There are two different, unaffiliated companies that use the name MERCK. When this document refers to Merck or a company having Merck in its name, its referring to Merck KGaA, Darmstadt, Germany, or one of its affiliates. This company uses the firm name "Merck KGaA, Darmstadt, Germany," in the United States and Canada, and also uses "EMD Serono" in healthcare, "MilliporeSigma" in life science and "EMD Performance Materials" in the performance materials business. The other company, Merck & Co., Inc. holds the rights in the trademark MERCK in the United States and Canada. Merck & Co. is not affiliated with or related to Merck KGaA, Darmstadt, Germany, which owns the MERCK trademark in all other countries of the world.

Convenience Translation

Report on the Audit of the Control and Profit and Loss Pooling Agreement in accordance with Section 293b (1) AktG

between

MERCK Kommanditgesellschaft auf Aktien, Darmstadt

and

AZ Electronic Materials GmbH, Darmstadt

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Annex 5: General Terms and Conditions

1. Engagement and Execution of the Engagement

MERCK Kommanditgesellschaft auf Aktien, Darmstadt, as the "Parent Company".
(hereinafter: MERCK KGaA)

and

AZ Electronic Materials GmbH, Darmstadt, as "Controlled Company".
(hereinafter AZ GmbH),

have concluded a control and profit and loss pooling agreement pursuant to Section 291 (1) sentence 1 of the German Stock Corporation Act (*Aktiengesetz*, "AktG") on February 16, 2021 (hereinafter also referred to as Intercompany Agreement or Agreement).

The Parent Company is the indirect owner of 100% of the shares in the Controlled Company. Merck 15. Allgemeine Beteiligungs-GmbH with registered office in Darmstadt, registered with Local Court of Darmstadt under HRB 92696 (hereinafter referred to as "Intermediate Company I"), directly holds 100% of the shares in the Subsidiary. Merck Financial Trading GmbH, with its registered office in Gernsheim, registered with Local Court of Darmstadt under HRB 90629 (hereinafter referred to as "Intermediate Company II"), holds 100% of the shares in Merck 15 Allgemeine Beteiligungs-GmbH. The Parent Company, MERCK KGaA, holds a 100% interest in Merck Financial Trading GmbH.

In accordance with Section 293 AktG, the control and profit and loss pooling agreement is by statute subject to the approval of the general meeting of MERCK KGaA and the shareholders' meeting of AZ GmbH. The control and profit and loss pooling agreement shall be submitted to the general meeting of MERCK KGaA for approval. A resolution on the consent of the shareholders' meeting of AZ GmbH was passed on February 22, 2021 in notarial form. Furthermore, entry in the commercial register of AZ GmbH is required for the Intercompany Agreement to become effective.

The executive board of MERCK KGaA and the management board of AZ GmbH have submitted a joint report (hereinafter referred to as "Joint Report") dated February 16, 2021 in accordance with Section 293a (1) sentence 1 AktG, in which the conclusion of the control and profit and loss pooling agreement and the agreement itself are explained and justified in detail from a legal and economic perspective.

Section 293b AktG provides that the control and profit and loss pooling agreement must be audited by an expert auditor for each party entering into the agreement.

The Regional Court of Frankfurt appointed us, HLB Dr. Stückmann und Partner mbB Wirtschaftsprüfungsgesellschaft, Steuerberatungsgesellschaft, as the expert joint auditor of the Intercompany Agreement pursuant to Section 293c AktG by order dated January 28, 2021 based on the joint application of the executive board of MERCK KGaA and the management board of AZ Electronic Materials GmbH.

Based on this order, the executive board of MERCK KGaA and the management board of AZ GmbH have jointly commissioned us to audit the control and profit and loss pooling agreement. The subject and scope of the audit are derived from Section 293b and Section 293e AktG applied *mutatis mutandis*.

In carrying out the audit, we had in particular the following documents at our disposal:

- Control and profit and loss pooling agreement between MERCK Kommanditgesellschaft auf Aktien, Darmstadt, and AZ Electronic Materials GmbH, Darmstadt dated February 16, 2021 (Annex 1)
- Order of the Frankfurt Regional Court of January 28, 2021 (Annex 2)
- Joint report pursuant to Section 293a AktG of the executive board of MERCK Kommanditgesellschaft auf Aktien and the management board of AZ Electronic Materials GmbH on the control and profit and loss pooling agreement between MERCK Kommanditgesellschaft auf Aktien and AZ Electronic Materials GmbH dated February 16, 2021 (Annex 3)
- Minutes of the extraordinary shareholders' meeting of AZ Electronic Materials GmbH, Darmstadt, dated February 22, 2021 (deed no. 217/2021 of the notary Dr. Wulf Albach, Darmstadt) (Annex 4)
- Commercial register excerpt of MERCK Kommanditgesellschaft auf Aktien, Darmstadt, dated March 4,2021
- Commercial register excerpt of AZ Electronic Materials GmbH, Darmstadt, dated March 4, 2021
- Commercial register excerpt of Merck Financial Trading GmbH, Gernsheim, dated March 4, 2021
- Commercial register excerpt of Merck 15. Allgemeine Beteiligungs-GmbH, Darmstadt, dated March 4, 2021
- List of shareholders of Merck 15. Allgemeine Beteiligungs-GmbH, dated November 20, 2013
- List of shareholders of Merck Financial Trading GmbH, dated December 5, 2011
- List of shareholders of AZ Electronic Materials GmbH, dated October 21, 2019
- Articles of Association of MERCK Kommanditgesellschaft auf Aktien, Darmstadt, dated July 30, 2020
- Articles of Association of AZ Electronic Materials GmbH, Darmstadt, dated October 21, 2019
- Articles of Association of Merck 15. Allgemeine Beteiligungs-GmbH, dated March 28, 2014
- Articles of Association of Merck Financial Trading GmbH, dated November 15, 2013
- Audited annual financial statements of Merck 15. Allgemeine Beteiligungs-GmbH, Merck Financial Trading GmbH and AZ Electronic Materials GmbH, each for fiscal year 2019, which have been issued with an unqualified audit opinion.

All information and evidence requested by us were provided willingly. The accuracy of the information received was not checked separately. The executive board of MERCK KGaA and the management board of AZ GmbH have each provided us with a declaration of completeness stating that all documents and information relevant to the audit of the control and profit and loss pooling agreement have been provided to us correctly and completely.

The responsibility for the content of the contract to be audited lies with the contracting companies. The scope of our audit activities does not constitute an audit in accordance with the principles of proper auditing pursuant to Section 316 *et seq* German Commercial Code (*Handelsgesetzbuch*, "HGB"). Such an audit is not part of the audit of contracts pursuant to Section 293b AktG. Our responsibility in this respect is limited to exercising due professional care.

We performed our work in February and March 2021 at our offices in Bielefeld. We have documented the nature and scope of our audit work in our working papers.

Our reporting takes into account the corporate structure of MERCK KGaA, Intermediate Company I and Intermediate Company II and AZ GmbH, as they were described in the documents made available to us and up to the date of this report.

