



Audit of the Domination and Profit/Loss Transfer Agreement

REPORT

Merck Kommanditgesellschaft auf Aktien

Darmstadt

and

AmpTec GmbH

Hamburg

KPMG AG Wirtschaftsprüfungsgesellschaft

This document is a courtesy translation of our report „Prüfung des Beherrschungs- und Gewinnabführungsvertrages zwischen der Merck Kommanditgesellschaft auf Aktien, Darmstadt/Germany, und der AmpTec GmbH, Hamburg/Germany “ which was written in German. This English version serves only as an explanatory note and shall not be signed by us. The German version of these terms and conditions shall be the binding version, the translation into English is a courtesy translation.

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1 Engagement and execution of the engagement

1.1 Preliminary remarks

Merck Kommanditgesellschaft auf Aktien, Darmstadt/Germany, registered in the commercial register of the local court of Darmstadt under HRB 6164 (hereinafter “Merck KGaA, Darmstadt/Germany” or the “parent company”) is the sole shareholder of Merck Life Science Holding GmbH, Darmstadt/Germany, registered in the commercial register of the local court of Darmstadt under HRB 97051 (hereinafter “Merck LS Holding GmbH, Darmstadt/Germany”), which is in turn the sole shareholder of AmpTec GmbH, Hamburg/Germany, registered in the commercial register of the local court of Hamburg under HRB 92485 (hereinafter “AmpTec GmbH, Hamburg/Germany” or the “subsidiary”).

On 16 February 2021, Merck KGaA, Darmstadt/Germany, as the controlling company entered into a Domination and Profit/Loss Transfer Agreement with AmpTec GmbH, Hamburg/Germany, as the controlled company (hereinafter the “DPLTA” or “company agreement”). To enter into effect, the agreement requires the consent of the general meeting of Merck KGaA, Darmstadt/Germany, and the consent of the shareholders’ meeting of the subsidiary. A resolution on the consent of the general meeting of Merck KGaA, Darmstadt/Germany, is scheduled to be adopted at the ordinary general meeting of Merck KGaA, Darmstadt/Germany, on 23 April 2021. The shareholders’ meeting of the subsidiary issued its consent on 22 February 2021.

1.2 Appointment as contract auditor

By decision of the local court of Hamburg of 2 February 2021, we, KPMG AG Wirtschaftsprüfungsgesellschaft, Hamburg, (hereinafter “KPMG”) were appointed jointly as the expert to audit the intended DPLTA between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany, for the two companies.

In accordance with this decision, the management of Merck KGaA, Darmstadt/Germany, and the management of AmpTec GmbH, Hamburg/Germany, appointed us by letter of 12 February 2021 to audit the DPLTA in the function of an independent expert.

1.3 Subject and scope of the audit

The subject and the scope of the audit result from section 293b and section 293e of the *German Stock Corporation Act* (AktG).

In accordance with section 293b para1, first half of the sentence, AktG, the company agreement has to be audited by an auditor for each contracting public limited company. The exemption from the requirement for an audit in accordance with section 293b para1, second half of the sentence, AktG is not given in this case, as the shares of AmpTec GmbH, Hamburg/Germany, are not held directly by Merck KGaA, Darmstadt/Germany, but by Merck LS Holding GmbH, Darmstadt/Germany, the sole shareholder of which is Merck KGaA, Darmstadt/Germany.

Section 291 para.1 AktG lays down a legal definition of domination agreements and profit/loss transfer agreements. According to this definition, domination agreements are agreements in which a public limited company or partnership limited by shares agrees that the management of its company shall be subject to another company (domination agreement) or undertakes to transfer all its profits to another company (profit/loss transfer agreement). Sections 291 ff. AktG apply in the same way to companies in the legal form of a GmbH (limited liability company). In this case, a DPLTA has been entered into between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany.

From a legal perspective, the subject matter of the contract auditor is whether the agreement fulfils the minimum contents required under company law for a DPLTA in accordance with the definition in section 291 para 1 sentence 1 AktG. Furthermore, various regulations of the Companies Act contain further requirements governing the minimum contents of a company agreement (sections 301, 302, 304 and 305 AktG in particular).

