



**VARTA**

**DATE**

**2021**

**PROFIT AND LOSS TRANSFER AGREEMENT**

between

VARTA AKTIENGESELLSCHAFT,  
VARTA-Platz 1,  
73479 Ellwangen/Jagst

and

VARTA Micro Production GmbH,  
Nürnberger Str. 64-65,  
86720 Nördlingen



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## PREAMBLE

- A The joint-stock company under the name VARTA AKTIENGESELLSCHAFT headquartered in Ellwangen/Jagst is registered in the commercial register of the Local Court of Ulm (Amtsgericht) under HRB 728059 (hereinafter referred to as the "**Parent Company**").
- B The limited liability company under the name VARTA Micro Production GmbH headquartered in Nördlingen is registered in the commercial register of the Local Court of Augsburg (Amtsgericht) under HRB 32477 (hereinafter referred to as the "**Subsidiary Company**").
- C The Parent Company holds all shares in the Subsidiary Company with a total nominal value of EUR 100,000.00. This corresponds to the total voting share capital of the Subsidiary Company (financial integration).
- D This profit and loss transfer agreement is intended to establish a single-entity relationship between the Parent Company and the Subsidiary Company within the meaning of Section 14 of the German Corporation Tax Act (KStG). In light of the above, the parties agree the following:

### 1. Profit transfer

- 1.1 The Subsidiary Company undertakes to transfer to the Parent Company its entire profit, i.e., subject to the provision in 1.2 below, the entire annual net profit accruing prior to such profit transfer, after deducting any loss carried forward from the previous year, the amount to be mandatorily allocated to a statutory reserve and the amount blocked from distribution pursuant to Section 268 (8) of the German Commercial Code (HGB). The provisions of Section 301 of the German Stock Corporation Act (AktG), as amended from time to time, shall apply accordingly.
- 1.2 The Subsidiary Company may, with the consent of the Parent Company, allocate amounts from the annual net profit to revenue reserves (Section 272 (3) HGB), with the exception of statutory reserves, only to the extent that this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment.
- 1.3 Other revenue reserves formed during the term of this Agreement in accordance with Section 272 (3) HGB shall - as far as legally permissible - be reversed at the request of the Parent Company and transferred as profit. Other reserves and amounts from the reversal of profit carried forward and revenue reserves that were formed or arose from profits generated prior to the fiscal year in which this Agreement becomes effective may not be transferred to the Parent Company as profit. The same applies to amounts from the reversal of capital reserves within the meaning of Section 272 (2) HGB, regardless of whether these capital reserves were formed before or during the term of this Agreement.
- 1.4 The entitlement to the transfer of profit arises at the end of the fiscal year of the Subsidiary Company. Such claim is due and payable at this date.

### 2. Assumption of losses

The provisions of Section 302 AktG, as amended from time to time, shall apply accordingly.



### **3. Preparation of the annual financial statements**

- 3.1 The annual financial statements of the Subsidiary Company shall be submitted to the Parent Company for information, review and approval prior to their adoption.
- 3.2 The annual financial statements of the Subsidiary Company shall be prepared and adopted before the annual financial statements of the Parent Company.
- 3.3 If the fiscal year of the Subsidiary Company ends at the same time as the fiscal year of the Parent Company, the profit or loss of the Subsidiary Company to be assumed shall nevertheless be taken into account in the annual financial statements of the Parent Company for the same fiscal year.

### **4. Duration and termination of the Agreement**

- 4.1 The effectiveness of the Agreement is subject to
  - (a) approval by the Annual General Meeting of the Parent Company
  - (b) approval by the Shareholders' Meeting of the Subsidiary Company
  - (c) entry in the commercial register of the Subsidiary Company.

The Agreement shall apply retroactively from the beginning of the current fiscal year of the Subsidiary Company at the time of the entry of this Agreement in the commercial register.

- 4.2 The Agreement shall be concluded for a fixed period of five years ("minimum term"). The minimum term shall commence at the beginning of the current fiscal year of the Subsidiary Company at the time of entry of this Agreement in the commercial register of the Subsidiary Company, for which the legal consequences of Section 14 (1) sentence 1 KStG first arise. If the minimum term of five years ends during a current fiscal year of the Subsidiary Company, the minimum term shall be extended until the end of that fiscal year. If the Agreement is not terminated by one of the parties three months before its expiry, it shall be extended for another year.
- 4.3 The parties are entitled to terminate the Agreement for good cause in particular
  - (a) if, due to the sale of shares or for other reasons, the conditions for financial integration of the Subsidiary Company into the Parent Company under tax law are no longer met after completion of the respective measure;
  - (b) if the Parent Company transfers the shareholding in the Subsidiary Company to another company;
  - (c) if the Parent Company or the Subsidiary Company is merged, split or liquidated; or
  - (d) if there is good cause within the meaning of R 14.5 (6) Guidelines on Corporation Tax 2015 (or a corresponding provision) or any other good cause recognized for income tax purposes at the time of termination.
- 4.4 If the effectiveness of this Agreement or its proper implementation is not or not fully recognized for tax purposes, the parties agree that the minimum term shall in each case only begin on the



first day of that fiscal year of the Subsidiary Company for which the conditions for the recognition for tax purposes of its effectiveness or its proper implementation are met for the first time or are met again for the first time.

- 4.5 If the Agreement is cancelled or terminated, the Parent Company shall provide security to the creditors of the Subsidiary Company in accordance with Section 303 AktG, as amended from time to time.

## 5. Final provisions

- 5.1 Amendments to this Agreement in accordance with Section 295 AktG require the approval of the Annual General Meeting of the Parent Company and the Shareholders' Meeting of the Subsidiary Company. The approval of the Subsidiary Company must be unanimous and requires entry in the commercial register of the Subsidiary Company.
- 5.2 Furthermore, any changes and additions to this Agreement must be made in writing, unless recording by a notary is required. This shall also apply to the waiver of this written form requirement.
- 5.3 Should any provision of this Agreement be or become invalid, impracticable or unenforceable in whole or in part, or should the Agreement contain an omission, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. The parties undertake to agree on a valid, practicable and enforceable provision in place of the invalid, impracticable, unenforceable or missing provision which comes closest to the economic purpose pursued by the parties.
- 5.4 When interpreting individual provisions of this Agreement, the provisions of Sections 14 and 17 KStG, as amended from time to time, or, if applicable, the corresponding succeeding provisions shall be observed. Insofar as individual provisions of this Agreement conflict with Section 2 of this Agreement, Section 2 of this Agreement shall take precedence over those provisions.

Ellwangen/Nördlingen, [•] 2021 [date]

### VARTA AKTIENGESELLSCHAFT

The Executive Board

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(Herbert Schein)  
Member of the Executive  
Board  
VARTA  
AKTIENGESELLSCHAFT

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(Armin Hessenberger)  
Member of the Executive  
Board  
VARTA  
AKTIENGESELLSCHAFT



## VARTA Micro Production GmbH

The Management

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Herbert	Schein
Managing	Director
VARTA	Micro
Production GmbH	

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Armin	Hessenberger
Managing	Director
VARTA	Micro
Production GmbH	

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