

**DISCLAIMER:**

**THIS TEMPLATE SHARE PURCHASE AGREEMENT DOES NOT SUBSTITUTE NOR IS IT  
INTENDED TO SUBSTITUTE SPECIFIC LEGAL AND/OR TAX ADVICE FOR THE PARTIES IN THE  
INDIVIDUAL CASE**

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**TEMPLATE SHARE PURCHASE AGREEMENT**

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**[notarization required]**

**Preface from the Executive Board of the German Association for Mergers & Acquisitions  
(Bundesverband Mergers & Acquisitions gem. e.V.)**

At a time when German medium-sized companies are increasingly facing global challenges, M&A is gaining in importance as a strategic instrument for securing the future and the attractiveness of Germany as a business location. M&A transactions offer a wide range of opportunities: they enable companies to strengthen themselves in a targeted manner through acquisitions, to access new markets and to integrate innovative technologies. These opportunities are essential for medium-sized companies in particular to be able to survive in international competition. The German Association for Mergers & Acquisitions (*Bundesverband Mergers & Acquisitions gem. e.V.*) would like to support this development and has therefore developed standard documentation in cooperation with several renowned commercial law firms. This standard documentation provides a balanced and practical example of the usual content of provisions for M&A transactions, particularly in the SME sector. The standard documentation does not replace the need for legal transaction advice in each individual case, but it does provide wording and settlement proposals and is intended to streamline and accelerate M&A processes. We would like to thank the renowned law firms ADVANT Beiten, EY LAW, HEUKING, MOOG, MOSBURG, Osborne Clark, Reed Smith and Taylor Wessing for their significant contribution to the development of this template share purchase agreement and Stephan Heinemann of Taylor Wessing for coordinating this initiative. Their commitment and expertise have made it possible to create a practice-oriented template. We are convinced that this standard share purchase agreement will make an important contribution to promoting M&A in the German SME sector. Together, we can ensure the future viability of our companies and further strengthen Germany's attractiveness as a business location.

The Executive Board of the German Association for Mergers & Acquisitions (*Bundesverband Mergers & Acquisitions gem. e.V.*) would like to express its sincere thanks for the active support and looks forward to further cooperation.

With best regards

The Executive Board of the German Association for Mergers & Acquisitions (*Bundesverband Mergers & Acquisitions gem. e.V.*)

## **Editors Notes / Disclaimer**

This template addresses the sale of shares in a German limited liability company (*GmbH*), as this is the most common form of corporate organization. Parts of the template (such as warranties, legal consequences of breaches of warranty, etc.) can certainly also be used for purchase agreements regarding other legal forms (such as partnerships or stock corporations). However, in these cases, the contract must be adapted to the respective legal form of the target company.

The template assumes a transaction structure with multiple sellers selling all of their shares to one acquiring entity. Furthermore, the template assumes that the target company itself does not hold any subsidiaries or majority interests in other companies. The template also assumes that the acquisition of the target company does not require any regulatory approval (e.g. of the Federal Financial Supervisory Authority (*BaFin*) or the Federal Ministry of Foreign Trade (*Außenwirtschaftsministerium*)). Finally, the template provides for the purchase price (equity value) to be adjusted to the net debt and normal working capital at closing (closing accounts) and includes a typical provision for the preparation and review of the corresponding closing date financial statements. However, in practice a so-called locked-box mechanism based on the last balance sheet date is often chosen (with corresponding restrictions on distributions in the current financial year).

The aim of the editors of this template was to create a balanced contract template that considers the interests of both, the seller and the acquirer, in a reasonable way and at the same time reflects what the editors consider to be the current market standard. However, the editors are aware that there is no objective market standard and that, depending on the industry and the details of the transactions, other provisions may be more suitable and better reflect the interests of all parties.

Furthermore, the agreement covers transactions involving small and medium-sized companies (small and mid-cap). The larger the transaction volume and the companies involved, the more special provisions the purchase agreement will generally require (such as detailed provisions on antitrust clearance, financing of the purchase price, redemption of bank liabilities, etc.). Additional agreements will also often be necessary, such as shareholder agreements (in particular if the seller retains a residual interest in the company after the sale or in the case of a purchase by private equity investors).

However, even in the case of supposedly small and simple transactions, a lawyer specialising in company sales/purchases and a tax advisor should always be consulted. This template does not replace or substitute legal or tax advice under any circumstances.

**Neither the German Association for Mergers & Acquisitions (*Bundesverband Mergers & Acquisitions gem. e.V.*) nor the law firms involved in the creation of this template accept any liability or provide any guarantee for this template agreement and its use, in particular (but not limited) not for the correctness, suitability, completeness or enforceability of the contractual provisions provided in this template.**

## TEMPLATE SHARE PURCHASE AGREEMENT

between

1. **[Name]**, **[date of birth, address]**

- hereinafter referred to as “**Seller 1**” -

2. **[Name]**, **[date of birth, address]**

- hereinafter referred to as “**Seller 2**” -

3. **[Name]**, **[date of birth, address]**

- hereinafter referred to as “**Seller 3**” -

and

4. **[Company]**, **[address]**

- hereinafter referred to as “**Acquirer**” -

- Seller 1, Seller 2 and Seller 3 hereinafter each individually referred to as a “**Seller**”  
and jointly as the “**Sellers**” -

- the Sellers and the Acquirer hereinafter also each individually referred to as a “**Party**”  
and jointly as the “**Parties**” -

***[Note: The following provisions set out in brackets and italics are to be understood as alternatives. Blanks need to be completed. The Annexes are not included in this template share purchase agreement. The Annexes need to be created for each individual case.]***

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**Preamble**

- (A) The Acquirer is a limited liability company (*Gesellschaft mit beschränkter Haftung*) under German law with a statutory capital (*Stammkapital*) in the amount of EUR [ ] (in words: Euro [ ]), with its business seat (*Sitz*) in [ ] and registered with the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) of [ ] under HRB [ ].
- (B) [Target Company] is a limited liability company (*Gesellschaft mit beschränkter Haftung*) under German law with a statutory capital (*Stammkapital*) in the amount of EUR [ ] (in words: Euro [ ]), with its business seat (*Sitz*) in [ ] and registered with the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) of [ ] under HRB [ ] (“Company”).
- (C) The Sellers are [the sole]<sup>1</sup> shareholders of the Company, which [description of the object of the Company] (“Business”).
- (D) The registered share capital of the Company amounts to EUR [ ] (in words: Euro [ ]) and is held by the Sellers as follows:

Shareholder	Current numbers of the shares	Total nominal value in EUR	Percentage of share capital
Seller 1	[ ]	[ ]	[ ]
Seller 2	[ ]	[ ]	[ ]
Seller 3	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	[ ]	<b>100,00</b>

- (E) The Sellers intend to sell and transfer all their shares in the Company, independently from whether these are described correctly in the table above (“Shares”), to the Acquirer upon the terms and conditions of this share purchase agreement (“Agreement”). The Acquirer wishes to purchase and acquire these Shares subject to the terms and conditions of the Agreement.

[Insert additional items if necessary.]

Now, therefore, the Parties agree as follows:

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<sup>1</sup> To be adjusted in case not all shareholders sell their shares in the Company.

