

## **Joint Report**

**by the Executive Board of  
euromicron Aktiengesellschaft  
communication & control technology**

**and**

**management of  
LWL Sachsenkabel GmbH  
– Spezialkabel und Vernetzungstechnik**

in accordance with Section 295 in conjunction with Section 293a AktG (German Stock Corporation Law) on

### **amendment of the profit and loss transfer agreement dated October 14, 2002**

between euromicron Aktiengesellschaft communication & control technology and LWL Sachsenkabel GmbH – Spezialkabel und Vernetzungstechnik

#### **I. General**

euromicron Aktiengesellschaft communication & control technology (hereinafter referred to as “euromicron AG”) and LWL Sachsenkabel GmbH – Spezialkabel und Vernetzungstechnik (hereinafter referred to as the “subsidiary”) concluded a profit and loss transfer agreement on October 14, 2002 (hereinafter referred to as the “profit and loss transfer agreement”). The Executive Board of euromicron AG and management of the subsidiary jointly submit the following report on the amendment of the profit and loss transfer agreement in accordance with Section 295 (1) in conjunction with Section 293a AktG (German Stock Corporation Law).

#### **II. Amendment of the profit and loss transfer agreement**

euromicron AG, represented by the Chairman of the Executive Board, Dr. Willibald Späth, and the Executive Board member Mr. Thomas Hoffmann, concluded an amendment agreement to the profit and loss transfer agreement (hereinafter referred to as the “amendment agreement”) with the subsidiary, represented by Ms. Silvia Duus and Dr. Volker Wilkening, the Managing Directors authorized to represent it jointly, on March 24, 2014. The amendment agreement is attached as an **Annex** to this report.

The shareholder’s meeting of the subsidiary approved the conclusion of the amendment agreement beforehand on March 18, 2014.

The amendment agreement shall only become effective with the approval of the General Meeting of euromicron AG. The Executive Board and Supervisory Board of euromicron AG shall therefore propose approving the amendment agreement to the Ordinary General Meeting of euromicron AG, which has been convened on May 14, 2014.

In accordance with Section 295 (1) in conjunction with Section 294 (2) AktG (German

Stock Corporation Law), amendment of the profit and loss transfer agreement shall not become effective until it has been entered in the commercial register at the place of the subsidiary's registered offices.

### **III. Parties to the amendment agreement**

#### **1. euromicron AG**

euromicron AG, Frankfurt/Main, Germany, entered in the commercial register of Frankfurt/Main Local Court under HRB 45562, is a listed stock corporation and the ultimate parent company of the euromicron Group. euromicron AG's fiscal year is the calendar year.

According to its Articles of Association, the purpose of the company is the development and distribution of mechanical, electrical and electronic components and systems, including software and engineering services for them. The company can achieve this purpose itself or through subsidiaries and associated companies.

The company can undertake all business transactions suited to promoting the purpose of the company. The company can also take a participating interest in other companies in Germany and abroad, acquire them, assume management of them, establish branch offices and conclude affiliation agreements with other companies.

The members of the Executive Board of euromicron AG are Dr. Willibald Späth (Chairman) and Mr. Thomas Hoffmann. In accordance with Section 7 No. 2 of its Articles of Association, euromicron AG is legally represented by two members of the Executive Board or by one member of the Executive Board jointly with a holder of general commercial power of attorney. If there is only one member of the Executive Board, he/she shall represent the company on his/own her.

#### **2. The subsidiary**

The subsidiary has its registered offices in Gornsdorf and is entered in the commercial register of Chemnitz Local Court under HRB 5862. The subsidiary's fiscal year is the calendar year.

The purpose of the subsidiary is the development, production and distribution of fiber-optic components and products related to that sector, as well as all derived products related thereto.

The sole shareholder of the subsidiary is euromicron AG, which has a direct participating interest of 100% in the subsidiary.

The subsidiary's nominal capital is €100,000.00 and is fully paid up.

