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# MARLEY SPOON

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## Annual General Meeting of Marley Spoon AG to be held on Wednesday 29 July 2020 at 12:00pm (CEST) / 8:00pm (AEST)

Dear CDI-holder,

You are invited to attend the annual general meeting of Marley Spoon AG (**Company**) (ASX:MMM) to be held on Wednesday 29 July 2020 at 12:00pm (CEST) / 8:00pm (AEST).

The meeting will be held at the Company's business premises, Paul-Lincke Ufer 39-40, 10999 Berlin, Germany. CDI-holders may apply for the meeting to be webcast live over the internet. In such case, you will be sent a link and confidential access data with which you will be able to access the online transmission of the annual general meeting. Detailed instructions hereon are provided in Sec. III. and IV. of the notice of meeting.

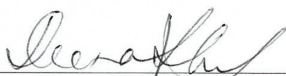
In accordance with section 5(1)(f) of the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 made by the Commonwealth Treasurer on 5 May 2020, the notice of meeting is being made available to CDI-holders electronically. This means that:

- You are able to access the notice of meeting online at the Company's website, <https://ir.marleyspoon.com/investor-centre/?page=general-meetings>.
- A complete copy of the notice of meeting has also been posted on the Company's ASX market announcements page (<https://ir.marleyspoon.com/investor-centre/?page=asx-announcements>).
- If you have nominated an email address and have elected to receive communications from the Company, you will also receive an email to your nominated email address with a link to an electronic copy of the notice of meeting and the proxy form.

In order to be able to receive electronic communications from the Company in the future, please update your CDI-holder details online at <https://investorcentre.linkmarketservices.com.au/> and log in with your unique identification number and postcode (or country for overseas residents), that you can find on your enclosed personalized proxy form. Once logged in you can also lodge your proxy vote online by clicking on the "Vote" tab.

As a valued CDI-holder in the Company, we look forward to your participation in the meeting. If you prefer not to lodge your vote online, please return the attached proxy form in the return envelope provided.

Yours sincerely,



Deena Shiff  
Chairman

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Marley Spoon AG  
Paul-Lincke Ufer 39/40  
10999 Berlin

Vorstand: Fabian Siegel (Vors., CEO), Julian Lange  
(CFO)  
Aufsichtsrat: Deena Shiff (Vors.)  
Amtsgericht Berlin Charlottenburg HRB 195994 B  
St.-Nr.: 37/087/45401 Ust.-ID: DE294825877

Berliner Volksbank  
IBAN:  
DE15100900002510698005 BIC:  
BEVODEBB

# MARLEY SPOON

**Invitation and Agenda for the**

**2020 Annual General Meeting of**

**Marley Spoon AG,**

with its registered seat in Berlin, Germany, registered with the commercial register of the Local Court of Charlottenburg under HRB 195994 B (the “**Company**”),

**on July 29, 2020**

We hereby invite the shareholders of our Company to the

**2020 Annual General Meeting**

on July 29, 2020, at 12:00 p.m. (noon) (CEST) / 8:00 p.m. (AEST),

in the Company's business premises at

Paul-Lincke-Ufer 39-40

10999 Berlin

Deutschland/Germany

**I.**

**Agenda**

- 1. Presentation of the approved individual financial statements of Marley Spoon AG as of December 31, 2019 and of the consolidated financial statements as of December 31, 2019 as adopted by the Supervisory Board, the combined management report of Marley Spoon AG and the Marley Spoon group, including the Supervisory Board Report for the financial year 2019**

The Supervisory Board has adopted the individual financial statements and the consolidated financial statements of Marley Spoon AG for the financial year 2019, prepared by the Management Board. The individual financial statements of Marley Spoon AG are thus approved. It is therefore not intended, nor is it necessary, for the Annual General Meeting to pass a resolution on this agenda item 1. Instead, these documents shall merely be made accessible to the Annual General Meeting and shall be explained by the Management Board or, in the case of the Supervisory Board Report, by the Supervisory Board. As part of their right to information, shareholders shall have the opportunity to ask questions regarding the submitted documents.

The aforementioned documents can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39-40, 10999 Berlin, Germany, and are available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. They will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge. In addition, they will be available at the Annual General Meeting and will also be explained there in more detail.

## **2. Resolution on the discharge of the members of the Management Board for the financial year 2019**

The Management Board and the Supervisory Board propose that the officiating members of the Management Board in the financial year 2019 be discharged for that financial year.

## **3. Resolution on the discharge of the members of the Supervisory Board for the financial year 2019**

The Management Board and the Supervisory Board propose that the officiating members of the Supervisory Board in the financial year 2019 be discharged for that financial year.

## **4. Resolution on the appointment of the auditor for the individual financial statements and the consolidated financial statements for the financial year 2020, as well as for any review of interim financial statements and interim management reports during the financial year 2020**

The Supervisory Board proposes to appoint Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, registered seat: Stuttgart, office: Hamburg, Germany,

- a) as the auditor for the individual financial statements and the consolidated financial statements for the financial year 2020, and
- b) as the auditor for any review of interim financial statements and interim management reports during the financial year 2020.

## **5. Resolution on the authorisation to grant subscription rights to members of the Management Board (*Vorstand*) of the Company, to members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad (“Share Option Program 2020”) and to create a Conditional Capital 2020/II, as well as the corresponding amendment of the Constitution**

The Management Board and the Supervisory Board propose that the general meeting resolves as follows:

### **a) Authorisation to grant share options with subscription rights for shares of the Company**

The Share Option Program 2020 shall comprise a total of up to 6,332 Share Options (as defined below):

The Management Board is authorised, with the consent of the Supervisory Board, to grant, on one or more occasions until and including July 28, 2025 (“**Authorisation Period**”) 4,432 subscription rights (“**Share Options**”) for up to 4,432 no-par-value registered shares of the Company (akin to fully paid ordinary shares) to members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad (“**Participants**”).

The Supervisory Board is authorised to grant, on one or more occasions until and including July 28, 2025 (equally “**Authorisation Period**”) 1,900 subscription rights (equally “**Share Options**”) for up to

1,900 no-par-value registered shares of the Company to members of the Management Board of the Company (equally “**Participants**”).

One Share Option grants one subscription right for one share of the Company. The shareholders of the Company are not entitled to subscription rights. If Share Options forfeit during the Authorisation Period due to the termination of the service or the employment relationship with the Company or an affiliated company or for other reasons, a corresponding number of Share Options may be re-issued to Participants. The Company may elect to fulfil exercised subscription rights by either using the Conditional Capital 2020/II, which is proposed for resolution under the following para. b), by using treasury shares, by granting an equivalent number of CDIs (*CHESS Depository Interests*, with one CDI being a unit of beneficial ownership in shares that is held in trust for the respective CDI holder by a depository nominee) over shares of the Company in the form of CUFS (*CHESS Units of Foreign Securities*, “**CDIs**”) or a combination thereof. The Company has also the right to effect a cash settlement. The granting of Share Options and the issue of subscription shares is subject to the following provisions:

(i) Participants and allocation

The circle of Participants includes the members of the Management Board of the Company (“**Group 1**”), members of the senior leadership team or senior managers of the Company (including members of managing corporate bodies of affiliated companies in Germany and abroad; “**Group 2**”) and selected executives and employees of the Company in Germany and abroad and selected executives and employees of affiliated companies in Germany and abroad (“**Group 3**”).

The total volume of subscription rights (up to 6,332) shall be allocated among the three groups of Participants as follows:

- The Participants of Group 1 together receive up to a maximum of 1,900 Share Options and the subscription rights resulting therefrom;
- the Participants of Group 2 together receive up to a maximum of 1,900 Share Options and the subscription rights resulting therefrom;
- the Participants of Group 3 together receive up to a maximum of 2,532 Share Options and the subscription rights resulting therefrom.

Where a Participant belongs to several groups, they will receive Share Options exclusively due to their membership to one group. The group membership is determined by the Management Board of the Company, and to the extent members of the Management Board are concerned, by the Supervisory Board of the Company. The Participants within each group and the numbers of Share Options to be granted may vary during the term of the Share Option Program 2020 and are determined by the Management Board, and to the extent members of the Management Board are concerned, by the Supervisory Board.

(ii) Grant Periods (acquisition periods)

Share Options can be granted in tranches within the Authorisation Period for a single or repeated initiation of a program on one or several occasions during each year, whereby the options are to be granted in accordance with legal requirements in each case within four weeks, always beginning on the third working day after the publication of the results of the half year or the fiscal year or, where the Company publishes results on a quarterly basis, within such time period after each respective publication (referred to as the “**Grant Period**”). If Share Options are granted to members of the Management Board of the Company, the relevant provisions are determined by the Supervisory Board of the Company, and to the

extent that Participants of Group 2 or Group 3 are concerned, by the Management Board of the Company (collectively referred to as the “**Terms and Conditions**”).

The grant date shall be the date on which the Participant is awarded the offer concerning the granting of Share Options, irrespective of the point in time the offer is accepted (the “**Grant Date**”).

(iii) **Waiting Period**

Share Options are only to be exercised after the end of the waiting period. The waiting period of one tranche of Share Options begins on the specified grant date and ends no earlier than at the end of the grant date’s fourth anniversary (the “**Waiting Period**”).

(iv) **Performance Targets**

Share Options can only be exercised, if and to the extent one or several of the “**Performance Targets**” as defined below are achieved.

The Supervisory Board for members of the Management Board and the Management Board upon approval of the Supervisory Board for Group 2 and 3 Participants shall decide at its best discretion on the weighting of the Performance Targets for each individual tranche of Share Options. No single Performance Target may have a weighting of more than 70% within each individual tranche of the Share Options. When opting for the weighting of the Performance Targets and the target parameters, the Supervisory Board and the Management Board are to be guided by a sustainable development of the Company, based on its approved Company planning.

(a) Performance Target EBITDA

The Performance Target “EBITDA” is achieved if the EBITDA for the two (2) year “**Performance Period**” stipulated for the Share Options at least meets the “**Target-EBITDA**” for the Performance Period. The Performance Period and the Target-EBITDA are defined by the Supervisory Board for members of the Management Board and by the Management Board upon approval of the Supervisory Board for Group 2 and Group 3 Participants. The calculation of EBITDA corresponds to the calculation of EBITDA for the audited accounts of the Company.

(b) Performance Target Contribution Margin (“CM”)

The Performance Target “CM” is achieved if the CM for the Performance Period stipulated for the Share Options at least meets the “**Target-CM**” for the Performance Period. The Performance Period and the Target-CM are defined by the Supervisory Board for members of the Management Board and by the Management Board upon approval of the Supervisory Board for Group 2 and Group 3 Participants. The calculation of the CM corresponds to the calculation of the CM for the audited accounts of the Company.

(c) Weighting of the Performance Targets

The amount of exercisable subscription rights per tranche is calculated as follows: The amount of all subscription rights of the respective tranche is multiplied by the determined weighting percentage for each achieved Performance Target. Subsequently, the numbers of exercisable subscription rights for each achieved Performance Target are added up.

The following examples illustrate under which circumstances – assuming that all other exercise conditions are fulfilled – Participants may exercise all, some or no subscription rights:

**Example 1:** EBITDA weighted at 70%, CM weighted at 30%; 100 Share Options granted. Performance Target EBITDA and CM achieved = 70% out of 100 + 30% out of 100 = 100 subscription rights exercisable.

**Example 2:** EBITDA weighted at 70%, CM weighted at 30%; 100 Share Options granted. Only Performance Target EBITDA achieved = 70% out of 100 = 70 subscription rights exercisable.

If no integral amount of exercisable subscription rights results, the amount of the exercisable subscription rights is determined by rounding according to commercial principles. A subscription to fractional shares is excluded; a potential settlement of fractional amounts does not occur.

(v) Exercisability of Share Options

Share Options can only be exercised if the Waiting Period has expired and at least one Performance Target has been achieved. Share Options are issued in the form of shares of the Company, whereby each Share Option entitles the Participant to subscribe to one share.

(vi) Exercise Periods and expiration

Share Options can be exercised by the Participants within two years following the date of the expiry of the Waiting Period. Share Options can be exercised during this period within four weeks, always beginning on the third working day after the publication of the results of the half year or the fiscal year (“**Exercise Period**”). The Exercise Period can be appropriately extended by the Management Board of the Company or, to the extent members of the Management Board are concerned, by the Supervisory Board, to the extent that legal provisions prohibit the exercise at the expiration of the original Exercise Period. The Share Options expire after the end of the respective (if applicable, extended) Exercise Period. Share Options that are not exercised until the expiration of the respective Exercise Period forfeit without compensation.

(vii) Exercise Price

In the case of an exercise of Share Options, the Exercise Price has to be paid for each share subscribed. The “**Exercise Price**” per share equals the volume-weighted 1 months’ average price of the Company’s CDIs on ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price and as determined by the Management Board), multiplied by the applicable ratio of CDIs to shares in the Company (in accordance with the actual ratio where 1,000 CDIs represent 1 share: multiplied by 1,000), before the Grant Date. The minimum issue price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 German Stock Corporation Act (*Aktiengesetz*, “**AktG**”) of currently EUR 1.00.

(viii) Substitution rights of the Company

The Company can meet the obligations of the Share Options exercised by issuing new no-par-value registered shares by utilizing the Conditional Capital 2020/II which is proposed for resolution under para. b) below. The Company is also entitled to meet the obligations in whole or in part by delivering treasury shares or the equivalent amount of CDIs instead of new shares. Moreover, instead of delivering new or treasury shares or CDIs, the Company is entitled to pay in whole or in part an amount in cash which equals the value of the shares that arise out of the exercise of the Share Options less the Exercise Price. The Participants shall commit themselves vis-à-vis the Company to transfer the respective subscription shares to be issued to them from the Conditional Capital 2020/II, which is yet to be resolved, immediately after their issuance to CHES Depository Nominees Pty Ltd, ACN 071 346 506, with busi-

ness address: 20 Bridge Street, Sydney NSW 2000, Australia (“CDN”), with CDN to hold the subscription shares pursuant to the ASX Settlement Operating Rules in trust and such number of CDIs to be allocated to the respective Participant, instead of subscription shares, as corresponds to the beneficial ownership of the subscription shares, for as long as CDIs are quoted by the ASX.

The decision which alternative shall be chosen is made by the Management Board of the Company (upon approval of the Supervisory Board) or, to the extent members of the Management Board are concerned, by the Supervisory Board of the Company.

(ix) Restrictions in the event of extraordinary developments

In the event of extraordinary developments, the Supervisory Board of the Company is authorised at its discretion to restrict the exercise of Share Options granted to members of the Management Board of the Company. A restriction may be necessary specifically to ensure the appropriateness of remuneration as defined under Section 87 para. 1 s. 1 AktG.

In the event of extraordinary developments, the Management Board of the Company (upon approval of the Supervisory Board) is authorised at its discretion to restrict the exercise of Share Options granted to Participants of Group 2 and Group 3. A restriction may be necessary specifically to ensure that the total remuneration of the individual Participant is proportionate to the tasks and performance of the respective Participant and does not exceed the usual remuneration without special reason.

(x) Individual right

The Share Options are not legally transferable but are inheritable. A transfer is also allowed for the fulfilment of legacies. Share Options may only be exercised by the respective Participant or his/her heirs or legatees. If Share Options can no longer be exercised in accordance with the above provisions, they will be forfeited without replacement or compensation. The provision authorizing the re-issue of forfeited Share Options to Participants remains unaffected.

(xi) Anti-dilution protection

The Terms and Conditions may contain customary anti-dilution protection clauses based upon which the economic value of the Share Options in accordance with the regulations in Section 216 para. 3 AktG can be essentially protected, particularly by taking into account potential share splits, capital increases from company funds by issuing new shares, or other measures with similar effects when determining the number of shares to be issued for each Share Option.

(xii) Dividend rights

The new no-par-value registered shares are entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted.

(xiii) Authorisation to determine further details

The further details with respect to the granting and fulfilment of obligations resulting from Share Options for the issuance of shares from the Conditional Capital 2020/II and the further Terms and Conditions are determined by the Supervisory Board of the Company to the extent members of the Management Board are concerned, or by the Management Board of the Company to the extent Participants of Group 2 and Group 3 are concerned.



In particular, the further provisions shall include the decision to initiate annual tranches on one or repeated occasions to make use of the authorisation to grant Share Options as well as provisions on the execution of the Share Option Program 2020 and the annual tranches and the method of granting and exercising Share Options, the granting of Share Options to individual Participants, the determination of the grant date within the respective Grant Period as well as provisions on the exercisability in special cases, particularly in case the service or employment relationship with the Participants ends in the event of death, withdrawal of an affiliated company, business or operating segment from the Marley Spoon Group, or in case of a change of control, the conclusion of an affiliation agreement or delisting, or to meet legal requirements and relating to vesting.