In our audit of the contracts, we have observed the professional regulations on independence (Section 319, Section 319a and Section 319b HGB in conjunction with Section 293d para. 1 AktG applied *mutatis mutandis*).

Our responsibility for the audit of the Agreement is determined in accordance with Section 323 HGB in conjunction with Section 293d (2) AktG by analogy. The report on the audit of the control and profit and loss pooling agreement is prepared solely for the purpose described above. This includes the use for information purposes within the scope of reporting by the executive board of MERCK KGaA and the management board of AZ GmbH, including publication on the internet as part of the invitation to the annual general meeting of MERCK KGaA and submission to the competent court. It is not intended for publication, duplication or use for any purpose other than that stated above. It may not be passed on to third parties without our consent.

The "General Terms and Conditions ", version dated January 1, 2017, (cf. Annex 5) shall apply to the execution of the engagement and our responsibility, also in relation to third parties. Our liability is determined in accordance with Section 1 and 9.2 to 9.6 of the General Terms and Conditions. These engagement terms regulate - in addition to the statutory provisions pursuant to Sections 327c (2) sentence 4, 293d (2) AktG as well as Section 323 HGB - our liability also towards third parties.

2. Subject, Type and Scope of the Contract Review

Subject

The subject of our audit pursuant to Section 293b (1) AktG is the control and profit and loss pooling agreement between MERCK KGaA and AZ GmbH.

Type and scope

The type and scope of the audit is not explicitly regulated in Section 291 *et seq.* AktG; the scope of the contract audit is stipulated in Sections 293b and 293e AktG.

The subject of the audit of the Intercompany Agreement by the contract auditor is to examine whether the control and profit and loss pooling agreement contains the regulatory components prescribed in Sections 291 *et seq.* AktG are complete and correct. In contrast to a merger audit, the German Stock Corporation Act does not explicitly stipulate the minimum content of intercompany agreements (*Unternehmensverträge*); however, the control and profit and loss pooling agreement is described in an abstract manner in Section 291 (1) AktG and its typical content is defined in Sections 301, 302, 304 and 308 AktG. We have therefore examined whether the Agreement correctly contains the provisions typical for a control and profit and loss pooling agreement. However, it is not our task to confirm that all legal provisions of Section 291 *et seq.* AktG in the Intercompany Agreement were complied with.

In addition, pursuant to Section 293e (1) sentence 2 AktG, if there is at least one outside shareholder, the contract auditor must determine whether the proposed compensation and the proposed settlement payment are appropriate. Pursuant to Section 304 (1) sentence 3 AktG, the determination of an appropriate compensation may be waived if the company does not have an outside shareholder at the time of the resolution of its shareholders' meeting on the agreement. This also applies by analogy with regard to the obligation to pay a compensation, since an obligation pursuant to Section 305 (1) AktG only arises at the request of an outside shareholder, and therefore does not exist if there is no outside shareholder. The control and profit and loss pooling agreement concluded does not contain any provision on an appropriate compensation pursuant to Section 304 AktG or on a compensation payment pursuant to Section 305 AktG, as MERCK KGaA indirectly holds 100% of the shares in AZ GmbH. Consequently, our audit covers solely whether the lack of a compensation and a settlement payment in the control and profit and loss pooling agreement is correct. It is expressly not our task to carry out the valuations required for the compensation and settlement payments.

The legal representatives of each of the companies involved in the control and profit and loss pooling agreement shall, insofar as the approval of the general meeting pursuant to Section 293 AktG is required and the exemption clause of Section 293a (3) AktG does not apply, submit a detailed written report pursuant to Section 293a AktG in which the conclusion of the intercompany agreement, the agreement in detail and - if required - the type and amount of the compensation payment pursuant to Section 304 AktG and the settlement

payment pursuant to Section 305 AktG are explained and justified in legal and economic terms. The management board of AZ GmbH, together with the executive board of MERCK KGaA, has prepared a report pursuant to Section 293a AktG on the control and profit and loss pooling agreement between MERCK KGaA and AZ GmbH. There are inconsistent comments in the literature on the extent to which the contract audit must extend to the report on the intercompany agreement in accordance with Section 293a AktG. In agreement with the prevailing opinion in the literature, we have audited the joint report for obvious inaccuracies only to the extent that it contains material information on the content of the control and profit and loss pooling agreement. The audit of the completeness and accuracy of the joint report was not part of our audit.

Likewise, the assessment of the appropriateness of the conclusion of the control and profit and loss pooling agreement as well as the tax requirements for or the tax consequences of a control and profit and loss pooling agreement was not the subject of our work.

Audit report

Pursuant to Section 293c (1) sentence 1 AktG, the contract auditor appointed pursuant to Section 293e (1) sentence 1 AktG shall report in writing on the results of the audit. Pursuant to Section 293e (1) sentence 2 AktG, the audit report must conclude with a statement as to whether the proposed compensation or settlement payment is appropriate. The audit report of the expert auditor shall therefore state,

- according to which methods the compensation or settlement payment has been determined,
- for what reasons the use of these methods is appropriate,
- what compensation or settlement payment would result from the application of different methods, if several have been applied. At the same time, the weight given to the various methods in the proposed compensation or settlement and the values on which they are based shall be set out; and
- what particular difficulties have arisen in the valuation of the contracting companies.

Since, in accordance with our explanations above, compensation and settlement payments were not to be examined in terms of their amount, but only whether the non-inclusion of compensation and settlement payments was correct, the information on the calculation methods and valuation is omitted from our report.

3. Audit Findings

3.1. Content of the Control and Profit and Loss Pooling Agreement

3.1.1 Classification as a Control and Profit and Loss Pooling Agreement

The control and profit and loss pooling agreement between MERCK KGaA as the parent company and AZ GmbH as the controlled company submitted to us for audit is to be classified as a control and profit pooling agreement in accordance with Section 291 (1) sentence 1 AktG. It contains the stipulations typical for such an agreement, as it provides for the subordination of the management of AZ GmbH to MERCK KGaA as well as the transfer of the profits of AZ GmbH defined in the Intercompany Agreement to MERCK KGaA.

The minimum content of a control and profit and loss pooling agreement required under company law is derived from Sections 291 *et seq.* AktG by analogy. The examination of the completeness and correctness of the Intercompany Agreement therefore relates to the general information on the contracting parties, the determination of the object of the Agreement, the beginning and the term of the Agreement as well as the dispensable nature of stipulations on compensation and settlement payments.

3.1.2 Participating Contracting Companies and Presentation of the Shareholder Structure

The name and registered office of the companies involved are stated in the control and profit and loss pooling agreement and correspond in each case to the entries in the commercial register.

The shareholdings set out in Section 1 of the Intercompany Agreement correspond to the respective lists of shareholders deposited in the commercial register. With the exception of the registered office of the Intermediate Company II, the name and registered office of the companies named in addition to the contracting parties in Section 1 of the Intercompany Agreement correspond to the entries in the commercial register.

