the general meeting on May 31, 2022 will be approx. two years until and including the annual general meeting in 2024. The elections to the Supervisory Board will be conducted as individual elections.

The Supervisory Board proposes to elect:

a) Ms. **Deena Robyn Shiff**

current profession: Independent Chairman of the Supervisory Board / Non-Executive Director of Marley Spoon, Non-Executive Director of Electro Optic Systems Holdings (EOS:ASX), Appen Limited (ASX:APX) and Pro Medicus Ltd. (ASX:PME), Board member of Opera Australia and Chair of the Australian Government's Broadband Advisory Council

place of residence: Sydney, Australia

further details: please refer to the Company's investor relations website for further information about Ms. Shiff (<https://ir.marleyspoon.com/investor-centre/?page=general-meetings>)

b) Mr. **Roy Perticucci**

current profession: Independent member of the Supervisory Board / Non-Executive Director of Marley Spoon

place of residence: Sandweiler, Luxembourg

further details: please refer to the Company's investor relations website for further information about Mr. Perticucci (<https://ir.marleyspoon.com/investor-centre/?page=general-meetings>)

c) Ms. **Kim Elizabeth Winifred Anderson**

current profession: Independent member of the Supervisory Board and Chair of the Nomination and Remuneration Committee (NRC) / Non-Executive Director of Marley Spoon, Non-Executive Director and Chair of the Remuneration, People & Culture Committee of Carsales (ASX:CAR), Info-media (ASX:IFM), InvoCare (ASX:IVC) and SiteMinder (ASX: SDR)

place of residence: Pyrmont, Australia

further details: please refer to the Company's investor relations website for further information about Ms. Anderson (<https://ir.marleyspoon.com/investor-centre/?page=general-meetings>)

d) Ms. **Robin Jane Low**

current profession: Independent member of the Supervisory Board and Chair of the Audit and Risk Committee (ARC) / Non-Executive Director of Marley Spoon, Non-Executive Director of Appen Ltd. (ASX:APX), AUB Group Ltd. (ASX:AUB) and IPH Ltd. (ASX:IPH), not for profit directorships at Guide Dogs NSW/ACT and the Sax Institute

place of residence: Kirribilli (Sydney), Australia

further details: please refer to the Company's investor relations website for further information about Ms. Low (<https://ir.marleyspoon.com/investor-centre/?page=general-meetings>)

as members of the first Supervisory Board of Marley Spoon SE.

In each case the election becomes effective as of the conclusion of the present general meeting and ends upon conclusion of the general meeting, which resolves on the discharge for financial year 2023 and in any event within six years.

As noted above, the appointment of the Supervisory Board is subject to the approval of the Joint Merger Plan under agenda item 13 by the required majority.

## **15. Resolution to approve the Share Option Program 2022 and issue of securities under that program in the future**

Note: A voting exclusion statement applies to the resolution under this agenda item 15 and is set out in para. d) in full below.

This resolution seeks approval for the Share Option Program 2022 (as described above under agenda item 5) and future issues of securities under that program for the purposes of ASX Listing Rule 7.2, Exception 13. The Share Option Program 2022 has been adopted by the Company to provide ongoing incentives to Participants (as described above at agenda item 5).

The objective of the Share Option Program 2022 is to provide the Company with a remuneration mechanism, through the issue of securities in the Company, to motivate and reward the performance of members of the Management Board, including the CEO, and senior executives in achieving specified performance milestones within a specified performance period.

The Management Board and, in respect of the Management Board, the Supervisory Board, will ensure that the Performance Targets will be aligned with a sustainable development of the Company. The members of the Management Board and senior executives of the Company have been, and will continue to be, instrumental in the growth of the Company.

### **a) ASX Listing Rules 7.1 and 7.2, Exception 13**

ASX Listing Rule 7.1 provides, subject to exceptions, that a company must not issue or agree to issue equity securities which represent 15% of the company's issued share capital within any 12 months without obtaining shareholder approval.

ASX Listing Rule 7.2, Exception 13 provides that ASX Listing Rule 7.1 does not apply to an issue of securities under an employee incentive scheme if the scheme has been approved by shareholders and the issue is within 3 years of the date of such approval.

The effect of this resolution, if passed, will be to allow the Management Board and, in respect of the Management Board, the Supervisory Board, to grant Share Options to Participants under the Share Option Program 2022 during the period of 3 years after the Annual General Meeting, subject to the terms of the Share Option Program 2022, without using the Company's 15% placement capacity. If this resolution is not passed the Management Board and, in respect of the Management Board, the Supervisory Board, will need to consider its remuneration framework and an alternate method by which to motivate and reward the performance of members of the Management Board, including the CEO, and senior executives, which may include a cash reward.

Members of the Supervisory Board are not eligible to participate in the Share Option Program 2022. If an offer is made to the CEO to participate in the Share Option Program 2022, then separate shareholder approval will need to be obtained.

#### **b) Terms of the Share Option Program 2022**

A summary of the terms of the Share Option Program 2022 is set out above under agenda item 5.

As at the date of this invitation and notice, no Share Options have been issued under the Share Option Program 2022.

The maximum number of Share Options that may be issued under the Share Option Program 2022 is 2,500 or, following the Capital Increase Registration, 250,000.

#### **c) Resolution by the shareholders**

Based on the aforementioned, namely with a view to ASX Listing Rule 7.1 and 7.2 as well as further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.2, and for all other ASX Listing Rule purposes, the Share Option Program 2022 and the issue of Share Options under that program is approved.

#### **d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any member of the Supervisory Board, or the CEO, or their respective associates other than any member of the Supervisory Board who is ineligible to participate in any employee incentive scheme in relation to the Company, and any associates of those ineligible members of the Supervisory Board. However, this exclusion does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution in that way; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

#### **16. Resolution on the granting of share options to Fabian Siegel under the 2021 SOP**

Note: A voting exclusion statement applies to the resolution under this agenda item 16 and is set out in para. e) in full below.

The Company is proposing to issue to Mr. Fabian Siegel, CEO, up to 806 share options (or 806,000 CDIs) (“**Options**”) under the share option program approved by the shareholders of the Company on June 11, 2021 (“**2021 SOP**”).

The purpose of the issue of Options to Mr. Siegel is to further motivate and reward Mr. Siegel’s performance in achieving specified performance targets within a specified performance period. Furthermore, the grant of Options is intended to align Mr. Siegel’s performance with successful Company outcomes for the benefit of shareholders.

#### **a) Requirement for shareholder approval**

ASX Listing Rule 10.14 provides that a listed company must not permit any of the following persons to acquire equity securities under an employee incentive scheme:

- 10.14.1 a director of the Company;
- 10.14.2 an associate of a director of the Company; or
- 10.14.3 a person whose relationship with the Company or a person referred to in ASX Listing Rule 10.14.1 or 10.14.2 is such that, in ASX's opinion, the acquisition should be approved by its shareholders, unless it obtains the approval of its shareholders.

The grant of Options falls within ASX Listing Rule 10.14.1 above and therefore requires the approval of Marley Spoon's shareholders under ASX Listing Rule 10.14.

This resolution seeks the required shareholder approval to the grant of Options under and for the purposes of ASX Listing Rule 10.14.

If this resolution is passed, the Company will be able to proceed with the grant of Options. If this resolution is not passed, the grant of Options the subject of this resolution will not proceed. In these circumstances the Company will need to consider alternate means of rewarding Mr Siegel which may include cash, any cash payment will impact the company's operating expenses.

The Supervisory Board considers that the issue of the Options to Mr. Siegel constitutes reasonable remuneration having regard to the circumstances of the Company, his duties and responsibilities.

It is proposed that Mr. Siegel be issued the Options for nil cash consideration. On exercise of an Option, the exercise price, as defined below, becomes payable.

Each Option will vest as one Share (or CDIs at the relevant transmutation ratio, at the Supervisory Board’s discretion) subject to the satisfaction of certain performance criteria. Unless the Supervisory Board determines otherwise, in the event that the relevant vesting conditions are not met, the Options will not vest and, as a result, no new Shares will be issued. There is nil consideration payable upon the vesting of an Option.

#### **b) Summary of the Material Terms of the Options**

- (i) Total Number of Options: 806
- (ii) Vesting Period: Over the 42-month period commencing on the date the Options are granted (“**Grant Date**”), with the Grant Date being expected to be September 1, 2022, as follows:
  - A. 10% of the Options shall vest 6 months following the Grant Date;

- B. 20% of the Options shall vest 18 months following the Grant Date;
- C. 30% of the Options shall vest 30 months following the Grant Date and
- D. 40% of the Options shall vest 42 months following the Grant Date.
- (iii) Waiting Period: The Options are only to be exercised after the end of the waiting period which begins on the Grant Date and ends no earlier than at the end of the fourth anniversary.
- (iv) Expiry Date: 3 years after the expiry of the Waiting Period.
- (v) Performance Targets: Vesting of the Options is subject to the following Performance Targets:
- 30% of the Total Options are subject to a measure of Operating EBITDA margin over the Performance Period (“**EBITDA Target**”); and
  - 70% of the Total Options are subject to a measure of Contribution Margin over the Performance Period (“**CM Target**”).

Where:

- Operating EBITDA is calculated in the same manner as calculated for the audited accounts of the Company;
  - Contribution Margin is calculated in the same manner as calculated for the audited accounts of the Company;
  - Performance Period means FY2022 and FY2023.
- (vi) Performance weightings: the number of vested Options will be determined by
- Options = 645 Options (the “**Target Option Number**”) \* Weight of Performance Measure x Performance Factor

- (vii) Performance vesting scale:

Performance scale	Performance Factor applied
Below Threshold	0
Threshold	0.5
Target	1.0
Stretch	1.25

The Board considers the EBITDA Target and CM Target performance measures as commercially sensitive as disclosure could potentially indicate the Company’s margins. Therefore, those targets will not be disclosed during the Performance Period. The Board will set out how the Company has performed against the EBITDA Target and CM Target performance measures in the 2024 Remuneration Report.

The following matrix illustrates under which circumstances – depending on the achievement of the Performance Targets and assuming that all other exercise conditions are fulfilled – Mr. Siegel can exercise all, some or no Options (based on Target Option Number):



Operating EBITDA (30% weight)		Contribution Margin (70% weight)			
		> Threshold	Threshold	Target	Stretch
	> Threshold	0	225	451	564
	Threshold	96	321	547	660
	Target	193	418	664	757
	Stretch	242	467	693	806

- (viii) Exercise Price per Option: The exercise price will be calculated based on the volume-weighted 30 calendar day average price of the Company's CDIs on ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price), multiplied by the relevant Share to CDI ratio, before the Grant Date. The minimum issue price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 AktG, currently EUR 1.00.
- (ix) Exercise Window: the Options can only be exercised within two periods during the year, each period being four weeks long and beginning on the third working day after the publication of the financial results of the half year and the full financial year.
- (x) Settlement of exercised Options: the Company may elect to fulfil exercised Share Options by either: (aa) issuing new Shares using the Conditional Capital 2021/I, (bb) delivering treasury Shares or treasury CDIs, (cc) a cash settlement by paying an amount in cash which equals the value of the Shares on the last day of the respective Exercise Period less the Exercise Price (dd) granting CDIs over new Shares, or (ee) any combination of the above.
- (xi) Restrictions in the event of extraordinary developments: in these circumstances, the Supervisory Board of the Company is authorised to restrict the exercise of Options.
- (xii) Individual right: the Options are not legally transferable but are inheritable. A transfer is also allowed for the fulfilment of legacies. Options may only be exercised by Mr Siegel or his heirs or legatees. If the Options can no longer be exercised in accordance with the above provisions, they will be forfeited without replacement or compensation. The provision authorising the re-issue of forfeited Options remains unaffected.
- (xiii) Anti-dilution protection: customary anti-dilution protection clauses are included based upon which the economic value of the Share Options in accordance with the regulations in Section 216 para. 3 AktG can be essentially protected, particularly by taking into account potential share splits, capital increases from company funds by issuing new Shares, or other measures with similar effects when determining the number of Shares to be issued for each Option.
- (xiv) Dividend rights: new Shares are entitled to dividends from the beginning of the financial year in which the Option is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted.

Mr. Siegel may exercise his Options and receive Shares on conversion of those Options if:

- (i) one or more Performance Targets are satisfied;
- (ii) the Options have vested;

- (iii) the Waiting Period has expired;
- (iv) the Exercise Window has started and not yet ended;
- (v) the Supervisory Board has not enforced a black-out period;
- (vi) the Expiry Date has not passed; and
- (vii) Mr. Siegel has remained in office as a member of the Management Board or was continuously employed by the Company (or one of its subsidiary companies) up to and on the Vesting Date.

**c) Information required pursuant to ASX Listing Rule 10.15**

The following information is provided to satisfy the requirements of ASX Listing Rule 10.15 (being the information required to be disclosed for the purposes of ASX Listing Rule 10.14):

- (i) as at the date of this invitation, Mr. Siegel is the chief executive officer of the Company;
- (ii) the maximum number of Options (being the nature of the financial benefit being provided) to be granted to Mr. Siegel is 806 Options;

Note: Each Option will vest and convert into one no-par-value registered share (or CDIs based on the relevant transmutation ratio) in the Company upon the relevant vesting conditions being achieved.

- (iii) Mr. Siegel's fixed remuneration for the year ended 31 December 2021 is equivalent to A\$~749,520;
- (iv) The Company has determined that the use of Options creates alignment between the CEO and security holders but do not provide Mr. Siegel with the full benefits of CDI ownership (such as voting rights) unless and until the Options vest.
- (v) Mr. Siegel has not been issued with any other securities under the 2021 SOP;
- (vi) the Options will be granted to Mr. Siegel as soon as practicable after the date of the meeting (if approved by shareholders), and in any event no later than 12 months after the date of the meeting;
- (vii) the Options will be issued to Mr. Siegel for nil consideration;
- (viii) the exercise price for the Options will be calculated as the volume-weighted 1 months' average price of the Company's CDIs on ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price), multiplied by the relevant Share to CDI ratio before the Grant Date;
- (ix) the value of the grant of Options cannot be determined at the date of this invitation as the value is dependent on various factors including whether, and to what extent Performance Targets are satisfied and the exercise price which cannot be determined until the Grant Date;
- (x) the Options will be issued to Mr. Siegel for nil consideration and as such there is no loan in relation to the Options.

Mr. Siegel is currently the sole person referred to in ASX Listing Rule 10.14 who is entitled to participation in the 2021 SOP. Details of any securities issued under the 2021 SOP will be published in Marley Spoon's annual report, along with a statement that approval for the issue was obtained under Listing Rule 10.14.

In any case, any additional persons covered by Listing Rule 10.14 who become entitled to participate in an issue of securities under the 2021 SOP after this resolution is approved and who were not named in this notice will not participate until approval is obtained under that rule.

**d) Resolution by the shareholders**

Based on the aforementioned, namely with a view to ASX Listing Rule 10.14 as well as further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 10.14, and for all other ASX Listing Rule purposes, the grant of Options to Mr. Siegel under the 2021 SOP is approved.

**e) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any member of the Supervisory Board, or the CEO, or their respective associates other than any member of the Supervisory Board who is ineligible to participate in any employee incentive scheme in relation to the Company, and any associates of those ineligible members of the Supervisory Board. However, this exclusion does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution in that way; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**17. Resolution to approve the Restricted Stock Unit Program 2022 and issue of securities under that program**

Note: A voting exclusion statement applies to the resolution under this agenda item 17 and is set out in para. d) in full below.

This resolution seeks approval for the Restricted Stock Unit Program 2022 (as described above under agenda items 9 and 10 and item 3 in Section II, Reports) and future issues of securities under that program for the purposes of ASX Listing Rule 7.2, Exception 13. The Restricted Stock Unit Program 2022 has been adopted by the Company to provide ongoing incentives to RSUP 2022/I Beneficiaries and RSUP 2022/II Beneficiaries (together “**RSUP 2022 Beneficiaries**”) (as described above at agenda items

9 in respect of RSUP 2022/I and 10 in respect of RSUP 2022/II and item 3 in Section II, Reports). The RSUP 2022/I and RSUP 2022/II are together the “**RSU Program 2022**”.

The objective of the RSUP 2022/I is to provide the Company with a remuneration mechanism to motivate and reward the performance of employees in achieving specified Performance Targets within certain Performance Measures and a specified Performance Period. The objective of the RSUP 2022/II is to provide the Company with a short-term equity incentive and remuneration mechanism that allows the Company to attract, reward and retain talent.

The Management Board will ensure that in selecting the Performance Measures, weighting the selected Performance Measures and determining the respective Performance Targets it is guided by a sustainable development of the Company. The employees of the Company have been, and will continue to be, instrumental in the growth of the Company. Also, with respect to each of the Performance Measures, the Management Board retains reasonable discretion to review and adjust the Performance Targets to ensure there is neither a material advantage nor disadvantage due to matters that affect the Performance Measures and/or Performance Targets (for example, by adjusting for one-off items or significant changes to the business, e.g., due to acquisitions or disposals).

If this resolution is not passed the Management Board will need to consider its remuneration framework and an alternate method by which to motivate and reward the performance of employees, which may include a cash reward.

#### **a) ASX Listing Rules 7.1 and 7.2, Exception 13**

ASX Listing Rule 7.1 provides, subject to exceptions, that a company must not issue or agree to issue equity securities which represent 15% of the company’s issued share capital within any 12 months without obtaining shareholder approval.

ASX Listing Rule 7.2, Exception 13 provides that ASX Listing Rule 7.1 does not apply to an issue of securities under an employee incentive scheme if the scheme has been approved by shareholders and the issue is within 3 years of the date of such approval.

The effect of this resolution, if passed, will be to allow the Management Board to grant RSUs to RSUP 2022 Beneficiaries under the RSU Program 2022 during the period of 3 years after the Annual General Meeting, subject to the terms of the RSU Program 2022, without using the Company’s 15% placement capacity.

Members of the Supervisory Board and Management Board are not eligible to participate in the RSU Program 2022.

#### **b) Terms of the RSU Program 2022**

A summary of the terms of the RSU Program 2022 is set out below under item 3 of Section II.

As at the date of this invitation and notice, no RSUs have been issued under the RSU Program 2022.

The maximum number of RSUs that may be issued under the RSU Program 2022 is 1,093 or, following the Capital Increase Registration, 109,300 RSUs.

#### **c) Resolution by the shareholders**

Based on the aforementioned, namely with a view to ASX Listing Rule 7.1 and 7.2 as well as further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.2, and for all other ASX Listing Rule purposes, the RSU Program 2022 and the issue of RSUs under that program is approved.

**d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any member of the Supervisory Board, or the CEO, or their respective associates, other than any member of the Supervisory Board, or the CEO, who is ineligible to participate in any employee incentive scheme in relation to the Company, and any associates of those persons. However, this exclusion does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution in that way; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**18. Resolution pursuant to which, for the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of Shares in the Company and CDIs**

Note: A voting exclusion statement applies to the resolution under this agenda item 18 and is set out in para. d) in full below.

**a) Background**

On January 11, 2022, the Company announced it had completed a placement of 7,907,000 CDIs (“**Placement CDIs**”) in the Company for a total price of approximately AUD 7,907,000 to a European institutional investor (“**Placement**”).

ASX Listing Rule 7.1 provides, subject to exceptions, that a company may not issue or agree to issue equity securities which represent more than 15% of the company's issued share capital within any 12-month period without obtaining shareholder approval. ASX Listing Rule 7.4 sets out an exception to ASX Listing Rule 7.1. It provides that where the company in a general meeting ratifies a prior issue of securities (and provided that the prior issue did not breach ASX Listing Rule 7.1) those securities will be deemed to have been made with shareholder approval for the purpose of ASX Listing Rule 7.1 The

Company is seeking shareholder ratification of this issue to provide the Company with the flexibility to issue equity securities up to the 15% annual placement capacity set out in ASX Listing Rule 7.1 without that capacity being diminished by the Placement. The issue of the Shares did not breach ASX Listing Rule 7.1.

If this resolution is not passed the Company's placement capacity under the ASX Listing Rules will not be refreshed which will limit the Company's ability to undertake future capital raisings and the Company may need to consider different avenues in order to raise funds.

#### **b) Information for the shareholders**

ASX Listing Rule 7.5 requires certain information to be provided to shareholders for the purpose of seeking ratification of an issue of Shares under Listing Rule 7.4.

- (i) Persons to whom the Placement CDIs were issued: a European institutional investor identified by the Company;
- (ii) The number of securities issued: 7,907 fully paid ordinary Shares in the Company were issued, being 7,907,000 CDIs;
- (iii) The date of issue: February 1, 2022;
- (iv) Issue price: Shares were issued at ~AUD 1.00 per CDI;
- (v) Terms of the Shares issued: The Shares and Placement CDIs issued rank pari passu with, and on the same terms as, the existing fully paid ordinary shares of the Company and CDIs on issue.
- (vi) Use of proceeds of the Placement: the proceeds from the Placement, being ~AUD 7,907,000.00, will be used to partially fund outstanding payments for the acquisition of Chefgood, a Melbourne-based ready-to-heat meal provider (as announced to the market on December 21, 2021) and/or for general purposes. The acquisition completed in January 2022.

#### **c) Resolution by the shareholders**

Based on the above, namely with a view to ASX Listing Rule 7.4 and further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of the Placement CDIs.

#### **d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any person who participated in the Placement, and any of their associates, and any other person who might obtain a material benefit as a result of the issue. However, this exclusion does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution in that way; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## II.

### Reports

**1. Report of the Management Board on agenda item 5 (Resolution on the authorisation to grant subscription rights to members of the Management Board (*Vorstand*) of the Company as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company (Share Option Program 2022) and to create a Conditional Capital 2022/I, as well as the corresponding amendment of the Constitution)**

The Management Board provides the following written report to the general meeting of the Company, which is convened for May 31, 2022, on the reasons for the creation of a new conditional capital with the purpose of serving share options, as provided for by agenda item 5 (Conditional Capital 2022/I). The following report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.mar-leyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

In the case the general meeting resolves on the creation of the Conditional Capital 2022/I, such new conditional capital will supplement the already existing Conditional Capital 2018/II, the Conditional Capital 2019/III, the Conditional Capital 2020/II and the Conditional Capital 2021/I. At present, therefore, four conditional capitals are already existing at the Company in the aggregate amount of EUR 19,602.00 corresponding to 6.71% of the registered share capital of the Company (EUR 291,958.00). In the case the Conditional Capital 2022/I is adopted, the aggregate amount of conditional capitals existing at the Company would amount to EUR 22,102.00, corresponding to 7.57% of the registered share capital of the Company (EUR 291,958.00). Such portion remains unchanged by the Capital Increase Approval; upon the Capital Increase Registration and by operation of law pursuant to Section 218 sentence 1 AktG the conditional capitals will be adjusted accordingly to an aggregate amount of EUR 2,210,200.00; the proportionate amount of the share capital of 7.57% will remain unchanged.

It corresponds to national and international customary standards to provide incentives to the staff of a company, the performance and decisions of which are key for the further development and success of the business, in order to further enhance their loyalty to the Company. The Management Board and the Supervisory Board are convinced that an executive participation program is strongly necessary for the Company in order to remain attractive also in the future for qualified executives. Selected executives shall be offered a corresponding remuneration component by the granting of Share Options. In doing so, the Company shall become stronger and more attractive within the competition for qualified executives. By granting share options, a specific incentive shall be created, the benchmark of which is the fair value of the business, which is reflected in the share price and which is still to be enhanced. As a consequence, the interests of the executives are, as are those of the shareholders and CDI-holders, targeted at an increase of the fair value of the business. This is also for the benefit of the shareholders and CDI-holders of the Company, as a result of the positive effect on the stock exchange price of the CDIs. By way of Share Options, the executives are in a position to participate therein.

It must be noted that virtual share options and cash-based benefits, which do not bear an exclusion of shareholders' subscription rights, may be a suitable alternative to Share Options. However, upon the exercise of Share Options, and in the case those options are underlined with Shares, the participant effectively becomes a shareholder and acquires the respective shareholders' rights. This enhances the



entrepreneurial spirit of executives, reason for which share options are being considered by the Management Board and the Supervisory Board as a reasonable method for incentivizing executives.

The utilization of a conditional capital comprises by law an exclusion of the shareholders' subscription rights. The Management Board and the Supervisory Board are of the opinion that the shareholders are sufficiently protected against an excessive dilution by the framework conditions of the authorisation to grant Share Options, which needs to be resolved upon by the general meeting, given that those conditions provide for relevant performance targets and, furthermore, the determined exercise price is appropriate. In addition, the shareholders are in a position to themselves decide upon those framework conditions on the basis of the resolution proposal of the Management Board and the Supervisory Board.

Under agenda item 5, the agenda provides for the resolution of an authorisation to grant subscription rights (Share Options) to members of the Management Board (*Vorstand*) of the Company as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company. The subscription right provided for in this agenda item relates to no-par-value registered shares. The Company is also entitled to meet the obligations in whole or in part by delivering treasury Shares or treasury CDIs, a cash settlement by paying an amount in cash which equals the value of the Shares on the last day of the respective Exercise Period less the Exercise Price, and/or granting CDIs over new Shares.

The authorisation under agenda item 5 provides for the granting of in aggregate up to 2,500 subscription rights (Share Options) to members of the Management Board of the Company, including the CEO (Group 1 Participants) as well as to appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company (Group 2 Participants). The authorisation is limited in time until May 30, 2027. The aggregate volume of share options (up to 2,500) is allocated to the two groups of participants in such manner that up to 1,800 Share Options and the subscription rights resulting therefrom are attributable to the participants of Group 1 Participants and up to 700 share options and the subscription rights resulting therefrom are attributable to the participants of Group 2 Participants. In the case the Participants belong to several groups, they receive Share Options exclusively due to their membership to one group. The group membership is determined by the Management Board of the Company, and to the extent members of the Management Board are concerned, by the Supervisory Board of the Company. The Participants within each group and the numbers of Share Options to be granted may vary during the term of the Share Option Program 2022 and are determined by the Management Board, and to the extent members of the Management Board are concerned, by the Supervisory Board.

Share Options can be granted to Participants in tranches within the Authorisation Period on one or several occasions during each financial year (Share Option Grant). Share Option Grants are to be granted as per a date within a four-week period commencing on the third working day after the publication of the financial results of either (i) the previous financial year, (ii) the previous financial half year or (iii) the previous financial quarter, if and for as long as the Company is required to publish financial results on a quarterly basis (Grant Period).

One Share Option grants one subscription right to acquire one Share of the Company (or, at the discretion of the Company, the corresponding number of CDIs representing one Share in the Company (currently one thousand) at a certain Exercise Price. The Exercise Price per Share equals the volume-

weighted 30 calendar day average price of the Company's CDIs on the ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price and as determined by the Management Board) until the Grant Date (inclusive) and exchanged from AUD into EUR at the European Central Bank's closing exchange rate on the Grant Date, multiplied by the applicable ratio of CDIs to Shares in the Company (in accordance with the actual ratio where 1,000 CDIs represent 1 Share: multiplied by 1,000). The minimum Exercise Price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 German Stock Corporation Act (*Aktiengesetz*, "**AktG**") of currently EUR 1.00.

Before 31 March of the financial year in which tranches of Share Options are to be granted, the Supervisory Board with respect to Group 1 Participants and the Management Board with respect to Group 2 Participants shall, each at their own reasonable discretion, (i) select two out of the following three Performance Measures Net Revenue Growth, Contribution Margin and/or Operating EBITDA Margin, (ii) weigh the two selected Performance Measures, whereas no selected Performance Measure may have a Weight of more than 70% within each individual grant of Share Options and (iii) determine the Performance Targets to be achieved over the respective Performance Period as follows:

Within each of the selected Performance Measures, three Performance Targets shall be determined:

- (i) A minimum Performance Target (Threshold). If the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 0.5 when calculating the exercisable Share Options. For the avoidance of doubt, unless the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of zero when calculating the exercisable Share Options. If the Threshold is exceeded but the Target is not achieved, the Performance Factor will be linearly increased when calculating the exercisable Share Options;
- (ii) A target Performance Target (Target). If the Target is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.0 when calculating the exercisable Share Options. If the Target is exceeded but the Stretch is not achieved, the Performance Factor will be linearly increased when calculating the exercisable Share Options;
- (iii) A maximum Performance Target (Stretch). If the Stretch is achieved or exceeded, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.25 when calculating the exercisable Share Options.

The number of exercisable Share Options per grant is calculated as follows: For each selected Performance Measure, the number of granted Share Options is multiplied by the Weight of the respective Performance Measure and further multiplied by the achieved Performance Factor. Subsequently, the results are added up.

In selecting the Performance Measures, weighting the selected Performance Measures and determining the respective Performance Targets, the Supervisory Board and the Management Board are to be guided by the goal of a sustainable development of the Company.

If no integral amount of exercisable subscription rights results, the amount of the exercisable subscription rights is determined by rounding according to commercial principles. A subscription to fractional Shares is excluded; a potential settlement of fractional amounts does not occur.

The terms and conditions for the Share Option Program 2022 may contain customary anti-dilution protection clauses based upon which the economic value of the Share Options in accordance with the regulations in Section 216 para. 3 AktG can be essentially protected, particularly by taking into account potential share splits, capital increases from company funds by issuing new Shares, or other measures with similar effects when determining the number of Shares to be issued for each Share Option.

In addition to the achievement of certain Performance Targets (i.e., performance vesting), Share Options are subject to vesting over time (Vesting Schedule).

Share Options are only to be exercised after the Waiting Period End Date. The waiting period of any Share Option Grant begins on the specified Grant Date and ends no earlier than at the end of the Grant Date's fourth anniversary (Waiting Period End Date).

Share Options can only be exercised until the Expiry Date. The expiry period of any Share Option Grant begins on Waiting Period End Date and ends at the end of the Waiting Period End Date's third anniversary (Expiry Date). Share Options that are not exercised until the Expiry Date are forfeited without compensation.

Between the Waiting Period End Date and the Expiry Date, Share Options can be exercised by Participants, in accordance with legal requirements, within a four-week period commencing on the third working day after the publication of the financial results of (i) the previous financial year or (ii) the previous financial half year (Exercise Period). The Exercise Period can be appropriately extended by the Management Board of the Company to the extent Group 2 Participants are concerned or, to the extent Group 1 Participants are concerned, by the Supervisory Board, in particular, if legal provisions prohibit the exercise of Share Options during the respective Exercise Period.

The Share Options are not legally transferable but are inheritable. A transfer is also allowed for the fulfilment of legacies. Share Options may only be exercised by the respective participant or his/her heirs or legatees. If Share Options can no longer be exercised in accordance with the above provisions, they will be forfeited without replacement or compensation. If Share Options are forfeited during the Authorisation Period due to the termination of the service or the employment relationship with the Company or an affiliated company or for other reasons, a corresponding number of Share Options may be returned to the share pool for re-issuance to other Participants.

The resulting dilution of the shareholders is compensated by the concurrent increase in the value of the Shares. In addition, the dilutive effect, which occurs upon a utilization of the Conditional Capital 2022/I, is relatively low, given the increase in the value of the business, which is linked to the incentive effect of the Share Options. In this context, the Management Board and the Supervisory Board are convinced that the proposed Share Option Program 2022 is particularly suitable to provide for a sustainable performance incentive and thus to contribute, in the interest of the Company and the shareholders as well as the CDI-holders, to an increase of the fair value of the Company.

Taking all aforementioned circumstances into consideration, the Management Board and the Supervisory Board are of the opinion that the exclusion of the shareholders' subscription rights, which occurs by law upon the settlement of Share Options by Shares out of conditional capital, as well as the exercise price, equally taking into consideration the occurring dilutive effect, is objectively justified and appropriate, in accordance with the legal assessment of Secs. 192 para. 2 no. 3, 193 AktG.

**2. Report of the Management Board on agenda item 7 (Resolution on the cancellation of the existing Authorised Capital 2021/I and the creation of an Authorised Capital 2022/I, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Section 3 para. 3 of the Constitution)**

The Management Board provides the following written report to the general meeting of the Company, which is convened for May 31, 2022, on the reasons for the creation of a new Authorised Capital 2022/I with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board, as provided for by agenda item 7. The report can be inspected in the business premises of the Company, Paul-Linke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

With regard to agenda item 7 of the general meeting on May 31, 2022, the Management Board and the Supervisory Board propose to cancel the Authorised Capital 2021/I and replace it with a new Authorised Capital 2022/I. The Management Board is providing this report to the general meeting pursuant to Section 203 para. 2 sentence 2, in conjunction with Section 186 para. 4 sentence 2 AktG on the reasons for the exclusion of the shareholders' subscription rights.

By way of a resolution of the general meeting on June 11, 2021, the Management Board was authorised, with the consent of the Supervisory Board, to increase the share capital of the Company, on one or several occasions during the period until June 10, 2026, by up to EUR 122,012.00, by issuing up to 122,012 new, no-par-value registered shares against contributions in cash and/or in kind (Authorised Capital 2021/I).

The Authorised Capital 2021/I was partially utilized in 2021 and, therefore, as of the date of this invitation amounts to EUR 106,517.00.

In order for the Company to remain flexible in the future to increase its equity capital as necessary (including issuing new Shares against cash contributions and with the exclusion of subscription rights), the existing Authorised Capital 2021/I shall be cancelled, a new authorised capital shall be resolved and the Constitution is to be amended accordingly. The new authorised capital under agenda item 7 of the general meeting on May 31, 2022, shall authorise the Management Board, with the consent of the Supervisory Board, to increase the Company's share capital, on one or several occasions during the period until May 30, 2027, by up to EUR 13,888,600.00, by issuing up to 13,888,600 new no-par-value registered shares against contribution in cash and/or in kind (Authorised Capital 2022/I).

The volume of the Authorised Capital 2022/I takes into account the Capital Increase proposed under agenda item 6 of the general meeting as well as all other existing authorised capitals of the Company and the additional Authorised Capital 2022/II and Authorised Capital 2022/III proposed to the general meeting for resolution under agenda item 9 and 10, respectively. With a view to the statutory maximum volume of an authorised capital pursuant to Section 202 para. 3 sentence 1 AktG, the Management Board is instructed to ensure that the Authorised Capital 2022/I and the corresponding amendment of Section 3 para. 3 of the Constitution is not registered with the competent commercial register prior to the Capital Increase Registration. Against this background, the volume of the Authorised Capital 2022/I shall amount to EUR 138,886.00 if the Capital Increase Approval is not obtained.

The Authorised Capital 2022/I will enable the Company to continue to raise the capital it needs for its further development on the capital markets in the short term by issuing new Shares, and to be flexible

enough to benefit from a favourable market environment in order to fulfil any future financing requirements quickly. As decisions regarding the fulfilment of any future capital requirements generally have to be taken at short notice, it is important that the Company is not restricted by the frequency of Annual General Meetings or by the long notice period required for convening an extraordinary general meeting. Legislators have made accommodations for this situation in the form of the “authorised capital”.

Upon utilization of the Authorised Capital 2022/I for the issuance of Shares against contributions in cash and/or in kind, shareholders shall, in principle, have subscription rights with respect to such Shares (Section 203 para. 1 sentence 1, in conjunction with Section 186 para. 1 AktG), although indirect subscription rights within the meaning of Section 186 para. 5 AktG shall also suffice. According to the law, the issuance of Shares with the granting of such an indirect subscription right is not deemed to be an exclusion of subscription rights. Shareholders are ultimately granted the same subscription rights as with a direct subscription. For settlement-related reasons, only one or several banks are involved in the transaction. In addition, the Shares can be subscribed by the Trustee with the obligation to hold the Shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those Shares, such number of CDIs as corresponds to the new Shares.

The Management Board shall be authorised, with the consent of the Supervisory Board, to exclude subscription rights in certain cases:

- In order to exclude fractional amounts from the subscription right. The aim of this exclusion of subscription rights is to simplify the process of issuing new Shares with basic subscription rights to shareholders, as this makes a technically feasible subscription ratio possible. The value of the fractional amounts is usually low per shareholder, therefore, the potential dilutive effect is likewise considered to be low. On the other hand, the cost of issuing Shares without such an exclusion is significantly higher. The exclusion therefore serves to ensure that an issuance is practical and easier to carry out. If necessary, the fractions of new Shares excluded from the shareholders’ subscription rights shall be realized either by sale on the stock exchange or in any other manner so as to best further the Company’s interests. The Management Board and Supervisory Board deem the potential exclusion of subscription rights as factually justified for these reasons and reasonable in consideration of shareholder interests.
- Subscription rights can also be excluded in the event of cash capital increases, if the Shares are issued at a price that is not significantly lower than the market price and such an increase in capital does not exceed 10% of the share capital (simplified exclusion of subscription rights in accordance with Section 186 para. 3 sentence 4 AktG). This authorisation enables the Company to respond flexibly to any favourable capital market situations that arise and to flexibly place new Shares at very short notice, without having to offer subscription rights for at least two weeks. The exclusion of subscription rights allows for an extremely quick response and placement close to the market price, i.e., without the usual discount for issuing subscription rights. This lays the foundations for achieving the highest possible disposal amount and for increasing equity as much as possible. The authorisation for the simplified exclusion of subscription rights is objectively justified also by the fact that an increased cash inflow can often be generated. Such a capital increase must not exceed 10% of the issued share capital that exists on the date on which the authorisation becomes effective or on the date on which it is exercised. The resolution proposal also provides for a deduction clause. The restriction to a maximum of 10% of the share capital, to which this exclusion of subscription rights relates, shall include Shares that were issued to serve bonds with conversion or option rights or conversion or option obligations pursuant to Section 221 para. 4 sentence 2, in conjunction with Section 186 para. 3 sentence 4 AktG, during the term of this authorisation, with the exclusion of

subscription rights and which are to be issued based on the conversion price prevailing at the time of the resolution of the Management Board concerning the utilization of the Authorised Capital 2022/I, insofar as these bonds were issued, as specified by Section 186 para. 3 sentence 4 AktG, during the period of this authorisation, with the exclusion of subscription rights. The sale of treasury Shares shall also be included, insofar as they are sold within the term of this authorisation based on an authorisation pursuant to Section 71 para. 1 no. 8 sentence 5 clause 2, in conjunction with Section 186 para. 3 sentence 4 AktG, with the exclusion of subscription rights. The simplified exclusion of subscription rights strictly specifies that the issue price of the new Shares may not be significantly lower than the market price. Any discount on the prevailing market price or the arithmetic volume-weighted market price during an appropriate period prior to the final fixing of the issue amount shall, with the exception of special circumstances in individual cases, presumably be no more than approx. 3-5% of the relevant market price. This also takes into account the shareholders' protection requirement in terms of a dilution of the value of their shareholding. Fixing the issue price close to the market price ensures that the value of a subscription right to the new Shares is very low and shareholders have the option to maintain their relative shareholding by acquiring the requisite number of Shares on the stock exchange.

- The Management Board shall also be able to exclude subscription rights, with the consent of the Supervisory Board, insofar as this is necessary to grant the holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations that will be issued by the Company or its subordinated group companies a subscription right to new Shares. In addition, the terms and conditions of issuance for bonds with conversion or option rights or conversion or option obligations often contain a dilution protection provision, which grants the holders or creditors a subscription right to new Shares in the event of subsequent share issuances and certain other measures. They will thus be treated as though they were already shareholders. In order to be able to also provide the bonds with such dilution protection, shareholders' subscription rights must be excluded from these Shares. This facilitates the placement of the bonds and thus fulfils the shareholders' interests in the Company having an optimum financial structure. Furthermore, the exclusion of subscription rights may also have the advantage for the holders or creditors of bonds that, in the case of the authorisation being exercised, the option or conversion price for the holders or creditors of already existing bonds does not have to be discounted in accordance with the respective terms and conditions of the bonds.
- Subscription rights can also be excluded for capital increases against contributions in kind for new Shares. The Company should also be able to continue to make acquisitions, in particular of companies, parts of companies, participations or other assets, and respond to acquisition and merger offers, to strengthen its competitiveness, and increase the profitability and value of the Company. In addition, the Company should be in a position to make flexible decisions by issuing Shares against the contribution of claims against the Company or any of its group companies. The option to use Company Shares as acquisition currency gives the Company the necessary scope to seize such acquisition opportunities quickly and flexibly and allows the Company to acquire entities in return for Shares. It should also be possible, in some circumstances, to acquire assets in return for Shares and to issue Shares against the contribution of claims against the Company or any of its group companies. In these cases, it must be possible to exclude shareholders' subscription rights. Given that such acquisitions or other (financing) opportunities often have to be made at short notice, it is important that these decisions cannot only be resolved at the Annual General Meetings, which are held just once a year, or at extraordinary general meetings which require a long statutory invitation period. This

requires an authorised capital, which the Management Board is able to access quickly with the consent of the Supervisory Board. If the Management Board and the Supervisory Board utilized this authorisation before the date of this general meeting to issue new Shares, the implementation of a new authorisation to allow the Company to exclude subscription rights for capital increases against contributions in kind would renew the Company's flexibility to seize such opportunities quickly and flexibly.

If, during the course of a financial year, the Management Board exercises one of the aforementioned authorisations to exclude subscription rights as part of a capital increase from the Authorised Capital 2022/I, the Management Board shall report on this matter at the next general meeting. In the case the issuance of any Bonds requires additional the approval according to ASX Listing Rules, the Company will ensure to seek approval by the general meeting before issuing the Bonds.

**3. Written report of the Management Board on agenda items 9 and 10 pursuant to Section 203 para. 1 sentence 1 in conjunction with Section 186 para. 4 sentence 2 AktG on (i) Resolution on the creation of an Authorised Capital 2022/II under exclusion of subscription rights for the purpose of serving "Restricted Stock Units" to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the RSUP 2022/I of the Company and on the respective amendment of Section 3 para. 18 of the Constitution and (ii) Resolution on the creation of an Authorised Capital 2022/III under exclusion of subscription rights for the purpose of serving "Restricted Stock Units" to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the RSUP 2022/II of the Company and on the respective amendment of Section 3 para. 19 of the Constitution)**

Under agenda items 9 and 10, the Management Board and the Supervisory Board propose to the general meeting on May 31, 2022 to create two new authorised capitals, the Authorised Capital 2022/II and the Authorised Capital 2022/III. Pursuant to Section 203 para. 1 sentence 1 in conjunction with Section 186 para. 4 sentence 2 AktG, the Management Board provides the following report on agenda items 9 and 10 to the general meeting on the reason for the exclusion of subscription rights of the shareholders when issuing new Shares from the Authorised Capital 2022/II and the Authorised Capital 2022/III. The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

It corresponds to national and international customary standards to provide incentives to the staff of a company, the performance and decisions of which are key for the further development and success of the business, in order to further enhance their loyalty to the company. The Management Board and the Supervisory Board are convinced that an employee participation program is strongly necessary for the Company in order to remain attractive also in the future for qualified executives and employees. In particular, due to the international business of the Company, it is essential for the Company to also take into consideration the standards and expectations of its international workforce. Therefore, in addition

to the Company's existing share option programs, the Company deems it necessary to create an additional employee incentive program. In adopting the RSUP 2022/I and the RSUP 2022/II, the Company shall become stronger and more attractive within the competition for a qualified workforce. By granting RSUs, a specific incentive shall be created, the benchmark of which is the fair value of the business, which is reflected in the share price and which is still to be enhanced. As a consequence, the interests of the beneficiaries of the RSUP 2022/I and RSUP 2022/II are targeted at an increase of the fair value of the business, as are those of the shareholders and CDI-holders.

