

## PROFIT TRANSFER AGREEMENT

Between

**Delivery Hero SE**, with its registered address at Oranienburger Straße 70, 10117 Berlin, registered with the commercial register of the Local Court (*Amtsgericht*) Charlottenburg under HRB 198015 B,

- hereinafter referred to as “**SE**” -,

and

**Foodpanda GmbH**, with its registered address at Oranienburger Straße 70, 10117 Berlin, registered with the commercial register of the Local Court (*Amtsgericht*) Charlottenburg under HRB 138224 B,

- hereinafter referred to as “**GmbH**” -,

- SE and GmbH individually also referred to as “**Party**” and together as “**Parties**” -

the following profit transfer agreement is concluded:

### PREAMBLE

The GmbH is a wholly owned subsidiary of the SE. The Parties intend to conclude a profit transfer agreement with effect from January 1, 2023.

Now, therefore, the Parties agree as follows:

### § 1 TRANSFER OF PROFIT

- (1) The GmbH is obliged to transfer its entire profit to the SE for the duration of this Agreement in accordance with Section 301 of the German Stock Corporation Act (*Aktiengesetz*, “**AktG**”), as amended from time to time. Subject to the formation and dissolution of reserves pursuant to Section 4 para. 1 of this Agreement, the annual profit generated without the transfer of profit, less any losses carried forward from the precedent year shall be transferred.
- (2) The obligation to transfer profit will apply for the first time for the entire profit of the then current financial year of the GmbH in which this Agreement becomes effective.

## § 2 ABSORPTION OF LOSSES

- (1) The provisions of Section 302 AktG, as amended from time to time, shall apply accordingly.
- (2) The claim for absorption of losses shall arise, unless otherwise provided for in para. 1, on the balance sheet date of the relevant financial year of the GmbH.

## § 3 PREPARATION OF THE ANNUAL FINANCIAL STATEMENTS

- (1) The annual financial statements of the GmbH shall be submitted to the SE for information, review and approval prior to their adoption.
- (2) The annual financial statements of the GmbH shall be prepared and adopted prior to the annual financial statements of the SE.
- (3) If the financial year of the GmbH ends at the same time as the financial year of the SE, the profit or loss of the GmbH to be absorbed shall nevertheless be taken into account in the annual financial statements of the SE for the same financial year.

## § 4 FORMATION AND DISSOLUTION OF RESERVES

- (1) With the SE's consent, the GmbH may allocate amounts from the annual profit to the retained earnings only to the extent permissible under commercial law and justified in economic terms on the basis of a reasonable commercial assessment. Any other retained earnings pursuant to Section 272 para. 3 sentence 2 of the German Commercial Code (*Handelsgesetzbuch*, "HGB") formed during the term of this Agreement shall be dissolved upon the SE's request and be used in accordance with Section 302 AktG as amended from time to time to compensate any annual deficit or be transferred as profit.
- (2) Other reserves, profit carried forward and retained earnings from the period prior to the effective date of this Agreement must not be transferred as profit to the SE. The same applies to capital reserves irrespective of whether such capital reserves were established prior to or after the effective date of this Agreement

## **§ 5 DUE DATE AND INTEREST**

- (1) The claim for compensation of the annual deficit pursuant to Section 2 of this Agreement shall become due as per the balance sheet date of the relevant financial year of the GmbH.
- (2) The claim for transfer of profit pursuant to Section 1 of this Agreement shall become due upon the adoption of the annual financial statements of the GmbH for the relevant past financial year.
- (3) The SE may demand an advance on any transfer of profits if and to the extent that an interim dividend could be paid in accordance with the law and the articles of association.
- (4) The claims for the transfer of profit pursuant to Section 1 of this Agreement and for the compensation of the annual deficit pursuant to Section 2 of this Agreement shall bear interest at a rate of 5 % p. a. pursuant to Sections 352, 353 HGB as from the date when they fall due (Section 5 para. 1 and 2 of this Agreement). Advances pursuant to Section 5 para. 3 of this Agreement are non-interest bearing. In case any advance paid exceeds the actual payment obligations under Section 5 para. 2 of this Agreement, the amount paid in excess shall be treated as an interest-bearing granted loan and shall bear interest according to sentence 1 as from the date when the advance is paid.

## **§ 6 EFFECTIVENESS AND TERM; TERMINATION**

- (1) This Agreement requires for its effectiveness the consent of both the general meeting of the SE and the shareholders' meeting of the GmbH.
- (2) This Agreement takes effect upon registration with the commercial register of the registered seat of the GmbH and shall enter into force with retroactive effect as from the beginning of the financial year of the GmbH in which this Agreement becomes effective.
- (3) This Agreement is concluded for a fixed term of five (5) years, counting from the time it becomes effective. Thereafter, the Agreement continues indefinitely unless it is terminated in writing by one of the contracting Parties with six months' notice in compliance with the above minimum term of five years. If the end of the term does not fall at the end of a financial year of the GmbH, the term shall be extended until the end of the then current financial year.

- (4) The right to give notice of termination for an important cause with immediate effect and without adhering to a notice period shall remain unaffected. An important cause is deemed to be in particular:
- if the SE no longer holds the majority of the voting rights from the shares in the GmbH;
  - the transformation, merger, split or liquidation of the SE or the GmbH;
  - or any other reason leading to the discontinuation of the tax group for corporation and trade tax between the SE and the GmbH in accordance with the respective applicable version of the German Corporation Tax Act (*Körperschaftsteuergesetz*, KStG).
- (5) Notice of termination must be issued in writing.
- (6) If this Agreement terminates, the SE shall provide security to the creditors of the GmbH in accordance with Section 303 AktG, as amended from time to time, if they so request.

## § 7 FINAL PROVISIONS

- (1) Amendments and supplements to this Agreement must be made in writing in order to be effective, unless recording by a notary is required, and must be approved by the general meeting of the SE and the shareholders' meeting of the GmbH.
- (2) If any of the provisions of this Agreement are or become invalid or unenforceable, or if it becomes evident that this Agreement contains a gap, this shall not affect the remaining provisions of this Agreement. In such event, the Parties undertake to replace the invalid or unenforceable provision by the valid and enforceable provision that most closely approximates the invalid or unenforceable provision in economic intent; similarly, in the event of a gap, the Agreement is to be supplemented by a provision that the Parties would have agreed upon in accordance with their economic intent if they had considered this point.

*[Signature blocks of both Parties]*