3.1.3 Control (management) (analogous to Section 308 AktG)

According to Section 2 of the Intercompany Agreement, AZ GmbH places its management under the control of MERCK KGaA. MERCK KGaA is entitled to issue instructions to the management board of AZ GmbH regarding the management of the company. MERCK KGaA may not issue instructions to the management board of AZ GmbH to amend, maintain or terminate the Intercompany Agreement. These regulations correspond to the requirements of Sections 291 (1) sentence 1, 299, 308 AktG analogously. They do not contain a provision on the obligation to follow the instructions analogously to section 308 (2) sentence 1 AktG. Since the general view is that the duty to follow an instruction is the "mirror image of the power to issue instructions", in our opinion an explicit provision is not mandatory.

3.1.4 Profit transfer (analogous to Section 301 AktG)

The obligation of AZ GmbH to transfer profits shall exist for the term of the agreement, i.e. from 1 January 2021, 0.00 hours (Sections 4 (1) sentence 1, 8 (2) sentence 1 of the Intercompany Agreement).

Pursuant to Section 4 (1) sentence 1 of the Intercompany Agreement, AZ GmbH undertakes to transfer its entire profit to MERCK KGaA. Therefore, in accordance with Section 4 of the Intercompany Agreement, the profit to be transferred - subject to the formation of reserves based on Section 4 (2) of the Intercompany Agreement - is the annual net profit arising without the profit transfer, reduced by any loss carried forward from the previous year and reduced by the amount blocked from distribution in accordance with Section 268 (8) HGB and increased by any amounts withdrawn from other revenue reserves in accordance with Section 4 (3) of the Intercompany Agreement.

Pursuant to Section 4(2) of the Intercompany Agreement, reserves may only be formed with the consent of MERCK KGaA as retained earnings pursuant to Section 272(3) HGB to the extent that this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment.

Pursuant to Section 4 (3) of the Intercompany Agreement, other retained earnings formed during the term of the Agreement must be dissolved at the request of MERCK KGaA and used to offset any net loss for the year or loss carried forward or transferred as profit.

The transfer of profits may not exceed the amount specified in Section 301 AktG, as amended from time to time. The transfer of profits derived from the release of capital reserves (Section 272 (2) no. 4 HGB) or pre-contractual retained earnings (Section 272 (3) HGB) or from pre-contractual profit carried forward is excluded.

The claim to profit transfer arises at the end of AZ GmbH's financial year and is due at this time (Section 4 (4) of the Intercompany Agreement). Pursuant to Section 7 sentence 1 of the Intercompany Agreement, MERCK

KGaA is entitled to demand advance payments in the course of the financial year with regard to any expected profit transfers from AZ GmbH, if and to the extent as AZ GmbH's liquidity permits the payment of such advance payments.

With these provisions, the legal requirements within the meaning of Sections 291 (1) sentence 1 and 301 AktG are fulfilled. The agreement of the advance payments is not precluded by provisions of stock corporation law.

3.1.5 Loss Compensation (analogous to Section 302 AktG)

Pursuant to Section 5 (1) sentence 1 of the Intercompany Agreement, MERCK KGaA undertakes, in accordance with all provisions of Section 302 AktG as amended from time to time, to compensate any net loss otherwise incurred during the term of the Agreement, unless such net loss is compensated by using other retained earnings formed during the term of this agreement.

The loss to be compensated for shall not be reduced by the withdrawal of capital reserves and pre-contractual retained earnings and by pre-contractual profits carried forward (Section 5 (1) sentence 2 of the Intercompany Agreement).

Due to the dynamic reference to all provisions of Section 302 AktG, Section 302 AktG is comprehensively included.

According to Section 5 (2) of the Intercompany Agreement, the claim for loss compensation arises at the end of AZ GmbH's financial year and becomes due with effect as of this date. This substantially corresponds to the requirements of the law and case law.

3.1.6 Appropriate Compensation / Settlement Payments (analogous to Sections 304 and 305 AktG)

The Intercompany Agreement does not contain any provision on an appropriate compensation pursuant to Section 304 AktG analogously or on a settlement payment pursuant to Section 305 AktG analogously. Pursuant to Section 304 (1) sentence 3 Act, the determination of an appropriate compensation can be waived by analogy if the company has no outside shareholder at the time of the resolution of its shareholders' meeting on the intercompany agreement. This also applies by analogy with regard to the obligation for a settlement payment, since an obligation to purchase pursuant to Section 305 (1) AktG only arises at the request of an outside shareholder.

Outside shareholders within the meaning of Sections 304 and 305 AktG analogously are all shareholders of the company with the exception of the other party to the contract and those shareholders who " directly or

indirectly benefit from the profit transfer in a similar manner as the other party to the contract due to a well-founded economic link with the other party to the contract (see German Federal Court of Justice, decision dated May 8, 2006 - II ZR 27/05; Hüffer/Koch, 14th ed. 2020, AktG Section 304 marginal no. 2). It follows from the security purpose of the provision that shareholders are also not to be regarded as outside if the compensation claim granted to them under Section 304 AktG would economically benefit the other party to the contract (Spindler/Stilz/Veil/Preisser, 4th ed. 2019, AktG Section 304 marginal no. 21). Thus, shareholders in which the controlling company, for its part, directly or indirectly holds 100% of the shares are not outside shareholders (Emmerich/Habersack/Emmerich, 9th ed. 2019, AktG Section 304 marginal no. 17). This view also corresponds to the legislator's view as set out in the explanations to the Stock Corporation Act, where it states: "In principle, all shareholders of the company are outside shareholders with the exception of the other party to the contract. However, those shareholders whose assets economically form a unit with the assets of the other party to the contract or whose profits accrue to the other party to the contract or to whom the profit of the other party to the contract accrues must be treated as equal to the other party to the contract. Therefore, shareholders who are directly or indirectly connected with the other party to the contract through the ownership of all shares or through a profit transfer or control agreement are not outside shareholders." (explanation of the government to Section 295 AktG (Section 284 former version), BT-Drucks IV/171, p. 220)

Intermediate Company I, as the sole shareholder of AZ GmbH, is therefore not an outside shareholder, as it is in turn a wholly-owned subsidiary of Intermediate Company II, which in turn is a wholly-owned subsidiary of MERCK KGaA. Intermediate Company I is thus indirectly wholly-owned by MERCK KGaA and thus forms a single economic entity in the sense mentioned above.

Against this background, the absence of provisions stipulating compensation and settlement payments is not objectionable.

3.1.7 Effective Date, Duration and Termination of the Intercompany Agreement (analogous to Sections 293, 294 and Section 297 AktG)

Section 8 (1) of the Intercompany Agreement provides that the Agreement requires the approval of the shareholders' meetings of the contracting companies. In this context, Section 8 (1) of the Intercompany Agreement is to be interpreted to the extent that, with regard to MERCK KGaA, the general meeting approves in accordance with Section 293(2) AktG.

Pursuant to Section 8 (2) sentence 1 of the Intercompany Agreement, it shall become effective upon its entry in the commercial register of AZ GmbH's registered office and shall be applicable as of January 1, 2021, 0.00 hours, i.e. for the first time for AZ GmbH's 2021 financial year. The agreement on MERCK KGaA's right to make instructions shall not apply until the Agreement is entered in the commercial register of AZ GmbH's registered seat.