To adequately incentivize its national and international workforce, the Management Board, with the consent of the Supervisory Board, wants to implement the RSUP 2022/I and the RSUP 2022/II. Under each of the RSUP 2022/I and the RSUP 2022/II, the group of beneficiaries who will be entitled to be granted so-called "Restricted Stock Units" (RSUs) by the Company will be (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. For the avoidance of doubt, due to German stock corporation law restrictions, members of the Management Board of the Company, including the CEO, as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad are not eligible to participate in the RSUP 2022/I and/or the RSUP 2022/II.

The Management Board and Supervisory Board deem the exclusion of subscription rights of shareholders in order for the Company to be able to issue shares to settle RSUs of full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts suitable, appropriate and justified, since the Management Board and Supervisory Board believe it is in the best interest of the Company to create an equity incentive also for those persons who perform work on an equivalent basis as employees of the Company do, but who simply do not qualify as "employees" for structural reasons.

The RSUs – if certain performance targets and other requirements are met – grant the RSUP 2022/I Beneficiaries and RSUP 2022/II Beneficiaries, as the case may be, a claim against the Company for a cash payment depending on the stock exchange price of the Shares and respectively the CDIs of the Company (with one CDI currently representing a beneficial ownership in 0.001 Share of the Company). However, the terms and conditions of the RSUP 2022/I and RSUP 2022/II shall grant a substitution right of the Company, permitting it to fulfil the payment claims of RSUP 2022/I Beneficiaries and RSUP 2022/II Beneficiaries, in full or in part, by delivering Shares or CDIs instead of cash.

In order for the Company to be able to issue new Shares and CDIs in such case, and to fulfil the payment claims of the respective beneficiaries when due, the Authorised Capital 2022/II and the Authorised Capital 2022/III shall be created.

#### **a) Key aspects of the planned RSUP 2022/I**

It is currently planned to implement the RSUP 2022/I as follows:

##### *(i) Granting of RSUs to beneficiaries, Term and Determination of RSUs Granted*

Eligible beneficiaries under the RSUP 2022/I are only the following non-KMPs: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts.



Each tranche of the RSUP 2022/I has a term of three years.

The Company may, in any of the Grant Periods, grant a certain number of RSUs to beneficiaries. To calculate the exact number of RSUs, the respective individual award amount for each RSUP I Beneficiary (in EUR, AUD, USD or any other currency) is divided by the “**RSU Conversion Price**” being the volume-weighted 30 calendar day average price of the Company’s CDIs on the ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price and as determined by the Management Board) until the Grant Date (inclusive) of the respective RSU tranche and exchanged from AUD into EUR at the European Central Bank’s closing exchange rate on the Grant Date of the respective RSU tranche, multiplied by the applicable ratio of CDIs to Shares in the Company (in accordance with the actual ratio where 1,000 CDIs represent 1 Share: multiplied by 1,000). If no integral amount of RSUs results from such calculation, the number of RSUs to be awarded is rounded down to the next full number. A subscription to fractional RSUs is excluded and a potential settlement of fractional amounts does not occur. One RSU thus represents the value of one Share or (currently) 1,000 CDIs of the Company listed on ASX.

*(ii) Performance Targets*

RSUs under the RSUP 2022/I shall be granted subject to the achievement of certain targets (each a “**Performance Target**” and together the “**Performance Targets**”) determined in relation to certain financial performance measures (each a “**Performance Measure**” and together the “**Performance Measures**”) which are to be tested over a period of two financial years commencing on 1 January of the financial year in which the RSUs are to be granted (the “**Performance Period**”).

Before 31 March of the financial year in which tranches of RSUs are to be granted, the Management Board shall (i) select two out of the following three Performance Measures, (ii) weigh the two selected Performance Measures and (iii) determine the Performance Targets to be achieved over the respective Performance Period. In selecting the Performance Measures, weighting the selected Performance Measures and determining the respective Performance Targets, the Management Board is to be guided by a sustainable development of the Company.

With respect to each of the Performance Measures, the Management Board retains reasonable discretion to review and adjust the Performance Targets to ensure there is neither a material advantage nor disadvantage due to matters that affect the Performance Measures and/or Performance Targets (for example, by adjusting for one-off items or significant changes to the business, e.g., due to acquisitions or disposals).

*(a) Net Revenue Growth*

The Performance Measure “Net Revenue Growth” means the annual growth rate of net revenue of the Company consistent with the net revenue disclosed when reporting the Company’s annual results (“**Net Revenue**”)

*(b) Contribution Margin*

The Performance Measure “Contribution Margin” (“**CM**”) means gross profit less fulfillment expenses, consistent with the gross profit and the fulfillment expenses disclosed when reporting the Company’s annual results, expressed as a percentage of Net Revenue.

(c) Operating EBITDA Margin

The Performance Measure “Operating EBITDA Margin” means the Operating EBITDA disclosed when reporting the Company’s annual results, expressed as a percentage of Net Revenue.

(d) Weighting of the Performance Measures

The Management Board shall determine, at its reasonable discretion, the weighting of the selected Performance Measures for each individual tranche of RSUs (the respective weighting is referred to as “**Weight**”). No selected Performance Measure may have a Weight of more than 70% within each individual grant of RSUs.

(e) Determination of Performance Targets

Within each of the selected Performance Measures, three Performance Targets shall be determined:

- (i) A minimum Performance Target (“**Threshold**”). If the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a “**Performance Factor**” of 0.5 when calculating the exercisable RSUs. For the avoidance of doubt, unless the Threshold is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of zero when calculating the exercisable RSUs. If the Threshold is exceeded but the Target is not achieved, the Performance Factor will be linearly increased when calculating the exercisable RSUs;
- (ii) A target Performance Target (“**Target**”). If the Target is achieved, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.0 when calculating the exercisable RSUs. If the Target is exceeded but the Stretch is not achieved, the Performance Factor will be linearly increased when calculating the exercisable RSUs;
- (iii) A maximum Performance Target (“**Stretch**”). If the Stretch is achieved or exceeded, the Weight of the respective Performance Measure will be multiplied by a Performance Factor of 1.25 when calculating the exercisable RSUs.

The number of exercisable RSUs per grant is calculated as follows: For each selected Performance Measure, the number of granted RSUs is multiplied by the Weight of the respective Performance Measure and further multiplied by the achieved Performance Factor. Subsequently, the results are added up.

$$(granted\ RSUs * Weight\ Performance\ Measure_1 * Performance\ Factor_1) + (granted\ RSUs * Weight\ Performance\ Measure_2 * Performance\ Factor_2) = exercisable\ RSUs$$

The number of exercisable RSUs may not exceed 125% of the granted RSUs (quantity cap).

If no integral amount of exercisable subscription rights results, the amount of the exercisable subscription rights is determined by rounding according to commercial principles. A subscription to fractional Shares is excluded; a potential settlement of fractional amounts does not occur.

**b) Key aspects of the planned RSUP 2022/II**

It is currently planned to implement the RSUP 2022/II as follows:

(i) *Granting of RSUs to beneficiaries, Term and Determination of RSUs Granted*

The eligible beneficiaries under the RSUP 2022/II are only the following non-KMPs: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts.

Each tranche of the RSUP 2022/II has a term of up to two years.

The Company may, in any of the Grant Periods, grant a certain number of RSUs to beneficiaries. To calculate the exact number of RSUs, the respective individual award amount for each RSUP II Beneficiary (in EUR, AUD, USD or any other currency) is divided by the RSU Conversion Price. If no integral amount of RSUs results from such calculation, the number of RSUs to be awarded is rounded down to the next full number. A subscription to fractional RSUs is excluded and a potential settlement of fractional amounts does not occur. One RSU thus represents the value of one Share or (currently) 1,000 CDIs of the Company listed on ASX.

*(ii) KPI*

The exercise of RSUs under the RSUP 2022/II shall not be subject to the achievement of the Performance Targets applicable to the RSUP 2022/I. However, the Management Board may, in certain cases make the RSUs subject to KPIs individually agreed with a beneficiary. The main purpose of the RSUP 2022/II is for the Company to be able to grant RSUs as a sign-on or retention incentive and to reward outstanding performance of non-KMPs.

**c) Settlement of the RSUP 2022/I and RSUP 2022/II**

The terms and conditions of the RSUP 2022/I and the RSUP 2022/II shall each give the Company the right to opt, in its full discretion, to fulfil the cash payment claims from the beneficiaries' vested RSUs by delivering Shares or CDIs of the Company. In order for the Company to grant new Shares or CDIs, the Authorised Capital 2022/II and the Authorised Capital 2022/III shall be created. In this regard, the ASX closing price per CDI immediately prior to the utilization of the Authorised Capital 2022/II and the Authorised Capital 2022/III, respectively, by the Management Board, with the consent of the Supervisory Board, shall be relevant, such that one vested RSU corresponds to one new share or (currently) 1,000 CDIs of the Company.

**d) Authorised Capital 2022/II and Authorised Capital 2022/III**

The registered share capital of the Company currently amounts to EUR 291,958.00 and, following the Capital Increase Registration, to EUR 29,195,800.00.

Under the Authorised Capital 2022/II, the Management Board shall be authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 100,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 100,000 new no-par value registered shares, i.e., by approximately 0.34% of the registered share capital following the Capital Increase Registration. Under the Authorised Capital 2022/III, the Management Board shall be authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 9,300.00 against cash contributions and/or contributions in kind once or several times by issuing up to 9,300 new no-par value registered shares, i.e., by approximately 0.03% of the registered share capital following the Capital Increase Registration. The total volume of all authorised capitals as of the Capital Increase Registration – i.e., the Authorised Capital 2022/I as proposed for resolution under agenda item 7, in the amount of up to EUR 13,888,600.00 (Section 3 para. 3 of the Constitution as amended by resolution under agenda item 7), the Authorised Capital 2021/II as proposed for resolution under agenda item 8 in the amount of up to EUR 400,000.00 (Section 3 para. 15 of the Constitution as amended by resolution under agenda item 8) and the Authorised Capital 2021/III as proposed for resolution under agenda item 8 in the amount of up to EUR 200,000.00 (Section 3 para. 16 of the Constitution as amended by resolution

under agenda item 8) – would amount to EUR 14,597,900.00, i.e., to 50.0% of the registered share capital following the Capital Increase Registration. When adding the Conditional Capital 2018/II, the Conditional Capital 2019/III, the Conditional Capital 2020/II, the Conditional Capital 2021/I and Conditional Capital 2022/I (as proposed for resolution under agenda item 5), the total amount of conditional capitals – as of the Capital Increase Registration – amount to up to EUR 2,210,200.00, i.e., approximately 7.57% of the registered share capital following the Capital Increase Registration.

To reduce a cash outflow, the Company shall be given the possibility, through the creation of the Authorised Capital 2022/II and the Authorised Capital 2022/III, to fulfil the cash payment claims of beneficiaries whose RSUs have fully vested under the RSUP 2022/I and the RSUP 2022/II by delivering new Shares as an underline for new CDIs. Namely, pursuant to the terms and conditions of the RSUP 2022/I and the RSUP 2022/II, the Company shall be authorised to opt, in its full discretion, to settle, in whole or in part, the cash payment claims by delivering Shares or CDIs. The fulfillment of the cash payment claims by delivering Shares or CDIs instead of paying a cash amount has the advantage that no cash outflow will occur and that the Company will continue to have the respective liquidity at its disposal to pursue its business.

The volume of the Authorised Capital 2022/II and of the Authorised Capital 2022/III takes into account the Capital Increase proposed under agenda item 6 of the general meeting as well as all other existing authorised capitals of the Company and the additional Authorised Capital 2022/I proposed to the general meeting for resolution under agenda item 7. With a view to the statutory maximum volume of authorised capital pursuant to Section 202 para. 3 sentence 1 AktG, the Management Board is instructed to ensure that the Authorised Capital 2022/II, the Authorised Capital 2022/III and the corresponding amendments of Section 3 of the Constitution are not registered with the competent commercial register prior to the Capital Increase Registration. Against this background, the volume of the Authorised Capital 2022/II shall amount to EUR 1,000.00 and the Authorised Capital 2022/III shall amount to EUR 93.00 if the Capital Increase Approval is not obtained as proposed under agenda item 6. In such case, the portion of the aggregate amount of all of the Company's authorised capitals of the registered share capital will remain unchanged and continue to amount to 50.0%.

#### **e) Exclusion of subscription rights and issue price**

Under the Authorised Capital 2022/II and the Authorised Capital 2022/III, the subscription rights of shareholders shall be excluded in accordance with section 203 para. 1 sentence 1 in conjunction with section 186 paras. 3 sentence 4 AktG. The background is that the Authorised Capital 2022/II and the Authorised Capital 2022/III shall each serve the sole purpose of delivering Shares or CDIs of the Company against the contribution of payment claims resulting from RSUs in order to fulfil RSUs that were granted to beneficiaries under the RSUP 2022/I and the RSUP 2022/II. Shares issued from the Authorised Capital 2022/II and the Authorised Capital 2022/III may solely be issued for this purpose; the issuance of Shares for any other purpose – or to other beneficiaries (except for the Trustee) – is not permitted. The issue price of the new Shares from the Authorised Capital 2022/II and the Authorised Capital 2022/III must, in each case, amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2022/I and the RSUP 2022/II. Furthermore, the amount of a cash claim resulting from one fully vested RSU corresponds to the stock exchange price of one Marley Spoon Share or (currently) 1,000 CDIs on ASX immediately prior to the payout. The Management Board shall be authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already

completed financial year. A potential dilution of voting rights of the shareholders whose subscription rights are excluded is limited, amongst others, due to the small size of the Authorised Capital 2022/II and the Authorised Capital 2022/III. Taking into consideration all relevant factors, the Management Board and the Supervisory Board conclude that the exclusion of subscription rights under the respective limitations is appropriate, necessary and adequate and lies in the best interest of the Company.

**f) Utilization of the Authorised Capital 2022/II and the Authorised Capital 2022/III**

The Management Board will report on the utilization of the Authorised Capital 2022/II and the Authorised Capital 2022/III in each case to the respective following Annual General Meeting.

**4. Report of the Management Board on agenda item 12 (Resolution pursuant to Section 71 para. 1 no. 8 AktG on an authorisation regarding the acquisition and the use of treasury shares / treasury CDIs, also with a potential exclusion of subscription rights)**

The authorisation proposed under agenda item 12 is intended to enable the Management Board to acquire treasury shares of the Company and its shareholders via the stock exchange or by means of a public purchase offer up to a total of 10% of the Company's share capital in accordance with Section 71 para. 1 no. 8 AktG.

Pursuant to lit. g) of the authorisation, the authorisation shall become effective upon the Capital Increase Registration and the registration of the corresponding amendments to the Constitution with the competent commercial register. This ensures that the 10% threshold of the authorisation already relates to the new, increased share capital. Should the Capital Increase Approval not be obtained, the authorisation shall already become effective upon resolution by the general meeting.

On the basis of the authorisation, treasury shares may be acquired either via the stock exchange or by means of a public purchase offer to all shareholders. In each case, the principle of equal treatment under stock corporation law must be observed.

If treasury shares are acquired by means of a public purchase offer to all shareholders, the proposed authorisation allows the acquisition to be made in proportion to the shares tendered (tender quotas), provided that the total number of shares tendered exceeds a volume determined by the Management Board. Only if, in principle, shares are acquired on the basis of tender quotas rather than shareholding quotas, the acquisition procedure can be technically handled within an economically reasonable framework. In addition, it should be possible to provide for preferential acceptance of small lots of up to 100 shares tendered per shareholder. This option serves on the one hand to avoid small, generally uneconomical residual holdings and a possible de facto disadvantage for small shareholders. On the other hand, it also serves to simplify the technical handling of the acquisition procedure. Finally, it should be possible to provide for rounding according to commercial principles in all cases in order to avoid arithmetical fractions of shares. In this respect, the acquisition quota and/or the number of shares to be acquired by the individual tendering shareholder may be rounded in accordance with commercial principles as necessary to represent the acquisition of whole shares in terms of processing. In the aforementioned cases, the exclusion of any further tender rights is necessary and, in the opinion of the Management Board and the Supervisory Board, justified for the aforementioned reasons and reasonable for the shareholders.

The Management Board shall be authorised, with the approval of the Supervisory Board, to use any treasury shares already held by the Company and the treasury shares acquired on the basis of the proposed acquisition authorisation for all legally permissible purposes. Among other things, the authorisation in this respect under lit. c) provides that the treasury shares acquired may be resold on the stock exchange or by way of an offer directed to all shareholders.

In addition, the Company shall have the option to transfer treasury shares to third parties against contributions in kind as (partial) consideration in connection with business combinations or the acquisition of companies, businesses, parts of businesses or equity interests in companies (including increases in existing shareholdings) (item (1)), and to sell them for cash at a price (excluding incidental costs of realization) which is not significantly lower than the relevant stock market price at the time of sale (item (2)) and to transfer them to service convertible bonds or bonds with warrants or profit participation rights, conversion or option rights or conversion or option obligations (item (3)). Finally, treasury shares may also be transferred to the management and employees of the Company and its affiliates (item (4)). In addition, the Company shall be able to redeem treasury shares without a new resolution by the general meeting (item (5)).

Shareholders' subscription rights are excluded to the extent that the Management Board uses shares with the approval of the Supervisory Board in accordance with the authorisations in items (1) to (4). The Management Board shall also be authorised, with the approval of the Supervisory Board, to exclude shareholders' subscription rights for fractional amounts when selling treasury shares as part of an offer for sale to the Company's shareholders. The possibility of excluding subscription rights for fractional amounts serves to represent a technically feasible subscription ratio. The treasury shares excluded from shareholders' subscription rights as fractional shares are either sold on the relevant stock exchange or otherwise realized in the best possible way for the Company. The possible dilution effect is low due to the restriction to fractional amounts.

The exclusion of subscription rights or the possibility of excluding subscription rights in the authorisations to use treasury shares in items (1) to (4) is justified as follows:

Regarding item (1) of the authorisation for use treasury shares:

Shareholders' subscription rights shall be excluded insofar as the Management Board, with the approval of the Supervisory Board, uses the repurchased shares of the Company against contributions in kind as (partial) consideration in connection with business combinations or for the purpose of acquiring companies, businesses, parts of businesses or equity interests in companies (including increasing existing shareholdings).

The Company is exposed to national and global competition. It must therefore be able to act quickly and flexibly on national and international markets at all times. This also includes the ability to merge with other companies to improve its competitive position or to acquire companies, businesses, parts of companies and shareholdings in companies. This also includes increasing existing shareholdings. In the interests of the shareholders and the Company, the best way to implement this option in individual cases is to carry out the business combination or the acquisition of companies, businesses, parts of companies or equity interests in companies by granting shares in the acquiring company. Practice also shows that on both international and national markets the provision of shares in the acquiring company is frequently demanded as consideration for attractive acquisition targets. For this reason, the Company must be given the opportunity to have treasury shares available in order to be able to offer and grant them as consideration in the context of mergers or for the purpose of acquiring companies, parts of companies or interests in companies. This is served on the one hand by the Company's Authorised Capital 2021/I or as the case

may be, Authorised Capital 2022/I. In addition, however, there shall also be the possibility of using repurchased treasury shares as acquisition currency.

The proposed authorisation is intended to give the Company the necessary leeway to be able to flexibly exploit opportunities that arise for mergers and acquisitions of companies, businesses, parts of companies, and equity interests in companies, and to grant treasury shares as consideration in suitable cases even without carrying out a capital increase – which is more time-consuming due to the requirement for registration with the competent commercial register. Such an acquisition or merger would also conserve the Company's liquidity. In order to be able to carry out such transactions quickly and with the necessary flexibility, it is necessary that the Management Board be authorised to grant treasury shares excluding shareholders' subscription rights with the approval of the Supervisory Board.

There are currently no concrete plans to use this authorisation. The Management Board will examine on a case-by-case basis whether it should make use of this authorisation to use treasury shares with the exclusion of subscription rights if opportunities for mergers or the acquisition of companies, operations, parts of companies or equity interests in companies (including the increase of existing shareholdings) become concrete. It will only make use of the authorisation if it comes to the conclusion that the merger or acquisition involving the transfer of shares in the Company is in the well-understood interests of the Company.

Regarding item (2) of the authorisation for use treasury shares:

In accordance with the statutory provision in Section 71 para. 1 no. 8 sentence 5 AktG, the proposed authorisation allows the Management Board, with the approval of the Supervisory Board, to sell the acquired treasury shares in a way other than via the stock exchange or by means of an offer to all shareholders if, in accordance with the provision in Section 186 para. 3 sentence 4 AktG, the acquired treasury shares are sold for cash at a price which is not significantly lower than the relevant stock market price of the Company's shares of the same class at the time of the sale. The time of the sale shall be deemed to be the time at which the transfer obligation is entered into, even if this is still conditional, or the time of the transfer itself if this is not preceded by a separate obligation or determined as such in the obligation agreement. The final determination of the selling price for the treasury shares shall be made in accordance with this provision shortly before the sale of the treasury shares.

The possibility of a sale in a form other than via the stock exchange or by means of an offer to all shareholders is in the interests of the Company and the shareholders, as the sale of shares, for example to institutional investors, can attract additional domestic and foreign shareholders. The Company will also be in a position to adjust its equity to the respective business requirements and to react quickly and flexibly to favourable situations. This authorisation makes use of the option to simplify the exclusion of subscription rights permitted under Section 71 para. 1 no. 8 AktG in corresponding application of Section 186 para. 3 sentence 4 AktG. This authorisation may only be used subject to the proviso that the proportion of shares issued with exclusion of subscription rights in accordance with Section 186 para. 3 sentence 4 AktG does not exceed 10% of the share capital either at the time this authorisation becomes effective or at the time it is exercised. This maximum limit for the simplified exclusion of subscription rights shall be reduced by the pro rata amount of share capital represented by shares issued during the term of this authorisation subject to the exclusion of subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG.

The interests of the shareholders in the non-dilution of their shareholding are taken into account, as the shares sold with the exclusion of shareholders' subscription rights may only be sold at a price which is not significantly lower than the relevant stock market price of the Company's shares of the same class

at the time of the sale. The final selling price for the treasury shares will be determined shortly before the sale. The Management Board will ensure to keep any discount on the stock market price as low as possible. Shareholders are protected in this connection by the fact that the discount to the stock market price at the time of the sale may not be significant. In addition, shareholders have the option of maintaining their share in the Company's share capital at any time by purchasing additional shares on the stock exchange.

Regarding item (3) of the authorisation for use treasury shares:

In addition, the Management Board is to be authorised to use the acquired treasury shares also to service or hedge acquisition obligations or acquisition rights to shares arising from and in connection with convertible bonds or bonds with warrants or profit participation rights with conversion or option rights or conversion or option obligations issued in the future by the Company or dependent affiliated companies. The Management Board will give due consideration to the interests of the shareholders when deciding whether treasury shares or new shares are to be issued to service such purchase obligations or purchase rights. The same applies to the question of the – possibly also exclusive – serviceability of convertible bonds or bonds with warrants or profit participation rights with conversion or option rights or conversion or option obligations with treasury shares. In all such cases, shareholders' subscription rights must be excluded. This also applies to the granting of a form of protection against dilution that is customary in the market, insofar as the holders or creditors of convertible bonds or bonds with warrants or profit participation rights with conversion or option rights or conversion or option obligations to shares in the Company are granted subscription rights to shares to the extent to which they would be entitled after exercising these rights or fulfilling these obligations.

Regarding item (4) of the authorisation for use treasury shares:

Finally, it shall also be possible to transfer treasury shares to employees of the Company and its affiliated companies. Furthermore, it shall also be possible to transfer treasury shares to the management of the Company and affiliated companies. This will in particular enable the Company to offer treasury shares as compensation components and to use them as part of long-term participation programs established or to be established by the Company, such as the existing Share Options Programs and Restricted Stock Unit Programs in accordance with the corresponding terms and conditions. The issue of treasury shares to employees and management is in the interests of the Company and its shareholders, as it promotes identification with the Company and thus increases the value of the Company. The use of existing treasury shares as share price- and value-based compensation components instead of a capital increase or cash payment may also make economic sense for the Company. For this purpose, the subscription rights of shareholders must be excluded. Insofar as treasury shares are to be issued to members of the Management Board of the Company, it is the responsibility of the Supervisory Board to make use of the authorisation; the Supervisory Board is also responsible for selecting the beneficiaries and determining the volume of shares to be granted to them in each case.

The Management Board will examine on a case-by-case basis whether it should make use of the authorisations granted if the possibilities under which the subscription right can be excluded become more concrete. It will only exclude subscription rights if the use of treasury shares is in line with the plans described in abstract terms to the general meeting in this report and if the use is in the well-understood interests of the Company. Only then will the Supervisory Board also grant its approval for the appropriate use of treasury shares. The Management Board will report on the details of this use at the general meeting following the use of this authorisation.



Regarding item (5) of the authorisation for use treasury shares:

Finally, the Management Board is to be authorised to retire the acquired treasury shares with the approval of the Supervisory Board. The redemption of shares generally leads to a capital reduction without the need for an additional resolution by the general meeting. By way of derogation from this, the Management Board may also determine that the share capital shall remain unchanged upon redemption and that instead the proportion of the share capital represented by the remaining shares shall increase as a result of the redemption in accordance with Section 8 para. 3 AktG. The Management Board is therefore also authorised to make the necessary amendment to the Constitution with regard to the number of no-par value shares changed by a redemption.

Pursuant to lit. f) of the authorisation, the authorisation also includes the acquisition and sale of CDIs. Thereby it is clarified, that the Company may not only acquire and sell treasury shares in the form of shares but also in the form of CDIs (also in the combination of shares and CDIs). Accordingly, the authorisation provides that requirements relating to shares of the Company are to be applied *mutatis mutandis* to CDIs when acquiring and using CDIs. The same applies to the above statements in this report relating to shares and shareholders as well as CDIs and CDI-holders, as the case may be.

**5. Report of the Management Board on the partial utilization of the Authorised Capital 2021/I against contribution in cash and under the exclusion of the shareholder' / CDI holders' subscription rights in August 2021 and December 2021**

The Management Board provides the following report to the general meeting of the Company, which is convened for May 31, 2022, on the partial utilization of the Authorised Capital 2021/I against contribution in cash and under the exclusion of the shareholders' and CDI-holders' subscription rights in August 2021 and December 2021. The report can be inspected in the business premises of the Company, Paul-Linke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

**a) Capital increase by EUR 7,588.00 in August 2021 (conversion of convertible bonds by W23 Investments Pty Limited)**

Pursuant to Section 3 para. 3 lit. (i) of the Constitution of the Company as of July 2, 2021, the subscription right of the shareholders was excluded in order to issue new Shares to W23 Investments Pty Limited ("W23") upon exercise of its conversion right under a convertible bond in the nominal amount of AUD 23,000,000.00 with a conversion right for a total of 23,833 shares of the Company with a fractional amount of the nominal share capital of the Company of a total of EUR 23,833.00, issued by the Company to W23 on September 26, 2019 on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 1, no. 1 ("Tranche 2 Convertible Bond"). To be able to issue the new shares to W23 upon exercise of the conversion right under the Tranche 2 Convertible Bond, the possibility exists besides the Authorised Capital 2021/I to issue new shares from the Conditional Capital 2019/IV.

Furthermore, pursuant to Section 3 para. 3 lit. (ii) of the Constitution of the Company as of July 2, 2021, the subscription rights of the shareholders was excluded in order to issue new shares to W23 upon exercise of its conversion right under an additional convertible bond in the nominal amount of AUD 4,047,250.00 with a conversion right for a total of 4,193 shares of the Company with a fractional amount of the nominal share capital of the Company of a total of EUR 4,193.00, issued by the Company

to W23 on February 28, 2020 on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 2, no. 1 (“**WOW Convertible Bond**”).

In August 2021, W23 exercised its conversion rights under the Tranche 2 Convertible Bond for 23,833 shares and under the WOW Convertible Bond for 4,193 shares. In order to fulfil W23’s conversion rights under the two bonds, new Shares were to be issued from the Conditional Capital 2019/IV and from the Authorised Capital 2021/I as follows:

From the Conditional Capital 2019/IV in the amount of EUR 20,438.00, 20,438 shares were to be issued for W23 under the Tranche 2 Convertible Bond. From the Authorised Capital 2021/I an additional 3,395 shares were to be issued to fully fulfil W23’s conversion right under the Tranche 2 Convertible Bond and an additional 4,193 shares were to be issued to fully fulfil W23’s conversion right under the WOW Convertible Bond. Thus, a total of 7,588 new Shares were to be issued from the Authorised Capital 2021/I to W23 under partial utilization of the Authorised Capital 2021/I in the amount of EUR 7,588.00.

Against this background, the Management Board resolved on August 23, 2021, with the consent of the Supervisory Board of August 23, 2021, to increase the share capital of the Company, on the basis of the resolution of the general meeting of June 11, 2021 by way of a partial utilization of the Authorised Capital 2021/I, from EUR 276,463.00 by EUR 7,588.00 to EUR 284,051.00 through the issuance of 7,588 new no-par-value registered shares against contribution in kind in the form of the rededication of the repayment claim (i) under the Tranche 2 Convertible Bond in the pro-rata amount of AUD 3,276,339.53 (the remaining pro-rata amount was rededicated under the issuance of 20,438 new shares to W23 under the Conditional Capital 2019/IV) and (ii) under the WOW Convertible Bond in the full amount of AUD 4,047,250.00. The new Shares were issued at the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 per share. The amount by which the issue price per new share exceeded the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 was booked into the capital reserves of the Company. The consummation of the capital increase from the Authorized Capital 2021/I was registered in the commercial register of the local court of Charlottenburg on August 27, 2021.

The subscription rights were excluded pursuant to Section 3 para. 3 (i) and (ii) of the Constitution as of July 2, 2021. Solely W23 was entitled to subscribe the new shares under the Tranche 2 Convertible Bond and the WOW Convertible Bond.

Following the issuance of the 7,588 new Shares to W23, W23 transferred all of such shares (a total of 28,026 including the additional 20,438 new shares from the Conditional Capital 2019/IV) to CDN which in turn issued the corresponding number of 28,026,000 CDIs to W23. Thus, pursuant to the ASX Settlement Operating Rules CDN holds the 28,026 new Shares in trust for W23.

As a consequence of the capital increase, the Authorised Capital 2021/I was reduced from EUR 122,012.00 to EUR 114,424.00.

**b) Capital increase by EUR 7,907.00 in December 2021 (cash capital increase by 468 Capital II GmbH & Co KG)**

The Management Board resolved on December 20, 2021, with the consent of the Supervisory Board of December 20, 2021, to increase the share capital of the Company, on the basis of the resolution of the general meeting of June 11, 2021 by way of a further partial utilization of the Authorised Capital 2021/I, from EUR 284,051.00 by EUR 7,907.00 to EUR 291,958.00 through the issuance of 7,907 new no-par-value registered shares against contribution in cash. The new Shares were issued at the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 per share. The issue price per new share amounted to

EUR 632.35. The amount by which the issue price per new share exceeded the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 was booked into the capital reserves of the Company pursuant to Section 272 para. 2 no. 4 of the German Commercial Code (*HGB*). The aggregate proceeds from the capital increase amounted to EUR 4,999,991.45 will be used to partially fund outstanding payments for the acquisition of Chefgood, a Melbourne-based ready-to-heat meal provider (as announced to the market on December 21, 2021) and/or for general purposes.

In its resolution of December 20, 2021, the Management Board resolved, with the consent of the Supervisory Board of December 20, 2021, that 468 Capital II GmbH & Co KG was exclusively permitted to subscribe the 7,907 new Shares in analogous application of Section 203 para. 1, Section 186 para. 3 sentence 4 AktG and in accordance with Section 3 para. 3 para. (iv) of the Constitution. Neither the sole shareholder of the Company nor the CDI-holders were granted subscription rights for the new CDIs. Rather, the corresponding number of 7,907 new shares were issued to 468 Capital II GmbH & Co KG. The consummation of the capital increase was registered in the commercial register of the local court of Charlottenburg on February 1, 2022.

The requirements for an exclusion of the shareholders' and CDI-holders' subscription rights pursuant to Section 203 para. 1, Section 186 para. 3 sentence 4 AktG in analogous application and the corresponding provisions of the Authorised Capital 2021/I were met:

- The volume of the capital increase under the Authorised Capital 2021/I under exclusion of subscription rights corresponded to a pro-rata amount of approx. 3.09% of the Company's share capital on the day the Authorised Capital 2021/I became effective on July 2, 2021 and to a pro-rata amount of approx. 2.78% of the Company's share capital on the date of the utilization of the Authorised Capital 2021/I.
- The price per new share was not set significantly below the stock exchange price of the Company's CDIs. As of December 17, 2021, the last trading day prior to the day of the resolution of the Management Board on the utilization of the Authorised Capital 2021/I, the stock exchange price of the listed CDIs on ASX converted into EUR 0.46 per CDI. Thus, the placement price of EUR 0.63235 per CDI ( $\text{EUR } 0.63235 \text{ per CDI} \times 1,000 = \text{EUR } 632.35 \text{ per share}$ ) of the new shares was not significantly lower than the stock exchange price, rather the issue price of the new shares exceeded the stock exchange price. Accordingly, the issue price met the requirements of Section 186 para. 3 sentence 4 AktG and the corresponding provisions of the Authorised Capital 2021/I.
- 468 Capital II GmbH & Co KG was allowed to subscribe the new Shares and the existing sole shareholder's and CDI-holders' subscription rights were excluded, since a placement of the new Shares with subscription rights would have been more time-consuming and would have required an adequate discount to the then current CDI-price on ASX, thereby leading to offer conditions most likely not close to market. Also, the placement of the CDIs, underlying the new Shares, with a new investor in the Company allowed the Company to continue to build its strong and supportive shareholder base. For the aforementioned reasons, the exclusion of subscription rights was in the best interest of the Company. The interests of the existing shareholders were adequately accounted for by fixing the placement price above the then-current CDI-price on ASX and by limiting the volume of the capital increase to approx. 3% of the share capital on the effective date of the Authorised Capital 2021/I. Thus, the existing CDI-holders had the possibility to maintain their stake in the Company by acquiring additional CDIs over ASX at a comparable price.

In light of the abovementioned considerations, subscription rights – taking the requirements of the Authorised Capital 2021/I into account – were validly excluded and objectively justified.

Following the issuance of the 7,907 new Shares to 468 Capital II GmbH & Co KG, 468 Capital II GmbH & Co KG transferred all of such shares to CDN which in turn issued the corresponding number of 7,907,000 CDIs to 468 Capital II GmbH & Co KG. Thus, pursuant to the ASX Settlement Operating Rules CDN holds the 7,907 new Shares in trust for 468 Capital II GmbH & Co KG.

As a consequence of the additional capital increase, the Authorised Capital 2021/I was further reduced from EUR 114,424.00 to EUR 106,517.00.

### **III.**

**Copy of the new Constitution of Marley Spoon SE  
highlighting the minor changes against the current Constitution of Marley Spoon AG**

# MARLEY SPOON

## **Satzung / Constitution**

Stand: ~~20. Dezember 2021~~ [\[...\]](#) / As of: ~~December 20, 2021~~ [\[...\]](#)

**SATZUNG DER MARLEY SPOON ~~AG~~SE/  
CONSTITUTION OF MARLEY SPOON ~~AG~~SE**

*Deutsche Fassung*

*English Translation*

**SATZUNG  
DER  
MARLEY SPOON ~~AG~~SE**

**CONSTITUTION  
OF  
MARLEY SPOON ~~AG~~SE**

**A.  
ALLGEMEINE BESTIMMUNGEN**

**A.  
GENERAL PROVISIONS**

**§ 1  
FIRMA, SITZ UND GESCHÄFTSJAHR**

**§ 1  
COMPANY NAME, REGISTERED  
OFFICE AND FINANCIAL YEAR**

- (1) Die Gesellschaft führt die Firma  
**Marley Spoon ~~AG~~SE.**
- (2) Sie hat ihren Sitz in  
**Berlin.**
- (3) Das Geschäftsjahr ist das Kalenderjahr.

- (1) The name of the Company is  
**Marley Spoon ~~AG~~SE.**
- (2) The Company has its registered office  
in  
**Berlin.**
- (3) The financial year is the calendar year.

**§ 2  
GEGENSTAND DES UNTERNEHMENS**

**§ 2  
OBJECT OF THE COMPANY**

- (1) Gegenstand des Unternehmens ist der Einkauf, die Entwicklung, Herstellung, Vermarktung, der Vertrieb und die Lieferung von Produkten im Lebensmittelbereich und damit verbundener Non-food-Erzeugnisse, einschließlich der Lieferung von Kochrezepten und Zutaten in Form von Gesamtpaketlösungen an

- (1) The object of the Company is the procurement, development, production, marketing, distribution and supply of products in the food sector and related non-food-products, including the delivery of cooking recipes and ingredients in the form of overall package solutions to end consumers, the composition, development, creation and marketing

*Deutsche Fassung**English Translation*

Endverbraucher, die Zusammenstellung, Entwicklung, Gestaltung und Vermarktung von Kochrezepten und Ernährungshinweisen, insbesondere auch über das Internet, sowie die Entwicklung, Vermarktung und Erbringung damit verbundener Dienstleistungen an Verbraucher, Vertriebshändler und sonstige gewerbliche oder private Abnehmer.

of cooking recipes and diet recommendations, particularly also through the internet, as well as the development, marketing and provisioning of related services to consumers, distributors and other commercial or private customers.

- (2) Die Gesellschaft kann sich an anderen Unternehmen mit gleichem oder ähnlichem Gegenstand beteiligen, Zweigniederlassungen im In- und Ausland errichten und alle Geschäfte betreiben sowie sämtliche Handlungen und Maßnahmen vornehmen, die mit dem Gegenstand des Unternehmens zusammenhängen oder die geeignet erscheinen, den Gesellschaftszweck unmittelbar oder mittelbar zu fördern. Sie kann ihren Betrieb ganz oder teilweise in verbundene Unternehmen ausgliedern oder ihn verbundenen Unternehmen überlassen und sich auf die Verwaltung ihrer Beteiligungen als geschäftsleitende Holding beschränken. Sie kann ihre Tätigkeit auf einen Teil der in vorstehendem Absatz 1 bezeichneten Tätigkeitsfelder beschränken.

- (2) The Company may acquire or invest in other companies whose object fully or partially covers the aforementioned areas, establish branches (domestic or abroad) and may conduct all transactions, and perform all acts and measures relating to the object of the Company or which are deemed suitable for directly or indirectly promoting its business object. It may outsource its business in full or in part to affiliated companies or transfer it to affiliated companies and confine itself to the management of its participations as a management holding company. It may limit its activity to a part of the areas designated in [Section paragraph 1](#) above.

**§ 3****GRUNDKAPITAL**

- (1) Das Grundkapital der Gesellschaft beträgt ~~€ 291.958,00~~ EUR 29.195.800,00 (in Worten: ~~zweihunderteinundneunzigtausendneuhundertachtundfünfzigneunundzwanzig Millionen einhundertfünfundneunzigtausendachthundert~~ Euro). Es wurde in Höhe von ~~€EUR~~ 82.084,00 (in Worten: zweiundachtzigtausendvierundachtzig Euro) durch Formwechsel gemäß §§ 190 ff. UmwG der im Handelsregister

**§ 3****SHARE CAPITAL**

- (1) The share capital of the Company is ~~€ 291,958.00~~ EUR 29,195,800.00 (in words: ~~two~~ twenty-nine million ~~one~~ hundred ninety-~~one~~ five thousand and ~~nine~~ eight hundred ~~fifty-eight~~ euros ~~Euros~~). It has been provided in the amount of ~~€EUR~~ 82,084.00 (in words: eighty-two thousand eighty-four ~~euros~~ Euros) by way of conversion pursuant to Sections 190 *et seqq.* of the German Conversion Act (*Umwandlungsgesetz*, “**UmwG**”) of



*Deutsche Fassung**English Translation*

des Amtsgerichts Charlottenburg unter HRB 158261 B eingetragenen Marley Spoon GmbH mit Sitz in Berlin erbracht.

Marley Spoon GmbH with registered office in Berlin, registered with the commercial register of the local court of Charlottenburg under registration number HRB 158261 B.

- (2) Das Grundkapital der Gesellschaft ist eingeteilt in ~~291.958~~29.195.800 Stückaktien (Aktien ohne Nennbetrag).
- (3) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum ~~1030. Juni 2026~~May 30, 2027 mit Zustimmung des Aufsichtsrats durch Ausgabe von bis zu ~~106.517~~13.888.600 neuen, auf den Namen lautenden Stückaktien gegen Bar- und/oder Sacheinlage einmalig oder mehrmals um bis zu insgesamt ~~€106.517,00~~EUR 13.888.600,00 (in Worten: ~~ein hundertsechstausesendfünfhundertsebzehn~~thirteen million eight hundred and eighty-eight thousand six hundred Euro) zu erhöhen („Genehmigtes Kapital ~~2021~~2022/I“).

- (2) The share capital of the Company is divided into ~~291,958~~29,195,800 no-par-value shares (shares without nominal value).
- (3) The Management Board is authorised until ~~June 10, 2026~~May 30, 2027, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to ~~€106,517.00~~EUR 13,888,600.00 (in words: ~~one hundred and sixty-eight thousand seven hundred and thirteen~~thirteen million eight hundred and eighty-eight thousand six hundred and Euros) by issuing up to ~~106,517~~13,888,600 new no-par-value registered shares against contribution in cash and/or in kind (“~~Authorized Capital 2021~~Authorised Capital 2022/I”).