The Company is also authorised to deviate from the provisions of this resolution in case of its application to members of managing corporate bodies, executives and employees of affiliated companies abroad as far as it is, with regard to the content of this resolution, not mandatory pursuant to German stock corporation law that the general meeting adopt the resolution or to the extent this resolution exceeds the minimum requirements of German stock corporation law.

#### **b) Conditional Capital 2020/II**

The share capital of the Company is conditionally increased by up to EUR 6,332.00 (in words: six thousand three hundred thirty-two Euros) by issuing up to 6,332.00 new no-par-value registered shares of the Company (Conditional Capital 2020/II). The Conditional Capital 2020/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad based on the authorisation under para. a) above. The shares will be issued from the Conditional Capital 2020/II at the exercise price determined in accordance with para. a) (vii) of the above authorisation. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board of the Company, is authorised to determine the further details of the conditional capital increase and its consummation.

#### **c) Amendment of the Constitution**

Section 3 of the Constitution is supplemented by a new paragraph 12. The new Section 3 para. 12 of the Constitution shall be worded as follows:

*“(12) In accordance with the authorisation of the general meeting of July 29, 2020 under agenda item 5, para. a), the share capital of the Company is conditionally increased by up to EUR 6,332.00 (in words: six thousand three hundred thirty-two Euros) by issuing up to 6,332 new no-par-value registered shares of the Company (Conditional Capital 2020/II). The Conditional Capital 2020/II solely serves the granting of subscription rights for shares (Share Options) that are granted by the Company based on the authorisation of the general meeting of July 29, 2020 under agenda item 5, para. a), under the Share Option Program 2020 from the date of the registration of the Conditional Capital 2020/II until July 28, 2025 to members of the Management Board of the Company, members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated*

*companies in Germany and abroad. The shares will be issued from the Conditional Capital 2020/II at the exercise price determined in accordance with para. a) (vii) of the aforementioned authorisation. The conditional capital increase will only be consummated to the extent that subscription rights are exercised and the Company refrains from using treasury shares or CDIs, as well as from paying a cash compensation to meet its subscription right obligations. The new shares will be entitled to dividends from the beginning of the fiscal year in which the subscription right is exercised and for which a resolution of the general meeting on the appropriation of the balance sheet profit has not yet been adopted. The Management Board of the Company or, to the extent members of the Management Board are concerned, the Supervisory Board, of the Company is authorised to determine the further details of the conditional capital increase and its consummation.”*

**6. Resolution on the granting of an authorisation to issue a convertible bond in the nominal amount of USD 2,387,750.00 to USV MARLEY SPOON A, LLC and a convertible bond in the nominal amount of USD 112,250.00 to USV MARLEY SPOON B, LLC, each against contribution in kind and under the exclusion of subscription rights, and the creation of a new Conditional Capital 2020/III and a corresponding amendment of Section 3 of the Constitution (insertion of a new Section 3 para. 13 of the Constitution)**

On January 27, 2020, USV MARLEY SPOON A, LLC, a Limited Liability Company (LLC) established under the laws of Delaware with its registered office at: 251 Little Falls Drive, Wilmington, DE 19808, USA (hereinafter also referred to as “**USV MS A**”), USV MARLEY SPOON B, LLC, a Limited Liability Company (LLC) established under the laws of Delaware with its registered office at: 251 Little Falls Drive, Wilmington, DE 19808, USA, (hereinafter also referred to as “**USV MS B**”), and the Company entered into a loan agreement (as amended by amendment agreement dated May 28, 2020 and as further amended from time to time the “**USV MS Loan Agreement**”), in which USV MS A and USV MS B committed themselves to grant a loan to the Company in the amount of USD 2,500,000.00, to be funded in the amount of USD 2,387,750.00 by USV MS A (“**USV MS A Loan Tranche**”) and to be funded in the amount of USD 112,250.00 by USV MS B (“**USV MS B Loan Tranche**”). The USV MS Loan Agreement contains a unilateral substitution right (“**USV MS Substitution Right**”) of the Company to replace the USV MS A Loan Tranche by the issuance of a registered convertible bond to USV MS A in the nominal amount of USD 2,387,750.00 (“**USV MS A Convertible Bond**”) and the USV MS B Loan Tranche by the issuance of a registered convertible bond to USV MS B in the nominal amount of USD 112,250.00 (“**USV MS B Convertible Bond**” and together with the USV MS A Convertible Bond, the “**USV MS Convertible Bonds**” and each a “**USV MS Convertible Bond**”). In order for the Company to be able to exercise the USV MS Substitution Right and replace the USV MS A Loan Tranche and the USV MS B Loan Tranche by the USV MS Convertible Bonds, the Company seeks to be granted an authorisation to issue the USV MS A Convertible Bond to USV MS A and the USV MS B Convertible Bond to USV MS B.

Further, a new conditional capital (“**Conditional Capital 2020/III**”) shall be implemented in order to enable the Company to issue shares of the Company to USV MS A and USV MS B upon exercise of the respective conversion right under the USV MS Convertible Bonds.

Further, to the extent the Conditional Capital 2020/III does not suffice – the Company proposes, under agenda item 7 below, a new Authorised Capital 2020/III (as defined below) which will include an authorisation of the Management Board to issue, with the consent of the Supervisory Board, additional

new shares to USV MS A and USV MS B under the exclusion of subscription rights of the existing shareholders upon exercise of their respective conversion right under the USV MS Convertible Bonds.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

**a) Authorisation to issue the USV MS A Convertible Bond to USV MS A and to issue the USV MS B Convertible Bond to USV MS B, in each case against contribution in kind and under the exclusion of subscription rights**

(i) Nominal amount, authorisation period, maximum number of shares

The Management Board shall be authorised until October 29, 2020 (inclusive), with the consent of the Supervisory Board, to issue the two USV MS Convertible Bonds in the aggregate nominal amount of USD 2,500,000.00, each with a term of up to three years as of the respective day the USV MS Convertible Bond is issued and to grant the beneficiaries of the USV MS Convertible Bonds a conversion right for in aggregate up to a maximum of 7,470 no-par-value registered shares of the Company (including a buffer to account for exchange rate fluctuations) with an aggregate fractional amount of the nominal share capital of the Company of up to EUR 7,470.00 (for the USV MS Convertible Bonds collectively) as set out in the terms and conditions of each of the USV MS Convertible Bonds (hereinafter referred to as, as the case may be, the “**USV MS A Terms and Conditions**“ or the “**USV MS B Terms and Conditions**“ and both together, the “**USV MS Terms and Conditions**“). The issuance of the two USV MS Convertible Bonds shall only be made upon exercise by the Company of its USV MS Substitution Right pursuant to the USV MS Loan Agreement, for the purpose of a replacement of the USV MS A Loan Tranche in the amount of USD 2,387,750.00 and the USV MS B Loan Tranche in the amount of USD 112,250.00, i.e. against contribution in kind.

(ii) Exclusion of subscription rights

The shareholders’ subscription right with respect to each of the USV MS Convertible Bonds is excluded. Solely the following beneficiaries shall be permitted to subscribe the USV MS Convertible Bonds:

- (a) Upon exercise of the USV MS Substitution Right by the Company with respect to the USV MS A Loan Tranche, USV MS A shall be permitted to subscribe for the USV MS A Convertible Bond in the nominal amount of USD 2,387,750.00 with a conversion right for up to a maximum of 7,100 no-par-value registered shares of the Company (the “**USV MS A Conversion Shares**”) with a fractional amount of the nominal share capital of the Company of up to EUR 7,100.00 as set out in the USV MS A Terms and Conditions.
- (b) Upon exercise of the USV MS Substitution Right by the Company with respect to the USV MS B Loan Tranche, USV MS B shall be permitted to subscribe for the USV MS B Convertible Bond in the nominal amount of USD 112,250.00 with a conversion right for up to a maximum of 370 no-par-value registered shares of the Company (the “**USV MS B Conversion Shares**” and together with the USV MS A Conversion Shares, the “**USV MS Conversion Shares**” and each a “**USV MS Conversion Share**”) with a fractional amount of the nominal share capital of the Company of up to EUR 370.00 as set out in the USV MS B Terms and Conditions.

(iii) Conversion right, calculation of conversion ratio

Each of USV MS A and USV MS B has the right to convert its respective USV MS Convertible Bond into no-par-value registered shares of the Company, in whole but not in part, during the conversion period and in accordance with the respective USV MS Terms and Conditions (hereinafter referred to as,

as the case may be, the “**USV MS A Conversion Right**” or the “**USV MS B Conversion Right**” and together, the “**USV MS Conversion Rights**” and each a “**USV MS Conversion Right**”).

The conversion ratio is calculated by dividing the nominal amount of the respective USV MS Convertible Bond by the USV MS Conversion Price (as defined below) determined for one (1) USV MS Conversion Share, with the conversion being based on the Euro (EUR) foreign exchange reference rate, as published on the official website of the European Central Bank (ECB), between US-dollars (i.e. USD converted into Euros) and Australian dollars (i.e. AUD converted into Euros) on the day prior to the resolution of the Management Board on the issuance of the respective USV MS Convertible Bond.

The USV MS A Terms and Conditions shall determine for the USV MS A Convertible Bond the final number of USV MS A Conversion Shares to be subscribed for upon exercise of the USV MS A Conversion Right based on the afore described conversion ratio. The USV MS B Terms and Conditions shall determine for the USV MS B Convertible Bond the fixed number of USV MS B Conversion Shares to be subscribed for upon exercise of the USV MS B Conversion Right based on the afore described conversion ratio.

The Company will not compensate the respective holder for any fractions of USV MS Conversion Shares that may occur upon conversion. The fractional amount of the nominal share capital represented by the USV MS Conversion Shares to be issued upon conversion of the USV MS Convertible Bonds shall not exceed the nominal value of the USV MS Convertible Bonds. Section 9 para. 1 in conjunction with Section 199 para. 2 AktG shall be complied with.

(iv) USV MS Conversion Price

The conversion price for one (1) USV MS Conversion Share (“**USV MS Conversion Price**”) is the higher of:

(x) AUD 500.00, which corresponds to a price of AUD 0.50 per CDI of the Company quoted on ASX, since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and

(y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the 30 trading days immediately preceding the resolution of the Management Board to issue, with the consent of the Supervisory Board, the respective USV MS Convertible Bond (“**Averaging Period**”), multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company.

Please see below agenda item 10 for examples illustrating the calculation of the USV MS Conversion Price and the number of USV MS Conversion Shares.

(v) Interest

During their respective term and until exercise of the respective USV MS Conversion Right, the USV MS Convertible Bonds shall bear interest on their respective nominal amount in the aggregate amount of the 12-months USD-LIBOR plus a margin of 5.00 per cent. per annum (“**Interest**”). All accrued interest shall only become due and payable on the maturity date unless the respective USV MS Convertible Bond is converted into shares before such date or in the case of an early redemption event

occurring and termination by the respective holder. If the USV MS Conversion Right is exercised, all claims of, as the case may be, USV MS A or USV MS B to receive an Interest payment are forfeited.

(vi) Authorisation to determine the further USV MS Terms and Conditions

The USV MS Terms and Conditions may stipulate that in the case of a conversion, the Company may also deliver treasury shares of the Company, shares from any other conditional capital or authorised capital or other considerations.

USV MS A and USV MS B have to commit themselves vis-à-vis the Company to transfer the respective USV MS Conversion Shares to be issued to them, immediately after their issuance to CDN, with CDN to hold the USV MS Conversion Shares in trust pursuant to the ASX Settlement Operating Rules and in turn such number of CDIs will be allocated to USV MS A and/or USV MS B, instead of USV MS Conversion Shares, as corresponds to the beneficial ownership of the USV MS Conversion Shares, for as long as CDIs are quoted on ASX.

Subject to the ASX Listing Rules, the Management Board shall be authorised to determine the further details concerning the issue and structure of the USV MS Convertible Bonds in the USV MS Terms and Conditions, specifically the term and conversion period.

The USV MS Terms and Conditions shall include provisions pursuant to which the USV MS Conversion Price may be amended during the term as a result of anti-dilution protection. The USV MS Terms and Conditions shall equally provide that where a capital measure or comparable measure is implemented at the Company, and to the extent permitted by the ASX Listing Rules and mandatory German law, the Management Board (together with the Supervisory Board) may seek shareholders' approval or take other measures that would permit the issue of subscription rights or shares (or CDIs) to USV MS A and/or USV MS B in such a way that USV MS A or USV MS B would maintain *pari passu* a stake in the Company that each of them would have, had they already exercised their respective USV MS Conversion Right at the respective point in time.

Further, the USV MS Terms and Conditions will provide for the USV MS Convertible Bonds to constitute subordinated claims of USV MS A and USV MS B against the Company ranking after all unsubordinated creditors of the Company. The Company will also not be required to make any payment to USV MS A and USV MS B under the USV MS Convertible Bonds if and to the extent such payment would give cause for the commencement of insolvency proceedings over the assets of the Company.

The Management Board (with the consent of the Supervisory Board) will only issue the USV MS Convertible Bonds referred to in this agenda item 6 if resolutions under agenda items 7 and 10 are passed by the required majorities.

**b) Conditional Capital 2020/III**

(i) Creation of a Conditional Capital 2020/III

The share capital of the Company shall be conditionally increased by up to EUR 1,594.00 (in words: one thousand five hundred ninety-four Euros) by the issue of up to 1,594.00 new no-par-value registered shares of the Company (Conditional Capital 2020/III). The purpose of the Conditional Capital 2020/III is solely to permit the issue of shares upon the exercise of the conversion right under the USV MS Convertible Bonds granted to USV MS A and USV MS B on the basis of the authorisation under agenda item 6. para. a) above.

Pursuant to the aforementioned authorisation under agenda item 6. para. a), the issuance of the subscription shares shall be made at a conversion price equal to the higher of

(x) AUD 500.00, which corresponds to a price of AUD 0.50 per CDI on ASX, since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and

(y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company.

For the number of subscription shares resulting therefrom, the conversion ratio as determined by the authorisation under agenda item 6. para. a) no. (iii) above shall be decisive. The conditional capital increase will only be implemented, and subscription shares will only be issued, to the extent that USV MS A and/or USV MS B exercises its respective USV MS Conversion Right and to the extent the respective USV MS Conversion Right is not serviced by treasury shares, or shares from any other conditional capital or authorised capital or other considerations.

The subscription shares participate in profits from the beginning of the fiscal year in which they are created and for all subsequent fiscal years. In deviation hereof, the Management Board can, if legally permissible and with the approval of the Supervisory Board, determine that the subscription shares participate in profits from the beginning of such fiscal year for which at the time of the exercise of the respective USV MS Conversion Right still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed, including the financial year preceding the issuance.

The Management Board shall be authorised to determine the further details of the execution of the conditional capital increase. The Supervisory Board shall be authorised to amend the Constitution of the Company in accordance with the respective utilisation of the Conditional Capital 2020/III as well as after expiration of the conversion period.

(ii) Amendment of the Constitution

Section 3 of the Constitution is supplemented by a new paragraph 13. The new Section 3 para. 13 of the Constitution shall be worded as follows:

*“(13) The share capital of the Company is conditionally increased by up to EUR 1,594.00 (in words: one thousand five hundred ninety-four Euros) by the issue of up to 1,594 new no-par-value registered shares of the Company (Conditional Capital 2020/III). The Conditional Capital 2020/III is solely to permit the issue of shares upon the exercise of the conversion right under the convertible bonds (“**USV MS Convertible Bonds**”) granted to USV MARLEY SPOON A, LLC (“**USV MS A**”) and USV MARLEY SPOON B, LLC (“**USV MS B**”) on the basis of the authorisation of the general meeting of the Company of July 29, 2020 under agenda item 6, para. a).*

*Pursuant to the authorisation of the general meeting of the Company of July 29, 2020 under agenda item 6, para. a), the issuance of the subscription shares shall be made at a conversion price per subscription share equal to the higher of (x) AUD 500.00, which corresponds to a price of AUD 0.50 per CHESS Depository Interest (“CDI”) of the Company quoted on the Australian Securities Exchange (ASX), since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and (y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the*

*Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company. For the number of subscription shares resulting therefrom, the conversion ratio as determined by the aforementioned authorisation under agenda item 6, para. a), no. (iii) shall be decisive. The conditional capital increase will only be implemented, and subscription shares will only be issued, to the extent that USV MS A and/or USV MS B exercises its conversion right and to the extent the conversion right is not serviced by treasury shares, or shares from any other conditional capital or authorised capital or other considerations.*

*The subscription shares participate in profits from the beginning of the fiscal year in which they are created and for all subsequent fiscal years. In deviation hereof, the Management Board can, if legally permissible and with the approval of the Supervisory Board, determine that the subscription shares participate in profits from the beginning of such fiscal year for which at the time of the exercise of the conversion right still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed, including the financial year preceding the issuance.*

*The Management Board is authorised to determine the further details of the execution of the conditional capital increase. The Supervisory Board is authorised to amend the Constitution of the Company in accordance with the respective utilisation of the Conditional Capital 2020/III as well as after expiration of the conversion period.”*

**7. Resolution on the cancellation of the existing Authorised Capital 2020/I and the creation of an Authorised Capital 2020/III, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Sec. 3 para. 3 of the Constitution**

The Authorised Capital 2020/I in the aggregate amount of EUR 52,108.00, which currently exists at the Company, shall be cancelled and a new Authorised Capital 2020/III in the aggregate amount of EUR 75,886.00 shall be implemented in order to, in addition to maintaining the previous authorisations which are still required under the Authorised Capital 2020/I, create new authorisations that will permit the Company to issue additional shares to USV MS A and USV MS B, if the Company issues the USV MS Convertible Bonds, which may be required to fulfil subscription rights by USV MS A and/or USV MS B under the USV MS Convertible Bonds, to the extent the Conditional Capital 2020/III is not sufficient. Further, the Authorised Capital 2020/III shall enable the Company to quickly and flexibly cover its financial requirements in the framework of its business purpose, and to swiftly seize arising market opportunities and strategic options.