The term of the agreement is regulated in Section 8 (3) of the Intercompany Agreement. According to Section 8 (3) of the Intercompany Agreement, it is concluded for an indefinite period of time. It may not be terminated prior to the expiry of five years as of the beginning of the financial year of AZ GmbH in which the Intercompany Agreement became effect (minimum term), at the earliest at the end of 31 December 2025. Subject to compliance with the minimum term, the Intercompany Agreement may be terminated at the end of each financial year of AZ GmbH by giving three months' written notice. The right to terminate for good cause without observing a notice period remains unaffected. The Intercompany Agreement also stipulates which facts are considered a good cause. The right to terminate for good cause in the event that MERCK KGaA no longer holds the majority of voting rights in AZ GmbH (Section 8 (3) sentence 6 of the Intercompany Agreement) is subject to interpretation, as there is only an indirect shareholding relationship.

The provisions on the effectiveness, duration and termination of the Intercompany Agreement do not conflict with the legal requirements (Sections 293, 294 and 297 AktG).

3.2. Joint Report on the Agreement

The management board of AZ GmbH, together with the executive board of MERCK KGaA, has prepared a report in accordance with Section 293a AktG on the control and profit and loss pooling agreement between MERCK KGaA and AZ GmbH.

We have audited the joint report for obvious inaccuracies in relation to material disclosures in the Intercompany Agreement.

There were no indications for objections. In particular, the contents of the Intercompany Agreement is accurately described.

4. Audit Result

As joint contract auditors appointed by the Frankfurt Regional Court, we have audited the control and profit and loss pooling agreement concluded between MERCK KGaA and AZ GmbH in accordance with Sections 293b, 293e AktG.

We have examined whether the Agreement contains the typical contents of a control and profit and loss pooling agreement as defined in Section 291 (1) *et seq.* AktG by analogy.

As a result of our audit, we find that the Intercompany Agreement contains the components prescribed in Section 291 *et seq.* AktG and therefore complies with the legal requirements in this respect.

The control and profit and loss pooling agreement does not contain any provisions on appropriate compensation pursuant to Section 304 AktG and appropriate settlement payment pursuant to Section 305 AktG. Therefore, we have examined the correctness of the absence of a compensation and settlement payment.

There is no need for including such provisions in application of Section 304 (1) sentence 3 AktG, as the shareholder of AZ Electronic Materials GmbH, Darmstadt, is an indirect 100% subsidiary of MERCK KGaA at the time of the audit and therefore no outside shareholders exist within the meaning of this provision.

5. Final Statement

We issue the final statement as follows:

"After the final result of our dutiful audit in accordance with Section 293b AktG on the basis of the documents submitted to us and the information and evidence provided to us, we confirm that the present control and profit and loss pooling agreement between MERCK Kommanditgesellschaft auf Aktien, Darmstadt, and AZ Electronic Materials GmbH, Darmstadt, contains the typical components prescribed in Section 291 *et seq.* of the German Stock Corporation Act and therefore complies with the legal requirements in this respect.

A declaration within the meaning of Section 293e AktG on the appropriateness of the proposed compensation and the proposed settlement payment is not to be made. The control and profit and loss pooling agreement does not contain any provisions on the appropriate compensation pursuant to Section 304 AktG and on the settlement payment pursuant to Section 305 AktG. These provisions are dispensable in the present case in application of Section 304 (1) sentence 3 AktG, since the shareholder of AZ Electronic Materials GmbH, Darmstadt, is an indirect wholly-owned subsidiary of MERCK KGaA and thus no outside shareholders exist within the meaning of this provision.“

We have prepared this report on the basis of the documents made available to us and the information provided, in compliance with the professional principles as laid down in particular in Sections 2 and 43 of the German Auditors' Code.

Bielefeld, March 4, 2021

Dr. Stückmann and Partner mbB
Auditing Company
Tax Advisory Company

(Kirchner)
Auditor

(Roll)
Auditor

Beherrschungs- und Gewinnabführungsvertrag

zwischen der

Merck Kommanditgesellschaft auf Aktien
Frankfurter Straße 250
64293 Darmstadt
(Amtsgericht Darmstadt, HRB 6164)

im folgenden "Obergesellschaft"

und der

AZ Electronic Materials GmbH
Frankfurter Straße 250
64293 Darmstadt
(Amtsgericht Darmstadt, HRB 99747)

im folgenden "Untergesellschaft"

§ 1

Die Obergesellschaft ist mittelbar Inhaberin von 100 % der Geschäftsanteile an der Untergesellschaft. An der Untergesellschaft unmittelbar zu 100% beteiligt ist die Merck 15. Allgemeine Beteiligungs-GmbH mit Sitz in Darmstadt, eingetragen beim Amtsgericht Darmstadt unter HRB 92696. An der Merck 15. Allgemeine Beteiligungs-GmbH unmittelbar zu 100 % beteiligt ist die Merck Financial Trading GmbH mit Sitz in Darmstadt, eingetragen beim Amtsgericht Darmstadt unter HRB 90629. An der Merck Financial Trading GmbH zu 100 % beteiligt ist die Obergesellschaft, die Merck KGaA.

§ 2

Die Untergesellschaft unterstellt ihre Leitung der Obergesellschaft. Die Obergesellschaft ist demgemäß berechtigt, der Untergesellschaft Weisungen hinsichtlich der Leitung der Gesellschaft zu erteilen. Das Weisungsrecht besteht nur gegenüber der Geschäftsführung der Untergesellschaft und umfasst alle Maßnahmen, die zum Tätigkeitsbereich der Geschäftsführung gehören.

Die Obergesellschaft kann der Untergesellschaft nicht die Weisung erteilen, diesen Vertrag zu ändern, aufrechtzuerhalten oder zu beendigen.

§ 3

Der Geschäftsführung der Untergesellschaft obliegt weiterhin die Geschäftsführung und Vertretung der Untergesellschaft. Die Geschäftsführung der Untergesellschaft behält ihre volle Entscheidungsbefugnis, soweit diese nicht durch Weisung nach § 2 eingeschränkt ist.

§ 4

1. Die Untergesellschaft verpflichtet sich, während der Vertragsdauer ihren ganzen Gewinn an die Obergesellschaft abzuführen. Abzuführen ist - vorbehaltlich einer Bildung von Rücklagen nach Abs. 2 - der ohne die Gewinnabführung entstehende Jahresüberschuss, vermindert um einen etwaigen Verlustvortrag aus dem Vorjahr und um den nach § 268 Abs. 8 HGB ausschüttungsgesperrten Betrag und erhöht um etwaige den anderen Gewinnrücklagen gemäß Abs. 3 entnommene Beträge. Die Gewinnabführung darf jedoch den in § 301 AktG, der in seiner jeweils gültigen Fassung entsprechend anzuwenden ist, genannten Betrag nicht überschreiten. Die Abführung von Gewinn, der aus der Auflösung von Kapitalrücklagen (§ 272 Abs. 2 Nr. 4 HGB) oder vorvertraglichen Gewinnrücklagen (§ 272 Abs. 3 HGB) oder aus vorvertraglichen Gewinnvorträgen stammt, ist ausgeschlossen.
2. Die Untergesellschaft kann mit Zustimmung der Obergesellschaft Beträge aus dem Jahresüberschuss in die anderen Gewinnrücklagen nach § 272 Abs. 3 HGB nur insoweit einstellen, als dies handelsrechtlich zulässig und bei vernünftiger kaufmännischer Beurteilung wirtschaftlich begründet ist.
3. Während der Dauer dieses Vertrages gebildete andere Gewinnrücklagen nach § 272 Abs. 3 HGB sind auf Verlangen der Obergesellschaft aufzulösen und zum Ausgleich eines Jahresfehlbetrages oder Verlustvortrags zu verwenden oder als Gewinn abzuführen.
4. Der Anspruch auf Gewinnabführung entsteht zum Ende des Geschäftsjahres der Untergesellschaft und wird mit Wirkung zu diesem Zeitpunkt fällig.