The Managing Directors of the subsidiary are Ms. Silvia Duus and Dr. Volker Wilkening. If more than one Managing Director has been appointed, the subsidiary shall be represented jointly by two Managing Directors or by one Managing Director

jointly with a holder of general commercial power of attorney. The company shall be represented solely by one Managing Director if only one Managing Director has been appointed.

#### **IV. Legal and economic reasons for concluding the amendment agreement**

The amendment agreement modifies the existing profit and loss transfer agreement to reflect the current legal situation; formulations on the assumption of losses have been chosen so as to make changes to the text of the agreement superfluous even if there are changes to the law in future (dynamic reference) and also to take new tax requirements into account:

The German Act on Modification and Simplification of Business Taxation and the Tax Law on Travel Expenses dated February 20, 2013, amended the requirements of Section 17 No. 2 KStG (German Corporation Tax Act). In order to establish an integrated inter-company relationship under German income tax law under a profit and loss transfer agreement, it is necessary pursuant to the change in the law for the profit and loss transfer agreement to contain an explicit dynamic reference to the provisions of Section 302 AktG (German Stock Corporation Law).

The amendments do not have any economic or operational effects on the companies involved.

The core of the parties' main performance obligations (transfer of profits by the subsidiary and equalization of losses by euromicron AG) remains unchanged.

The minimum term for tax purposes of the profit and loss transfer agreement in its non-amended version has already expired. The minimum term for tax purposes is not to recommence anew as a result of the amendment agreement. The German Act on Modification and Simplification of Business Taxation and the Tax Law on Travel Expenses also stipulates that no new 5-year period begins if the dynamic reference has to be included. If even the minimum term for tax purposes would start to run anew, that would not entail any effects as regards the integrated inter-company relationship under tax law established by the profit and loss transfer agreement, because it can be assumed that the amended profit and loss transfer agreement will at most remain in effect for the duration of the newly commencing minimum term for tax purposes.

#### **V. Explanation of the amendment agreement to the profit and loss transfer agreement**

The provisions of the amendment agreement are to be explained in the following.

##### **1. Assumption of losses**

Section 2 of the amendment agreement provides for a revision of Section 3 of the profit and loss transfer agreement.

Section 3 of the amended profit and loss transfer agreement contains the obligation on the part of euromicron AG, as the controlling company, to equalize any net loss for the

year made by the subsidiary during the term of the agreement in accordance with the provisions of Section 302 AktG (German Stock Corporation Law). The reference is now a dynamic one: Reference is now made to “the applicable version” of the statutory provision referred to. The operation of Section 302 AktG (German Stock Corporation Law) in its entirety and in its applicable version is required in accordance with Section 17 (1) Sentence 2 No. 2 KStG (German Corporation Tax Act) for an integrated inter-company relationship under tax law with a GmbH (German limited liability company).

In accordance with Section 302 (1) AktG (German Stock Corporation Law), any net loss for the year otherwise made during the term of the agreement – i.e. without an equalization of losses – must be equalized, unless it is equalized by amounts allocated to the other revenue reserves during the term of the agreement being withdrawn from said reserves. In this regard, euromicron AG bears the economic risk of the subsidiary. This obligation to assume losses is a mandatory consequence of the profit and loss transfer agreement.

Section 302 (3) AktG (German Stock Corporation Law) governs the possibility for the subsidiary to waive its claim to equalization of losses and settlements relating to this claim. The reference to Section 302 (3) AktG (German Stock Corporation Law) results in particular in the following in the present case: The subsidiary cannot waive the claim to equalization or reach a settlement on it until three years after the date on which entry of the agreement’s termination in the commercial register has been published in accordance with Section 10 HGB (German Commercial Code). This shall not apply if euromicron AG is insolvent and reaches a settlement with its creditors to avert insolvency proceedings or if the obligation to render compensation is regulated in an insolvency plan.