## 1. Sale and Purchase of Shares

- 1.1 Upon the terms and conditions set forth in this Agreement, each of the Sellers hereby separately (*einzel*) sells (*verkauft*) to the Acquirer each of the Shares attributed to that particular Seller as set forth in the Preamble and the Acquirer hereby accepts each of such sales.
- 1.2 The sale of the Shares shall include all ancillary rights, benefits and obligations arising from the Shares, including voting rights, subscription rights and dividend rights (*Gewinnbezugsrechte*) to all profits for the fiscal year starting on [ ] and all profits for previous fiscal years which have not been distributed to the Sellers by the Closing Date.
- 1.3 To the extent not stipulated otherwise in the Agreement, the Sellers hereby irrevocably waive any potential pre-emption rights, tag-along rights, drag-along rights or similar rights relating to the Shares and they hereby relieve each other of any such potential obligations. In addition, waiving all legal and statutory provisions relating to notice periods, form and other requirements for the holding of shareholders' meetings, they hereby hold a shareholders' meeting of the Company and unanimously resolve that the sale and transfer of the Shares to the Acquirer is approved.<sup>2</sup>
- 1.4 [The consents of the spouses of the Sellers pursuant to Section 1365 German Civil code (*BGB*) are attached to this Agreement as **Annex 1.4** for information purposes].<sup>3</sup>

## 2. Effective Date

The Parties agree that the Shares are sold with economic effect and with all opportunities and risks as of the Closing Date, [0/24 hours].<sup>4</sup>

## 3. Assignment of the Shares

- 3.1 Each of the Sellers hereby individually (*einzel*) assigns (*abtreten*) the Shares attributed to that particular Seller as set forth in the Preamble, together with the rights specified in

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<sup>2</sup> Whether such resolution is required depends on the Company's articles of association. In terms of notarial costs, it is more favourable to resolve the resolution separately and only attach the resolution for information purposes.

<sup>3</sup> Whether such consent is required depends on the matrimonial property regime (*Güterstand*) of married Sellers and is governed by § 1365 BGB.

<sup>4</sup> In practice, the parties often set the Closing Date as the last of a month or the first day of a month. Depending on this, the Effective Date should be the beginning or the end of the Closing Date.

Section 1.2 to the Acquirer, the respective assignments being subject to the condition precedent (*aufschiebende Bedingung*) of (i) the occurrence or waiver of the Closing Conditions set forth in Section 7.3 and (ii) the Preliminary Purchase Price (as defined in Section 4.4) being irrevocably and completely credited on the bank accounts of the Sellers pursuant to Section 6.1 in accordance with the Quotas (as defined in Section 4.4).

3.2 The Acquirer hereby accepts the assignments.

#### 4. Purchase Price

4.1 The “**Purchase Price**” for all Shares sold by the Sellers shall be an aggregate amount equal to the sum of

- (a) a fixed amount of EUR [ ] (in words: Euro [ ]);
- (b) less an amount equal to the Financial Debt set out in the Closing Accounts;
- (c) plus an amount equal to the Cash set out in the Closing Accounts; and
- (d) less the amount by which the Working Capital set out in the Closing Accounts falls short of the Target Working Capital or plus the amount by which the Working Capital set out in the Closing Accounts exceeds the Target Working Capital, as the case may be.

4.2 “**Financial Debt**”, “**Cash**” and “**Working Capital**” shall each mean such respective items as exhaustively listed in **Annex 4.2** and shall each be calculated and shall be determined in accordance with the accounting principles as set forth in Section 5 and each as of the Closing Date. For the purpose of the calculation of the Purchase Price, the Parties assume a working capital of the Company as of Closing Date of EUR [ ] (in words: Euro [ ]) (the “**Target Working Capital**”).

4.3 **Annex 4.3** contains a sample calculation of the Purchase Price.

4.4 Based on a preliminary calculation of the Purchase Price in accordance with the calculation metrics set forth in this Agreement, the Parties have estimated the Purchase Price to be EUR [ ] (in words: [ ] Euro) (“**Preliminary Purchase Price**”). The Preliminary Purchase

Price is due and payable as per the Scheduled Closing Date in accordance with the following quotas (“**Quotas**”):

- (a) Seller 1: EUR [ ] (corresponds to [quota] %);
- (b) Seller 2: EUR [ ] (corresponds to [quota] %);
- (c) Seller 3: EUR [ ] (corresponds to [quota] %).

4.5 Any differences between the Preliminary Purchase Price and the Purchase Price shall be settled either by the Acquirer or by the Sellers as follows (“**Purchase Price Adjustment**”):

- (a) If the Preliminary Purchase Price exceeds the Purchase Price, the Sellers shall be obliged, each in proportion to their respective Quotas, to pay the difference between the Preliminary Purchase Price and the Purchase Price to the Acquirer within 10 (ten) Banking Days after the Closing Accounts have become binding upon the Parties, to the bank account of the Acquirer as defined in Annex 6.2.
- (b) If the Purchase Price exceeds the Preliminary Purchase Price, the Acquirer shall be obliged to pay the difference between the Purchase Price and the Preliminary Purchase Price to the Sellers within 10 (ten) Banking Days after the Closing Accounts have become binding upon the Parties, in proportion to their respective Quotas, to the bank accounts of the Sellers as defined in Annex 6.1.

4.6 The Parties jointly assume, that the transaction under this Agreement will not trigger any value added tax according to the German Value Added Tax Code (*Umsatzsteuergesetz*). The Sellers hereby irrevocably waive any right to exercise an option pursuant to section 9 German Value Added Tax Code. Should the transaction trigger any value added tax, the Purchase Price shall be deemed to be a net purchase price and the Acquirer is obliged on receipt of an invoice from the Sellers, to pay such value added tax amount due to the Sellers.

**[Note: The calculation and components of the Purchase Price must be adjusted to the individual case, which may lead to significant deviations from the above model clause.]**

## 5. Closing Accounts

5.1 The Financial Debt, the Cash and the Working Capital as per Closing Date and any resulting

Purchase Price Adjustment shall be determined on the basis of pro forma financial statements (consisting of a balance sheet and a profit and loss statement) which shall be prepared after the Closing Date in accordance with the provisions of this Section 5 (the “Closing Accounts”).

- 5.2 The Closing Accounts shall be prepared by the Acquirer in collaboration with the Company’s management no later than [ ] Banking Days after the Closing Date. The Closing Accounts shall be prepared in accordance with the applicable commercial and tax regulations and the principles of proper accounting, in particular, maintaining formal and material accounting and valuation continuity and exercise of valuation options in accordance with past practice. On the basis of such Closing Accounts, the Acquirer shall also issue a calculation of the final Purchase Price and the Purchase Price Adjustment, showing the Financial Debt, the Cash and the Working Capital (“Purchase Price Calculation”). No liabilities and/or provisions caused exclusively by restructuring decisions made by the Acquirer or by the Company at the Acquirer’s instigation are to be included in the Closing Accounts.
- 5.3 The Acquirer is obliged to provide the Sellers with the Closing Accounts and the Purchase Price Calculation without undue delay after their preparation, but no later than within the period set forth in Section 5.2. The Sellers are entitled to audit the Closing Accounts within [ ] Banking Days. For this purpose, the Acquirer shall ensure that the Sellers and their advisors, who are subject to confidentiality obligations, are granted access to the books and accounting records of the Company and its relevant managing directors and employees, as well as to advisors involved in the preparation, to an appropriate extent and with reasonable notice during normal business hours.
- 5.4 If, following their audit, the Sellers have objections to the Closing Accounts or the Purchase Price Calculation, such objections have to be communicated to the Acquirer in writing within [ ] Banking Days after expiry of the period specified in Section 5.3, stating appropriate reasons for such objections. If the Sellers do not raise any objections, the Closing Accounts shall be deemed to be approved.
- 5.5 If and to the extent the Sellers raise objections, the Parties shall attempt to agree in good faith on a joint position within a further period of [ ] Banking Days. If they succeed in doing so, the Closing Accounts shall be deemed to be approved in the agreed upon version.
- 5.6 If the Parties have not agreed on the differing items from the Closing Accounts within the period specified in Section 5.5, each Party is entitled to request [insert neutral audit firm]