§ 5

1. Die Obergesellschaft ist entsprechend allen Vorschriften des § 302 AktG in seiner jeweils gültigen Fassung verpflichtet, jeden während der Vertragsdauer sonst entstehenden Jahresfehlbetrag auszugleichen, soweit dieser nicht dadurch ausgeglichen wird, dass während der Dauer dieses Vertrages gebildete andere Gewinnrücklagen zum Ausgleich eines Jahresfehlbetrages verwendet werden. Der zu übernehmende Verlust wird durch die Auflösung von Kapitalrücklagen sowie vorvertraglicher Gewinnrücklagen und durch vorvertragliche Gewinnvorträge nicht gemindert.
2. Der Anspruch auf Verlustausgleich entsteht zum Ende des Geschäftsjahres der Untergesellschaft und wird mit Wirkung zu diesem Zeitpunkt fällig.

§ 6

Der Jahresabschluss der Untergesellschaft ist nach den Grundsätzen ordnungsmäßiger

Buchführung unter Beachtung der gesetzlichen Bestimmungen, der für die Ertragsteuern jeweils geltenden Vorschriften und aller Weisungen der Obergesellschaft zu erstellen.

§ 7

Der Obergesellschaft steht das Recht zu, bereits im Laufe des Geschäftsjahres im Hinblick auf etwa zu erwartende Gewinnabführungen der Untergesellschaft Vorauszahlungen zu verlangen, soweit die Liquidität der Untergesellschaft die Zahlung solcher Vorauszahlungen zulässt. Eine Verzinsung des Ergebnisverrechnungskontos wird nicht vorgenommen.

§ 8

1. Dieser Vertrag bedarf der Genehmigung durch die Gesellschafterversammlungen der vertragsschließenden Gesellschaften.

2. Der Vertrag wird mit seiner Eintragung in das Handelsregister des Sitzes der Untergesellschaft wirksam und gilt ab dem 1. Januar 2021, 0.00 Uhr, also erstmals für das Geschäftsjahr 2021 der Untergesellschaft. Die Vereinbarung zum Weisungsrecht der Obergesellschaft gilt erst ab der Eintragung des Vertrages in das Handelsregister des Sitzes der Untergesellschaft.

3. Der Vertrag ist auf unbestimmte Zeit geschlossen. Er ist nicht vor Ablauf von fünf Zeitjahren ab dem Beginn des Geschäftsjahres der Untergesellschaft, in dem der Vertrag nach Abs. 2 wirksam geworden ist, kündbar (Mindestlaufzeit), frühestens jedoch zum Ablauf des 31. Dezember 2025. Vorbehaltlich der Einhaltung der Mindestlaufzeit kann der Vertrag zum Ende eines jeden Geschäftsjahres der Untergesellschaft unter Einhaltung einer Frist von drei Monaten schriftlich gekündigt werden. Das Recht zur Kündigung aus wichtigem Grund ohne Einhaltung einer Kündigungsfrist bleibt unberührt. Als wichtiger Grund gelten insbesondere die Verschmelzung, Spaltung oder Liquidation einer der beiden vertragsschließenden Gesellschaften. Darüber hinaus ist die Obergesellschaft zur Kündigung aus wichtigem Grund berechtigt, wenn ihr nicht mehr die Mehrheit der Stimmrechte an der Untergesellschaft zusteht.

§ 9

1. Änderungen, Ergänzungen oder die Aufhebung dieses Vertrags, einschließlich der Änderung dieser Bestimmung, bedürfen der Schriftform, sofern nicht nach zwingendem Recht notarielle Beurkundung erforderlich ist.

2. Die nichtige, unwirksame oder undurchsetzbare Bestimmung ist durch diejenige wirksame und durchsetzbare Bestimmung zu ersetzen, die dem mit der nichtigen, unwirksamen oder undurchsetzbaren Bestimmung verfolgten wirtschaftlichen Zweck nach Gegenstand, Maß, Zeit, Ort oder Geltungsbereich am nächsten kommt. Entsprechendes gilt für etwaige Lücken in diesem Vertrag.

[Unterschriftenseite folgt]

Darmstadt, den 16. Februar 2021

Merck Kommanditgesellschaft auf Aktien

Dr. Stefan Oschmann
(Persönlich haftender Gesellschafter)

Dr. Marcus Kuhnert
(Persönlich haftender Gesellschafter)

Darmstadt, den 16. Februar 2021

AZ Electronic Materials GmbH

Rüdiger Demuth
(Geschäftsführer)

Dr. Stefan Horstmann
(Geschäftsführer)

Convenience Translation

3-05 O 8/21

LANDGERICHT FRANKFURT AM MAIN
BESCHLUSS

In dem Verfahren
auf Bestellung eines sachverständigen Prüfers nach § 293c Abs. 1 AktG
der

1) Merck KGaA, vertr. d. d. p.h.G. Dr. Oschmann und Dr. Kuhnert, Frankfurter Str. 250, 64293 Darmstadt (HRB 6164 AG Darmstadt)
Antragstellerin

2) AZ Electronic Materials GmbH, vertr. d. d. Geschäftsführer R. Demuth und Dr. Horstmann, Frankfurter Str. 250, 64293 Darmstadt (HRB 99747 AG Darmstadt)
Antragstellerin

betreffend eines vorgesehenen Unternehmensvertrages zwischen beiden Unternehmen

hat die 5. Kammer für Handelssachen des Landgerichts Frankfurt am Main
durch den Vorsitzenden Richter am Landgericht Dr. M. Müller am 28.1.2021 beschlossen:

Für die Prüfung des beabsichtigten Unternehmensvertrages
wird die

Dr. Stückmann und Partner mbB
Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft
z. Hd. Frau Dipl.-Kff. Miriam Roll
Wirtschaftsprüferin, Steuerberaterin
ö.b.u.v. Sachverständige für Unternehmensbewertung
Elsa-Brändström-Straße 7
33602 Bielefeld

zur sachverständigen gemeinsamen Prüferin bestellt.

Die Antragstellerinnen haben die Kosten des Bestellungsverfahrens als Gesamtschuldner zu tragen.
Der Geschäftswert wird auf EUR 60.000,-- festgesetzt.