Dabei ist den Aktionären grundsätzlich ein Bezugsrecht auf die Aktien einzuräumen. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne von § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Darüber hinaus können die Aktien auch von einem Treuhänder (jeweils der ~~„Treuhänder“~~„CDI“) mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle dieser Aktien eine solche Anzahl von sogenannten CHES Depository Interests (~~„CDIs“~~„CDIs“), z.B. in Form von CUFS (CHES Units of Foreign Securities), zuzuteilen, die den neuen Aktien entspricht, ~~wobei ein CDI eine Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der~~

In principle, the shareholders are to be offered subscription rights with respect to such shares. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 of the German Stock Corporation Act (Aktengesetz, „AktG“) with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee (in each case the “Trustee”) with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CHES Depository Interests (“CDIs”), e.g., in the form of CUFS (CHES Units of Foreign Securities), as corresponds to the new shares, ~~with one CDI being a unit of beneficial ownership in 0.001 share of the~~

*Deutsche Fassung**English Translation*

~~Gesellschaft darstellt.~~

~~Company.~~

~~Ferner ist der~~Der Vorstand ~~ist~~ ermächtigt, mit Zustimmung des Aufsichtsrats das Bezugsrecht der Aktionäre bei einer oder mehreren Kapitalerhöhungen im Rahmen des Genehmigten Kapitals ~~2021~~2022/I auszuschließen

~~Further, the~~The Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital ~~2021~~2022/I

(~~iii~~) um Spitzenbeträge vom Bezugsrecht auszuschließen;

(~~iii~~) in order to exclude fractional amounts from the subscription right;

(~~iv~~ii) im Falle einer Kapitalerhöhung gegen Bareinlagen, sofern der Ausgabepreis der neuen Aktien / CDIs den Börsenpreis der bereits börsennotierten Aktien / CDIs der Gesellschaft nicht wesentlich unterschreitet. Diese Ermächtigung gilt jedoch nur mit der Maßgabe, dass der anteilige Betrag des Grundkapitals, der auf die ausgegebenen Aktien entfällt, ~~die~~ gemäß § 186 Abs. 3 Abs. 4 AktG unter dieser Ermächtigung zum Bezugsrechtsausschluss ausgegeben werden, 10 % des Grundkapitals der Gesellschaft im Zeitpunkt des Wirksamwerdens des Genehmigten Kapitals ~~2021~~2022/I oder - falls das eingetragene Grundkapital der Gesellschaft geringer ist - im Zeitpunkt der Ausübung des Genehmigten Kapitals ~~2021~~2022/I nicht übersteigen darf (die ~~10~~ <sup>10</sup> **%-Platzierungsschwelle**). Auf die 10 %-Platzierungsschwelle sind ferner anzurechnen (a) eigene Aktien, die während der Laufzeit des Genehmigten Kapitals ~~2021~~2022/I aufgrund einer Ermächtigung zur Veräußerung eigener Aktien gemäß §§ 71 Abs. 1 Nr. 8 Satz 5, 186 Abs. 3 Satz 4 AktG unter Ausschluss des Bezugsrechts der Aktionäre auf diese eigenen Aktien veräußert werden, (b)

(~~iv~~ii) in the event of a capital increase against cash contributions, provided that the issue price of the new shares / CDIs is not significantly lower than the stock exchange price of the shares / CDIs of the Company already listed. However, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares issued, in accordance with Section 186 para. 3 ~~s-sentence~~ 4 AktG, under this authorisation to exclude shareholders' subscription rights shall not exceed 10% of the share capital of the Company at the time the Authorised Capital ~~2021~~2022/I comes into effect or – in the case the registered share capital of the Company is lower – at the time the Authorised Capital ~~2021~~2022/I is exercised (the **“10% Placement Threshold”**). Towards the 10% Placement Threshold shall also count (a) any treasury shares that are sold during the Authorised Capital ~~2021~~2022/I ~~Term~~term on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG, provided that the shareholders' subscription rights for such treasury shares are excluded, (b) any shares that are issued during

*Deutsche Fassung*

Aktien, die während der Laufzeit des Genehmigten Kapitals ~~2021/2022~~/I zur Erfüllung von Bezugs- oder Wandlungsrechten oder -pflichten aus Wandel- und/oder Optionsschuldverschreibungen, Genussrechten und/oder Gewinnschuldverschreibungen (bzw. Kombinationen dieser Instrumente) (zusammen **„Schuldverschreibungen“**) ausgegeben werden, sofern die Ausgabe dieser Schuldverschreibungen unter Ausschluss des Bezugsrechts der Aktionäre in direkter oder entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG erfolgt ~~3 Satz 4 AktG ausgegeben werden;~~ und (c) Aktien, die während der Laufzeit des Genehmigten Kapitals ~~2021/2022~~/I auf Grund anderer Kapitalmaßnahmen unter Ausschluss des Bezugsrechts in direkter oder entsprechender Anwendung des § 186 Abs. ~~3 Satz 4 AktG ausgegeben werden;~~ ~~und (d) Aktien, die während der Laufzeit des Genehmigten Kapitals 2021/I auf Grund anderer Kapitalmaßnahmen unter Ausschluss des Bezugsrechts in entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG ausgegeben werden.~~ 3 Satz 4 AktG ausgegeben werden;

- (~~v~~iii) soweit es erforderlich ist, damit die Gesellschaft (a) den Inhabern bzw. Gläubigern von Schuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen bei Ausübung des Wandlungs- bzw. Optionsrechts oder bei Erfüllung der Wandlungs- bzw. Optionspflicht ausgegeben werden, neue Aktien der Gesellschaft gewähren kann, und (b) Inhabern von Wandlungs- oder Optionsrechten bzw.

*English Translation*

the Authorised Capital ~~2021/2022~~/I ~~Term~~term to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the “**Bonds**”), provided that such Bonds are issued subject to the exclusion of the shareholders’ subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG~~;~~ and (c) any shares that are issued during the Authorised Capital ~~2021/2022~~/I ~~Term~~term on the basis of other capital measures, provided that such shares are issued subject to the exclusion of the shareholders’ subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG;

- (~~v~~iii) to the extent necessary in order for the Company to be able to (a) grant new shares of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon exercise of their conversion or option rights or fulfilment of their conversion or option obligations, and (b) grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations, that will be issued by

*Deutsche Fassung**English Translation*

Gläubigern von mit Wandlungspflichten ausgestatteten Wandel- oder Optionsschuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen ausgegeben werden, ein Bezugsrecht auf neue Aktien in dem Umfang zu gewähren, wie es ihnen nach Ausübung der Options- oder Wandlungsrechte bzw. nach Erfüllung der Wandlungs- oder Optionspflichten als Aktionär zustehen würde;

the Company or its subordinated group companies, a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;

~~(vi)~~—

~~(vi)~~—

(iv) im Falle einer Kapitalerhöhung gegen Sacheinlagen, insbesondere im Rahmen von Unternehmenszusammenschlüssen oder beim (auch mittelbaren) Erwerb von Unternehmen, Betrieben, Unternehmensteilen, Beteiligungen oder sonstigen Vermögensgegenständen oder Ansprüchen auf den Erwerb von Vermögensgegenständen, einschließlich Forderungen gegen die Gesellschaft oder eine ihrer Konzerngesellschaften.

(iv) in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.

Das Bezugsrecht der Aktionäre kann nach Maßgabe der vorstehenden Bestimmungen auch zugunsten des Treuhänders ausgeschlossen werden, der die neuen Aktien mit der Verpflichtung zur treuhänderischen Verwahrung der Aktien und mit der Verpflichtung für die Gesellschaft, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine entsprechende Anzahl von CDIs zuzuteilen, zeichnen kann.

The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new shares with the obligation to hold the shares in trust and with the obligation for the Company to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.

Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der

The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit

*Deutsche Fassung*

Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn abgeschlossener Geschäftsjahre teilnehmen können, für die noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist. ~~Soweit das Bezugsrecht gemäß Abs. (i) ausgeschlossen wird, sind die neuen Aktien (i) ausgeschlossen wird, werden diese neuen Aktien jeweils zum Ausgabebetrag von € 1,00 ohne Zuzahlung ausgegeben.~~

Der Aufsichtsrat wird ermächtigt, die Fassung der Satzung nach Ausnutzung des Genehmigten Kapitals ~~2021~~2022/I oder nach Ablauf der Laufzeit des Genehmigten Kapitals ~~2021~~2022/I entsprechend anzupassen.

*English Translation*

participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed financial years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed. ~~To the extent the subscription right is excluded pursuant to para. (i) above, those new shares are each issued at an issue amount of € 1.00 without additional payment.~~

The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital ~~2021~~2022/I or upon expiry of the Authorised Capital ~~2021~~2022/I ~~Term~~term.

(4) ~~leer~~

(4) ~~empty~~

~~(5)~~  
(4) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), um bis zu ~~€ 4.105,00~~EUR 410.500,00 (in Worten: ~~viertausendeinhundertfünf~~vierhundertz ehntausend fünfhundert Euro) durch Ausgabe von bis zu ~~4.105~~410.500 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2018/II**“). Das Bedingte Kapital 2018/II dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2018/II bis zum 4. Juni 2023 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung verbundener Unternehmen sowie an ausgewählte

~~(5)~~  
(4) In accordance with the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), the share capital of the Company is conditionally increased by up to ~~€ 4,105.00~~EUR 410,500.00 (in words: four hundred and ten thousand ~~one~~five hundred ~~five~~ Euros) by issuing up to ~~4,105~~410,500 new no-par-value registered shares of the Company (“**Conditional Capital 2018/II**”). The Conditional Capital 2018/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), under the Share Option Program from the date of the registration of the Conditional Capital 2018/II until June 4, 2023 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will

*Deutsche Fassung**English Translation*

Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2018/II erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

be issued from the Conditional Capital 2018/II at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

(6) ~~—leer—~~

(6) ~~—empty—~~

(7) ~~—leer—~~

(7) ~~—empty—~~

(8)(5) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a), um bis zu ~~€ 7.000,00~~EUR 700.000,00 (in Worten: ~~siebentausend~~siebenhunderttausend Euro) durch Ausgabe von bis zu ~~7.000~~700.000 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („Bedingtes Kapital 2019/III“). Das Bedingte Kapital 2019/III dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a),

(8)(5) In accordance with the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), the share capital of the Company is conditionally increased by up to ~~€ 7,000.00~~EUR 700.000.00 (in words: seven hundred thousand Euros) by issuing up to ~~7,000~~700,000 new no-par-value registered shares of the Company (“Conditional Capital 2019/III”). The Conditional Capital 2019/III solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), under the Share Option Program from the date of the



*Deutsche Fassung**English Translation*

von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2019/III bis zum 23. Mai 2024 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung verbundener Unternehmen im In- und Ausland sowie an ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2019/III erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

registration of the Conditional Capital 2019/III until May 23, 2024 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2019/III at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

(9) ~~–leer–~~(9) ~~–empty–~~(10) ~~–leer–~~(10) ~~–empty–~~(11) ~~–leer–~~(11) ~~–empty–~~

(12) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5, lit. a) um bis zu ~~6.332,00 Euro~~ EUR 633.200,00 (in Worten: ~~sechstausenddreihundertzweiunddreißig~~

(12) In accordance with the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), the share capital of the Company is conditionally increased by up to EUR ~~6,332.00~~ 633,200.00 (in words: ~~six hundred thirty-three~~ thousand ~~threetwo~~

*Deutsche Fassung*

~~sechshundertdreißigtausend~~  
~~zweihundert~~ Euro) durch Ausgabe von bis zu ~~6.332~~633.200 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („Bedingtes Kapital 2020/II“). Das Bedingte Kapital 2020/II dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5, lit. a) im Rahmen des Aktienoptionsprogramms 2020 ab dem Zeitpunkt der Eintragung des Bedingten Kapitals 2020/II bis zum 28. Juli 2025 von der Gesellschaft an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführungsorgane verbundener Unternehmen im In- und Ausland sowie ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2020/II erfolgt zu dem nach Maßgabe von lit. a) (vii) der vorstehenden Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleichs gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem das Bezugsrecht ausgeübt wurde und für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstandes der Gesellschaft betroffen sind, der Aufsichtsrat, ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

*English Translation*

hundred ~~thirty-two~~ Euros) by issuing up to ~~6,332~~633,200 new no-par-value registered shares of the Company (“Conditional Capital 2020/II”). The Conditional Capital 2020/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), under the Share Option Program 2020 from the date of the registration of the Conditional Capital 2020/II until July 28, 2025 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2020/II at the exercise price determined in accordance with lit. a) (vii) of the aforementioned authorisation. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board, of the Company is authorised to determine the further details of the conditional capital increase and its consummation.



*Deutsche Fassung*

(14) Das Grundkapital der Gesellschaft ist gemäß der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7, ~~Absl.~~ a) um bis zu EUR ~~2.165.000~~ 216.500,00 (in Worten: ~~zweitausendeinhundertfünfundsechzigzweihundertsechzehntausend~~ fünfhundert Euro) durch Ausgabe von bis zu ~~2.165.000~~ 216.500,00 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („Bedingtes Kapital 2021/I“). Das Bedingte Kapital 2021/I dient ausschließlich der Bedienung von Aktienoptionen, d.h. Bezugsrechten auf Aktien, die von der Gesellschaft an Teilnehmer der Gruppe 1, d.h. Mitglieder des Vorstands der Gesellschaft einschließlich des Vorstandsvorsitzenden, sowie Teilnehmer der Gruppe 2, d.h. (a) Prokuristen, Geschäftsführer und sonstige Mitglieder von Geschäftsführungsorganen von Tochtergesellschaften und verbundene Unternehmen der Gesellschaft im In- und Ausland und (b) sonstige Mitglieder der oberen Leitungsebene bzw. leitende Angestellte der Gesellschaft aufgrund der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a). Die Ausgabe der Aktien aus dem Bedingten Kapital 2021/I erfolgt zu dem nach Maßgabe der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(v) festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur dann durchgeführt, d.h. verwässernd wirken, wenn und soweit von Aktienoptionen Gebrauch gemacht wird und die Gesellschaft von ihrem Wahlrecht Gebrauch macht, neue Aktien gemäß der in der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(vi) beschriebenen Standard –Erfüllungsoption auszugeben. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem die

*English Translation*

(14) In accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7, ~~para lit.~~ a), the share capital of the Company is conditionally increased by up to EUR ~~2,165.000~~ 216,500.00 (in words: two hundred sixteen thousand ~~one five~~ hundred ~~sixty five~~ Euros) by issuing up to ~~2,165.000~~ 216,500 new no-par-value registered shares of the Company (“Conditional Capital 2021/I”). The Conditional Capital 2021/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a). The Shares will be issued from the Conditional Capital 2021/I at the Exercise Price determined in accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7 ~~para lit.~~ a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the

*Deutsche Fassung**English Translation*

Aktienoptionen ausgeübt werden und für das noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft bzw., soweit Mitglieder des Vorstands betroffen sind, der Aufsichtsrat der Gesellschaft, ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

(15)  
(8) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR ~~4.000,00~~400.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu ~~4.000~~400.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („Genehmigtes Kapital 2021/II“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des ersten Restricted Stock Unit Programms der Gesellschaft 2021/I (RSUP 2021/I) ausschließlich an die folgenden „RSUP 2021/I-Begünstigten“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der

(15)  
(8) The Management Board is ~~authorized~~authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company's registered share capital by up to EUR ~~4,000.00~~400,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to ~~4,000~~400,000 new no-par-value registered shares (~~Authorized~~Authorised **Capital 2021/II**). The subscription rights of shareholders are excluded. The ~~Authorized~~Authorised Capital 2021/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to ~~fulfil~~fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2021/I (RSUP 2021/I) exclusively to the following **“RSUP 2021/I Beneficiaries”**: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with

*Deutsche Fassung*

Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen, ~~wobei ein CDI eine Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der Gesellschaft darstellt.~~ Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen der RSUP 2021/I Begünstigten gegen die Gesellschaft aus dem RSUP 2021/I, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

- (16) Der Vorstand ist ermächtigt, mit  
(9) Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR ~~2.000,00~~200.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu ~~2.000~~200.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („Genehmigtes Kapital 2021/HIII“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/HIII dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der

*English Translation*

the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares, ~~with one CDI being a unit of beneficial ownership in 0.001 share of the Company.~~ The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2021/I Beneficiaries' claims against the Company under the RSUP 2021/I. The Management Board is ~~authorized~~authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

- (16) The Management Board is  
(9) ~~authorized~~authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company's registered share capital by up to EUR ~~2,000.00~~200,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to ~~2,000~~200,000 new no-par-value registered shares („Authorized“~~“Authorised“~~ **Capital 2021/HIII**). The subscription rights of shareholders are excluded. The ~~Authorized~~Authorised Capital 2021/HIII serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock

*Deutsche Fassung*

Bedingungen des zweiten Restricted Stock Unit Programms der Gesellschaft 2021/II (RSUP 2021/II) ausschließlich an die folgenden **„RSUP 2021/II-Begünstigten“** gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen, ~~wobei ein CDI eine Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der Gesellschaft darstellt.~~ Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder durch Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen gegen die Gesellschaft aus dem RSUP 2021/II, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; dies umfasst auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits

*English Translation*

Units (RSUs) in order to ~~fulfill~~fulfil RSUs that were granted in accordance with the terms and conditions of the second Restricted Stock Unit Program of the Company 2021/II (RSUP 2021/II) exclusively to the following **“RSUP 2021/II Beneficiaries”**: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares, ~~with one CDI being a unit of beneficial ownership in 0.001 share of the Company.~~ The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2021/II. The Management Board is ~~authorized~~authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

*Deutsche Fassung**English Translation*

abgeschlossenen Geschäftsjahres teilnehmen können.

(10) Das Grundkapital der Gesellschaft ist gemäß der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a) um bis zu EUR 250.000,00 (in Worten: zweihundertfünfzigtausend dreihundert Euro) durch Ausgabe von bis zu 250.000 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („Bedingtes Kapital 2022/I“). Das Bedingte Kapital 2022/I dient ausschließlich der Gewährung von Aktienoptionen, d.h. Bezugsrechten auf Aktien, die von der Gesellschaft an Teilnehmer der Gruppe 1, d.h. Mitglieder des Vorstands der Gesellschaft einschließlich des Vorstandsvorsitzenden, sowie Teilnehmer der Gruppe 2, d.h. (a) Prokuristen, Geschäftsführer und sonstige Mitglieder von Geschäftsführungsorganen von Tochtergesellschaften und verbundene Unternehmen der Gesellschaft im In- und Ausland und (b) sonstige Mitglieder der oberen Leitungsebene bzw. leitende Angestellte der Gesellschaft aufgrund der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a) ausgegeben werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2022/I erfolgt zu dem nach Maßgabe der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a)(v) festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur dann durchgeführt, d.h. verwässernd wirken, wenn und soweit von Aktienoptionen Gebrauch gemacht wird und die Gesellschaft von ihrem Wahlrecht Gebrauch macht, neue Aktien gemäß der in der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit.

(10) In accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a), the share capital of the Company is conditionally increased by up to EUR 250,000.00 (in words: two hundred fifty thousand Euros) by issuing up to 250,000 new no-par-value registered shares of the Company (“Conditional Capital 2022/I”). The Conditional Capital 2022/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a). The Shares will be issued from the Conditional Capital 2022/I at the Exercise Price determined in accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet



*Deutsche Fassung**English Translation*

a)(vi) beschriebenen Standard-Erfüllungsoption auszugeben. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem die Aktienoptionen ausgeübt werden und für das noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft bzw., soweit Mitglieder des Vorstands betroffen sind, der Aufsichtsrat der Gesellschaft ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (11) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 30. Mai 2027 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 100.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 100.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („Genehmigtes Kapital 2022/II“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2022/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des ersten Restricted Stock Unit Programms der Gesellschaft 2022/I (RSUP 2022/I) ausschließlich an die folgenden „RSUP 2022/I-Begünstigten“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186

profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

- (11) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 100,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 100,000 new no-par-value registered shares (“Authorised Capital 2022/II”). The subscription rights of shareholders are excluded. The Authorised Capital 2022/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2022/I (RSUP 2022/I) exclusively to the following “RSUP 2022/I Beneficiaries”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of

*Deutsche Fassung**English Translation*

Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen der RSUP 2022/I-Begünstigten gegen die Gesellschaft aus dem RSUP 2022/I, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2022/I Beneficiaries' claims against the Company under the RSUP 2022/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

- (12) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 30. Mai 2027 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 9.300,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 9.300 neuen, auf den Namen lautenden Stückaktien zu erhöhen („Genehmigtes Kapital 2022/III“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2022/III dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des zweiten Restricted

- (12) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 9,300.00 against cash contributions and/or contributions in kind once or several times by issuing up to 9,300 new no-par-value registered shares ("Authorised Capital 2022/III"). The subscription rights of shareholders are excluded. The Authorised Capital 2022/III serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with

*Deutsche Fassung*

Stock Unit Programms der Gesellschaft 2022/II (RSUP 2022/II) ausschließlich an die folgenden „RSUP 2022/II-Begünstigten“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder durch Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen gegen die Gesellschaft aus dem RSUP 2022/II, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; dies umfasst auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

*English Translation*

the terms and conditions of the second Restricted Stock Unit Program of the Company 2022/II (RSUP 2022/II) exclusively to the following “RSUP 2022/II Beneficiaries”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2022/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.



*Deutsche Fassung**English Translation***§ 4  
AKTIEN**

- (1) Sämtliche Aktien der Gesellschaft lauten auf den Namen. Die Aktionäre haben der Gesellschaft zur Eintragung in das Aktienregister, soweit es sich um natürliche Personen handelt, ihren Namen, ihre Anschrift und ihr Geburtsdatum und, soweit es sich um juristische Personen oder (teil-)rechtsfähige Gesellschaften handelt, ihren Namen oder ihre Firma, ihren Sitz und ihre Geschäftsanschrift sowie in jedem Fall die Zahl der von ihnen gehaltenen Aktien der Gesellschaft und ~~–~~ sofern vorhanden ~~–~~ ihre elektronische Postadresse anzugeben.
- (2) Die Form der Aktienurkunden setzt der Vorstand mit Zustimmung des Aufsichtsrates fest. Die Gesellschaft kann Gewinnanteil- und Erneuerungsscheine ausgeben. Die Gesellschaft kann einzelne Aktien in Aktienurkunden zusammenfassen, die eine Mehrzahl von Aktien verbriefen (Globalaktien, Globalurkunden).
- (3) Für Gewinnanteil- und Erneuerungsscheine sowie Schuldverschreibungen und Zins- und Erneuerungsscheine gilt Abs. 2 Satz 1.
- (4) Das Recht der Aktionäre auf Verbriefung ihres Anteils ist ausgeschlossen.

**§ 4  
SHARES**

- (1) All shares in the Company are registered shares. To be entered in the share register, shareholders who are natural persons must notify the Company of their name, address and date of birth, while legal entities and (partly) incorporated partnerships must inform the Company of their name or Company name, their principal place of business and their business address. Moreover, the Company must always be notified of the number of shares held and ~~–~~ if available ~~–~~ of each shareholder's email address.
- (2) The form of share certificates shall be determined by the Management Board subject to the approval of the Supervisory Board. The Company may issue dividend and renewal coupons. The Company may combine individual shares in share certificates certifying multiple shares (global certificates).
- (3) ~~Section 4(2), Para. 2~~ sentence 1, applies to dividend and renewal coupons as well as to bonds, bond coupons and renewal coupons.
- (4) Shareholders have no automatic entitlement to physical share certificates.

*Deutsche Fassung**English Translation*

**B.**  
**ORGANE DER GESELLSCHAFT**

**B.**  
**CORPORATE BODIES**

**§ 5**  
**ORGANE DER GESELLSCHAFT**

**§ 5**  
**CORPORATE BODIES**

- (1) Die Gesellschaft hat ein dualistisches Leitungs- und Aufsichtssystem, bestehend aus einem Leitungsorgan (Vorstand) und einem Aufsichtsorgan (Aufsichtsrat).
- (2) Organe der Gesellschaft sind:
- a) der Vorstand (Abschnitt I.);
  - b) der Aufsichtsrat (Abschnitt II.) und
  - c) die Hauptversammlung (Abschnitt III.).

- (1) The Company has a two-tier management and supervisory system, consisting of a management body (Management Board) and a supervisory body (Supervisory Board).
- (2) The corporate bodies of the Company are:
- a) the Management Board (Section I.);
  - b) the Supervisory Board (Section II.)  
and
  - c) the General Meeting (Section III.).

**I.**  
**VORSTAND**

**I.**  
**MANAGEMENT BOARD**

**§ 56**  
**ZUSAMMENSETZUNG UND  
GESCHÄFTSORDNUNG DES  
VORSTANDS**

**§ 56**  
**COMPOSITION AND RULES OF  
PROCEDURE OF THE MANAGEMENT  
BOARD**

- (1) Der Vorstand besteht aus einer oder mehreren Personen.
- (2) Der Aufsichtsrat bestellt die Vorstandsmitglieder für die Amtszeit von maximal fünf Jahren und bestimmt im Rahmen von Abs. 1 ihre Zahl. Der Aufsichtsrat kann einen Vorsitzenden des Vorstands sowie einen stellvertretenden Vorsitzenden des Vorstands ernennen.
- (3) Der Aufsichtsrat kann eine

- (1) The Management Board is to consist of one or more members.
- (2) The Supervisory Board shall appoint the members of the Management Board for a term of office of a maximum of five years and set their number in accordance with ~~Section 5(1)~~para. 1. The Supervisory Board may appoint a Chair of the Management Board and a Deputy Chair of the Management Board.
- (3) The Supervisory Board may adopt

*Deutsche Fassung**English Translation*

Geschäftsordnung für den Vorstand erlassen. Der Geschäftsverteilungsplan des Vorstands bedarf der Zustimmung des Aufsichtsrats.

rules of procedure for the Management Board. The executive organization chart is subject to the approval of the Supervisory Board.

**§ 67****GESCHÄFTSFÜHRUNG UND  
VERTRETUNG DER GESELLSCHAFT****§ 67****MANAGEMENT AND  
REPRESENTATION OF THE COMPANY**

- (1) Die Mitglieder des Vorstands haben die Geschäfte der Gesellschaft nach Maßgabe der Gesetze, der Satzung, der Geschäftsordnung für den Vorstand und des Geschäftsverteilungsplans zu führen.
- (2) Ist nur ein Vorstandsmitglied bestellt, so vertritt dieses die Gesellschaft allein. Sind mehrere Vorstandsmitglieder bestellt, so wird die Gesellschaft durch zwei Vorstandsmitglieder oder durch ein Vorstandsmitglied in Gemeinschaft mit einem Prokuristen gesetzlich vertreten. Der Aufsichtsrat kann bestimmen, dass einzelne oder alle Vorstandsmitglieder einzelvertretungsbefugt sind. Der Aufsichtsrat kann ferner alle oder einzelne Vorstandsmitglieder generell oder für den Einzelfall vom Verbot der Mehrfachvertretung gemäß § 181, 2. Alternative BGB befreien; § 112 AktG bleibt unberührt.
- (3) Der Vorstand bedarf der Zustimmung des Aufsichtsrats
  - a) zur Veräußerung des Unternehmens im Ganzen;

- (1) The members of the Management Board shall conduct the business transactions of the Company in accordance with the law, the Constitution, the rules of procedure for the Management Board and the executive organization chart.
- (2) If only one member has been appointed to the Management Board, the Company will be solely represented by this member. If multiple persons have been appointed to the Management Board, the Company will be legally represented by two Management Board members or by one member and one executive vested with the power of commercial representation (*Prokurist*). The Supervisory Board may decide that specific members or all ~~the~~ members of the Management Board have sole power of representation. The Supervisory Board may also 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 Section 181, 2<sup>nd</sup> alternative of the German Civil Code (*Bürgerliches Gesetzbuch*, “**BGB**”); Section 112 AktG remains unaffected.
- (3) The Management Board requires the approval of the Supervisory Board:

- a) To sell the Company as a whole;

**Deutsche Fassung**

- b) zum Abschluss von Verträgen oder Plänen nach dem Umwandlungsgesetz;
- c) zum Abschluss von Unternehmensverträgen nach § 291 AktG.

Darüber hinaus ordnet der Aufsichtsrat im Rahmen des rechtlich Zulässigen in der Geschäftsordnung für den Vorstand oder durch Beschluss an, welche Arten von Geschäften seiner Zustimmung bedürfen.

**II.****AUFSICHTSRAT****§ 78****ZUSAMMENSETZUNG UND AMTSDAUER**

- (1) Der Aufsichtsrat besteht aus vier Mitgliedern, die von der Hauptversammlung gewählt werden.
- (2) Die Mitglieder des Aufsichtsrats werden vorbehaltlich einer anderweitigen Festlegung der Amtszeit bei der Wahl bis zur Beendigung der Hauptversammlung bestellt, die über die Entlastung für das zweite Geschäftsjahr nach dem Beginn der Amtszeit beschließt. Das Geschäftsjahr, in welchem die Amtszeit beginnt, wird hierbei nicht mitgerechnet. In jedem Fall erfolgt die Wahl jedoch längstens für sechs Jahre.
- (3) Eine Nachwahl für ein vor Ablauf der Amtszeit ausgeschiedenes Mitglied erfolgt für den Rest der Amtszeit des ausgeschiedenen

**English Translation**

- b) To conclude contracts or plans pursuant to the German Conversion Act;
- c) To conclude inter-company agreements as defined in Section 291 AktG.

In addition, the Supervisory Board may specify, within the limits permitted by law, in the rules of procedure for the Management Board or by resolution the types of transactions requiring its consent.

**II.****SUPERVISORY BOARD****§ 78****COMPOSITION AND TERM OF OFFICE**

- (1) The Supervisory Board shall consist of four members which are elected by the General Meeting.
- (2) Unless otherwise specified at the time of their election, the members of the Supervisory Board are elected for a period terminating at the end of the General Meeting that resolves on the formal approval of the members' acts for the second fiscal year following the commencement of their term of office. The fiscal year in which the term of office begins shall not be included in this calculation. However, in any case, the respective election is effected for a term of six years at the longest.
- (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

*Deutsche Fassung**English Translation*

Aufsichtsratsmitglieds, soweit die Hauptversammlung die Amtszeit des Nachfolgers nicht abweichend bestimmt. Entsprechendes gilt, falls eine Nachwahl wegen Wahlanfechtung notwendig wird.

member who has left office, unless the General Meeting specifies a shorter term for such successor. The same applies if a successor has to be elected due to a challenge of the election.

- (4) Gleichzeitig mit den Aufsichtsratsmitgliedern können für ein oder für mehrere bestimmte Aufsichtsratsmitglieder Ersatzmitglieder gewählt werden. Sie werden nach einer bei der Wahl festzulegenden Reihenfolge Mitglieder des Aufsichtsrates, wenn Aufsichtsratsmitglieder, als deren Ersatzmitglieder sie gewählt wurden, vor Ablauf der Amtszeit aus dem Aufsichtsrat ausscheiden. Tritt ein Ersatzmitglied an die Stelle des Ausgeschiedenen, so erlischt sein Amt mit Beendigung der nächsten Hauptversammlung.

- (4) Simultaneously with the members of the Supervisory Board, substitute members can be elected for one or more specific members of the Supervisory Board. Substitute members shall join the Supervisory Board in accordance with the order of precedence determined at the time of their election if Supervisory Board members whom they have been appointed to replace leave office prematurely. If a member of the Supervisory Board is replaced by a substitute member, their term of office shall expire at the close of the next General Meeting.

- (5) Jedes Aufsichtsratsmitglied und jedes Ersatzmitglied kann sein Amt auch ohne wichtigen Grund unter Einhaltung einer Frist von einem Monat niederlegen. Die Niederlegung muss durch schriftliche Erklärung gegenüber dem Vorstand unter Benachrichtigung des Vorsitzenden des Aufsichtsrates erfolgen. Der Vorstand kann die Frist abkürzen oder auf die Einhaltung der Frist verzichten. Das Recht zur Amtsniederlegung aus wichtigem Grund bleibt hiervon unberührt.

- (5) Each member of the Supervisory Board and each substitute member may resign from office even without good cause with one month's notice. Resignation is to be declared in writing to the Management Board and the Chair of the Supervisory Board. The Management Board can consent to a shortening or to a waiver of this period. This shall have no effect on the right to resign for good cause.

**§ 89****VORSITZENDER UND  
STELLVERTRETER****§ 89****CHAIR AND DEPUTY CHAIR**

- (1) Der Aufsichtsrat wählt in der ersten Sitzung nach seiner Wahl aus seiner Mitte einen Vorsitzenden und einen oder mehrere Stellvertreter. Die Wahl erfolgt für die Amtsdauer der gewählten oder einen kürzeren vom

- (1) At its first meeting, the Supervisory Board shall elect a Chair and one or more Deputy Chairs from among its members. They shall be elected for their term of office or a shorter period determined by the Supervisory Board.

*Deutsche Fassung*

Aufsichtsrat bestimmten Zeitraum. Stellvertreter haben die Rechte und Pflichten des Vorsitzenden des Aufsichtsrates, wenn dieser verhindert ist. Unter mehreren Stellvertretern gilt die bei ihrer Wahl bestimmte Reihenfolge.

- (2) Scheidet der Vorsitzende oder einer seiner Stellvertreter vorzeitig aus dem Amt aus, so hat der Aufsichtsrat unverzüglich eine Neuwahl für die restliche Amtszeit des Ausgeschiedenen vorzunehmen.

**§ 910****SITZUNGEN DES AUFSICHTSRATS**

- (1) Die Sitzungen des Aufsichtsrates werden durch den Vorsitzenden des Aufsichtsrates mit einer Frist von 14 Tagen in Textform einberufen. Bei der Berechnung der Frist werden der Tag der Absendung der Einladung und der Tag der Sitzung nicht mitgerechnet. Mit der Einberufung sind die Gegenstände der Tagesordnung mitzuteilen. In dringenden Fällen kann der Vorsitzende diese Frist angemessen verkürzen und mündlich einberufen.
- (2) Den Vorsitz in den Sitzungen des Aufsichtsrats führt der Vorsitzende des Aufsichtsrats oder im Fall seiner Verhinderung sein Stellvertreter.

**§ 1011****BESCHLÜSSE DES AUFSICHTSRATS**

- (1) Beschlüsse des Aufsichtsrats werden in der Regel in Sitzungen gefasst. Auf Anordnung des Vorsitzenden oder mit Zustimmung aller Mitglieder des

*English Translation*

Deputy Chairs shall assume the rights and duties of the Chair of the Supervisory Board if the Chair is unable to attend. If multiple Deputy Chairs are elected, the order of precedence determined at the time of their election shall apply.

- (2) If the Chair or one of the Deputy Chairs resigns prematurely, the Supervisory Board shall hold a new election without delay to elect a new Chair for the remainder of the retiree's term of office.

**§ 910****MEETINGS OF THE SUPERVISORY BOARD**

- (1) Meetings of the Supervisory Board shall be convened by the Chair of the Supervisory Board with 14 days' notice in writing. The 14-day period does not include the day on which the invitation is sent or the day of the meeting itself. When a meeting is convened, the agenda is to be announced. In urgent cases, the Chair may shorten this period of notice and convene the meeting orally.
- (2) Meetings of the Supervisory Board shall be chaired by the Chair of the Supervisory Board or, if he is unable to attend, the Deputy Chair.

**§ 1011****RESOLUTIONS OF THE SUPERVISORY BOARD**

- (1) Resolutions of the Supervisory Board shall generally be passed in meetings. At the order of the Chair or with the consent of all Supervisory Board

*Deutsche Fassung*

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. Darüber hinaus können sie ihre Stimme auch im Vorfeld der Sitzung, während der Sitzung oder nachträglich innerhalb einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist auch mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel abgeben. Ein Recht zum Widerspruch gegen die vom Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.

- (2) Eine Beschlussfassung über Gegenstände der Tagesordnung, die nicht in der Einladung enthalten waren und auch nicht bis zum dritten Tag vor der Sitzung mitgeteilt worden sind, ist nur zulässig, wenn kein Aufsichtsratsmitglied widerspricht. Abwesenden Mitgliedern ist in einem solchen Fall Gelegenheit zu geben, binnen einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist schriftlich, mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel der Beschlussfassung zu widersprechen oder ihre Stimme

*English Translation*

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. In addition, they may also cast their vote prior to or during the meeting or following the meeting within a reasonable period as determined by the chairman of the Supervisory Board in oral form, by telephone, by telefax, by email or any other customary means of communication. Objections to the form of voting determined by the chairman are not permitted.

- (2) Resolutions on matters which have not been mentioned on the agenda enclosed with the invitation to the meeting and which have not been notified by the third day before the meeting shall only be permitted if no member of the Supervisory Board objects. In such case, absent members must be given the opportunity to object to the adoption or to cast their vote in writing, orally, by telephone, telefax, email or any other customary means of communication within an adequate period of time to be determined by the Chair. The resolution becomes effective only after no absent Supervisory Board



*Deutsche Fassung*

abzugeben. Der Beschluss wird erst wirksam, wenn kein abwesendes Aufsichtsratsmitglied innerhalb der Frist widersprochen hat. Telefonisch oder mittels elektronischer Kommunikationsmittel zugeschaltete Mitglieder des Aufsichtsrats gelten als anwesend.

- (3) Beschlussfassungen können auch außerhalb von Sitzungen (im Sinne von § ~~10(1)~~11 Abs. 1) 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.
- (4) Der Aufsichtsrat ist beschlussfähig, wenn mindestens die Hälfte der Mitglieder, aus denen er insgesamt zu bestehen hat, an der Beschlussfassung teilnimmt. In jedem Fall müssen drei Mitglieder an der Beschlussfassung teilnehmen. Abwesende bzw. nicht telefonisch oder über elektronische Kommunikationsmittel (insbesondere Videokonferenz) teilnehmende oder zugeschaltete Aufsichtsratsmitglieder, die nach Maßgabe von § ~~10(1)~~11 Abs. 1 bzw. Abs. 3 ihre Stimme abgeben, sowie Mitglieder, die sich bei der Beschlussfassung der Stimme enthalten, nehmen in diesem Sinne an der Beschlussfassung teil.
- (5) Beschlüsse des Aufsichtsrates werden, soweit das Gesetz nicht zwingend etwas anderes bestimmt, mit einfacher Mehrheit der abgegebenen Stimmen gefasst. Dabei gilt Stimmenthaltung

*English Translation*

member has objected within the period. Members of the Supervisory Board taking part via telephone or other electronic means of communication are considered to be present.

- (3) Resolutions may also be adopted outside of meetings (within the meaning of Section ~~10(1)~~11 para. 1) in writing, by telefax or by email or any other comparable means of communication, whereas the aforementioned forms may also be combined, at the order of the Chair 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 Chair are not permitted.
- (4) The Supervisory Board has a quorum if at least half of the members of which it has to consist in total (and 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 Section ~~10(1)~~11 para. or ~~(3)~~ as well as members who abstain from voting are considered to take part in the voting for this purpose.
- (5) Unless required otherwise by law, resolutions passed by the Supervisory Board are adopted with a simple majority of the votes cast. Abstentions are not counted as votes cast.



*Deutsche Fassung**English Translation*

nicht als Stimmabgabe. Bei Wahlen genügt die verhältnismäßige Mehrheit. Bei Stimmengleichheit gibt die Stimme des Vorsitzenden des Aufsichtsrates den Ausschlag; das gilt auch bei Wahlen. Nimmt der Vorsitzende des Aufsichtsrates an der Abstimmung nicht teil, so gibt die Stimme seines Stellvertreters den Ausschlag.

Elections are decided by a relative majority. In the event of a tie, the Chair shall have the casting vote; this shall also apply to elections. If the Chair does not vote, the casting vote will pass to his Deputy.

- (6) Der Aufsichtsratsvorsitzende ist ermächtigt, im Namen des Aufsichtsrates die zur Durchführung der Beschlüsse des Aufsichtsrates erforderlichen Willenserklärungen abzugeben und an den Aufsichtsrat gerichtete Willenserklärungen in Empfang zu nehmen.
- (7) Über die Verhandlungen und Beschlüsse des Aufsichtsrates sind Niederschriften anzufertigen, die vom Vorsitzenden der Sitzung oder bei Abstimmungen außerhalb von Sitzungen vom Leiter der Abstimmung zu unterzeichnen sind. Beschlüsse außerhalb von Sitzungen werden allen Aufsichtsratsmitgliedern zugeleitet.
- (8) Die Unwirksamkeit oder Rechtswidrigkeit von Beschlüssen des Aufsichtsrats kann nur innerhalb einer Ausschlussfrist von einem Monat seit Kenntnis von der Beschlussfassung gerichtlich geltend gemacht werden.

- (6) The Chair of the Supervisory Board is authorized to make declarations of intent on behalf of the Supervisory Board which are necessary for the implementation of resolutions adopted by the Supervisory Board and to accept declarations of intent to the Supervisory Board.
- (7) The proceedings and resolutions of the Supervisory Board are to be recorded in minutes which must be signed by the Chair or, in the case of votes outside meetings, by the person managing the voting procedure. Resolutions which were adopted outside meetings shall be made available to all members.
- (8) Invalid or illegal resolutions adopted by the Supervisory Board may only be contested before the courts within a one-month period of limitation of the resolution adopted becoming known.

**§ ~~11~~12**  
**GESCHÄFTSORDNUNG**

Der Aufsichtsrat setzt im Rahmen von Gesetz und Satzung seine Geschäftsordnung selbst fest.

**§ ~~11~~12**  
**RULES OF PROCEDURE**

The Supervisory Board shall determine its own rules of procedure subject to statutory requirements and the Constitution.

**Deutsche Fassung****English Translation****AUSSCHÜSSE****COMMITTEES**

- (1) Der Aufsichtsrat kann im Rahmen der gesetzlichen Vorschriften aus seiner Mitte Ausschüsse bilden und ihnen in seiner Geschäftsordnung oder durch besonderen Beschluss Aufgaben und Befugnisse übertragen. Zusammensetzung, Befugnisse und Verfahren der Ausschüsse werden vom Aufsichtsrat festgelegt.
- (2) Für Aufsichtsratsausschüsse gelten die Bestimmungen dieser Satzung für den Aufsichtsrat sinngemäß, soweit die Geschäftsordnung des Aufsichtsrats im Rahmen des Gesetzes nichts Abweichendes anordnet mit der Maßgabe, dass ein Ausschuss beschlussfähig ist, wenn mindestens zwei seiner Mitglieder an der Beschlussfassung teilnehmen. Bei Abstimmung und bei Wahlen gibt im Falle der Stimmengleichheit die Stimme des Vorsitzenden des Ausschusses den Ausschlag.
- (3) Von einem Aufsichtsratsausschuss beschlossene Willenserklärungen gibt im Namen des Ausschusses dessen Vorsitzender ab.