In accordance with section 293e para1 sentence 2, the contract auditor additionally has to audit and establish whether the proposed compensation in accordance with section 304 AktG and the proposed settlement in accordance with section 305 AktG are appropriate. The DPLTA provided to us does not contain any regulation governing appropriate compensation in accordance with section 304 AktG or governing a settlement in accordance with section 305 AktG. In accordance with section 304 para.1 sentence 3 AktG, appropriate compensation does not have to be determined if the company does not have any external shareholders at the time the resolution of its shareholders' meeting on the agreement is adopted. This also applies with regard to the settlement requirement (cf. *Koch*, in: Hüffer/Koch, Kommentar zum Aktiengesetz (Commentary on the Companies Act), 14th edition, Munich 2020, section 305, note 8). External shareholders within the meaning of sections 304 and 305 AktG are all shareholders of the company (partners in the case of a GmbH) with the exception of the other party to the agreement and the shareholders that "on account of a well-founded economic connection with the other party to the agreement directly or indirectly profit from the profit transfer in a similar way as this party" (cf. *Koch*, in: Hüffer/Koch, Kommentar zum Aktiengesetz, 14th edition, Munich 2020, section 304, note 2). As the sole shareholder of AmpTec GmbH, Hamburg/Germany, Merck LS Holding GmbH, Darmstadt/Germany, is accordingly not an external shareholder, as it is for its part a wholly owned subsidiary of the other party to the agreement, Merck KGaA, Darmstadt/Germany, and is thus economically connected with Merck KGaA,

Darmstadt/Germany. As the company agreement does not provide for either compensation or a settlement, these are also not owed pursuant to the contents of the agreement and we also therefore did not have to audit any compensation or settlement. The closing statement in accordance with section 293e para 1 sentence 2 AktG on the appropriateness of the compensation and settlement is also dispensed with.

It was thus our task only to establish whether the control and profit transfer agreement contains the regulatory provisions prescribed in sections 291 ff. AktG correctly and in full.

The assessment of whether it is appropriate to enter into a company agreement is a matter for the parties to the agreement and not the subject matter of the contract audit in accordance with the regulations of the Companies Act.

1.4 Documents and provision of information

We conducted our work in the period from 12 February to 4 March 2021 at our business premises in Hamburg and Frankfurt am Main. We collected the following key documents that form the basis for our audit:

- Domination and Profit/Loss Transfer Agreement between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany, of 16 February 2021 (in accordance with appendix 2; including previous drafts);
- Joint report of the Management Board of Merck KGaA, Darmstadt/Germany, and the Management of AmpTec GmbH, Hamburg/Germany, of 16 February 2021 (including previous drafts);
- Extract from the commercial register for Merck KGaA, Darmstadt/Germany, of 11 February 2021 and for AmpTec GmbH, Hamburg/Germany, of 11 February 2021;
- Articles of association of Merck KGaA, Darmstadt/Germany, of 30 July 2020 and articles of association of AmpTec GmbH, Hamburg/Germany, of 4 October 2007;
- List of the shareholders of AmpTec GmbH, Hamburg/Germany, dated 22 December 2020 and of Merck LS Holding GmbH, Darmstadt/Germany, dated 4 June 2018.

All explanations and evidence as well as other illustrative written and/or verbal information that we requested were readily provided to us by the management of Merck KGaA, Darmstadt/Germany, and the management of AmpTec GmbH, Hamburg/Germany. The management of Merck KGaA, Darmstadt/Germany, and the management of AmpTec GmbH, Hamburg/Germany, each submitted a management representation letter to us containing the statement that all information that is of importance for auditing the DPLTA has been provided and is correct and complete.

1.5 Disclosure and liability

Our report is drawn up in connection with the conclusion of the DPLTA between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany, and is intended only for use by Merck KGaA, Darmstadt/Germany and AmpTec GmbH, Hamburg/Germany, and companies affiliated with it in accordance with section 15 AktG. Permissible use also includes reference to our work and the use of our report in its entirety as part of the reporting on the DPLTA and also as part of the information provided at the general meeting of Merck KGaA, Darmstadt/Germany, and at the shareholders' meeting of AmpTec GmbH, Hamburg/Germany, relating to the DPLTA, the inspection of the report by shareholders at the general meeting of Merck KGaA, Darmstadt/Germany, and the inspection of the report by partners at the shareholders' meeting of AmpTec GmbH, Hamburg/Germany, and the publication of our report in its entirety online as part of the documents to be published, in so far as this is prescribed by law.

