

**Joint Report**

**in accordance with Section 293a of the German Stock Corporation Act (AktG)**

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

**and**

**the Management of  
VARTA Consumer Europe Holding GmbH, Ellwangen/Jagst,**

**on the draft Profit and Loss Transfer Agreement**

**between**

**VARTA AKTIENGESELLSCHAFT**

**and**

**VARTA Consumer Europe Holding GmbH**



## I. Preliminary remark

VARTA AKTIENGESELLSCHAFT ("**VARTA**"), registered office in Ellwangen/Jagst, recorded in the commercial register of the Local Court of Ulm under No. HRB 728059, and VARTA Consumer Europe Holding GmbH ("**VARTA Consumer Europe Holding**"), registered office in Ellwangen/Jagst, recorded in the commercial register of the Local Court of Ulm under No. HRB 739922, intend to conclude a profit and loss transfer agreement (also designated as the "**Agreement**"). For the purpose of informing the shareholders and/or partners of both companies, the Executive Board of VARTA and the Management of VARTA Consumer Europe Holding jointly submit the following Report pursuant to Section 293a of the German Stock Corporation Act ("**AktG**").

## II. Conclusion and coming into force of the Profit and Loss Transfer Agreement

The Agreement shall be concluded in writing and shall require the approval of the Annual General Meeting of VARTA and the Shareholders' Meeting of VARTA Consumer Europe Holding as well as entry in the commercial register of VARTA Consumer Europe Holding in order to come into force under civil law. The Executive Board of VARTA adopted the draft agreement on 17 May 2023 and included it in the invitation to the Annual General Meeting of VARTA that is set to take place on 11 July 2023. The Supervisory Board of VARTA has approved the convening of the Annual General Meeting of VARTA for 11 July 2023 and will approve the draft Agreement itself prior to the Annual General Meeting of VARTA. The draft Profit and Loss Transfer Agreement will be submitted to the Annual General Meeting of VARTA on 11 July 2023 for approval as an inter-company agreement pursuant to Section 293 AktG. The Executive Board and the Supervisory Board of VARTA will propose to the Annual General Meeting of VARTA that the draft Profit and Loss Transfer Agreement with VARTA Consumer Europe Holding is approved.

Pursuant to Section 293 (1) sentence 2 AktG, the resolution for approval by the Annual General Meeting of VARTA requires a majority of at least three quarters of the voting share capital represented at the time of the passing of the resolution. The Shareholders' Meeting of VARTA Consumer Europe Holding is expected to be asked to approve the Agreement following the ordinary Shareholders' Meeting. The Agreement is then to be concluded after the approvals have been granted and filed for registration in the commercial register of the registered office of VARTA Consumer Europe Holding.

Pursuant to Section 293 (1) sentence 2 AktG, the resolution for approval at the VARTA Annual General Meeting requires a majority of at least three quarters of the share capital with voting rights represented at the time that the resolution is passed. The Shareholders' Meeting of VARTA Consumer Europe Holding is expected to be asked to approve the Agreement following the Annual General Meeting. The agreement is then to be concluded after the approvals have been granted and filed for registration in the commercial register of the registered office of VARTA Consumer Europe Holding.



### **III. Legal and economic grounds for concluding the Profit and Loss Transfer Agreement**

#### **1. Corporate and economic positions**

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

VARTA AKTIENGESELLSCHAFT is a listed stock corporation under German law with its registered office in Ellwangen/Jagst. The business address is VARTA-Platz 1, 73479 Ellwangen/Jagst. VARTA is registered in the commercial register of the district court of Ulm under No. HRB 728059. VARTA is the parent company of the VARTA Group. The financial year is the calendar year.

The share capital of VARTA entered in the commercial register amounts to € 42,641,686.00 and is divided into 42,641,686 no-par value shares (bearer shares), each with a notional value of € 1.00 of the share capital.

As at 31 December 2022, the VARTA Group employed 4,498 staff and generated a consolidated loss of approximately € 200.4 m in financial year 2022.

