

“Control and Profit Transfer Agreement
[Beherrschungs- und Gewinnabführungsvertrag]

Between

Formycon AG with registered offices in Munich
(District Court of Munich HRB 200801)
(hereinafter the “Controlling Company”)

And

Formycon Project 201 GmbH with registered offices in Munich
(District Court of Munich HRB 210064)
(hereinafter the “Controlled Company”).

§ 1 Management control

The Controlling Company shall have management control of the Controlled Company. The Controlling Company shall have the right to issue instructions to the Controlled Company regarding the management thereof. The Controlled Company shall be obligated to follow such instructions.

§ 2 Profit transfer

- 1. The Controlled Company undertakes to transfer all of its profits to the Controlling Company. Subject to any additions to or releases from reserves pursuant to No. 2 or 3 below, the amount of profit to be transferred shall be the maximum amount provided under sec. 301 of the German Stock Corporation Act [Aktiengesetz] in the version currently in force as may be amended from time to time.*
- 2. The Controlled Company may, subject to the consent of the Controlling Company, allocate an amount from its annual net income to profit reserves (per sec. 272 para. 3 of the German Commercial Code [Handelsgesetzbuch]), provided that this is permitted by law and economically justified based on a reasonable commercial assessment.*

3. *Insofar as not otherwise provided by sec. 301 of the Stock Corporation Act, any other profit reserves set aside during the term of this agreement in accordance with sec. 272 para. 3 of the Commercial Code must be liquidated at the request of the Controlling Company and used to compensate for an annual net loss or for a prior year loss carried forward, or to be transferred as profit.*
4. *Amounts from the release of capital reserves or of profit reserves taken in anticipation of a contract may not be transferred to the Controlling Company as profit.*
5. *The right to such transfer of profits shall be established as of the date of the respective annual financial statements of the Controlled Company and shall become due upon such date.*

§ 3 Assumption of losses

The assumption of losses shall be governed by the provisions of sec. 302 of the Stock Corporation Act in the version currently in force as may be amended from time to time.

§ 4 Duration of agreement

1. *This agreement is subject to approval through shareholders' meetings of the Controlling Company and the Controlled Company. It shall become effective upon entry into the Controlled Company's commercial register [Handelsregister] and shall apply retroactively – with the exception of the right to issue instructions pursuant to Section 1 – from the start of the fiscal year of the Controlled Company during which this agreement is entered into the commercial register thereof.*
2. *This agreement is concluded for an indefinite period. It may be terminated with a notice period of six months prior to the end of the Controlled Company's fiscal year starting from the end of the fifth year following its entry into force according to the above item no. 1 or, if the fiscal year does not end on this day, at the end of the fiscal year extending from that day.*
3. *The right of termination without notice for good cause shall remain unaffected. This agreement may specifically be terminated without notice if the Controlling Company no longer holds a majority of voting rights in the Controlled Company.*

4. *The legal possibility of revoking this agreement by mutual agreement in lieu of termination shall remain unaffected.*

§ 5 Amendments to this agreement

1. *In the event of any change in law which is relevant to this agreement, or in the interpretation of such law by the courts, the right is reserved to adapt this agreement accordingly.*
2. *Any amendments or additions to this agreement, including any amendment to this requirement, must be in written form.*

§ 6 Concluding provisions

1. *In carrying out this agreement, the provisions of sections 14 and 17 of the German Corporate Tax Act (Körperschaftsteuergesetz), in the version currently in force as may be amended from time to time, shall be considered.*
2. *Should any individual provision of this agreement be or become wholly or partially invalid or inapplicable, or should there be an omission in this agreement, the validity of the remaining provisions shall be unaffected thereby. Instead of the invalid or inapplicable provisions, a valid and applicable provision shall be agreed which corresponds to the sense and purpose of the invalid or inapplicable provision. In the event of an omission, a provision shall be agreed which corresponds to what would have been agreed in terms of the spirit and purpose of this agreement if the matter had been considered."*