Any further disclosure of our report beyond that to third parties may take place subject to the express written consent of KPMG only if it is disclosed in full, which shall include a written statement on the purpose of the underlying engagement as well as the restrictions on disclosure and terms and conditions of liability connected with the engagement, and only if the third party in question has first stated to us in writing that it agrees with the General Engagement Terms, supplemented by an individual liability agreement, as well as a binding non-disclosure obligation on its part.

The basis for the letter of engagement is provided by the General Engagement Terms for German Public Auditors and Public Audit Firms of 1 January 2017, which are attached as Appendix 3. Our maximum liability is governed by clause 9 of the General Engagement Terms and supplementary written agreements. Clause 1(2) and clause 9 of the general engagement terms apply with regard to third parties.

2 Legal relationships of the contracting companies

2.1 Merck Kommanditgesellschaft auf Aktien, Darmstadt/Germany

Merck KGaA, Darmstadt/Germany, registered in the commercial register of the local court of Darmstadt under HRB 6164, is a listed partnership limited by shares and the operating parent company of the Merck KGaA, Darmstadt/Germany group.

The company's financial year is the calendar year.

The business purpose laid down in the articles of association is the manufacture and the distribution of chemical and biotechnical products, especially pharmaceuticals, basic substances for pharmaceuticals, fine chemicals, industrial chemicals, pigments and cosmetic substances, the manufacture as well as the distribution of and the trade in laboratory preparations and equipment, especially reagents and diagnostic agents, and the development, the acquisition and the exploitation of chemical processes and equipment. The company is entitled to conduct all transactions and measures that appear suitable for serving the company's objective. For this purpose, it can in particular perform services, acquire, manage and sell property, establish, acquire and take an equity interest in other companies and manage such companies or restrict itself to the management of the equity interest. The company is furthermore entitled to exercise its business activity also through subsidiaries, associated companies and joint ventures. It can spin off or outsource its operations in full or in part to affiliated companies.

Members of the management of the parent company are the personally liable partners without capital shares: Mr Stefan Oschmann, Mr Kai Beckmann, Ms Belen Garijo Lopez, Mr Peter Guenter and Mr Marcus Kuhnert.

2.2 AmpTec GmbH, Hamburg/Germany

AmpTec GmbH, Hamburg/Germany, was founded on 3 January 2005. The company has its registered office in Hamburg and is registered in the commercial register of the local court of Hamburg under HRB 92485.

The company's financial year is the calendar year.

The share capital of the company amounts to EUR 25,000.00. All shares in the subsidiary are held indirectly by Merck KGaA, Darmstadt/Germany. The sole direct shareholder is Merck LS Holding GmbH, Darmstadt/Germany, the sole shareholder of which is Merck KGaA, Darmstadt/Germany.

The business purpose laid down in the articles of association is the development, production and distribution of molecular biological reagents and kits for isolating and amplifying nucleic acids. The company is entitled to conduct all transactions that are suitable for directly or indirectly promoting the company's objective. The company may take over, take an equity interest in or manage the business of other companies of the same or a similar nature. The company may furthermore establish branch offices.

The Managing Directors are Mr Stephan Lahrkamp and Mr Matthias Jöhnck.

3 Contents and audit of the company agreement

The DPLTA submitted to us for audit requires the consent of the shareholders' meeting of AmpTec GmbH, Hamburg/Germany, and the consent of the general meeting of Merck KGaA, Darmstadt/Germany, in order to become effective. After it is entered into, the company agreement becomes effective once it has been entered in the commercial register of AmpTec GmbH, Hamburg/Germany, as laid down in section 294 AktG.

We have audited the DPLTA between Merck KGaA, Darmstadt/Germany, as the receiving company and AmpTec GmbH, Hamburg/Germany, as the transferring company in accordance with the legal regulations (section 293b AktG). We have also consulted the explanations provided in the joint report of the management of Merck KGaA, Darmstadt/Germany, and the management of AmpTec GmbH, Hamburg/Germany, in this process.