In accordance with Section 302 (4) AktG (German Stock Corporation Law), the claim for equalization of losses becomes time-barred 10 years after the date on which entry of the agreement’s termination in the commercial register has been published in accordance with Section 10 HGB (German Commercial Code).

The above changes in Section 3 of the profit and loss transfer agreement result in a standardization with regard to other profit and loss transfer agreements.

## **2. Miscellaneous**

In addition, the recitals to the agreement have been amended for the purpose of clarification and adjusted to reflect the new business address of euromicron AG (Section 1 of the amendment agreement).

Section 3 of the amendment agreement clarifies that the provisions of the profit and loss transfer agreement not amended by the amendment agreement remain unchanged.

## **3. Assessments in accordance with Sections 304 and 305 AktG (German Stock Corporation Law)**

Because there are no outside shareholders, euromicron AG does not have to make any compensatory payment and cash compensation in accordance with Sections 304 and 305 AktG (German Stock Corporation Law). Section 7 of the profit and loss transfer agreement, which governs compensatory payment and cash compensation for outside shareholders within the meaning of Sections 304 and 305 AktG (German Stock Corporation Law), has not been deleted from the profit and loss transfer agreement, despite the fact that the related provisions are now irrelevant because the subsidiary no longer has any outside shareholders. The provisions of Section 7 are consequently redundant, but are without detrimental effect to the existing profit and loss transfer agreement.

#### **4. Effectiveness**

Like the original profit and loss transfer agreement, amendment of it requires the approval of the General Meeting of euromicron AG and the shareholders' meeting of the subsidiary, as well as entry of it in the subsidiary's commercial register. In addition, the resolutions to approve the amendment by the General Meeting of euromicron AG and the shareholders' meeting of the subsidiary must be certified by a notary. Amendment of the profit and loss transfer agreement only takes effect once these conditions have been met, which is scheduled for this year.

#### **VI. Auditing of the amendment agreement to the profit and loss transfer agreement**

Since euromicron AG directly holds all the shares in the subsidiary, no audit of the amendment agreement by a court-appointed expert auditor (contract auditor) is required in accordance with Section 295 (1) AktG in conjunction with Section 293b (1), 2nd half of the sentence AktG (German Stock Corporation Law).

Frankfurt/Main, March 24, 2014

#### **euromicron Aktiengesellschaft communication & control technology**

##### **The Executive Board**

*Dr. Willibald Späth*

*Thomas Hoffmann*

##### **LWL Sachsenkabel GmbH – Spezialkabel und Vernetzungstechnik**

##### **Management**

*Silvia Duus*

*Dr. Volker Wilkening*

#### **Annex:**

Copy of the amendment agreement (including the amended profit and loss transfer agreement)

**Amendment Agreement to the Profit and Loss Transfer Agreement**

between

**euromicron AG communication & control technology**

Zum Laurenburger Hof 76

60594 Frankfurt/Main

entered in the commercial register of

Frankfurt/Main Local Court under HRB 45562

**- hereinafter referred to as the “controlling company” -**

and

**LWL Sachsenkabel GmbH**

**– Spezialkabel und Vernetzungstechnik**

Auerbacher Straße 24, 09390 Gornsdorf

entered in the commercial register of

Chemnitz Local Court under HRB 5862

**- hereinafter referred to as the “controlled company” -**

**Preamble**

On October 14, 2002, the parties concluded a profit and loss transfer agreement (hereinafter referred to as the “agreement”), which is attached as **Annex 1** to this amendment agreement. At the time the agreement was concluded, the controlling company had its registered offices at Kennedyallee 97 a, 60596 Frankfurt/Main. In the wake of changes to statutory requirements demanded of the profit and loss transfer agreement by the German Act on Modification and Simplification of Business Taxation and the Tax Law on Travel Expenses (BT Drs 17/10774), the parties hereby amend the agreement to adapt it to the new regulations.