Under the Authorised Capital 2020/III, the Management Board shall be authorised, amongst others, to exclude in specific cases, with the consent of the Supervisory Board, the subscription rights of the existing shareholders, also including the cases hitherto provided for by the Authorised Capital 2020/I. In addition, for certain authorisations the subscription rights of the shareholders will be excluded as hitherto provided for by the Authorised Capital 2020/I. Further, new authorisations shall be implemented pursuant to which the Management Board, with the consent of the Supervisory Board, will be authorised to issue shares to USV MS A and USV MS B upon exercise of the respective USV MS Conversion Right under the USV MS Convertible Bonds to the extent the Conditional Capital 2020/III to be created pursuant to agenda item 6 para. b) is not sufficient to back the respective USV MS Conversion Shares; in this case, the subscription right of the shareholders will be excluded.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

#### **a) Cancellation of the Authorised Capital 2020/I**

The authorisation of the Management Board contained in Sec. 3 para. 3 of the Constitution is cancelled, taking effect with the point in time of the registration of the Authorised Capital 2020/III, as proposed in the resolution hereafter under para. b) and para. c), being registered with the commercial register of the Local Court of Charlottenburg, which is competent for the Company.

#### **b) Authorised Capital 2020/III**

The Management Board is authorised until July 28, 2025, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to EUR 75,886.00 (in words: seventy five thousand eight hundred eighty-six Euros) by issuing up to 75,886 new no-par-value registered shares against contributions in cash and/or in kind (Authorised Capital 2020/III).

In principle, the shareholders are to be offered subscription rights. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 AktG with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee with the obligation to hold the shares in trust and to allocate, instead of those shares, such number of so-called CDIs, *e.g.* in the form of CUFS (*CHESS Units of Foreign Securities*), as corresponds to the new shares – with one CDI being a unit of beneficial ownership in shares of the Company – to the respective beneficial owners.

The subscription right of the shareholders is excluded for one or more capital increases in the context of the Authorised Capital 2020/III

- (i) for the purpose of serving subscription rights which have been issued to Kreos Capital V (Expert Fund) LP in the framework of the so-called “Kreos Warrant Agreement” dated March 16, 2016 and in the framework of the “2018 Kreos Warrant Agreement” dated April 12, 2018;
- (ii) in order to issue new shares to W23 Investments Pty Limited upon exercise of its Tranche 2 Conversion Right under a Tranche 2 Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 1, no. 1;
- (iii) in order to issue new shares to W23 Investments Pty Limited upon exercise of its Tranche 1 Conversion Right under a Tranche 1 Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 2, no. 1;
- (iv) in order to issue new shares to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds issued by the Company to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 1, no. 1;
- (v) in order to issue new shares to W23 Investments Pty Limited upon exercise of its WOW Conversion Right under a WOW Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 2, no. 1;



- (vi) in order to issue new shares to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds issued by the Company to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC on the basis of the authorisation of the general meeting of July 29, 2020 under agenda item 6 para. a).

Further, the Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2020/III

- (vii) in order to exclude fractional amounts from the subscription right;
- (viii) in the event of a capital increase against cash contributions, provided that the issue price of the new shares is not significantly lower than the stock exchange price of the shares of the Company already listed; however, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares sold under the exclusion of the shareholders' subscription rights, in accordance with Section 186 para. 3 s. 4 AktG, shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2020/III comes into effect or – in the case such amount is lower – at the time the Authorised Capital 2020/III is exercised. Towards the above threshold of 10% of the share capital shall also count (a) any shares that are sold during the term of the Authorised Capital 2020/III on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 s. 5, 186 para. 3 s. 4 AktG, provided that the shareholders' subscription rights are excluded, (b) any shares that are issued during the term of the Authorised Capital 2020/III to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the “**Bonds**”), provided that such Bonds are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 s. 4 AktG; and (c) any shares that are issued during the term of the Authorised Capital 2020/III on the basis of other capital measures, provided that such shares are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 s. 4 AktG;
- (ix) to the extent necessary in order to be able to grant new shares of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon their exercise of conversion or option rights or fulfilment of conversion or option obligations, and to the extent necessary in order to grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations that will be issued by the Company or its subordinated group companies a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;
- (x) for up to 12,313 new shares in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.

The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new shares with the obligation to hold the shares in trust and to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.

The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed fiscal years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed. To the extent the subscription right is excluded pursuant to para. (i) above, those new shares are each issued at an issue amount of € 1.00 without additional payment.

The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2020/III or upon expiry of the period for the utilization of the Authorised Capital 2020/III.

### **c) Amendment to the Constitution**

Sec. 3 para. 3 of the Constitution of the Company is correspondingly amended and restated in its entirety as follows:

*“(3) The Management Board is authorised until July 28, 2025, to increase the share capital of the Company on one or more occasions with the approval of the Supervisory Board by a total of up to € 75,886.00 (in words: seventy five thousand eight hundred eighty-six Euros) by issuing up to 75,886 new no-par-value registered shares against contributions in cash and/or in kind (Authorised Capital 2020/III).*

*In principle, the shareholders are to be offered subscription rights. The shares may also be subscribed by one or more banks or enterprises within the meaning of Section 186 para. 5 sentence 1 of the German Stock Corporation Act (Aktiengesetz, **AktG**) with the obligation to offer the shares to the shareholders of the Company. In addition, the shares can be subscribed by a trustee (the “Trustee”) with the obligation to hold the shares in trust and to allocate, instead of those shares, such number of so-called CHESS Depository Interests (“CDIs”), e.g. in the form of CUFSS (CHESS Units of Foreign Securities), as corresponds to the new shares – with one CDI being a unit of beneficial ownership in shares of the Company – to the respective beneficial owners.*

*The subscription right of the shareholders is excluded for one or more capital increases in the context of the Authorised Capital 2020/III*

- (i) for the purpose of serving subscription rights which have been issued to Kreos Capital V (Expert Fund) LP in the framework of the so-called “Kreos Warrant Agreement” dated March 16, 2016 and in the framework of the “2018 Kreos Warrant Agreement” dated April 12, 2018;*
- (ii) in order to issue new shares to W23 Investments Pty Limited upon exercise of its Tranche 2 Conversion Right under a Tranche 2 Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 1, no. 1;*
- (iii) in order to issue new shares to W23 Investments Pty Limited upon exercise of its Tranche 1 Conversion Right under a Tranche 1 Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 2, no. 1;*
- (iv) in order to issue new shares to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds issued by the Company to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B,*

*LLC on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 1, no. 1;*

- (v) in order to issue new shares to W23 Investments Pty Limited upon exercise of its WOW Conversion Right under a WOW Convertible Bond issued by the Company to W23 Investments Pty Limited on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 2, no. 1;*
- (vi) in order to issue new shares to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds issued by the Company to USV MARLEY SPOON A, LLC and USV MARLEY SPOON B, LLC on the basis of the authorisation of the general meeting of July 29, 2020 under agenda item 6 para. a).*

*Further, the Management Board is authorised to exclude the subscription rights of shareholders with the consent of the Supervisory Board for one or more capital increases in the context of the Authorised Capital 2020/III*

- (vii) in order to exclude fractional amounts from the subscription right;*
- (viii) in the event of a capital increase against cash contributions, provided that the issue price of the new shares is not significantly lower than the stock exchange price of the shares of the Company already listed; however, this authorisation shall be subject to the provision that the pro rata amount of the share capital attributable to the shares sold under the exclusion of the shareholders' subscription rights, in accordance with Section 186 para. 3 s. 4 AktG, shall not exceed 10% of the share capital of the Company at the time the Authorised Capital 2020/III comes into effect or – in the case such amount is lower – at the time the Authorised Capital 2020/III is exercised. Towards the above threshold of 10% of the share capital shall also count (a) any shares that are sold during the term of the Authorised Capital 2020/III on the basis of an authorisation to sell treasury shares according to Sections 71 para. 1 no. 8 s. 5, 186 para. 3 s. 4 AktG, provided that the shareholders' subscription rights are excluded, (b) any shares that are issued during the term of the Authorised Capital 2020/III to satisfy subscription or conversion or option rights or obligations arising from convertible bonds and/or warrant bonds, profit participation rights and/or income bonds (or any combination of these instruments) (together the "**Bonds**"), provided that such Bonds are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 s. 4 AktG; and (c) any shares that are issued during the term of the Authorised Capital 2020/III on the basis of other capital measures, provided that such shares are issued subject to the exclusion of the shareholders' subscription rights in analogous application of Section 186 para. 3 s. 4 AktG;*
- (ix) to the extent necessary in order to be able to grant new shares of the Company to holders or creditors of Bonds that will be issued by the Company or its subordinated group companies upon their exercise of conversion or option rights or fulfilment of conversion or option obligations, and to the extent necessary in order to grant holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations that will be issued by the Company or its subordinated group companies a subscription right to new shares in the amount to which they would be entitled to as shareholders upon exercise of the option or conversion rights or fulfilment of their conversion or option obligations;*

- (x) *for up to 12,313 new shares in the event of a capital increase against contributions in kind, in particular in the context of mergers or acquisitions (including indirect acquisitions) of companies, businesses, parts of businesses, participations or other assets or claims for the acquisition of assets, including claims against the Company or any of its group companies.*

*The subscription right of the shareholders can also be excluded, pursuant to the provisions above, in favour of the Trustee who can subscribe the new shares with the obligation to hold the shares in trust and to allocate a corresponding number of CDIs to the respective beneficial owners instead of the shares.*

*The Management Board is authorised to determine any further details of the capital increase and its implementation, subject to the consent of the Supervisory Board; this also includes the determination of the profit participation of the new shares, which may, in deviation of Section 60 para. 2 AktG also participate in the profit of completed fiscal years, for which still no resolution by the general meeting as to the appropriation of the balance sheet profit has been passed. To the extent the subscription right is excluded pursuant to para. (i) above, those new shares are each issued at an issue amount of € 1.00 without additional payment.*

*The Supervisory Board is authorised to adjust the wording of the Constitution accordingly after the utilization of the Authorised Capital 2020/III or upon expiry of the period for the utilization of the Authorised Capital 2020/III.”*

## **8. Resolution to approve the Share Option Program 2020 and issue of securities under that program**

Note: A voting exclusion statement applies to the resolution under this agenda item 8 and is set out in para. d) in full below.

This resolution seeks approval for the Share Option Program 2020 (as described above under agenda item 5) and future issues of securities under that program for the purposes of ASX Listing Rule 7.2, Exception 9. The Share Option Program 2020 has been adopted by the Company to provide ongoing incentives to Participants (as described above at agenda item 5).

The objective of the Share Option Program 2020 is to provide the Company with a remuneration mechanism, through the issue of securities in the Company, to motivate and reward the performance of employees in achieving specified performance milestones within a specified performance period.

The Management Board and, in respect of the Management Board, the Supervisory Board, will ensure that the Performance Targets will be aligned with the growth of the Company's business activities. The employees of the Company have been, and will continue to be, instrumental in the growth of the Company.

### **a) ASX Listing Rules 7.1 and 7.2, Exception 9**

ASX Listing Rule 7.1 provides, subject to exceptions, that a company must not issue or agree to issue equity securities which represent 15% of the company's issued share capital within any 12 months without obtaining shareholder approval.

ASX Listing Rule 7.2, Exception 9 provides that ASX Listing Rule 7.1 does not apply to an issue of securities under an employee incentive scheme if the scheme has been approved by shareholders and the issue is within 3 years of the date of such approval.

The effect of this resolution, if passed, will be to allow the Management Board and, in respect of the Management Board, the Supervisory Board, to grant Share Options to Participants under the Share Option Program 2020 during the period of 3 years after the annual general meeting, subject to the terms of the Share Option Program 2020, without using the Company's 15% placement capacity.

Members of the Supervisory Board are not eligible to participate in the Share Option Program 2020. If an offer is made to the Chief Executive Officer to participate in the Share Option Program 2020, then separate shareholder approval will need to be obtained.

#### **b) Terms of the Share Option Program 2020**

A summary of the terms of the Share Option Program 2020 is set out above under agenda item 5 and will be made available free of charge to any shareholder upon request.

As at the date of this invitation and notice, no Share Options have been issued under the Share Option Program 2020.

#### **c) Resolution by the shareholders**

Based on the aforementioned, namely with a view to ASX Listing Rule 7.1 and 7.2 as well as further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.2, and for all other ASX Listing Rule purposes, the Share Option Program 2020 and the issue of Share Options under that program is approved.

#### **d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by any member of the Supervisory Board, or the Chief Executive Officer, other than any member of the Supervisory Board who is ineligible to participate in any employee incentive scheme in relation to the Company, and any associates of those members of the Supervisory Board. However, this does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## **9. Resolution on the granting of share options to Fabian Siegel**

Note: A voting exclusion statement applies to the resolution under this agenda item 9 and is set out in para. e) in full below.

It is proposed that Mr. Fabian Siegel, Chief Executive Officer, be issued up to 700 options (or 700,000 CDIs) (“**Options**”) under the share option program approved by the shareholders of the Company on May 24, 2019 (“**2019 SOP**”).

The purpose of the issue of Options to Mr. Siegel is to further motivate and reward Mr. Siegel’s performance in achieving specified performance targets within a specified performance period. Furthermore, the grant of Options is intended to align Mr. Siegel’s performance with successful Company outcomes for the benefit of shareholders.

### **a) Requirement for shareholder approval**

The grant of Options to Mr. Siegel under this resolution is, for the purposes of the ASX Listing Rules, an issue of securities to a director under an employee incentive scheme and consequently shareholder approval is required under ASX Listing Rule 10.14.

The Supervisory Board considers that the issue of the Options to Mr. Siegel constitutes reasonable remuneration having regard to the circumstances of the Company, his duties and responsibilities.

It is proposed that Mr. Siegel be issued the Options for nil cash consideration. On exercise of an Option, the exercise price, as defined below, becomes payable.

Each Option will vest as one share (or 1,000 CDIs at the Supervisory Board’s discretion) subject to the satisfaction of certain performance criteria. Unless the Supervisory Board determines otherwise, in the event that the relevant vesting conditions are not met, the Options will not vest and, as a result, no new shares will be issued. There is nil consideration payable upon the vesting of an Option.

### **b) Summary of the Material Terms of the Options**

- (i) Total Number of Options: 700
- (ii) Vesting Period: Over the 41-month period commencing on the date the Options are granted (“**2019 SOP Grant Date**”), as follows:
  - A. 10% of the Options shall vest 5 months following the 2019 SOP Grant Date;
  - B. 20% of the Options shall vest 17 months following the 2019 SOP Grant Date;
  - C. 30% of the Options shall vest 29 months following the 2019 SOP Grant Date and
  - D. 40% of the Options shall vest 41 months following the 2019 SOP Grant Date.
- (iii) Waiting Period: The Options are only to be exercised after the end of the waiting period which begins on the 2019 SOP Grant Date and ends no earlier than at the end of the fourth anniversary.
- (iv) Expiry Date: 2 years after the expiry of the Waiting Period.
- (v) Performance Targets: The Options can only be exercised if and to the extent that one or more of the 2019 SOP Performance Targets are achieved.
  - A. Performance Target EBITDA: relates to 40% of the total Options.

This performance target will be achieved if the Company's EBITDA for the two-year period (Performance Period) improves by at least 7.5% (average over FY 2020 and 2021) from FY 2019. The calculation of EBITDA corresponds to the calculation of EBITDA for the audited accounts of the Company.

