

## **Supplementary information on agenda item 9.4:**

Amendment Agreement dated 17 March 2022 to the existing Profit and Loss Transfer Agreement between BMW AG and BMW Fahrzeugtechnik GmbH

## **Amendment Agreement pursuant to § 295 AktG to the Profit and Loss Transfer Agreement in the version dated 15 March 2010**

between

**Bayerische Motoren Werke Aktiengesellschaft** with its registered office in Munich and entered in the Commercial Register of Munich District Court under HRB 42243,

– hereinafter referred to as the **“Controlling Entity”** –

and

**BMW Fahrzeugtechnik GmbH** with its registered office in Eisenach and entered in the Commercial Register of Jena District Court under HRB 400361,

– hereinafter referred to as the **“Controlled Entity”** –

– Controlling Entity and Controlled Entity are hereinafter also referred to individually as **“Party”** or collectively as **“Parties”** –

### **Preamble**

The Controlling Entity is the sole shareholder of the Controlled Entity. The Parties concluded a Profit and Loss Transfer Agreement on 15 March 2010.

The Profit and Loss Transfer Agreement of 15 March 2010 contains, among other things, dynamic references to the provisions of §§ 301, 302 AktG (German Stock Corporation Act). In addition, the wording of individual components of these provisions has been incorporated into the text of the agreement in isolated cases and merely by way of example. The interpretation of the Profit and Loss Transfer Agreement of 15 March 2010 shows in this respect that the dynamic references should take precedence over the adopted wording of the provisions. This was and is also the understanding of the Parties.

Notwithstanding the above, the Parties take the minor amendment of the wording of section 302 AktG as of 1.01.2021 as an opportunity for the purpose of legal clarity and certainty in order to

- express the common understanding even more clearly about the dynamic references to §§ 301, 302 AktG,

- to amend the wording of the Profit and Loss Transfer Agreement in such a way that it does not have to be amended even in the event of any future amendments to the relevant provisions in the Stock Corporation Act,
- to further standardise the existing Profit and Loss Transfer Agreements in the BMW Group,
- to make other editorial adjustments to the text of the agreement.

Based on this, the Parties agree on the following in continuation of the fiscal unity within the meaning of §§ 14, 17 KStG (Corporation Taxes Act):

- I. The Profit and Loss Transfer Agreement in the version of 15 March 2010 shall be amended in and shall be worded as follows (right column, without notes):

<b>Version of 15 March 2010</b>	<b>Amended version</b>
<p><b>Preamble</b></p> <p>The Controlling Entity is the sole shareholder of the Controlled Entity. In continuation of an existing fiscal unity within the meaning of §§ 14, 17 KStG (Corporation Taxes Act) between the Controlled Entity and the Controlling Entity, the previously existing Profit and Loss Transfer Agreement between the Parties shall be amended as a whole.</p> <p><b>1. Profit transfer</b></p> <p><b>1.1</b></p> <p>The Controlled Entity undertakes to transfer its entire profit to the Controlling Entity. The provisions of § 301 of the German Stock Corporation Act (AktG) shall apply in full in their respective valid version.</p> <p><b>1.2</b></p> <p>Accordingly, subject to the formation or release of reserves pursuant to sections 1.3 and 1.4 below – profit is the total annual</p>	<p><b>Preamble</b></p> <p>The Controlling Entity is the sole shareholder of the Controlled Entity. The Parties hereby agree on the following Profit and Loss Transfer Agreement.</p> <p><b>1. Profit transfer</b></p> <p><b>1.1</b></p> <p>The Controlled Entity undertakes to transfer its entire profit arising during the term of the agreement to the Controlling Entity. The provisions of § 301 of the German Stock Corporation Act (AktG), as amended, shall apply to the transfer of profits; if, in the event of future amendments to § 301 of the AktG, the wording of the agreement should conflict with the statutory provision, the latter shall prevail.</p> <p>–</p> <p>[Note: section 1.2. old version was merged with section 1.1]</p>

net profit arising without the profit transfer, reduced by any loss carried forward from the previous year and reduced by the other deductions listed in § 301 AktG, as amended, insofar as they are relevant to the Controlled Entity.

### **1.3**

The Controlled Entity may only allocate amounts from the annual net profit to revenue reserves (§ 272 para. 3 HGB (German Commercial Code)) – with the exception of statutory reserves, if relevant – (hereinafter “other revenue reserves”) to the extent that this is economically justified based on a reasonable commercial assessment.

### **1.4**

Other revenue reserves formed during the term of the agreement must be dissolved at the request of the Controlling Entity and used to offset a net loss for the year or transferred as profit.

### **1.5**

The claim to profit transfer shall become due with the adoption of the annual financial statements of the Controlled Entity. The Controlling Entity may request an advance transfer of profits if and to the extent that an advance distribution might be paid.