The parties wish to amend the agreement and therefore agree the following:

**1. Amendment of the agreement’s recitals**

The agreement’s recitals are amended by way of clarification and now read:

**“Profit and Loss Transfer Agreement**

between

**euromicron AG communication & control technology**

Zum Laurenburger Hof 76  
60594 Frankfurt/Main  
entered in the commercial register of  
Frankfurt/Main Local Court under HRB 45562

**- hereinafter referred to as the “controlling company” -**

and

**LWL Sachsenkabel GmbH**  
**– Spezialkabel und Vernetzungstechnik**  
Auerbacher Straße 24, 09390 Gornsdorf  
entered in the commercial register of  
Chemnitz Local Court under HRB 5862

**- hereinafter referred to as the “controlled company” -**

in the version of the amendment agreement dated March 24, 2014”

## **2. Amendment of Section 3 of the agreement**

Section 3 of the agreement is amended as follows:

“Section 3: Assumption of losses

The controlling company undertakes toward the controlled company to assume the latter’s losses in accordance with the provisions of Section 302 AktG (German Stock Corporation Law) (in its entirety and in all its elements) in its applicable version (or provisions replacing it).

## **3. Continued validity of the rest of the agreement**

The provisions of the rest of the agreement shall remain unchanged.

## **4. Final version**

**Annex 2** contains the agreement in the version as modified pursuant to this amendment agreement. This **Annex 2** is only for the purpose of clarity and does not contain any provision binding on the parties.

Frankfurt/Main, March 24, 2014

**euromicron AG communication & control technology**

*Dr. Willibald Späth*

*Thomas Hoffmann*

Gornsdorf, March 24, 2014

**LWL Sachsenkabel GmbH**

**– Spezialkabel und Vernetzungstechnik**

*Silvia Duus*

*Dr. Volker Wilkening*



## **Annex 1**

## Ergebnisabführungsvertrag

Anlage zur notariellen Vorhandlung  
vom 18.12.2002  
(Nr. der Urk.-Rolle 2651/2002...)

Der Notar:

*Hilmar Häuser*

zwischen

der euromicron AG communication & control technology,  
Kennedyallee 97 a, 60596 Frankfurt am Main,  
eingetragen im Handelsregister des Amtsgerichts Frankfurt am Main unter HRB 45562,

- nachstehend "der Organträger" genannt -

und

der LWL-Sachsenkabel GmbH - Spezialkabel und Vernetzungstechnik,  
Auerbachstraße 24, 09390 Gornsdorf,  
eingetragen im Handelsregister des Amtsgerichts Chemnitz unter HRB 5862,

- nachstehend "die Organgesellschaft" genannt -.

### § 1 Leitung der Organgesellschaft

1. Die Organgesellschaft ist finanziell, wirtschaftlich und organisatorisch in den Organträger eingegliedert. Die rechtliche Selbständigkeit beider Gesellschaften bleibt unberührt.
2. Die Organgesellschaft unterstellt die Leitung ihrer Gesellschaft dem Organträger. Der Organträger ist demgemäß berechtigt, der Geschäftsführung der Organgesellschaft hinsichtlich der Leitung der Gesellschaft Weisungen zu erteilen. Weisungen sollen schriftlich erteilt werden.
3. Die Führung der Geschäfte und die Vertretung der Organgesellschaft obliegt weiterhin der Geschäftsführung der Organgesellschaft.