("Neutral Auditor") to have the Parties' outstanding objections and the Purchase Price Calculation finally determined. In the event that the Neutral Auditor requests an advance payment, the Acquirer on the one hand and the Sellers on the other hand shall each bear half of this advance payment. The Neutral Auditor shall be instructed to audit the outstanding objections only and, when deciding and determining on these, shall remain within the Parties' range of disagreement. The Neutral Auditor shall receive from the Parties all necessary support and access to the Company's management and all relevant information and documents required for this review. The Neutral Auditor shall conduct the audit as an independent and neutral arbitrator in accordance with the principles set forth in this Agreement. The Neutral Auditor is instructed to notify the Parties of the results of its audit and the resulting Purchase Price Adjustment in writing no later than [ ] Banking Days after its appointment. As part of the audit and before communicating the results, the Neutral Auditor shall give the Sellers and the Acquirer adequate opportunity to present their views and comments on the preliminary results in writing and in one or more hearings to be held with the Sellers, the Acquirer and their respective advisors. The costs for the above audit, taking into account any advance payments, shall be borne by the Acquirer on the one hand and the Sellers on the other hand in accordance with the determination by the Neutral Auditor, analogous to the provisions in §§ 91 et seq. of the German Code of Civil Procedure (ZPO). Provided there is no obvious error (Section 319 of the German Civil Code (*Bürgerliches Gesetzbuch* – **BGB**)), the items determined by the Neutral Auditor for the Closing Accounts and the resulting Purchase Price Adjustment shall be binding on the Parties.

## **6. Payment**

- 6.1 All payments to the Sellers under this Agreement shall be made to the bank accounts defined for each Seller in **Annex 6.1**.
- 6.2 All payments to the Acquirer under this Agreement shall be made to the bank account defined in **Annex 6.2**.
- 6.3 All payments under this Agreement shall be made by bank transfer and free of any costs and fees.

## **7. Signing and Closing**

- 7.1 The day on which this Agreement has been duly signed by all Parties is the "**Signing Date**".

7.2 The Parties shall consummate in rem the legal transactions agreed upon in this Agreement and perform the Closing Actions set forth in Section 9.1 (collectively referred to as the “Closing”) on the [last/first]<sup>5</sup> Banking Day of the month [following the month] in which the last of the Closing Conditions as specified in Section 7.3 has been fulfilled or waived according to Section 7.3. The day on which the Closing is supposed to take place shall be referred to as the “Scheduled Closing Date”. The day on which the Closing actually takes place shall be referred to as the “Closing Date”.

7.3 Closing shall only occur if the following Closing Conditions (“Closing Conditions”) have been fulfilled [or the fulfilment of the Closing Conditions pursuant to Section [ ] has been waived by the protected Party]:<sup>6</sup>

(a) The merger control clearance (*Kartellfreigabe*) for this transaction has been obtained in accordance with the conditions set forth in Annex 7.3(a).<sup>7</sup>

(b) [Insert additional closing conditions if necessary.]

7.4 The Parties undertake to use all reasonable endeavors and to render to each other all reasonably necessary support and cooperation to ensure that the Closing Conditions are fulfilled as soon as possible after the Signing Date.

7.5 As soon as a Party believes in good faith that a Closing Condition has been satisfied or duly waived, it must without undue delay inform the other Parties thereof in writing (email being sufficient).

## 8. Rescission Rights

The Sellers may, by joint written notice to the Acquirer, and the Acquirer may, by written notice to each Seller, rescind (*zurücktreten*) from this Agreement if the Closing Conditions have not been fulfilled or waived at the latest [ ] [weeks/months] after the Signing Date (“Longstop Date”)<sup>8</sup>, unless the Party delivering such written notice is responsible for (*hat zu vertreten*)

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<sup>5</sup> In practice, the last day of the month or the first day of the month is recommended.

<sup>6</sup> This depends on the Closing Conditions and whether they serve to ensure compliance with the law or only protect one party in particular.

<sup>7</sup> It should always be checked by a lawyer whether antitrust clearance is required. If antitrust clearance is considered, further contractual provisions on the preparation of the application and mutual coordination should be included.

<sup>8</sup> Depending on the content and protective purpose of further Closing Conditions, it may be stipulated that in the event of non-fulfilment, only the protected party is entitled to withdraw from the agreement.

the non-fulfilment of the Closing Conditions. Such rescission (*Rücktritt*) is only valid if the other Party has received written notice of the declaration of rescission (*Rücktrittserklärung*) after the Longstop Date, but prior to the date on which the Closing Conditions have been fulfilled or waived. In the event of rescission, Sections 18 and 22 through 26 of this Agreement shall survive and shall remain in full force and effect. If a Party causes the rescission by culpably and demonstrably having prevented the fulfilment of a Closing Condition, it shall be liable for the resulting damage. Otherwise, the Parties hereby waive all claims that they might have against each other in connection with such a rescission.

## 9. Closing Actions

9.1 On the Scheduled Closing Date, the following closing actions (“**Closing Actions**”) shall take place at [ ] or at any other place to be agreed between the Parties:

- (a) Payment of the Preliminary Purchase Price to the Sellers pursuant to Sections 4.4 and 6.1.
- (b) Termination of the agreements between the Company and a Seller or a Related Party set out in **Annex 9.1(b)** as of the Closing Date.
- (c) **[Insert additional closing actions if necessary].**

9.2 The Acquirer may, by written notice to each or any of the Sellers, waive the Closing Actions listed in section 9.1(b) and [ ]. The Sellers may, individually or all jointly, waive the Closing Actions listed in Sections [ ] and [ ] by written notice to the Acquirer.<sup>9</sup> The effect of such waiver shall be limited to eliminating the respective Closing Action and shall not limit or prejudice any claim the respective Party may have with respect to any non-fulfilment of such Closing Action. If the Closing Actions are not fulfilled or waived by [ ] Banking Days after the Scheduled Closing Date, Section 8 shall apply accordingly, provided that in the event of a failure to fulfil the Closing Action pursuant to Section 9.1(a), only the Sellers shall be entitled to rescind from this Agreement.

9.3 On the Closing Date, the Sellers and the Acquirer shall execute a closing memorandum essentially in the form as set out in **Annex 9.3** (“**Closing Memorandum**”). The Closing Memorandum shall confirm the satisfaction or waiver of the Closing Conditions set out under

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<sup>9</sup> This always depends on the respective Closing Action. Sometimes, such as the conclusion of new managing director contracts, these only protect certain parties or all parties.

Section 7.3, the completion or waiver of the Closing Actions as set out under Section 9.1 and the occurrence of the condition precedent pursuant to Section 3.1.

9.4 Each Seller hereby grants – under release from the restrictions of Section 181 German Civil Code (BGB), if legally possible – an unlimited and irrevocable power of attorney to the Acquirer to act on each Seller’s behalf with regard to any and all rights and liabilities the relevant Seller is entitled to from and in connection with the Shares, in particular, but not limited to the exercising of all voting rights arising from the Shares in shareholders’ meetings and/or written procedures for the passing of resolutions regarding the Company. This power of attorney becomes valid and binding upon execution of the Closing Memorandum and shall terminate on the date on which the Acquirer is evidenced as owner of the Shares in the shareholders’ list of the Company filed with the competent commercial register.