We have found that the DPLTA meets the legal requirements stipulated in sections 291 ff. AktG. We come to this conclusion, as the following points are regulated in the company agreement:

1. Regulations relating to section 291 AktG (control and profit transfer agreement)

Section 2 of the DPLTA provides that AmpTec GmbH, Hamburg/Germany, agrees that the management of its company shall be subject to Merck KGaA, Darmstadt/Germany, as the controlling company. Merck KGaA, Darmstadt/Germany, is accordingly entitled to issue instructions to AmpTec GmbH, Hamburg/Germany, concerning the management of the company. The right to issue instructions applies only with regard to the management of the subsidiary and covers all measures that form part of the area of activity of the management.

Merck KGaA, Darmstadt/Germany, cannot issue an instruction to AmpTec GmbH, Hamburg/Germany, to amend, to continue or to end the DPLTA.

2. Regulations relating to sections 300, 301 AktG (statutory reserve, maximum amount of the profit transfer)

In accordance with section 4 para. 1 of the DPLTA, AmpTec GmbH, Hamburg/Germany, undertakes to transfer all the profit generated during the term of the DPLTA to Merck KGaA, Darmstadt/Germany, if the profits are not retained at AmpTec GmbH, Hamburg/Germany, in accordance with section 4 para. 2 of the DPLTA.

Subject to any creation of reserves in accordance with section 4 para. 2 of the DPLTA, the net income for the year arising without the profit transfer, less any loss carried forward

from the previous year and the amount blocked from distribution in accordance with section 268 para. 8 of the *German Commercial Code* (HGB), plus any amounts withdrawn from the other retained earnings in accordance with section 4 para. 3 of the DPLTA, are to be transferred. The profit transfer may not, however, exceed the amount specified in section 301 AktG, which has to be applied accordingly as currently amended.

In accordance with section 4 para. 2, AmpTec GmbH, Hamburg/Germany, may transfer amounts from the net income for the year to the other retained earnings in accordance with section 272 para. 3 HGB with the consent of Merck KGaA, Darmstadt/Germany, only in so far as this is permitted by commercial law and is economically justified on the basis of prudent business judgement. The transfer of profit that originates from the reversal of capital reserves (section 272 para. 2 no. 4 HGB) or retained earnings from before the DPLTA (section 272 para. 3 HGB) or from profit carryforwards from before the DPLTA is excluded in accordance with section 4 para. 1 sentence 4 of the DPLTA. Other retained earnings created in accordance with section 272 para. 3 HGB during the term of the DPLTA have to be reversed in accordance with section 4 para 3 of the DPLTA at the request of Merck KGaA, Darmstadt/Germany, and have to be used to compensate any net loss for the year or loss carryforward or have to be transferred as profit.

The entitlement to the profit transfer arises at the end of the financial year of AmpTec GmbH, Hamburg/Germany, and falls due with effect from this time (section 4 para. 4 of the DPLTA).

3. Regulations relating to 302 AktG (assumption of losses)

In accordance with section 5 para. 1 of the DPLTA, Merck KGaA, Darmstadt/Germany, is required, in line with the regulations of section 302 AktG in its currently valid version, to compensate any net loss for the year otherwise incurred during the term of the agreement, if this is not offset by the fact that other retained earnings created during the term of the DPLTA are used to compensate any net loss for the year. The loss to be assumed is not reduced by the reversal of capital reserves or retained earnings from before the DPLTA and profit carryforwards from before the DPLTA.

The entitlement to compensation of any loss arises at the end of the financial year of the subsidiary and falls due with effect from this time (section 5 para. 2 of the DPLTA).

4. Regulations relating to section 304 AktG (appropriate compensation) and under section 305 AktG (appropriate settlement)

The DPLTA does not contain any regulations governing compensation or a settlement for external shareholders.

In accordance with the explanations in section 1.3 of this audit report, the determination of appropriate compensation and of an appropriate settlement can be dispensed with, as Merck KGaA, Darmstadt/Germany, is the sole shareholder of Merck LS Holding GmbH, Darmstadt/Germany, which is in turn the sole shareholder of AmpTec GmbH, Hamburg/Germany.

A negative statement on the fact that no compensation and no settlement have to be offered is not required by law.

As the DPLTA does not contain any regulations relating to sections 304 and 305 AktG, no regulations on determining the appropriate compensation or the appropriate settlement are consequently stipulated. There are no objections to this.

As a result of our audit, we find that, taking into consideration the fact that there are no external shareholders at AmpTec GmbH, Hamburg/Germany, the DPLTA contains the regulatory provisions prescribed in sections 291 ff. AktG correctly and in full and thus complies with the statutory regulations.