## **§ 2 Gewinnabführung**

1. Die Organgesellschaft verpflichtet sich, erstmals für ihr ab dem 01.01.2002 beginnendes Geschäftsjahr ihren gesamten nach den maßgeblichen handelsrechtlichen Vorschriften ermittelten Gewinn, der sich unter Berücksichtigung von Absatz 2. abzüglich etwaiger Verlustvträge ergibt, an den Organträger abzuführen. Das Stammkapital der Organgesellschaft darf in keinem Fall ganz oder teilweise ausgekehrt werden.
2. Die Organgesellschaft kann mit Zustimmung des Organträgers Beträge aus dem Jahresüberschuß insoweit in freie Rücklagen einstellen, als dies handelsrechtlich zulässig und bei vernünftiger kaufmännischer Beurteilung wirtschaftlich begründet ist (§ 14 Ziffer 4 KStG). Während der Dauer dieses Vertrages in andere Gewinnrücklagen eingestellte Beträge sind auf Verlangen des Organträgers zu entnehmen und zum Ausgleich eines Jahresfehlbetrages zu verwenden oder als Gewinn abzuführen.

Die Abführung von Beträgen aus der Auflösung von Rücklagen, die vor Beginn dieses Vertrages gebildet wurden, ist ausgeschlossen.

## **§ 3 Verlustübernahme**

1. Der Organträger ist verpflichtet, jeden während der Vertragsdauer sonst bei der Organgesellschaft entstehenden Jahresfehlbetrag auszugleichen, soweit dieser nicht dadurch ausgeglichen wird, daß den freien Rücklagen Beträge entnommen werden, die während der Vertragsdauer in sie eingestellt worden sind.
2. Die Bestimmungen der §§ 301, 302 AktG gelten entsprechend.

## **§ 4 Feststellung des Jahresabschlusses**

1. Der Jahresabschluß der Organgesellschaft ist vor dem Jahresabschluß des Organträgers zu erstellen und festzustellen.
2. Endet das Geschäftsjahr der Organgesellschaft zugleich mit dem Geschäftsjahr des Organträgers, so ist gleichwohl das zu übernehmende Ergebnis der Organgesellschaft im Jahresabschluß des Organträgers für das gleiche Geschäftsjahr zu berücksichtigen.

## § 5 Informationsrecht

Dem Organträger steht ein uneingeschränktes Nachprüfungsrecht und Auskunftsrecht in sämtlichen Angelegenheiten der Organgesellschaft zu. Er ist berechtigt, jederzeit die Bücher und Schriften der Organgesellschaft einzusehen.

## § 6 Vertragsdauer, Kündigung

1. Dieser Vertrag gilt erstmals für das Geschäftsjahr der Organgesellschaft, das am 31.12.2002 endet und hat eine feste Laufzeit von fünf Jahren bis zum Ablauf des 31.12.2006. Danach verlängert er sich jeweils um ein weiteres Jahr.
2. Dieser Vertrag wird unter dem Vorbehalt der Zustimmung der Gesellschafterversammlung des Organträgers und der Organgesellschaft geschlossen. Sein Bestehen wird in das Handelsregister der Organgesellschaft eingetragen.
3. Dieser Vertrag ist auf unbestimmte Zeit geschlossen und kann von beiden Vertragsparteien unter Einhaltung einer Kündigungsfrist von 6 Monaten zum Ende eines Geschäftsjahres der Organgesellschaft gekündigt werden, frühestens jedoch zum 31.12.2006, sofern zu diesem Zeitpunkt ein Geschäftsjahr der Organgesellschaft endet.
4. Das Recht der vorzeitigen Kündigung bei Vorliegen eines wichtigen Grundes bleibt unberührt. Als wichtiger Grund gelten insbesondere Umstände, die von der deutschen Finanzverwaltung als solche anerkannt sind (A 55 Absatz 7 der KStR 1995 und §14 Nr.3 Satz3 KStG). Sofern eine Teilveräußerung der Organbeteiligung erfolgt, kann der Vertrag zum Übertragungstichtag gekündigt werden.
5. Die Kündigung bedarf der Schriftform.
6. Bei Beendigung des Vertrages ist der Organträger verpflichtet, den Gläubigern der Organgesellschaft in entsprechender Anwendung des § 303 AktG Sicherheit zu leisten.