Gründe

Nach der vom Gericht eingeholten tel. Auskunft bestehen bei der bestellten Prüferin keine Hinderungsgründe nach §§ 319, 319a HGB

Im Interesse der Steigerung der Transparenz und Akzeptanz der Prüfung soll die sachverständige Prüferin in dem Prüfungsbericht zu folgenden Punkten Stellung zu nehmen und Ausführungen zu machen:

1.
An welchem Ort, in welcher Weise und zu welcher Zeit ist die Prüfung erfolgt.

2.
Die Prüferin wird im Hinblick auf ein mögliches Spruchverfahren nach § 1 Nr. 1 SpruchG ausdrücklich auf die Ansicht des Gerichts hingewiesen, dass die Absicht des Gesetzgebers bei der vorab Bestellung von Angemessenheitsprüfern in die Praxis der Spruchverfahren nur umgesetzt werden kann, wenn der Bericht des Prüfers gegenüber dem Vertragsbericht ein eigenständiges Gutachten (vgl. auch BVerfG v. 30.5.2007 – 1 BvR 390/04 – AG 2007, 544 = NZG 2007, 587) darstellt, das die Parteinähe zur Gesellschaft und hier zum Hauptaktionär vermeidet und Distanz zu dessen Bericht zeigt. Dabei ist zu beachten, dass der Prüfer zwar gerichtlich bestellt wird, seinen Prüfungsbericht aber nicht dem Gericht, sondern der Gesellschaft und den Aktionären erstattet.
Wenn auch gegen eine sog. Parallelprüfung grundsätzlich nichts einzuwenden ist, ist es jedoch angebracht, dass der sachverständige Prüfer über die Art der Zusammenarbeit mit einem ggf. von der Gesellschaft beauftragten Bewertungsgutachter, zu Diskussionen über kritische Punkte etc., in seinem Gutachten Ausführungen macht, insbesondere in welchen Punkten divergierende Auffassungen des sachverständigen Prüfers zu denen des sog. Bewertungsgutachters bestanden und es ist auszuführen, weshalb die Auffassung des Prüfers oder des sog. Bewertungsgutachters letztlich vorzugswürdig ist.

3.
Aufzuführen ist, aus welchen Quellen der Prüfer die für die Bemessung des Ertragswertes benutzten Parameter (Basiszins, Wachstumsabschlag, Überrenditen, Risikozuschlag (bei Anwendung der CAPM oder TAX-CAPM: BETA-Faktor, u. U. Zusammensetzung einer

"peer-group") abgeleitet hat und warum gerade diese Indizes und/oder gegriffenen Zeitspannen anderen, ebenfalls in Betracht kommenden gegenüber vorzugswürdig sind.

4.
Sofern Vergangenheitsergebnisse um bestimmte außergewöhnliche Aufwendung und Erträge bereinigt werden, sind diese explizit aufzuführen und zu begründen, warum dies geschehen ist

5.
Bei den prognostizierten Unternehmenserträgen gilt zunächst dasselbe wie vorstehend zu Ziffer 4. Außerdem ist darzustellen, aus welchen Quellen etwaige Unternehmensplanungen übernommen wurden.

6.
Der Prüferin wird aufgegeben, ein Exemplar ihres Prüfberichts für das Gericht zu den Akten zu reichen. Sofern sie sich bei der Berechnung des Unternehmenswertes, sowie der Verzinsungsparameter eines Rechenprogramms bedient hat, wird sie gebeten, die hierbei erstellte Datei (z.B. Excelsheet und auch den Prüfberichte als Datei für das Gericht auf einen gebräuchlichen Datenträger in Kopie (z.B. CD-ROM; USB-Stick oder als E-Mail Anhang an M.Mueller@LG-Frankfurt.Justiz.Hessen.de) beizufügen.

7.
Die Prüferin soll bei entsprechender Anforderung durch das Gericht ggf. die Vergütungsvereinbarung mit der Antragstellerin und die endgültige Honorarabrechnung nach Ende ihrer Arbeiten dem Gericht gegenüber offenlegen.

8.
Vorsorglich wird die Prüferin darauf hingewiesen, dass sie in einem evtl. Spruchverfahren über die Angemessenheit der einer ggf. zu leistenden Ausgleich bzw. Abfindung schriftlich auf Anforderung des Gerichts Stellung zu nehmen hat und ihr Erscheinen in einer etwaigen mündlichen Verhandlung angeordnet werden kann.

Die Kostenentscheidung ergibt sich aus § 22 GNotKG.

Der Geschäftswert bestimmt sich nach § 67 GNotKG.

Rechtsmittelbelehrung:
Gegen diese Entscheidung ist das Rechtsmittel der Beschwerde gegeben, die binnen eines Monats nach Zustellung beim Landgericht Frankfurt am Main durch Einreichung einer Beschwerdeschrift oder zur Protokoll der Geschäftsstelle einzulegen ist. Die Beschwerde muss die Bezeichnung des angefochtenen Beschlusses, sowie die Erklärung enthalten, dass Beschwerde gegen diesen Beschluss eingelegt wird. Die Beschwerdeschrift ist vom Beschwerdeführer oder seinem Bevollmächtigten zu unterzeichnen.

Dr. M. Müller

Beglaubigt,
Frankfurt am Main, den 28. Januar 2021

Horz, Justizfachangestellte
als Urkundsbeamtin der Geschäftsstelle

English reading version

Joint Report of the Executive Board of Merck KGaA, Darmstadt, Germany, and the Management Board of AZ Electronic Materials GmbH, Darmstadt, Germany, on the control and profit and loss transfer agreement of February 16, 2021 pursuant to Section 293a of the German Stock Corporation Act ("AktG")

According to Section 293a AktG, the Executive Board and the Management Board of the involved companies are required to prepare a written report on the agreement.

Specifically:

1. Closing of the agreement, entry into force

On February 16, 2021, as the controlling company, Merck KGaA, Darmstadt, Germany (hereafter referred to as "**Parent Company**") entered into a control and profit and loss pooling agreement (hereinafter "**Agreement**") with AZ Electronic Materials GmbH, Darmstadt, Germany (hereinafter referred to as "**Controlled Company**"). The effectiveness of the Agreement is subject to the approval of the General Meeting of the Parent Company and the approval of the shareholders' meeting of the Controlled Company. The approval resolution of the Parent Company will be put forward to the Annual General Meeting of the Parent Company on April 23, 2021. The shareholders' meeting of the Controlled Company will approve the Agreement on February 22, 2021. The Agreement shall take effect when it is entered in the Commercial Register located at the registered office of the Controlled Company.

2. The parties to the Agreement

a) Merck KGaA, Darmstadt, Germany

The Parent Company domiciled in Darmstadt, Germany, registered with the Commercial Register of Darmstadt under HRB 6164, is a publicly listed corporation with general partners and the parent company of the operating businesses that comprise the Group. The fiscal year of the Parent Company is the calendar year.