- (1) Within the framework of the statutory regulations, the Supervisory Board may appoint committees from among its members and delegate tasks and powers to such committees pursuant to its rules of procedure or special resolutions. The Supervisory Board shall determine the composition, competences and procedures of the committees.
- (2) The provisions of this Constitution shall apply accordingly to Supervisory Board committees unless otherwise stipulated by the Supervisory Board's rules of procedure in compliance with the statutory provisions, provided that a committee shall constitute a quorum if at least two of its members participate in the adoption of resolutions. The chair of the committee shall have the casting vote in the event of tied votes and elections.
- (3) Declarations of intent adopted by a Supervisory Board committee shall be issued by the chair on behalf of the committee.

**§ ~~13~~14**  
**VERGÜTUNG**

**§ ~~13~~14**  
**COMPENSATION**

- (1) Den Aufsichtsratsmitgliedern kann für ihre Tätigkeit von der Hauptversammlung eine Vergütung bewilligt werden. Sie soll in einem angemessenen Verhältnis zu den Aufgaben der Aufsichtsratsmitglieder und zur Lage der Gesellschaft stehen.
- (2) Die Mitglieder des Aufsichtsrates erhalten ferner Ersatz aller vernünftigen Auslagen im Zusammenhang mit ihrer Stellung als

- (1) The members of the Supervisory Board may be paid remuneration for their duties, as approved by the General Meeting. It ought to be reasonable in relation to the duties of the Supervisory Board member and the situation of the Company.
- (2) The members of the Supervisory Board shall also be reimbursed for all reasonable expenses in connection with their role as members of the

**Deutsche Fassung****English Translation**

Mitglieder des Aufsichtsrats sowie Ersatz der etwa auf ihre Vergütung und Auslagen entfallenden Umsatzsteuer.

Supervisory Board as well as for any value added tax payable on their compensation and expenses.

- (3) Die Gesellschaft kann die Mitglieder des Aufsichtsrats weiter gegen Inanspruchnahme aus ihrer Haftung nach §§ 116, 93 AktG versichern.

- (3) The Company can also take out insurance on behalf of the members of the Supervisory Board to cover their liability pursuant to Sections 116 and 93 AktG.

- (4) § 113 Abs. 2 AktG bleibt unberührt.

- (4) Section ~~113(2)~~113 para. 2 AktG shall remain unaffected.

**§ ~~14~~15****SATZUNGSÄNDERUNGEN****§ ~~14~~15****AMENDMENTS TO THE CONSTITUTION**

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

The Supervisory Board is authorized to adopt amendments to the Constitution exclusively pertaining to its drafting.

**III.****HAUPTVERSAMMLUNG****III.****GENERAL MEETING****§ ~~15~~16****ORT UND EINBERUFUNG****§ ~~15~~16****PLACE AND INVITATION**

- (1) Die Hauptversammlung findet am Sitz der Gesellschaft oder nach Wahl des einberufenden Organs an einem deutschen Börsenplatz statt.

- (1) General Meetings are held at the Company's corporate seat or at the seat of a German stock exchange chosen by the convening corporate body.

- (2) Die Hauptversammlung wird durch den Vorstand oder in den gesetzlich vorgeschriebenen Fällen durch den Aufsichtsrat einberufen.

- (2) A General Meeting is to be convened by the Management Board or, if required by law, the Supervisory Board.

- (3) Für die Einberufungsfrist gelten die gesetzlichen Vorschriften.

- (3) The period of notice for convening a General Meeting is subject to the

*Deutsche Fassung**English Translation*

statutory requirements.

**§ 1617**  
**TEILNAHME AN DER**  
**HAUPTVERSAMMLUNG**

- (1) Zur Teilnahme an der Hauptversammlung und zur Ausübung des Stimmrechts sind nur diejenigen Aktionäre berechtigt, die im Aktienregister eingetragen sind und die sich rechtzeitig angemeldet haben. Die Anmeldung muss der Gesellschaft unter der in der Einberufung hierfür mitgeteilten Adresse am letzten Tag der gesetzlichen Anmeldefrist zugehen. In der Einberufung kann eine kürzere, in Tagen zu bemessende Frist für die Anmeldung vorgesehen werden. Der Tag der Hauptversammlung und der Tag des Zugangs sind hierbei nicht mitzurechnen.
- (2) Das Stimmrecht kann durch einen Bevollmächtigten ausgeübt werden. Die Erteilung der Vollmacht, ihr Widerruf und der Nachweis der Bevollmächtigung gegenüber der Gesellschaft bedürfen der Textform. § 135 AktG bleibt unberührt.
- (3) 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 zum Umfang und zum Verfahren der Teilnahme und Rechtsausübung zu treffen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.
- (4) Der Vorstand ist ermächtigt vorzusehen, dass Aktionäre auch ohne

**§ 1617**  
**PARTICIPATION IN THE GENERAL**  
**MEETING**

- (1) The right to participate and vote in a General Meeting is restricted to those shareholders who are entered in the share register and who have registered in due time. Registration must be received by the Company on the last day of the statutory registration period at the address given in the notice convening the General Meeting. A shorter period for registration expressed in days may be set in the notice of convening. This period does not include the day of the General Meeting and the day of receipt.
- (2) Voting rights may be exercised by a proxy. The granting of proxy, the revocation of proxy and proof of authorization must be made out to the Company in writing. Section 135 AktG remains unaffected.
- (3) The Management Board is authorized to make provision for shareholders to participate in the General Meeting without attending in person and without granting a proxy, and to vote in whole or in part via electronic means (online participation). The Management Board may also set rules regarding the extent and procedure for participation and voting, which are to be announced when the General Meeting is convened.
- (4) The Management Board is authorized to make provision for shareholders to

**Deutsche Fassung****English Translation**

Teilnahme an der Hauptversammlung ihre Stimmen schriftlich oder im Wege elektronischer Kommunikation abgeben dürfen (Briefwahl). Der Vorstand ist auch ermächtigt, Bestimmungen zum Verfahren zu treffen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.

cast their votes in writing or via electronic means without participating in the General Meeting (postal vote). It may also set rules for this procedure, which are to be announced when the General Meeting is convened.

**§ 1718  
STIMMRECHT****§ 1718  
VOTING RIGHTS**

- (1) Jede Aktie gewährt eine Stimme.
- (2) Das Stimmrecht beginnt mit der vollständigen Leistung der gesetzlichen Mindesteinlage.

- (1) Each share entitles its holder to one vote.
- (2) Only those shareholders who have paid in the statutory minimum capital contribution in full are entitled to vote.

**§ 1819  
VORSITZ IN DER  
HAUPTVERSAMMLUNG****§ 1819  
CHAIRMANSHIP OF THE GENERAL  
MEETING**

- (1) Den Vorsitz in der Hauptversammlung führt der Vorsitzende des Aufsichtsrates oder ein anderes durch den Aufsichtsrat zu bestimmendes Aufsichtsratsmitglied. Für den Fall, dass kein Mitglied des Aufsichtsrats den Vorsitz übernimmt, so eröffnet ein vom Vorstand zu bestimmendes Mitglied des Vorstands die Hauptversammlung und lässt den Versammlungsleiter durch die Hauptversammlung wählen.
- (2) Der Versammlungsleiter leitet die Verhandlungen und bestimmt die Reihenfolge der Behandlung der Tagesordnung sowie die Art und Reihenfolge der Abstimmungen. Er kann das Frage- und Rederecht der Aktionäre zeitlich angemessen beschränken.

- (1) The General Meeting shall be chaired by the Chair of the Supervisory Board or another member of the Supervisory Board to be decided by the Supervisory Board. If none of the members of the Supervisory Board chairs the General Meeting, it shall be opened by a member of Management Board decided by the Management Board, who shall then have the Chair of the Meeting elected by the General Meeting.
- (2) The Chair of the Meeting shall conduct the proceedings and determine the sequence in which the items on the agenda are to be dealt with as well as the type and order of voting. The Chair of the Meeting can also limit the time available to shareholders to ask questions and

*Deutsche Fassung**English Translation*

- (3) Der Versammlungsleiter ist ermächtigt, die vollständige oder teilweise Bild- und Tonübertragung der Hauptversammlung in einer von ihm näher zu bestimmenden Weise zuzulassen. Die Übertragung kann auch in einer Form erfolgen, zu der die Öffentlichkeit uneingeschränkt Zugang hat.

speak as appropriate.

- (3) The Chair of the Meeting is authorized to permit the video and audio transmission of all or part of the General Meeting in a manner they see fit. Transmission may also take place in a form to which the public has unlimited access.

**§ 1920**  
BESCHLUSSFASSUNG

Die Beschlüsse der Hauptversammlung werden, soweit nicht zwingende gesetzliche Vorschriften ~~etwas anderes bestimmen~~ entgegenstehen, mit ~~einfacher~~ der einfachen Mehrheit der abgegebenen Stimmen ~~und, soweit gefasst~~. Für Satzungsänderungen bedarf es, soweit nicht zwingende gesetzliche Vorschriften entgegenstehen, einer Mehrheit von zwei Dritteln der abgegebenen Stimmen oder, sofern mindestens die Hälfte des Grundkapitals vertreten ist, der einfachen Mehrheit der abgegebenen Stimmen. Sofern das Gesetz für Beschlüsse der Hauptversammlung außer der Stimmenmehrheit eine Kapitalmehrheit vorschreibt, ~~mit der einfachen~~ genügt, soweit gesetzlich zulässig, die einfache Mehrheit des bei der Beschlussfassung vertretenen ~~Kapitals~~ Grundkapitals. Bei Stimmengleichheit gilt ein Antrag als abgelehnt.

**§ 1920**  
PASSING OF RESOLUTIONS

~~In the absence of mandatory legal provisions to the contrary,~~ The resolutions of the General Meeting shall be adopted by a simple majority of all the votes cast and, unless mandatory legal provisions provide otherwise. Unless otherwise required by mandatory statutory provisions, amendments to the Constitution require a majority of two thirds of the votes cast or, if at least half of the law stipulates a share capital is represented, a simple majority of the votes cast. If, in addition to a majority of votes, by statutory provisions require a majority of capital for resolutions of the General Meeting, a simple majority of the share capital represented in at the vote time the resolution is adopted shall suffice, to the extent legally permissible. In the event of a tie, a motion shall be deemed to have been rejected.

**§ 2021**  
NIEDERSCHRIFT ÜBER DIE  
HAUPTVERSAMMLUNG

Für die Niederschrift über die

**§ 2021**  
MINUTES OF THE GENERAL MEETING

The minutes of the General Meeting

**Deutsche Fassung****English Translation**

Hauptversammlung gilt § 130 AktG.

are governed by Section 130 AktG.

**C.**  
**SCHLUSSBESTIMMUNGEN**

**C.**  
**FINAL PROVISIONS**

**§ ~~21~~22**  
**JAHRESABSCHLUSS**

**§ ~~21~~22**  
**ANNUAL FINANCIAL STATEMENTS**

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 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.

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 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.

**§ ~~22~~23**  
**GEWINNVERWENDUNG**

**§ ~~22~~23**  
**APPROPRIATION OF PROFITS**

- (1) Für die Gewinnverwendung gelten die gesetzlichen Bestimmungen. In einem Kapitalerhöhungsbeschluss kann die Gewinnverteilung neuer Aktien abweichend von § 60 Abs. 2 Satz 3 AktG festgesetzt werden, insbesondere der Beginn der Dividendenberechtigung auch auf den Beginn eines bereits abgelaufenen Geschäftsjahres gelegt werden, wenn über die Gewinnverwendung für dieses Geschäftsjahr noch nicht beschlossen wurde. Die Hauptversammlung kann auch eine andere Verwendung bestimmen, als in § 58 Abs. 3 Satz 1

- (1) Profit appropriation is subject to statutory provisions. The profit participation rights of new shares may be determined by a shareholder resolution to increase the share capital in deviation from Section ~~60(2)~~, 60 para. 2 sentence 3 AktG, namely the date of first entitlement to dividends be backdated to the beginning of a financial year which has already elapsed if profit appropriation for this financial year has not yet been decided. The General Meeting may also decide on a different form of appropriation from that provided for in Section ~~58(3)~~, 58 para. 3 sentence 1



*Deutsche Fassung**English Translation*

AktG vorgesehen.

AktG.

- (2) Nach Ablauf eines Geschäftsjahres kann der Vorstand mit Zustimmung des Aufsichtsrates im Rahmen des § 59 AktG eine Abschlagsdividende an die Aktionäre ausschütten.

- (2) At the end of a financial year, the Management Board may ~~—~~ with the approval of the Supervisory Board ~~—~~ distribute an interim dividend to the shareholders pursuant to Section 59 AktG.

**§ ~~23~~24**  
**Rü CKLAGEN**

**§ ~~23~~24**  
**RESERVES**

- (1) Stellen Vorstand und Aufsichtsrat den Jahresabschluss fest, so können sie den gesamten Jahresüberschuss in andere Gewinnrücklagen einstellen, solange die anderen Gewinnrücklagen die Hälfte des Grundkapitals nicht übersteigen oder nach der Einstellung übersteigen würden.
- (2) Bei der Errechnung des gemäß Abs. 1 in andere Gewinnrücklagen einzustellenden Teils des Jahresüberschusses sind Beträge, die in die gesetzliche Rücklage einzustellen sind und ein Verlustvortrag vorab abzuziehen.

- (1) If the Management Board and the Supervisory Board approve the annual financial statements, they may allocate the entire net profit to other retained earnings unless the other retained earnings exceed half the share capital or would do so after allocation.
- (2) When calculating the portion of the net profit to be allocated to other retained earnings in accordance with ~~Section 23(1)~~para. 1, the amounts required to be allocated to the statutory reserve and any loss carried forward must first be deducted.

**§ ~~24~~25**  
**GRÜ NDUNGSKOSTEN/  
FORMWECHSELAUFWAND/SE-GRÜ N  
DUNG**

**§ ~~24~~25**  
**COSTS OF FORMATION/COST OF  
TRANSFORMATION/SE FORMATION**

- (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 8.000,00, einschließlich des von der Marley Spoon GmbH gemäß Ziffer 18. des Gesellschaftsvertrages übernommenen Gründungsaufwands in

- (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 8,000.00, including the formation expenses in the amount of up to EUR 1,500.00 which are ~~already~~ borne by Marley Spoon GmbH pursuant to ~~See~~Section 18 of the



**Deutsche Fassung****English Translation**

Höhe von bis zu EUR 1.500,00.

articles of association.

- (2) Die Marley Spoon SE ist durch Verschmelzung der MS Holding AG, Klagenfurt am Wörthersee, Österreich (Firmenbuch Nummer FN 579574 s), auf die Marley Spoon AG (AG Berlin-Charlottenburg, HRB 195994) aus der Marley Spoon AG entstanden (Art. 2 Abs. 1, 17 ff. SE-VO). Das Grundkapital wird im Wege der Verschmelzung durch Sacheinlagen in Form sämtlicher Aktiva und Passiva der Marley Spoon AG sowie der MS Holding AG erbracht. Die Beteiligung der Aktionäre ist unverändert.

- (2) Marley Spoon SE has been formed by way of merger of MS Holding AG, Klagenfurt am Wörthersee, Austria (Company Register no. FN 579574 s), onto Marley Spoon AG (local court of Berlin-Charlottenburg, registration number HRB 195994) from Marley Spoon AG (Art. 2 para. 1, 17 *et seqq.* SE Regulation). The share capital is provided by way of merger through contributions in kind in the form of all assets and liabilities of Marley Spoon AG and MS Holding AG. The participation of the shareholders remains unchanged.

- (3) Der Gründungsaufwand in Bezug auf die Verschmelzung der MS Holding AG, Klagenfurt am Wörthersee, Österreich, auf die Gesellschaft und die damit einhergehende Errichtung der Marley Spoon SE beträgt EUR 250.000,00.

- (3) The formation expenses in relation to the merger of MS Holding AG, Klagenfurt am Wörthersee, Austria, onto the Company and the corresponding formation of Marley Spoon SE amount to EUR 250,000.00.

**§ 2526**  
**BEKANNTMACHUNGEN**

**§ 2526**  
**ANNOUNCEMENTS**

- (1) Bekanntmachungen der Gesellschaft erfolgen im Bundesanzeiger.
- (2) Informationen an die Aktionäre können auch im Wege der Datenfernübertragung übermittelt werden.

- (1) Company announcements shall be published in the German Federal Gazette.
- (2) Information may also be conveyed to shareholders by means of electronic data transmission.

Nur die deutsche Fassung der Satzung ist verbindlich.

Only the German version of the Constitution shall be binding.

\* \* \* \*

#### **IV.**

**Convenience translation of the Joint Merger Plan between Marley Spoon AG as acquiring company and MS Holding AG, Klagenfurt, Austria, as transferring company (including the Constitution of Marley Spoon SE)**

**[DRAFT]**

**JOINT MERGER PLAN**

**for the merger by absorption**

**between the**

**Marley Spoon AG**

**and the**

**MS Holding AG**

The Management Board of Marley Spoon AG and the Management Board of MS Holding AG establish the following joint merger plan pursuant to Art. 2 para. 1 in conjunction with Art. 20 of the Council Regulation (EC) No. 2157/2001. Art. 20 of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European company (SE) ("**SE Regulation**") establish the following joint merger plan:

### Preamble

1. Marley Spoon AG (hereinafter also "**Marley Spoon**" or the "**Company**") is a stock corporation under German law with its registered office and head office in Berlin, Germany. It is registered in the Commercial Register of the Charlottenburg Local Court under HRB 195994 B. Its business address is Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany. As of today's date, the Company's share capital amounts to EUR 291,958.00 and is divided into 291,958 no-par value registered shares (ordinary shares) with a notional value of EUR 1.00 per share. The Company is the ultimate parent company of the group of companies consisting of the Company and its subsidiaries (hereinafter the "**Marley Spoon Group**").
2. MS Holding AG (hereinafter "**MS Holding**") is a stock corporation under Austrian law with its registered office and head office in Klagenfurt am Wörthersee, Austria. It is registered in the commercial register of the Regional Court of Klagenfurt, Austria, under number FN 579574 s. Its business address is: Viktringer Ring 5/4, 9020 Klagenfurt am Wörthersee, Austria. The share capital of MS Holding amounts to EUR 70,000.00 and is divided into 70,000 registered no-par value shares with a notional value of EUR 1.00 per share. The direct sole shareholder of MS Holding is Marley Spoon.
3. It is intended to merge MS Holding pursuant to Art. 17 para. 2 lit. a) in conjunction with Art. 29 para. 1 SE Regulation to Marley Spoon by way of absorption with simultaneous conversion of Marley Spoon into the legal form of a European company (*Societas Europaea*, SE) under the name "Marley Spoon SE" (the "**Merger**"). In addition, the merger is subject in particular to the Act on the Implementation of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European company (SE) of December 22, 2004 ("**SEAG**") and the Act on the Involvement of Employees in a European Company of December 22, 2004 ("**SEBG**"), which transposed Council Directive 2001/86/EC of October 8, 2001 supplementing the Statute for a European company with regard to the involvement of employees ("**SE Involvement Directive**") into German law. In the other member states of the European Union or in another state party to the Agreement on the European Economic Area (each a "**Member State**"), the implementation provisions of these states regarding the SE Involvement Directive shall -apply in addition.
4. The legal form of the SE is a supranational legal form based on European law for stock corporations with their registered office and head office in a Member State. The Marley Spoon Group, of which Marley Spoon is the parent company, serves customers in Europe, Australia and the United States of America as a leading provider of cooking boxes. The conversion of the Company into the legal form of a European Company (SE) expresses the self-image of the Marley Spoon Group as a European and globally oriented company

and takes sufficient account of the Company's further targeted growth. At the same time, the successfully established corporate governance structure can be continued in the dualistic management system.

5. Marley Spoon and MS Holding have a positive fair value both on the merger date pursuant to § 3.3 of the merger plan and at the time of preparation of the merger plan, Marley Spoon and MS Holding have a positive fair value. This will presumably also be the case at the time of the registration of Marley Spoon SE in the commercial register of the Local Court of Charlottenburg responsible for the Company pursuant to Art. 27 para. 1, Art. 12 SE Regulation -- and thus of the effectiveness of the merger, Art. 27 para. 1 SE Regulation - due to forecast income and expenses as well as the assets of both companies which are recoverable and stable in value.

## **§ 1**

### **Companies involved**

- 1.1 Marley Spoon AG is a stock corporation under German law with its registered office and head office in Berlin, Germany. It is registered in the Commercial Register of the Charlottenburg Local Court under HRB 195994 B. The Company's share capital currently amounts to EUR 291,958.00 and is divided into 291,958 no-par value registered shares (ordinary shares) with a notional value of EUR 1.00 per share.
- 1.2 MS Holding is a stock corporation under Austrian law with its registered office and head office in Klagenfurt am Wörthersee, Austria. It is registered in the commercial register of the Regional Court of Klagenfurt, Austria, under number FN 579574 s. The share capital of MS Holding amounts to EUR 70,000.00 and is divided into 70,000 no-par value registered shares with a notional value of EUR 1.00 per share. Marley Spoon has taken over and subscribed for all shares. Marley Spoon has paid one quarter of the issue amount on each share, i.e. a total issue amount of EUR 17,500.00, into the business account of MS Holding at the free disposal of the Executive Board.

## **§ 2**

### **Merger by absorption**

- 2.1 MS Holding as the transferring legal entity shall be merged with Marley Spoon as the acquiring legal entity by way of merger by absorption with dissolution without liquidation pursuant to Art. 17 para. 2 lit. a) SE-VO.
- 2.2 Since all issued shares in MS Holding are held by Marley Spoon, the share capital of Marley Spoon will not be increased in order to implement the merger and no new shares in Marley Spoon will be issued as part of the merger. Therefore, pursuant to Art. 31 para. 1 sentence 1 SE Regulation, this merger plan does not contain any information pursuant to Art. 20 para. 1 lit. b), c) and d) SE Regulation regarding the exchange ratio of the shares, the details regarding the transfer of the shares in the SE and the point in time from which the shares grant a right to participate in the profits. An examination of this merger plan

by one or more independent experts is also required for this reason pursuant to Art. 31 para. 1 sentence 1 SE Regulation in conjunction with Art. Art. 22 SE Regulation as well as pursuant to Section 20 of the Austrian Act on the Statute for a European Company (*Societas Europaea* - SE) ("öSEG") is not required and will not take place. A compensation offer to the shareholders of MS Holding is not required pursuant to Sections 17 in conjunction with 20 öSEG, as all shares are held by Marley Spoon as sole shareholder.

- 2.3 Marley Spoon will not make any additional cash payment or other form of compensation in connection with the merger.

### **§ 3**

#### **Effective Date of the Merger, Effective Date of the Merger**

- 3.1 Pursuant to Art. 27 para. 1 SE Regulation, the Merger will take effect upon registration of Marley Spoon SE in the commercial register of the local court of Charlottenburg, Germany, which is competent for the Company (the point in time at which the Merger takes effect by registration hereinafter referred to as the "**Effective Time**"). At the Effective Time, pursuant to Art. 29 para. 1 lit. a) SE Regulation, all assets and liabilities of MS Holding will automatically be transferred to Marley Spoon by operation of law, MS Holding will cease to exist and Marley Spoon will assume the legal form of an SE.
- 3.2 The merger will be based on the balance sheet of MS Holding as of April 30, 2022 (merger date) as the closing balance sheet.
- 3.3 The acquisition of the assets and liabilities of MS Holding by Marley Spoon shall take place in the internal relationship of the two companies for accounting purposes with effect as of April 30, 2022, 24:00 hours (Merger Effective Date). As of May 1, 2022, 00:00 hours, all acts of MS Holding and Marley Spoon shall be deemed to have been performed for the account of Marley Spoon or, as the case may be, for the account of Marley Spoon SE as of the Effective Date.

### **§ 4**

#### **Adoption of the legal form of a European Company (SE); company name, registered office, articles of association; share capital and shareholding structure, global certificate; management board and supervisory board**

- 4.1 At the Effective Time, Marley Spoon will adopt the legal form of a European Company (*Societas Europaea*, SE) by operation of law pursuant to Art. 17 para. 2 sentence 2 and Art. 29 para. 1 lit. d) SE Regulation.
- 4.2 The name of the SE is "Marley Spoon SE".
- 4.3 The registered office of Marley Spoon SE will continue to be Berlin, Germany; this is also where the head office will continue to be located.

4.4 Marley Spoon SE will receive the Articles of Association attached to this merger plan as **Annex 1, which** form an integral part of this merger plan.

4.5 The persons and companies who are shareholders of the Company at the Effective Time will become shareholders of Marley Spoon SE to the same extent in the share capital of Marley Spoon SE and with the same number of no-par value shares as they directly hold in the share capital of Marley Spoon AG at the Effective Time. Rights of third parties existing in shares of the Company or to their subscription shall continue in the shares of the future Marley Spoon SE.

#### 4.6 Share capital

The share capital of the Company in the amount existing at the Effective Time and in the division existing at the Effective Time will continue to be the share capital of Marley Spoon SE. The proportionate amount of the share capital of the individual no-par value shares of currently EUR 1.00 each remains unchanged as it exists at the effective time.

The share capital of the Company currently amounts to EUR 291,958.00 and is divided into 291,958 registered ordinary shares as no-par value shares. However, it is intended to propose to the Annual General Meeting of the Company on May 31, 2022, under agenda item 6, a capital increase from company funds pursuant to Secs. 207 et seq. AktG by EUR 28,903,842.00 to EUR 29,195,800.00 by issuing a total of 28,903,842 new registered no-par value shares at EUR 1.00 per share and a corresponding revision of Section 3 (1) and (2) of the Articles of Association of Marley Spoon AG (the "**Capital Increase from Company Funds**").

Provided that the capital increase from company funds is resolved by the Annual General Meeting on May 31, 2022 with the required majority and the share capital and the associated revised version of Section 3 (1) and (2) of the Articles of Association of Marley Spoon AG have already become effective at the effective time by registration in the commercial register of the Charlottenburg Local Court having jurisdiction over the Company, the share capital of Marley Spoon SE pursuant to Section 3 (1) and (2) of the Articles of Association of Marley Spoon AG at the effective time shall correspond to the amount and division of the share capital of Marley Spoon AG pursuant to the revised version of Section 3 (1) and (2) of the Articles of Association of Marley Spoon AG. 1 and 2 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in amount and division to the share capital of Marley Spoon AG in accordance with the revised Section 3 (1) and (2) of the Articles of Association of Marley Spoon AG and amounts - subject to a further amendment made before the Effective Date - to EUR 29,195,800.00 and is divided into 29,195,800 registered ordinary shares as no-par value shares (see Section 3 (1) and (2) of the Articles of Association of Marley Spoon SE contained in **Annex 1**).

Otherwise, pursuant to Section 3 para. 1 and 2 of the Articles of Association of Marley Spoon SE, the share capital of Marley Spoon SE at the Effective Time corresponds in amount and division to the current share capital of Marley Spoon AG and is - subject to

an amendment made before the Effective Time - as set out in Section 3 para. 1 and 2 of the currently valid Articles of Association of Marley Spoon AG contained in **Annex 2, which are an** integral part of this Merger Plan, to EUR 291,958.00, divided into 291,958 registered ordinary shares as no-par value shares (the "**Existing Share Capital**"). In this case, the Management Board is instructed to apply for registration of the provisions of Section 3 (1) and (2) of the Articles of Association of Marley Spoon SE in the version of the Existing Share Capital with the merger.

#### 4.7 Authorized capital

As of the effective date, the authorized capitals of Marley Spoon SE correspond in scope and design to the authorized capitals of Marley Spoon AG in their respective scope and design existing as of the effective date:

##### Authorized capital 2022/I

- The existing Authorized Capital 2021/I of Marley Spoon AG is governed by Section 3 (3) of the Articles of Association of Marley Spoon AG. However, it is intended to propose to the Annual General Meeting of the Company on May 31, 2022, under agenda item 7, by way of a corresponding amendment of Section 3 (3) of the Articles of Association of Marley Spoon AG, the cancellation of the existing Authorized Capital 2021/I and the creation of a new Authorized Capital (Authorized Capital 2022/I) for resolution (the "**Amendment of the Authorized Capital 2022/I**").
- Provided that the new version of the Authorized Capital 2022/I, taking into account the capital increase from company funds, is resolved by the General Meeting on May 31, 2022 under agenda item 7, letter c), with the required majority and the new Authorized Capital 2022/I and the associated new version of Section 3 para. 3 of the Articles of Association of Marley Spoon AG have already become effective at the effective time by registration in the commercial register of the Charlottenburg Local Court having jurisdiction over the Company, the Authorized Capital 2022/I of Marley Spoon SE pursuant to Section 3 para. 3 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in scope and form to the Authorized Capital 2022/I of Marley Spoon AG pursuant to the newly formulated Section 3 para. 3 of the Articles of Association of Marley Spoon AG and - subject to a utilization still prior to the Conversion Date and a related reduction in scope of the Authorized Capital 2022/I - reads as set out in Section 3 para. 3 of the Articles of Association of Marley Spoon SE contained in **Annex 1** (the "**Newly Formulated Authorized Capital 2022/I**"). In this case, the Management Board is instructed to apply for registration of the provision of Section 3 para. 3 of the Articles of Association of Marley Spoon SE in the version of the Revised Authorized Capital 2022/I together with the merger.
- If, on the other hand, the new version of Authorized Capital 2022/I is resolved by the General Meeting of Shareholders of May 31, 2022 under agenda item 7, letter



e), with the required majority (i.e. the capital increase from company funds is not resolved by the General Meeting of Shareholders with the required majority) and the new Authorized Capital 2022/I and the associated new version of § 3 para. 3 of the Articles of Association of Marley Spoon AG have already become effective at the effective time by registration in the Commercial Register of the Local Court of Charlottenburg having jurisdiction over the Company, the Authorized Capital 2022/I of Marley Spoon SE shall correspond to the new Authorized Capital 2022/I pursuant to Section 3 para. 3 of the Articles of Association of Marley Spoon SE as of the effective date also corresponds in scope and form to the Revised Authorized Capital 2022/I of Marley Spoon AG pursuant to the revised Section 3 para. 3 of the Articles of Association of Marley Spoon AG and - subject to a utilization still prior to the Effective Time and a related reduction in the scope of the Authorized Capital 2022/I - reads like the Revised Authorized Capital 2022/I, but with the proviso that sentence 1 in § 3 para. 3 of the Articles of Association of Marley Spoon SE reads differently as follows:

*"(3) The Board of Management is authorized, with the consent of the Supervisory Board, to increase the share capital of the Company on one or more occasions on or before May 30, 2027, by up to a total of EUR 138,886.00 (in words: one hundred thirty-eight thousand eight hundred eighty-six euros) by issuing up to 138,886 new no-par value registered shares against cash and/or non-cash contributions ("Authorized Capital 2022/I")."*

In this case, the Management Board is instructed to apply for registration of the provision of Section 3 (3) of the Articles of Association of Marley Spoon SE in the version of the Recast Authorized Capital 2022/I with the above deviation together with the merger.

- If, on the other hand, the new version of the Authorized Capital 2022/I is not resolved by the General Meeting on May 31, 2022 under agenda item 7 with the required majority, the Authorized Capital 2021/I of Marley Spoon SE pursuant to Art. 3 para. 3 of the Articles of Association of Marley Spoon SE will correspond to the Authorized Capital 2021/I of Marley Spoon AG pursuant to Art. 3 para. 3 of the Articles of Association of Marley Spoon AG in its currently applicable version in terms of scope and structure at the effective time. 3 of the Articles of Association of Marley Spoon AG in its currently applicable version and - subject to a utilization still prior to the Effective Time and a related reduction in the scope of the Authorized Capital 2021/I - reads as set out in Section 3 para. 3 of the currently applicable Articles of Association of Marley Spoon AG contained in **Annex 2** (the "**Existing Authorized Capital 2021/I**"). In this case, the Management Board is instructed to apply for registration of Section 3 para. 3 of the Articles of Association of Marley Spoon SE in the version of the Existing Authorized Capital 2021/I together with the merger.

Authorized Capital 2021/II and Authorized Capital 2021/III

- The existing Authorized Capital 2021/II is governed by Article 3 (15) of the Articles of Association of Marley Spoon AG. The existing Authorized Capital 2021/III is governed by Section 3 (16) of the Articles of Association of Marley Spoon AG. However, in adjustment to the capital increase from company funds, it is intended to propose to the General Meeting of the Company on May 31, 2022 under agenda item 8 the corresponding adjustment of the Authorized Capital 2021/II and the Authorized Capital 2021/III (the "**Adjustment of the Authorized Capital 2021/II and the Authorized Capital 2021/III**").
- Provided that the adjustment of the Authorized Capital 2021/II and the Authorized Capital 2021/III is resolved by the Annual General Meeting on May 31, 2022 under agenda item 8 with the required majority and the adjustment of the Authorized Capital 2021/II and the Authorized Capital 2021/III as well as the related amendment of § 3 para. 15 and § 3 para. 16 of the Articles of Association of Marley Spoon AG have already become effective at the effective date by registration in the Commercial Register of the Charlottenburg Local Court having jurisdiction over the Company, the Authorized Capital 2021/II and the Authorized Capital 2021/III of Marley Spoon SE shall correspond to the Articles of Association of Marley Spoon AG pursuant to § 3 para. 8 and § 3 para. 9 of the Articles of Association of Marley Spoon SE, respectively. § 3 para. 9 of the Articles of Association of Marley Spoon SE as of the effective date correspond in scope and form to the Authorized Capital 2021/II and the Authorized Capital 2021/III of Marley Spoon AG pursuant to the amended Section 3 para. 15 and Section 3 para. 16 of the Articles of Association of Marley Spoon AG and shall read - subject to any utilization of the Authorized Capital 2021/II or the Authorized Capital 2021/III prior to the effective date and any associated reduction in the scope thereof - as set out in Section 3 para. 8 or Section 3 para. 9 of the Articles of Association of Marley Spoon SE contained in **Annex 1** ("**Adjusted Authorized Capital 2021/II and Adjusted Authorized Capital 2021/III**"). In this case, the Executive Board is instructed to apply for registration of Section 3 para. 8 and Section 3 para. 9 of the Articles of Association of Marley Spoon SE as amended by the Adjusted Authorized Capital 2021/II and Adjusted Authorized Capital 2021/III together with the merger.
- If, on the other hand, the adjustment of the Authorized Capital 2021/II and the Authorized Capital 2021/III is not resolved by the General Meeting on May 31, 2022 under agenda item 8 with the required majority, the Authorized Capital 2021/II and the Authorized Capital 2021/III of Marley Spoon SE pursuant to Art. 3 para. 8 and Art. 3 para. 9 of the Articles of Association of Marley Spoon SE will correspond to the Authorized Capital 2021/II and the Authorized Capital 2021/III of Marley Spoon AG respectively pursuant to Art. 3 para. 15 and Article 3 para. 16 of the Articles of Association of Marley Spoon AG in their currently applicable version and - subject to a utilization of the Authorized Capital 2021/II and the Authorized Capital 2021/III prior to the Effective Time and a related reduction in the scope thereof - shall be as set out in Article 3 para. 15 and Article 3 para. 16 of the Articles of Association of Marley Spoon AG contained in **Annex 2 and** currently applicable ("**Existing Authorized Capital 2021/II and Existing Authorized Capital**").

**2021/III**"). In this case, the Executive Board is instructed to apply for registration of the provisions of Section 3 para. 8 and Section 3 para. 9 of the Articles of Association of Marley Spoon SE as amended by Existing Authorized Capital 2021/II and Existing Authorized Capital 2021/III together with the merger.

#### Authorized Capital 2022/II and Authorized Capital 2022/III

- The creation of a new Authorized Capital 2022/II and a new Authorized Capital 2022/III shall be proposed to the General Meeting of the Company on May 31, 2022 under agenda items 9 and 10 for resolution by way of the corresponding creation of a new Section 3 (18) and a new Section 3 (19) of the Articles of Association of Marley Spoon AG (the "**Creation of the Authorized Capital 2022/II and the Authorized Capital 2022/III**").
- Insofar as the creation of Authorized Capital 2022/II and Authorized Capital 2022/III, taking into account the capital increase from company funds, is resolved by the Annual General Meeting on May 31, 2022 under agenda item 9, letter b), and agenda item 10, letter b), in each case with the required majority, and the new Authorized Capital 2022/II and the new Authorized Capital 2022/III and the associated creation of § 3 para. 18 and § 3 para. 19 of the Articles of Association of Marley Spoon AG have already become effective as of the effective date by registration in the Commercial Register of the Local Court of Charlottenburg having jurisdiction over the Company, the Authorized Capital 2022/II and the Authorized Capital 2022/III of Marley Spoon SE shall, pursuant to § 3 para. 11 and § 3 para. 12 of the Articles of Association of Marley Spoon SE correspond as of the effective date in scope and form to the Authorized Capital 2022/II and the Authorized Capital 2022/III of Marley Spoon AG pursuant to the newly created § 3 para. 18 and § 3 para. 19 of the Articles of Association of Marley Spoon AG, respectively, and shall read - subject to any utilization of the Authorized Capital 2022/II and the Authorized Capital 2022/III prior to the Effective Time and any related reduction in the scope thereof - as set forth in Section 3 para. 11 and Section 3 para. 12 of the Articles of Association of Marley Spoon SE contained in **Annex 1, respectively** (the "**New Authorized Capital 2022/II and the New Authorized Capital 2022/III**"). In this case, the Executive Board is instructed to apply for registration of the provisions of Section 3 para. 11 and Section 3 para. 12 of the Articles of Association of Marley Spoon SE as amended by the New Authorized Capital 2022/II and the New Authorized Capital 2022/III together with the merger.
- If, on the other hand, the creation of Authorized Capital 2022/II and Authorized Capital 2022/III is resolved by the Annual General Meeting on May 31, 2022 under agenda item 9, letter d), and agenda item 10, letter d), with the required majority (i.e. the capital increase from company funds is not resolved by the Annual General Meeting with the required majority) and the new Authorized Capital 2022/II and the new Authorized Capital 2022/III and the associated creation of § 3 para. 18 and § 3 para. 19 of the Articles of Association of Marley Spoon AG have already become effective as of the effective date by registration in the Commercial Register

of the Local Court of Charlottenburg having jurisdiction over the Company, the Authorized Capital 2022/II and the Authorized Capital 2022/III of Marley Spoon SE are in accordance with § 3 para. 11 and § 3 para. 12 of the Articles of Association of Marley Spoon SE as of the effective date also correspond in scope and form to the New Authorized Capital 2022/II and the New Authorized Capital 2022/III, respectively, of Marley Spoon AG pursuant to the newly created § 3 para. 18 and § 3 para. 19 of the Articles of Association of Marley Spoon AG and - subject to a utilization still prior to the Effective Time and a related reduction in the scope of the Authorized Capital 2022/II and the Authorized Capital 2022/III, respectively - shall read like the New Authorized Capital 2022/II and the New Authorized Capital 2022/III, respectively, provided, however, that sentence 1 in Section 3 para. 11 of the Articles of Association of Marley Spoon SE shall read differently as follows:

*"(11) The Executive Board is authorized, with the consent of the Supervisory Board, to increase the share capital of the Company on one or more occasions on or before May 30, 2027 (inclusive) by up to EUR 1,000.00 against cash contributions and/or contributions in kind by issuing up to 1,000 new no-par value registered shares ("**Authorized Capital 2022/II**")."*

and that sentence 1 in Article 3 (12) of the Articles of Association of Marley Spoon SE reads differently as follows:

*"(12) The Executive Board is authorized, with the consent of the Supervisory Board, to increase the share capital of the Company on one or more occasions on or before May 30, 2027 (inclusive) by up to EUR 93.00 against cash and/or non-cash contributions by issuing up to 93 new no-par value registered shares ("**Authorized Capital 2022/III**")."*

In this case, the Executive Board is instructed to apply for registration of the provisions of Section 3 (11) and Section 3 (12) of the Articles of Association of Marley Spoon SE in the version of the New Authorized Capital 2022/II and the New Authorized Capital 2022/III, respectively, with the above deviation.

- If, on the other hand, the creation of Authorized Capital 2022/II and Authorized Capital 2022/III is not resolved by the General Meeting of May 31, 2022 under agenda items 9 and 10 with the required majority in each case, neither Marley Spoon AG nor Marley Spoon SE will have a new Authorized Capital 2022/II or a new Authorized Capital 2022/III, respectively.

#### 4.8 Conditional capital

At the effective date, the conditional capitals of Marley Spoon SE correspond to the conditional capitals of Marley Spoon AG in their respective scope and structure existing at the effective date:

##### Conditional capital 2018/II

- The existing Conditional Capital 2018/II is governed by Section 3 (5) of the Articles of Association of Marley Spoon AG. Upon effectiveness of the capital increase from company funds, the Conditional Capital 2018/II will be automatically adjusted in scope by operation of law pursuant to Section 218 sentence 1 of the German Stock Corporation Act and - subject to an issue of subscription shares from the Conditional Capital 2018/II still taking place prior to the effective date and a related reduction in scope - will read as set out in Section 3 para. 4 of the Articles of Association of Marley Spoon SE contained in **Annex 1** (the "**Adjusted Conditional Capital 2018/II**").
- If, on the other hand, the capital increase from company funds is *not* resolved by the General Meeting on May 31, 2022 with the required majority and the Adjusted Contingent Capital 2018/II has not become effective at the Effective Time by registration of the capital increase from company funds in the commercial register of the Charlottenburg Local Court having jurisdiction over the Company, the Contingent Capital 2018/II of Marley Spoon SE pursuant to Section 3 para. 4 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in scope and form to the existing Conditional Capital 2018/II of Marley Spoon AG pursuant to Section 3 para. 5 of the Articles of Association of Marley Spoon AG in its currently applicable version and - subject to an issue of subscription shares from the Conditional Capital 2018/II still prior to the Conversion Date and a related reduction in scope - reads as set out in Section 3 para. 5 of the Articles of Association of Marley Spoon AG contained in **Annex 2 and** currently applicable (the "**Existing Conditional Capital 2018/II**"). In this case, the Executive Board is instructed to apply for registration of the provision of Section 3 para. 4 of the Articles of Association of Marley Spoon SE in the version of the Existing Conditional Capital 2018/II together with the merger.