## **§ 7 Ausgleich für außenstehende Gesellschafter**

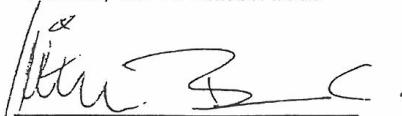
1. Der Organträger garantiert für die Vertragsdauer den außenstehenden Gesellschaftern der Organgesellschaft für jedes volle Geschäftsjahr der Organgesellschaft eine Dividende in Höhe von 5 % des jeweiligen Vollausschüttungsbetrages reduziert um die darauf entfallende Kapitalsteuerbelastung von 25 %. Soweit in einem Geschäftsjahr die Vertragsdauer dieses Vertrages nicht dem vollen Geschäftsjahr entspricht, wird der Ausgleich zeitanteilig gewährt. Die Ausgleichszahlung durch den Organträger ist am Tage nach der ordentlichen Hauptversammlung des Organträgers für das abgelaufene Geschäftsjahr fällig, jedoch nicht vor Feststellung des Jahresabschlusses der Organgesellschaft.
2. Der Organträger verpflichtet sich, auf Verlangen der außenstehenden Gesellschafter der Organgesellschaft deren Geschäftsanteile gegen einen in bar zu zahlenden Kaufpreis zu einem Betrag von Euro 10.000,00 für je Euro 100,00 Geschäftsanteile zu erwerben. Die außenstehenden Gesellschafter der Organgesellschaft, die die Übernahme ihrer Geschäftsanteile durch den Organträger ganz oder zum Teil wünschen, können dieses Verlangen binnen einer Frist von 8 Wochen durch schriftliche Erklärung gegenüber dem Organträger geltend machen; die Frist beginnt mit Ablauf des Tages, an dem die Eintragung des Bestehens dieses Vertrages im Handelsregister der Organgesellschaft vollzogen wurde.

## **§ 8 Schlußbestimmungen**

1. Wegen der Auslegung einzelner Bestimmungen dieses Vertrages wird auf § 14 und § 17 KStG verwiesen.
2. Alle Änderungen und Ergänzungen dieses Vertrages bedürfen der Schriftform. Dies gilt auch für einen Verzicht auf das vorstehende Schriftformerfordernis.
3. Sollten einzelne Bestimmungen dieses Vertrages unwirksam oder undurchführbar sein oder werden, so wird die Gültigkeit der übrigen Bestimmungen dieses Vertrages davon nicht berührt. Anstelle der unwirksamen oder undurchführbaren Bestimmung gilt eine solche Bestimmung als vereinbart, die in gesetzlich zulässiger Weise dem wirtschaftlichen Zweck der unwirksamen oder undurchführbaren Bestimmung möglichst nahe kommt. Das gleiche gilt im Fall von Lücken in diesem Vertrag.

4. Erfüllungsort ist für beide Vertragsteile der Sitz des Organträgers.

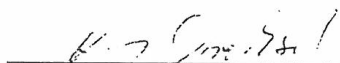
Frankfurt, den 14. Oktober 2002



euromicron AG

communication & control technology

Gornsdorf, den 14. 10. 2002




LWL Sachsenkabel GmbH -

Spezialkabel und Vernetzungstechnik

Vorstehende Abschrift stimmt mit der vorgelegten Urschrift der Urkunde vollständig und wörtlich überein.

Frankfurt am Main, den 26. DEZ. 2002



Rain Betting-Meyer  
als amtlich bestellte  
Vertreterin des Notars  
Dr. Helmut Häuser

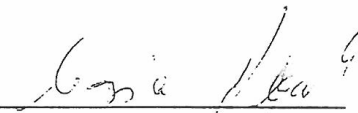
### Genehmigungserklärung

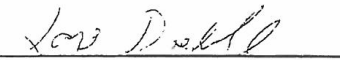
Hierdurch genehmigen wir, Maria Drechsel geb. Steinert, Lars Drechsel und Kai Drechsel, alle Erklärungen, die Henry Drechsel, Ingenieur, geb. am 09.11.1948, wohnhaft Gartenstraße 9, 09390 Gornsdorf, in der Urkunde des Notars Dr. Helmut Häuser in Frankfurt am Main vom 18.12. 2002 – UR-Nr. 2651/2002 – für uns abgegeben hat.