The object of the Company is the holding, acquisition, management and realisation of participations, in particular participations in companies in the field of development, production and distribution of energy systems and energy storage systems, the provision of services of all types, in particular, services for companies and/or on behalf of companies in which the Company holds participations, as well as the development, production and distribution of selected energy systems and energy storage systems. The object of the Company is also the management of its own assets, in particular the realisation and liquidation of assets, contracts, liabilities and participations relating to the business areas formerly operated by the Company and its subsidiaries.

The company is entitled to take all direct or indirect measures that are suitable to serve the object of the Company. The Company may establish, acquire, sell or participate in branches and other companies in Germany and abroad. Moreover, the Company may also limit its activities to just a part of the scope of activities indicated above.

##### **1.2. VARTA Consumer Europe Holding GmbH**

VARTA Consumer Europe Holding is a limited liability company under German law with its registered office in Ellwangen/Jagst. The business address is VARTA-Platz 1, 73479 Ellwangen/Jagst. VARTA Consumer Europe Holding is registered in the commercial register of the district court of Ulm under No. HRB 739922. The share capital of VARTA Consumer Europe Holding amounts to € 25,000.00 and is divided into a single share with the serial number 1 and a nominal amount of € 25,000. All shares are currently held by VARTA Consumer Batteries Benelux B.V., registered office in Utrecht, the Netherlands, registered in the Dutch Commercial Register (*Kamer van Koophandel, KvK*) under No. 71298436, whose shares are in turn wholly owned by VARTA. Under the terms of the restructuring currently being carried out in 2023, an exchange of shares and a related capital increase is planned, which will result in VARTA AKTIENGESELLSCHAFT directly holding all the shares in VARTA Consumer Europe Holding on conclusion of the Agreement. The financial year of VARTA Consumer Europe Holding is the calendar year.

As at 31 December 2022, VARTA Consumer Europe Holding employed no staff and generated a loss for financial year 2022 amounting to around € 2.3 m.



The object of the Company is the acquisition, holding, administration and sale of participations and rights similar to participations in other business partnerships and corporations, in particular in companies belonging to the VARTA AG Group. VARTA Consumer Europe Holding is entitled to provide all services for these companies in connection with the administration of the participations, including their financing, provided that there are no banking or financial service transactions requiring approval.

VARTA Consumer Europe Holding may establish, acquire or lease similar companies in Germany and abroad, participate in such companies, establish branches and engage in all business activities which appear necessary or useful to promote the object of its business.

## **2. Grounds for concluding the Profit and Loss Transfer Agreement**

Concluding the Profit and Loss Transfer Agreement would make it possible for VARTA to achieve tax optimisation. The conclusion of an effective and implemented Profit and Loss Transfer Agreement is a prerequisite for the establishment of a corporate tax group and a trade tax group. Forming a fiscal unity for income tax purposes will result in combined taxation of the companies belonging to the tax group. The fact that positive and negative results of VARTA and VARTA Consumer Europe Holding can be offset at the same time will make it possible to offset tax losses within the group.

## **IV. Explanation of the Profit and Loss Transfer Agreement**

The primary regulations pertaining to the Profit and Loss Transfer Agreement are explained below:

### **1. Profit transfer**

Pursuant to Section 1 of the Profit and Loss Transfer Agreement, VARTA Consumer Europe Holding is obliged to transfer its entire profit to VARTA during the term of the Agreement in accordance with all provisions of Section 301 AktG in its currently valid version. Section 301 AktG limits the amount of the profit transfer. Pursuant to Section 301 sentence 1 AktG, the profit to be transferred is the annual net profit arising without the profit transfer less 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). Pursuant to Section 1 (2) of the Profit and Loss Transfer Agreement, it is possible to allocate amounts from the annual net profit to other revenue reserves pursuant to Section 272 (3) HGB, provided that this is admissible under commercial law and justified on the basis of reasonable commercial judgement and providing VARTA agrees. Pursuant to Section 1 (3) of the Profit and Loss Transfer Agreement, other revenue reserves pursuant to Section 272 (3) HGB formed during the term of the Agreement are to be released at VARTA's request, to the extent legally permissible, and used to offset any net loss for the year or loss carried forward or transferred as profit. Other reserves and amounts from the release of profit carried forward and retained earnings which were formed or arose from profits generated prior to the financial year in which the Profit and Loss Transfer Agreement takes effect, as well as amounts from the release of capital reserves pursuant to Section 272 (2) nos. 1 to 4 HGB (irrespective of whether they were formed before or after the Profit and Loss Transfer Agreement came into force) may not be transferred to VARTA as profit.