### **1.2**

The Controlled Entity may allocate amounts from the net profit for the year to revenue reserves (§ 272 para. 3 HGB) to the extent that this is permissible under commercial law and (i) is economically justified on the basis of a reasonable commercial assessment or (ii) these are statutory reserves to be formed from the result.

### **1.3**

Reserve revenues formed during the term of the agreement pursuant to section 1.2 shall – to the extent legally permissible – be dissolved at the request of the Controlling Entity and transferred as profit under the conditions of § 301 of the German Stock Corporation Act (AktG) as amended. Other reserves and the profit carried forward and reserves originating from the time before the validity of this agreement may not be transferred to the Controlling Entity as profit. The same shall apply to capital reserves, whether they were formed before or after the entry into force of this agreement.

### **1.4**

The claim for profit transfer arises at the end of the fiscal year of the Controlled Entity and becomes due with the adoption of the annual financial statements of the Controlled Entity.

## **2. Loss transfer**

### **2.1**

The provisions § 302 AktG shall apply in full in their respective valid version.

### **2.2**

In particular, the Controlling Entity shall be obliged pursuant to § 302 para. 1 AktG to offset any net loss for the year otherwise arising during the term of the agreement, unless such net loss is offset by withdrawing amounts from the other revenue reserves which were transferred to it during the term of the agreement.

### **2.3**

In particular, the Controlled Entity may, in analogous application of § 302 para. 3 AktG, neither waive nor settle the claim for loss compensation within three years after the day on which the entry of the termination of this agreement in the commercial register is deemed to have been announced within the meaning of § 10 HGB (German Commercial Code). This does not apply if the Controlling Entity is insolvent and settles with its creditors in order to avoid insolvency proceedings or if the obligation to pay compensation is settled in an insolvency plan.

### **2.4**

The claim to loss transfer shall become due with the adoption of the annual financial statements of the Controlled Entity.

## **3. Effective date and duration of the agreement**

### **3.1**

This agreement is concluded subject to the approval of the Annual General Meeting of the Controlling Entity and the approval of

## **2. Loss transfer**

### **2.1**

The provisions § 302 AktG shall apply in full in their respective valid version.

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[Note: deleted, as already included in section 2.1]

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[Note: deleted, as already included in section 2.1]

### **2.2**

The claim for loss transfer arises at the end of the fiscal year of the Controlled Entity and is due with value date at this time.

## **3. Effective date and duration of the agreement**

### **3.1**

This agreement is concluded subject to the approval of the Annual General Meeting of the Controlling Entity and the approval of

the shareholders' meeting of the Controlled Entity. It becomes effective upon entry in the commercial register of the Controlled Entity and applies for the period from the beginning of the financial year of the entry.

The Profit and Loss Transfer Agreement previously existing between the Parties shall be replaced by the present agreement without transition as of the beginning of the financial year of registration when the present agreement becomes effective.

### **3.2**

The agreement is concluded for a fixed term until the end of 31 December 2014 (minimum term five years). If the entry in the commercial register of the Controlled Entity is not made by 31 December 2010 at the latest, the minimum term pursuant to sentence 1 shall be extended until the expiry of five years from the beginning of the financial year of the Controlled Entity in which the entry is made in the commercial register of the Controlled Entity.

The agreement shall be extended by one year at a time following the minimum term if it is not terminated by one Party at least six weeks before its expiry by one of the Parties.

### **3.3**

The right of each Party to terminate the agreement for good cause without notice shall remain unaffected.

## **4. Final provisions**

Should individual provisions of this agreement be or become invalid, or should this agreement contain loopholes, this shall

the shareholders' meeting of the Controlled Entity. It shall become effective upon entry in the commercial register of the Controlled Entity and shall apply from the beginning of the Controlled Entity's financial year running at the time of entry of this agreement in the commercial register.

### **3.2**

The agreement is valid for an indefinite period. It may be terminated with six weeks' notice only at the end of the fiscal year of the Controlled Entity. However, ordinary termination is possible for the first time at the end of the fiscal year of the Controlled Entity at the end of which the minimum tax term within the meaning of §§ 14, 17 KStG (Corporation Taxes Act), § 2 GewStG (Trade Tax Act), as amended, is fulfilled (at the time of the conclusion of the agreement, the minimum term is five years).

### **3.3**

The right of each Party to terminate the agreement for good cause without notice shall remain unaffected. The agreement may be terminated without notice if the Controlling Entity no longer holds the majority of the voting rights in the Controlled Entity.

## **4. Final provision**

If any provision of this agreement is or becomes invalid, unenforceable or unenforceable in whole or in part, the validity,

not affect the validity of the remaining provisions.