## 10. Sellers Guarantees

With regard to the following guarantees of the Sellers, “**Best Knowledge of the Sellers**” means the positive knowledge of one or more of the Sellers [or their legal representatives] and the legal representatives of the Company of the relevant circumstances and facts, as well as their grossly negligent lack of knowledge.

### 10.1 Title Guarantees

Each Seller hereby individually guarantees to the Acquirer only with regard to the respective Shares attributed to that particular Seller in the Preamble by way of an independent guarantee (*selbstständiges Garantieverprechen*) pursuant to Section 311 (1) German Civil Code (BGB) that the statements set forth in Section 10.1(a) through 10.1(j) (collectively “**Title Guarantees**”) are true and correct as of the Signing Date and the Closing Date:

- (a) The description of the current corporate structure of the Company in Preamble (B) and (D) of the Agreement is accurate as of the Closing Date. In particular, the Company is legally established and in existence under the laws of the Federal Republic of Germany with the right to conduct its business in its present form.
- (b) Each respective Seller guarantees as of the Closing Date that (i) he/she holds the Shares in the Company attributed to him/her in Preamble (D) and he/she is the sole legal and beneficial owner of such Shares and (ii) he/she is entitled to freely dispose of the Shares, subject to the provisions of the Company’s articles of association.

- (c) The Shares held by each respective Seller are validly issued [and fully paid in]. The respective share capital (*Stammeinlage*) has not been directly or indirectly repaid (neither openly nor concealed) to the respective Seller (*Rückgewähr von Einlagen*). No hidden contributions in kind (*verdeckte Sacheinlagen*) have been made. [No obligations to make further contributions (*Nachschusspflichten*) exist.]
- (d) As of the Closing Date, there are no silent participations, profit-participating loans, inter-company agreements within the meaning of Sections 291 et seqq. of the German Stock Corporation Act (AktG), participation rights or other rights, unless mentioned in **Annex 10.1(d)**, that – in whole or in part – convey a right of third parties to the profit, sales or liquidation proceeds of the Company and there are no agreements that would establish such rights.
- (e) The respective Shares of the Sellers are, subject to the provisions of the Company's articles of association, free of any encumbrances, liens or other third-party rights. In particular no third parties are entitled to exercise rights of first refusal, options or other rights to purchase any Shares of the respective Seller, except as provided for in this Agreement.
- (f) No insolvency proceedings have been opened against the Company's assets. To the Best Knowledge of the Sellers, there are no circumstances that would require the opening or filing of such proceedings. The Company is not insolvent or over-indebted.
- (g) Each respective Seller has the full corporate legal power and capacity to enter into this Agreement and to carry out any of the transactions contemplated therein.
- (h) Each respective Seller is not, nor has he committed to become, a party to any agreement binding him for the time after the Signing Date in any way to dispose of or encumber any Shares or exercise the rights arising from such Shares in any way, except as provided for in this Agreement.
- (i) On the Closing date, the Company has [neither direct nor indirect interests in other companies/only the interests in other companies listed in **Annex 10.1(i)**]. The Company is not obliged to acquire or sell any business, operation or part of a business, company, company shares, whether in the context of acquisition or sales transactions, capital increases, mergers and/or other transformations or in the

context of other legal transactions or measures, and there are no preliminary agreements or declarations of intent in this regard.

- (j) There are no facts that need to be entered in the commercial register of the Company but have not yet been entered and no shareholders' resolutions have been adopted that still need to be entered in the commercial register, unless they are already apparent from the excerpt from the commercial register of the Company attached as a copy as **Annex 10.1(j)-1**. Prior to the conclusion of this Agreement, the Acquirer has been provided with an accurate and complete copy of the articles of association of the Company, dated [●] and attached for information purposes as **Annex 10.1(j)-2**, which reflects the currently valid version.

## 10.2 Business Guarantees

Each of the Sellers hereby individually guarantees to the Acquirer by way of an independent guarantee (*selbstständiges Garantieverprechen*) pursuant to Section 311 (1) German Civil Code (BGB) that the statements set forth in **Annex Error! Reference source not found.** are true and correct as of the Signing Date, unless specifically provided for that a different date shall be decisive ("**Business Guarantees**").

**[Note: A proposal for a template catalogue of business guarantees can be downloaded from the website of the German Association for Mergers & Acquisitions (Bundesverband Mergers & Acquisitions gem. e.V.) in German language. Business guarantees must be adapted to the individual case.]**

## 10.3 No further Guarantees

Except for the Title Guarantees and the Business Guarantees set forth in this Agreement, the Sellers make no other guarantees, representations, warranties or other statements (wether express or implied) with respect to the Shares, the Company or the business of the Company. In particular, but not limited, the Sellers make no guarantees, representations, warranties or other statements regarding:

- (a) forecasts, estimates or budgets provided or made available to the Acquirer regarding future revenues, earnings, cash flows, the future financial position or the future business operations of the Company; and/or

- (b) any other information or documents provided or made available in the transaction process to the Acquirer, the Acquirer's Affiliates or its managing directors, employees, advisors or other representatives regarding the Company or its business, unless otherwise expressly provided in this Agreement. The Acquirer expressly agrees to acquire the Shares without reliance on any representations, warranties or guarantees of any kind, express or implied, made by the Sellers, except for the Title Guarantees and the Business Guarantees, which are expressly made under this Agreement.

#### 10.4 Legal consequences for Breach of Sellers' Guarantees

- (a) In the event of any breach or non-fulfilment of any of the Title Guarantees by any Seller, the respective Seller in breach of a Title Guarantee shall put the Acquirer into the same position the Acquirer would have been in if the respective Title Guarantee(s) had not been breached (*restitution in kind - Naturalrestitution*). To the extent that such restitution in kind (i) is not possible, (ii) is not sufficient, (iii) is definitively rejected by the respective Seller or (iv) has not been made by the respective Seller within a period of [ ] Banking Days after the respective Seller has been informed about the breach or non-fulfilment in writing by the Acquirer, the Acquirer shall be entitled to claim monetary damages from such Seller, subject to the applicable limitations contained in this Section 10.
- (b) In the event of any breach or non-fulfilment of any of the Business Guarantees ("**Business Guarantee Claim**"; Business Guarantee Claims and claims resulting from a breach or non-fulfilment of any of the Title Guarantees together "**Guarantee Claims**"), the Sellers shall put the Acquirer into the same position the Acquirer would have been in if the respective Business Guarantee(s) had not been breached (*restitution in kind - Naturalrestitution*). To the extent that such restitution in kind (i) is not possible, (ii) is not sufficient, (iii) is definitively rejected by the respective Seller or (iv) has not been made by the respective Seller within a period of [ ] Banking Days after the respective Seller has been informed about the breach or non-fulfilment in writing by the Acquirer, the Acquirer may claim monetary damages. The liability of the Sellers under this Section 10 is limited to actual, immediate and direct damages as well as to foreseeable consequential damages (including lost profits), which, however, are only eligible for compensation if and to the extent that these are covered by the protective purpose of the breached guarantee. In calculating damages, however, any actual or potential reduction in the value of the Company or the Acquirer, whereby in particular, but not limited, the internal valuation of the Company

by the Acquirer, including the underlying valuation methods, is not taken into account when determining the actual damage. Liability for indirect damages, unforeseeable consequential damages, business interruptions and internal costs and expenses of the Acquirer (in particular overhead costs of the Acquirer) or the Company is excluded. The valuation methods, in particular, but not limited, multiples (e.g. an EBIT or EBITDA multiple), which the Acquirer has applied in valuing the Shares, the Company or the business of the Company shall also not be taken into account when determining the amount of damages and shall in no case lead to the establishment or increase of compensable damages. The above principles for calculating damages shall apply accordingly in the event that the Acquirer breaches other obligations under or in connection with this Agreement. The Sellers' liability for damages shall also be subject to the further limitations set forth in this Agreement.