The claim for profit transfer arises at the end of the financial year of VARTA Consumer Europe Holding and is due on the value date at this point in time.



## **2. Loss transfer**

Pursuant to Section 2 of the Agreement, VARTA is obliged to assume losses in accordance with the provisions of Section 302 AktG in its currently valid version. VARTA is consequently obliged to offset any annual loss of VARTA Consumer Europe Holding arising during the term of the Agreement in accordance with the provisions of Section 302 AktG in its currently valid version. The obligation to offset losses is a mandatory consequence of a Profit and Loss Transfer Agreement. The reference to the provisions of Section 302 (1) AktG ensures that only losses not offset by withdrawals from other revenue reserves formed during the term of the Agreement have to be compensated. The reference to Section 302 (2) to (4) of the German Stock Corporation Act (AktG) refers in particular to the statutory possibility of waiving and settling the claim and to the legal statute of limitations period.

## **3. Preparation of the Annual Financial Statements**

Section 3 of the Profit and Loss Transfer Agreement contains provisions on the preparation of the Annual Financial Statements of VARTA Consumer Europe Holding. Pursuant to Section 3 (1), the Annual Financial Statements of VARTA Consumer Europe Holding must be submitted to VARTA for information, examination and approval prior to their adoption. Section 3 (2) stipulates that the Annual Financial Statements of VARTA Consumer Europe Holding are to be prepared and adopted before the Annual Financial Statements of VARTA. Pursuant to Section 3 (3), the result of VARTA Consumer Europe Holding to be taken over shall be taken into account in the Annual Financial Statements of VARTA for the same financial year, even if the financial year of VARTA Consumer Europe Holding ends at the same time as the financial year of VARTA. Pursuant to Section 3 (4), VARTA may assume losses in advance before the end of the financial year or, subject to sufficient net profit for the year, request an advance transfer of profits to the extent this is legally permissible. However, the amounts transferred or assumed in advance shall be credited against the profit to be transferred or the loss to be assumed for the financial year, whereby any excess amounts transferred or assumed shall bear interest at the usual external loan rate and shall be refunded after the Annual Financial Statements have been adopted.

## **4. Coming into force and duration**

Section 4 of the Profit and Loss Transfer Agreement contains provisions on the coming into force and duration of the Profit and Loss Transfer Agreement.

Firstly, Section 4 (1) of the Agreement reproduces the statutory provisions of Section 293 AktG for VARTA and Section 293 AktG similarly for VARTA Consumer Europe Holding and this applies similarly to Section 294 AktG. The Agreement is namely subject to approval by the Shareholders' Meeting of VARTA Consumer Europe Holding as well as approval by the Annual General Meeting of VARTA (see preliminary remark) as well as the entry in the commercial register of VARTA Consumer Europe Holding.

In addition, Section 4 (1) sentence 2 stipulates the retroactive validity of the Agreement from the beginning of the financial year of VARTA Consumer Europe Holding in which it is entered in the commercial register of the registered office of VARTA Consumer Europe Holding. The Profit and Loss Transfer Agreement therefore applies retroactively as at the beginning of the current financial year of VARTA Consumer Europe Holding, if the entry in the commercial register of the registered office of VARTA Consumer Europe Holding



takes place in the current financial year, in order to be able to already use the advantages of the fiscal unity for income tax purposes for financial year 2023.