According to the articles of association, the object of the Parent Company is the production and sale of chemical and biotechnological products, especially pharmaceutical products, basic substances for pharmaceutical products, fine chemicals, industrial chemicals, pigments, substances for cosmetics, the production, sale and trade of products and equipment for laboratory use, particularly reagents and diagnostic products, the development, acquisition and exploitation of chemical processes and equipment. The company is entitled to engage in all businesses and take all measures that appear suited to serving the object of the company. For this purpose, it may in particular perform services, purchase, administer and sell land, set up, acquire and hold interests in other companies, as well as manage such companies or limit its activities to administering the investment holding. Moreover, the company is entitled to perform its business activities also through subsidiaries, affiliates and joint ventures. It may demerge its operations either partly or in full to affiliates or delegate operations to affiliates.

The members of the Executive Board of the Parent Company are the general partners with no equity interest: Dr. Stefan Oschmann, Dr. Kai Beckmann, Belén Garijo Lopez, Peter Guenter and Dr. Marcus Kuhnert.

The Parent Company is legally represented by two personally liable general partners without an equity interest or a personally liable partner without an equity interest together with an authorized signatory with special power of attorney (*Prokurist*). If only one personally liable general partner without an equity interest has been appointed, he/she shall represent the Parent Company alone. Moreover, the Parent Company is represented by an authorized signatory with special power of attorney or another authorized signatory in accordance with specific instructions of the personally liable general partners without an equity interest.

b) AZ Electronic Materials GmbH, Darmstadt, Deutschland

The Controlled Company was established on November 20, 2019 as a result of a change in the legal form of AZ Electronic Materials S.a.r.l. domiciled in Luxembourg (previously: Registre de Commerce et des Societes, Luxembourg, B156074) with a simultaneous cross-border transfer of the domicile from Luxembourg to Darmstadt. The Controlled Company is domiciled in Darmstadt, Germany, and registered with the Commercial Register of Darmstadt under HRB 99747. The fiscal year of the Controlled Company is the calendar year. The Controlled Company's share capital amounts to 30,861,400.00 EUR. All interests in the Controlled Company are indirectly held by the Parent Company.

The managing directors of the Controlled Company are Mr. Rüdiger Demuth and Mr. Dr. Stefan Horstmann. In principle, the Controlled Company is represented by two managing directors jointly or by one managing director together with an authorized signatory with special power of attorney (*Prokurist*). If only one managing director has been appointed, he/she shall represent the Controlled Company alone.

According to the articles of association, the object of the Controlled Company includes the holding and management of investments of all kinds. The Controlled Company is entitled to engage in all transactions that serve the Company's purpose.

3. Earnings situation of the Controlled Company

The Controlled Company currently has no employees. The fiscal year of the Controlled Company runs from January 1 until December 31 of each year. In 2019, the Controlled Company achieved a net profit of 12,479,585 EUR. As of December 31, 2019, the balance sheet of the Controlled Company shows a total balance of 675,446,403 EUR and an equity capital amounting to 641,766,153 EUR.

4. Explanation of the Agreement and the reasons for entering into the Agreement

The essential content of the control and profit and loss transfer agreement is as follows:

The Controlled Company subordinates its management to the Parent Company. Accordingly, the Parent Company is entitled to issue instructions to the Controlled Company as regards the management of the company (Section 2 of the Agreement). The management of the Controlled Company retains full authority to make decisions if and to the extent no instructions are issued (Section 3 of the Agreement).

The Controlled Company shall transfer all of its profits to the Parent Company during the term of the Agreement. Subject to the setting up of reserves under the provisions of the Agreement (see the following explanations), the Controlled Company shall transfer the net income arising without profit

transfer less any losses carried forward from the previous year and the amount protected from distributions according to Section 268 (8) of the German Commercial Code ("**HGB**") plus any other amounts withdrawn from retained earnings under the provisions of the Agreement (see the following explanations on withdrawals from retained earnings). However, the profit transfer may not exceed the amount stated in Section 301 AktG, the respectively valid version of which shall be applied. The transfer of profits stemming from the release of capital reserves (Section 272 (2) No. 4 HGB) or retained earnings reported prior to the Agreement (Section 272 (3) HGB) or from profit carried forward prior to the Agreement, shall be ruled out (Section 4 (1) of the Agreement).

With the approval of the Parent Company, the Controlled Company may transfer amounts from net income to retained earnings in accordance with Section 272 (3) HGB provided this is permitted under German commercial law and it is considered economically justifiable using reasonable commercial judgment (Section 4 (2) of the Agreement).

Other retained earnings set up during the term of the Agreement in accordance with Section 272 (3) HGB are to be released if demanded by the Parent Company and to be used to offset an annual loss or any loss carried forward or to be transferred as profit (Section 4 (3) of the Agreement).

The entitlement to profit transfers shall arise at the end of the Controlled Company's fiscal year and is effective and due as of this date (Section 4 (4) of the Agreement).

In accordance with the provisions of the currently valid version of Section 302 AktG, the Parent Company shall offset any other annual losses during the term of the Agreement provided that these are not offset by using other retained earnings for offsetting an annual loss during the term of the Agreement. The amount of the loss to be assumed will not be lowered by releasing capital reserves or retained earnings reported prior to the Agreement and by profit carried forward prior to the Agreement (Section 5 (1) of the Agreement).

The entitlement to offset any losses shall arise at the end of the Controlled Company's fiscal year and is effective and due as of this date (Section 5 (2) of the Agreement).

The Parent Company has the right to demand advance payments in the course of the fiscal year with respect to expected profit transfers by the Controlled Company provided that the liquidity of the Controlled Company permits such advance payments to be made. No interest will be paid on the profit transfer account (Section 7 of the Agreement).

Section 8 (1) of the Agreement stipulates that the Agreement requires the approval of the Annual General Meeting and the shareholders' meeting of the companies entering the Agreement.

The Agreement shall take effect when it is entered in the Commercial Register of the court located at the registered office of the Controlled Company. With the exception of the Parent Company's right to issue instructions, it shall apply retroactively as of January 1, 2021, 0:00, meaning for the first time in the Controlled Company's fiscal 2021. The provision concerning the Parent Company's right to issue instructions shall take effect only once the Agreement has been entered in the Commercial Register of the court at the registered office of the Controlled Company (Section 8 (2) of the Agreement).

The Agreement has been entered into indefinitely. It may not be terminated before a period of five years, as of the start of the Controlled Company's fiscal year in which the Agreement took effect, has expired (minimum term), at the earliest however until the expiry of December 31, 2025. Subject to the

adherence to the minimum term, the Agreement may be terminated in writing at the end of each fiscal year of the Controlled Company by giving three months' notice. This does not affect the right to terminate the Agreement without notice for good cause. Good cause includes in particular the merger, split or liquidation of one of the two companies entering the Agreement. Moreover, the Parent Company is entitled to terminate the Agreement for good cause if it no longer holds the direct or indirect majority of the voting rights in the Controlled Company (Section 8 (3) of the Agreement).

The Parent Company indirectly holds 100% of the shares in the Controlled Company. The agreement was reviewed by expert examiners in accordance with Sec. 293b (1) AktG. Third-party shareholders do not hold shares in the Controlled Company. For this reason, the Parent Company is not obligated to make compensation payments pursuant to Section 304 AktG or guarantee settlements pursuant to Section 305 AktG in connection with the closing of the Agreement. Apart from the obligation of the Parent Company to offset losses, in the viewpoint of the limited liability shareholders of Merck KGaA, Darmstadt, Germany, the Agreement therefore does not lead to any special consequences.