## 11. Acquirer Guarantees

11.1 The Acquirer hereby guarantees to the Sellers by way of an independent guarantee (*selbstständiges Garantieverprechen*) pursuant to section 311 (1) of the German Civil Code (BGB) that the statements set forth in Sections 11.1(a) through 11.1(c) (collectively "**Acquirer Guarantee(s)**") are true and correct as of the Signing Date and the Closing Date:

- (a) Subject to the merger control clearance to be obtained prior to Closing in accordance with Section 7.3(a), the Acquirer has the unrestricted right, power and capacity to execute this Agreement and to perform its obligations under this Agreement.
- (b) The execution and consummation of this Agreement and the performance of the transactions contemplated hereunder have been approved by all required corporate and shareholder actions of the Acquirer.
- (c) The Acquirer has sufficient funds to settle all payment obligations resulting from the performance of the transactions contemplated in this Agreement.

11.2 In the event of any breach or non-fulfilment of any of the Acquirer Guarantees, the Acquirer shall put the Sellers into the same position they would have been in if the respective Acquirer Guarantee(s) had not been breached (*restitution in kind - Naturalrestitution*). To the extent that such restitution in kind (i) is not possible, (ii) is not sufficient, or (iii) has not been undertaken by the Acquirer within a period of [ ] Banking Days after the Acquirer has been

notified in writing about the breach or non-fulfilment by the Sellers, the Sellers shall be entitled to claim monetary damages from the Acquirer.

## 12. Exclusion of Liability

The Sellers shall not be liable for, and the Acquirer shall not be entitled to, any Guarantee Claim under or in connection with this Agreement if and to the extent that:

- 12.1 the matter to which the Guarantee Claim relates is provided for in the financial statements of the Company for the financial year [ ] and/or in the Closing Accounts as a liability (*Verbindlichkeit*) or as a specific provision (*spezifische Rückstellung*); or
- 12.2 [the Guarantee Claim would not have arisen if, after Closing, there had not been a change in the tax structure or the corporate structure of the Company or a change in the tax accounting principles of the Company; or]<sup>10</sup>
- 12.3 the Guarantee Claim arises as a result of any change after Closing of the date to which the Company makes up its accounts or in the basis, methods or policies of accounting of the Company [except for a change deemed necessary by the respective auditor of the Company]<sup>11</sup>; or
- 12.4 the Guarantee Claim or the damage is the result of a change in the law, case law, or a change in the interpretation or implementation thereof by a governmental authority after the Closing Date; or
- 12.5 any damages of the Acquirer have been reimbursed by third parties, including, but not limited to, through insurance policies of the Company; or
- 12.6 either the Acquirer or an affiliated company has caused the damage or the circumstances underlying it, or has contributed to causing them, or has failed to fulfil its duty to mitigate the damage (Section 254 of the German Civil Code (BGB)).
- 12.7 If one and the same set of circumstances giving rise to a claim fulfils the criteria of several guarantee and/or indemnity and/or compensation claims under this Agreement, the Acquirer

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<sup>10</sup> Depending on the specific structure of the tax guarantees (Annex 20.3).

<sup>11</sup> Delete if the Company is not subject to mandatory auditing and therefore does not have an auditor.

may not request multiple compensation, but the relevant guarantee and/or indemnity and/or damage claims in question shall be offset against each other.

- 12.8 The Acquirer shall not be entitled to assert any claims under the Business Guarantees if the underlying facts or circumstances to which the Guarantee Claim relates were known to the Acquirer, taking into account that the Acquirer had the opportunity prior to entering into this Agreement to conduct a thorough investigation of the condition and situation of the Company and its respective business in commercial, financial and legal respects, including by reviewing the information disclosed in the information memorandum dated [REDACTED], in the management presentation delivered on [REDACTED], or in this Agreement or its Annexes and/or in the documents disclosed in the data room (collectively “**Disclosed Documents**”)<sup>12</sup>. However, the Disclosed Documents shall only be deemed known to the Acquirer to the extent that (i) the respective document was placed in a systematically rational location in the data room from the perspective of a knowledgeable viewer experienced in conducting due diligence processes, and (ii) the disclosure was made in a manner that would reasonably allow a knowledgeable viewer experienced in conducting due diligence processes to identify the relevant fact, information, or circumstance. The knowledge of the legal representatives of the Acquirer as well as the employees of the Acquirer who were involved in and familiar with the due diligence conducted before the conclusion of this Agreement and are listed in **Annex 12.7** shall be attributed to the Acquirer.

### 13. General Scope of Liability

- 13.1 With respect to the Title Guarantees, each Seller shall only be liable for the guaranteed statements that he himself has made regarding the Shares held by him; with respect to the Business Guarantees, the Sellers shall be jointly and severally liable.<sup>13</sup>
- 13.2 The aggregate liability of the Sellers with respect to Business Guarantee Claims shall be limited to EUR [REDACTED] (in words: Euro [REDACTED]).<sup>14</sup>

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<sup>12</sup> In this respect, the parties often also deposit a data carrier (e.g. USB stick) with the certifying notary for evidence purposes, on which the contents of the data room and, if applicable, the other disclosed documents are recorded/stored. Until the expiry of the agreed retention period (usually at least the expiry of the longest limitation periods under the share purchase agreement), the notary will hold the data carrier in trust and grant both parties access to the data carrier upon request.

<sup>13</sup> In some cases, buyers request a security deposit or fiduciary administration of a portion of the purchase price in order to protect themselves against guarantee claims. This is a matter for negotiation.

<sup>14</sup> The amount of liability in relation to the business guarantees is regularly a matter for negotiation. In practice, the amount of liability is often set in a range corresponding to 10% to 40% (or more) of the purchase price. The larger the transaction volume, the lower the percentage is usually.

13.3 The aggregate liability of a Seller with respect to Title Guarantee Claims shall be limited to 100 % of the Purchase Price received by the respective Seller.

13.4 The aggregate liability of a Seller for all claims of the Acquirer under this Agreement shall, to the extent legally permissible, not exceed 100 % of the Purchase Price received by such Seller.

#### **14. De Minimis Amount; Threshold**

14.1 The Acquirer shall only be entitled to Business Guarantee Claims under this Agreement if and to the extent that (i) each individual claim exceeds an amount of EUR [ ]<sup>15</sup> (in words: Euro [ ]) (“**De Minimis Amount**”) and (ii) the aggregate amount of all such individual claims pursuant to lit. (i) exceeds an amount of EUR [ ]<sup>16</sup> (in words: Euro [ ]) (“**Threshold**”).

14.2 In case the Threshold is exceeded, the Acquirer is entitled to claim only the exceeding amount (*Freibetrag*)<sup>17</sup>.

#### **15. Notification; Procedure in Case of Third-Party Claims**

15.1 In the event of an actual or potential Guarantee Claim or indemnity claim under this Agreement, the Acquirer shall, without undue delay after becoming aware of the matter, notify the Sellers of such alleged claim in writing, describe the alleged claim as accurately as possible, state the estimated amount of such claim if such specification is possible, and, if applicable, give the Sellers the opportunity to remedy the breach of duty within the period of time indicated in Section 10.4(a) or 10.4(b).