#### Conditional Capital 2019/III

- The existing Conditional Capital 2019/III is governed by Section 3 (8) of the Articles of Association of Marley Spoon AG. Upon the capital increase from company funds taking effect, the Conditional Capital 2019/III will be automatically adjusted in scope by operation of law pursuant to Section 218 sentence 1 of the German Stock Corporation Act and - subject to an issue of subscription shares from the Conditional Capital 2019/III taking place prior to the effective date and a related reduction in scope - will read as set out in Section 3 para. 5 of the Articles of Association of Marley Spoon SE contained in **Annex 1** (the "**Adjusted Conditional Capital 2019/III**").
- If, on the other hand, the capital increase from company funds is *not* resolved by the General Meeting on May 31, 2022 with the required majority and the Adjusted Contingent Capital 2019/III has not become effective at the Effective Time by registration of the capital increase from company funds in the commercial register of

the Charlottenburg Local Court having jurisdiction over the Company, the Contingent Capital 2019/III of Marley Spoon SE pursuant to Section 3 para. 5 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in scope and form to the existing Conditional Capital 2019/III of Marley Spoon AG pursuant to Section 3 para. 8 of the Articles of Association of Marley Spoon AG in its currently applicable version and - subject to an issue of subscription shares from the Conditional Capital 2019/III still prior to the Conversion Date and a related reduction in scope - reads as set out in Section 3 para. 8 of the Articles of Association of Marley Spoon AG contained in **Annex 2 and** currently applicable (the "**Existing Conditional Capital 2019/III**"). In this case, the Executive Board is instructed to apply for registration of the provision of Section 3 para. 5 of the Articles of Association of Marley Spoon SE in the version of the Existing Conditional Capital 2019/III together with the merger.

#### Conditional Capital 2020/II

- The existing Conditional Capital 2020/II is governed by Section 3 (12) of the Articles of Association of Marley Spoon AG. Upon effectiveness of the capital increase from company funds, the Conditional Capital 2020/II will be automatically adjusted in scope by operation of law pursuant to Section 218 sentence 1 AktG and - subject to an issue of subscription shares from the Conditional Capital 2020/II still taking place prior to the effective date and a related reduction in scope - will read as set out in Section 3 para. 6 of the Articles of Association of Marly Spoon SE contained in **Annex 1** (the "**Adjusted Conditional Capital 2020/II**").
- If, on the other hand, the capital increase from company funds is *not* resolved by the General Meeting on May 31, 2022 with the required majority and the Adjusted Contingent Capital 2020/II has not become effective at the Effective Time by registration of the capital increase from company funds in the commercial register of the Charlottenburg Local Court having jurisdiction over the Company, the Contingent Capital 2020/II of Marley Spoon SE pursuant to Section 3 para. 6 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in scope and form to the existing Conditional Capital 2020/II of Marley Spoon AG pursuant to Section 3 para. 12 of the Articles of Association of Marley Spoon AG in its currently applicable version and - subject to an issue of subscription shares from the Conditional Capital 2020/II still prior to the Conversion Date and a related reduction in scope - reads as set out in Section 3 para. 12 of the Articles of Association of Marley Spoon AG contained in **Annex 2 and** currently applicable (the "**Existing Conditional Capital 2020/II**"). In this case, the Executive Board is instructed to apply for registration of the provision of Section 3 para. 6 of the Articles of Association of Marley Spoon SE in the version of the Existing Conditional Capital 2020/II together with the merger.

### Conditional capital 2021/I

- The existing Conditional Capital 2021/I is governed by Section 3 (14) of the Articles of Association of Marley Spoon AG. Upon effectiveness of the capital increase from corporate funds, the Conditional Capital 2021/I will be automatically adjusted in scope by operation of law pursuant to Section 218 sentence 1 AktG and - subject to an issue of subscription shares from the Conditional Capital 2021/I still taking place prior to the effective date and a related reduction in scope - will read as set out in Section 3 para. 7 of the Articles of Association of Marley Spoon SE contained in **Annex 1** (the "**Adjusted Conditional Capital 2021/I**").
- If, on the other hand, the capital increase from corporate funds is not resolved by the General Meeting of Shareholders on May 31, 2022 with the required majority and the Adjusted Contingent Capital 2021/I has not become effective at the Effective Time by registration of the capital increase from corporate funds in the commercial register of the Charlottenburg Local Court having jurisdiction over the Company, the Contingent Capital 2021/I of Marley Spoon SE pursuant to Section 3 para. 7 of the Articles of Association of Marley Spoon SE as of the Effective Date corresponds in scope and form to the existing Conditional Capital 2021/I of Marley Spoon AG pursuant to Section 3 para. 14 of the Articles of Association of Marley Spoon AG in its currently applicable version and - subject to an issue of subscription shares from the Conditional Capital 2021/I still prior to the Conversion Date and a reduction in scope associated therewith - reads as set out in Section 3 para. 14 of the Articles of Association of Marley Spoon AG contained in **Annex 2 and** currently applicable (the "**Existing Conditional Capital 2021/I**"). In this case, the Management Board is instructed to apply for registration of the provision of Section 3 para. 7 of the Articles of Association of Marley Spoon SE in the version of the Existing Conditional Capital 2021/I together with the merger.

### Conditional capital 2022/I

- The creation of a new Conditional Capital 2022/I and the creation of a new Section 3 (17) of the Articles of Association of Marley Spoon AG are to be proposed for resolution to the Annual General Meeting of the Company on May 31, **2022** under agenda item 5 (the "**Creation of Conditional Capital 2022/I**").
- Insofar as the creation of Conditional Capital 2022/I is resolved by the Annual General Meeting on May 31, 2022 under agenda item 5 with the required majority and the new Conditional Capital 2022/I and the associated creation of Art. 3 para. 17 of the Articles of Association of Marley Spoon AG have already become effective at the effective time by registration in the Commercial Register of the Local Court of Charlottenburg having jurisdiction over the Company and the Conditional Capital 2022/I has already been automatically adjusted at this time by operation of law pursuant to Section 218 sentence 1 of the German Stock Corporation Act (AktG) due to the capital increase from corporate funds, the Conditional Capital 2022/I of Mar-

ley Spoon SE shall correspond to the conditional capital of Marley Spoon SE pursuant to Section 3 para. 10 of the Articles of Association of Marley Spoon SE corresponds as of the effective date in scope and form to the Conditional Capital 2022/I of Marley Spoon AG pursuant to the newly created and adjusted Section 3 para. 17 of the Articles of Association of Marley Spoon AG and - subject to an issue of subscription shares from Contingent Capital 2022/I still taking place prior to the Effective Time and a related reduction in scope - reads as set out in Section 3 para. 10 of the Articles of Association of Marley Spoon SE contained in **Annex 1** (the "**New Contingent Capital 2022/I**"). In this case, the Management Board is instructed to apply for registration of the provision of Section 3 para. 10 of the Articles of Association of Marley Spoon SE in the version of the New Conditional Capital 2022/I together with the merger.

- If, on the other hand, the creation of the Conditional Capital 2022/I is resolved by the General Meeting of May 31, 2022 under agenda item 5 with the required majority and the new Conditional Capital 2022/I and the related creation of Section 3 para. 17 of the Articles of Association of Marley Spoon AG have already become effective at the Effective Time by registration in the commercial register of the Local Court of Charlottenburg having jurisdiction over the Company, but the Conditional Capital 2022/I has not been adjusted at that time pursuant to Section 218 sentence 1 of the German Stock Corporation Act due to the capital increase from corporate funds (i.e. the capital increase from corporate funds is *not* resolved by the General Meeting with the required majority), the Conditional Capital 2022/I of Marley Spoon SE pursuant to Section 3 para. 10 of the Articles of Association of Marley Spoon SE corresponds at the Effective Time in scope and form to the Conditional Capital 2022/I of Marley Spoon AG pursuant to the newly created Section 3 para. 17 of the Articles of Association of Marley Spoon AG and - subject to an issue of subscription shares from Contingent Capital 2022/I still taking place prior to the Effective Time and a related reduction in scope - reads like the New Contingent Capital 2022/I, but with the proviso that sentence 1 in Section 3 para. 10 of the Articles of Association of Marley Spoon SE reads differently as follows:

*"(10) The share capital of the Company is conditionally increased by up to EUR 2,500.00 (in words: two thousand five hundred euros) by issuing up to 2,500 new no-par value registered shares of the Company ("**Conditional Capital 2022/I**") in accordance with the authorization granted by the Annual General Meeting on May 31, 2022 under agenda item 5 a)."*

In this case, the Management Board is instructed to apply for registration of the provision of Section 3 (10) of the Articles of Association of Marley Spoon SE in the version of the New Contingent Capital 2022/I with the above deviation together with the merger.

- In contrast, if the Conditional Capital 2022/I is *not* resolved by the General Meeting of May 31, 2022 under agenda item 5 with the required majority, neither Marley



Spoon AG nor Marley Spoon SE will have a new Conditional Capital 2022/I at its disposal.

- 4.9 The Supervisory Board of Marley Spoon SE (alternatively the Supervisory Board of Marley Spoon AG) is authorized and at the same time instructed to make any amendments to the Articles of Association of Marley Spoon SE resulting from the foregoing, which are attached to this Merger Plan as **Annex 1**, prior to the registration of the merger in the commercial register of the Local Court of Charlottenburg having jurisdiction over the Company.
- 4.10 The contractual terms and conditions of the participation programs of Marley Spoon (stock option programs, restricted stock units programs) existing at the time the capital increase from company funds becomes effective will automatically be adjusted accordingly by operation of law pursuant to Section 216 (3) sentence 1 AktG.
- 4.11 The shares of the Company are represented by 16 global certificates. These will be replaced after the effective date by a new global certificate in the name of Marley Spoon SE.
- 4.12 The offices of the members of the Management Board of Marley Spoon AG shall end upon the merger taking effect as of the Effective Date.
- 4.13 The offices of the members of the Supervisory Board of Marley Spoon AG shall end upon the merger taking effect as of the Effective Date.

## **§ 5**

### **Continued validity of resolutions of the Annual General Meeting of Marley Spoon AG**

- 5.1 Resolutions (in particular authorizations granted outside the Articles of Association) of the General Meeting of Marley Spoon AG shall continue to apply unchanged to Marley Spoon SE to the extent that they have not yet been implemented at the time of effectiveness.
- 5.2 This applies in particular to
- the authorization granted by resolution of the Annual General Meeting of June 5, 2018 under agenda item 3, letter a), to grant subscription rights to shares (stock options) to members of the Executive Board of the Company, to members of the management of affiliated companies, and to selected managers and employees of the Company and affiliated companies in Germany and abroad;
  - the authorization granted by resolution of the Annual General Meeting of May 24, 2019 under agenda item 6, letter a), to grant subscription rights to shares (stock options) to members of the Executive Board of the Company, to members of the

management of affiliated companies in Germany and abroad, and to selected executives and employees of the Company and affiliated companies in Germany and abroad;

- the authorization granted by resolution of the Annual General Meeting of July 29, 2020 under agenda item 5, letter a), to grant subscription rights to shares (stock options) to members of the Executive Board of the Company, to members of the management bodies of affiliated companies in Germany and abroad, and to selected managers and employees of the Company and affiliated companies in Germany and abroad;
- the authorization granted by resolution of the Annual General Meeting of June 11, 2021 under agenda item 7, letter a), to grant subscription rights to shares (stock options) of members of the Executive Board of the Company, including the Chairman of the Executive Board, as well as authorized signatories, managing directors and other members of management bodies of subsidiaries and affiliated companies of the Company in Germany and abroad, and other members of senior management or executive employees of the Company,

in each case taking into account and subject to a resolution of the Annual General Meeting on May 31, 2022 under agenda item 11 with the required majority on the adjustment of the above authorizations with regard to the capital increase from company funds;

- the authorization, subject to a resolution by the Annual General Meeting with the required majority, proposed for resolution at the Annual General Meeting of the Company on May 31, 2022 under agenda item 5, letter a), to grant subscription rights to shares (stock options) of members of the Executive Board of the Company, including the Chairman of the Executive Board, as well as authorized signatories, managing directors and other members of management bodies of subsidiaries and affiliated companies of the Company in Germany and abroad, and other members of senior management or executive employees of the Company, as well as
- the authorization, subject to a resolution by the Annual General Meeting with the required majority, proposed to the Annual General Meeting of the Company on May 31, 2022 under agenda item 12 for resolution on the acquisition of treasury shares pursuant to Section 71 (1) no. 8 AktG and on the use of treasury shares with possible exclusion of subscription rights.

As a result of the merger and the associated transfer of the Company into Marley Spoon SE, the aforementioned authorizations relate to shares of Marley Spoon SE instead of shares of Marley Spoon AG as of the effective date and otherwise continue to apply at Marley Spoon SE in each case in the version and to the extent existing at the effective date.

## **§ 6**

### **Special rights and special benefits**

- 6.1 -No special rights are granted to persons within the meaning of Art. 20 para. 1 sentence 2 lit. f) SE Regulation -and no special measures are provided for these persons. It is pointed out for reasons of legal precaution that special rights (e.g. conversion rights, option rights or profit participation rights) of holders of securities other than shares remain unaffected; the special rights continue unchanged in the legal form of the SE. No special measures are provided for the holders of these rights.
- 6.2 No special benefits have been or will be granted to persons within the meaning of Art. 20 para. 1 sentence 2 lit. g) SE Regulation in the course of the merger. For reasons of legal precaution, it is pointed out that (notwithstanding the decision-making competence of the Supervisory Board of Marley Spoon SE under stock corporation law) it is to be assumed that the currently acting members of the Management Board of Marley Spoon AG will be appointed as members of the Management Board of Marley Spoon SE. Furthermore, it is intended that all currently acting members of the Supervisory Board of Marley Spoon AG will become members of the first Supervisory Board of Marley Spoon SE; notwithstanding the decision-making competence under stock corporation law of the Supervisory Board of Marley Spoon SE, it is currently to be assumed that Ms. Deena Shiff is to be re-elected as Chairperson of the Supervisory Board of the first Supervisory Board of Marley Spoon SE.

## **§ 7**

### **Measures with regard to the shareholding in MS Holding**

- 7.1 As no new shares of Marley Spoon will be granted in the Merger and the shares of MS Holding will cease to exist as of the Effective Time, no measures in connection with the transfer of the shareholding in MS Holding are intended or required.
- 7.2 Marley Spoon and MS Holding each have positive equity and a positive fair value as of the Merger Date and at the time of preparation of the merger plan. The capital maintenance provisions are complied with, as the equity of Marley Spoon exceeds that of MS Holding in any case.

## **§ 8**

### **Information on the procedure for the involvement of employees in Marley Spoon SE, its affected subsidiaries and affected establishments**

- 8.1 Employee participation in the Marley Spoon Group

Marley Spoon is not subject to any form of corporate co-determination; the Company does not have any German subsidiaries. There is also no form of corporate co-determination in foreign subsidiaries of Marley Spoon.

There are no works councils or general works councils and no group works council at the Company and its respective establishments. In companies of the Marley Spoon Group in other member states of the European Union, there are also no employee representative bodies in accordance with the respective national requirements. The Marley Spoon Group currently has no employees in other signatory states to the Agreement on the European Economic Area, nor does the Marley Spoon Group currently have any companies that are subject to the laws of other signatory states to the Agreement on the European Economic Area.

There is no European Works Council or similar employee representation body at European level at the Company.

## 8.2 Necessity of a procedure for the participation of employees and setting of objectives

In connection with the merger and the resulting conversion of Marley Spoon into a European Company (*Societas Europaea*, SE), a procedure for the involvement of the employees in the future Marley Spoon SE is required by law. "Involvement of the employees" in this context means any procedure, including information, consultation and co-determination, by which representatives of the employees can influence the decision-making within the Company.

The objective of the procedure for the involvement of the employees is the conclusion of an agreement on the involvement of the employees in Marley Spoon SE, in particular on the procedure for the information and consultation of the employees. For this purpose, a so-called special negotiating body of the employees (hereinafter the "SNB") is to be formed, which has the task of negotiating the involvement of the employees in the future Marley Spoon SE with the Executive Board of the Company and MS Holding and to stipulate this in a written agreement.

The registration of Marley Spoon SE in the commercial register of the Local Court Charlottenburg having jurisdiction over the Company can only take place when the procedure for the involvement of the employees has been completed, i.e. when an agreement on the involvement of the employees in the SE has been concluded, the statutory negotiation period has expired without agreement or the procedure has otherwise been completed.

## 8.3 Information of the employees and request for the formation of the SNB

The initiation of the procedure for the involvement of the employees will take place in accordance with the provisions of the SEBG, since Marley Spoon SE will have its registered office in Germany. In this respect, the law provides that the managements of the companies involved, i.e. in this case the Management Board of Marley Spoon AG and the Management Board of MS Holding, inform the employees or their respective employee representations (if any) about the merger proposal and request them to form the SNB. In principle, the procedure shall be initiated without being requested to do so and at the latest without undue delay after disclosure of the merger plan by the management boards of Marley Spoon AG and MS Holding; disclosure shall be effected by filing the

merger plan with the commercial register of the Charlottenburg Local Court having jurisdiction for the Company and, in the case of MS Holding, by publication of the merger plan in the Austrian Edict File (sec. 19 para. 1 öSEG in conjunction with sec. 221a para. 1a öAktG).

The information of the employees or their representatives concerned shall in particular cover (i) the identity and structure of Marley Spoon AG and MS Holding, the subsidiaries and the establishments concerned and their distribution among the Member States, (ii) the employee representations existing in these companies and establishments, (iii) the number of employees employed in each of these companies and establishments and the total number of employees employed in a Member State to be calculated therefrom, and (iv) the number of employees entitled to co-determination rights in the bodies of these companies.

#### 8.4 Formation and composition of the SNB

It is provided by law that the employees or their representative bodies concerned shall elect or appoint the members of the SNB, which shall be composed of representatives of the employees from all the Member States concerned, within ten weeks of the information of the employees or their representative bodies concerned described in § 8.3 the employees or their representative bodies concerned elect or appoint the members of the SNB, which shall be composed of representatives of the employees from all Member States concerned. It is the task of the SNB to negotiate with the managements of the companies involved in the merger, in this case Marley Spoon AG and MS Holding, the form of the participation procedure and the determination of the participation rights of the employees in the SE.

The formation and composition of the SNB is, in principle, governed by German law. The allocation of the seats in the SNB to the individual Member States is to be calculated for an SE formation with its registered office in Germany in such a way that each Member State in which employees of the Marley Spoon Group are employed receives at least one seat in the SNB. Furthermore, the number of members of a Member State in the SNB increases by one member in each case insofar as the number of employees employed in this Member State exceeds a threshold of 10%, 20%, 30% etc. of all employees of the Marley Spoon Group employed in the Member States.

The Marley Spoon Group does not currently employ any employees in any signatory states to the Agreement on the European Economic Area that are not also member states of the European Union. Furthermore, the Marley Spoon Group does not employ any employees at the companies of the Marley Spoon Group in Austria. In accordance with the statutory requirements and on the basis of the number of employees in the respective Member States of the European Union as of April 22, 2022 (the day of publication of the invitation to the Annual General Meeting of Marley Spoon on May 31, 2022, which is to adopt a resolution on the merger plan), a total of 12 seats are allocated to the Member States of the European Union for the SNB in accordance with the following allocation:

<b>Member State</b>	<b>Number of employees</b>	<b>Share of employees (in %, rounded)</b>	<b>Number of members in the SNB</b>
Germany	248	32,21	4
Netherlands	337	43,77	5
Portugal	185	24,03	3
<b>Total:</b>	<b>770</b>	<b>100,00</b>	<b>12</b>

The final number of employees and distribution of seats in the SNB shall be determined as of the effective date of the information of the employees pursuant to the above § 8.3 which will be made without undue delay after the publication of the merger plan.

If, during the activity of the SNB, changes occur in the structure or number of employees of the Company, the affected subsidiaries and the affected establishments as a result of which the specific composition of the SNB would change, the SNB shall be reconstituted accordingly.

The election or appointment of SNB members from the other member states is subject to the respective national regulations. Various procedures may therefore apply, such as the primary election or appointment by works councils or trade unions. In Germany, the relevant members of the SNB shall be elected by direct and secret ballot by the employees employed by Marley Spoon AG and its German operations under the supervision of an election committee to be elected in advance by the employees. The election or appointment of the members as well as the constitution of the SNB are in principle the responsibility of the employees and their employee representatives concerned or the trade unions responsible for them.

#### 8.5 Negotiated procedure

Within the statutory period of ten weeks, the Management Boards of Marley Spoon AG and MS Holding shall be notified of the names of all members of the SNB from the respective Member States (including any substitute members). The Management Boards of Marley Spoon AG and MS Holding shall then invite the respective members of the SNB to its constituent meeting.

On the day of the constitution of the SNB, the procedure for the formation of the SNB shall end and the negotiations with the SNB shall begin, for which a maximum period of six months is provided by law; this maximum period may be extended to a total of up to one year by mutual resolution of the negotiating parties - the Management Boards of Marley Spoon AG and MS Holding as well as the SNB (Section 20 of the German SE Participation Act).

The negotiation procedure shall also take place if the statutory period of ten weeks for the election or appointment of individual or all members of the SNB is exceeded for reasons for which the employees are responsible. However, members elected or appointed subsequently, i.e. in particular during the negotiations already in progress, may participate in

the negotiation procedure at any time. However, a member who joins during the ongoing negotiations must accept the negotiation status he or she finds at that time. There is no entitlement to an extension of the six-month negotiation period.

The objective of the negotiations of the Executive Board of Marley Spoon AG and MS Holding with the SNB is the conclusion of an agreement on the involvement of employees in Marley Spoon SE (Employee Involvement Agreement). The subject matter of the negotiations is, in particular, the determination of the procedure for the information and consultation of the employees either through the formation of an SE works council or in another manner.

The negotiated procedure may alternatively lead to the following results:

- An agreement is concluded between the Executive Board of Marley Spoon AG and MS Holding and the SNB regarding the participation of employees in Marley Spoon SE (Employee Participation Agreement): In this case, the participation rights of the employees in Marley Spoon SE are governed by this agreement. For further details on the agreement on the involvement of employees, reference is made to the following § 8.6 of this merger plan.
- In the negotiation procedure, no agreement is reached within the statutory negotiation period of Section 20 SEBG: In this case, a statutory fall-back provision shall apply. Accordingly, pursuant to Section 22 para. 1 no. 2 SEBG, an SE works council would have to be established at Marley Spoon SE by operation of law, the rights and obligations of which arise in particular from Sections 22 to 33, Section 41 SEBG. However, even under the statutory standard rules, the Supervisory Board of Marley Spoon SE would continue to consist only of representatives of the shareholders, as is the case with the Supervisory Board of Marley Spoon AG. For further details on the statutory fall-back regulation, reference is made to the following § 8.7 reference is made.
- Pursuant to Section 16 para. 1 of the German SE Participation Act, the SNB shall decide not to enter into negotiations or to break off negotiations: Under certain circumstances, the SNB may decide, pursuant to Section 16 para. 1 of the German SE Participation Act, not to enter into negotiations or to break off negotiations which have already been entered into. The resolution requires a majority of two thirds of the members of the SNB representing at least two thirds of the employees in at least two Member States. Such a resolution terminates the negotiation procedure without the statutory standard rules applying, with the consequence that, in particular, no SE- works council would have to be established at Marley Spoon SE. Instead, the provisions for information and consultation applicable in the Member States would apply (Section 16 para. 1 sentence 3 SEBG). The Supervisory Board of Marley Spoon SE would also in this case, like the Supervisory Board of Marley AG, continue to consist only of representatives of the shareholders.

## 8.6 Employee Participation Agreement (Employee Participation Agreement)

In order for the SNB to be able to conclude an agreement with the managements of the companies, i.e. in this case the Executive Board of Marley Spoon AG and MS Holding, on the information and involvement of the employees, the SNB must first adopt a resolution on the approval of the proposed and negotiated agreement, which resolution must be adopted by a majority of the members, which must also represent the majority of the represented employees. The subject matter of the agreement shall be the determination of a procedure for the information and consultation of the employees in the SE. This can take place by means of a procedure determined by the negotiating parties or by means of -the establishment of an SE works council.

If an SE works council is formed, the scope of the agreement, the composition of the SE works council, the number of its members and the allocation of seats, the information and consultation powers, the associated procedure, the frequency of the meetings, the financial and material resources to be provided, the date of entry into force of the agreement and its term as well as the cases in which the agreement is to be renegotiated and the procedure to be applied in this regard are to be agreed pursuant to Section 21 para. 1 SEBG. The agreement shall also stipulate that further negotiations on the involvement of the employees in Marley Spoon SE shall also be commenced prior to any structural changes of Marley Spoon SE.

If no SE Works Council is -established, the implementation modalities of the procedure or procedures for the information and consultation of the employees shall be determined in compliance with the aforementioned substantive requirements of Section 21 para. 1 SEBG.

## 8.7 Statutory standard rule

If an agreement on the involvement of the employees is not reached within the period provided for in Section 20 of the German SE Participation Act and if the SNB does not decide either not to commence negotiations or to terminate them, the statutory standard rules shall apply (cf. Sections 22 to 38 of the German SE Participation Act). The application of the statutory standard rules may also be agreed between the Executive Board of Marley Spoon AG and MS Holding and the SNB in the Employee Participation Agreement.

The application of the subsidiary regulation by operation of law pursuant to Sections 23 to 33 SEBG would have the consequence that an SE works council would have to be established in accordance with Section 23 SEBG, the task of which would be to ensure the information and consultation of the employees in the SE. It would be responsible for matters which concern the SE itself, one of its subsidiaries or one of its establishments in another Member State or which exceed 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 heard at least once per calendar year in a joint meeting about the development of the business situation and the prospects of Marley Spoon SE. The SE



works council would -also have to be informed and heard during the year about extraordinary circumstances which have a significant impact on the interests of the employees.- The composition of the SE Works Council and the election of its members would, in principle, be governed by the provisions on the composition and appointment of the members of the SNB.

The provisions regarding the co-determination of employees by operation of law pursuant to Sections 35 to 38 SEBG would not apply in the present case pursuant to Section 34 para. 1 no. 2 SEBG, since Marley Spoon SE is established by way of a merger and no form of co-determination exists or existed at present, i.e. prior to the registration of Marley Spoon SE, neither in Marley Spoon AG nor in MS Holding.

#### 8.8 Costs of the negotiation procedure and the formation of the SNB

The costs arising from the formation and activity of the SNB shall be borne by MS Holding and Marley Spoon AG or, after the merger has taken effect, Marley Spoon SE as joint and several debtors (Section 19 SEBG). The obligation to bear costs includes the necessary and reasonable material and personal costs in connection with the activities of the SNB, including negotiations, in particular for rooms and material resources (e.g. telephone, fax, literature, etc.) as well as the necessary travel and accommodation expenses of the members of the SNB.

### **§ 9**

#### **Other effects of the merger for the employees and their their representations**

- 9.1 MS Holding has no employees. The merger has no effect in this respect.
- 9.2 Neither Marley Spoon nor MS Holding has a works council.
- 9.3 The employment relationships of the employees of the Marley Spoon Group shall remain unaffected by the merger and the associated transfer of the Company into the legal form of an SE; they shall continue unchanged after the merger. A transfer of business pursuant to Section 613a BGB will not take place.
- 9.4 Any individual or collective agreements applicable to the employees of the Marley Spoon Group shall continue to apply unchanged in accordance with the respective agreements.
- 9.5 As there are no employee representative bodies in the Marley Spoon Group, the merger will have no effect in this respect.
- 9.6 The merger will also not lead to any changes in the operational structure and organization. The identity of the establishments under works constitution law is not affected by the merger.

- 9.7 Other measures that could have an impact on the employees of the Marley Spoon Group are not planned in the present context.
- 9.8 In the course of or as a result of the Merger, no other measures are envisaged or planned which would have an impact on the situation of the employees of the Company and the Marley Spoon Group or their representative bodies.

## **§ 10**

### **Appointment of the first auditor, first fiscal year**

- 10.1 Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft with registered office in Stuttgart, office: Hamburg, Germany, is appointed as auditor of the financial statements and auditor of the consolidated financial statements for the first financial year of Marley Spoon SE.
- 10.2 The first (short) financial year of Marley Spoon SE is the calendar year in which the merger is entered in the commercial register of the Local Court of Charlottenburg having jurisdiction over the Company, i.e. the calendar year in which the Effective Date falls.

## **§ 11**

### **No merger audit and no audit report, no merger report**

- 11.1 Since all shares in MS Holding are held by Marley Spoon, pursuant to Art. 31 para. 1 sentence 1 SE Regulation in conjunction with Sections 9, 12 para. 3, 8 para. 3 sentence 1 var. 2 UmwG and Section 20 öSEG no audit of the merger is required. §§ Sections 9, 12 para. 3, 8 para. 3 sentence 1 var. 2 UmwG and Section 20 öSEG, no audit of the merger, no appointment of a merger auditor and no report on the result of the audit of this merger plan is required.
- 11.2 Since all shares in MS Holding are held by Marley Spoon, no merger report is required pursuant to Art. 31 para. 1 sentence 2 SE Regulation in conjunction with Section 8 para. 3 sentence 1 var. 2 UmwG and Section 232 para. 1 öAktG. § Section 8 para. 3 sentence 1 var. 2 UmwG and Section 232 para. 1 öAktG, no merger report of the representative bodies of the two companies is required.

## **§ 12**

### **Creditor protection and protection of other parties under the law of obligations**

- 12.1 Creditors of MS Holding shall be granted security for the claims arising up to that point in time if they submit written claims for this purpose no later than one month after the merger resolution, insofar as they cannot demand satisfaction. The creditors shall only be entitled to this right if they can credibly demonstrate that the fulfillment of their claims is jeopardized by the merger.

These claims must be made in writing to:

MS Holding AG, Viktringer Ring 5/4, 9020 Klagenfurt am Wörthersee, Austria

- 12.2 There are no holders of profit participation rights or bonds, so no regulations to this effect need to be defined.

### **§ 13**

#### **Costs**

The Company shall bear the costs incurred in connection with the preparation and implementation of the Merger and the costs incurred in connection with this Merger Plan.

### **§ 14**

#### **Applicable law**

Unless otherwise provided for in the merger plan and with the exception of those items which are subject to the mandatory law applicable to MS Holding - i.e. the law of the Republic of Austria - the merger plan shall be governed by the law of the Federal Republic of Germany and shall be interpreted accordingly.

#### **Attachments:**

- **Annex 1:** Articles of Association of Marley Spoon SE
- **Annex 2:** Articles of Association of Marley Spoon AG

\* \* \* \*

**Articles of Association of Marley Spoon SE**

# MARLEY SPOON

## **Satzung/ Constitution**

Stand: [...] / As of: [...]

**SATZUNG DER MARLEY SPOON SE/  
CONSTITUTION OF MARLEY SPOON SE**

*Deutsche Fassung*

*English Translation*

**SATZUNG  
DER  
MARLEY SPOON SE**

**CONSTITUTION  
OF  
MARLEY SPOON SE**

**A.  
ALLGEMEINE BESTIMMUNGEN**

**A.  
GENERAL PROVISIONS**

**§ 1  
FIRMA, SITZ UND GESCHÄFTSJAHR**

**§ 1  
COMPANY NAME, REGISTERED  
OFFICE AND FINANCIAL YEAR**

- (1) Die Gesellschaft führt die Firma  
**Marley Spoon SE.**
- (2) Sie hat ihren Sitz in  
**Berlin.**
- (3) Das Geschäftsjahr ist das Kalenderjahr.

- (1) The name of the Company is  
**Marley Spoon SE.**
- (2) The Company has its registered office  
in  
**Berlin.**
- (3) The financial year is the calendar year.

**§ 2  
GEGENSTAND DES UNTERNEHMENS**

**§ 2  
OBJECT OF THE COMPANY**

- (1) Gegenstand des Unternehmens ist der Einkauf, die Entwicklung, Herstellung, Vermarktung, der Vertrieb und die Lieferung von Produkten im Lebensmittelbereich und damit verbundener Non-food-Erzeugnisse, einschließlich der Lieferung von Kochrezepten und Zutaten in Form von Gesamtpaketlösungen an Endverbraucher, die Zusammenstellung, Entwicklung, Gestaltung und Vermarktung von Kochrezepten und

- (1) The object of the Company is the procurement, development, production, marketing, distribution and supply of products in the food sector and related non-food-products, including the delivery of cooking recipes and ingredients in the form of overall package solutions to end consumers, the composition, development, creation and marketing of cooking recipes and diet recommendations, particularly also

**Deutsche Fassung**

Ernährungshinweisen, insbesondere auch über das Internet, sowie die Entwicklung, Vermarktung und Erbringung damit verbundener Dienstleistungen an Verbraucher, Vertriebs Händler und sonstige gewerbliche oder private Abnehmer.

- (2) Die Gesellschaft kann sich an anderen Unternehmen mit gleichem oder ähnlichem Gegenstand beteiligen, Zweigniederlassungen im In- und Ausland errichten und alle Geschäfte betreiben sowie sämtliche Handlungen und Maßnahmen vornehmen, die mit dem Gegenstand des Unternehmens zusammenhängen oder die geeignet erscheinen, den Gesellschaftszweck unmittelbar oder mittelbar zu fördern. Sie kann ihren Betrieb ganz oder teilweise in verbundene Unternehmen ausgliedern oder ihn verbundenen Unternehmen überlassen und sich auf die Verwaltung ihrer Beteiligungen als geschäftsleitende Holding beschränken. Sie kann ihre Tätigkeit auf einen Teil der in vorstehendem Absatz 1 bezeichneten Tätigkeitsfelder beschränken.

**§ 3****GRUNDKAPITAL**

- (1) Das Grundkapital der Gesellschaft beträgt EUR 29.195.800,00 (in Worten: neunundzwanzig Millionen einhundertfünfundneunzigtausend achthundert Euro). Es wurde in Höhe von EUR 82.084,00 (in Worten: zweiundachtzigtausendvierundachtzig Euro) durch Formwechsel gemäß §§ 190 ff. UmwG der im Handelsregister des Amtsgerichts Charlottenburg unter HRB 158261 B eingetragenen Marley Spoon GmbH mit Sitz in Berlin erbracht.

**English Translation**

through the internet, as well as the development, marketing and provisioning of related services to consumers, distributors and other commercial or private customers.

- (2) The Company may acquire or invest in other companies whose object fully or partially covers the aforementioned areas, establish branches (domestic or abroad) and may conduct all transactions, and perform all acts and measures relating to the object of the Company or which are deemed suitable for directly or indirectly promoting its business object. It may outsource its business in full or in part to affiliated companies or transfer it to affiliated companies and confine itself to the management of its participations as a management holding company. It may limit its activity to a part of the areas designated in paragraph 1 above.

**§ 3****SHARE CAPITAL**

- (1) The share capital of the Company is EUR 29,195,800.00 (in words: twenty-nine million one hundred ninety-five thousand and eight hundred Euros). It has been provided in the amount of EUR 82,084.00 (in words: eighty-two thousand eighty-four Euros) by way of conversion pursuant to Sections 190 *et seqq.* of the German Conversion Act (*Umwandlungsgesetz*, “**UmwG**”) of Marley Spoon GmbH with registered office in Berlin, registered with the commercial register of the local court of Charlottenburg under registration number HRB 158261 B.

<i>Deutsche Fassung</i>	<i>English Translation</i>
<p>(2) Das Grundkapital der Gesellschaft ist eingeteilt in 29.195.800 Stückaktien (Aktien ohne Nennbetrag).</p> <p>(3) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum 30. Mai 2027 mit Zustimmung des Aufsichtsrats durch Ausgabe von bis zu 13.888.600 neuen, auf den Namen lautenden Stückaktien gegen Bar- und/oder Sacheinlage einmalig oder mehrmals um bis zu insgesamt EUR 13.888.600,00 (in Worten: dreizehn Millionen achthundertachtundachtzigtausend sechshundert Euro) zu erhöhen („<b>Genehmigtes Kapital 2022/I</b>“).</p> <p>Dabei ist den Aktionären grundsätzlich ein Bezugsrecht auf die Aktien einzuräumen. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne von § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Darüber hinaus können die Aktien auch von einem Treuhänder (jeweils der „<b>Treuhänder</b>“) mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle dieser Aktien eine solche Anzahl von sogenannten CHESS Depository Interests („<b>CDIs</b>“), z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen, die den neuen Aktien entspricht.</p> <p>Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats das Bezugsrecht der Aktionäre bei einer oder mehreren Kapitalerhöhungen im Rahmen des Genehmigten Kapitals 2022/I auszuschließen</p> <p>(i) um Spitzenbeträge vom Bezugsrecht auszuschließen;</p>	<p>(2) The share capital of the Company is divided into 29,195,800 no-par-value shares (shares without nominal value).</p> <p>(3) The Management Board is authorised until May 30, 2027, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 13,888,600.00 (in words: thirteen million eight hundred eighty-eight thousand six hundred Euros) by issuing up to 13,888,600 new no-par-value registered shares against contribution in cash and/or in kind (“<b>Authorised Capital 2022/I</b>”).</p> <p>In principle, the shareholders are to be offered subscription rights with respect to such shares. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 of the German Stock Corporation Act (Aktiengesetz, “<b>AktG</b>”) with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee (in each case the “<b>Trustee</b>”) with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CHESS Depository Interests (“<b>CDIs</b>”), e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares.</p> <p>The Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2022/I</p> <p>(i) in order to exclude fractional amounts from the subscription right;</p>



*Deutsche Fassung*

- (ii) im Falle einer Kapitalerhöhung gegen Bareinlagen, sofern der Ausgabepreis der neuen Aktien/CDIs den Börsenpreis der bereits börsennotierten Aktien/CDIs der Gesellschaft nicht wesentlich unterschreitet. Diese Ermächtigung gilt jedoch nur mit der Maßgabe, dass der anteilige Betrag des Grundkapitals, der auf die ausgegebenen Aktien entfällt, die gemäß § 186 Abs. 3 Abs. 4 AktG unter dieser Ermächtigung zum Bezugsrechtsausschluss ausgegeben werden, 10 % des Grundkapitals der Gesellschaft im Zeitpunkt des Wirksamwerdens des Genehmigten Kapitals 2022/I oder - falls das eingetragene Grundkapital der Gesellschaft geringer ist - im Zeitpunkt der Ausübung des Genehmigten Kapitals 2022/I nicht übersteigen darf (die „**10 %-Platzierungsschwelle**“). Auf die 10 %-Platzierungsschwelle sind ferner anzurechnen (a) eigene Aktien, die während der Laufzeit des Genehmigten Kapitals 2022/I aufgrund einer Ermächtigung zur Veräußerung eigener Aktien gemäß §§ 71 Abs. 1 Nr. 8 Satz 5, 186 Abs. 3 Satz 4 AktG unter Ausschluss des Bezugsrechts der Aktionäre auf diese eigenen Aktien veräußert werden, (b) Aktien, die während der Laufzeit des Genehmigten Kapitals 2022/I zur Erfüllung von Bezugs- oder Wandlungsrechten oder -pflichten aus Wandel- und/oder Optionsschuldverschreibungen, Genussrechten und/oder Gewinnschuldverschreibungen (bzw. Kombinationen dieser Instrumente) (zusammen „**Schuldverschreibungen**“) ausgegeben werden, sofern die Ausgabe dieser Schuldverschreibungen unter Ausschluss des Bezugsrechts der Aktionäre in direkter oder entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG erfolgt 3 Satz 4 AktG ausgegeben werden, und (c) Aktien, die während der Laufzeit des

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- (ii) in the event of a capital increase against cash contributions, provided that the issue price of the new shares/CDIs is not significantly lower than the stock exchange price of the shares/CDIs of the Company already listed. However, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares issued, in accordance with Section 186 para. 3 sentence 4 AktG, under this authorisation to exclude shareholders' subscription rights shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2022/I comes into effect or – in the case the registered share capital of the Company is lower – at the time the Authorised Capital 2022/I is exercised (the “**10% Placement Threshold**”). Towards the 10% Placement Threshold shall also count (a) any treasury shares that are sold during the Authorised Capital 2022/I term on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG, provided that the shareholders' subscription rights for such treasury shares are excluded, (b) any shares that are issued during the Authorised Capital 2022/I term to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the “**Bonds**”), provided that such Bonds are issued subject to the exclusion of the shareholders' subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG, and (c) any shares that are issued during the Authorised Capital 2022/I term on the basis of other capital measures, provided that such

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Genehmigten Kapitals 2022/I auf Grund anderer Kapitalmaßnahmen unter Ausschluss des Bezugsrechts in direkter oder entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG ausgegeben werden;

shares are issued subject to the exclusion of the shareholders' subscription rights in direct or analogous application of Section 186 para. 3 sentence 4 AktG;

- (iii) soweit es erforderlich ist, damit die Gesellschaft (a) den Inhabern bzw. Gläubigern von Schuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen bei Ausübung des Wandlungs- bzw. Optionsrechts oder bei Erfüllung der Wandlungs- bzw. Optionspflicht ausgegeben werden, neue Aktien der Gesellschaft gewähren kann, und (b) Inhabern von Wandlungs- oder Optionsrechten bzw. Gläubigern von mit Wandlungspflichten ausgestatteten Wandel- oder Optionsschuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen ausgegeben werden, ein Bezugsrecht auf neue Aktien in dem Umfang zu gewähren, wie es ihnen nach Ausübung der Options- oder Wandlungsrechte bzw. nach Erfüllung der Wandlungs- oder Optionspflichten als Aktionär zustehen würde;

- (iii) to the extent necessary in order for the Company to be able to (a) grant new shares of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon exercise of their conversion or option rights or fulfilment of their conversion or option obligations, and (b) grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations, that will be issued by the Company or its subordinated group companies, a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;

- (iv) im Falle einer Kapitalerhöhung gegen Sacheinlagen, insbesondere im Rahmen von Unternehmenszusammenschlüssen oder beim (auch mittelbaren) Erwerb von Unternehmen, Betrieben, Unternehmensteilen, Beteiligungen oder sonstigen Vermögensgegenständen oder Ansprüchen auf den Erwerb von Vermögensgegenständen, einschließlich Forderungen gegen die Gesellschaft oder eine ihrer Konzerngesellschaften.

- (iv) in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.