Moreover, tax reasons are one of the main factors supporting a control and profit and loss transfer agreement. Subsequent to the closing of the Agreement, the Parent Company and the Controlled Company are consolidated for both corporation tax and trade tax purposes, thereby making it possible to net their profits and losses already in the first year in which they are incurred.

A summary evaluation of the Agreement indicates that the Agreement is advantageous to both the Parent Company and the Controlled Company.

English reading version

Merck KGaA

Darmstadt, Germany, February 16, 2021

Dr. Stefan Oschmann

Belén Garijo Lopez

Dr. Kai Beckmann

Peter Guenter

Dr. Marcus Kuhnert

AZ Electronic Materials GmbH

Darmstadt, Germany, February 16, 2021

Rüdiger Demuth

Dr. Stefan Horstmann

Nr. 217 der Urkundenrolle für das Jahr 2021 (A)

Gesellschafterversammlung

Verhandelt zu Darmstadt, den 22.02.2021

Vor mir, dem unterzeichnenden Notar

Dr. Wulf Albach

mit dem Amtssitz in 64283 Darmstadt, Friedensplatz 6, welcher sich auf ausdrücklichen Wunsch der Erschienenen in die Geschäftsräume der MERCK Kommanditgesellschaft auf Aktien, Frankfurter Straße 250, 64293 Darmstadt, begeben hat, erschienen:

1. Frau **Rose Lea Brounts**, geboren am 17.06.1971

2. Herr **Rando Bruns**, geboren am 15.05.1967

   beide geschäftsansässig Frankfurter Straße 250, 64293 Darmstadt, und dem Notar von Person bekannt,

handelnd nicht im eigenen Namen, sondern für die Firma

> **Merck 15. Allgemeine Beteiligungs-GmbH mit Sitz in Darmstadt**
> Geschäftsanschrift: Frankfurter Straße 250, 64293 Darmstadt
> eingetragen im Handelsregister des Amtsgerichts Darmstadt unter HRB 92696

und zwar als deren gesamtvertretungsberechtigte Prokuristin und gesamtvertretungsberechtigter Geschäftsführer.

Der Notar fragte die Erschienenen, ob der Notar oder eine Person, die mit ihm zur gemeinsamen Berufsausübung verbunden ist, in einer Angelegenheit, die Gegenstand dieser Beurkundung ist, außerhalb des Notaramts tätig war oder ist. Dies wurde von den Erschienenen verneint. Ferner erklärten die Erschienenen auf Befragen des Notars, dass sie bei den nachstehenden Erklärungen jeweils auf Rechnung der von ihnen Vertretenen handeln.

Die Erschienenen erklärten mit der Bitte um Beurkundung:

Die von uns vertretene Merck 15. Allgemeine Beteiligungs-GmbH ist die Alleingesellschafterin der **AZ Electronic Materials GmbH mit Sitz in Darmstadt**, Geschäftsanschrift: Frankfurter Straße 250, 64293 Darmstadt, eingetragen im Handelsregister des Amtsgerichts Darmstadt unter HRB 99747 (nachstehend „**die Gesellschaft**" genannt).

Unter Verzicht auf die Einhaltung sämtlicher Form- und Fristerfordernisse nach Gesetz oder dem Gesellschaftsvertrag der Gesellschaft hält die Alleingesellschafterin eine Gesellschafterversammlung der Gesellschaft ab und **beschließt einstimmig**:

1. Dem Abschluss des **Beherrschungs- und Gewinnabführungsvertrages** vom 16.02.2021 zwischen der Merck Kommanditgesellschaft auf Aktien mit Sitz in Darmstadt als Obergesellschaft und der Gesellschaft als Untergesellschaft, welcher dieser Urkunde als Anlage in Kopie beigefügt ist, wird hiermit unwiderruflich zugestimmt.

2. Auf die Erstattung eines Vertragsberichts sowie auf eine Prüfung des Unternehmensvertrages entsprechend §§ 293 a, b AktG und auf die Auslegung der in § 293 f AktG genannten Unterlagen wird verzichtet.

   Weiterhin wird auf die Anfechtung des vorstehenden Beschlusses verzichtet.

Weitere Beschlüsse sollen jetzt nicht gefasst werden. Damit ist die außerordentliche Gesellschafterversammlung beendet und wird geschlossen.

Die Kosten dieser Urkunde und ihres Vollzuges trägt die Gesellschaft.

Den Notarangestellten Frau Sandra Oppe und Frau Annkatrin Moddelmog, beide dienstansässig beim beurkundenden Notar, Friedensplatz 6, 64283 Darmstadt, wird hiermit unter Befreiung von den Beschränkungen des § 181 BGB Vollmacht erteilt - und zwar jeder von ihnen alleine und mit dem Recht, Untervollmachten zu erteilen - alle etwaigen Änderungen oder Ergänzungen der heute gefassten Beschlüsse vorzunehmen und Erklärungen abzugeben und entgegenzunehmen, soweit dies zum Vollzug der Gesellschafterbeschlüsse erforderlich ist.

Von dieser Urkunde sind zu erteilen:

a) Der Gesellschaft eine einfache Abschrift,
b) der Alleingesellschafterin eine einfache Abschrift,
c) dem Amtsgericht -Registergericht- ~~Hamburg~~ Darmstadt eine elektronisch beglaubigte Kopie.

gestrichen
Albach, Notar

Das Protokoll wurde vorgelesen, von den Erschienenen genehmigt und von ihnen und dem Notar eigenhändig, wie folgt, unterschrieben:

DR. WULF ALBACH NOTAR IN DARMSTADT

Albach, Notar

DR. WULF ALBACH NOTAR IN DARMSTADT

Convenience Translation

General Engagement Terms

for

Dr. Stückmann und Partner mbB
Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft
as of January 1, 2017

1. Scope of application

(1) These engagement terms apply to contracts between Dr. Stückmann und Partner mbB Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft - hereinafter collectively referred to as "German Public Auditor" - and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

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

2. Scope and execution of the engagement

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

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

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

3. The obligations of the engaging party to cooperate

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

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

4. Ensuring independence

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

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

5. Reporting and oral information

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

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

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

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

7. Deficiency rectification

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

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

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

8. Confidentiality towards third parties, and data protection

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

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

9. Liability

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

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

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

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

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

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

10. Supplementary provisions for audit engagements

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

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

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

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

11. Supplementary provisions for assistance in tax matters

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

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

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

a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party

b) examination of tax assessments in relation to the taxes referred to in (a)

c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)

e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

The German Public Auditor does in performance of the tasks outlined above consider the published (i) jurisdiction of the respective highest courts, (ii) jurisdiction of the local tax courts (Finanzgerichte) in those areas of tax law, which are apparently developing, and (iii) view of the tax authorities.

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

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

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

a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;

b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;

c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and

d) support in complying with disclosure and documentation obligations.

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

12. Electronic communication

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

13. Remuneration

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

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

14. Dispute Settlement

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

15. Applicable law

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