Eine Abschrift der oben genannten Urkunde liegt uns vor.

Wert: Höchstwert

Ort/Datum

  
Maria Drechsel geb. Steinert

  
Lars Drechsel

  
Kai Drechsel

URNr. 1088 /2002

H:\UB\Drechsel.1


Vorstehende, vor mir vollzogene Unterschriften von

1. Frau Maria Drechsel, geb. Steinert, geb. am 1.11.1954,  
wohnhaft Gartenstraße 9, 09390 Gornsdorf,
2. Herrn Lars Drechsel, geb. am 12.5.1975, wohnhaft Am Ski-  
hang 49, 09235 Burkhardtsdorf OT Meinersdorf,
3. Herrn Kai Drechsel, geb. am 5.8.1981, wohnhaft Gartenstr.  
9, 09390 Gornsdorf,

alle mir, Notar, persönlich bekannt,

beglaubige ich.

Stollberg, 20.12.2002

  
Georg Fürle  
Notar

Kostenberechnung

<u>Wert</u> <i>höchstwert</i>	EUR
§ 45 I KostO (1/4)	EUR 115,-
§ 136 I KostO	EUR 1,-
§ 137 KostO	EUR
Mehrwertsteuer	EUR 11,50
<u>Summe</u>	EUR 126,50





URNr. 1088 /2002

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Vorstehende, vor mir vollzogene Unterschriften von

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Stollberg, 20.12.2002

  
Georg Fürle  
Notar

Kostenberechnung

<u>Wert</u>	<u>höchstwert</u>	EUR
§ 45 I KostO (1/4)		EUR 14,20
§ 136 I KostO		EUR 7,-
§ 137 KostO		EUR
Mehrwertsteuer		EUR 11,25
<u>Summe</u>		EUR 32,45



**Profit and Loss Transfer Agreement**

between

**euromicron AG communication & control technology**

Zum Laurenburger Hof 76

60594 Frankfurt/Main

entered in the commercial register of

Frankfurt/Main Local Court under HRB 45562

**- hereinafter referred to as the “controlling company” -**

and

**LWL Sachsenkabel GmbH**

**– Spezialkabel und Vernetzungstechnik**

Auerbacher Straße 24, 09390 Gornsdorf

entered in the commercial register of

Chemnitz Local Court under HRB 5862

**- hereinafter referred to as the “controlled company” -**

in the version of the amendment agreement dated March 24, 2014

**Section 1: Running of the controlled company**

1. The controlled company is integrated financially, economically and organizationally in the controlling company. The legal independence of both companies shall remain unaffected.
2. The controlled company shall subordinate running of it to the controlling company. The controlling company shall accordingly be authorized to issue instructions to the management of the controlled company as to how the controlled company must be managed. Instructions shall be issued in writing.
3. Management of the controlled company shall still be responsible for running the business of and representing the controlled company.

**Section 2: Transfer of profits**

1. The controlled company undertakes, for the first time for its fiscal year starting on January 1, 2002, to transfer to the controlling company its entire profit, as calculated in accordance with the relevant provisions under the German Commercial Code (HGB) and taking into account Subsection 2, minus any losses carried forward. The nominal capital of the controlled company must never be paid out in full or in part.
2. The controlled company can, with the consent of the controlling company, allocate amounts from the net income for the year to free reserves insofar as this is permitted under commercial law and is economically justified on the basis of a reasonable commercial assessment (Section 14, Nr. 4 KStG (German Corporation Tax Act)). Amounts allocated to other revenue reserves during the term of this agreement shall be withdrawn at the request of the controlling company and used to equalize any net loss for the year or transferred as profits.

