

# **Profit and Loss Transfer Agreement**

**between**

**HELLA GmbH & Co. KGaA**

**and**

**FWB Kunststofftechnik GmbH**

**PROFIT AND LOSS TRANSFER AGREEMENT**

between

**HELLA GmbH & Co. KGaA** with registered office in Lippstadt, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Paderborn under HRB 6857 hereinafter the “**Controlling Entity**”

and

**FWB Kunststofftechnik GmbH** with registered office in Pirmasens, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Zweibrücken under HRB 21947 hereinafter the “**Controlled Entity**”

**Recitals**

Hella GmbH & Co. KGaA, with registered office in Lippstadt, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Paderborn under HRB 6857, is the sole shareholder of FWB Kunststofftechnik GmbH, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Zweibrücken under HRB 21947. A profit and loss transfer agreement is now to be made between the aforementioned entities.

**§ 1**

**Transfer of profit**

- 1.1 The Controlled Entity shall transfer its entire profits to the Controlling Entity during the term of this Agreement, and pursuant to section 301 of the German Stock Corporation Act (*Aktiengesetz*, “**AktG**”), as amended from time to time, this amount shall be a maximum of the annual net income accruing without the profits being transferred,
- less any loss carried forward from the previous year and allocations to profit reserves in accordance with clause 1.2 below, and
  - plus any amounts withdrawn from profit reserves in accordance with clause 1.2 below, and
  - less the amount that must not be distributed pursuant to section 268(8) of the German Commercial Code (*Handelsgesetzbuch*, “**HGB**”).

- 1.2 The Controlled Entity may only allocate parts of its annual net income, with the exception of statutory reserves, to the profit reserves (section 272(3) HGB) with the consent of the Controlling Entity and to the extent permitted under commercial law and as economically justified by reasonable commercial judgement. Upon the request of the Controlling Entity, other profit reserves established during the term of the Agreement are to be dissolved and transferred as profits or used in accordance with section 302(1) AktG, as amended from time to time.
- 1.3 The transfer of amounts from the dissolution of profit reserves and of profit carry-forwards is excluded to the extent that any such amounts originate from the period before this Agreement takes effect. The transfer of amounts from the dissolution of capital reserves under section 272(2) HGB is generally excluded. This does not affect the permissibility of dissolving or distributing capital reserves in accordance with the general statutory provisions.
- 1.4 The claim to the transfer of profit is created at the end of the Controlled Entity's fiscal year and becomes due and payable upon approval of the Controlled Entity's annual financial statements for the preceding fiscal year.
- 1.5 The Controlling Entity may demand an advance transfer of profits if and to the extent that the payment of an advance dividend would be permitted. Where the amount of the advance transfer exceeds the final amount of the profit transfer, the surplus amount shall be deemed to have been granted as a loan by the Controlled Entity to the Controlling Entity.

## § 2

### Assumption of losses

- 2.1 The rules in section 302 AktG, as amended from time to time, shall apply, mutatis mutandis, to the assumption of losses by the Controlling Entity.
- 2.2 The claim to compensation for losses is created at the end of the Controlled Entity's fiscal year and becomes due and payable at that time.

## § 3

### Preparation of annual financial statements

- 3.1 The Controlled Entity's annual financial statements shall be submitted to the Controlling Entity for information, review and consultation prior to their approval.
- 3.2 The Controlled Entity's annual financial statements shall be prepared and approved prior to the Controlling Entity's annual financial statements.

- 3.3 If the Controlled Entity's fiscal year ends at the same time as the Controlling Entity's fiscal year, the Controlled Entity's profit to be transferred or loss to be assumed shall be accounted for in the Controlling Entity's annual financial statements for the same fiscal year.

#### § 4

##### Information rights

- 4.1 The Controlling Entity may at any time request information from the management at the Controlled Entity regarding the legal, business and administrative affairs at the Controlled Entity. The Controlling Entity may also inspect the Controlled Entity's books and business records at any time.
- 4.2 Notwithstanding the rights agreed above, the Controlled Entity shall also report to the Controlling Entity on its business development and performance on an ongoing basis, including on significant business transactions.