**B. Performance Target Contribution Margin:** relates to 60% of the total Options

This performance target will be achieved if the contribution margin (CM) for the Performance Period improves by at least 1% (average over FY 2020 and 2021) from FY 2019. The calculation of the CM corresponds to the calculation of the CM for the audited accounts for the Company.

The following examples illustrate under which circumstances – depending on the achievement of the Performance Targets and assuming that all other exercise conditions are fulfilled – Mr. Siegel can exercise all, some or no Options:

**Example 1:** If Performance Target EBITDA and Performance Target CM are both achieved, all 700 Options can be exercised.

**Example 2:** If only Performance Target EBITDA is achieved but Performance Target CM is not achieved, 280 Options can be exercised (40% out of 700 Options).

**Example 3:** If only Performance Target CM is achieved but Performance Target EBITDA is not achieved, 420 Options can be exercised (60% out of 700 Options).

**Example 4:** If neither Performance Target EBITDA nor Performance Target CM is achieved, no (0) Options can be exercised.

- (vi) Exercise Price per Option: The exercise price will be calculated based on the volume-weighted 1 months' average price of the Company's CDIs on ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price), multiplied by the share to CDI ratio (1:1,000), before the Grant Date. The minimum issue price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 AktG of currently EUR 1.00.
- (vii) Exercise Window: the Options can only be exercised within two periods during the year, each period being four weeks long and beginning on the third working day after the publication of the financial results of the half year and the full fiscal year.

Mr. Siegel may exercise his Options and receive shares on conversion of those Options if:

- (i) one or more 2019 SOP Performance Targets are satisfied;
- (ii) the Options have vested;
- (iii) the Waiting Period has expired;
- (iv) the Exercise Window has started and not yet ended;
- (v) the Supervisory Board has not enforced a black-out period;
- (vi) the Expiry Date has not passed; and
- (vii) Mr. Siegel has remained in office as a member of the Management Board or was continuously employed by the Company (or one of its subsidiary companies) up to and on the Vesting Date.

**c) Information required pursuant to ASX Listing Rule 10.15**

The following information is provided to satisfy the requirements of ASX Listing Rule 10.15 (being the information required to be disclosed for the purposes of ASX Listing Rule 10.14):

- (i) as at the date of this invitation, Mr. Siegel is the Chief Executive Officer of the Company;
- (ii) the maximum number of Options (being the nature of the financial benefit being provided) to be granted to Mr. Siegel is 700 Options;

Note: Each Option will vest and convert into one no-par-value registered share (or 1,000 CDIs) in the Company upon the relevant vesting conditions being achieved.

- (iii) Mr. Siegel's fixed remuneration for the year ended 31 December 2019 is equivalent to A\$~470,000;
- (iv) Mr. Siegel has not been issued with any other securities under the 2019 SOP;
- (v) the Options will be granted to Mr. Siegel as soon as practicable after the date of the meeting (if approved by shareholders), and in any event no later than 12 months after the date of the meeting;
- (vi) the Options will be issued to Mr. Siegel for nil consideration;
- (vii) the exercise price for the Options will be calculated as the volume-weighted 1 months' average price of the Company's CDIs on ASX (excluding trades customarily excluded from the calculations of a volume-weighted average price), multiplied by the share to CDI ratio (1:1,000), before the Grant Date.
- (viii) a summary of the terms of the 2019 SOP is set out in the notice of meeting in respect of the annual general meeting held by the Company on May 24, 2019;
- (ix) the Options will be issued to Mr. Siegel for nil consideration and as such there is no loan in relation to the Options.

Mr. Siegel is currently the sole person referred to in ASX Listing Rule 10.14 who is entitled to participation in the 2019 SOP. Details of any securities issued under the 2019 SOP will be published in Marley Spoon's annual report, along with a statement that approval for the issue was obtained under Listing Rule 10.14.

In any case, any additional persons covered by Listing Rule 10.14 who become entitled to participate in an issue of securities under the 2019 SOP after this resolution is approved and who were not named in this notice will not participate until approval is obtained under that rule.

#### **d) Resolution by the shareholders**

Based on the aforementioned, namely with a view to ASX Listing Rule 10.14 as well as further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 10.14, and for all other ASX Listing Rule purposes, the grant of Options to Mr. Siegel under the 2019 SOP is approved.



#### **e) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by any member of the Supervisory Board, or the Chief Executive Officer, other than any member of the Supervisory Board who is ineligible to participate in any employee incentive scheme in relation to the Company, and any associates of those members of the Supervisory Board. However, this does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

#### **10. Resolution pursuant to which, for the purposes of ASX Listing Rule 7.1, and for all other ASX Listing Rule purposes, the Company be approved and authorised to issue, until October 29, 2020 the USV MS A Convertible Bond to USV MS A and to issue the USV MS B Convertible Bond to USV MS B, and to issue shares in the Company, and CDIs in respect of such shares, upon the conversion of the USV MS A Convertible Bond and the USV MS B Convertible Bond**

Note: The Management Board (with the consent of the Supervisory Board) will only issue the USV MS Convertible Bonds referred to in agenda item 6 if the resolutions under agenda item 6, agenda item 7 and this agenda item 10 are passed by the required majorities.

Note: A voting exclusion statement applies to the resolution under this agenda item 10 and is set out in para. d) in full below.

Note: Defined terms in this agenda item 10 have the same meaning as those terms in agenda item 6.

#### **a) Background**

ASX Listing Rule 7.1 provides, subject to exceptions, that a company may not issue or agree to issue equity securities which represent more than 15% of the company's issued share capital within any 12-month period without obtaining shareholder approval. If the Company issued the USV MS Convertible Bonds, it would not currently have sufficient capacity under ASX Listing Rule 7.1 for the issue of shares in the Company if the USV MS Convertible Bonds were converted at this time. Accordingly, the Company will only issue the USV MS Convertible Bonds if the issuance is approved by shareholders under ASX Listing Rule 7.1 by a simple majority (50%) of votes cast. In addition, if shareholders approve the issue of the USV MS Convertible Bonds and the USV MS Convertible Bonds are issued, the shares issued on the conversion of the USV MS Convertible Bonds will not be counted towards the Company's 15% capacity set by ASX Listing Rule 7.1.

## b) Information for shareholders

ASX Listing Rule 7.3 requires certain information to be provided to shareholders for the purpose of seeking approval of an issue under Listing Rule 7.1.

(i) Persons to whom the USV MS Convertible Bonds may be issued

The USV MS A Convertible Bond may be issued to USV Marley Spoon A, LLC. The USV MS B Convertible Bond may be issued to USV Marley Spoon B, LLC.

Neither USV MS A, nor USV MS B are a related party of the Company for the purposes of the ASX Listing Rules.

(ii) The issue price of the USV MS Convertible Bonds

The Company may issue the USV MS A Convertible Bond with a principal amount of USD 2,387,750.00 and the USV MS B Convertible Bond with a principal amount of USD 112,250.00.

(iii) The number of securities which may be issued on conversion and the conversion price

USV MS A and USV MS B may each convert its respective USV MS Convertible Bond into no-par-value registered shares of the Company in accordance with the respective USV MS Terms and Conditions.

The conversion ratio is calculated by dividing the nominal amount of the respective USV MS Convertible Bond by the USV MS Conversion Price (as defined below) determined for one (1) USV MS Conversion Share of the Company, with the conversion being based on the Euro (EUR) foreign exchange reference rate, as published on the official website of the European Central Bank (ECB), between US-dollars (i.e. USD converted into Euros) and Australian dollars (i.e. AUD converted into Euros) on the day prior to the resolution of the Management Board on the issuance of the respective USV MS Convertible Bond.

The USV MS Conversion Price, i.e. the conversion price for one (1) USV MS Conversion Share is the higher of:

(x) AUD 500.00, which corresponds to a price of AUD 0.50 per CDI of the Company quoted on ASX, since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and

(y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company.

The respective USV MS Terms and Conditions shall determine for each of the USV MS Convertible Bonds the fixed number of shares to be subscribed for (subscription shares) upon exercise of the respective USV MS Conversion Right (as defined in **Annex 1**) based on the conversion ratio described above. The Company will not compensate the respective holder for any fractions of USV MS Conversion Shares that may occur upon conversion.

**Example calculation (alternative (x)):** By way of example, if the applicable foreign exchange reference rate were 1 EUR to 1.1222 USD and 1 EUR to 1,6356 AUD (as on June 18, 2020), the total nominal amount of USD 2,500,000.00 would convert into EUR 2,227,766.89 and the conversion price of AUD 500.00 would convert to EUR 305.70. The number of subscription shares to be issued in aggregate if

both USV MS Convertible Bonds were converted would therefore be 7,287 shares (EUR 2,227,766.89 / EUR 305.70) corresponding to 7,287,000 CDIs. This would represent approximately 4.0% of the Company's nominal share capital/CDIs following the issue of the subscription shares (i.e. on a diluted basis) as follows:

USV MS A: 6,960 shares (3.8%)

USV MS B: 327 shares (0.2%).

**Example calculation (alternative (v)):** By way of example, if (a) the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period is AUD 1.00 and (b) the applicable foreign exchange reference rate were 1 EUR to 1.1222 USD and 1 EUR to 1,6356 AUD (as on June 18, 2020), the total nominal amount of USD 2,500,000.00 would convert into EUR 2,227,766.89 and the conversion price of AUD 800.00 would translate to EUR 489.12. The number of subscription shares to be issued in aggregate if both USV MS Convertible Bonds were converted would therefore be 4,554 shares (EUR 2,227,766.89 / EUR 489.12) corresponding to 4,554,000 CDIs. This would represent approximately 2.6% (the discrepancy of the sum to the individual percentage values below being due to rounding) of the Company's nominal share capital/CDIs following the issue of the subscription shares (i.e. on a diluted basis) as follows:

USV MS A: 4,350 shares (2,4%)

USV MS B: 204 shares (0.1%)

The maximum number of shares to be issued is 7,470 shares (subject to adjustment, in accordance with the ASX Listing Rules) and such maximum number includes a buffer to account for possible exchange rate fluctuations until the issuance of the USV MS Convertible Bonds.

The shares (and CDIs) issued upon conversion of the respective USV MS Convertible Bond will rank *pari passu* with, and on the same terms as, the existing ordinary shares (and CDIs) of the Company on issue.

(iv) Date of issue

The USV MS Convertible Bonds may be issued by the Company until October 29, 2020.

Issues of shares on conversion of the respective USV MS Convertible Bonds could occur progressively during the conversion period (as defined in **Annex 1**) (however each USV MS Convertible Bond may only be converted in whole not in part), depending on if and when the respective USV MS Convertible Bond is converted by USV MS A or USV MS B.

(v) USV MS Terms and Conditions

The proposed USV MS Terms and Conditions are summarised in this invitation, including in particular in **Annex 1** to this invitation.

(vi) Use of proceeds

The proceeds from the USV MS Convertible Bonds will only be used to enable the Company to exercise its respective USV MS Substitution Right pursuant to the USV MS Loan Agreement, as set out in detail under agenda item 6 para. a) above; the USV MS Loan Agreement was granted by USV MS A and USV MS B to the Company for general corporate purposes.

### **c) Resolution by shareholders**

Based on the above, namely with a view to ASX Listing Rule 7.1 and further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.1, and for all other ASX Listing Rule purposes, the Company is hereby approved and authorised, until October 29, 2020, to issue the USV MS A Convertible Bond to USV MS A and to issue the USV MS B Convertible Bond to USV MS B, and to issue shares in the Company, and CDIs in respect of such shares, upon the conversion of the USV MS A Convertible Bond and the USV MS B Convertible Bond.

### **d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any person who is expected to participate in the issue of the USV MS Convertible Bonds and by any person who might obtain a material benefit as a result of the issue, except a benefit solely in the capacity of a holder of shares if this resolution is passed, or any associate of that person. However, this does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## **11. Resolution pursuant to which, for the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of the Placement CDIs**

Note: A voting exclusion statement applies to the resolution under this agenda item 11 and is set out in para. d) in full below.

### **a) Background**

On 5 May 2020, the Company announced it had completed a placement of 15,852,000 CDIs (“**Placement CDIs**”) in the Company for a total price of AUD 16,644,600.00 to certain sophisticated and institutional investors (“**Placement**”).

ASX Listing Rule 7.1 provides, subject to exceptions, that a company may not issue or agree to issue equity securities which represent more than 15% of the company’s issued share capital within any 12-month period without obtaining shareholder approval. ASX Listing Rule 7.4 sets out an exception to ASX Listing Rule 7.1. It provides that where the company in a general meeting ratifies a prior issue of

securities (and provided that the prior issue did not breach ASX Listing Rule 7.1) those securities will be deemed to have been made with shareholder approval for the purpose of ASX Listing Rule 7.1. The Company is seeking shareholder ratification of this issue to provide the Company with the flexibility to issue equity securities up to the 15% annual placement capacity set out in ASX Listing Rule 7.1 without that capacity being diminished by the Placement. The issue of the Placement CDIs did not breach ASX Listing Rule 7.1.

#### **b) Information for the shareholders**

ASX Listing Rule 7.5 requires certain information to be provided to shareholders for the purpose of seeking ratification of an issue of shares under Listing Rule 7.4.

- (i) Persons to whom the Placement CDIs were issued: certain sophisticated and institutional investors identified by the Company and its financial advisers;
- (ii) The number of securities issued: 15,852 fully paid ordinary shares in the Company were issued, being 15,852,000 CDIs;
- (iii) The date of issue: May 6, 2020.
- (iv) Issue price: shares were issued at AUD 1,050.00 per share, being AUD 1.05 per CDI.
- (v) Terms of the shares issued: The shares and CDIs issued rank *pari passu* with, and on the same terms as, the existing fully paid ordinary shares of the Company and CDIs on issue.
- (vi) Use of proceeds of the Placement: the proceeds from the Placement, being AUD 16,644,600.00, will primarily be used to fund continued global expansion, for general business expenses and to further develop the business.

#### **c) Resolution by the shareholders**

Based on the above, namely with a view to ASX Listing Rule 7.4 and further ASX Listing Rule purposes, the Management Board requests the general meeting, pursuant to Sec. 119 para. 2 AktG, to adopt the required resolutions.

The Management Board and Supervisory Board propose that the general meeting resolves as follows:

For the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of the Placement CDIs.

#### **d) Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this resolution by or on behalf of any person who participated in the Placement and by any person who might obtain a material benefit as a result of the issue, except a benefit solely in the capacity of a holder of shares if this resolution is passed, or any associate of that person.

However, this does not apply to a vote cast in favour of this resolution by:

- (i) a person as a proxy or attorney for a person who is entitled to vote on this resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution; or
- (ii) the chair of the meeting as proxy or attorney for a person who is entitled to vote on this resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or

- (iii) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
- the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## II.

### Reports

#### **1. Report of the Management Board on agenda item 5 (Resolution on the authorisation to grant subscription rights to members of the Management Board (*Vorstand*) of the Company, to members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad (Share Option Program 2020) and to create a Conditional Capital 2020/II, as well as the corresponding amendment of the Constitution)**

The Management Board provides the following written report to the general meeting of the Company, which is convened for July 29, 2020, on the reasons for the creation of a new conditional capital with the purpose of serving share options, as provided for by agenda item 5 (Conditional Capital 2020/II). The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

In case the general meeting resolves on the creation of the Conditional Capital 2020/II, such new conditional capital will supplement the already existing Conditional Capital 2018/II, the Conditional Capital 2019/I, the Conditional Capital 2019/II, the Conditional Capital 2019/III, the Conditional Capital 2019/IV, the Conditional Capital 2020/I and, in case also the Conditional Capital 2020/III proposed for resolution under agenda item 6 is adopted, also the Conditional Capital 2020/III. At present, therefore, six conditional capitals are already existing at the Company in the aggregate amount of EUR 79,260.00, corresponding to 45% of the issued share capital of the Company. In case the Conditional Capital 2020/II and the Conditional Capital 2020/III are adopted, the aggregate amount of conditional capitals existing at the Company will amount to EUR 87.186,00, corresponding to 50% of the issued share capital of the Company.

It corresponds to national and international customary standards to provide incentives to the staff of a company, the performance and decisions of which are key for the further development and success of the business, in order to further enhance their loyalty to the company. The Management Board and the Supervisory Board are convinced that an employee participation program is strongly necessary for the Company in order to remain attractive also in the future for qualified executives and employees. Selected executives shall be offered a corresponding remuneration component by the granting of share options. In doing so, the Company shall become stronger and more attractive within the competition for qualified executives. By granting share options, a specific incentive shall be created, the benchmark of which is the fair value of the business, which is reflected in the share price and which is still to be enhanced. As a consequence, the interests of the executives are, as are those of the shareholders and CDI-holders, targeted at an increase of the fair value of the business. This is also for the benefit of the shareholders and CDI-holders of the Company, as a result of the positive effect on the stock exchange price of the CDIs. By way of share options, the executives are in a position to participate therein.

