

**Joint Report**

**pursuant to Section 293a of the German Stock Corporation Act (AktG)**

**of the Executive Board of  
VARTA AKTIENGESELLSCHAFT, Ellwangen/Jagst,**

**and**

**the management of  
VARTA Micro Production GmbH, Nördlingen,**

**on the draft profit and loss transfer agreement**

**between**

**VARTA AKTIENGESELLSCHAFT**

**and**

**VARTA Micro Production GmbH**



## **I. Preamble**

VARTA AKTIENGESELLSCHAFT ("**VARTA**"), headquartered in Ellwangen/Jagst and registered in the commercial register of the Local Court of Ulm (Amtsgericht) under HRB 728059, and VARTA Micro Production GmbH ("**VARTA Micro Production**"), registered in the commercial register of the Local Court of Augsburg (Amtsgericht) under HRB 32477, intend to enter into a profit and loss transfer agreement (also "**Agreement**"). For the information of the shareholders/partners of the two companies, the Executive Board of VARTA and the management of VARTA Micro Production jointly issue the following report in accordance with Section 293a of the German Stock Corporation Act ("**AktG**").

## **II. Conclusion and date of effectiveness of the profit and loss transfer agreement**

The Agreement shall be concluded in writing and requires the approval of the Annual General Meeting of VARTA and the Shareholders' Meeting of VARTA Micro Production as well as registration in the commercial register of VARTA Micro Production in order to be effective under civil law. The following board approvals have been obtained:

- Resolution of the VARTA Executive Board dated March 30, 2021,
- Resolution of the VARTA Supervisory Board dated March 25, 2021.

The draft profit and loss transfer agreement will be submitted to the Ordinary General Meeting of VARTA on June 17, 2021 for approval as an inter-company agreement pursuant to Section 293 AktG. The Executive Board and the Supervisory Board of VARTA shall propose to the Annual General Meeting of VARTA that it approve the draft profit and loss transfer agreement with VARTA Micro Production.

Pursuant to Section 293 (1) sentence 2 AktG, the approval resolution of the Annual General Meeting of VARTA requires a majority of at least three-quarters of the voting share capital represented at the time of passing the resolution. The Shareholders' Meeting of VARTA Micro Production is expected to be asked to approve the Agreement after the Ordinary General Meeting. The Agreement is then to be concluded after the approvals have been granted and filed for entry in the commercial register of the headquarters of VARTA Micro Production.

## **III. Legal and economic reasons for concluding the profit and loss transfer agreement**

### **1. Corporate and economic situations**

#### **1.1. VARTA AKTIENGESELLSCHAFT**

VARTA AKTIENGESELLSCHAFT is a listed stock corporation under German law headquartered in Ellwangen/Jagst. The business address is VARTA-Platz 1, 73479 Ellwangen/Jagst. VARTA is registered in the commercial register of the Local Court of Ulm under HRB 728059. VARTA is the holding company of the VARTA Group. The fiscal year is the calendar year.



VARTA's share capital, which is registered in the commercial register, amounts to EUR 40,421,686.00 and is divided into 40,421,686 no-par value shares (bearer shares), each representing EUR 1.00 of the share capital.

As at December 31, 2020, the VARTA Group had 4,300 employees and generated a consolidated profit of approximately EUR 95.5 million in the 2020 fiscal year.

The purpose of the Company is the acquisition, holding, management and disposal of participating interests, in particular in the area of the development, manufacture and distribution of energy systems and energy storage systems, the provision of services of all kinds, in particular services for companies and/or on behalf of companies in which the Company has a shareholding, as well as the development, manufacture and distribution of selected energy systems and energy storage systems. The purpose of the Company is also the management of its own assets, in particular the exploitation and management of assets, contracts, liabilities and participating interests relating to the businesses formerly operated by the Company and its subsidiaries.

The Company is authorized to take all direct or indirect measures suitable for serving the purpose of the Company. The Company may establish, acquire, dispose of or take an equity stake in branches and other enterprises in Germany and abroad. In addition, the Company may also limit its activities to a part of the field of operation referred to in the above paragraph.