15.2 In the event that, in connection with a Guarantee Claim or indemnity claim under this Agreement, any claim or demand of a third party (tax authorities excluded) is asserted against the Acquirer or the Company (“**Third-Party Claim**”), the Acquirer shall be obliged, to

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<sup>15</sup> The de minimis amount is regularly a matter for negotiation. In practice, the de minimis amount is often set in a range corresponding to 0.1% to 0.3% of the purchase price. The larger the transaction volume, the lower the percentage is usually.

<sup>16</sup> The threshold (often also referred to as the basket amount) is also frequently the subject of intensive negotiation. If the threshold is structured as an allowance amount (*Freibetrag*) - as is the case here - the threshold is often in the range of 1% to 3% of the purchase price. The larger the transaction volume, the lower the percentage is usually.

<sup>17</sup> Alternatively, and more buyer-friendly: Agreement of an exemption limit amount (*Freigrenze*) instead of an allowance amount (*Freibetrag*).

the extent legally permissible, to make available to the Sellers copies of the Third-Party Claim or demand and all time-sensitive documents as well as any correspondence with the third party regarding the Third-Party Claim. Subject to the provisions set out in Section 15.3, the Acquirer is generally entitled to conduct proceedings regarding Third-Party Claims (each a "**Third-Party Proceeding**") independently. The Sellers shall be kept informed of the current status of Third-Party Proceedings and the Sellers' suggestions/recommendations are to be taken into account in an appropriate manner. § 254 BGB shall apply.

- 15.3 If the Sellers declare vis-à-vis the Acquirer that the respective Third-Party Claim may, in principle, lead to a claim of the Acquirer against the Sellers under this Agreement and the Sellers undertake, in such event, to provide the Acquirer or the Company, in accordance with the provisions of this Agreement, with restitution in kind or monetary damages for the breach of guarantee underlying the respective Third-Party Claim or, to the extent an indemnity obligation is affected, to indemnify the Acquirer (or the Company) accordingly, the following shall apply (whereby such declaration does not constitute any acknowledgment as to the existence of any breach of guarantee or indemnity obligation in respect of the amount): The Acquirer and the Company shall not, under any circumstances, be entitled to acknowledge claims, settle, or approve an acknowledgment or settlement without the prior written consent of the Sellers. The Sellers shall not unreasonably withhold necessary consents. The Acquirer and the Company are obliged to grant the Sellers and their representatives (including advisors) access to all business documents and records related to the Third-Party Claim with reasonable notice and during normal business hours, and to allow the Sellers and their representatives to involve the management of the Acquirer and the management and employees of the Company in consultations to a reasonable extent. Upon written request of the Sellers, the Acquirer is obliged to comply with the Sellers' instructions regarding the conduct of the Third-Party Proceeding and to ensure that the Company also complies with these instructions. If the Sellers have breached a guarantee, the Sellers shall reimburse the Acquirer or the Company for all reasonable expenses incurred in carrying out these instructions. The Acquirer shall ensure that the Company complies with its obligations under this Section 15.3. The Sellers undertake to treat the information provided confidentially and to use it solely for this purpose.

## **16. Calculation of Damages, Mitigation**

- 16.1 The legal principles as to the calculation of damages, mitigation of damages and off-setting of losses by advantages caused due to the damaging event (*Schadensberechnung*,

*Schadensminderung, Vorteilsausgleich*) pursuant to section 249 et seq. of the German Civil Code (BGB) shall apply to all Guarantee Claims.

- 16.2 The Acquirer shall not be entitled to seek recourse more than once in respect of any suffered damage, even if more than one guarantee, representation, or warranty or another Section of this Agreement has been violated.
- 16.3 Each payment under a Guarantee Claim shall be deemed to be, and treated as, an adjustment to the Purchase Price.

## **17. Limitation Periods**

- 17.1 All claims of the Acquirer resulting from Title Guarantees shall become time-barred (*verjähren*) [ ] years after the Closing Date <sup>18</sup>.
- 17.2 All claims of the Acquirer resulting from Business Guarantees shall become time-barred (*verjähren*) [ ] months after the Closing Date <sup>19</sup>.
- 17.3 Section 203 of the German Civil Code (BGB) shall not apply.

## **18. Exclusion of Further Remedies**

- 18.1 To the extent permitted by law, any further claims and remedies other than those provided for in this Agreement, irrespective of which nature, amount or legal basis, are hereby expressly waived and excluded, without limitation, in particular, but not limited to all claims based on German statutory law such as breach of pre-contractual duties (section 311 (2) and (3) German Civil Code (BGB)), breach of German purchase law provisions (supplementary performance - *Nacherfüllung*; reduction of the purchase price - *Minderung*; compensation of damages - *Schadensersatz* or rescission of the agreement - *Rücktritt*, section 437 German Civil Code (BGB)) or claims based on tort law (*Deliktshaftung*) save for primary performance claims (*primäre Erfüllungsansprüche*) and any remedies of the Acquirer in the event of wilful deceit (*arglistige Täuschung*), wilful misrepresentation (*vorsätzliche Aufklärungspflichtverletzung*) or other deliberate acts of the Sellers (*Vorsatzhaftung*, Section 276 (3) and Section 444 German Civil Code (BGB)).

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<sup>18</sup> In practice, between 4 and 7 years are often agreed for title guarantees.

<sup>19</sup> In practice, between 12 and 36 months are often agreed for business guarantees.

18.2 The Sellers and the Acquirer agree that the Title Guarantees, and the Business Guarantees are no quality guarantees concerning the object of the purchase (*Garantien für die Beschaffenheit der Sache*) within the meaning of Section 443 and Section 444 German Civil Code (BGB) and that Section 444 German Civil Code (BGB) shall not and does not apply to the Title Guarantees and the Business Guarantees.

## 19. Taxes

19.1 The term “**Tax**” as referred to in this Agreement shall mean all taxes (*Steuern*), including tax advances, auxiliary obligations (*steuerliche Nebenleistungen*), as defined in section 3 (1) to (5) of the German Tax Act (*Abgabenordnung - AO*) or corresponding taxes, tax advances and auxiliary obligations levied by foreign authorities as well as social security charges (*Sozialversicherungsbeiträge*).

### 19.2 Indemnity

- (a) Subject to, and limited by, the provisions set forth in this Section 19 or otherwise in this Agreement, the Sellers, jointly and severally (*gesamtschuldnerisch*), hereby undertake to hold the Acquirer or - at the sole discretion of the Acquirer - the Company harmless and to indemnify the Acquirer (or the Company) ) in respect of all payment obligations for Taxes of the Company to the extent that they relate to the period prior to the Closing Date, except to the extent such payment obligations for Taxes:
- (i) are provided for in the financial statements of the Company for the financial year [ ] and/or in the Closing Accounts as a liability (*Verbindlichkeit*) or as a specific provision (*spezifische Rückstellung*) or have already been deducted from the Purchase Price in the course of the Purchase Price Adjustment;
  - (ii) are the result of any transaction or act directly or indirectly initiated by the Acquirer or by the Company following the Closing Date;
  - (iii) are the result of any change in the accounting or taxation policies introduced following the Closing Date, unless such change is required in order to comply with laws or administrative guidelines; or

- (iv) would not have arisen or would have been reduced or eliminated if the Acquirer had fulfilled its obligations under Section 254 German Civil Code (BGB) after the Closing Date.
- (b) It is understood that any indemnification by the Sellers under this Section 19 shall be limited to the respective Seller's portion of the Purchase Price.