It must be noted that virtual share options and cash-based benefits, which do not bear an exclusion of shareholders' subscription rights, may be a suitable alternative to share options. However, upon the exercise of share options, and in case those options are served with shares, the participant effectively becomes a shareholder and acquires the respective shareholders' rights. This enhances the entrepreneurial spirit of executives, reason for which share options are being considered by the Management Board and the Supervisory Board as a reasonable method for incentivizing executives.

The utilization of a conditional capital comprises by law an exclusion of the shareholders' subscription rights. The Management Board and the Supervisory Board are of the opinion that the shareholders are sufficiently protected against an excessive dilution by the framework conditions of the authorisation to grant share options, which needs to be resolved upon by the general meeting, given that those conditions provide for relevant performance targets and, furthermore, the determined exercise price is appropriate. In addition, the shareholders are in a position to themselves decide upon those framework conditions on the basis of the resolution proposal of the Management Board and the Supervisory Board.

Under agenda item 5, the agenda provides for the resolution of an authorisation to grant subscription rights (share options) to members of the Management Board (*Vorstand*) of the Company, to members of the senior leadership team or senior managers of the Company (including members of managing corporate bodies of affiliated companies in Germany and abroad) and to selected executives and employees of the Company and affiliated companies in Germany and abroad. The subscription right provided for in this agenda item relates to no-par-value registered shares. The Company is also entitled to meet the obligations in whole or in part by delivering treasury shares or the equivalent amount of CDIs instead of new shares. Moreover, instead of delivering new or treasury shares or CDIs, the Company is entitled to pay in whole or in part an amount in cash which equals the value of the shares that arise out of the exercise of the share options less the exercise price.

The authorisation under agenda item 5 provides for the granting of in aggregate up to 6,332 subscription rights (share options) to members of the Management Board of the Company (Group 1), to members of the senior leadership team or senior managers of the Company (including members of managing corporate bodies of affiliated companies in Germany and abroad; Group 2) as well as to selected executives and employees of the Company in Germany and abroad and selected executives and employees of affiliated companies in Germany and abroad (Group 3). The authorisation is limited in time until July 28, 2025. The aggregate volume of share options (up to 6,332) is allocated to the three groups of participants in such manner that up to 1,900 share options and the subscription rights resulting therefrom are attributable to the participants of Group 1, up to 1,900 share options and the subscription rights resulting therefrom are attributable to the participants of Group 2, and up to 2,532 share options to the participants of Group 3. In case the participants belong to several groups, they receive share options exclusively due to their membership to one group. The group membership is determined by the Management Board of the Company, and to the extent members of the Management Board are concerned, by the Supervisory Board of the Company. The participants within each group and the numbers of share options to be granted may vary during the term of the Share Option Program 2020 and are determined by the Management Board, and to the extent members of the Management Board are concerned, by the Supervisory Board.

Share options can be granted in tranches within the authorisation period for a single or repeated initiation of a program on one or several occasions during each year, whereby the options are to be granted in accordance with legal requirements in each case within four weeks, always beginning on the third working day after the publication of the results of the half year or the fiscal year or, in case the Company publishes results on a quarterly basis, within such time period after each respective publication. If share options are granted to members of the Management Board of the Company, the relevant provisions are determined by the Supervisory Board of the Company, and to the extent that participants of Group 2 or Group 3 are concerned, by the Management Board of the Company.

One share option grants one subscription right for one share of the Company. The exercise price per share equals the volume-weighted 1 months' average price of the Company's CDIs on ASX (excluding



trades customarily excluded from the calculations of a volume-weighted average price and as determined by the Management Board), multiplied by the applicable ratio of CDIs to shares in the Company (in accordance with the actual ratio where 1,000 CDIs represent 1 share: multiplied by 1,000), before the grant date. The minimum issue price is equivalent to at least the lowest issue amount (*Ausgabebetrag*) as defined under Section 9 para. 1 AktG of currently EUR 1.00.

Share options can only be exercised, if and to the extent one or several of the performance targets are achieved. The performance targets consist of EBITDA and Contribution Margin (CM), whereby for each participant for a two-year performance period a target-EBITDA and a target-CM are defined. The Supervisory Board for members of the Management Board and the Management Board upon approval of the Supervisory Board for Group 2 and 3 Participants shall decide at its best discretion on the weighting of the performance targets for each individual tranche of the share options. No single performance target may have a weighting of more than 70% within each individual tranche of the share options. When opting for the weighting of the performance targets and the target parameters, the Supervisory Board and the Management Board are to be guided by a sustainable development of the Company, based on its approved Company planning.

The terms and conditions for the Share Option Program 2020 may contain customary anti-dilution protection clauses based upon which the economic value of the share options in accordance with the regulations in Section 216 para. 3 AktG can be essentially protected, particularly by taking into account potential share splits, capital increases from company funds by issuing new shares, or other measures with similar effects when determining the number of shares to be issued for each share option.

Share options are only to be exercised after the end of the Waiting Period, if at least one performance target has been achieved. The Waiting Period of one tranche of share options begins on the specified grant date and ends no earlier than at the end of the grant date's fourth anniversary. Share options can be exercised by the participants within two years following the date of the expiry of the Waiting Period. Share options can be exercised during this period within four weeks, always beginning on the third working day after the publication of the results of the half year or the fiscal year. The Exercise Period can be appropriately extended by the Management Board of the Company or, to the extent members of the Management Board are concerned, by the Supervisory Board, to the extent that legal provisions prohibit the exercise at the expiration of the original Exercise Period. The share options expire after the end of the respective (if applicable, extended) exercise period. Share options that are not exercised until the expiration of the respective exercise period forfeit without compensation.

The share options are not legally transferable but are inheritable. A transfer is also allowed for the fulfilment of legacies. Share options may only be exercised by the respective participant or his/her heirs or legatees. If share options can no longer be exercised in accordance with the above provisions, they will forfeit without replacement or compensation. If Share Options forfeit during the Authorisation Period due to the termination of the service or the employment relationship with the Company or an affiliated company or for other reasons, a corresponding number of Share Options may be re-issued to Participants.

The resulting dilution of the shareholders is compensated by the concurrent increase in the value of the shares. In addition, the dilutive effect, which occurs upon a utilization of the Conditional Capital 2020/II, is relatively low, given the increase in the value of the business, which is linked to the incentive effect of the share options. In this context, the Management Board and the Supervisory Board are convinced

that the proposed Share Option Program 2020 is particularly suitable to provide for a sustainable performance incentive and thus to contribute, in the interest of the Company and the shareholders as well as the CDI-holders, to an increase of the fair value of the Company.

Taking all aforementioned circumstances into consideration, the Management Board and the Supervisory Board are of the opinion that the exclusion of the shareholders' subscription rights, which occurs by law upon the serving of share options by shares out of conditional capital, as well as the exercise price, equally taking into consideration the occurring dilutive effect, is objectively justified and appropriate, in accordance with the legal assessment of Secs. 192 para. No. 3, 193 AktG.

**2. Report of the Management Board on agenda item 6 (Resolution on the granting of an authorisation to issue a convertible bond in the nominal amount of USD 2,387,750.00 to USV MARLEY SPOON A, LLC and a convertible bond in the nominal amount of USD 112,250.00 to USV MARLEY SPOON B, LLC, each against contribution in kind and under the exclusion of subscription rights, and the creation of a new Conditional Capital 2020/III and a corresponding amendment of Section 3 of the Constitution (insertion of a new Section 3 para. 13 of the Constitution))**

The Management Board provides the following written report to the general meeting of the Company, which is convened for July 29, 2020, on the reasons for the issue of the USV MS Convertible Bonds under the exclusion of subscription rights and the creation of a new Conditional Capital 2020/III, as provided for by agenda item 6. The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

Under agenda item 6 para. a) of the general meeting of July 29, 2020, the Management Board and the Supervisory Board propose to be granted an authorisation to issue, until October 29, 2020, a convertible bond to USV MS A in the nominal amount of USD 2,387,750.00 and to issue a convertible bond to USV MS B in the nominal amount of USD 112,250.00 and to create a new Conditional Capital 2020/III. Since the authorisation proposed under agenda item 6 para. a) on the issuance of convertible bonds to USV MS A and USV MS B (hereinafter collectively also referred to as "USV") proposes an exclusion of shareholders' subscription rights, the Management Board is providing this report to the general meeting pursuant to Section 221 para. 4 sentence 2 in connection with Section 186 para. 4 sentence 2 AktG on the reasons for the exclusion of the shareholders' subscription rights. In addition, the proposed USV MS Terms and Conditions are summarised in this invitation, including in particular in **Annex 1** to this invitation.

The USV MS Convertible Bonds shall have a term of up to three years as of their issuance date and shall grant USV MS A and USV MS B a conversion right for up to a maximum of 7,470 no-par-value registered shares of the Company (including a buffer to account for exchange rate fluctuations) with an aggregate fractional amount of the nominal share capital of up to a maximum of EUR 7,470.00.

The Convertible Bonds will only be issued in compliance with the ASX Listing Rules.

**a) Background on the authorisation to issue the USV MS Convertible Bonds**

An adequate capitalisation is material for the further positive development of the Company. By issuing the USV MS Convertible Bonds, the Company shall be given the option to support its capital needs and

further strengthen its liquidity. By issuing the USV MS Convertible Bonds, the Company can utilise an attractive financing opportunity, which will provide capital to the enterprise, whereas interest payments will only become due in where USV MS A and/or USV MS B do not exercise their respective USV MS Conversion Right.

The authorisation proposed to the general meeting on July 29, 2020 under agenda item 6 para. a) shall enable the Company to replace the USV Loan in the aggregate amount of USD 2,500,000.00, with an interest of 12% p.a., which USV MS A and USV MS B have granted to the Company by way of the USV MS Loan Agreement. For this purpose, the Management Board shall be authorised, with the consent of the Supervisory Board, to issue the two USV MS Convertible Bonds against contribution in kind for the sole purpose to replace the USV Loan with the respective aggregate nominal amount. The interest rate in the amount of the 12-months USD-LIBOR (as of June 17, 2020: 0.58388%) plus 5% p.a. set forth in the proposed authorisation to issue the USV MS Convertible Bonds is currently much more attractive than the interest rate under the USV Loan Agreement (which amounts to 12%). Therefore, the Management Board and the Supervisory Board believe it is generally reasonable to replace the USV Loan Agreement by the issuance of the USV MS Convertible Bonds. The USV Loan Agreement contains a respective unilateral substitution right of the Company.

Should the general meeting not pass the resolutions under agenda item 6 to grant to the Company the authorisation to issue the USV MS Convertible Bonds, create the respectively required conditional and authorised capital, and permit the issue of the USV MS Convertible Bonds to USV for the purposes of the ASX Listing Rules, USV will be entitled to request prepayment of the USV Loan in full and, if at a later point in time a USV MS Change of Control (as defined in [Annex 1](#)) or a sale of all or substantially all of the assets of the Company occurs, the Company will be required to pay an additional payment in the amount of USD 2,500,000.00 to USV as additional consideration for the investment by USV in the Company made through the USV Loan Agreement.

In addition, pursuant to the proposed USV MS Terms and Conditions, the following shall apply:

If the USV MS Convertible Bonds are issued to USV, and subsequently a USV MS Change of Control in the Company occurs or a sale of all or substantially all of the assets of the Company occurs, and the Company elects to terminate and redeem one or all of the USV MS Convertible Bonds issued to USV, the Company will also have to pay an additional payment in the amount of USD 2,500,000.00 (where not all of the USV MS Convertible Bonds are terminated and redeemed, the additional payment only amounts to the nominal amount of the terminated and redeemed USV MS Convertible Bond). However, the Company is not required to pay the additional payment to USV if a USV MS Change of Control or a sale of all or substantially all of the assets of the Company occurs, and if the Company exercises its right to convert the USV MS Convertible Bonds into shares.

In addition, if the USV MS Convertible Bonds to USV are not issued and the USV Loan Agreement continues, the Company must not declare or pay any dividend during the term of the USV Loan Agreement pursuant to the terms of the USV Loan.

#### **b) Reasons for the exclusion of shareholders' subscription rights**

When convertible bonds are issued, shareholders are generally to be granted a subscription right (Section 221 para. 4 sentence 1 AktG). The authorisation proposed under agenda item 6 para. a) to issue the USV MS Convertible Bonds proposes an exclusion of shareholders' subscription rights for the benefit of the lenders USV MS A and USV MS B, vis-à-vis which the Company has the USV MS Substitution

Right. The Management Board and the Supervisory Board believe it is reasonable and in the best interests of the Company to exclude the shareholders' subscription rights, since otherwise a timely issue of the USV MS Convertible Bonds, to replace the USV Loan Agreement would not be possible.

Based on the aforementioned reasons, the proposed exclusion of subscription rights is also necessary, since otherwise the exercise of the USV Substitution Right by the Company vis-à-vis USV would not be possible in the timeframe proposed.

Based on the aforementioned reasons and after careful consideration of the interests at stake for the enterprise, against the interests of the shareholders to maintain their respective share in the Company – and therefore indirectly the respective interests of the CDI-holders, the Management Board and the Supervisory Board deem the exclusion of subscription rights appropriate and therefore, overall, reasonably justified. As already referred to, an adequate capitalisation is material for the further positive development of the Company. The option to replace the USV Loan Agreement by issuing the USV MS Convertible Bonds supports such adequate capitalisation.

#### **c) Assessment of the proposed conversion price**

The authorisation proposed under agenda item 6 para. a) shall authorise the Management Board to issue a convertible bond to USV MS A in the nominal amount of USD 2,387,750.00 and to issue a convertible bond to USV MS B in the nominal amount of USD 112,250.00. In both cases, the USV MS Conversion Price, i.e. the conversion price for one (1) USV MS Conversion Share is the higher of

(x) AUD 500.00, which corresponds to a price of AUD 0.50 per CDI of the Company quoted on ASX, since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and

(y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company.

The USV MS Conversion Price proposed in the authorisations is appropriate from the point of view of the Company. USV MS A and USV MS B are willing to acquire shares of the Company at this price upon exercise of their respective USV MS Conversion Right. The shareholders – and indirectly the CDI-holders – will thereby not be subject to an excessive dilution in their participation.

#### **d) Creation of the required conditional and authorised capital**

To enable the Company to issue, upon exercise of the USV MS Conversion Right stemming from the USV MS Convertible Bonds, the USV MS Conversion Shares of up to a maximum of 7,470 shares (including a buffer to account for exchange rate fluctuations), a new Conditional Capital 2020/III shall be created by inserting a new Sec. 3 para. 13 into the Constitution and a respective authorisation shall be inserted into the new Authorised Capital 2020/III. Given that the USV MS Convertible Bonds to be issued shall be denominated in US dollars, yet the conversion price is denominated in Australian dollars, the authorised capital proposed for resolution to the general meeting provides for an upward buffer with a view to potential exchange rate fluctuations.

With respect to the USV MS Convertible Bonds to be issued to USV, a new conditional capital in the amount of up to EUR 1,594.00 (“**Conditional Capital 2020/III**“), corresponding to up to 1,594 new shares, i.e. approximately 0.9% of the current share capital of the Company (i.e. on a non-diluted basis), shall be created.

In addition, to enable the Company to issue up to additional 5,876 shares, corresponding to 3.4% of the current share capital of the Company (i.e. on a non-diluted basis), upon exercise of the respective USV MS Conversion Right under the USV MS Convertible Bonds for which the Conditional Capital 2020/III does not suffice, a new authorised capital shall be created by cancelling the Authorised Capital 2020/I and creating a new Authorised Capital 2020/III in the aggregate amount of EUR 75,886.00 and which will contain a respective exclusion of subscription rights under (vi).

In addition, the USV MS Terms and Conditions shall provide for the Company to be able to use treasury shares of the Company, shares from authorised capital or other considerations to satisfy its obligations under the USV MS Convertible Bonds on any conversion.

**e) Assessment by the Management Board prior to issuing any USV MS Convertible Bonds**

The Management Board will in each case thoroughly assess whether a utilisation of the authorisation proposed under agenda item 6 para. a) on the issuance of the USV MS Convertible Bonds is in the best interests of the Company. Currently, the Management Board – as well as the Supervisory Board – believes it is generally reasonable to issue the USV MS Convertible Bonds to USV for the reasons set out above, and contemplates to make use of a corresponding authorisation, should the general meeting grant the authorisation and pass the resolutions under agenda item 6, 7 and 12. In this context, the Management Board will in particular thoroughly assess whether the stipulated conversion price in the circumstances is appropriate at the respective point in time. If the Management Board utilises the afore described authorisation to issue the USV MS Convertible Bonds, it will report on this matter in the following general meeting.