## **1.2. VARTA Micro Production GmbH**

VARTA Micro Production is a limited liability company under German law headquartered in Nördlingen. The business address is Nürnberger Straße 64-65, 86720 Nördlingen. VARTA Micro Production is registered in the commercial register of the Local Court of Augsburg under HRB 32477. The share capital of VARTA Micro Production amounts to EUR 100,000.00 and is divided into 100,000 shares each with a nominal value of EUR 1.00 with serial numbers 1 to 100,000. All shares in the Company are held by VARTA. The fiscal year is the calendar year.

The annual financial statements of VARTA Micro Production are included in the consolidated financial statements of VARTA. As at December 31, 2020, VARTA Micro Production had 845 employees and generated an annual net profit of approximately EUR 4.06 million in the 2020 fiscal year.

The purpose of the company is the manufacture, distribution and development of chemical, electro-chemical, electro-technical, metallurgical and other industrial products of all kinds, in particular batteries, the manufacture and distribution of products in the field of mechanical and apparatus engineering, the manufacture, installation, management and exploitation of plants and facilities and trade in third-party products in the above-mentioned fields.

VARTA Micro Production is authorized to take all measures and conduct all business suitable for promoting the Company's purpose. This also includes the establishment of branches as well as the acquisition and establishment of other companies and the participation in such enterprises in Germany and abroad. The Company is also authorized to divest parts of its business to associated companies, including joint ventures with third parties.



## **2. Reasons for concluding the profit and loss transfer agreement**

By concluding the profit and loss transfer agreement, it is possible for VARTA to achieve tax optimization. The conclusion of an effective and implemented profit and loss transfer agreement is a prerequisite for the establishment of a fiscal unit for corporation tax and trade tax purposes. These consolidated income tax groups ensure that the tax burden of the companies belonging to the tax group is pooled. The fact that positive and negative results of VARTA and VARTA Micro Production can be simultaneously offset enables tax-deductible loss compensation within the Group.

## **IV. Explanation of the profit and loss transfer agreement**

The main provisions of the profit and loss transfer agreement are explained below:

### **1. Profit transfer**

According to Section 1 of the profit and loss transfer agreement, VARTA Micro Production is obliged to transfer its entire profit to VARTA during the term of the Agreement in accordance with all the provisions of Section 301 AktG, as amended from time to time. Section 301 AktG limits the amount of profit transfer. According to Section 301 sentence 1 AktG, the profit to be transferred is the annual net profit accruing prior to such profit transfer, after deducting any loss carried forward from the previous year and the amount blocked from distribution pursuant to Section 268 (8) of the German Commercial Code (HGB). According to Section 1.2 of the profit and loss transfer agreement, the allocation of amounts from the annual net profit to other revenue reserves pursuant to Section 272 (3) HGB is possible, provided that this is permissible under commercial law and justified on the basis of a reasonable commercial assessment, and VARTA agrees. According to Section 1.3 of the profit and loss transfer agreement, other revenue reserves formed during the term of the Agreement in accordance with Section 272 (3) HGB shall - as far as legally permissible - be reversed at the request of VARTA and appropriated as compensation for an annual net loss or losses carried forward or transferred as profit. Other reserves and amounts from the reversal of profits carried forward and revenue reserves that were formed or arose from profits generated prior to the fiscal year in which the profit and loss transfer agreement becomes effective as well as amounts from the reversal of capital reserves according to Section 272 (2) no. 1 to 4 HGB (regardless of whether they were formed before or after the profit and loss transfer agreement entered into force) may not be transferred to VARTA as profit.

The claim to the transfer of profit arises at the end of the fiscal year of VARTA Micro Production and is due and payable at this date.

### **2. Assumption of losses**

Pursuant to Section 2 of the Agreement on the assumption of losses, VARTA is obliged to assume losses in accordance with the provisions of Section 302 AktG, as amended from time to time. VARTA is therefore obliged to compensate any annual net loss of VARTA Micro Production accruing during the term of the Agreement in accordance with the provisions of Section 302 AktG, as amended from time to time. This obligation to compensate losses is a mandatory consequence of a profit and loss transfer agreement. Reference to the provisions of Section 302 (1) AktG ensures that only such loss must be compensated that



is not compensated by withdrawals from other revenue reserves formed during the term of the Agreement. The reference to Section 302 (2) to (4) AktG relates in particular to the statutory waiver and settlement option with regard to the claim and to the statutory limitation provision.