5. Regulations relating to 294 AktG (entry into force) and section 297 AktG (termination)

The DPLTA requires the approval of the shareholder meetings of the companies entering into the agreement.

The DPLTA will come into effect once it is entered in the commercial register at the seat of AmpTec GmbH, Hamburg/Germany, and applies from 1 January 2021, 12:00 a.m., i.e. for the first time for the 2021 financial year of AmpTec GmbH, Hamburg/Germany. The agreement on the right of Merck KGaA, Darmstadt/Germany, to issue instructions applies only from the time that the DPLTA is entered in the commercial register at the seat of AmpTec GmbH, Hamburg/Germany.

The DPLTA is entered into for an indefinite period. It cannot be terminated before five calendar years have elapsed from the start of the financial year of AmpTec GmbH, Hamburg/Germany, in which the DPLTA comes into effect in accordance with section 8 para. 2 of the DPLTA (minimum term), however no earlier than at the end of 31 December 2025. Subject to compliance with the minimum term, the DPLTA can be terminated at the end of each financial year of AmpTec GmbH, Hamburg/Germany, by giving three months' written notice. The right to termination for good cause without notice remains unaffected. The merger, spin-off or liquidation of one of the two companies entering into the agreement are regarded as good cause in particular. Furthermore, Merck KGaA, Darmstadt/Germany, is entitled to terminate the agreement for good cause if it is no longer entitled directly or indirectly to the majority of the voting rights at AmpTec GmbH, Hamburg/Germany.

* * *

Furthermore, the DPLTA includes the following regulations:

Section 1 Relationship between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany

Merck KGaA, Darmstadt/Germany, is the indirect owner of all shares in AmpTec GmbH, Hamburg/Germany. The sole shareholder of AmpTec GmbH, Hamburg/Germany, is Merck LS Holding GmbH, Darmstadt/Germany, the sole shareholder of which is Merck KGaA, Darmstadt/Germany.

Section 3 Control

The management of AmpTec GmbH, Hamburg/Germany, continues to have the responsibility for the management and representation of AmpTec GmbH, Hamburg/Germany. The management of AmpTec GmbH, Hamburg/Germany, retains its full decision-making authority, unless this is restricted by an instruction in accordance with section 2 of the DPLTA.

Section 6 Annual financial statements

The annual financial statements of AmpTec GmbH, Hamburg/Germany, have to be drawn up in accordance with the German generally accepted accounting principles in compliance with the statutory provisions, the regulations applicable to income taxes and all instructions of Merck KGaA, Darmstadt/Germany.

Section 7 Advance payments

Merck KGaA, Darmstadt/Germany, is entitled to request advance payments already in the course of the financial year in view of any profit transfers from AmpTec GmbH, Hamburg/Germany, that may be expected, provided that the liquidity of AmpTec GmbH, Hamburg/Germany, allows advance payments of this kind to be made. Interest is not paid on the profit and loss settlement account.

Section 9 Other provisions

Amendments and additions to or the cancellation of the DPLTA, including any amendment of this provision, must be made in writing, unless notarisation is required under mandatory regulations in law.

Any provision that is void, invalid or unenforceable is to be replaced by a valid and enforceable provision that most closely approximates in terms of subject matter, extent, time, place or scope of application the economic purpose that was pursued by the void, invalid or unenforceable provision. The same applies to any gaps or omissions in the DPLTA.

4 Contents of the report on the company agreement

In accordance with section 293a para. 1 AktG, the Executive Board of each of the stock corporations that are party to a company agreement has to produce a detailed written report ("report on the agreement"), in which the conclusion of the company agreement, the details of the agreement and in particular – if necessary – the nature and amount of the compensation pursuant to section 304 AktG and the settlement pursuant to section 305 AktG are explained and justified in legal and economic terms. Where two stock corporations are party to the agreement, a joint report can also be produced by the Management Boards.

In this case, AmpTec GmbH, Hamburg/Germany, is a company in the legal form of a GmbH (limited liability company). There is no legal obligation for the management of this GmbH to produce a corresponding report. Nevertheless, the management of AmpTec GmbH, Hamburg/Germany, has produced a report together with the Management Board of Merck KGaA, Darmstadt/Germany, in order to inform the partners.