**3. Report of the Management Board on agenda item 7 (Resolution on the cancellation of the existing Authorised Capital 2020/I and the creation of an Authorised Capital 2020/III, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Sec. 3 para. 3 of the Constitution)**

The Management Board provides the following written report to the general meeting of the Company, which is convened for July 29, 2020, on the reasons for the creation of a new Authorised Capital 2020/III with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board, as provided for by agenda item 7. The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

With regard to agenda item 7 of the general meeting on July 29, 2020, the Management Board and the Supervisory Board propose to cancel the Authorised Capital 2020/I and replace it with a new Authorised Capital 2020/III. The Management Board is providing this report to the general meeting pursuant to Section 203 para. 2 sentence 2, in conjunction with Section 186 para. 4 sentence 2 AktG on the reasons for the exclusion of the shareholders' subscription rights.

By way of a resolution of the extraordinary general meeting on January 29, 2020, the Management Board was authorised, with the consent of the Supervisory Board, to increase the share capital of the Company, on one or several occasions during the period until January 28, 2025, by up to EUR 67,960.00, by issuing up to 67,960 new, no-par-value registered shares against contributions in cash and/or in kind (Authorised Capital 2020/I).

The Authorised Capital 2020/I as of the date of this invitation amounts to EUR 52,108.00.

In order for the Company to remain flexible in the future to increase its equity capital as necessary (including issuing new shares against cash contributions and with the exclusion of subscription rights), the existing Authorised Capital 2020/I shall be cancelled, a new authorised capital shall be resolved and the Constitution is to be amended accordingly. The new authorised capital under agenda item 7 of the general meeting on July 29, 2020, shall authorize the Management Board, with the consent of the Supervisory Board, to increase the Company's share capital, on one or several occasions during the period until July 28, 2025, by up to EUR 75,886.00, by issuing up to 75,886 new no-par-value registered shares against contribution in cash and/or in kind (Authorised Capital 2020/III).

The Authorised Capital 2020/III will enable the Company to continue to raise the capital it needs for its further development on the capital markets in the short term by issuing new shares, and to be flexible enough to benefit from a favourable market environment in order to fulfil any future financing requirements quickly. As decisions regarding the fulfilment of any future capital requirements generally have to be taken at short notice, it is important that the Company is not restricted by the frequency of annual general meetings or by the long notice period required for convening an extraordinary general meeting. Legislators have made accommodations for this situation in the form of the "authorised capital".

Upon utilization of the Authorised Capital 2020/III for the issuance of shares against contributions in cash and/or in kind, shareholders shall, in principle, have subscription rights (Section 203 para. 1 sentence 1, in conjunction with Section 186 para. 1 AktG), although indirect subscription rights within the meaning of Section 186 para. 5 AktG shall also suffice. According to the law, the issuance of shares with the granting of such an indirect subscription right is not deemed to be an exclusion of subscription rights. Shareholders are ultimately granted the same subscription rights as with a direct subscription. For settlement-related reasons, only one or several banks are involved in the transaction. In addition, the shares can be subscribed by a Trustee with the obligation to hold the shares in trust and to allocate, instead of those shares, such number of CDIs, e.g. in the form of CUFS (CHESS Units of Foreign Securities), as corresponds to the new shares – with one CDI being a unit of beneficial ownership in shares of the Company – to the respective beneficial owners.

The authorisation shall provide for certain cases in which the subscription rights of shareholders shall be excluded:

- The subscription right of the shareholders shall be excluded for the purpose of serving subscription rights which have been issued to Kreos Capital V (Expert Fund) LP in the framework of the so-called "Kreos Warrant Agreement" dated March 16, 2016 and in the framework of the "2018 Kreos Warrant Agreement" dated April 12, 2018. The proposed exclusion of subscription rights under the Authorised Capital 2020/III (i) is required in order for the Company to be able to fulfil obligations it has entered into in the Kreos Warrant Agreement and in the framework of the 2018 Kreos Warrant Agreement.
- The subscription right of the shareholders shall be excluded in order to issue new shares to Woolworths upon exercise of its Tranche 2 Conversion Right under a Tranche 2 Convertible Bond which was issued by the Company to Woolworths on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 1, no. 1 on September 26, 2019. The proposed exclusion of subscription rights under the Authorised Capital 2020/III (ii) is required to enable the Company to issue the respective Tranche 2 Conversion Shares to Woolworths upon exercise of its respective Tranche 2 Conversion Right under the Tranche 2 Convertible Bond.

- The subscription right of the shareholders shall be excluded in order to issue new shares to Woolworths upon exercise of its Tranche 1 Conversion Right under a Tranche 1 Convertible Bond which was issued by the Company to Woolworths on the basis of the authorisation of the general meeting of August 29, 2019 under agenda item 2, no. 1 on September 26, 2019. The proposed exclusion of subscription rights under the Authorised Capital 2020/III (iii) is required to enable the Company to issue the respective Tranche 1 Conversion Shares to Woolworths upon exercise of its respective Tranche 1 Conversion Right under the Tranche 1 Convertible Bond.
- The subscription right of the shareholders shall be excluded in order to issue new shares to USV MS A and/or USV MS B upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds which may be issued by the Company to USV MS A and USV MS B on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 1, no. 1. The proposed exclusion of subscription rights under the Authorised Capital 2020/III (iv) is required to enable the Company to issue additional conversion shares to USV MS A and/or USV MS B upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds, which cannot be fulfilled with the Conditional Capital 2020/I.
- The subscription right of the shareholders shall be excluded in order to issue new shares to Woolworths upon exercise of its WOW Conversion Right under the WOW Convertible Bond which may be issued by the Company to Woolworths on the basis of the authorisation of the general meeting of January 29, 2020 under agenda item 2, no. 1. The proposed exclusion of subscription rights under the Authorised Capital 2020/III (v) is required to enable the Company to issue conversion shares to Woolworths upon exercise of the WOW Conversion Right under the WOW Convertible Bond.
- In addition, the subscription right of the shareholders shall be excluded in order to issue new shares to USV MS A and/or USV MS B upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds which may be issued by the Company to USV MS A and USV MS B on the basis of the authorisation of the general meeting of July 29, 2020 under agenda item 6 para. a). The proposed exclusion of subscription rights under the Authorised Capital 2020/III (vi) is required to enable the Company to issue additional conversion shares to USV MS A and/or USV MS B upon exercise of their respective USV MS Conversion Right under the USV MS Convertible Bonds, which cannot be fulfilled with the Conditional Capital 2020/III.

In addition, the Management Board shall be authorised, with the consent of the Supervisory Board, to exclude subscription rights in certain cases:

- In order to exclude fractional amounts from the subscription right. The aim of this exclusion of subscription rights is to simplify the process of issuing new shares with basic subscription rights to shareholders, as this makes a technically feasible subscription ratio possible. The value of the fractional amounts is usually low per shareholder, therefore, the potential dilutive effect is likewise considered to be low. On the other hand, the cost of issuing shares without such an exclusion is significantly higher. The exclusion therefore serves to ensure that an issuance is practical and easier to carry out. If necessary, the fractions of new shares excluded from the shareholders' subscription rights shall be realized either by sale on the stock exchange or in any other manner so as to best further the Company's interests. The Management Board and Supervisory Board deem the potential exclusion of subscription rights as factually justified for these reasons and reasonable in consideration of shareholder interests.
- Subscription rights can also be excluded in the event of cash capital increases, if the shares are issued at a price that is not significantly lower than the market price and such an increase in capital does not exceed 10% of the share capital (simplified exclusion of subscription rights in accordance with

Section 186 para. 3 sentence 4 AktG). This authorisation enables the Company to respond flexibly to any favourable capital market situations that arise and to flexibly place new shares at very short notice, without having to offer subscription rights for at least two weeks. The exclusion of subscription rights allows for an extremely quick response and placement close to the market price, i.e. without the usual discount for issuing subscription rights. This lays the foundations for achieving the highest possible disposal amount and for increasing equity as much as possible. The authorisation for the simplified exclusion of subscription rights is objectively justified also by the fact that an increased cash inflow can often be generated. Such a capital increase must not exceed 10% of the share capital that exists on the date on which the authorisation becomes effective or on the date on which it is exercised. The resolution proposal also provides for a deduction clause. The restriction to a maximum of 10% of the share capital, to which this exclusion of subscription rights relates, shall include shares that were issued to serve bonds with conversion or option rights or conversion or option obligations pursuant to Section 221 para. 4 sentence 2, in conjunction with Section 186 para. 3 sentence 4 AktG, during the term of this authorisation, with the exclusion of subscription rights and which are to be issued based on the conversion price prevailing at the time of the resolution of the Management Board concerning the utilization of the Authorised Capital 2020/III, insofar as these bonds were issued, as specified by Section 186 para. 3 sentence 4 AktG, during the period of this authorisation, with the exclusion of subscription rights. The sale of treasury shares shall also be included, insofar as they are sold within the term of this authorisation based on an authorisation pursuant to Section 71 para. 1 No. 8 sentence 5 clause 2, in conjunction with Section 186 para. 3 sentence 4 AktG, with the exclusion of subscription rights. The simplified exclusion of subscription rights strictly specifies that the issue price of the new shares may not be significantly lower than the market price. Any discount on the prevailing market price or the arithmetic volume-weighted market price during an appropriate period prior to the final fixing of the issue amount shall, with the exception of special circumstances in individual cases, presumably be no more than approx. 5% of the relevant market price. This also takes into account the shareholders' protection requirement in terms of a dilution of the value of their shareholding. Fixing the issue price close to the market price ensures that the value of a subscription right to the new shares is very low and shareholders have the option to maintain their relative shareholding by acquiring the requisite number of shares on the stock exchange.

- The Management Board shall also be able to exclude subscription rights, with the consent of the Supervisory Board, insofar as this is necessary to grant the holders of convertible or option rights or creditors of convertible bonds or warrant bonds with conversion obligations that will be issued by the Company or its subordinated group companies a subscription right to new shares. The terms and conditions of issuance for bonds with conversion or option rights or conversion or option obligations often contain a dilution protection provision, which grants the holders or creditors a subscription right to new shares in the event of subsequent share issuances and certain other measures. They will thus be treated as though they were already shareholders. In order to be able to provide the bonds with such dilution protection, shareholders' subscription rights must be excluded from these shares. This facilitates the placement of the bonds and thus fulfils the shareholders' interests in the Company having an optimum financial structure. Furthermore, the exclusion of subscription rights may also have the advantage for the holders or creditors of bonds that, in the case of the authorisation being exercised, the option or conversion price for the holders or creditors of already existing bonds does not have to be discounted in accordance with the respective terms and conditions of the bonds.
- Subscription rights can also be excluded for capital increases against contributions in kind for up to 12,313 new shares. The Company should also be able to continue to make acquisitions, in particular



of companies, parts of companies, participations or other assets, and respond to acquisition and merger offers, to strengthen its competitiveness, and increase the profitability and value of the Company. In addition, the Company should be in a position to make flexible decisions by issuing shares against the contribution of claims against the Company or any of its group companies. The option to use Company shares as acquisition currency gives the Company the necessary scope to seize such acquisition opportunities quickly and flexibly, and allows the Company to acquire entities in return for shares. It should also be possible, in some circumstances, to acquire assets in return for shares and to issue shares against the contribution of claims against the Company or any of its group companies. In these cases, it must be possible to exclude shareholders' subscription rights. Given that such acquisitions or other (financing) opportunities often have to be made at short notice, it is important that these decisions cannot only be resolved at the annual general meetings, which are held just once a year, or at extraordinary general meetings which require a long statutory invitation period. This requires an authorised capital, which the Management Board is able to access quickly with the consent of the Supervisory Board. If the Management Board and the Supervisory Board utilized this authorisation before the date of this general meeting to issue new shares, the implementation of a new authorisation to allow the Company to exclude subscription rights for capital increases against contributions in kind for up to 12,313 new shares would renew the Company's flexibility to seize such opportunities quickly and flexibly.

If, during the course of a financial year, the Management Board exercises one of the aforementioned authorisations to exclude subscription rights as part of a capital increase from the Authorised Capital 2020/III, the Management Board shall report on this matter at the next general meeting.

#### **4. Report of the Management Board on the partial utilization of the Authorised Capital 2019/I against contribution in cash and under the exclusion of shareholders' subscription rights in December 2019**

The Management Board provides the following written report to the general meeting of the Company, which is convened for July 29, 2020, on the partial utilization of the Authorised Capital 2019/I against contribution in cash and under the exclusion of shareholders' subscription rights in December 2019. The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

On December 15, 2019, the Management Board resolved, with the consent of the Supervisory Board of December 16, 2019, to increase the share capital of the Company, on the basis of the authorisation of the general meeting of August 29, 2019 by way of a partial utilization of the Authorised Capital 2019/I, from EUR 148,670.00 by EUR 9,850.00 to EUR 158,520.00 through the issuance of 9,850 new no-par-value registered shares against contribution in cash. The new shares were issued at the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 per share. The issue price per new share amounted to AUD 250.00. The amount by which the issue price per new share exceeded the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 was booked into the capital reserves of the Company pursuant to Sec. 272 para. 2 no. 4 of the German Commercial Code (*HGB*). The aggregate proceeds from the capital increase amounted to AUD 2,462,500.00 and were used for general business expenses and to further develop the business of the Company.

In its resolution of December 15, 2019, the Management Board resolved, with the consent of the Supervisory Board of December 16, 2019, to exclude the shareholders' subscription rights pursuant to Sec. 3 para. 3 para. (vii) of the Constitution. Acacia Partners, LP was exclusively permitted to subscribe 3,940 of the total of 9,850 new shares, Acacia Institutional Partners, LP was exclusively permitted to subscribe 2,955 of the total of 9,850 new shares and Acacia Conservation Fund, LP was exclusively permitted to subscribe 2,955 of the total of 9,850 new shares. The capital increase was registered in the commercial register of the local court of Charlottenburg on December 20, 2019.

The requirements for an exclusion of the shareholders' subscription rights pursuant to Section 203 para. 1, Section 186 para. 3 s. 4 AktG and the corresponding provisions of the Authorised Capital 2019/I were met:

- The volume of the capital increase under the Authorised Capital 2019/I under exclusion of subscription rights corresponded to a pro-rata amount of 6.6% of the Company's share capital on the day the Authorised Capital 2019/I became effective on September 3, 2019 and on the date of the utilization of the Authorised Capital 2019/I.
- The price per new share was not set significantly below the stock exchange price of the Company's shares/CDIs. As of the day of the resolution of the Management Board on the utilization of the Authorised Capital 2019/I, the stock exchange price of the listed CDIs was below the price of AUD 0.25 per CDI, i.e. of the issue price of AUD 250.00 per share (AUD 0.25 per CDI x 1,000 = AUD 250.00 per share). Thus, the issue price of the new shares was not significantly lower than the stock exchange price.
- Acacia Partners, LP, Acacia Institutional Partners, LP and Acacia Conservation Fund, LP (who were – at the time – already CDI-holders of the Company) were allowed to subscribe the new shares and the existing shareholders' and existing CDI-holders' subscription rights were excluded, in order to provide capital to the Company on a short-term basis and since market conditions were not favourable. As opposed thereto, a placement of the new shares in a capital markets transaction with subscription rights would have necessitated an adequate discount to the then current CDI-price on ASX, thereby leading to offer conditions prospectively not close to market. For the aforementioned reasons, the exclusion of subscription rights and the placement of the new shares with Acacia Partners, LP, Acacia Institutional Partners, LP and Acacia Conservation Fund, LP was in the best interest of the Company. The interests of the existing shareholders were adequately accounted for by fixing the offer price above the then-current CDI-price on ASX and by limiting the volume of the capital increase to 6.6% of the share capital on the effective date of the Authorised Capital 2019/I. Thus, the existing CDI-holders had the possibility to maintain their stake in the Company by acquiring additional CDIs over ASX at a comparable or even lower price.

In light of the abovementioned considerations, subscription rights – taking the requirements of the Authorised Capital 2019/I into account – were validly excluded and objectively justified.

The new shares were subsequently transferred from Acacia Partners, LP, Acacia Institutional Partners, LP and Acacia Conservation Fund, LP to CDN, with CDN holding the shares pursuant to the ASX Settlement Operating Rules. In exchange for the transfer of the new shares to CDN, the Company issued a total of 9,850,000 new CDIs, corresponding to the beneficial ownership of the 9,850 new shares as follows:

- Acacia Partners, LP was issued 3,940,000 CDIs,
- Acacia Institutional Partners, LP was issued 2,955,000 CDIs and
- Acacia Conservation Fund, LP was issued 2,955,000 CDIs.