Das Bezugsrecht der Aktionäre kann nach Maßgabe der vorstehenden Bestimmungen auch zugunsten des Treuhänders ausgeschlossen werden, der die

The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new

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neuen Aktien mit der Verpflichtung zur treuhänderischen Verwahrung der Aktien und mit der Verpflichtung für die Gesellschaft, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine entsprechende Anzahl von CDIs zuzuteilen, zeichnen kann.

Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn abgeschlossener Geschäftsjahre teilnehmen können, für die noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist.

Der Aufsichtsrat wird ermächtigt, die Fassung der Satzung nach Ausnutzung des Genehmigten Kapitals 2022/I oder nach Ablauf der Laufzeit des Genehmigten Kapitals 2022/I entsprechend anzupassen.

- (4) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), um bis zu EUR 410.500,00 (in Worten: vierhundertzehntausend fünfhundert Euro) durch Ausgabe von bis zu 410.500 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2018/II**“). Das Bedingte Kapital 2018/II dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2018/II bis zum 4. Juni 2023 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung ver-

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shares with the obligation to hold the shares in trust and with the obligation for the Company to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.

The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed financial years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed.

The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2022/I or upon expiry of the Authorised Capital 2022/I term.

- (4) In accordance with the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), the share capital of the Company is conditionally increased by up to EUR 410,500.00 (in words: four hundred and ten thousand five hundred Euros) by issuing up to 410,500 new no-par-value registered shares of the Company (“**Conditional Capital 2018/II**”). The Conditional Capital 2018/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), under the Share Option Program from the date of the registration of the Conditional Capital 2018/II until June 4, 2023 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies as

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bundener Unternehmen sowie an ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2018/II erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (5) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a), um bis zu EUR 700.000,00 (in Worten: siebenhunderttausend Euro) durch Ausgabe von bis zu 700.000 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2019/III**“). Das Bedingte Kapital 2019/III dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a), von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2019/III bis zum 23. Mai 2024 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung verbundener Unternehmen im In- und Ausland sowie an ausgewählte Führungskräfte und Ar-

*English Translation*

well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2018/II at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

- (5) In accordance with the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), the share capital of the Company is conditionally increased by up to EUR 700,000.00 (in words: seven hundred thousand Euros) by issuing up to 700,000 new no-par-value registered shares of the Company (“**Conditional Capital 2019/III**”). The Conditional Capital 2019/III solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), under the Share Option Program from the date of the registration of the Conditional Capital 2019/III until May 23, 2024 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The

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beitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2019/III erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (6) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5, lit. a) um bis zu EUR 633.200,00 (in Worten: sechshundertdreißigtausend zweihundert Euro) durch Ausgabe von bis zu 633.200 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2020/II**“). Das Bedingte Kapital 2020/II dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5, lit. a) im Rahmen des Aktienoptionsprogramms 2020 ab dem Zeitpunkt der Eintragung des Bedingten Kapitals 2020/II bis zum 28. Juli 2025 von der Gesellschaft an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführungsorgane verbundener Unternehmen im In- und Ausland sowie ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und ver-

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shares will be issued from the Conditional Capital 2019/III at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

- (6) In accordance with the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), the share capital of the Company is conditionally increased by up to EUR 633,200.00 (in words: six hundred thirty-three thousand two hundred Euros) by issuing up to 633,200 new no-par-value registered shares of the Company (“**Conditional Capital 2020/II**”). The Conditional Capital 2020/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), under the Share Option Program 2020 from the date of the registration of the Conditional Capital 2020/II until July 28, 2025 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The

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bundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2020/II erfolgt zu dem nach Maßgabe von lit. a) (vii) der vorstehenden Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleichs gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem das Bezugsrecht ausgeübt wurde und für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstandes der Gesellschaft betroffen sind, der Aufsichtsrat, ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (7) Das Grundkapital der Gesellschaft ist gemäß der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7, lit. a) um bis zu EUR 216.500,00 (in Worten: zweihundertsechzehntausend fünfhundert Euro) durch Ausgabe von bis zu 216.500,00 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2021/I**“). Das Bedingte Kapital 2021/I dient ausschließlich der Bedienung von Aktienoptionen, d.h. Bezugsrechten auf Aktien, die von der Gesellschaft an Teilnehmer der Gruppe 1, d.h. Mitglieder des Vorstands der Gesellschaft einschließlich des Vorstandsvorsitzenden, sowie Teilnehmer der Gruppe 2, d.h. (a) Prokuristen, Geschäftsführer und sonstige Mitglieder von Geschäftsführungsorganen von Tochtergesellschaften und verbundene Unternehmen der Gesellschaft im In- und Ausland und (b) sonstige Mitglieder der oberen Leitungsebene bzw. leitende Angestellte der Gesellschaft auf-

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shares will be issued from the Conditional Capital 2020/II at the exercise price determined in accordance with lit. a) (vii) of the aforementioned authorisation. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorised to determine the further details of the conditional capital increase and its consummation.

- (7) In accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7, lit. a), the share capital of the Company is conditionally increased by up to EUR 216,500.00 (in words: two hundred sixteen thousand five hundred Euros) by issuing up to 216,500 new no-par-value registered shares of the Company (“**Conditional Capital 2021/I**”). The Conditional Capital 2021/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a). The Shares will

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grund der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a). Die Ausgabe der Aktien aus dem Bedingten Kapital 2021/I erfolgt zu dem nach Maßgabe der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(v) festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur dann durchgeführt, d.h. verwässernd wirken, wenn und soweit von Aktienoptionen Gebrauch gemacht wird und die Gesellschaft von ihrem Wahlrecht Gebrauch macht, neue Aktien gemäß der in der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(vi) beschriebenen Standard-Erfüllungsoption auszugeben. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem die Aktienoptionen ausgeübt werden und für das noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft bzw., soweit Mitglieder des Vorstands betroffen sind, der Aufsichtsrat der Gesellschaft ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (8) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 400.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 400.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („**Genehmigtes Kapital 2021/II**“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des ersten Restricted Stock Unit Programms der Gesellschaft 2021/I (RSUP 2021/I) ausschließlich an die folgenden „**RSUP 2021/I-Begünstigten**“ gewährt wurden:

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be issued from the Conditional Capital 2021/I at the Exercise Price determined in accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7 lit. a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorised to determine the further details of the conditional capital increase and its consummation.

- (8) The Management Board is authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company's registered share capital by up to EUR 400,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 400,000 new no-par-value registered shares (“**Authorised Capital 2021/II**”). The subscription rights of shareholders are excluded. The Authorised Capital 2021/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2021/I (RSUP 2021/I) exclusively to the following “**RSUP 2021/I**”

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(a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen der RSUP 2021/I-Begünstigten gegen die Gesellschaft aus dem RSUP 2021/I, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

- (9) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 200.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 200.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („**Genehmigtes Kapital 2021/III**“). Das Bezugsrecht der

**English Translation**

**Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2021/I Beneficiaries’ claims against the Company under the RSUP 2021/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

- (9) The Management Board is authorised, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company’s registered share capital by up to EUR 200,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 200,000 new no-par-value registered shares (“**Authorised Capital 2021/III**”). The subscription rights of



*Deutsche Fassung*

Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/III dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des zweiten Restricted Stock Unit Programms der Gesellschaft 2021/II (RSUP 2021/II) ausschließlich an die folgenden „**RSUP 2021/II-Begünstigten**“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder durch Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen gegen die Gesellschaft aus dem RSUP 2021/II, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; dies umfasst auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

*English Translation*

shareholders are excluded. The Authorised Capital 2021/III serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the second Restricted Stock Unit Program of the Company 2021/II (RSUP 2021/II) exclusively to the following “**RSUP 2021/II Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2021/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

**Deutsche Fassung**

- (10) Das Grundkapital der Gesellschaft ist gemäß der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a) um bis zu EUR 250.000,00 (in Worten: zweihundertfünzigtausend dreihundert Euro) durch Ausgabe von bis zu 250.000 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht („**Bedingtes Kapital 2022/I**“). Das Bedingte Kapital 2022/I dient ausschließlich der Gewährung von Aktienoptionen, d.h. Bezugsrechten auf Aktien, die von der Gesellschaft an Teilnehmer der Gruppe 1, d.h. Mitglieder des Vorstands der Gesellschaft einschließlich des Vorstandsvorsitzenden, sowie Teilnehmer der Gruppe 2, d.h. (a) Prokuristen, Geschäftsführer und sonstige Mitglieder von Geschäftsführungsorganen von Tochtergesellschaften und verbundene Unternehmen der Gesellschaft im In- und Ausland und (b) sonstige Mitglieder der oberen Leitungsebene bzw. leitende Angestellte der Gesellschaft aufgrund der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a) ausgegeben werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2022/I erfolgt zu dem nach Maßgabe der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a)(v) festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur dann durchgeführt, d.h. verwässernd wirken, wenn und soweit von Aktienoptionen Gebrauch gemacht wird und die Gesellschaft von ihrem Wahlrecht Gebrauch macht, neue Aktien gemäß der in der Ermächtigung der Hauptversammlung vom 31. Mai 2022 unter Tagesordnungspunkt 5 lit. a)(vi) beschriebenen Standard-Erfüllungsoption auszugeben. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem die Aktienoptionen ausgeübt werden und für das noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft bzw., soweit Mitglieder des Vorstands

**English Translation**

- (10) In accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a), the share capital of the Company is conditionally increased by up to EUR 250,000.00 (in words: two hundred fifty thousand Euros) by issuing up to 250,000 new no-par-value registered shares of the Company (“**Conditional Capital 2022/I**”). The Conditional Capital 2022/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company’s subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a). The Shares will be issued from the Conditional Capital 2022/I at the Exercise Price determined in accordance with the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of the general meeting of May 31, 2022 under agenda item 5 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

**Deutsche Fassung****English Translation**

betroffen sind, der Aufsichtsrat der Gesellschaft ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (11) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 30. Mai 2027 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 100.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 100.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen („**Genehmigtes Kapital 2022/II**“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2022/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des ersten Restricted Stock Unit Programms der Gesellschaft 2022/I (RSUP 2022/I) ausschließlich an die folgenden „**RSUP 2022/I-Begünstigten**“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien

- (11) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 100,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 100,000 new no-par-value registered shares (“**Authorised Capital 2022/II**”). The subscription rights of shareholders are excluded. The Authorised Capital 2022/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2022/I (RSUP 2022/I) exclusively to the following “**RSUP 2022/I Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution

*Deutsche Fassung*

muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen der RSUP 2022/I-Begünstigten gegen die Gesellschaft aus dem RSUP 2022/I, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

- (12) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 30. Mai 2027 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 9.300,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 9.300 neuen, auf den Namen lautenden Stückaktien zu erhöhen („**Genehmigtes Kapital 2022/III**“). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2022/III dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des zweiten Restricted Stock Unit Programms der Gesellschaft 2022/II (RSUP 2022/II) ausschließlich an die folgenden „**RSUP 2022/II-Begünstigten**“ gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft

*English Translation*

and/or contribution in kind, including in particular the contribution of RSUP 2022/I Beneficiaries' claims against the Company under the RSUP 2022/I. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

- (12) The Management Board is authorised, with the consent of the Supervisory Board, until May 30, 2027 (including), to increase the Company's registered share capital by up to EUR 9,300.00 against cash contributions and/or contributions in kind once or several times by issuing up to 9,300 new no-par-value registered shares (“**Authorised Capital 2022/III**”). The subscription rights of shareholders are excluded. The Authorised Capital 2022/III serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfil RSUs that were granted in accordance with the terms and conditions of the second Restricted Stock Unit Program of the Company 2022/II (RSUP 2022/II) exclusively to the following “**RSUP 2022/II Beneficiaries**”: (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the

**Deutsche Fassung**

zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder durch Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen gegen die Gesellschaft aus dem RSUP 2022/II, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; dies umfasst auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

**§ 4  
AKTIEN**

- (1) Sämtliche Aktien der Gesellschaft lauten auf den Namen. Die Aktionäre haben der Gesellschaft zur Eintragung in das Aktienregister, soweit es sich um natürliche Personen handelt, ihren Namen, ihre Anschrift und ihr Geburtsdatum und, soweit es sich um juristische Personen oder (teil-)rechtsfähige Gesellschaften handelt, ihren Namen oder ihre Firma, ihren Sitz und ihre Geschäftsanschrift sowie in jedem Fall die Zahl der von ihnen gehaltenen Aktien der Gesellschaft und - sofern vorhanden - ihre elektronische Postadresse anzugeben.

**English Translation**

Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2022/II. The Management Board is authorised to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

**§ 4  
SHARES**

- (1) All shares in the Company are registered shares. To be entered in the share register, shareholders who are natural persons must notify the Company of their name, address and date of birth, while legal entities and (partly) incorporated partnerships must inform the Company of their name or Company name, their principal place of business and their business address. Moreover, the Company must always be notified of the number of shares held and - if available - of each shareholder's email address.

<i>Deutsche Fassung</i>	<i>English Translation</i>
<p>(2) Die Form der Aktienurkunden setzt der Vorstand mit Zustimmung des Aufsichtsrates fest. Die Gesellschaft kann Gewinnanteil- und Erneuerungsscheine ausgeben. Die Gesellschaft kann einzelne Aktien in Aktienurkunden zusammenfassen, die eine Mehrzahl von Aktien verbrieften (Globalaktien, Globalurkunden).</p> <p>(3) Für Gewinnanteil- und Erneuerungsscheine sowie Schuldverschreibungen und Zins- und Erneuerungsscheine gilt Abs. 2 Satz 1.</p> <p>(4) Das Recht der Aktionäre auf Verbriefung ihres Anteils ist ausgeschlossen.</p>	<p>(2) The form of share certificates shall be determined by the Management Board subject to the approval of the Supervisory Board. The Company may issue dividend and renewal coupons. The Company may combine individual shares in share certificates certifying multiple shares (global certificates).</p> <p>(3) Para. 2 sentence 1 applies to dividend and renewal coupons as well as to bonds, bond coupons and renewal coupons.</p> <p>(4) Shareholders have no automatic entitlement to physical share certificates.</p>
<p style="text-align: center;"><b>B.</b> <b>ORGANE DER GESELLSCHAFT</b></p>	<p style="text-align: center;"><b>B.</b> <b>CORPORATE BODIES</b></p>
<p style="text-align: center;"><b>§ 5</b> <b>ORGANE DER GESELLSCHAFT</b></p>	<p style="text-align: center;"><b>§ 5</b> <b>CORPORATE BODIES</b></p>
<p>(1) Die Gesellschaft hat ein dualistisches Leitungs- und Aufsichtssystem, bestehend aus einem Leitungsorgan (Vorstand) und einem Aufsichtsorgan (Aufsichtsrat).</p> <p>(2) Organe der Gesellschaft sind:</p> <ul style="list-style-type: none"> <li>a) der Vorstand (Abschnitt I.);</li> <li>b) der Aufsichtsrat (Abschnitt II.) und</li> <li>c) die Hauptversammlung (Abschnitt III.).</li> </ul>	<p>(1) The Company has a two-tier management and supervisory system, consisting of a management body (Management Board) and a supervisory body (Supervisory Board).</p> <p>(2) The corporate bodies of the Company are:</p> <ul style="list-style-type: none"> <li>a) the Management Board (Section I.);</li> <li>b) the Supervisory Board (Section II.) and</li> <li>c) the General Meeting (Section III.).</li> </ul>

**Deutsche Fassung****English Translation****I.  
VORSTAND****I.  
MANAGEMENT BOARD****§ 6  
ZUSAMMENSETZUNG UND  
GESCHÄFTSORDNUNG DES  
VORSTANDS****§ 6  
COMPOSITION AND RULES OF  
PROCEDURE OF THE MANAGEMENT  
BOARD**

- (1) Der Vorstand besteht aus einer oder mehreren Personen.
- (2) Der Aufsichtsrat bestellt die Vorstandsmitglieder für die Amtszeit von maximal fünf Jahren und bestimmt im Rahmen von Abs. 1 ihre Zahl. Der Aufsichtsrat kann einen Vorsitzenden des Vorstands sowie einen stellvertretenden Vorsitzenden des Vorstands ernennen.
- (3) Der Aufsichtsrat kann eine Geschäftsordnung für den Vorstand erlassen. Der Geschäftsverteilungsplan des Vorstands bedarf der Zustimmung des Aufsichtsrats.

- (1) The Management Board is to consist of one or more members.
- (2) The Supervisory Board shall appoint the members of the Management Board for a term of office of a maximum of five years and set their number in accordance with para. 1. The Supervisory Board may appoint a Chair of the Management Board and a Deputy Chair of the Management Board.
- (3) The Supervisory Board may adopt rules of procedure for the Management Board. The executive organization chart is subject to the approval of the Supervisory Board.

**§ 7  
GESCHÄFTSFÜHRUNG UND  
VERTRETUNG DER GESELLSCHAFT****§ 7  
MANAGEMENT AND  
REPRESENTATION OF THE COMPANY**

- (1) Die Mitglieder des Vorstands haben die Geschäfte der Gesellschaft nach Maßgabe der Gesetze, der Satzung, der Geschäftsordnung für den Vorstand und des Geschäftsverteilungsplans zu führen.
- (2) Ist nur ein Vorstandsmitglied bestellt, so vertritt dieses die Gesellschaft allein. Sind mehrere Vorstandsmitglieder bestellt, so wird die Gesellschaft durch zwei Vorstandsmitglieder oder durch ein Vorstandsmitglied in Gemeinschaft

- (1) The members of the Management Board shall conduct the business transactions of the Company in accordance with the law, the Constitution, the rules of procedure for the Management Board and the executive organization chart.
- (2) If only one member has been appointed to the Management Board, the Company will be solely represented by this member. If multiple persons have been appointed to the Management Board, the Company will be legally represented by two Management Board

**Deutsche Fassung**

mit einem Prokuristen gesetzlich vertreten. Der Aufsichtsrat kann bestimmen, dass einzelne oder alle Vorstandsmitglieder einzelvertretungsbefugt sind. Der Aufsichtsrat kann ferner alle oder einzelne Vorstandsmitglieder generell oder für den Einzelfall vom Verbot der Mehrfachvertretung gemäß § 181, 2. Alternative BGB befreien; § 112 AktG bleibt unberührt.

(3) Der Vorstand bedarf der Zustimmung des Aufsichtsrats

- a) zur Veräußerung des Unternehmens im Ganzen;
- b) zum Abschluss von Verträgen oder Plänen nach dem Umwandlungsgesetz;
- c) zum Abschluss von Unternehmensverträgen nach § 291 AktG.

Darüber hinaus ordnet der Aufsichtsrat im Rahmen des rechtlich Zulässigen in der Geschäftsordnung für den Vorstand oder durch Beschluss an, welche Arten von Geschäften seiner Zustimmung bedürfen.

**English Translation**

members or by one member and one executive vested with the power of commercial representation (*Prokurist*). The Supervisory Board may decide that specific members or all members of the Management Board have sole power of representation. The Supervisory Board may also 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 Section 181, 2<sup>nd</sup> alternative of the German Civil Code (*Bürgerliches Gesetzbuch*, “**BGB**”); Section 112 AktG remains unaffected.

(3) The Management Board requires the approval of the Supervisory Board:

- a) To sell the Company as a whole;
- b) To conclude contracts or plans pursuant to the German Conversion Act;
- c) To conclude inter-company agreements as defined in Section 291 AktG.

In addition, the Supervisory Board may specify, within the limits permitted by law, in the rules of procedure for the Management Board or by resolution the types of transactions requiring its consent.



**Deutsche Fassung****English Translation****II.  
AUFSICHTSRAT****II.  
SUPERVISORY BOARD****§ 8  
ZUSAMMENSETZUNG UND  
AMTSDAUER****§ 8  
COMPOSITION AND TERM OF OFFICE**

- |   |   |
|---|---|
| <p>(1) Der Aufsichtsrat besteht aus vier Mitgliedern, die von der Hauptversammlung gewählt werden.</p> <p>(2) Die Mitglieder des Aufsichtsrats werden vorbehaltlich einer anderweitigen Festlegung der Amtszeit bei der Wahl bis zur Beendigung der Hauptversammlung bestellt, die über die Entlastung für das zweite Geschäftsjahr nach dem Beginn der Amtszeit beschließt. Das Geschäftsjahr, in welchem die Amtszeit beginnt, wird hierbei nicht mitgerechnet. In jedem Fall erfolgt die Wahl jedoch längstens für sechs Jahre.</p> <p>(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 abweichend bestimmt. Entsprechendes gilt, falls eine Nachwahl wegen Wahlanfechtung notwendig wird.</p> <p>(4) Gleichzeitig mit den Aufsichtsratsmitgliedern können für ein oder für mehrere bestimmte Aufsichtsratsmitglieder Ersatzmitglieder gewählt werden. Sie werden nach einer bei der Wahl festzulegenden Reihenfolge Mitglieder des Aufsichtsrates, wenn Aufsichtsratsmitglieder, als deren Ersatzmitglieder sie gewählt wurden, vor Ablauf der Amtszeit aus dem Aufsichtsrat ausscheiden. Tritt ein Ersatzmitglied an die Stelle des</p> | <p>(1) The Supervisory Board shall consist of four members which are elected by the General Meeting.</p> <p>(2) Unless otherwise specified at the time of their election, the members of the Supervisory Board are elected for a period terminating at the end of the General Meeting that resolves on the formal approval of the members' acts for the second fiscal year following the commencement of their term of office. The fiscal year in which the term of office begins shall not be included in this calculation. However, in any case, the respective election is effected for a term of six years at the longest.</p> <p>(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. The same applies if a successor has to be elected due to a challenge of the election.</p> <p>(4) Simultaneously with the members of the Supervisory Board, substitute members can be elected for one or more specific members of the Supervisory Board. Substitute members shall join the Supervisory Board in accordance with the order of precedence determined at the time of their election if Supervisory Board members whom they have been appointed to replace leave office prematurely. If a member</p> |
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Ausgeschiedenen, so erlischt sein Amt mit Beendigung der nächsten Hauptversammlung.

- (5) Jedes Aufsichtsratsmitglied und jedes Ersatzmitglied kann sein Amt auch ohne wichtigen Grund unter Einhaltung einer Frist von einem Monat niederlegen. Die Niederlegung muss durch schriftliche Erklärung gegenüber dem Vorstand unter Benachrichtigung des Vorsitzenden des Aufsichtsrates erfolgen. Der Vorstand kann die Frist abkürzen oder auf die Einhaltung der Frist verzichten. Das Recht zur Amtsniederlegung aus wichtigem Grund bleibt hiervon unberührt.

**§ 9****VORSITZENDER UND  
STELLVERTRETER**

- (1) Der Aufsichtsrat wählt in der ersten Sitzung nach seiner Wahl aus seiner Mitte einen Vorsitzenden und einen oder mehrere Stellvertreter. Die Wahl erfolgt für die Amtsdauer der gewählten oder einen kürzeren vom Aufsichtsrat bestimmten Zeitraum. Stellvertreter haben die Rechte und Pflichten des Vorsitzenden des Aufsichtsrates, wenn dieser verhindert ist. Unter mehreren Stellvertretern gilt die bei ihrer Wahl bestimmte Reihenfolge.
- (2) Scheidet der Vorsitzende oder einer seiner Stellvertreter vorzeitig aus dem Amt aus, so hat der Aufsichtsrat unverzüglich eine Neuwahl für die restliche Amtszeit des Ausgeschiedenen vorzunehmen.

**English Translation**

of the Supervisory Board is replaced by a substitute member, their term of office shall expire at the close of the next General Meeting.

- (5) Each member of the Supervisory Board and each substitute member may resign from office even without good cause with one month's notice. Resignation is to be declared in writing to the Management Board and the Chair of the Supervisory Board. The Management Board can consent to a shortening or to a waiver of this period. This shall have no effect on the right to resign for good cause.

**§ 9****CHAIR AND DEPUTY CHAIR**

- (1) At its first meeting, the Supervisory Board shall elect a Chair and one or more Deputy Chairs from among its members. They shall be elected for their term of office or a shorter period determined by the Supervisory Board. Deputy Chairs shall assume the rights and duties of the Chair of the Supervisory Board if the Chair is unable to attend. If multiple Deputy Chairs are elected, the order of precedence determined at the time of their election shall apply.
- (2) If the Chair or one of the Deputy Chairs resigns prematurely, the Supervisory Board shall hold a new election without delay to elect a new Chair for the remainder of the retiree's term of office.

**Deutsche Fassung****English Translation****§ 10****SITZUNGEN DES AUFSICHTSRATS**

- (1) Die Sitzungen des Aufsichtsrates werden durch den Vorsitzenden des Aufsichtsrates mit einer Frist von 14 Tagen in Textform einberufen. Bei der Berechnung der Frist werden der Tag der Absendung der Einladung und der Tag der Sitzung nicht mitgerechnet. Mit der Einberufung sind die Gegenstände der Tagesordnung mitzuteilen. In dringenden Fällen kann der Vorsitzende diese Frist angemessen verkürzen und mündlich einberufen.
- (2) Den Vorsitz in den Sitzungen des Aufsichtsrats führt der Vorsitzende des Aufsichtsrats oder im Fall seiner Verhinderung sein Stellvertreter.

**§ 11****BESCHLÜSSE DES AUFSICHTSRATS**

- (1) 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

**§ 10****MEETINGS OF THE SUPERVISORY BOARD**

- (1) Meetings of the Supervisory Board shall be convened by the Chair of the Supervisory Board with 14 days' notice in writing. The 14-day period does not include the day on which the invitation is sent or the day of the meeting itself. When a meeting is convened, the agenda is to be announced. In urgent cases, the Chair may shorten this period of notice and convene the meeting orally.
- (2) Meetings of the Supervisory Board shall be chaired by the Chair of the Supervisory Board or, if he is unable to attend, the Deputy Chair.

**§ 11****RESOLUTIONS OF THE SUPERVISORY BOARD**

- (1) Resolutions of the Supervisory Board shall generally be passed in meetings. At the order of the Chair 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

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teilnehmen, dass sie schriftliche Stimmabgaben durch ein anderes Aufsichtsratsmitglied überreichen lassen. Darüber hinaus können sie ihre Stimme auch im Vorfeld der Sitzung, während der Sitzung oder nachträglich innerhalb einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist auch mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel abgeben. Ein Recht zum Widerspruch gegen die vom Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.

- (2) Eine Beschlussfassung über Gegenstände der Tagesordnung, die nicht in der Einladung enthalten waren und auch nicht bis zum dritten Tag vor der Sitzung mitgeteilt worden sind, ist nur zulässig, wenn kein Aufsichtsratsmitglied widerspricht. Abwesenden Mitgliedern ist in einem solchen Fall Gelegenheit zu geben, binnen einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist schriftlich, mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel der Beschlussfassung zu widersprechen oder ihre Stimme abzugeben. Der Beschluss wird erst wirksam, wenn kein abwesendes Aufsichtsratsmitglied innerhalb der Frist widersprochen hat. Telefonisch oder mittels elektronischer Kommunikationsmittel zugeschaltete Mitglieder des Aufsichtsrats gelten als anwesend.
- (3) Beschlussfassungen können auch außerhalb von Sitzungen (im Sinne von § 11 Abs. 1) 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.

**English Translation**

submitting their votes in writing through another Supervisory Board member. In addition, they may also cast their vote prior to or during the meeting or following the meeting within a reasonable period as determined by the chairman of the Supervisory Board in oral form, by telephone, by telefax, by email or any other customary means of communication. Objections to the form of voting determined by the chairman are not permitted.

- (2) Resolutions on matters which have not been mentioned on the agenda enclosed with the invitation to the meeting and which have not been notified by the third day before the meeting shall only be permitted if no member of the Supervisory Board objects. In such case, absent members must be given the opportunity to object to the adoption or to cast their vote in writing, orally, by telephone, telefax, email or any other customary means of communication within an adequate period of time to be determined by the Chair. The resolution becomes effective only after no absent Supervisory Board member has objected within the period. Members of the Supervisory Board taking part via telephone or other electronic means of communication are considered to be present.
- (3) Resolutions may also be adopted outside of meetings (within the meaning of Section 11 para. 1) in writing, by telefax or by email or any other comparable means of communication, whereas the aforementioned forms may also be combined, at the order of the Chair 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.

**Deutsche Fassung**

Ein Recht zum Widerspruch gegen die vom Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.

- (4) Der Aufsichtsrat ist beschlussfähig, wenn mindestens die Hälfte der Mitglieder, aus denen er insgesamt zu bestehen hat, an der Beschlussfassung teilnimmt. In jedem Fall müssen drei Mitglieder an der Beschlussfassung teilnehmen. Abwesende bzw. nicht telefonisch oder über elektronische Kommunikationsmittel (insbesondere Videokonferenz) teilnehmende oder zugeschaltete Aufsichtsratsmitglieder, die nach Maßgabe von § 11 Abs. 1 bzw. Abs. 3 ihre Stimme abgeben, sowie Mitglieder, die sich bei der Beschlussfassung der Stimme enthalten, nehmen in diesem Sinne an der Beschlussfassung teil.
- (5) Beschlüsse des Aufsichtsrates werden, soweit das Gesetz nicht zwingend etwas anderes bestimmt, mit einfacher Mehrheit der abgegebenen Stimmen gefasst. Dabei gilt Stimmenthaltung nicht als Stimmabgabe. Bei Wahlen genügt die verhältnismäßige Mehrheit. Bei Stimmengleichheit gibt die Stimme des Vorsitzenden des Aufsichtsrates den Ausschlag; das gilt auch bei Wahlen. Nimmt der Vorsitzende des Aufsichtsrates an der Abstimmung nicht teil, so gibt die Stimme seines Stellvertreters den Ausschlag.
- (6) Der Aufsichtsratsvorsitzende ist ermächtigt, im Namen des Aufsichtsrates die zur Durchführung der Beschlüsse des Aufsichtsrates erforderlichen Willenserklärungen abzugeben und an den Aufsichtsrat gerichtete Willenserklärungen in Empfang zu nehmen.
- (7) Über die Verhandlungen und Beschlüsse des Aufsichtsrates sind Niederschriften anzufertigen, die vom Vorsitzenden der Sitzung oder bei Abstimmungen außerhalb von Sitzungen vom Leiter der Abstimmung zu unterzeich-

**English Translation**

Objections to the form of voting determined by the Chair are not permitted.

- (4) The Supervisory Board has a quorum if at least half of the members of which it has to consist in total (and 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 Section 11 para. or 3 as well as members who abstain from voting are considered to take part in the voting for this purpose.
- (5) Unless required otherwise by law, resolutions passed by the Supervisory Board are adopted with a simple majority of the votes cast. Abstentions are not counted as votes cast. Elections are decided by a relative majority. In the event of a tie, the Chair shall have the casting vote; this shall also apply to elections. If the Chair does not vote, the casting vote will pass to his Deputy.
- (6) The Chair of the Supervisory Board is authorized to make declarations of intent on behalf of the Supervisory Board which are necessary for the implementation of resolutions adopted by the Supervisory Board and to accept declarations of intent to the Supervisory Board.
- (7) The proceedings and resolutions of the Supervisory Board are to be recorded in minutes which must be signed by the Chair or, in the case of votes outside meetings, by the person managing the voting procedure. Resolutions which

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nen sind. Beschlüsse außerhalb von Sitzungen werden allen Aufsichtsratsmitgliedern zugeleitet.

- (8) Die Unwirksamkeit oder Rechtswidrigkeit von Beschlüssen des Aufsichtsrats kann nur innerhalb einer Ausschlussfrist von einem Monat seit Kenntnis von der Beschlussfassung gerichtlich geltend gemacht werden.

**§ 12****GESCHÄFTSORDNUNG**

Der Aufsichtsrat setzt im Rahmen von Gesetz und Satzung seine Geschäftsordnung selbst fest.

**§ 13****AUSSCHÜSSE**

- (1) Der Aufsichtsrat kann im Rahmen der gesetzlichen Vorschriften aus seiner Mitte Ausschüsse bilden und ihnen in seiner Geschäftsordnung oder durch besonderen Beschluss Aufgaben und Befugnisse übertragen. Zusammensetzung, Befugnisse und Verfahren der Ausschüsse werden vom Aufsichtsrat festgelegt.
- (2) Für Aufsichtsratsausschüsse gelten die Bestimmungen dieser Satzung für den Aufsichtsrat sinngemäß, soweit die Geschäftsordnung des Aufsichtsrats im Rahmen des Gesetzes nichts Abweichendes anordnet mit der Maßgabe, dass ein Ausschuss beschlussfähig ist, wenn mindestens zwei seiner Mitglieder an der Beschlussfassung teilnehmen. Bei Abstimmung und bei Wahlen gibt im Falle der Stimmengleichheit die

**English Translation**

were adopted outside meetings shall be made available to all members.

- (8) Invalid or illegal resolutions adopted by the Supervisory Board may only be contested before the courts within a one-month period of limitation of the resolution adopted becoming known.

**§ 12****RULES OF PROCEDURE**

The Supervisory Board shall determine its own rules of procedure subject to statutory requirements and the Constitution.

**§ 13****COMMITTEES**

- (1) Within the framework of the statutory regulations, the Supervisory Board may appoint committees from among its members and delegate tasks and powers to such committees pursuant to its rules of procedure or special resolutions. The Supervisory Board shall determine the composition, competences and procedures of the committees.
- (2) The provisions of this Constitution shall apply accordingly to Supervisory Board committees unless otherwise stipulated by the Supervisory Board's rules of procedure in compliance with the statutory provisions, provided that a committee shall constitute a quorum if at least two of its members participate in the adoption of resolutions. The chair of the committee shall have the casting vote in the event of tied votes and elections.

**Deutsche Fassung****English Translation**

Stimme des Vorsitzenden des Ausschusses den Ausschlag.

- (3) Von einem Aufsichtsratsausschuss beschlossene Willenserklärungen gibt im Namen des Ausschusses dessen Vorsitzender ab.

- (3) Declarations of intent adopted by a Supervisory Board committee shall be issued by the chair on behalf of the committee.

**§ 14**  
**VERGÜTUNG**

**§ 14**  
**COMPENSATION**

- (1) Den Aufsichtsratsmitgliedern kann für ihre Tätigkeit von der Hauptversammlung eine Vergütung bewilligt werden. Sie soll in einem angemessenen Verhältnis zu den Aufgaben der Aufsichtsratsmitglieder und zur Lage der Gesellschaft stehen.
- (2) Die Mitglieder des Aufsichtsrates erhalten ferner Ersatz aller vernünftigen Auslagen im Zusammenhang mit ihrer Stellung als Mitglieder des Aufsichtsrats sowie Ersatz der etwa auf ihre Vergütung und Auslagen entfallenden Umsatzsteuer.
- (3) Die Gesellschaft kann die Mitglieder des Aufsichtsrats weiter gegen Inanspruchnahme aus ihrer Haftung nach §§ 116, 93 AktG versichern.
- (4) § 113 Abs. 2 AktG bleibt unberührt.

- (1) The members of the Supervisory Board may be paid remuneration for their duties, as approved by the General Meeting. It ought to be reasonable in relation to the duties of the Supervisory Board member and the situation of the Company.
- (2) The members of the Supervisory Board shall also be reimbursed for all reasonable expenses in connection with their role as members of the Supervisory Board as well as for any value added tax payable on their compensation and expenses.
- (3) The Company can also take out insurance on behalf of the members of the Supervisory Board to cover their liability pursuant to Sections 116 and 93 AktG.
- (4) Section 113 para. 2 AktG shall remain unaffected.

**§ 15**  
**SATZUNGSÄNDERUNGEN**

**§ 15**  
**AMENDMENTS TO THE  
CONSTITUTION**

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

The Supervisory Board is authorized to adopt amendments to the Constitution exclusively pertaining to its drafting.

**Deutsche Fassung****English Translation**

**III.  
HAUPTVERSAMMLUNG**

**III.  
GENERAL MEETING**

**§ 16  
ORT UND EINBERUFUNG**

**§ 16  
PLACE AND INVITATION**

- (1) Die Hauptversammlung findet am Sitz der Gesellschaft oder nach Wahl des einberufenden Organs an einem deutschen Börsenplatz statt.
- (2) Die Hauptversammlung wird durch den Vorstand oder in den gesetzlich vorgeschriebenen Fällen durch den Aufsichtsrat einberufen.
- (3) Für die Einberufungsfrist gelten die gesetzlichen Vorschriften.

- (1) General Meetings are held at the Company's corporate seat or at the seat of a German stock exchange chosen by the convening corporate body.
- (2) A General Meeting is to be convened by the Management Board or, if required by law, the Supervisory Board.
- (3) The period of notice for convening a General Meeting is subject to the statutory requirements.

**§ 17  
TEILNAHME AN DER  
HAUPTVERSAMMLUNG**

**§ 17  
PARTICIPATION IN THE GENERAL  
MEETING**

- (1) Zur Teilnahme an der Hauptversammlung und zur Ausübung des Stimmrechts sind nur diejenigen Aktionäre berechtigt, die im Aktienregister eingetragen sind und die sich rechtzeitig angemeldet haben. Die Anmeldung muss der Gesellschaft unter der in der Einberufung hierfür mitgeteilten Adresse am letzten Tag der gesetzlichen Anmeldefrist zugehen. In der Einberufung kann eine kürzere, in Tagen zu bemessende Frist für die Anmeldung vorgesehen werden. Der Tag der Hauptversammlung und der Tag des Zugangs sind hierbei nicht mitzurechnen.
- (2) Das Stimmrecht kann durch einen Bevollmächtigten ausgeübt werden. Die Erteilung der Vollmacht, ihr Widerruf

- (1) The right to participate and vote in a General Meeting is restricted to those shareholders who are entered in the share register and who have registered in due time. Registration must be received by the Company on the last day of the statutory registration period at the address given in the notice convening the General Meeting. A shorter period for registration expressed in days may be set in the notice of convening. This period does not include the day of the General Meeting and the day of receipt.
- (2) Voting rights may be exercised by a proxy. The granting of proxy, the revo-



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und der Nachweis der Bevollmächtigung gegenüber der Gesellschaft bedürfen der Textform. § 135 AktG bleibt unberührt.

- (3) 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 zum Umfang und zum Verfahren der Teilnahme und Rechtsausübung zu treffen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.
- (4) Der Vorstand ist ermächtigt vorzusehen, dass Aktionäre auch ohne Teilnahme an der Hauptversammlung ihre Stimmen schriftlich oder im Wege elektronischer Kommunikation abgeben dürfen (Briefwahl). Der Vorstand ist auch ermächtigt, Bestimmungen zum Verfahren zu treffen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.

**§ 18****STIMMRECHT**

- (1) Jede Aktie gewährt eine Stimme.
- (2) Das Stimmrecht beginnt mit der vollständigen Leistung der gesetzlichen Mindesteinlage.

**English Translation**

cation of proxy and proof of authorization must be made out to the Company in writing. Section 135 AktG remains unaffected.

- (3) The Management Board is authorized to make provision for shareholders to participate in the General Meeting without attending in person and without granting a proxy, and to vote in whole or in part via electronic means (online participation). The Management Board may also set rules regarding the extent and procedure for participation and voting, which are to be announced when the General Meeting is convened.
- (4) The Management Board is authorized to make provision for shareholders to cast their votes in writing or via electronic means without participating in the General Meeting (postal vote). It may also set rules for this procedure, which are to be announced when the General Meeting is convened.

**§ 18****VOTING RIGHTS**

- (1) Each share entitles its holder to one vote.
- (2) Only those shareholders who have paid in the statutory minimum capital contribution in full are entitled to vote.

**Deutsche Fassung****English Translation****§ 19  
VORSITZ IN DER  
HAUPTVERSAMMLUNG****§ 19  
CHAIRMANSHIP OF THE GENERAL  
MEETING**

- (1) Den Vorsitz in der Hauptversammlung führt der Vorsitzende des Aufsichtsrates oder ein anderes durch den Aufsichtsrat zu bestimmendes Aufsichtsratsmitglied. Für den Fall, dass kein Mitglied des Aufsichtsrats den Vorsitz übernimmt, so eröffnet ein vom Vorstand zu bestimmendes Mitglied des Vorstands die Hauptversammlung und lässt den Versammlungsleiter durch die Hauptversammlung wählen.
- (2) Der Versammlungsleiter leitet die Verhandlungen und bestimmt die Reihenfolge der Behandlung der Tagesordnung sowie die Art und Reihenfolge der Abstimmungen. Er kann das Frage- und Rederecht der Aktionäre zeitlich angemessen beschränken.
- (3) Der Versammlungsleiter ist ermächtigt, die vollständige oder teilweise Bild- und Tonübertragung der Hauptversammlung in einer von ihm näher zu bestimmenden Weise zuzulassen. Die Übertragung kann auch in einer Form erfolgen, zu der die Öffentlichkeit uneingeschränkt Zugang hat.

- (1) The General Meeting shall be chaired by the Chair of the Supervisory Board or another member of the Supervisory Board to be decided by the Supervisory Board. If none of the members of the Supervisory Board chairs the General Meeting, it shall be opened by a member of Management Board decided by the Management Board, who shall then have the Chair of the Meeting elected by the General Meeting.
- (2) The Chair of the Meeting shall conduct the proceedings and determine the sequence in which the items on the agenda are to be dealt with as well as the type and order of voting. The Chair of the Meeting can also limit the time available to shareholders to ask questions and speak as appropriate.
- (3) The Chair of the Meeting is authorized to permit the video and audio transmission of all or part of the General Meeting in a manner they see fit. Transmission may also take place in a form to which the public has unlimited access.

**§ 20  
BESCHLUSSFASSUNG****§ 20  
PASSING OF RESOLUTIONS**

Die Beschlüsse der Hauptversammlung werden, soweit nicht zwingende gesetzliche Vorschriften entgegenstehen, mit der einfachen Mehrheit der abgegebenen Stimmen gefasst. Für Satzungsänderungen bedarf es, soweit nicht zwingende gesetzliche Vorschriften entgegenstehen, einer Mehrheit von zwei Dritteln der abgegebenen Stimmen oder, sofern mindestens die Hälfte des Grundkapitals vertreten ist, der einfachen

The resolutions of the General Meeting shall be adopted by a simple majority of the votes cast, unless mandatory legal provisions provide otherwise. Unless otherwise required by mandatory statutory provisions, amendments to the Constitution 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. If, in addition to a majority of votes, statutory provisions require a majority of

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chen Mehrheit der abgegebenen Stimmen. Sofern das Gesetz für Beschlüsse der Hauptversammlung außer der Stimmenmehrheit eine Kapitalmehrheit vorschreibt, genügt, soweit gesetzlich zulässig, die einfache Mehrheit des bei der Beschlussfassung vertretenen Grundkapitals. Bei Stimmengleichheit gilt ein Antrag als abgelehnt.

