



## **Control and Profit and Loss Transfer Agreement**

between

**K+S Aktiengesellschaft**  
Headquartered in Kassel  
(Kassel District Court HRB 2669)  
hereinafter referred to as the "Parent Company"

and

**MSW-CHEMIE Gesellschaft mit beschränkter Haftung**  
Headquartered in Langelshiem  
(Braunschweig District Court HRB 110893)  
hereinafter referred to as the "Subsidiary Company"



## Section 1

### **Management of the Subsidiary Company**

(1) The Subsidiary Company shall be subject to the management of the Parent Company. The Parent Company shall be entitled to issue general or specific instructions to the management of the Subsidiary Company.

(2) The Subsidiary Company shall be obliged to comply with the instructions of the Parent Company.

(3) The management and representation of the Subsidiary Company shall remain the responsibility of the management of the Subsidiary Company. The legal independence of both companies shall remain unaffected.

(4) The Parent Company shall not be entitled to issue instructions to the management of the Subsidiary Company to amend, maintain, or terminate this Agreement.

## Section 2

### **Profit transfer**

(1) During the term of the Agreement, the Subsidiary Company is obliged, subject to Paragraph 2, to transfer its entire profit, however, not exceeding the net income for the year without profit transfer in accordance with Section 301 Sentence 2 of the AktG, as amended, reduced by any loss carried forward from the previous year, by the amount to be allocated to the legal reserve pursuant to Section 300 of the German Stock Corporation Act (hereinafter referred to as "AktG") and by the amount subject to the distribution block pursuant to Section 268 (8) of the German Commercial Code.

(2) The Subsidiary Company may, with the consent of the Parent Company, allocate amounts from the net income for the year - with the exception of any legal reserves - to the revenue reserves (Section 272 (3) of the German Commercial Code) only to the extent that this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment. At the request of the Parent Company, amounts transferred to other revenue reserves during the term of this Agreement may be withdrawn from other revenue reserves and transferred as profit in accordance with Section 301 Sentence 2 AktG, as amended. The same shall apply mutatis mutandis to the release of amounts transferred to the legal or statutory reserves during the term of this Agreement.

(3) Should Section 301 of the AktG be amended in the future, the version valid in each case shall apply accordingly.

(4) The transfer of amounts from the release of revenue reserves and from profit carried forward is excluded if they were allocated to the revenue reserves or arose in financial years prior to the application of this Agreement. The transfer of amounts from the release of capital reserves pursuant to Section 272 (2) of the German Commercial Code is generally excluded.

This does not affect the permissibility of the release, distribution or withdrawal of capital reserves in accordance with the general statutory provisions.



(5) The obligation of the Subsidiary Company to transfer its entire profit also includes, to the extent permitted by law, the profit from the sale of all its assets and a transfer profit from conversions. The foregoing provision shall not apply to profits arising after the dissolution of the Subsidiary Company.

(6) The claim for transfer of profits shall arise at the end of the financial year of the Subsidiary Company and shall become due for payment upon adoption of the annual financial statements of the Subsidiary Company for the past financial year.

(7) The Parent Company may demand an advance transfer of profits if and to the extent that the payment of an advance dividend would be permissible. If the amount of the advance transfer exceeds the final amount of the profit transfer, the excess amount shall be deemed to be a loan granted by the Subsidiary Company to the Parent Company.

### Section 3

#### **Loss transfer**

(1) The provisions of Section 302 AktG, as amended from time to time, shall apply accordingly to the transfer of losses by the Parent Company.

(2) The claim for loss compensation arises at the end of the financial year of the Subsidiary Company and is due for payment at the same time.

### Section 4

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

(1) The annual financial statements of the Subsidiary Company shall be submitted to the Parent Company for information, review, and approval prior to their adoption.

(2) The annual financial statements of the Subsidiary Company shall be prepared and adopted before those of the Parent Company.

(3) If the financial year of the Subsidiary Company ends at the same time as that of the Parent Company, the earnings of the Subsidiary Company to be transferred shall be taken into account in the annual financial statements of the Parent Company for the same financial year.

### Section 5

#### **Rights to information**

(1) The Parent Company may at any time request information from the management of the Subsidiary Company regarding the legal, business, and administrative affairs of the Subsidiary Company. The Parent Company may also inspect the books and records of the Subsidiary Company at any time.

(2) Without prejudice to the rights agreed above, the Subsidiary Company shall report to the Parent Company on an ongoing basis on the development of its business, in particular on significant business transactions.



## Section 6

### **Effective date, term, termination**

(1) This Agreement shall be concluded subject to the approval of the Annual General Meeting of the Parent Company and the shareholders' meeting of the Subsidiary Company and shall become effective upon its registration in the Commercial Register of the Subsidiary Company. Regarding the appropriation of profits (profit and loss transfer), the Agreement shall be applied for the first time for the fiscal year of the Subsidiary Company beginning on January 1, 2025, but at the earliest for the financial year of the Subsidiary Company in which the Agreement becomes effective. The Parent Company and the Subsidiary Company are contractually obliged to actually implement the control from the time of the approval resolution of the last of the two Annual General Meetings/shareholders' meetings of the parties.

(2) The Agreement shall be concluded for an indefinite period. It may be terminated at the end of a financial year of the Subsidiary Company with a notice period of three months, but not before the expiration of five (5) years, i.e., 60 months (minimum term) after the beginning of the financial year in which the Agreement is applied for the first time pursuant to Section 6.1, i.e., not before the end of December 31, 2029, if it becomes effective in 2025.

(3) The right to terminate this Agreement prematurely for cause or by mutual consent shall remain unaffected. Good cause for early termination includes in particular

a) the sale, contribution, or other transfer of shares in the Subsidiary Company,

b) the merger, demerger, or dissolution of the Parent Company or the Subsidiary Company,

c) the change of form of the Subsidiary Company, unless the Subsidiary Company is converted into a corporation with a different legal form,

d) the transfer of the registered or administrative office of the Subsidiary Company or the Parent Company abroad, if this results in the fiscal unity ceasing to exist.

(4) In the event that during the term of this Agreement for a financial year the existence of a corporate tax group is not to be recognized or is not recognized by the tax office, a new minimum term of five (5) years shall commence with effect from the first day of the financial year of the Subsidiary Company for which the prerequisites for a corporate tax group exist for the first time or again. Paragraphs 2 and 3 shall apply mutatis mutandis to this new minimum term.

(5) Notice pursuant to paragraphs 2 and 3 must be given in writing.

## Section 7

### **Costs**

The costs incurred in connection with the execution of this Agreement shall be borne by the Parent Company.



## Section 8

### **Final provisions**

(1) Should any provision of this Agreement be or become void, invalid or unenforceable in whole or in part, the validity of the remaining provisions of this Agreement shall not be affected. The void, invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to what the parties would have intended in accordance with the purpose of this Agreement if they had considered the voidness, invalidity or unenforceability.

(2) This shall also apply in the event of the invalidity, ineffectiveness or unenforceability of a performance or time provision contained in this Agreement. In this case, the legally permissible service or time provision that comes closest to the agreed provision shall be deemed agreed. Sentences 1 and 2 shall apply accordingly to any loopholes in this Agreement.

Kassel (Germany), March 21, 2025

**K+S Aktiengesellschaft**

Keuthen                      ppa. Kroll

Kassel (Germany), March 21, 2025

**MSW-CHEMIE Gesellschaft mit beschränkter Haftung**

Prof. Dr. Triebel