## **5. Report of the Management Board on the partial utilization of the Authorised Capital 2020/I against contribution in cash and under the exclusion of CDI-holders' subscription rights in May 2020**

The Management Board provides the following written report to the general meeting of the Company, which is convened for July 29, 2020, on the partial utilization of the Authorised Capital 2020/I against contribution in cash and under the exclusion of CDI-holders' subscription rights in May 2020. The report can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany, and is also available on the Company's website under <https://ir.marleyspoon.com/investor-centre/>. It will also be sent to the shareholders and CDI-holders upon request without undue delay and free of charge.

Following the Placement of 15,852,000 CDIs of the Company to existing and new institutional investors, the Management Board resolved on May 5, 2020, with the consent of the Supervisory Board of May 5, 2020, to increase the share capital of the Company, on the basis of the resolution of the general meeting of January 29, 2020 by way of a partial utilization of the Authorised Capital 2020/I, from EUR 158,520.00 by EUR 15,852.00 to EUR 174,372.00 through the issuance of 15,852 new no-par-value registered shares against contribution in cash. The new shares were issued at the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 per share. The issue price per new share amounted to AUD 1,050.00. The amount by which the issue price per new share exceeded the minimum issue amount (*Ausgabebetrag*) of EUR 1.00 was booked into the capital reserves of the Company pursuant to Sec. 272 para. 2 no. 4 of the German Commercial Code (*HGB*). The aggregate proceeds from the capital increase amounted to and AUD 16,644,600.00 will be used to fund continued global expansion, for general business expenses and to further develop the business.

In its resolution of May 5, 2020, the Management Board resolved, with the consent of the Supervisory Board of May 5, 2020, that the sole shareholder of the Company, CDN, was exclusively permitted to subscribe the 15,852 new shares in analogous application of Section 203 para. 1, Section 186 para. 3 s. 4 AktG and in accordance with Sec. 3 para. 3 para. (vii) of the Constitution. CDI-holders were not granted subscription rights for the new CDIs. Rather, the corresponding number of 15,852,000 CDIs was subsequently issued to existing and new institutional investors who had subscribed CDIs in the Placement. The capital increase was registered in the commercial register of the local court of Charlottenburg on May 6, 2020.

The requirements for an exclusion of the CDI-holders' subscription rights pursuant to Section 203 para. 1, Section 186 para. 3 s. 4 AktG in analogous application and the corresponding provisions of the Authorised Capital 2020/I were met:

- The volume of the capital increase under the Authorised Capital 2020/I under exclusion of subscription rights corresponded to a pro-rata amount of 10% of the Company's share capital on the day the Authorised Capital 2020/I became effective on January 29, 2020 and on the date of the utilization of the Authorised Capital 2020/I.
- The price per new share was not set significantly below the stock exchange price of the Company's CDIs. On May 1, 2020, immediately before the trading of the Company's CDIs was

halted temporarily with regard to the capital increase, the price per CDI on ASX amounted to AUD 1.08. The placement price of AUD 1.05 per CDI (AUD 1.05 per CDI x 1,000 = AUD 1,050.00 per share) thus represented a discount in the amount of 2.8% of the CDI-price. Therefore, the placement price of the new shares was not significantly lower than the stock exchange price.

- CDN was allowed to subscribe the new shares and the existing CDI-holders' subscription rights were excluded, since a placement of the new shares with subscription rights would have necessitated an adequate discount to the then current CDI-price on ASX, thereby leading to offer conditions most likely not close to market. Also, the placement of the CDIs, underlying the new shares, with existing and new investors in the Company allowed the Company to build and maintain its strong and supportive shareholder base. For the aforementioned reasons, the exclusion of subscription rights was in the best interest of the Company. The interests of the existing shareholders were adequately accounted for by fixing the placement price not significantly below the then-current CDI-price on ASX and by limiting the volume of the capital increase to 10% of the share capital on the effective date of the Authorised Capital 2020/I. Thus, the existing CDI-holders had the possibility to maintain their stake in the Company by acquiring additional CDIs over ASX at a comparable price.

In light of the abovementioned considerations, subscription rights – taking the requirements of the Authorised Capital 2020/I into account – were validly excluded and objectively justified.

Pursuant to the ASX Settlement Operating Rules CDN holds the 15,852 new shares in trust for the institutional investors of the Placement who subscribed the 15,852,000 CDIs. The institutional investors in turn were issued such number of CDIs as corresponds to the CDI-amount they subscribed in the Placement.

### III.

#### Additional information for shareholders

##### 1. Availability on the Company's website

The invitation to the general meeting of the Company on July 29, 2020, as well as the documentation pertaining to agenda item 1 and the reports under section II. can be inspected in the business premises of the Company, Paul-Lincke-Ufer 39-40, 10999 Berlin, Germany, and are also available on the Company's website at:

<https://ir.marleyspoon.com/investor-centre/>

##### 2. Participation and exercise of voting rights in the general meeting

All shareholders who are registered in the share register of the Company on the day of the general meeting and who have registered themselves for participation in the general meeting on time are eligible to attend the general meeting and cast votes. The registration must arrive by no later than July 22, 2020 midnight (CEST) / July 23, 2020, 8:00 a.m. (AEST), at the Company's address:

Marley Spoon AG  
Paul-Lincke-Ufer 39-40  
Attn: Dr. Mathias Hansen  
10999 Berlin  
Deutschland/Germany  
E-Mail: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

Shareholders registered in the share register who cannot attend the general meeting in person may be represented by an authorised representative of their choice (or a proxy), including a financial institution or a shareholder association. The power of attorney is to be granted in text form (Section 16 para. 2 sentence 1 of the Constitution), *i.e.* in writing, via facsimile or email. The form requirement does not apply if a financial institution, a shareholder association or a person or institution that is considered equivalent pursuant to Section 135 para. 8 or Section 135 para. 10 in connection with Section 125 para. 5 AktG is granted power of attorney, given that the aforementioned institutions or persons have to only keep a verifiable record of such power of attorney pursuant to Section 135 para. 1 sentence 2 AktG.

##### 3. Motions and election proposals

Each shareholder is entitled to submit countermotions or election proposals with respect to the agenda items. The Company will make motions by shareholders, including the shareholder's name, a potential explanation and statement of the administration, if any, available, if the shareholder has sent to the following address at least 14 days prior to the general meeting, *i.e.* by no later than July 14, 2020 midnight (CEST) / July 15, 2020, 8:00 a.m. (AEST), a counter-motion against a proposal by the Management Board and/or the Supervisory Board regarding a certain agenda item together with an explanation:

Marley Spoon AG  
Attn: Dr. Mathias Hansen  
Paul-Lincke-Ufer 39-40  
10999 Berlin  
Deutschland/Germany

Email: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

These regulations apply *mutatis mutandis* to election proposals submitted by a shareholder. The election proposal does not have to be supported by a statement of grounds. The right of each shareholder to submit counterproposals with respect to agenda items or election proposals during the general meeting also without a prior submission to the Company remains unaffected.

#### **4. Live transmission of the general meeting**

Shareholders and CDI-holders may apply by no later than July 22, 2020 midnight (CEST) / July 23, 2020, 8:00 a.m. (AEST) for the general meeting to be webcast live over the internet. In such case, they will be sent a link and confidential access data with which they will be able to access the online transmission of the general meeting on July 29, 2020, starting at 12:00 p.m. (noon) (CEST) / 8:00 p.m. (AEST). The Chairman of the general meeting may then determine that the entire general meeting on July 29, 2020 will be webcast live to shareholders and CDI-holders of Marley Spoon AG over the internet starting at 12:00 p.m. (noon) (CEST) / 8:00 p.m. (AEST). The live transmission of the general meeting does not allow for a participation in the general meeting within the meaning of Section 118 para.1 sentence 2 AktG.

Shareholders and CDI-holders wishing to access the online transmission of the general meeting can request the link and the confidential access data by sending their full name and CDI holder number for verification before the aforementioned date to:

Marley Spoon AG  
Attn: Dr. Mathias Hansen  
Paul-Lincke-Ufer 39-40  
10999 Berlin  
Deutschland/Germany  
Email: [mathias.hansen@marleyspoon.com](mailto:mathias.hansen@marleyspoon.com)  
with copy to: [legal@marleyspoon.com](mailto:legal@marleyspoon.com)

## IV.

### **Additional information for CDI-holders**

CDI-holders will be able to vote at the general meeting by:

1. instructing the Company's CDI Depositary, CHESSE Depositary Nominees Pty Ltd (CDN), as the legal owner, to vote the shares underlying their CDIs in a particular manner. A CDI Voting Instruction Form will be sent to CDI-holders with this invitation and this must be completed and returned to in accordance with the instructions on the form; or
2. informing Marley Spoon AG that they wish to nominate themselves or another person to be appointed as CDN's proxy with respect to their shares underlying multiples of 1,000 CDIs for the purposes of attending and voting at the general meeting. CDI-holders may do this by completing and returning the CDI Voting Instruction Form sent to them with this invitation in accordance with the instructions on the form; or
3. converting their CDIs (in multiples of 1,000) into a holding of shares and voting these shares at the general meeting (however, if thereafter the former CDI holder wishes to sell their investment on ASX it would be necessary to convert the shares back to CDIs). In order to vote in person, the former CDI holder has to appear at the Company's business premises in Berlin, Germany. Furthermore, the conversion and entry into the Company's share register must be completed before July 22, 2020 midnight (CEST) / July 23, 2020, 8:00 a.m. (AEST), and registration for attendance of the general meeting must have arrived at the Company's address – as set out under Section III. above – by no later than July 22, 2020 midnight (CEST) / July 23, 2020, 8:00 a.m. (AEST).

To obtain a copy of CHESSE Depositary Nominee's Financial Services Guide, go to [www.asx.com.au/CDIs](http://www.asx.com.au/CDIs) or phone 1300 300 279 if you would like one sent to you by mail.

Berlin, Germany, June 2020

**Management Board (*Vorstand*)**

\* \* \* \* \*

## Annex 1

### Proposed Key Terms of the USV MS Convertible Bonds

|   |  |
|---|--|
| <b>Issuer</b>   | Marley Spoon AG (the “Company”).   |
| <b>Aggregate Principal Amount of the 2 USV MS Convertible Bonds</b> | USD 2,500,000.00.  |
| <b>Form</b>   | Both USV MS Convertible Bonds (as defined below) will be in the form of a registered bond.   |
| <b>Convertible Bonds, Principal Amounts and Beneficiaries</b>       | <p>(1) <b>one (1)</b> convertible bond in the principal amount of <b>USD 2,387,750.00</b> will be issued to <b>USV Marley Spoon A, LLC</b> (the “<b>USV MS A Convertible Bond</b>”);</p> <p>(2) <b>one (1)</b> convertible bond in the principal amount of <b>USD 112,250.00</b> will be issued to <b>USV Marley Spoon B, LLC</b> (the “<b>USV MS B Convertible Bond</b>” and together with the USV MS A Convertible Bond the “<b>USV MS Convertible Bonds</b>” and each a “<b>USV MS Convertible Bond</b>”; and USV Marley Spoon A, LLC “<b>USV MS A</b>” and USV Marley Spoon B, LLC “<b>USV MS B</b>”).</p> |
| <b>Issue Price</b>  | 100% of its respective principal amount.   |
| <b>Redemption Price</b>   | 100% of its respective principal amount.   |
| <b>Interest</b>   | Twelve-months USD LIBOR + 5.00%. An interest payment will only be made at the Maturity Date of the respective Convertible Bond or on any early redemption of the respective USV MS Convertible Bond. If the USV MS Conversion Right (as defined below) is exercised, all accrued interest will be forfeited.   |
| <b>USV MS Conversion Right</b>                                      | Each of USV MS A and USV MS B has the right to convert its respective USV MS Convertible Bond into no-par-value registered shares of the Company, in whole but not in part, during the conversion period (as defined below) (each a “ <b>USV MS Conversion Right</b> ”).   |
| <b>USV MS Conversion Period</b>                                     | The period starting five (5) business days after the Conditional Capital 2020/III and the Authorised Capital 2020/III from which the conversion shares shall be issued is registered in the commercial register of the local court of Berlin-Charlottenburg under the Company’s docket number and ending at 4 p.m. (local time Sydney, Australia) on the trading day prior to the Maturity Date subject to certain conversion exclusion periods.   |
| <b>Underlying Shares</b>  | Registered shares with no par-value of the Company, each representing a fractional amount of the Company’s registered share capital of EUR 1.00. The   |



shares (and CDIs) issued upon conversion of the USV MS Convertible Bonds will rank *pari passu* with, and on the same terms as, the existing ordinary shares (and CDIs) on issue.

|   |  |
|---|--|
| <b>Maximum Number of Shares to be Issued</b>                            | Given that the USV MS Convertible Bonds to be issued shall be denominated in US dollars, yet the USV MS Conversion Price (as defined below) is denominated in Australian dollars, the authorised capital proposed for resolution to the shareholders provide for an upward buffer, with a view to potential exchange rate fluctuations. Based on the aforementioned, the maximum number of shares which may be issued on conversion of the bonds in aggregate totals 7,470 new shares (subject to adjustment, in accordance with the ASX Listing Rules, referred to below).  |
| <b>Delivery of CDIs</b>   | USV MS A and USV MS B will have to commit themselves to transfer the respective shares to be issued to them on conversion of the respective USV MS Convertible Bond, immediately after their issuance to CHESS Depository Nominees Pty Ltd, ACN 071 346 506, with business address: 20 Bridge Street, Sydney NSW 2000, Australia (“CDN”), with CDN to hold such shares pursuant to the ASX Settlement Operating Rules and such number of CDIs to be allocated to USV MS A and/or USV MS B, instead of the shares, as corresponds to the beneficial ownership of the shares, for as long as CDIs are quoted by the ASX.   |
| <b>USV MS Conversion Price per Share</b>                                | <p><u>The higher of:</u></p> <p>(x) AUD 500.00, which corresponds to a price of AUD 0.50 per CDI of the Company quoted on ASX, since one (1) CDI represents a beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company, and</p> <p>(y) 80% of the arithmetic volume-weighted average price per CDI on ASX during the 30 trading days immediately preceding the resolution of the Management Board to issue, with the consent of the Supervisory Board, the respective USV MS Convertible Bond (“<b>Averaging Period</b>”), multiplied by 1,000, which corresponds to an AUD price equal to 80% of the arithmetic volume-weighted average price per CDI on ASX during the Averaging Period, since one (1) CDI represents the beneficial ownership of 1/1,000<sup>th</sup> in one (1) share of the Company (“<b>USV MS Conversion Price</b>”).</p> |
| <b>USV MS Issue Date</b>  | To be determined for each USV MS Convertible Bond by the Management Board until October 29, 2020.  |
| <b>Maturity</b>   | 3 years after the issue date of the respective USV MS Convertible Bond (the “ <b>USV MS Maturity Date</b> ”).  |
| <b>Redemption and Early Termination of the USV MS Convertible Bonds</b> | Each USV MS Convertible Bond will be redeemed at its respective USV MS Maturity Date at its respective principal amount plus accrued interest, to the  |

extent the respective USV MS Convertible Bond has not previously been redeemed or cancelled and no conversion notice has been issued by USV MS A and/or USV MS B.

USV MS A and USV MS B may terminate their respective USV MS Convertible Bond for redemption before the respective USV MS Maturity Date in the case of an USV MS Event of Default (as defined below).

The Company may terminate the respective USV MS Convertible Bond for redemption before the USV MS Maturity Date in the case of a USV MS Change of Control or a sale of all or substantially all of the assets of the Company occurs (as defined below).

**Status of the USV MS Convertible Bonds** Unsecured and subordinated. The USV MS Convertible Bonds will rank *pari passu* among themselves.

**Subordination** In the event of a dissolution or liquidation of the Company or the commencement of any insolvency, bankruptcy or similar legal proceedings or other procedure in respect to the assets of the Company (each case “**Insolvency or Liquidation Proceedings**”), all claims under the USV MS Convertible Bonds are subordinated in full to the Preferred Obligations of the Company, and no payment will be made in respect of the claims under the USV MS Convertible Bonds, until the Preferred Obligations of the Company are finally discharged in full.

The Company will not make any payment, and USV MS A and USV MS B are not entitled to request payment, in respect of the claims under the USV MS Convertible Bonds if and to the extent such payment would give cause for the commencement of insolvency proceedings over the assets of the Company.

Prior to the commencement of Insolvency or Liquidation Proceedings the Company will only make payments in respect of the claims under the USV MS Convertible Bonds from (i) any future distributable annual profits (*ausschüttbare Jahresgewinne*) or (ii) any other free assets (*sonstiges freies Vermögen*).

“**Preferred Obligations**” means the claims of all current and future creditors of the Company within the meaning of Section 39 para. 1 no. 1 to 5 of the German Insolvency Code (*Insolvenzordnung*).