### 19.3 Tax Benefit

If and to the extent, in respect of periods after the Closing Date, the Acquirer or the Company or any legal successor receives any benefit by refund, offset or reduction of Taxes, which they receive due to circumstances giving rise to a claim under this Section 19 (including, but not limited to timing difference (*Phasenverschiebung*), such as extension of depreciation periods or higher depreciation allowances), then the corresponding benefit shall reduce such claim (or any future claims) for indemnification under this Section 19. The amount of such benefit shall be determined by discounting (*Abzinsung*) the likely future reductions in Tax over a period of [ ] years from the expected benefit on the Closing Date, applying a tax rate in aggregate of [ ] % for all applicable income taxes and discounted by an interest rate of [ ] % p. a.

### 19.4 Compensation by the Acquirer

- (a) The Acquirer hereby undertakes to compensate the Sellers for any amount equal to any Tax refund of the Company relating to the period prior to the Closing Date, along with any interest thereon paid by the Tax authorities, if and to the extent not reflected in the Company's financial statements for the financial year [ ] or have already been taken into account with the effect of increasing the purchase price in the course of the Purchase Price Adjustment, unless the Tax refund relates to a Tax liability triggering a claim for indemnification under Section 19.2 above not yet discharged by the Sellers prior to the date of the Tax refund.
- (b) The amounts payable under this Section 19 shall become due and payable [ ] Banking Days following the date of the receipt of such Tax refund by the Company and shall be paid with discharging effect (*mit schuldbefreiender Wirkung*) to the bank accounts of the Sellers pursuant to Section 6.1 and in accordance with the respective Quotas.

- 19.5 The Acquirer hereby undertakes to allow the Sellers to participate in the handling of all Tax Matters (as defined below) of the Company relating to the period up to and including the Closing Date. The Sellers shall, in particular, be notified fully, and without undue delay, in respect of any Tax returns, Tax assessments, Tax audits, Tax appeals, Tax court proceedings and of any attempt of the Tax authorities to impose a Tax liability or to deny a Tax deduction, allowance or refund (together “**Tax Matters**”). Each notification shall be in writing by certified mail (*Übergabeeschreiben*) and by attaching copies of any documents related thereto. The Acquirer shall, except to the extent the Tax returns are to be prepared by the Sellers, provide the Sellers with draft Tax returns at least [ ] Banking Days prior to the earlier of the following: (i) the due date for filing or (ii) the actual filing of such Tax returns. Furthermore, the Sellers, their employees, advisors and other representatives shall be granted the opportunity to comment on, and to participate in, Tax Matters, which are prepared and conducted by the Company.
- 19.6 The Sellers and/or their representatives and advisors are entitled to participate in any tax audit (*Betriebsprüfung*) and all meetings with the Tax authorities related to the time period up to and including the Closing Date. The Sellers can appoint a lawyer, an accountant or a tax advisor or firms of such professionals to represent the Sellers or their legal successors in a tax audit in relation to Taxes for the time period up to and including the Closing Date. The Sellers and/or their representatives and/or advisors shall be given full access to all relevant documents. The Acquirer shall ensure that the Company or the relevant legal successors on request of the Sellers (i) accept the advisors appointed by the Sellers in accordance with this Section **Error! Reference source not found.** and to provide powers of attorney to them if and to the extent necessary, (ii) provide access to all documents connected to the relevant Taxes, and (iii) contest findings or Tax assessments and take any legal actions against such findings or Tax assessments or announcements relating to the period up to and including the Closing Date. This Section 19 also applies correspondingly to findings or Tax assessments that are not the result of a tax audit.
- 19.7 Binding declarations to the Tax authorities relating to the period up to and including the Closing Date shall be made by the Company or the Acquirer only in agreement with the Sellers. If any findings or assessments, respectively, of the Tax authorities, which relate to the period prior to the Closing Date, give rise to any claim of the Acquirer under this Section 19, the Acquirer shall cause the Company to file any remedy or appeal as instructed by the Sellers, provided that the Sellers bear the costs of such instructions for all of their advisors, court fees and reasonable third party expenses as properly documented and paid by the Acquirer.

- 19.8 If the Acquirer fails to comply with any of the provisions set forth in Section 19.5 through 19.7 in any material respect, any related claims of the Acquirer under this Section 19 shall be excluded to the extent such non-compliance has affected the ability of the Sellers to avoid or mitigate the Taxes. (Section 254 German Civil Code (BGB)).
- 19.9 Section 15.2 shall apply accordingly.
- 19.10 Each payment under this Section 19 shall be deemed to be, and treated as, an adjustment to the Purchase Price.
- 19.11 Any claims of the Acquirer under this Section 19 shall become time-barred six (6) months after the final and (formally and materially) binding determination of the respective Tax or other charge.
- 19.12 Tax Guarantees

Each of the Sellers hereby individually guarantees to the Acquirer by way of an independent guarantee (*selbstständiges Garantieverprechen*) pursuant to section 311 (1) German Civil Code (BGB) that the statements set forth in **Annex 19.12** are true and correct as of the Signing Date, unless specifically provided for that a different date shall be decisive (“**Tax Guarantees**”). In the event of a breach of a Tax Guarantee, the Sellers hereby undertake jointly and severally (*gesamtschuldnerisch*) to indemnify the Acquirer or - at the sole discretion of the Acquirer - the Company and to hold the Acquirer (or the Company) harmless from any payment obligations for Taxes of the Company.

## **20. Further Indemnities**

- 20.1 Each Seller, jointly and severally (*gesamtschuldnerisch*), undertakes to indemnify the Acquirer or - at the sole discretion of the Acquirer - the Company (by way of agreement for the benefit of third parties (*Vertrag zugunsten Dritter*), section 328 (1) German Civil Code (BGB)) from any and all costs, losses and liabilities incurred by the Acquirer or the Company in connection with the items listed in **Annex 20.1**, except indirect damages (*mittelbare Schäden*), unforeseeable consequential damages (*unvorhersehbare Folgeschäden*), business interruptions (*Betriebsunterbrechungen*), and internal costs and expenses of the Acquirer (in particular overhead costs of the Acquirer) or the Company.

20.2 Each payment under this Section 20 shall be deemed to be, and treated as, an adjustment to the Purchase Price.

**[Note: Further indemnities are usually agreed upon if there are specific known risks that are to be borne economically by the sellers, e.g. ongoing legal disputes or environmental damage. There may also be indemnities in favour of the sellers, e.g., if they have been managing directors of the target company (at least to the extent that the acquirer cannot assert claims, which do not fall under a guarantee breach, via the detour of section 43 German Limited Liability Companies Act (GmbHG)).]**

## 21. Covenants

### 21.1 Non-Compete

The Sellers shall not, without the prior consent of the Acquirer, for a period of two (2) years after the Closing Date, engage, neither directly nor indirectly, neither in their own name nor in the name of others, nor on their own account nor on behalf of others, in the geographic and material scope of activities (*im räumlichen und sachlichen Tätigkeitsbereich*) of the Company as of the Closing Date. In particular, but not limited, during this period, they shall not establish or acquire a company that operates in this area or acquire an interest in such a company or support it in any other way, provided that this can be agreed without violating legal provisions. Excluded from the non-compete clause are investments in listed companies that do not exceed 5 % of the voting capital in total.