**§ 21****NIEDERSCHRIFT ÜBER DIE  
HAUPTVERSAMMLUNG**

Für die Niederschrift über die Hauptversammlung gilt § 130 AktG.

**C.****SCHLUSSBESTIMMUNGEN****§ 22****JAHRESABSCHLUSS**

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 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.

**English Translation**

capital for resolutions of the General Meeting, a simple majority of the share capital represented at the time the resolution is adopted shall suffice, to the extent legally permissible. In the event of a tie, a motion shall be deemed to have been rejected.

**§ 21****MINUTES OF THE GENERAL  
MEETING**

The minutes of the General Meeting are governed by Section 130 AktG.

**C.****FINAL PROVISIONS****§ 22****ANNUAL FINANCIAL STATEMENTS**

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 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.

**Deutsche Fassung****English Translation****§ 23****GEWINNVERWENDUNG**

- (1) Für die Gewinnverwendung gelten die gesetzlichen Bestimmungen. In einem Kapitalerhöhungsbeschluss kann die Gewinnverteilung neuer Aktien abweichend von § 60 Abs. 2 Satz 3 AktG festgesetzt werden, insbesondere der Beginn der Dividendenberechtigung auch auf den Beginn eines bereits abgelaufenen Geschäftsjahres gelegt werden, wenn über die Gewinnverwendung für dieses Geschäftsjahr noch nicht beschlossen wurde. Die Hauptversammlung kann auch eine andere Verwendung bestimmen, als in § 58 Abs. 3 Satz 1 AktG vorgesehen.
- (2) Nach Ablauf eines Geschäftsjahres kann der Vorstand mit Zustimmung des Aufsichtsrates im Rahmen des § 59 AktG eine Abschlagsdividende an die Aktionäre ausschütten.

**§ 24****RÜCKLAGEN**

- (1) Stellen Vorstand und Aufsichtsrat den Jahresabschluss fest, so können sie den gesamten Jahresüberschuss in andere Gewinnrücklagen einstellen, solange die anderen Gewinnrücklagen die Hälfte des Grundkapitals nicht übersteigen oder nach der Einstellung übersteigen würden.
- (2) Bei der Errechnung des gemäß Abs. 1 in andere Gewinnrücklagen einzustellenden Teils des Jahresüberschusses sind Beträge, die in die gesetzliche Rücklage einzustellen sind und ein Verlustvortrag vorab abzuziehen.

**§ 23****APPROPRIATION OF PROFITS**

- (1) Profit appropriation is subject to statutory provisions. The profit participation rights of new shares may be determined by a shareholder resolution to increase the share capital in deviation from Section 60 para. 2 sentence 3 AktG, namely the date of first entitlement to dividends be backdated to the beginning of a financial year which has already elapsed if profit appropriation for this financial year has not yet been decided. The General Meeting may also decide on a different form of appropriation from that provided for in Section 58 para. 3 sentence 1 AktG.
- (2) At the end of a financial year, the Management Board may - with the approval of the Supervisory Board - distribute an interim dividend to the shareholders pursuant to Section 59 AktG.

**§ 24****RESERVES**

- (1) If the Management Board and the Supervisory Board approve the annual financial statements, they may allocate the entire net profit to other retained earnings unless the other retained earnings exceed half the share capital or would do so after allocation.
- (2) When calculating the portion of the net profit to be allocated to other retained earnings in accordance with para. 1, the amounts required to be allocated to the statutory reserve and any loss carried forward must first be deducted.

**Deutsche Fassung****English Translation****§ 25  
GRÜNDUNGSKOSTEN/  
FORMWECHSELAUFWAND/SE-  
GRÜNDUNG****§ 25  
COSTS OF FORMATION/COST OF  
TRANSFORMATION/SE FORMATION**

- |   |   |
|---|---|
| <p>(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 8.000,00, einschließlich des von der Marley Spoon GmbH gemäß Ziffer 18. des Gesellschaftsvertrages übernommenen Gründungsaufwands in Höhe von bis zu EUR 1.500,00.</p> <p>(2) Die Marley Spoon SE ist durch Verschmelzung der MS Holding AG, Klagenfurt am Wörthersee, Österreich (Firmenbuch Nummer FN 579574 s), auf die Marley Spoon AG (AG Berlin-Charlottenburg, HRB 195994) aus der Marley Spoon AG entstanden (Art. 2 Abs. 1, 17 ff. SE-VO). Das Grundkapital wird im Wege der Verschmelzung durch Sacheinlagen in Form sämtlicher Aktiva und Passiva der Marley Spoon AG sowie der MS Holding AG erbracht. Die Beteiligung der Aktionäre ist unverändert.</p> <p>(3) Der Gründungsaufwand in Bezug auf die Verschmelzung der MS Holding AG, Klagenfurt am Wörthersee, Österreich, auf die Gesellschaft und die damit einhergehende Errichtung der Marley Spoon SE beträgt EUR 250.000,00.</p> | <p>(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 8,000.00, including the formation expenses in the amount of up to EUR 1,500.00 which are borne by Marley Spoon GmbH pursuant to Section 18 of the articles of association.</p> <p>(2) Marley Spoon SE has been formed by way of merger of MS Holding AG, Klagenfurt am Wörthersee, Austria (Company Register no. FN 579574 s), onto Marley Spoon AG (local court of Berlin-Charlottenburg, registration number HRB 195994) from Marley Spoon AG (Art. 2 para. 1, 17 <i>et seqq.</i> SE Regulation). The share capital is provided by way of merger through contributions in kind in the form of all assets and liabilities of Marley Spoon AG and MS Holding AG. The participation of the shareholders remains unchanged.</p> <p>(3) The formation expenses in relation to the merger of MS Holding AG, Klagenfurt am Wörthersee, Austria, onto the Company and the corresponding formation of Marley Spoon SE amount to EUR 250,000.00.</p> |
|---|---|

<i>Deutsche Fassung</i>	<i>English Translation</i>
<b>§ 26</b> <b>BEKANNTMACHUNGEN</b>	<b>§ 26</b> <b>ANNOUNCEMENTS</b>
(1) Bekanntmachungen der Gesellschaft erfolgen im Bundesanzeiger.	(1) Company announcements shall be published in the German Federal Gazette.
(2) Informationen an die Aktionäre können auch im Wege der Datenfernübertragung übermittelt werden.	(2) Information may also be conveyed to shareholders by means of electronic data transmission.
Nur die deutsche Fassung der Satzung ist verbindlich.	Only the German version of the Constitution shall be binding.

\* \* \* \*

**Articles of Association of Marley Spoon AG**

# MARLEY SPOON

## **Satzung / Constitution**

Stand: 20. Dezember 2021 / As of: December 20, 2021



**SATZUNG DER MARLEY SPOON AG /  
CONSTITUTION OF MARLEY SPOON AG**

<i>Deutsche Fassung</i>	<i>English Translation</i>
<p style="text-align: center;"><b>SATZUNG DER MARLEY SPOON AG</b></p>	<p style="text-align: center;"><b>CONSTITUTION OF MARLEY SPOON AG</b></p>
<p style="text-align: center;"><b>A. ALLGEMEINE BESTIMMUNGEN</b></p>	<p style="text-align: center;"><b>A. GENERAL PROVISIONS</b></p>
<p style="text-align: center;"><b>§ 1 FIRMA, SITZ UND GESCHÄFTSJAHR</b></p>	<p style="text-align: center;"><b>§ 1 COMPANY NAME, REGISTERED OFFICE AND FINANCIAL YEAR</b></p>
<p>(1) Die Gesellschaft führt die Firma <b>Marley Spoon AG.</b></p>	<p>(1) The name of the Company is <b>Marley Spoon AG.</b></p>
<p>(2) Sie hat ihren Sitz in <b>Berlin.</b></p>	<p>(2) The Company has its registered of- fice in <b>Berlin.</b></p>
<p>(3) Das Geschäftsjahr ist das Kalender- jahr.</p>	<p>(3) The financial year is the calendar year.</p>
<p style="text-align: center;"><b>§ 2 GEGENSTAND DES UNTERNEHMENS</b></p>	<p style="text-align: center;"><b>§ 2 OBJECT OF THE COMPANY</b></p>
<p>(1) Gegenstand des Unternehmens ist der Einkauf, die Entwicklung, Her- stellung, Vermarktung, der Vertrieb und die Lieferung von Produkten im Lebensmittelbereich und damit ver- bundener Non-food-Erzeugnisse, einschließlich der Lieferung von Kochrezepten und Zutaten in Form</p>	<p>(1) The object of the Company is the procurement, development, produc- tion, marketing, distribution and sup- ply of products in the food sector and related non-food-products, including the delivery of cooking recipes and ingredients in the form of overall package solutions to end consumers,</p>

### **Deutsche Fassung**

von Gesamtpaketlösungen an Endverbraucher, die Zusammenstellung, Entwicklung, Gestaltung und Vermarktung von Kochrezepten und Ernährungshinweisen, insbesondere auch über das Internet, sowie die Entwicklung, Vermarktung und Erbringung damit verbundener Dienstleistungen an Verbraucher, Vertriebshändler und sonstige gewerbliche oder private Abnehmer.

- (2) Die Gesellschaft kann sich an anderen Unternehmen mit gleichem oder ähnlichem Gegenstand beteiligen, Zweigniederlassungen im In- und Ausland errichten und alle Geschäfte betreiben sowie sämtliche Handlungen und Maßnahmen vornehmen, die mit dem Gegenstand des Unternehmens zusammenhängen oder die geeignet erscheinen, den Gesellschaftszweck unmittelbar oder mittelbar zu fördern. Sie kann ihren Betrieb ganz oder teilweise in verbundene Unternehmen ausgliedern oder ihn verbundenen Unternehmen überlassen und sich auf die Verwaltung ihrer Beteiligungen als geschäftsleitende Holding beschränken. Sie kann ihre Tätigkeit auf einen Teil der in vorstehendem Absatz 1 bezeichneten Tätigkeitsfelder beschränken.

### **§ 3**

#### **GRUNDKAPITAL**

- (1) Das Grundkapital der Gesellschaft beträgt € 291.958,00 (in Worten: zweihunderteinundneunzigtausendneuhundertachtundfünfzig Euro). Es wurde in Höhe von € 82.084,00 (in Worten: zweiundachtzigtausendvierundachtzig Euro) durch Formwechsel gemäß §§ 190 ff. UmwG der im Handelsregister des Amtsgerichts Char-

### **English Translation**

the composition, development, creation and marketing of cooking recipes and diet recommendations, particularly also through the internet, as well as the development, marketing and provisioning of related services to consumers, distributors and other commercial or private customers.

- (2) The Company may acquire or invest in other companies whose object fully or partially covers the aforementioned areas, establish branches (domestic or abroad) and may conduct all transactions, and perform all acts and measures relating to the object of the Company or which are deemed suitable for directly or indirectly promoting its business object. It may outsource its business in full or in part to affiliated companies or transfer it to affiliated companies and confine itself to the management of its participations as a management holding company. It may limit its activity to a part of the areas designated in Section 1 above.

### **§ 3**

#### **SHARE CAPITAL**

- (1) The share capital of the Company is € 291,958.00 (in words: two hundred ninety-one thousand and nine hundred fifty-eight euros). It has been provided in the amount of € 82,084.00 (in words: eighty-two thousand eighty-four euros) by way of conversion pursuant to Sections 190 *et seqq.* of the German

### *Deutsche Fassung*

lottenburg unter HRB 158261 B eingetragenen Marley Spoon GmbH mit Sitz in Berlin erbracht.

- (2) Das Grundkapital der Gesellschaft ist eingeteilt in 291.958 Stückaktien (Aktien ohne Nennbetrag).
- (3) Der Vorstand ist ermächtigt, das Grundkapital der Gesellschaft bis zum 10. Juni 2026 mit Zustimmung des Aufsichtsrats durch Ausgabe von bis zu 106.517 neuen, auf den Namen lautenden Stückaktien gegen Bar- und/oder Sacheinlage einmalig oder mehrmals um bis zu insgesamt € 106.517,00 (in Worten: einhundertsechstaussendfünfhundertsiebzehn Euro) zu erhöhen („**Genehmigtes Kapital 2021/I**“).

Dabei ist den Aktionären grundsätzlich ein Bezugsrecht auf die Aktien einzuräumen. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne von § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Darüber hinaus können die Aktien auch von einem Treuhänder (jeweils der "**Treuhänder**") mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle dieser Aktien eine solche Anzahl von sogenannten CHESSE Depository Interests ("**CDIs**"), z.B. in Form von CUFS (CHESSE Units of Foreign Securities), zuzuteilen, die den neuen Aktien entspricht, wobei ein CDI eine

### *English Translation*

Conversion Act (*Umwandlungsgesetz*, "**UmwG**") of Marley Spoon GmbH with registered office in Berlin, registered with the commercial register of the local court of Charlottenburg under registration number HRB 158261 B.

- (2) The share capital of the Company is divided into 291,958 no-par-value shares (shares without nominal value).
- (3) The Management Board is authorised until June 10, 2026, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to € 106,517.00 (in words: one hundred six thousand five hundred and seventeen Euros) by issuing up to 106,517 new no-par-value registered shares against contribution in cash and/or in kind ("**Authorized Capital 2021/I**").

In principle, the shareholders are to be offered subscription rights with respect to such shares. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 of the German Stock Corporation Act (Aktiengesetz, **AktG**) with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee (in each case the "**Trustee**") with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CHESSE Depository Interests ("**CDIs**"), e.g. in the form of CUFS (CHESSE Units of Foreign Securities), as corresponds to the new shares, with one CDI being a

### *Deutsche Fassung*

Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der Gesellschaft darstellt.

Ferner ist der Vorstand ermächtigt, mit Zustimmung des Aufsichtsrats das Bezugsrecht der Aktionäre bei einer oder mehreren Kapitalerhöhungen im Rahmen des Genehmigten Kapitals 2021/I auszuschließen

- (iii) um Spitzenbeträge vom Bezugsrecht auszuschließen;
- (iv) im Falle einer Kapitalerhöhung gegen Bareinlagen, sofern der Ausgabepreis der neuen Aktien / CDIs den Börsenpreis der bereits börsennotierten Aktien / CDIs der Gesellschaft nicht wesentlich unterschreitet. Diese Ermächtigung gilt jedoch nur mit der Maßgabe, dass der anteilige Betrag des Grundkapitals, der auf die ausgegebenen Aktien entfällt, gemäß § 186 Abs. 3 Abs. 4 AktG unter dieser Ermächtigung zum Bezugsrechtsausschluss ausgegeben werden, 10 % des Grundkapitals der Gesellschaft im Zeitpunkt des Wirksamwerdens des Genehmigten Kapitals 2021/I oder - falls das eingetragene Grundkapital der Gesellschaft geringer ist - im Zeitpunkt der Ausübung des Genehmigten Kapitals 2021/I nicht übersteigen darf (die "**10 %-Platzierungsschwelle**"). Auf die 10 %-Platzierungsschwelle sind ferner anzurechnen (a) eigene Aktien, die während der Laufzeit des Genehmigten Kapitals 2021/I aufgrund

### *English Translation*

unit of beneficial ownership in 0.001 share of the Company

Further, the Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2021/I

- (iii) in order to exclude fractional amounts from the subscription right;
- (iv) in the event of a capital increase against cash contributions, provided that the issue price of the new shares / CDIs is not significantly lower than the stock exchange price of the shares / CDIs of the Company already listed. However, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares issued, in accordance with Section 186 para. 3 s. 4 AktG, under this authorisation to exclude shareholders' subscription rights shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2021/I comes into effect or – in the case the registered share capital of the Company is lower – at the time the Authorised Capital 2021/I is exercised (the "**10% Placement Threshold**"). Towards the 10% Placement Threshold shall also count (a) any treasury shares that are sold during the Authorised Capital

## *Deutsche Fassung*

einer Ermächtigung zur Veräußerung eigener Aktien gemäß §§ 71 Abs. 1 Nr. 8 Satz 5, 186 Abs. 3 Satz 4 AktG unter Ausschluss des Bezugsrechts der Aktionäre auf diese eigenen Aktien veräußert werden, (b) Aktien, die während der Laufzeit des Genehmigten Kapitals 2021/I zur Erfüllung von Bezugs- oder Wandlungsrechten oder -pflichten aus Wandel- und/oder Optionsschuldverschreibungen, Genussrechten und/oder Gewinnschuldverschreibungen (bzw. Kombinationen dieser Instrumente) (zusammen "**Schuldverschreibungen**") ausgegeben werden, sofern die Ausgabe dieser Schuldverschreibungen unter Ausschluss des Bezugsrechts der Aktionäre in entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG erfolgt 3 Satz 4 AktG ausgegeben werden; und (c) Aktien, die während der Laufzeit des Genehmigten Kapitals 2021/I auf Grund anderer Kapitalmaßnahmen unter Ausschluss des Bezugsrechts in entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG ausgegeben werden; und (d) Aktien, die während der Laufzeit des Genehmigten Kapitals 2021/I auf Grund anderer Kapitalmaßnahmen unter Ausschluss des Bezugsrechts in entsprechender Anwendung des § 186 Abs. 3 Satz 4 AktG ausgegeben werden. 3 Satz 4 AktG ausgegeben werden;

- (v) soweit es erforderlich ist, damit die Gesellschaft (a) den Inhabern bzw. Gläubigern

## *English Translation*

2021/I Term on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 sentence 5, 186 para. 3 sentence 4 AktG, provided that the shareholders' subscription rights for such treasury shares are excluded, (b) any shares that are issued during the Authorised Capital 2021/I Term to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the "**Bonds**"), provided that such Bonds are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 sentence 4 AktG; and (c) any shares that are issued during the Authorised Capital 2021/I Term on the basis of other capital measures, provided that such shares are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 sentence 4 AktG;

- (v) to the extent necessary in order for the Company to be able to (a) grant new shares

## *Deutsche Fassung*

von Schuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen bei Ausübung des Wandlungs- bzw. Optionsrechts oder bei Erfüllung der Wandlungs- bzw. Optionspflicht ausgegeben werden, neue Aktien der Gesellschaft gewähren kann, und (b) Inhabern von Wandlungs- oder Optionsrechten bzw. Gläubigern von mit Wandlungspflichten ausgestatteten Wandel- oder Optionsschuldverschreibungen, die von der Gesellschaft oder deren nachgeordneten Konzernunternehmen ausgegeben werden, ein Bezugsrecht auf neue Aktien in dem Umfang zu gewähren, wie es ihnen nach Ausübung der Options- oder Wandlungsrechte bzw. nach Erfüllung der Wandlungs- oder Optionspflichten als Aktionär zustehen würde;

- (vi) im Falle einer Kapitalerhöhung gegen Sacheinlagen, insbesondere im Rahmen von Unternehmenszusammenschlüssen oder beim (auch mittelbaren) Erwerb von Unternehmen, Betrieben, Unternehmensteilen, Beteiligungen oder sonstigen Vermögensgegenständen oder Ansprüchen auf den Erwerb von Vermögensgegenständen, einschließlich Forderungen gegen die Gesellschaft oder eine ihrer Konzerngesellschaften.

Das Bezugsrecht der Aktionäre kann nach Maßgabe der vorstehenden Bestimmungen auch zugunsten des Treuhänders ausgeschlossen werden,

## *English Translation*

of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon exercise of their conversion or option rights or fulfilment of their conversion or option obligations, and (b) grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations, that will be issued by the Company or its subordinated group companies, a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;

- (vi) in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.

The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the

## *Deutsche Fassung*

der die neuen Aktien mit der Verpflichtung zur treuhänderischen Verwahrung der Aktien und mit der Verpflichtung für die Gesellschaft, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine entsprechende Anzahl von CDIs zuzuteilen, zeichnen kann.

Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn abgeschlossener Geschäftsjahre teilnehmen können, für die noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist. Soweit das Bezugsrecht gemäß Abs. (i) ausgeschlossen wird, sind die neuen Aktien (i) ausgeschlossen wird, werden diese neuen Aktien jeweils zum Ausgabebetrag von € 1,00 ohne Zuzahlung ausgegeben.

Der Aufsichtsrat wird ermächtigt, die Fassung der Satzung nach Ausnutzung des Genehmigten Kapitals 2021/I oder nach Ablauf der Laufzeit des Genehmigten Kapitals 2021/I entsprechend anzupassen.

(4) - leer -

(5) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), um bis zu € 4.105,00 (in Worten: viertausendeinhundertfünf Euro) durch Ausgabe von bis zu 4.105 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht (Bedingtes Kapital 2018/II). Das Bedingte Kapital 2018/II dient ausschließlich der Gewährung von Bezugsrechten

## *English Translation*

new shares with the obligation to hold the shares in trust and with the obligation for the Company to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.

The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed financial years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed. To the extent the subscription right is excluded pursuant to para. (i) above, those new shares are each issued at an issue amount of € 1.00 without additional payment.

The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2021/I or upon expiry of the Authorised Capital 2021/I Term.

(4) - empty -

(5) In accordance with the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), the share capital of the Company is conditionally increased by up to € 4,105.00 (in words: four thousand one hundred five Euros) by issuing up to 4,105 new no-par-value registered shares of the Company (Conditional Capital 2018/II). The Conditional Capital 2018/II solely serves the granting of subscription rights for shares (Share

## *Deutsche Fassung*

auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 5. Juni 2018 unter Tagesordnungspunkt 3, lit. a), von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2018/II bis zum 4. Juni 2023 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung verbundener Unternehmen sowie an ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2018/II erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

(6) - leer -

(7) - leer -

(8) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a), um bis zu € 7.000,00 (in Worten:

## *English Translation*

Options) that are granted by the Company based on the authorization of the general meeting of June 5, 2018 under agenda item 3, lit. a), under the Share Option Program from the date of the registration of the Conditional Capital 2018/II until June 4, 2023 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2018/II at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

(6) - empty -

(7) - empty -

(8) In accordance with the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), the share capital of the Company is conditionally increased by up to €



### *Deutsche Fassung*

siebentausend Euro) durch Ausgabe von bis zu 7.000 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht (Bedingtes Kapital 2019/III). Das Bedingte Kapital 2019/III dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 24. Mai 2019 unter Tagesordnungspunkt 6, lit. a), von der Gesellschaft im Rahmen des Aktienoptionsprogramms in der Zeit ab Eintragung des Bedingten Kapitals 2019/III bis zum 23. Mai 2024 an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführung verbundener Unternehmen im In- und Ausland sowie an ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2019/III erfolgt zu dem gemäß lit. a) (7) der vorstehend genannten Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleich gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstands der Gesellschaft betroffen sind, der Aufsichtsrat ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

(9) - leer -

### *English Translation*

7,000.00 (in words: seven thousand Euros) by issuing up to 7,000 new no-par-value registered shares of the Company (Conditional Capital 2019/III). The Conditional Capital 2019/III solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorization of the general meeting of May 24, 2019 under agenda item 6, lit. a), under the Share Option Program from the date of the registration of the Conditional Capital 2019/III until May 23, 2024 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2019/III at the exercise price determined in accordance with lit. a) (7) of the aforementioned authorization. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year for which not yet a resolution of the general meeting has been made on the appropriation of the balance sheet profit at the time when the subscription right is exercised. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company is authorized to determine the further details of the conditional capital increase and its consummation.

(9) - empty -

*Deutsche Fassung**English Translation*

(10) - leer -

(10) - empty -

(11) - leer -

(11) - empty -

(12) Das Grundkapital der Gesellschaft ist nach Maßgabe der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5, lit. a) um bis zu 6.332,00 Euro (in Worten: sechstausenddreihundertzweiunddreißig Euro) durch Ausgabe von bis zu 6.332 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht (Bedingtes Kapital 2020/II). Das Bedingte Kapital 2020/II dient ausschließlich der Gewährung von Bezugsrechten auf Aktien (Aktienoptionen), die aufgrund der Ermächtigung der Hauptversammlung vom 29. Juli 2020 unter Tagesordnungspunkt 5 lit. a) im Rahmen des Aktienoptionsprogramms 2020 ab dem Zeitpunkt der Eintragung des Bedingten Kapitals 2020/II bis zum 28. Juli 2025 von der Gesellschaft an Mitglieder des Vorstands der Gesellschaft, an Mitglieder der Geschäftsführungsorgane verbundener Unternehmen im In- und Ausland sowie ausgewählte Führungskräfte und Arbeitnehmer der Gesellschaft und verbundener Unternehmen im In- und Ausland gewährt werden. Die Ausgabe der Aktien aus dem Bedingten Kapital 2020/II erfolgt zu dem nach Maßgabe von lit. a) (vii) der vorstehenden Ermächtigung festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur insoweit durchgeführt, als Bezugsrechte ausgeübt werden und die Gesellschaft zur Erfüllung der Bezugsrechte weder eigene Aktien oder CDIs noch einen Barausgleichs gewährt. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem das Bezugsrecht ausgeübt wurde und für das zum Zeitpunkt der Ausübung des Bezugsrechts noch kein Beschluss der Hauptversammlung über die Verwendung

(12) In accordance with the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), the share capital of the Company is conditionally increased by up to EUR 6,332.00 (in words: six thousand three hundred thirty-two Euros) by issuing up to 6,332 new no-par-value registered shares of the Company (Conditional Capital 2020/II). The Conditional Capital 2020/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorisation of the general meeting of July 29, 2020 under agenda item 5, lit. a), under the Share Option Program 2020 from the date of the registration of the Conditional Capital 2020/II until July 28, 2025 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad. The shares will be issued from the Conditional Capital 2020/II at the exercise price determined in accordance with lit. a) (vii) of the aforementioned authorisation. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of

### *Deutsche Fassung*

des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft oder, soweit Mitglieder des Vorstandes der Gesellschaft betroffen sind, der Aufsichtsrat, ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

(13) - leer -

(14) Das Grundkapital der Gesellschaft ist gemäß der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7, Abs. a) um bis zu EUR 2.165,00 (in Worten: zweitausendeinhundertfünfundsechzig Euro) durch Ausgabe von bis zu 2.165,00 neuen, auf den Namen lautenden Stückaktien der Gesellschaft bedingt erhöht (Bedingtes Kapital 2021/I). Das Bedingte Kapital 2021/I dient ausschließlich der Bedienung von Aktienoptionen, d.h. Bezugsrechten auf Aktien, die von der Gesellschaft an Teilnehmer der Gruppe 1, d.h. Mitglieder des Vorstandes der Gesellschaft einschließlich des Vorstandsvorsitzenden, sowie Teilnehmer der Gruppe 2, d.h. (a) Prokuristen, Geschäftsführer und sonstige Mitglieder von Geschäftsführungsorganen von Tochtergesellschaften und verbundene Unternehmen der Gesellschaft im In- und Ausland und (b) sonstige Mitglieder der oberen Leitungsebene bzw. leitende Angestellte der Gesellschaft aufgrund der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a). Die Ausgabe der Aktien aus dem Bedingten Kapital 2021/I erfolgt zu dem nach Maßgabe der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(v) festgelegten Ausübungspreis. Die bedingte Kapitalerhöhung wird nur dann durchgeführt, d.h. verwässernd wirken, wenn und soweit von Aktienoptionen Gebrauch gemacht wird und

### *English Translation*

the Company or, to the extent members of the Management Board are concerned, the Supervisory Board, of the Company is authorised to determine the further details of the conditional capital increase and its consummation.

(13) - empty -

(14) In accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7, para. a), the share capital of the Company is conditionally increased by up to EUR 2,165.00 (in words: two thousand one hundred sixty-five Euros) by issuing up to 2,165.00 new no-par-value registered shares of the Company (Conditional Capital 2021/I). The Conditional Capital 2021/I solely serves the settlement of Share Options, i.e. subscription rights for Shares that are granted by the Company to Group 1 Participants, i.e. members of the Management Board of the Company, including the CEO as well as Group 2 Participants, i.e. (a) appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and (b) other members of the senior leadership team or senior managers of the Company based on the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a). The Shares will be issued from the Conditional Capital 2021/I at the Exercise Price determined in accordance with the authorisation of the general meeting of June 11, 2021 under agenda item 7 para. a)(v). The conditional capital increase will be consummated, i.e., have a dilutive effect, only if and to the extent that Share Options are exercised, and the Company elects to issue new Shares according to the Default Settlement Option described in the authorisation of

## *Deutsche Fassung*

die Gesellschaft von ihrem Wahlrecht Gebrauch macht, neue Aktien gemäß der in der Ermächtigung der Hauptversammlung vom 11. Juni 2021 unter Tagesordnungspunkt 7 lit. a)(vi) beschriebenen Standard Erfüllungsoption auszugeben. Die neuen Aktien nehmen vom Beginn des Geschäftsjahres an, in dem die Aktienoptionen ausgeübt werden und für das noch kein Beschluss der Hauptversammlung über die Verwendung des Bilanzgewinns gefasst worden ist, am Gewinn teil. Der Vorstand der Gesellschaft bzw., soweit Mitglieder des Vorstands betroffen sind, der Aufsichtsrat der Gesellschaft, ist ermächtigt, die weiteren Einzelheiten der bedingten Kapitalerhöhung und ihrer Durchführung festzusetzen.

- (15) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 4.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 4.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen (Genehmigtes Kapital 2021/II). Das Bezugsrecht der Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des ersten Restricted Stock Unit Programms der Gesellschaft 2021/I (RSUP 2021/I) ausschließlich an die folgenden "**RSUP 2021/I-Begünstigten**" gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft

## *English Translation*

the general meeting of June 11, 2021 under agenda item 7 para. a)(vi). The new Shares will be entitled to dividends from the beginning of the financial year in which the Share Options are exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

- (15) The Management Board is authorized, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company's registered share capital by up to EUR 4,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 4,000 new no-par-value registered shares (Authorized Capital 2021/II). The subscription rights of shareholders are excluded. The Authorized Capital 2021/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfill RSUs that were granted in accordance with the terms and conditions of the first Restricted Stock Unit Program of the Company 2021/I (RSUP 2021/I) exclusively to the following "**RSUP 2021/I Beneficiaries**": (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad

oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen, wobei ein CDI eine Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der Gesellschaft darstellt. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen der RSUP 2021/I Begünstigten gegen die Gesellschaft aus dem RSUP 2021/I, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; hierzu gehört auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

- (16) Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats bis zum 10. Juni 2026 (einschließlich) das Grundkapital der Gesellschaft um bis zu EUR 2.000,00 gegen Bar- und/oder Sacheinlagen einmal oder mehrmals durch Ausgabe von bis zu 2.000 neuen, auf den Namen lautenden Stückaktien zu erhöhen (Genehmigtes Kapital 2021/II). Das Bezugsrecht der

under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares, with one CDI being a unit of beneficial ownership in 0.001 share of the Company. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of RSUP 2021/I Beneficiaries' claims against the Company under the RSUP 2021/I. The Management Board is authorized to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit participation of the new Shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

- (16) The Management Board is authorized, with the consent of the Supervisory Board, until June 10, 2026 (including), to increase the Company's registered share capital by up to EUR 2,000.00 against cash contributions and/or contributions in kind once or several times by issuing up to 2,000 new no-par-value registered shares (Authorized Capital 2021/II).

## *Deutsche Fassung*

Aktionäre ist ausgeschlossen. Das Genehmigte Kapital 2021/II dient der Lieferung von Aktien der Gesellschaft gegen Einbringung von Zahlungsansprüchen aus Restricted Stock Units (RSUs) zur Erfüllung von RSUs, die nach Maßgabe der Bedingungen des zweiten Restricted Stock Unit Programms der Gesellschaft 2021/II (RSUP 2021/II) ausschließlich an die folgenden "**RSUP 2021/II-Begünstigten**" gewährt wurden: (a) ausgewählte Führungskräfte und Mitarbeiter der Gesellschaft und mit ihr verbundener Unternehmen im In- und Ausland sowie (b) in Vollzeit tätige arbeitnehmerähnliche Personen, insbesondere Personen, die im Rahmen von sogenannten Employer-of-Record-Verträgen für die Gesellschaft oder mit ihr verbundene Unternehmen im In- und Ausland tätig sind. Die Aktien können auch von einem oder mehreren Kreditinstituten oder Unternehmen im Sinne des § 186 Abs. 5 Satz 1 AktG mit der Verpflichtung übernommen werden, die Aktien den Aktionären der Gesellschaft zum Bezug anzubieten. Die Aktien können ferner von einem Treuhänder mit der Verpflichtung gezeichnet werden, die Aktien treuhänderisch zu halten und die Gesellschaft zu verpflichten, den jeweiligen wirtschaftlich Berechtigten anstelle der Aktien eine den neuen Aktien entsprechende Anzahl von sogenannten CDIs, z.B. in Form von CUFS (CHESS Units of Foreign Securities), zuzuteilen, wobei ein CDI eine Einheit des wirtschaftlichen Eigentums an 0,001 Aktien der Gesellschaft darstellt. Der Ausgabebetrag der neuen Aktien muss mindestens EUR 1,00 betragen und kann entweder durch Bareinlage und/oder durch Sacheinlage, insbesondere auch durch Einbringung von Ansprüchen gegen die Gesellschaft aus dem RSUP 2021/II, erbracht werden. Der Vorstand ist ermächtigt, mit Zustimmung

## *English Translation*

The subscription rights of shareholders are excluded. The Authorized Capital 2021/II serves the purpose of delivering shares of the Company against the contribution of payment claims resulting from Restricted Stock Units (RSUs) in order to fulfill RSUs that were granted in accordance with the terms and conditions of the second Restricted Stock Unit Program of the Company 2021/II (RSUP 2021/II) exclusively to the following "**RSUP 2021/II Beneficiaries**": (a) selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as (b) full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by the Trustee with the obligation to hold the shares in trust and with the obligation for the Company to allocate to the respective beneficial owners, in lieu of those shares, such number of so-called CDIs, e.g., in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares, with one CDI being a unit of beneficial ownership in 0.001 share of the Company. The issue price of the new shares must amount to at least EUR 1.00 and can be paid either by way of a cash contribution and/or contribution in kind, including in particular the contribution of claims against the Company under the RSUP 2021/II. The Management Board is authorized to determine the further details of the capital increase and its implementation with the consent of the Supervisory Board; this also includes the determination of the profit

## ***Deutsche Fassung***

des Aufsichtsrats die weiteren Einzelheiten der Kapitalerhöhung und ihrer Durchführung festzulegen; dies umfasst auch die Festlegung der Gewinnbeteiligung der neuen Aktien, die abweichend von § 60 Abs. 2 AktG auch am Gewinn eines bereits abgeschlossenen Geschäftsjahres teilnehmen können.

### **§ 4 AKTIEN**

- (1) Sämtliche Aktien der Gesellschaft lauten auf den Namen. Die Aktionäre haben der Gesellschaft zur Eintragung in das Aktienregister, soweit es sich um natürliche Personen handelt, ihren Namen, ihre Anschrift und ihr Geburtsdatum und, soweit es sich um juristische Personen oder (teil-)rechtsfähige Gesellschaften handelt, ihren Namen oder ihre Firma, ihren Sitz und ihre Geschäftsanschrift sowie in jedem Fall die Zahl der von ihnen gehaltenen Aktien der Gesellschaft und – sofern vorhanden – ihre elektronische Postadresse anzugeben.
- (2) Die Form der Aktienurkunden setzt der Vorstand mit Zustimmung des Aufsichtsrates fest. Die Gesellschaft kann Gewinnanteil- und Erneuerungsscheine ausgeben. Die Gesellschaft kann einzelne Aktien in Aktienurkunden zusammenfassen, die eine Mehrzahl von Aktien verbriefen (Globalaktien, Globalurkunden).
- (3) Für Gewinnanteil- und Erneuerungsscheine sowie Schuldverschreibungen und Zins- und Erneuerungsscheine gilt Abs. 2 Satz 1.
- (4) Das Recht der Aktionäre auf Verbriefung ihres Anteils ist ausgeschlossen.

## ***English Translation***

participation of the new shares, which may, in deviation from section 60 para. 2 AktG, also participate in the profit of an already completed financial year.

### **§ 4 SHARES**

- (1) All shares in the Company are registered shares. To be entered in the share register, shareholders who are natural persons must notify the Company of their name, address and date of birth, while legal entities and (partly) incorporated partnerships must inform the Company of their name or Company name, their principal place of business and their business address. Moreover, the Company must always be notified of the number of shares held and – if available – of each shareholder's email address.
- (2) The form of share certificates shall be determined by the Management Board subject to the approval of the Supervisory Board. The Company may issue dividend and renewal coupons. The Company may combine individual shares in share certificates certifying multiple shares (global certificates).
- (3) Section 4(2), sentence 1, applies to dividend and renewal coupons as well as to bonds, bond coupons and renewal coupons.
- (4) Shareholders have no automatic entitlement to physical share certificates.

***Deutsche Fassung***

***English Translation***

**B.  
ORGANE DER GESELLSCHAFT**

**B.  
CORPORATE BODIES**

**I.  
VORSTAND**

**I.  
MANAGEMENT BOARD**

**§ 5  
ZUSAMMENSETZUNG UND  
GESCHÄFTSORDNUNG DES  
VORSTANDS**

**§ 5  
COMPOSITION AND RULES OF  
PROCEDURE OF THE  
MANAGEMENT BOARD**

- (1) Der Vorstand besteht aus einer oder mehreren Personen.
- (2) Der Aufsichtsrat bestellt die Vorstandsmitglieder und bestimmt im Rahmen von Abs. 1 ihre Zahl. Der Aufsichtsrat kann einen Vorsitzenden des Vorstands sowie einen stellvertretenden Vorsitzenden des Vorstands ernennen.
- (3) Der Aufsichtsrat kann eine Geschäftsordnung für den Vorstand erlassen. Der Geschäftsverteilungsplan des Vorstands bedarf der Zustimmung des Aufsichtsrats.

- (1) The Management Board is to consist of one or more members.
- (2) The Supervisory Board shall appoint the members of the Management Board and set their number in accordance with Section 5(1). The Supervisory Board may appoint a Chair of the Management Board and a Deputy Chair of the Management Board.
- (3) The Supervisory Board may adopt rules of procedure for the Management Board. The executive organization chart is subject to the approval of the Supervisory Board.

**§ 6  
GESCHÄFTSFÜHRUNG UND  
VERTRETUNG DER GESELLSCHAFT**

**§ 6  
MANAGEMENT AND  
REPRESENTATION OF THE  
COMPANY**

- (1) Die Mitglieder des Vorstands haben die Geschäfte der Gesellschaft nach Maßgabe der Gesetze, der Satzung,

- (1) The members of the Management Board shall conduct the business transactions of the Company in accordance with the law, the Constitution, the rules of procedure for the



### *Deutsche Fassung*

der Geschäftsordnung für den Vorstand und des Geschäftsverteilungsplans zu führen.

- (2) Ist nur ein Vorstandsmitglied bestellt, so vertritt dieses die Gesellschaft allein. Sind mehrere Vorstandsmitglieder bestellt, so wird die Gesellschaft durch zwei Vorstandsmitglieder oder durch ein Vorstandsmitglied in Gemeinschaft mit einem Prokuristen gesetzlich vertreten. Der Aufsichtsrat kann bestimmen, dass einzelne oder alle Vorstandsmitglieder einzelvertretungsbefugt sind. Der Aufsichtsrat kann ferner alle oder einzelne Vorstandsmitglieder generell oder für den Einzelfall vom Verbot der Mehrfachvertretung gemäß § 181, 2. Alternative BGB befreien; § 112 AktG bleibt unberührt.

- (3) Der Vorstand bedarf der Zustimmung des Aufsichtsrats
- a) zur Veräußerung des Unternehmens im Ganzen;
  - b) zum Abschluss von Verträgen oder Plänen nach dem Umwandlungsgesetz;
  - c) zum Abschluss von Unternehmensverträgen nach § 291 AktG.

Darüber hinaus ordnet der Aufsichtsrat im Rahmen des rechtlich Zulässigen in der Geschäftsordnung für den Vorstand oder durch Beschluss an,

### *English Translation*

Management Board and the executive organization chart.

- (2) If only one member has been appointed to the Management Board, the Company will be solely represented by this member. If multiple persons have been appointed to the Management Board, the Company will be legally represented by two Management Board members or by one member and one executive vested with the power of commercial representation (*Prokurist*). The Supervisory Board may decide that specific members or all the members of the Management Board have sole power of representation. The Supervisory Board may also 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 Section 181, 2<sup>nd</sup> alternative of the German Civil Code (*Bürgerliches Gesetzbuch*, “**BGB**”); Section 112 AktG remains unaffected.

- (3) The Management Board requires the approval of the Supervisory Board:
- a) To sell the Company as a whole;
  - b) To conclude contracts or plans pursuant to the German Conversion Act;
  - c) To conclude inter-company agreements as defined in Section 291 AktG.

In addition, the Supervisory Board may specify, within the limits permitted by law, in the rules of procedure

## ***Deutsche Fassung***

welche Arten von Geschäften seiner Zustimmung bedürfen.

### **II. AUFSICHTSRAT**

#### **§ 7 ZUSAMMENSETZUNG UND AMTSDAUER**

- (1) Der Aufsichtsrat besteht aus vier Mitgliedern, die von der Hauptversammlung gewählt werden.
- (2) Die Mitglieder des Aufsichtsrats werden vorbehaltlich einer anderweitigen Festlegung der Amtszeit bei der Wahl bis zur Beendigung der Hauptversammlung bestellt, die über die Entlastung für das zweite Geschäftsjahr nach dem Beginn der Amtszeit beschließt. Das Geschäftsjahr, in welchem die Amtszeit beginnt, wird hierbei nicht mitgerechnet.
- (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 abweichend bestimmt. Entsprechendes gilt, falls eine Nachwahl wegen Wahlanfechtung notwendig wird.
- (4) Gleichzeitig mit den Aufsichtsratsmitgliedern können für ein oder für mehrere bestimmte Aufsichtsratsmitglieder Ersatzmitglieder gewählt werden. Sie werden nach einer bei der

## ***English Translation***

for the Management Board or by resolution the types of transactions requiring its consent.