Transfer of amounts from the reversal of reserves set up before this agreement commenced shall be excluded.

### **Section 3: Assumption of losses**

The controlling company undertakes toward the controlled company to assume the latter's losses in accordance with the provisions of Section 302 AktG (German Stock Corporation Law) (in its entirety and in all its elements) in its applicable version (or provisions replacing it).

### **Section 4: Adoption of the annual financial statements**

1. The annual financial statements of the controlled company shall be prepared and adopted before the annual financial statements of the controlling company.
2. If the fiscal year of the controlled company is the same as the fiscal year of the controlling company, the profit or loss of the controlled company must be included in the annual financial statements of the controlling company for the same fiscal year.

### **Section 5: Right to information**

The controlling company shall have an unrestricted right of verification and right to obtain information in all matters of the controlled company. It shall be authorized to inspect the books and documents of the controlled company at any time.

### **Section 6: Term and termination of the agreement**

1. This agreement shall apply for the first time to the fiscal year of the controlled company that ends on December 31, 2002, and shall run for a fixed term of five years

until December 31, 2006. After that it shall be extended by a further year from time to time.

2. This agreement shall be concluded subject to the approval of the shareholders' meeting of the controlling company and of the controlled company. Its existence shall be entered in the commercial register of the controlled company.
3. This agreement is concluded for an indefinite period of time and can be terminated by either with period of notice of 6 months to the end of a fiscal year of the controlled company, but no earlier than effective December 31, 2006, if a fiscal year of the controlled company ends on that date.
4. The right to terminate the agreement prematurely for an important reason shall remain unaffected. An important reason shall be in particular circumstances than are recognized as such by the German fiscal authorities (A 55 Paragraph 7 of the KStR 1995 (Corporation Tax Guidelines) and Section 14 No. 3 Sentence 3 KStG (German Corporation Tax Act)). If part of the contribution of the consolidated interest is disposed of, the agreement can be terminated effective the date of transfer.
5. Notice of termination shall not be valid unless given in writing.
6. When the agreement ends, the controlling company is obliged to provide security for the creditors of the controlled company in analogous application of Section 303 AktG (German Stock Corporation Law).

## **Section 7: Compensation for outside shareholders**

1. The controlling company guarantees to pay outside shareholders of the controlled company a dividend 5% of the respective full amount to be distributed, minus the capital levy of 25% on it, for each full fiscal year of the controlled company for the term of the agreement. If the term of this agreement does not correspond to the full fiscal year in a fiscal year, this compensation shall be granted on a pro rata temporis basis. The compensatory payment by the controlling company shall be due on the day after the ordinary general meeting of the controlling company for the past fiscal year, but not before the annual financial statements of the controlled company have been adopted.
2. At the request of the outside shareholders of the controlled company, the controlling company undertakes to acquire their shares in exchange for a purchase price to be paid in cash, at an amount of 10,000.00 for each €100.00 of shares. The outside shareholders of the controlled company who want all or some of their shares to be taken over by the controlling company can request that by issuing a written declaration to the controlling company within a period of 8 weeks; this period shall commence at 12 midnight on the day on which the existence of this agreement was entered in the commercial register of the controlled company.

## **Section 8: Final provisions**

1. Section 14 and Section 17 KStG (German Corporation Tax Act) is referred to as regards the interpretation of individual provisions of this agreement.
2. Any amendments to or modifications of this agreement shall only be valid when given in writing. This shall also apply to any waiver of the above requirement for written form.
3. If individual provisions of this agreement are or become invalid or unworkable, this shall not affect the remaining provisions of the agreement. In place of the invalid or unworkable provision, an arrangement which corresponds as closely as possible to the economic purpose of the invalid or unworkable provision in a legally permissible manner shall be deemed as agreed. The same shall apply if there are gaps in this agreement.
4. The place of performance for both parties is the place of the registered offices of the controlling company.

*Dated October 14, 2002, signatures*