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

Section 3 of the profit and loss transfer agreement includes provisions on the preparation of the annual financial statements of VARTA Micro Production. Pursuant to Section 3.1, the annual financial statements of VARTA Micro Production shall be submitted to VARTA for information, review and approval prior to their adoption. Section 3.2 stipulates that the annual financial statements of VARTA Micro Production shall be prepared and adopted before the annual financial statements of VARTA. Pursuant to Section 3.3, the profit or loss of VARTA Micro Production to be assumed shall be taken into account in the annual financial statements of VARTA for the same fiscal year even if the fiscal year of VARTA Micro Production ends at the same time as the fiscal year of VARTA.

### **4. Date of effectiveness and duration**

Section 4 of the profit and loss transfer agreement contains provisions on the date of effectiveness and duration of the profit and loss transfer agreement.

Firstly, Section 4.1 of the Agreement quotes the statutory provision of Section 293 AktG for VARTA and Section 293 AktG analogously for VARTA Micro Production as well as Section 294 AktG analogously. The Agreement is namely subject to approval by the Shareholders' Meeting of VARTA Micro Production and approval by the Annual General Meeting of VARTA (see the Preamble) as well as entry in the commercial register of the Subsidiary Company.

In addition, Section 4.1 sentence 2 stipulates the retroactive validity of the Agreement from the beginning of the fiscal year of VARTA Micro Production in which it is entered in the commercial register of the headquarters of VARTA Micro Production. The profit and loss transfer agreement shall therefore apply retroactively to the beginning of the current fiscal year of VARTA Micro Production if the entry in the commercial register of the headquarters of VARTA Micro Production takes place in the current fiscal year in order to already be able to use the advantages of the consolidated tax filing arrangement for income tax for the 2021 fiscal year.

Section 4.2 of the Agreement contains a provision on the duration of the Agreement. The profit and loss transfer agreement shall be concluded for a fixed period of five years. This minimum term shall commence at the beginning of the fiscal year for which the legal consequences of the tax pooling arrangements intended by the Agreement (see III.2 "Reasons for concluding the profit and loss transfer agreement") arise for the first time. If these five years end during a current fiscal year of VARTA Micro Production, 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. The term of the Agreement is chosen in such a way that the tax law requirements for a corporate tax group are met with regard to the minimum tax term pursuant to Section 14 (1) sentence 1 no. 3 and Section 17 of the German Corporate Income Tax Act (KStG).



The right to terminate the Agreement for good cause without notice remains unaffected. Good causes that permit termination without notice are listed by way of example in Section 4.3 of the Agreement. Accordingly, good causes are in particular (i) if, due to the sale of shares or for other reasons, the conditions for financial integration of VARTA Micro Production into VARTA under tax law are no longer met after completion of the respective measure or (ii) if VARTA transfers the shareholding in VARTA Micro Production to another company or (iii) if VARTA or VARTA Micro Production is merged, split or liquidated or (iv) 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.

Section 4.4 of the Agreement contains a special provision on the term start date. If the effectiveness of the Agreement or its proper implementation is not or not fully recognized for tax purposes, the minimum term shall only begin on the first day of that fiscal year of VARTA Micro Production 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. This provision also links profit and loss transfer and intercompany grouping for tax purposes in terms of time.

Section 4.5 of the Agreement refers to the protection of creditors provision of Section 303 AktG. According to this, if the Agreement is cancelled or terminated, VARTA shall provide security to the creditors of VARTA Micro Production in accordance with Section 303 AktG.

## **5. Miscellaneous and final provisions**

The profit and loss transfer agreement also contains the usual miscellaneous and final provisions regarding the approval requirements at VARTA and VARTA Micro Production, a severability clause, the written form requirement for additions and changes to the Agreement and the interpretation of the Agreement in compliance with corporation tax law standards.

## **V. Determinations in accordance with Sections 304 and 305 AktG/Audit of the profit and loss transfer agreement**

No compensation payment and no consideration for outside shareholders of VARTA Micro Production is to be determined in the profit and loss transfer agreement as there are no outside shareholders of VARTA Micro Production; VARTA directly holds 100% of the shares in VARTA Micro Production. A valuation of the companies involved to determine an appropriate compensation and an appropriate consideration is therefore not necessary.

Since VARTA directly holds all the shares in VARTA Micro Production, an audit of the Agreement by qualified auditors (agreement auditors) is not required according to Section 293b (1) AktG.



Ellwangen/Jagst / 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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