Section 4 (2) of the Agreement contains a provision on the term of the Agreement. The Profit and Loss Transfer Agreement is concluded for a fixed term of five years. The minimum term begins at the beginning of the financial year for which the legal consequences of the fiscal unity intended by the Agreement (see III.2 "Grounds for the conclusion of the Profit and Loss Transfer Agreement") arise for the first time. If these five years end during a current financial year of VARTA Consumer Europe Holding, the minimum term shall be extended until the end of that financial year. The Agreement shall be extended by a further year in each case unless it is terminated by any of the parties three months before its expiry. The term of the Agreement has been chosen in such a way that the tax law requirements for a corporate tax group are met with regard to the minimum tax term in accordance with Section 14 (1) sentence 1 Nos. 3 and 17 of the German Corporate Income Tax Act (KStG).

The right to terminate the Agreement for good cause without notice remains unaffected. Important reasons entitling to extraordinary termination are listed by way of example in section 4 (3) of the Agreement. Accordingly, important reasons are in particular (i) the absence of the prerequisites for the financial integration of VARTA Consumer Europe Holding into VARTA within the meaning of tax law due to a sale of shares or for other reasons after completion of the respective measure or (ii) the contribution of the shareholding in VARTA Consumer Europe Holding to another company by VARTA or (iii) the merger, demerger or liquidation of VARTA or VARTA Consumer Europe Holding or (iv) the existence of an important reason within the meaning of R 14. 5 (6) Corporate Income Tax Guidelines 2015 (or corresponding provision) or any other good cause recognised for income tax purposes at the time of termination.

Section 4 (4) of the Agreement contains a special provision on the commencement of the term. If the coming into force of the Agreement or its proper implementation is not, or not fully, recognised for tax purposes, the minimum term shall only commence on the first day of that financial year of VARTA Consumer Europe Holding for which the conditions for recognition of its coming into force or its proper implementation for tax purposes are met for the first time or are met again for the first time. This provision also links profit and loss transfer and fiscal unity in terms of time.

Section 4 (5) of the Agreement refers to the creditor protection provision of Section 303 AktG. Accordingly, VARTA must provide security to the creditors of VARTA Consumer Europe Holding in accordance with Section 303 AktG if the Agreement is terminated.

## **5. Other and concluding provisions**

The Profit and Loss Transfer Agreement also contains the usual other and concluding provisions regarding the approval requirements for VARTA and VARTA Consumer Europe Holding, a severability clause, the written form requirement for supplements and amendments to the Agreement and the interpretation of the Agreement in compliance with corporate tax law standards.



## **V. Determinations in accordance with Sections 304, 305 of the German Stock Corporation Act (AktG) / Audit of the Profit and Loss Transfer Agreement**

No compensation payment or settlement for outside shareholders of VARTA Consumer Europe Holding is to be determined in the Profit and Loss Transfer Agreement, as there will be no outside shareholders of VARTA Consumer Europe Holding on conclusion of the Agreement; at that time, VARTA will directly hold 100% of the shares in VARTA Consumer Europe Holding. A valuation of the companies involved for the purposes of determining appropriate compensation and settlement is therefore not to be carried out.

Since VARTA will directly hold all the shares in VARTA Consumer Europe on conclusion of the Agreement, there is also no need for an audit of the Agreement by expert auditors pursuant to Section 293b (1) AktG.

Ellwangen/Jagst, 30 May 2023

### **VARTA AKTIENGESELLSCHAFT**

Executive Board

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Dr Markus Hackstein  
Member of the Executive Board  
VARTA AKTIENGESELLSCHAFT

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Marc Hundsdorf  
Member of the Executive Board  
VARTA AKTIENGESELLSCHAFT



## **VARTA Consumer Europe Holding GmbH**

The management

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Peter Werner  
Managing Director  
VARTA Consumer Europe  
Holding GmbH

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Julia Weber  
Managing Director  
VARTA Consumer Europe Holding  
GmbH