The joint report of 16 February 2021 on the agreement (including the previous drafts) has served us as a source of information and as documentation of the more specific circumstances concerning the contents of the company agreement. The report on the agreement explains in accordance with the regulations of company law the conclusion as well as the entry into force of the agreement, the legal and economic reasons for the company agreement and the DPLTA as such.

5 Result of the audit

As the expert appointed by the regional court of Hamburg to audit the DPLTA between Merck KGaA, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany, we have audited the DPLTA in accordance with section 293b AktG.

We have audited whether the company agreement contains the minimum contents of a DPLTA as defined in section 291 para. 1 AktG that are required under company law. The audit has shown that the DPLTA satisfies the legal requirements.

In the present case, the parties to the DPLTA have dispensed in appropriate application of section 304 para. 1 sentence 1 AktG with defining an appropriate compensation payment and an appropriate settlement. There are no legal objections to this because of the position of Merck KGaA, Darmstadt/Germany, as the indirect sole shareholder. A statement within the meaning of section 293e AktG on the appropriateness of the proposed compensation and of the proposed settlement is therefore neither possible nor required.

We point out that the agreement requires the consent of the general meeting of Merck KGaA, Darmstadt/Germany, and the consent of the shareholders' meeting of AmpTec GmbH, Hamburg/Germany, and also has to be entered in the commercial register of AmpTec GmbH, Hamburg/Germany, in order to become effective.

We issue the following final statement corresponding to the statement prescribed in section 293e AktG:



In accordance with the final result of our audit as required by law in accordance with section 293b AktG on the basis of the documents, books and records presented to us as well as the information and evidence provided to us, we can confirm that this control and profit transfer agreement between Merck Kommanditgesellschaft auf Aktien, Darmstadt/Germany, and AmpTec GmbH, Hamburg/Germany, of 16 February 2021 includes in an appropriate manner the minimum contents of a control and profit transfer agreement in accordance with section 291 para. 1 sentence 1 AktG that are required by company law. As is permitted, the control and profit transfer agreement does not contain any regulations governing appropriate compensation and an appropriate settlement.



Hamburg, 4 March 2021

KPMG AG
Wirtschaftsprüfungsgesellschaft

Stefan Schöniger
Wirtschaftsprüfer

Daniel Jagar
Wirtschaftsprüfer

This document is a courtesy translation of our report „Prüfung des Beherrschungs- und Gewinnabführungsvertrages zwischen der Merck Kommanditgesellschaft auf Aktien, Darmstadt/Germany, und der AmpTec GmbH, Hamburg/Germany “ which was written in German. This English version serves only as an explanatory note and shall not be signed by us. The German version of these terms and conditions shall be the binding version, the translation into English is a courtesy translation.

Appendices

Appendix 1

Landgericht Hamburg

Az.: 412 HKO 6/21



Beschluss

In der Sache

- 1) **Merck KGaA**, vertreten durch d. persönl. haft. Gesellschafter, Frankfurter Straße 250,
64271 Darmstadt

- Antragstellerin -

- 2) **AmpTec GmbH**, vertreten durch d. Geschäftsführer, Königsstraße 4A, 22767 Hamburg

- Antragstellerin -

beschließt das Landgericht Hamburg - Kammer 12 für Handelssachen - durch den Vorsitzenden Richter am Landgericht Dr. Nevermann am 01.02.2021:

1. Als Sachverständige zur Prüfung des beabsichtigten Gewinnabführungsvertrages zwischen der Merck KGaA, Darmstadt, HRB 6164, und der AmpTec GmbH, Hamburg, HRB 92485, wird für beide Unternehmen gemeinsam bestellt:

KPMG AG Wirtschaftsprüfungsgesellschaft
(Sachbearbeiter WP Stefan Schöniger, WP Daniel Jagar)
Michaelis Quartier
Ludwig-Erhard-Str. 11 – 17
20459 Hamburg
Postfach 11 12 85
20412 Hamburg

2. Die Kosten des Verfahrens haben die Antragstellerinnen als Gesamtschuldner zu tragen.

3. Der Streitwert wird festgesetzt auf € 50.000.-.

Gründe:

1. Die Antragstellerin zu 1. ist eine AG mit Sitz in Darmstadt, die Antragsstellerin zu 2. ist eine GmbH mit Sitz in Hamburg. Die Antragstellerin zu 1) ist an der Antragstellerin zu 2) über eine 100%tige Tochtergesellschaft zu 100% beteiligt. Die Antragstellerin und die Antragsgegnerin beabsichtigen den Abschluss Unternehmensvertrages. Die Geschäftsführungen beider Antragstellerinnen haben beantragt, einen gemeinsamen Vertragsprüfer zu bestellen.