#### § 5

##### Entry into effect, term, and termination

- 5.1 This Agreement is entered into subject to the respective approval of the General Meeting of the Controlling Entity and the Shareholders' Meeting of the Controlled Entity. The Agreement becomes effective upon its registration with the commercial register (*Handelsregister*) of the Controlled Entity and shall enter into force with retroactive effect as of the beginning of the Controlled Entity's fiscal year in which the Agreement takes effect.
- 5.2 The Agreement is entered into for an indefinite term. It may be ordinarily terminated by giving six months' prior notice with effect as of the end of a given fiscal year of the Controlled Entity, but no earlier than with effect as of a point in time occurring a minimum of five (full) years, i.e. 60 months (minimum term), after the beginning of the Controlled Entity's fiscal year in which the Agreement became effective in accordance with clause 5.1 of the Agreement.
- 5.3 The right to terminate the Agreement prematurely for good cause (*aus wichtigem Grund*) or by mutual consent shall remain unaffected. Good cause for termination shall be deemed to be present in any of the following instances, in particular:
- a) the sale, disposal, contribution or other transfer of shares in the Controlled Entity,
  - b) the merger, demerger or liquidation of the Controlling Entity or the Controlled Entity,
  - c) a change of the Controlled Entity's legal form, unless the Controlled Entity is transformed into a corporation (*Kapitalgesellschaft*) with a different legal structure,

- d) the relocation of the registered office or administrative headquarters of the Controlled Entity or the Controlling Entity to a foreign country, if this results in the cessation of the consolidated tax group (*steuerliche Organschaft*).

5.4 In the event that during the term of this Agreement the existence of a consolidated tax group for corporation income tax purposes cannot be recognised or is not recognised by the tax office for a given fiscal year, a new minimum term of five (full) years shall commence with effect as of the first day of the Controlled Entity's fiscal year for which the requirements for a consolidated tax group for corporation income tax purposes are satisfied for the first time or are satisfied once more. Clauses 5.2 and 5.3 shall apply to this new minimum term, *mutatis mutandis*.

5.5 In the event of termination of this Agreement for any reason whatsoever, the Parties undertake to immediately make and accept all relevant statements and declarations and to take all action necessary or expedient for the validity of the termination. In particular, the Parties undertake to arrange for any necessary resolutions granting approval at general meetings in the relevant legally required form and to make any necessary filings with the commercial register (*Handelsregister*).

5.6 Section 307 AktG shall apply, *mutatis mutandis*.

5.7 If the Agreement ends, section 303 AktG shall apply, *mutatis mutandis*.

## § 6

### Costs

The costs incurred in connection with the formation of this Agreement shall be borne by the Controlling Entity.

## § 7

### Final provisions

7.1 Should any provision of this contractual Agreement be or become void, invalid or unenforceable, either in whole or in part, this shall not affect the validity of its other provisions. To replace the void, invalid or unenforceable provision, a new provision shall come into effect that comes closest to what the Parties would have intended in accordance with the spirit and purpose of this Agreement, had they considered the position in light of the voidness, invalidity or unenforceability.

7.2 This shall also apply in the event of the voidness, invalidity or unenforceability of a provision regarding performance or time under this Agreement. In such a case, the performance or time provision that is permitted by law and comes closest to the one originally agreed shall be

deemed to have been agreed by the Parties instead. Sentences 1 and 2 shall also apply, mutatis mutandis, to any gaps in this Agreement.

7.3 This Agreement shall be exclusively governed by German law. The exclusive place of jurisdiction for any disputes arising out of, and in connection with, this Agreement shall be Lippstadt, as far as the law allows.

Lippstadt, \_\_\_\_\_ March 2023

**HELLA GmbH & Co. KGaA**

**FWB Kunststofftechnik GmbH**

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**Mr Michel Favre**

(Managing Director representing Hella  
Geschäftsführungsgesellschaft mbH)

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**Mr Andreas Kleinehr**

(Managing Director FWB Kunststofftechnik  
GmbH)

Lippstadt, \_\_\_\_\_ March 2023

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**Mr Bernard Schäferbarthold**

(Managing Director representing Hella  
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**Dr Anthanasios Valous**

(Managing Director FWB Kunststofftechnik  
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