### 21.2 Non-Solicitation

The Sellers also, each individually, undertake for a period of two (2) years from the Closing Date not to solicit or approach, with the intent to solicit, either directly or indirectly, any person employed with the Company. This does not apply to general job advertisements that do not specifically target individuals employed with the Company, as well as the hiring of such persons who respond to such a job advertisement or otherwise apply to a Seller on their own initiative.

21.3 The Acquirer procures that as of the Closing Date, the Company shall properly maintain and preserve all relevant books and records (including but not limited to files, correspondence, documents, other papers and electronic data), to the extent they relate to the period prior to

and including the Closing Date, during the longer of the statutory keeping periods and for a period of [five/ten] years as of the Closing Date.

21.4 The Acquirer procures that the Sellers, their employees, advisors and other representatives shall be granted, upon request, full access to the books (including the right to receive, in due time, hard and/or electronic copies thereof) and to the personnel of the Company, to the extent such access is reasonably requested by the Sellers for Tax or other legitimate reasons and provided that such access does not unreasonably disrupt the conduct of the Business.

21.5 The Sellers procure that the Company is operated between the Signing Date and the Closing Date with the care of a diligent businessman (*Sorgfalt eines ordentlichen Geschäftsmannes*) in the ordinary course of business and in compliance with past practice. In particular, and without limiting the foregoing, the Sellers shall procure that the Company – to the extent legally permitted – without the prior written consent of the Acquirer, that may not be unreasonably withheld, does not:

- (a) Incur any credit or other debt obligation or grant a loan to a third party (other than in respect of trade payables);
- (b) Change any agreements with employees or managing directors unless required under law, collective bargaining agreements, and/or existing employment contracts;
- (c) Enter into any employment or management contracts (except contracts with newly hired persons whose annual compensation is less than EUR [ ] (in words: Euro [ ]) per year);
- (d) Enter into any contracts on the acquisition of real property or rights which are equivalent to real property;
- (e) Enter into any contracts on the acquisition or disposal of fixed assets (*Vermögenswerte des Anlagevermögens*), which have a book or market value of at least EUR [ ] (in words: Euro [ ]);
- (f) Enter into any agreements relating to capital expenditures (*Investitionen*) in an amount exceeding EUR [ ] (in words: Euro [ ]);

- (g) Enter into any other agreements under which the Company has to make payments exceeding EUR [ ] (in words: Euro [ ]) per year;
- (h) Alter any existing pricing strategies with customers;
- (i) Commit to do any of the foregoing.

## **22. Confidentiality / Press Releases**

The Parties mutually undertake to keep the contents of this Agreement secret and confidential vis-à-vis any third party except to the extent that the relevant facts are publicly known (without breach of this obligation) or disclosure is required by law or is made to shareholders, organs, employees and advisors for the performance of their duties and under appropriate confidentiality. In the event of a statutory duty of disclosure, the Parties shall, however, inform each other prior to such disclosure and shall limit any disclosure to the minimum required by statutory law or the authorities. The above applies accordingly to the Sellers to the extent that they wish to disclose confidential information of the Company after Closing (which they are generally not entitled to do if they cannot demonstrate a legitimate interest). No press releases or other public announcement concerning the transactions contemplated by this Agreement shall be made by either Party unless the form and text of such announcement have been approved by the other Parties except that – if the other Party (i) is required by law or by applicable stock exchange regulations to make an announcement or (ii) intends to publish details of the transactions contemplated by this Agreement by way of general information to its investors in the ordinary course of business – it may do so.

## **23. Assignment of Rights and Obligations**

This Agreement and any rights and obligations hereunder may not be assigned or transferred, in whole or in part, without the prior written consent of the other Parties to third parties.<sup>20</sup>

## **24. Transfer Taxes and Costs**

- 24.1 All potential transfer taxes (including real estate transfer taxes) and costs for the notarisation of this Agreement and any other charges and costs which result from the conclusion and

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<sup>20</sup> If necessary, insert an exception for the case that an assignment to financing banks is required in individual cases.

execution of this Agreement (including the costs for merger control procedures and/or other regulatory approval procedures) shall be borne by the Acquirer, insofar as it does not concern registration costs of the Company.

24.2 Each Party shall bear its own costs and fees as well as those of its own advisors.

## **25. Notices**

25.1 All declarations, notices, or other communications under this Agreement (“**Notices**”) shall be made in writing (e-mail sufficient) in **[insert language]** and shall be delivered to the person at the addresses set out below, or such other addresses as may be designated by the respective Party to the other Parties in the same manner:

(a) Any Notice to the Sellers under this Agreement shall be addressed to the respective Sellers at the addresses specified in **Annex 25.1(a)**.

(b) Any Notice to the Acquirer shall be addressed to the address specified in **Annex 25.1(b)**.

25.2 The Parties shall, but shall not be legally obliged to, communicate any change of their respective addresses as soon as possible in writing to the respective other Parties. Until such communication is received by the relevant other Parties, the address last given shall apply.

25.3 The receipt of copies of Notices by the Parties’ advisors shall not constitute or substitute the receipt of such Notices by the Parties themselves.

## **26. Miscellaneous**

26.1 With regard to their respective payment obligations arising from or in connection with this Agreement, the Parties are not entitled to offset, withhold or assert any other rights to refuse performance, unless the corresponding claim has been recognised in writing by the other Party/Parties or the claim has been awarded to the Party/Parties in a legally binding judgment in the main proceedings.

26.2 This Agreement shall be governed by, and construed in accordance with, the laws of Germany, excluding the conflict of law rules and United Nations Convention on Contracts for the International Sale of Goods (CISG). **[Alternative to save notarization costs in case of**

*purely domestic transactions: It is the joint understanding of the Parties that this Agreement is subject to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG), even without a specific choice of agreement on applicable law.]*

- 26.3 All disputes arising out of or in connection with this Agreement, including disputes about its validity, shall be finally settled by the competent courts in [ ], to the extent legally permissible.<sup>21</sup>
- 26.4 “**Banking Day**” means any day (other than a Saturday or Sunday or a bank holiday) on which banks are open for business in [ ].
- 26.5 “**Affiliates**” means any affiliated company (*verbundenes Unternehmen*) within the meaning of Section 15 German Stock Corporation Act (*Aktiengesetz*).
- 26.6 “**Related Party**” means any individual persons or legal entities who or which are (i) Affiliates or (ii) relatives (*Angehörige*) within the meaning of Section 15 of the German Tax Code (*Abgabenordnung – AO*).
- 26.7 Any amendment or supplementation of this Agreement, including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarisation) is required under applicable law.
- 26.8 The headings and sub-headings of the sections contained herein are for convenience and reference purposes only and shall not affect the meaning or construction of any of the provisions hereof.
- 26.9 All Annexes and their appendices attached hereto form an integral part of this Agreement.
- 26.10 This Agreement constitutes the full understanding of the Parties and the complete and exclusive statements of the terms and conditions of the Parties’ agreements relating to the subject matter hereof and supersedes any and all prior agreements and understandings, whether written or oral, that may exist between the Parties with respect to the subject matter of this Agreement or parts thereof. Side agreements to this Agreement do not exist.

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<sup>21</sup> As an alternative to ordinary legal proceedings, an arbitration agreement is often concluded.

26.11 Should any provision of this Agreement be or become invalid, ineffective, or unenforceable as a whole or in part, the validity, effectiveness, and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective, and enforceable provision as comes closest to the economic intent and the purpose of such invalid, ineffective or unenforceable provision as regards subject matter, amount, time, place, and extent. The aforesaid shall apply mutatis mutandis to any gap in this Agreement. Section 139 German Civil Code (BGB) is excluded in its entirety (no mere reversal of the burden of proof).