In such a case, insofar as a supplementary interpretation of the agreement is not possible, the Parties shall agree on the provision which would have been agreed taking into account the purpose of the agreement if the ineffectiveness of the provision or the loophole had been known from the outset.

enforceability and enforceability of the remaining provisions of this agreement shall not be affected thereby. The Parties undertake to agree on a valid, feasible and enforceable provision in place of the invalid, unenforceable or unenforceable provision which comes as close as possible to the economic purpose pursued by the Parties with the invalid, unenforceable or unenforceable provision. The same applies if the contract contains a loophole.

- II. The consolidated Profit and Loss Transfer Agreement as amended by this agreement is attached to this Amendment Agreement as an annex.
- III. The Amendment Agreement is concluded subject to the approval of the Annual General Meeting of the Controlling Entity and the shareholders' meeting of the Controlled Entity. It becomes effective upon entry in the commercial register of the Controlled Entity and applies for the period from the beginning of the financial year of the entry.

**Munich, 17 March 2022**

**Bayerische Motoren Werke Aktiengesellschaft**

[SIGNATURE]

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Oliver Zipse  
Chairman of the Board of  
Management

[SIGNATURE]

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Dr Nicolas Peter  
Member of the Board of  
Management

**BMW Fahrzeugtechnik GmbH**

[SIGNATURE]

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Dr Peter Fallböhmer  
Managing Director

[SIGNATURE]

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Robert Frittrang  
Managing Director



## **Profit and Loss Transfer Agreement**

(as amended on 17 March 2022)

between

**Bayerische Motoren Werke Aktiengesellschaft** with its registered office in Munich and entered in the Commercial Register of Munich District Court under HRB 42243,

– hereinafter referred to as the “**Controlling Entity**” –

and

**BMW Fahrzeugtechnik GmbH** with its registered office in Munich and entered in the Commercial Register of Jena District Court under HRB 400361,

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### **Preamble**

The Controlling Entity is the sole shareholder of the Controlled Entity. The Parties hereby agree on the following Profit and Loss Transfer Agreement.

### **1. Profit transfer**

#### **1.1**

The Controlled Entity undertakes to transfer its entire profit arising during the term of the agreement to the Controlling Entity. The provisions of § 301 of the German Stock Corporation Act (AktG), as amended, shall apply to the transfer of profits; if, in the event of future amendments to § 301 of the AktG, the wording of the agreement should conflict with the statutory provision, the latter shall prevail.

## **1.2**

The Controlled Entity may allocate amounts from the net profit for the year to revenue reserves (§ 272 para. 3 HGB) to the extent that this is permissible under commercial law and (i) is economically justified on the basis of a reasonable commercial assessment or (ii) these are statutory reserves to be formed from the result.

## **1.3**

Reserve revenues formed during the term of the agreement pursuant to section 1.2 shall – to the extent legally permissible – be dissolved at the request of the Controlling Entity and transferred as profit under the conditions of § 301 of the German Stock Corporation Act (AktG) as amended. Other reserves and the profit carried forward and reserves originating from the time before the validity of this agreement may not be transferred to the Controlling Entity as profit. The same shall apply to capital reserves, whether they were formed before or after the entry into force of this agreement.

## **1.4**

The claim for profit transfer arises at the end of the fiscal year of the Controlled Entity and becomes due with the adoption of the annual financial statements of the Controlled Entity.

## **2. Loss transfer**

### **2.1**

The provisions § 302 AktG shall apply in full in their respective valid version.

### **2.2**

The claim for loss transfer arises at the end of the fiscal year of the Controlled Entity and is due with value date at this time.

## **3. Effective date and duration of the agreement**

### **3.1**

This agreement is concluded subject to the approval of the Annual General Meeting of the Controlling Entity and the approval of the shareholders' meeting of the Controlled Entity. It shall become effective upon entry in the commercial register of the Controlled Entity and shall apply from the beginning of the Controlled Entity's financial year running at the time of entry of this agreement in the commercial register.

### **3.2**

The agreement is valid for an indefinite period. It may be terminated with six weeks' notice only at the end of the fiscal year of the Controlled Entity. However, ordinary termination is possible for the first time at the end of the fiscal year of the Controlled Entity at the end of which the minimum tax term within the meaning of §§ 14, 17 KStG (Corporation Taxes Act), § 2 GewStG (Trade Tax Act), as amended, is fulfilled (at the time of the conclusion of the agreement, the minimum term is five years).

### **3.3**

The right of each Party to terminate the agreement for good cause without notice shall remain unaffected. The agreement may be terminated without notice if the Controlling Entity no longer holds the majority of the voting rights in the Controlled Entity.

## **4. Final provision**

If any provision of this agreement is or becomes invalid, unenforceable or unenforceable in whole or in part, the validity, enforceability and enforceability of the remaining provisions of this agreement shall not be affected thereby. The Parties undertake to agree on a valid, feasible and enforceable provision in place of the invalid, unenforceable or unenforceable provision which comes as close as possible to the economic purpose pursued by the Parties with the invalid, unenforceable or unenforceable provision. The same applies if the contract contains a loophole.