**Restriction on new Restricted Indebtedness under the USV MS Convertible Bonds** As long as any amounts of principal or interest remain outstanding under the USV MS Convertible Bonds, the Company will not incur any New Restricted Indebtedness without the prior consent of each of USV MS A and USV MS B.

“**New Restricted Indebtedness**” means any indebtedness incurred by the Company after the USV MS Issue Date for or in respect of (i) moneys borrowed from banks or other financial institutions or (ii) any bond or loan convertible into share capital of the Company, except for (A) any moneys borrowed from

Berliner Volksbank e.G. with a principal amount (together with the principal amount of any moneys borrowed from Berliner Volksbank e.G. and outstanding on the issue date) of up to EUR 5,000,000.00, (B) any of the USV MS Convertible Bonds and (C) any moneys borrowed under any third-party asset-backed financing or customary working capital financing (including, but not limited to, bank overdrafts) provided that the aggregate principal amount outstanding thereunder (together with the principal amount of any moneys borrowed under any third-party asset-backed financing or customary working capital financing and outstanding on the USV MS Issue Date) does not exceed EUR 5,000,000.00.

**USV MS Events of Default (summary only)**

The Company does not pay on the respective due date any amount payable pursuant to the respective USV MS Convertible Bond, unless failure to pay is caused by administrative or technical error and payment is made within five business days of its due date.

The Company does not comply with any provision of the respective USV MS Convertible Bond unless the failure to comply is capable of remedy and is remedied within 20 business days of USV MS A and/or USV MS B, as the case may be, giving notice to the Company of the failure to comply.

(A) Any Financial Indebtedness of the Company is not paid when due nor within any applicable grace period and the obligation to pay it is not being disputed in good faith. (B) Any Financial Indebtedness of the Company is validly declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) (“**Cross Default**”). For the purpose of Cross Default only, no Event of Default will occur, if the aggregate amount of Financial Indebtedness falling within paragraphs (A) and (B) is less than EUR 100,000.00 (or its equivalent in any other currency or currencies).

Insolvency:

- (i) The Company:
  - a) is unable or admits inability to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of Section 17 of the German Insolvency Code (*Insolvenzordnung*),
  - b) is overindebted within the meaning of Section 19 of the German Insolvency Code (*Insolvenzordnung*); or
  - c) by reason of actual or anticipated financial difficulties, commences negotiations with a class or category of its creditors (excluding USV MS A and USV MS B in their respective capacity as beneficiary) with a view to rescheduling a material amount of any of its indebtedness;

- d) files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the directors of the Company are required by law to file for insolvency; or
  - e) the competent court takes any of the actions set out in Section 21 of the German Insolvency Code (*Insolvenzordnung*) or the competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings) insolvency proceedings against it (*Eröffnung des Insolvenzverfahrens*).
- (ii) A moratorium is declared in respect of all or any substantial part of the indebtedness of the Company.
- (iii) Any corporate action, legal proceedings or other formal procedure or formal step is taken in relation to:
- a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
  - b) a composition, compromise, assignment or arrangement with any class or category of creditor of the Company (excluding USV MS A and USV MS B in their respective capacity as beneficiary) with a view to avoiding actual or anticipated financial difficulties;
  - c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any of its assets; or
  - d) the enforcement of any security over any assets of the Company,
  - e) or any analogous formal procedure or formal step is taken in any jurisdiction.

This shall not apply to any action, proceedings or step which is frivolous or vexatious and is discharged, stayed or dismissed within 20 business days of commencement.

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Company having an aggregate value of EUR 100,000.00 (or its equivalent in any other currency or currencies) and in respect of indebtedness aggregating EUR 100,000.00 (or its equivalent in any other currency or currencies) and is not discharged within 20 business days.

The Company ceases, threatens to cease, or suspends to carry on all or a material part of its business.

It is or becomes unlawful or impossible for the Company to perform any of its obligations under the respective Convertible Bond or to comply with any other obligation which USV MS A and USV MS B, acting reasonably, considers material under the respective USV MS Convertible Bond.

An event or circumstance which has a Material Adverse Effect.

**“Material Adverse Effect”** means a material adverse change, event, circumstance or development with respect to, or material adverse effect on:

- a) the business, assets, liabilities, capitalisation, operations or financial condition, prospects or results of operations of the Company and its subsidiaries, taken as a whole;
- b) the ability of the Company to perform its payment obligations under the USV MS Convertible Bonds; or
- c) subject to the Legal Reservations, the validity or enforceability of the obligations of the Company with respect to the respective USV MS Convertible Bond or the rights or remedies of USV MS A and/or USV MS B under the respective USV MS Convertible Bond.

**“Legal Reservations”** means any general and indispensable principles of, or rights and defenses under, any applicable law.

**“Financial Indebtedness”** means any indebtedness for or in respect of:

- a) moneys borrowed;
- b) any amount raised pursuant to any issue of bonds, notes, commercial papers or any similar instrument (other than notes issued in the ordinary course of trading);
- c) the amount of any liability in respect of any lease contract which would, in accordance with IFRS, be treated as a balance sheet liability (other than a lease contract which would, in accordance with IFRS in force prior to January 1, 2019, have been treated as an operating lease);
- d) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis);

- e) any amount raised under any other transaction of a type not referred to in any other paragraph of this definition required by IFRS to be shown as a borrowing in the audited consolidated balance sheet of the Company;
- f) for the purpose of Cross Default only, any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- g) for the purpose of Cross Default only, any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- h) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above.

**USV MS Change of Control** In the case of a USV MS Change of Control (as defined below), the Company shall, by giving no less than 30 days' prior notice ("**USV MS Termination Notice**"), elect to either (i) terminate the USV MS Convertible Bonds prior to the respective USV MS Maturity Date and redeem the USV MS Convertible Bonds at their respective principal amounts plus accrued interest or (ii) convert the USV MS Convertible Bonds. If the respective USV MS Convertible Bond is declared due for early redemption by the Company, the respective USV MS Conversion Right with respect to such USV MS Convertible Bond may no longer be exercised by USV MS A or USV MS B from the receipt of the notice of termination.

"**USV MS Change of Control**" means any person or group of persons acting in concert (in each case other than a person being a direct or indirect shareholder of the Company at the issue date) gains direct or indirect control of the Company.

"**control**" of the Company means:

- a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Company;

- (ii) appoint or remove all, or the majority, of the directors of the Company; or
  - (iii) give directions with respect to the operating and financial policies of the Company with which the directors of the Company are obliged to comply; or
- b) the holding beneficially of more than 50% of the issued share capital of the Company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

“**acting in concert**” (*Verhalten abstimmen*) means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company within the meaning of Section 30 (2) of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*).

**Adjustments of the Conversion Price**

If, prior to the last day of the conversion period or any earlier date relevant for conversion or redemption the Company increases its share capital from capital reserves, a share split or combining of shares of the Company is carried out, the share capital of the Company is decreased, the Company increases its share capital against contributions with subscription rights or the Company issues other securities with pre-emptive rights, an independent financial expert shall determine, as soon as possible, based on generally accepted mathematical principles what adjustment to the USV MS Conversion Price is fair and reasonable in order to keep up the respective Beneficiary’s economic position with a view to the USV MS Conversion Price, and on which date such adjustment should take effect. On this date, such adjustment (if any) will be made and will take effect. The Company may engage the advice or services of any lawyers or other experts whose advice or services it deems necessary and may rely upon any advice so obtained.

An adjustment shall not be made to the extent that the USV MS Conversion Price for one share would thereby fall below the pro rata amount of the share capital for one share of the Company. Sec. 9 para. 1 in conjunction with Sec. 199 para. 2 AktG remains unaffected.

Notwithstanding the aforementioned, any adjustment to the conversion of the USV MS Convertible Bonds must comply with the ASX Listing Rules.

**Anti-dilution Protection**

Before USV MS A and/or USV MS B have exercised their respective USV MS Conversion Right and been delivered shares/CDIs, either of them will not have the right to participate in any offering of securities of the Company as a result of being a holder of a USV MS Convertible Bond or CDIs. (The foregoing does

not impact any rights of USV MS A and USV MS B which arise by virtue of being a shareholder (or CDI holder) in the Company.)

In the case of a capital measure or comparable measure being implemented at the Company and to the extent permitted by the ASX Listing Rules and mandatory German law, the Management Board (together with the Supervisory Board) may seek shareholder's approval or take other measures that would permit the issue of subscription rights or shares (or CDIs) to USV MS A and USV MS B in such a way that USV MS A and USV MS B would maintain *pari passu* a stake in the Company that each of them would have, had they already exercised their respective USV MS Conversion Right.

**Transfer Restrictions** Neither USV MS A nor USV MS B may assign its respective USV MS Convertible Bond or any of the rights under its USV MS Convertible Bond (*Abtretungsverbot*), except with the consent of the Company.

**No Quotation** The Convertible Bonds will not be quoted by ASX.

**Participation/Voting Rights** Before USV MS A and/or USV MS B have exercised their respective USV MS Conversion Right and been delivered shares/CDIs, it will not be allowed to participate or vote at shareholders' meetings of the Company as a result of being a holder of a USV MS Convertible Bond. (The foregoing does not impact any rights of USV MS A and USV MS B which arise by virtue of either being a shareholder (or CDI holder) in the Company.)



# MARLEY SPOON

MARLEY SPOON AG

ARBN 625 684 068

## LODGE YOUR INSTRUCTION



### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



### BY MAIL

Marley Spoon AG  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia



### BY FAX

+61 2 9287 0309



### BY HAND

Link Market Services Limited  
1A Homebush Bay Drive, Rhodes NSW 2138; or  
Level 12, 680 George Street, Sydney NSW 2000



### ALL ENQUIRIES TO

Telephone: 1300 554 474      Overseas: +61 1300 554 474

## LODGEMENT OF A CDI VOTING INSTRUCTION FORM

This CDI Voting Instruction Form (and any Power of Attorney under which it is signed) must be received at an address given above by **8:00am (AEST) on Thursday, 23 July 2020**. Any CDI Voting Instruction Form received after that time will be invalid.

CDI Voting Instruction Forms may be lodged using the reply paid envelope or:



### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Login to the Link website using the holding details as shown on the CDI Voting Instruction Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" (Securityholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the reverse of this CDI Voting Instruction Form).

## HOW TO COMPLETE THIS CDI VOTING INSTRUCTION FORM

### YOUR NAME AND ADDRESS

This is your name and address as it appears on the Company's CDI register. If this information is incorrect, please make the correction on the form. CDI Holders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your CDIs using this form.**

### DIRECTION TO CHESS DEPOSITARY NOMINEES PTY LTD

Each CHESS Depository Interest ("CDI") is evidence of an indirect ownership in the Company's shares ("Shares"). The underlying Shares are registered in the name of CHESS Depository Nominees Pty Ltd ("CDN"). As holders of CDIs are not the legal owners of the Shares, CDN is entitled to vote at the annual general meeting of shareholders ("Meeting") on the instruction of the registered holders of the CDIs.

### APPOINTMENT OF A PROXY

If you wish to attend the Meeting in person or appoint some person or company other than CDN, who need not be a shareholder, to attend and vote at the Meeting as CDN's proxy or any adjournment or postponement thereof, please insert your name(s) or the name of your chosen appointee in the box in Step 2. Link will then send you a legal form of proxy which will grant you or the person specified by you the right to attend and vote at the Meeting. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies as outlined in the *Notice of Annual General Meeting* including any cut off time for receipt of valid proxies.

### SIGNING INSTRUCTIONS

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either holder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with Link. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** with respect to an Australian company, where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place. With respect to a U.S. company or other entity, this form may be signed by one officer. Please give full name and title under the signature.

NAME SURNAME  
 ADDRESS LINE 1  
 ADDRESS LINE 2  
 ADDRESS LINE 3  
 ADDRESS LINE 4  
 ADDRESS LINE 5  
 ADDRESS LINE 6



X99999999999

## CDI VOTING INSTRUCTION FORM

**Note:** Voting instructions in accordance with Option A will only be valid and accepted if this form, executed by you, is received in accordance with the instructions above by no later than **8:00am (AEST) on Thursday, 23 July 2020**. To ensure that any proxy appointed under Option B is eligible to vote in accordance with your instructions, you should also ensure that this form, executed by you with the box in Option B completed, is received in accordance with the instructions above by no later than **8:00am (AEST) on Thursday, 23 July 2020**.

STEP 1: OPTION

### DIRECTION TO CHESSE DEPOSITARY NOMINEES PTY LTD

I/We being a holder of CHESSE Depository Interests of Marley Spoon AG hereby direct CHESSE Depository Nominees Pty Ltd to vote the shares underlying my/our CDI holding at the Annual General Meeting of shareholders of the Company to be held at **12:00pm (CEST) / 8:00pm (AEST) on Wednesday, 29 July 2030 at Paul-Lincke-Ufer 39-40, 10999 Berlin, Germany**, and at any adjournment or postponement of that Meeting, in accordance with the following directions. By execution of this CDI Voting Instruction Form the undersigned hereby authorises CDN to appoint such proxies, attorneys or their substitutes in their discretion to vote in accordance with the directions set out below.

STEP 1: OPTION B

### PROXY APPOINTMENT – this only needs to be completed if you wish to attend the Meeting or appoint another person to attend the Meeting as your proxy. Leave this box blank if you wish to have votes cast in accordance with Option A.

If you wish to attend the Meeting in person or appoint another person or company other than CDN, who need not be a shareholder, to attend and vote at the Meeting as CDN's proxy or any adjournment or postponement thereof, please insert their name(s) in this box.

Link will then send you a legal form of proxy which will grant you or the person specified by you the right to attend and vote at the Meeting as CDN's proxy. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies and authorised representatives as outlined in the *Notice of Annual General Meeting* including any cut off time for receipt of valid proxies.

## VOTING INSTRUCTIONS

Please read the voting instructions overleaf before marking any boxes with an

### Resolutions

For Against Abstain\*

- |    |  |                          |                          |                          |
|----|--|--------------------------|--------------------------|--------------------------|
| 2  | Resolution on the discharge of the members of the Management Board for the financial year 2019   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3  | Resolution on the discharge of the members of the Supervisory Board for the financial year 2019  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4  | Resolution on the appointment of the auditor for the individual financial statements and the consolidated financial statements for the financial year 2020, as well as for any review of interim financial statements and interim management reports during the financial year 2020  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5  | Resolution on the authorisation to grant subscription rights to members of the Management Board ( <i>Vorstand</i> ) of the Company, to members of managing corporate bodies of affiliated companies in Germany and abroad as well as selected executives and employees of the Company and affiliated companies in Germany and abroad ("Share Option Program 2020") and to create a Conditional Capital 2020/II, as well as corresponding amendment of the Constitution   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6  | Resolution on the granting of an authorisation to issue a convertible bond in the nominal amount of USD 2,387,750.00 to USV MARLEY SPOON A, LLC and a convertible bond in the nominal amount of USD 112,250.00 to USV MARLEY SPOON B, LLC, each against contribution in kind and under the exclusion of subscription rights, and the creation of a new Conditional Capital 2020/III and a corresponding amendment of Section 3 of the Constitution (insertion of a new Section 3 para. 13 of the Constitution) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7  | Resolution on the cancellation of the existing Authorised Capital 2020/I and the creation of an Authorised Capital 2020/III, with the authorisation of the Management Board to exclude subscription rights with the consent of the Supervisory Board as well as the corresponding amendment of Sec. 3 para. 3 of the Constitution  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8  | Resolution to approve the Share Option Program 2020 and issue of securities under that program   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9  | Resolution on the granting of share options to Fabian Siegel   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10 | Resolution pursuant to which, for the purposes of ASX Listing Rule 7.1, and for all other ASX Listing Rule purposes, the Company be approved and authorised to issue, until October 29, 2020 the USV MS A Convertible Bond to USV MS A and to issue the USV MS B Convertible Bond to USV MS B, and to issue shares in the Company, and CDIs in respect of such shares, upon the conversion of the USV MS A Convertible Bond and the USV MS B Convertible Bond  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 | Resolution pursuant to which, for the purposes of ASX Listing Rule 7.4, and for all other ASX Listing Rule purposes, shareholders ratify the issue of the Placement CDIs   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



\* If you do not mark the "For" or "Against" box your vote will not be counted. If you wish to vote a portion of your CDI's, see voting instructions overleaf.

STEP 3

## SIGNATURE OF CDI HOLDERS – THIS MUST BE COMPLETED

CDI Holder 1 (Individual)

Joint CDI Holder 2 (Individual)

Joint CDI Holder 3 (Individual)




Sole Director and Sole Company Secretary

Director/Company Secretary (Delete one)

Director

This form should be signed by the CDI Holder in accordance with the instructions overleaf.

STEP 4

MMM PRX2002N