2. Die Bestellung beruht auf den §§ 293c I, 293b AktG. Hiernach ist der Unternehmensvertrag für jede der vertragsschließenden Parteien durch einen oder mehrere Vertragsprüfer zu prüfen, den das Gericht auswählt. Aus Gründen der Rechtssicherheit sind diese Vorschriften analog auch dann anzuwenden, wenn die Untergesellschaft eine GmbH ist und beide Vertragsparteien eine Angemessenheitsprüfung beantragen.

Örtlich zuständig ist nach § 293c I AktG das Gericht am Sitz der abhängigen Gesellschaft. Innerhalb des damit zuständigen Landgerichts ist die Kammer für Handelssachen zuständig (§ 293c I 3 AktG), deren Vorsitzender allein entscheidet § 293c I 4 AktG).

Der Antrag ist zulässig; er ist von den vertretungsberechtigten Organen unterzeichnet worden.

Die Auswahl der bestellten Sachverständigen hat das Gericht nach pflichtgemäßem Ermessen unter den vorgeschlagenen Sachverständigen vorgenommen.

Dr. Nevermann
Vorsitzender Richter am Landgericht



Für die Richtigkeit der Abschrift
Hamburg, 02.02.2021

Schult, JFAng
Urkundsbeamtin der Geschäftsstelle
Durch maschinelle Bearbeitung beglaubigt
- ohne Unterschrift gültig

Appendix 2

Beherrschungs- und Gewinnabführungsvertrag

zwischen der

Merck Kommanditgesellschaft auf Aktien

Frankfurter Straße 250

64293 Darmstadt

(Amtsgericht Darmstadt, HRB 6164)

im folgenden "Obergesellschaft"

und der

AmpTec GmbH

Koenigstraße 4A

22767 Hamburg

(Amtsgericht Hamburg, HRB 92485)

im folgenden "Untergesellschaft"

§ 1

Die Obergesellschaft ist mittelbar Inhaberin von 100% der Geschäftsanteile an der Untergesellschaft. Die alleinige Gesellschafterin der AmpTec GmbH ist die Merck Life Science Holding GmbH (Sitz: Darmstadt, Deutschland), deren alleinige Gesellschafterin die Obergesellschaft ist.

§ 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 beenden.

§ 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 ausschüttungsgesperren 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 mittelbar oder unmittelbar 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.

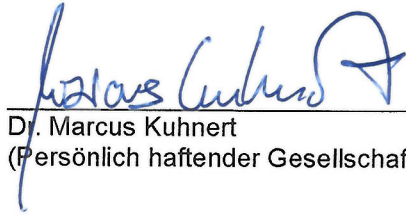
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Darmstadt, den 16. Februar 2021

Merck Kommanditgesellschaft auf Aktien



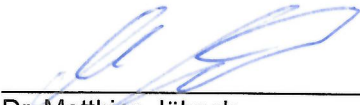
Dr. Stefan Oschmann
(Persönlich haftender Gesellschafter)



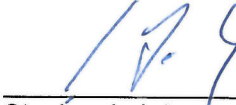
Dr. Marcus Kuhnert
(Persönlich haftender Gesellschafter)

Darmstadt, den 16. Februar 2021

AmpTec GmbH



Dr. Matthias Jöhnck
(Geschäftsführer)



Stephan Lahrkamp
(Geschäftsführer)

Appendix 3

General Engagement Terms

for

Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]

as of January 1, 2017

1. Scope of application

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

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

2. Scope and execution of the engagement

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

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

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

3. The obligations of the engaging party to cooperate

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

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

4. Ensuring independence

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

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

5. Reporting and oral information

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

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

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

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

7. Deficiency rectification

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

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (*Textform*) [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 Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

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

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

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

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

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

10. Supplementary provisions for audit engagements

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

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

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

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

11. Supplementary provisions for assistance in tax matters

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

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

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

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

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

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

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

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

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

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

12. Electronic communication

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

13. Remuneration

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

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

14. Dispute Settlement

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

15. Applicable law

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