### **II. SUPERVISORY BOARD**

#### **§ 7 COMPOSITION AND TERM OF OFFICE**

- (1) The Supervisory Board shall consist of four members which are elected by the General Meeting.
- (2) Unless otherwise specified at the time of their election, the members of the Supervisory Board are elected for a period terminating at the end of the General Meeting that resolves on the formal approval of the members' acts for the second fiscal year following the commencement of their term of office. The fiscal year in which the term of office begins shall not be included in this calculation.
- (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. The same applies if a successor has to be elected due to a challenge of the election.
- (4) Simultaneously with the members of the Supervisory Board, substitute members can be elected for one or more specific members of the Supervisory Board. Substitute members

### ***Deutsche Fassung***

Wahl festzulegenden Reihenfolge Mitglieder des Aufsichtsrates, wenn Aufsichtsratsmitglieder, als deren Ersatzmitglieder sie gewählt wurden, vor Ablauf der Amtszeit aus dem Aufsichtsrat ausscheiden. Tritt ein Ersatzmitglied an die Stelle des Ausgeschiedenen, so erlischt sein Amt mit Beendigung der nächsten Hauptversammlung.

- (5) Jedes Aufsichtsratsmitglied und jedes Ersatzmitglied kann sein Amt auch ohne wichtigen Grund unter Einhaltung einer Frist von einem Monat niederlegen. Die Niederlegung muss durch schriftliche Erklärung gegenüber dem Vorstand unter Benachrichtigung des Vorsitzenden des Aufsichtsrates erfolgen. Der Vorstand kann die Frist abkürzen oder auf die Einhaltung der Frist verzichten. Das Recht zur Amtsniederlegung aus wichtigem Grund bleibt hiervon unberührt.

### **§ 8**

#### **VORSITZENDER UND STELLVERTRETER**

- (1) Der Aufsichtsrat wählt in der ersten Sitzung nach seiner Wahl aus seiner Mitte einen Vorsitzenden und einen oder mehrere Stellvertreter. Die Wahl erfolgt für die Amtsdauer der gewählten oder einen kürzeren vom Aufsichtsrat bestimmten Zeitraum. Stellvertreter haben die Rechte und Pflichten des Vorsitzenden des Aufsichtsrates, wenn dieser verhindert ist. Unter mehreren Stellvertretern gilt die bei ihrer Wahl bestimmte Reihenfolge.

### ***English Translation***

shall join the Supervisory Board in accordance with the order of precedence determined at the time of their election if Supervisory Board members whom they have been appointed to replace leave office prematurely. If a member of the Supervisory Board is replaced by a substitute member, their term of office shall expire at the close of the next General Meeting.

- (5) Each member of the Supervisory Board and each substitute member may resign from office even without good cause with one month's notice. Resignation is to be declared in writing to the Management Board and the Chair of the Supervisory Board. The Management Board can consent to a shortening or to a waiver of this period. This shall have no effect on the right to resign for good cause.

### **§ 8**

#### **CHAIR AND DEPUTY CHAIR**

- (1) At its first meeting, the Supervisory Board shall elect a Chair and one or more Deputy Chairs from among its members. They shall be elected for their term of office or a shorter period determined by the Supervisory Board. Deputy Chairs shall assume the rights and duties of the Chair of the Supervisory Board if the Chair is unable to attend. If multiple Deputy Chairs are elected, the order of precedence determined at the time of their election shall apply.

### ***Deutsche Fassung***

- (2) Scheidet der Vorsitzende oder einer seiner Stellvertreter vorzeitig aus dem Amt aus, so hat der Aufsichtsrat unverzüglich eine Neuwahl für die restliche Amtszeit des Ausgeschiedenen vorzunehmen.

### **§ 9**

#### **SITZUNGEN DES AUFSICHTSRATS**

- (1) Die Sitzungen des Aufsichtsrates werden durch den Vorsitzenden des Aufsichtsrates mit einer Frist von 14 Tagen in Textform einberufen. Bei der Berechnung der Frist werden der Tag der Absendung der Einladung und der Tag der Sitzung nicht mitgerechnet. Mit der Einberufung sind die Gegenstände der Tagesordnung mitzuteilen. In dringenden Fällen kann der Vorsitzende diese Frist angemessen verkürzen und mündlich einberufen.
- (2) Den Vorsitz in den Sitzungen des Aufsichtsrats führt der Vorsitzende des Aufsichtsrats oder im Fall seiner Verhinderung sein Stellvertreter.

### **§ 10**

#### **BESCHLÜSSE DES AUFSICHTSRATS**

- (1) 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

### ***English Translation***

- (2) If the Chair or one of the Deputy Chairs resigns prematurely, the Supervisory Board shall hold a new election without delay to elect a new Chair for the remainder of the retiree's term of office.

### **§ 9**

#### **MEETINGS OF THE SUPERVISORY BOARD**

- (1) Meetings of the Supervisory Board shall be convened by the Chair of the Supervisory Board with 14 days' notice in writing. The 14-day period does not include the day on which the invitation is sent or the day of the meeting itself. When a meeting is convened, the agenda is to be announced. In urgent cases, the Chair may shorten this period of notice and convene the meeting orally.
- (2) Meetings of the Supervisory Board shall be chaired by the Chair of the Supervisory Board or, if he is unable to attend, the Deputy Chair.

### **§ 10**

#### **RESOLUTIONS OF THE SUPERVISORY BOARD**

- (1) Resolutions of the Supervisory Board shall generally be passed in meetings. At the order of the Chair 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

### *Deutsche Fassung*

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. Darüber hinaus können sie ihre Stimme auch im Vorfeld der Sitzung, während der Sitzung oder nachträglich innerhalb einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist auch mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel abgeben. Ein Recht zum Widerspruch gegen die vom Vorsitzenden angeordnete Form der Beschlussfassung besteht nicht.

- (2) Eine Beschlussfassung über Gegenstände der Tagesordnung, die nicht in der Einladung enthalten waren und auch nicht bis zum dritten Tag vor der Sitzung mitgeteilt worden sind, ist nur zulässig, wenn kein Aufsichtsratsmitglied widerspricht. Abwesenden Mitgliedern ist in einem solchen Fall Gelegenheit zu geben, binnen einer vom Vorsitzenden des Aufsichtsrats zu bestimmenden angemessenen Frist schriftlich, mündlich, fernmündlich, per Telefax, per E-Mail oder mittels sonstiger gebräuchlicher Kommunikationsmittel der Beschlussfassung zu widersprechen oder ihre Stimme abzugeben. Der Beschluss wird erst wirksam, wenn kein abwesendes Aufsichtsratsmitglied innerhalb der Frist widersprochen hat. Telefonisch oder

### *English Translation*

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. In addition, they may also cast their vote prior to or during the meeting or following the meeting within a reasonable period as determined by the chairman of the Supervisory Board in oral form, by telephone, by telefax, by email or any other customary means of communication. Objections to the form of voting determined by the chairman are not permitted.

- (2) Resolutions on matters which have not been mentioned on the agenda enclosed with the invitation to the meeting and which have not been notified by the third day before the meeting shall only be permitted if no member of the Supervisory Board objects. In such case, absent members must be given the opportunity to object to the adoption or to cast their vote in writing, orally, by telephone, telefax, email or any other customary means of communication within an adequate period of time to be determined by the Chair. The resolution becomes effective only after no absent Supervisory Board member has objected within the period. Members of the Supervisory Board taking part via telephone or other electronic

### *Deutsche Fassung*

mittels elektronischer Kommunikationsmittel zugeschaltete Mitglieder des Aufsichtsrats gelten als anwesend.

- (3) Beschlussfassungen können auch außerhalb von Sitzungen (im Sinne von § 10 Abs. 1) 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.
- (4) Der Aufsichtsrat ist beschlussfähig, wenn mindestens die Hälfte der Mitglieder, aus denen er insgesamt zu bestehen hat, an der Beschlussfassung teilnimmt. In jedem Fall müssen drei Mitglieder an der Beschlussfassung teilnehmen. Abwesende bzw. nicht telefonisch oder über elektronische Kommunikationsmittel (insbesondere Videokonferenz) teilnehmende oder zugeschaltete Aufsichtsratsmitglieder, die nach Maßgabe von § 10 Abs. 1 bzw. Abs. 3 ihre Stimme abgeben, sowie Mitglieder, die sich bei der Beschlussfassung der Stimme enthalten, nehmen in diesem Sinne an der Beschlussfassung teil.
- (5) Beschlüsse des Aufsichtsrates werden, soweit das Gesetz nicht zwingend etwas anderes bestimmt, mit einfacher Mehrheit der abgegebenen Stimmen gefasst. Dabei gilt Stimmenthaltung nicht als Stimmabgabe. Bei Wahlen genügt die verhältnismä-

### *English Translation*

means of communication are considered to be present.

- (3) Resolutions may also be adopted outside of meetings (within the meaning of Section 10(1)) in writing, by telefax or by email or any other comparable means of communication, whereas the aforementioned forms may also be combined, at the order of the Chair 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 Chair are not permitted.
- (4) The Supervisory Board has a quorum if at least half of the members of which it has to consist in total (and 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 Section 10(1) or (3) as well as members who abstain from voting are considered to take part in the voting for this purpose.
- (5) Unless required otherwise by law, resolutions passed by the Supervisory Board are adopted with a simple majority of the votes cast. Abstentions are not counted as votes cast. Elections are decided by a relative majority. In the event of a tie, the Chair shall have the casting vote; this

### ***Deutsche Fassung***

ßige Mehrheit. Bei Stimmengleichheit gibt die Stimme des Vorsitzenden des Aufsichtsrates den Ausschlag; das gilt auch bei Wahlen. Nimmt der Vorsitzende des Aufsichtsrates an der Abstimmung nicht teil, so gibt die Stimme seines Stellvertreters den Ausschlag.

- (6) Der Aufsichtsratsvorsitzende ist ermächtigt, im Namen des Aufsichtsrates die zur Durchführung der Beschlüsse des Aufsichtsrates erforderlichen Willenserklärungen abzugeben und an den Aufsichtsrat gerichtete Willenserklärungen in Empfang zu nehmen.
- (7) Über die Verhandlungen und Beschlüsse des Aufsichtsrates sind Niederschriften anzufertigen, die vom Vorsitzenden der Sitzung oder bei Abstimmungen außerhalb von Sitzungen vom Leiter der Abstimmung zu unterzeichnen sind. Beschlüsse außerhalb von Sitzungen werden allen Aufsichtsratsmitgliedern zugeleitet.
- (8) Die Unwirksamkeit oder Rechtswidrigkeit von Beschlüssen des Aufsichtsrats kann nur innerhalb einer Ausschlussfrist von einem Monat seit Kenntnis von der Beschlussfassung gerichtlich geltend gemacht werden.

### **§ 11**

#### **GESCHÄFTSORDNUNG**

Der Aufsichtsrat setzt im Rahmen von Gesetz und Satzung seine Geschäftsordnung selbst fest.

### ***English Translation***

shall also apply to elections. If the Chair does not vote, the casting vote will pass to his Deputy.

- (6) The Chair of the Supervisory Board is authorized to make declarations of intent on behalf of the Supervisory Board which are necessary for the implementation of resolutions adopted by the Supervisory Board and to accept declarations of intent to the Supervisory Board.
- (7) The proceedings and resolutions of the Supervisory Board are to be recorded in minutes which must be signed by the Chair or, in the case of votes outside meetings, by the person managing the voting procedure. Resolutions which were adopted outside meetings shall be made available to all members.
- (8) Invalid or illegal resolutions adopted by the Supervisory Board may only be contested before the courts within a one-month period of limitation of the resolution adopted becoming known.

### **§ 11**

#### **RULES OF PROCEDURE**

The Supervisory Board shall determine its own rules of procedure subject to statutory requirements and the Constitution.

## **Deutsche Fassung**

## **English Translation**

### **§ 12 AUSSCHÜSSE**

### **§ 12 COMMITTEES**

- |   |   |
|---|---|
| <p>(1) Der Aufsichtsrat kann im Rahmen der gesetzlichen Vorschriften aus seiner Mitte Ausschüsse bilden und ihnen in seiner Geschäftsordnung oder durch besonderen Beschluss Aufgaben und Befugnisse übertragen. Zusammensetzung, Befugnisse und Verfahren der Ausschüsse werden vom Aufsichtsrat festgelegt.</p> <p>(2) Für Aufsichtsratsausschüsse gelten die Bestimmungen dieser Satzung für den Aufsichtsrat sinngemäß, soweit die Geschäftsordnung des Aufsichtsrats im Rahmen des Gesetzes nichts Abweichendes anordnet. Bei Abstimmung und bei Wahlen gibt im Falle der Stimmengleichheit die Stimme des Vorsitzenden des Ausschusses den Ausschlag.</p> <p>(3) Von einem Aufsichtsratsausschuss beschlossene Willenserklärungen gibt im Namen des Ausschusses dessen Vorsitzender ab.</p> | <p>(1) Within the framework of the statutory regulations, the Supervisory Board may appoint committees from among its members and delegate tasks and powers to such committees pursuant to its rules of procedure or special resolutions. The Supervisory Board shall determine the composition, competences and procedures of the committees.</p> <p>(2) The provisions of this Constitution shall apply accordingly to Supervisory Board committees unless otherwise stipulated by the Supervisory Board's rules of procedure in compliance with the statutory provisions. The chair of the committee shall have the casting vote in the event of tied votes and elections.</p> <p>(3) Declarations of intent adopted by a Supervisory Board committee shall be issued by the chair on behalf of the committee.</p> |
|---|---|

### **§ 13 VERGÜTUNG**

### **§ 13 COMPENSATION**

- |   |  |
|---|--|
| <p>(1) Den Aufsichtsratsmitgliedern kann für ihre Tätigkeit von der Hauptversammlung eine Vergütung bewilligt werden. Sie soll in einem angemessenen Verhältnis zu den Aufgaben der Aufsichtsratsmitglieder und zur Lage der Gesellschaft stehen.</p> <p>(2) Die Mitglieder des Aufsichtsrates erhalten ferner Ersatz aller vernünftigen Auslagen im Zusammenhang mit ihrer Stellung als Mitglieder des Aufsichtsrats sowie Ersatz der etwa auf</p> | <p>(1) The members of the Supervisory Board may be paid remuneration for their duties, as approved by the General Meeting. It ought to be reasonable in relation to the duties of the Supervisory Board member and the situation of the Company.</p> <p>(2) The members of the Supervisory Board shall also be reimbursed for all reasonable expenses in connection with their role as members of the Supervisory Board as well as for any</p> |
|---|--|



<i>Deutsche Fassung</i>	<i>English Translation</i>
<p>ihre Vergütung und Auslagen entfallenden Umsatzsteuer.</p> <p>(3) Die Gesellschaft kann die Mitglieder des Aufsichtsrats weiter gegen Inanspruchnahme aus ihrer Haftung nach §§ 116, 93 AktG versichern.</p> <p>(4) § 113 Abs. 2 AktG bleibt unberührt.</p>	<p>value added tax payable on their compensation and expenses.</p> <p>(3) The Company can also take out insurance on behalf of the members of the Supervisory Board to cover their liability pursuant to Sections 116 and 93 AktG.</p> <p>(4) Section 113(2) AktG shall remain unaffected.</p>
<p style="text-align: center;"><b>§ 14</b> <b>SATZUNGSÄNDERUNGEN</b></p> <p>Der Aufsichtsrat ist befugt, Änderungen der Satzung, die nur deren Fassung betreffen, zu beschließen.</p>	<p style="text-align: center;"><b>§ 14</b> <b>AMENDMENTS TO THE CONSTITUTION</b></p> <p>The Supervisory Board is authorized to adopt amendments to the Constitution exclusively pertaining to its drafting.</p>
<p style="text-align: center;"><b>III.</b> <b>HAUPTVERSAMMLUNG</b></p> <p style="text-align: center;"><b>§ 15</b> <b>ORT UND EINBERUFUNG</b></p>	<p style="text-align: center;"><b>III.</b> <b>GENERAL MEETING</b></p> <p style="text-align: center;"><b>§ 15</b> <b>PLACE AND INVITATION</b></p>
<p>(1) Die Hauptversammlung findet am Sitz der Gesellschaft oder nach Wahl des einberufenden Organs an einem deutschen Börsenplatz statt.</p> <p>(2) Die Hauptversammlung wird durch den Vorstand oder in den gesetzlich vorgeschriebenen Fällen durch den Aufsichtsrat einberufen.</p>	<p>(1) General Meetings are held at the Company's corporate seat or at the seat of a German stock exchange chosen by the convening corporate body.</p> <p>(2) A General Meeting is to be convened by the Management Board or, if required by law, the Supervisory Board.</p>

### ***Deutsche Fassung***

- (3) Für die Einberufungsfrist gelten die gesetzlichen Vorschriften.

### **§ 16 TEILNAHME AN DER HAUPTVERSAMMLUNG**

- (1) Zur Teilnahme an der Hauptversammlung und zur Ausübung des Stimmrechts sind nur diejenigen Aktionäre berechtigt, die im Aktienregister eingetragen sind und die sich rechtzeitig angemeldet haben. Die Anmeldung muss der Gesellschaft unter der in der Einberufung hierfür mitgeteilten Adresse am letzten Tag der gesetzlichen Anmeldefrist zugehen. In der Einberufung kann eine kürzere, in Tagen zu bemessende Frist für die Anmeldung vorgesehen werden. Der Tag der Hauptversammlung und der Tag des Zugangs sind hierbei nicht mitzurechnen.
- (2) Das Stimmrecht kann durch einen Bevollmächtigten ausgeübt werden. Die Erteilung der Vollmacht, ihr Widerruf und der Nachweis der Bevollmächtigung gegenüber der Gesellschaft bedürfen der Textform. § 135 AktG bleibt unberührt.
- (3) 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 zum Umfang und zum Verfahren der Teilnahme und Rechtsausübung zu tref-

### ***English Translation***

- (3) The period of notice for convening a General Meeting is subject to the statutory requirements.

### **§ 16 PARTICIPATION IN THE GENERAL MEETING**

- (1) The right to participate and vote in a General Meeting is restricted to those shareholders who are entered in the share register and who have registered in due time. Registration must be received by the Company on the last day of the statutory registration period at the address given in the notice convening the General Meeting. A shorter period for registration expressed in days may be set in the notice of convening. This period does not include the day of the General Meeting and the day of receipt.
- (2) Voting rights may be exercised by a proxy. The granting of proxy, the revocation of proxy and proof of authorization must be made out to the Company in writing. Section 135 AktG remains unaffected.
- (3) The Management Board is authorized to make provision for shareholders to participate in the General Meeting without attending in person and without granting a proxy, and to vote in whole or in part via electronic means (online participation). The Management Board may also set rules regarding the extent and procedure for participation and voting, which are to be announced when the General Meeting is convened.

## ***Deutsche Fassung***

fen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.

- (4) Der Vorstand ist ermächtigt vorzusehen, dass Aktionäre auch ohne Teilnahme an der Hauptversammlung ihre Stimmen schriftlich oder im Wege elektronischer Kommunikation abgeben dürfen (Briefwahl). Der Vorstand ist auch ermächtigt, Bestimmungen zum Verfahren zu treffen. Diese werden mit der Einberufung der Hauptversammlung bekannt gemacht.

### **§ 17 STIMMRECHT**

- (1) Jede Aktie gewährt eine Stimme.
- (2) Das Stimmrecht beginnt mit der vollständigen Leistung der gesetzlichen Mindesteinlage.

### **§ 18 VORSITZ IN DER HAUPTVERSAMMLUNG**

- (1) Den Vorsitz in der Hauptversammlung führt der Vorsitzende des Aufsichtsrates oder ein anderes durch den Aufsichtsrat zu bestimmendes Aufsichtsratsmitglied. Für den Fall, dass kein Mitglied des Aufsichtsrats den Vorsitz übernimmt, so eröffnet ein vom Vorstand zu bestimmendes Mitglied des Vorstands die Hauptversammlung und lässt den Versammlungsleiter durch die Hauptversammlung wählen.

## ***English Translation***

- (4) The Management Board is authorized to make provision for shareholders to cast their votes in writing or via electronic means without participating in the General Meeting (postal vote). It may also set rules for this procedure, which are to be announced when the General Meeting is convened.

### **§ 17 VOTING RIGHTS**

- (1) Each share entitles its holder to one vote.
- (2) Only those shareholders who have paid in the statutory minimum capital contribution in full are entitled to vote.

### **§ 18 CHAIRMANSHIP OF THE GENERAL MEETING**

- (1) The General Meeting shall be chaired by the Chair of the Supervisory Board or another member of the Supervisory Board to be decided by the Supervisory Board. If none of the members of the Supervisory Board chairs the General Meeting, it shall be opened by a member of Management Board decided by the Management Board, who shall then have the Chair of the Meeting elected by the General Meeting.

### ***Deutsche Fassung***

- (2) Der Versammlungsleiter leitet die Verhandlungen und bestimmt die Reihenfolge der Behandlung der Tagesordnung sowie die Art und Reihenfolge der Abstimmungen. Er kann das Frage- und Rederecht der Aktionäre zeitlich angemessen beschränken.
- (3) Der Versammlungsleiter ist ermächtigt, die vollständige oder teilweise Bild- und Tonübertragung der Hauptversammlung in einer von ihm näher zu bestimmenden Weise zuzulassen. Die Übertragung kann auch in einer Form erfolgen, zu der die Öffentlichkeit uneingeschränkt Zugang hat.

### **§ 19**

#### **BESCHLUSSFASSUNG**

Die Beschlüsse der Hauptversammlung werden, soweit nicht zwingende gesetzliche Vorschriften etwas anderes bestimmen, mit einfacher Mehrheit der abgegebenen Stimmen und, soweit das Gesetz außer der Stimmenmehrheit eine Kapitalmehrheit vorschreibt, mit der einfachen Mehrheit des bei der Beschlussfassung vertretenen Kapitals gefasst. Bei Stimmengleichheit gilt ein Antrag als abgelehnt.

### ***English Translation***

- (2) The Chair of the Meeting shall conduct the proceedings and determine the sequence in which the items on the agenda are to be dealt with as well as the type and order of voting. The Chair of the Meeting can also limit the time available to shareholders to ask questions and speak as appropriate.
- (3) The Chair of the Meeting is authorized to permit the video and audio transmission of all or part of the General Meeting in a manner they see fit. Transmission may also take place in a form to which the public has unlimited access.

### **§ 19**

#### **PASSING OF RESOLUTIONS**

In the absence of mandatory legal provisions to the contrary, resolutions of the General Meeting shall be adopted by a simple majority of all votes cast and, if the law stipulates a capital majority in addition to a majority of votes, by the simple majority of the share capital represented in the vote. In the event of a tie, a motion shall be deemed to have been rejected.

## ***Deutsche Fassung***

### **§ 20**

#### **NIEDERSCHRIFT ÜBER DIE HAUPTVERSAMMLUNG**

Für die Niederschrift über die Hauptversammlung gilt § 130 AktG.

### **C.**

#### **SCHLUSSBESTIMMUNGEN**

### **§ 21**

#### **JAHRESABSCHLUSS**

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 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.

### **§ 22**

#### **GEWINNVERWENDUNG**

- (1) Für die Gewinnverwendung gelten die gesetzlichen Bestimmungen. In einem Kapitalerhöhungsbeschluss kann die Gewinnverteilung neuer Aktien abweichend von § 60 Abs. 2 Satz 3 AktG festgesetzt werden, insbesondere der Beginn der Dividendenberechtigung auch auf den Beginn eines

## ***English Translation***

### **§ 20**

#### **MINUTES OF THE GENERAL MEETING**

The minutes of the General Meeting are governed by Section 130 AktG.

### **C.**

#### **FINAL PROVISIONS**

### **§ 21**

#### **ANNUAL FINANCIAL STATEMENTS**

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 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.

### **§ 22**

#### **APPROPRIATION OF PROFITS**

- (1) Profit appropriation is subject to statutory provisions. The profit participation rights of new shares may be determined by a shareholder resolution to increase the share capital in deviation from Section 60(2), sentence 3 AktG, namely the date of first entitlement to dividends be

### **Deutsche Fassung**

bereits abgelaufenen Geschäftsjahres gelegt werden, wenn über die Gewinnverwendung für dieses Geschäftsjahr noch nicht beschlossen wurde. Die Hauptversammlung kann auch eine andere Verwendung bestimmen, als in § 58 Abs. 3 Satz 1 AktG vorgesehen.

- (2) Nach Ablauf eines Geschäftsjahres kann der Vorstand mit Zustimmung des Aufsichtsrates im Rahmen des § 59 AktG eine Abschlagsdividende an die Aktionäre ausschütten.

### **§ 23 RÜCKLAGEN**

- (1) Stellen Vorstand und Aufsichtsrat den Jahresabschluss fest, so können sie den gesamten Jahresüberschuss in andere Gewinnrücklagen einstellen, solange die anderen Gewinnrücklagen die Hälfte des Grundkapitals nicht übersteigen oder nach der Einstellung übersteigen würden.
- (2) Bei der Errechnung des gemäß Abs. 1 in andere Gewinnrücklagen einzustellenden Teils des Jahresüberschusses sind Beträge, die in die gesetzliche Rücklage einzustellen sind und ein Verlustvortrag vorab abzuziehen.

### **§ 24 GRÜNDUNGSKOSTEN/ FORMWECHSELAUFWAND**

Die Kosten des Formwechsels der Gesellschaft in die Rechtsform der Aktiengesellschaft (insbesondere Notar-

### **English Translation**

backdated to the beginning of a financial year which has already elapsed if profit appropriation for this financial year has not yet been decided. The General Meeting may also decide on a different form of appropriation from that provided for in Section 58(3), sentence 1 AktG.

- (2) At the end of a financial year, the Management Board may – with the approval of the Supervisory Board – distribute an interim dividend to the shareholders pursuant to Section 59 AktG.

### **§ 23 RESERVES**

- (1) If the Management Board and the Supervisory Board approve the annual financial statements, they may allocate the entire net profit to other retained earnings unless the other retained earnings exceed half the share capital or would do so after allocation.
- (2) When calculating the portion of the net profit to be allocated to other retained earnings in accordance with Section 23(1), the amounts required to be allocated to the statutory reserve and any loss carried forward must first be deducted.

### **§ 24 COSTS OF TRANSFORMATION**

The costs of the change of the legal form of the Company into a stock corporation (in particular the costs

***Deutsche Fassung***

und Gerichtsgebühren, Kosten der Veröffentlichung, Steuern, Prüfungs- und Beratungskosten) trägt die Gesellschaft bis zu einem Betrag von EUR 8.000,00, einschließlich des von der Marley Spoon GmbH gemäß Ziffer 18. des Gesellschaftsvertrages übernommenen Gründungsaufwands in Höhe von bis zu EUR 1.500,00.

**§ 25**

**BEKANNTMACHUNGEN**

- (1) Bekanntmachungen der Gesellschaft erfolgen im Bundesanzeiger.
- (2) Informationen an die Aktionäre können auch im Wege der Datenfernübertragung übermittelt werden.

***English Translation***

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 8,000.00, including the formation expenses in the amount of up to EUR 1,500.00 which are already borne by Marley Spoon GmbH pursuant to Sec. 18 of the articles of association.

**§ 25**

**ANNOUNCEMENTS**

- (1) Company announcements shall be published in the Federal Gazette.
- (2) Information may also be conveyed to shareholders by means of electronic data transmission.

\* \* \* \*

## V.

### Indicative timetable outlining milestones of the Corporate Conversion process

Date	Milestones
April 22, 2022	<ul style="list-style-type: none"> <li>• Publication of invitation to the AGM (NOM) of Marley Spoon AG</li> </ul>
End of April 2022/ Beginning of May 2022	<ul style="list-style-type: none"> <li>• Commencement of employee involvement procedure</li> <li>• Commencement of election procedure of SNB members</li> <li>• Submission of employee information letter to EU/EEA employees of Marley Spoon Group</li> </ul>
May 31, 2022	<ul style="list-style-type: none"> <li>• AGM of Marley Spoon AG approving the Joint Merger Plan</li> </ul>
June 1, 2022	<ul style="list-style-type: none"> <li>• AGM of MS Holding AG approving the Joint Merger Plan</li> </ul>
End of July 2022	<ul style="list-style-type: none"> <li>• Conclusion of election procedure of SNB members</li> </ul>
End of August 2022	<ul style="list-style-type: none"> <li>• Commencement of negotiations between SNB and Management Boards of Marley Spoon AG and MS Holding AG on the conclusion of the Employee Involvement Agreement</li> </ul>
Until mid of October 2022	<ul style="list-style-type: none"> <li>• Conclusion of the Employee Involvement Agreement</li> <li>• Conclusion of employee involvement procedure</li> </ul>
Mid/end of October 2022	<ul style="list-style-type: none"> <li>• Registration of Marley Spoon SE with commercial register of the Local Court of Berlin-Charlottenburg</li> <li>• Merger of MS Holding AG onto Marley Spoon AG and change of legal form of Marley Spoon AG into Marley Spoon SE become effective</li> <li>• Formation of Marley Spoon SE completed</li> <li>• Notice of completion of formation of Marley Spoon SE to the ASX, change of the listing to “Marley Spoon SE”</li> </ul>



## VI. Additional information for shareholders

### 1. Availability on the Company's website

The invitation to the general meeting of the Company on May 31, 2022, the documentation pertaining to agenda item 1 and agenda item 13, the reports under Section II., the copy of the new Constitution of Marley Spoon SE highlighting the minor changes against the current Constitution of Marley Spoon AG under Section III., the Joint Merger Plan under Section IV., an indicative timetable outlining milestones of the Corporate Conversion process under Section V. can be inspected in the business premises of the Company, Paul-Linke-Ufer 39-40, 10999 Berlin, Germany, and are also available on the Company's website at:

<https://ir.marleyspoon.com/investor-centre/>

### 2. Participation and exercise of voting rights in the general meeting

All shareholders who are registered in the share register of the Company on the day of the general meeting and who have registered themselves for participation in the general meeting on time are eligible to attend the general meeting and cast votes. The registration must arrive by no later than May 23, 2022 midnight (CEST) / May 24, 2022, 8:00 a.m. (AEST), at the Company's address:

Marley Spoon AG  
Paul-Linke-Ufer 39-40  
Attn: Dr. Mathias Hansen  
10999 Berlin  
Deutschland/Germany  
E-Mail: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

Shareholders registered in the share register who cannot attend the general meeting in person may be represented by an authorised representative of their choice (or a proxy), including a financial institution or a shareholder association. The power of attorney is to be granted in text form (Section 16 para. 2 sentence 1 of the Constitution), *i.e.*, in writing, via facsimile or email. The form requirement does not apply if an intermediary, a shareholder association or a person or institution that is considered equivalent pursuant to Section 135 para. 8 AktG is granted power of attorney, given that the aforementioned institutions or persons have to only keep a verifiable record of such power of attorney pursuant to Section 135 para. 1 sentence 2 AktG.

### 3. Motions and election proposals

Each shareholder is entitled to submit countermotions or election proposals with respect to the agenda items. The Company will make motions by shareholders, including the shareholder's name, a potential explanation and statement of the administration, if any, available, if the shareholder has sent to the following address at least 14 days prior to the general meeting, *i.e.*, by no later than May 16, 2022 midnight

(CEST) / May 17, 2022, 8:00 a.m. (AEST), a countermotion against a proposal by the Management Board and/or the Supervisory Board regarding a certain agenda item together with an explanation:

Marley Spoon AG  
Attn: Dr. Mathias Hansen  
Paul-Lincke-Ufer 39-40  
10999 Berlin  
Deutschland/Germany  
Email: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

These regulations apply *mutatis mutandis* to election proposals submitted by a shareholder. The election proposal does not have to be supported by a statement of grounds. The right of each shareholder to submit counterproposals with respect to agenda items or election proposals during the general meeting also without a prior submission to the Company remains unaffected.

#### **4. Live transmission of the general meeting**

Shareholders and CDI-holders may apply by no later than May 23, 2022 midnight (CEST) / May 24, 2022, 8:00 a.m. (AEST) for the general meeting to be webcast live over the internet. In such case, they will be sent a link and confidential access data with which they will be able to access the online transmission of the general meeting on May 31, 2022, starting at 9:00 a.m. (CEST) / 5:00 p.m. (AEST). The Chairman of the general meeting may then determine that the entire general meeting on May 31, 2022 will be webcast live to shareholders and CDI-holders of Marley Spoon AG over the internet starting at 9:00 a.m. (CEST) / 5:00 p.m. (AEST). The live transmission of the general meeting does not allow for a participation in the general meeting within the meaning of Section 118 para.1 sentence 2 AktG.

Shareholders and CDI-holders wishing to access the online transmission of the general meeting can request the link and the confidential access data by sending their full name and CDI holder number for verification before the aforementioned date to:

Marley Spoon AG  
Attn: Dr. Mathias Hansen  
Paul-Lincke-Ufer 39-40  
10999 Berlin  
Deutschland/Germany  
Email: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

**VII.**  
**Additional information for CDI-holders**

CDI-holders will be able to vote at the general meeting by:

1. instructing the Company's CDI Depositary, CHESS Depositary Nominees Pty Ltd (CDN), as the legal owner, to vote the Shares underlying their CDIs in a particular manner. A CDI Voting Instruction Form is included with this invitation and this must be completed and returned to in accordance with the instructions on the form; or
2. informing Marley Spoon AG that they wish to nominate themselves or another person to be appointed as CDN's proxy with respect to their Shares underlying multiples of 1,000 CDIs for the purposes of attending and voting at the general meeting. CDI-holders may do this by completing and returning the CDI Voting Instruction Form included with this invitation in accordance with the instructions on the form; or
3. converting their CDIs (in multiples of 1,000) into a holding of Shares and voting these Shares at the general meeting (however, if thereafter the former CDI holder wishes to sell their investment on ASX it would be necessary to convert the Shares back to CDIs). In order to vote in person, the former CDI holder has to appear at the Company's business premises in Berlin, Germany. Furthermore, the conversion and entry into the Company's share register must be completed before May 24, 2022 midnight (CEST) / May 25, 2022, 8:00 a.m. (AEST), and registration for attendance of the general meeting must have arrived at the Company's address – as set out under Section VI. above – by no later than May 23, 2022 midnight (CEST) / May 24, 2022, 8:00 a.m. (AEST).

To obtain a copy of CHESS Depositary Nominee's Financial Services Guide, go to [www.asx.com.au/CDIs](http://www.asx.com.au/CDIs) or phone +61 1300 300 279 if you would like one sent to you by mail.

Berlin, Germany, April 2022

**Management Board (*Vorstand*)**

\* \* \* \*

# MARLEY SPOON

## MARLEY SPOON AG

ARBN 625 684 068

### LODGE YOUR INSTRUCTION



#### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



#### BY MAIL

Marley Spoon AG  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia



#### BY FAX

+61 2 9287 0309



#### BY HAND

Link Market Services Limited  
Parramatta Square, Level 22, Tower 6,  
10 Darcy Street, Parramatta NSW 2150



#### ALL ENQUIRIES TO

Telephone: 1300 554 474

Overseas: +61 1300 554 474

### LODGEMENT OF A CDI VOTING INSTRUCTION FORM

This CDI Voting Instruction Form (and any Power of Attorney under which it is signed) must be received at an address given above by **midnight (CEST) on Monday, 23 May 2022 / 8:00am (AEST) on Tuesday, 24 May 2022, (the "cut-off")**. Any CDI Voting Instruction Form received after that time will be invalid. CDI Voting Instruction Forms may be lodged:



#### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Login to the Link website using the holding details as shown on the CDI Voting Instruction Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" (Securityholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the reverse of this CDI Voting Instruction Form).

### HOW TO COMPLETE THIS CDI VOTING INSTRUCTION FORM

#### YOUR NAME AND ADDRESS

This is your name and address as it appears on the Company's CDI register. If this information is incorrect, please make the correction on the form. CDI Holders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your CDIs using this form.**

#### DIRECTION TO CHESS DEPOSITARY NOMINEES PTY LTD

Each CHESS Depositary Interest ("CDI") is evidence of an indirect ownership in the Company's shares ("Shares"). The underlying Shares are registered in the name of CHESS Depositary Nominees Pty Ltd ("CDN"). As holders of CDIs are not the legal owners of the Shares, CDN is entitled to vote at the annual general meeting of shareholders ("Meeting") on the instruction of the registered holders of the CDIs.

#### APPOINTMENT OF A PROXY

If you wish to attend the Meeting in person or appoint some person or company other than CDN, who need not be a shareholder, to attend and vote at the Meeting as CDN's proxy or any adjournment or postponement thereof, please insert your name(s) or the name of your chosen appointee in the box in Step 2. Link will then send you a legal form of proxy which will grant you or the person specified by you the right to attend and vote at the Meeting. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies as outlined in the *Notice of Annual General Meeting* including any cut off time for receipt of valid proxies.

#### SIGNING INSTRUCTIONS

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either holder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with Link. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** with respect to an Australian company, where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place. With respect to a U.S. company or other entity, this form may be signed by one officer. Please give full name and title under the signature.

### CDI VOTING INSTRUCTION FORM

**Note:** Voting instructions in accordance with Option A will only be valid and accepted if this form, executed by you, is received in accordance with the instructions above by no later than the cut off. To ensure that any proxy appointed under Option B is eligible to vote in accordance with your instructions, you should also ensure that this form, executed by you with the box in Option B completed, is received in accordance with the instructions above by no later than the cut off.

#### STEP 1: OPTION A

#### DIRECTION TO CHESS DEPOSITARY NOMINEES PTY LTD

I/We being a holder of CHESS Depositary Interests of Marley Spoon AG hereby direct CHESS Depositary Nominees Pty Ltd to vote the shares underlying my/our CDI holding at the Annual General Meeting of shareholders of the Company to be held at **9.00am (CEST) / 5.00pm (AEST) on Tuesday, 31 May 2022 at Dentons Europe LLP, Markgrafenstraße 33, Berlin, 10117 Germany**, and at any adjournment or postponement of that Meeting, in accordance with the following directions. By execution of this CDI Voting Instruction Form the undersigned hereby authorises CDN to appoint such proxies, attorneys or their substitutes in their discretion to vote in accordance with the directions set out below.

NAME SURNAME  
ADDRESS LINE 1  
ADDRESS LINE 2  
ADDRESS LINE 3  
ADDRESS LINE 4  
ADDRESS LINE 5  
ADDRESS LINE 6



X99999999999

STEP 1: OPTION B

**PROXY APPOINTMENT**– this only needs to be completed if you wish to attend the Meeting or appoint another person to attend the Meeting as your proxy. Leave this box blank if you wish to have votes cast in accordance with Option A.

If you wish to attend the Meeting in person or appoint another person or company other than CDN, who need not be a shareholder, to attend and vote at the Meeting as CDN's proxy or any adjournment or postponement thereof, please insert their name(s) in this box.

Link will then send you a legal form of proxy which will grant you or the person specified by you the right to attend and vote at the Meeting as CDN's proxy. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies and authorised representatives as outlined in the *Notice of Annual General Meeting* including any cut off time for receipt of valid proxies.

**VOTING INSTRUCTIONS**

Please read the voting instructions overleaf before marking any boxes with an ☒

**Resolutions**

- |   | For                      | Against                  | Abstain*                 |
|---|--------------------------|--------------------------|--------------------------|
| 2 Resolution on the discharge of the members of the Management Board for the financial year 2021  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 Resolution on the discharge of the members of the Supervisory Board for the financial year 2021   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 Resolution on the appointment of the auditor for the individual financial statements and the consolidated financial statements for the financial year 2022, as well as for any review of interim financial statements and interim management reports during the financial year 2022   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 Resolution on the authorisation to grant subscription rights to members of the Management Board (Vorstand) of the Company as well as appointed officers, directors and other members of managing corporate bodies of the Company's subsidiaries and affiliated companies in Germany and abroad and other members of the senior leadership team or senior managers of the Company ("Share Option Program 2022") and on the creation of a Conditional Capital 2022/I, as well as the corresponding amendment of the Constitution  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 Resolution to increase share capital by converting existing capital reserves into registered share capital and corresponding amendment of Section 3 of the Constitution   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 Resolution on the cancellation of the existing Authorised Capital 2021/I and the creation of an Authorised Capital 2022/I, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Section 3 para. 3 of the Constitution  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8 Resolution on the adjustment of the existing Authorised Capital 2021/II and Authorised Capital 2021/III the corresponding amendment of Section 3 para. 15 and Section 3 para. 16 of the Constitution  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9 Resolution on the creation of an Authorised Capital 2022/II under exclusion of subscription rights for the purpose of serving "Restricted Stock Units" to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as to full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the Restricted Stock Unit Program 2022/I of the Company and on the respective amendment of Section 3 para. 18 of the Constitution        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10 Resolution on the creation of an Authorised Capital 2022/III under the exclusion of subscription rights for the purpose of serving "Restricted Stock Units" to be issued to selected executives and employees of the Company and of affiliated companies in Germany and abroad as well as to full-time employee-equivalent persons, in particular, persons working for the Company or affiliated companies in Germany and abroad under so-called employer of record contracts under the Restricted Stock Unit Program 2022/II of the Company and on the respective amendment of Section 3 para. 19 of the Constitution | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 Resolution on the adjustment of the authorisations regarding the Share Option Program 2018, Share Option Program 2019, Share Option Program 2020 and Share Option Program 2021   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 Resolution pursuant to Section 71 para. 1 no. 8 AktG on an authorisation regarding the acquisition and the use of treasury shares / treasury CDIs, also with a potential exclusion of subscription rights  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13 Resolution on the approval of the joint merger plan between Marley Spoon AG as acquiring company and MS Holding AG, Klagenfurt, Austria, as transferring company   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14 Resolution on elections of members of the first Supervisory Board of Marley Spoon SE   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (a) Ms Deena Robyn Shiff  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Mr Roy Perticucci   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Ms Kim Elizabeth Winifred Anderson  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Ms Robin Low  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15 Resolution to approve the Share Option Program 2022 and issue of securities under that program in the future   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16 Resolution on the granting of share options to Fabian Siegel under the 2021 SOP  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 17 Resolution to approve the Restricted Stock Unit Program 2022 and issue of securities under that program  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18 Resolution pursuant to which, for the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of Shares in the Company and CDIs   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

☒ \* If you do not mark the "For" or "Against" box your vote will not be counted. If you wish to vote a portion of your CDI's, see voting instructions overleaf.

STEP 4

**SIGNATURE OF CDI HOLDERS – THIS MUST BE COMPLETED**

CDI Holder 1 (Individual)

Sole Director and Sole Company Secretary

Joint CDI Holder 2 (Individual)

Director/Company Secretary (Delete one)

Joint CDI Holder 3 (Individual)

Director

This form should be signed by the CDI Holder in accordance with the instructions overleaf.

MMM PRX2201N