

**Convenience translation**

**CONTROL AND PROFIT AND LOSS TRANSFER AGREEMENT**

between

**KWS SAAT SE & Co. KGaA**

Controlling Company

and

**KWS INTERSAAT GmbH**

Controlled Company

Table of Contents

<b>Preamble .....</b>	<b>3</b>
<b>1. Management and power to direct .....</b>	<b>3</b>
<b>2. Rights to obtain information and inspect documents.....</b>	<b>3</b>
<b>3. Transfer of profits .....</b>	<b>4</b>
<b>4. Assumption of losses .....</b>	<b>4</b>
<b>5. Annual financial statements.....</b>	<b>4</b>
<b>6. Effective date, term and termination .....</b>	<b>5</b>
<b>7. Security.....</b>	<b>6</b>
<b>8. Final provisions .....</b>	<b>6</b>

This **Control and Profit and Loss Transfer Agreement** (hereinafter referred to as the **“Agreement”**) is hereby concluded on September 23, 2020, between the following Parties:

- (1) KWS SAAT SE & Co. KGaA, Einbeck, registered in the commercial register of the local court in Göttingen under the entry number HRB 205722 (**“KWS SAAT”**); and
- (2) KWS INTERSAAT GmbH, Einbeck, registered in the commercial register of the local court in Göttingen under the entry number HRB 131156 (**“KWS INTERSAAT”**)

(KWS SAAT and KWS INTERSAAT hereinafter jointly referred to as the **“Parties”**)

## **Preamble**

KWS SAAT has been the sole shareholder of KWS INTERSAAT without interruption since the beginning of the current fiscal year of KWS INTERSAAT; it is therefore entitled to the majority of voting rights from the shares in KWS INTERSAAT (financial integration) and there are no outside shareholders.

With regard to the existing financial integration of KWS INTERSAAT in KWS SAAT, the following Control and Profit and Loss Transfer Agreement is concluded in order to establish an integrated inter-company relationship within the meaning of Sections 14 and 17 of the German Corporation Income Tax Act (KStG):

## **1. Management and power to direct**

1.1 KWS INTERSAAT shall place management of its company in the hands of KWS SAAT.

1.2 KWS SAAT shall be authorized to issue instructions to the management of KWS INTERSAAT in accordance with Section 308 of the German Stock Corporation Act (AktG) relating to organizational, economic, technical, financial and personnel matters through its representative bodies or persons authorized to do so by its representative bodies. An instruction can be issued generally or in relation to a specific individual case.

1.3 Management of KWS INTERSAAT shall be obligated to obey instructions from KWS SAAT within the scope of the statutory regulations.

1.4 Instructions can be issued in writing, by electronic transmission (including by e-mail), or verbally. If an instruction is issued verbally, it must be confirmed in writing or by electronic transmission (including by e-mail) without undue delay at the request of KWS INTERSAAT’s management.

1.5 An instruction to modify, preserve or terminate this agreement cannot be issued.

## **2. Rights to obtain information and inspect documents**

2.1 KWS SAAT can demand at any time that KWS INTERSAAT provide it with all requested information on legal, business, financial, personnel and administrative matters of KWS INTERSAAT. Without prejudice to the rights agreed above, KWS INTERSAAT shall report regularly on its business development, in particular on significant business transactions and events.

2.2 In addition, KWS SAAT can inspect the books and business documents of KWS INTERSAAT at any time, either itself or through an expert with a professional duty of confidentiality.

### **3. Transfer of profits**

3.1 The provisions of Section 301 of the German Stock Corporation Act (AktG) in its respectively valid version shall apply *mutatis mutandis* to the transfer of profits.

3.2 KWS INTERSAAT undertakes to transfer its entire profit, as calculated on the basis of the provisions of German commercial law, to KWS SAAT. The net income for the year, excluding the profit to be transferred, minus any loss carried forward from the previous year and the amount barred from distribution in accordance with Section 268 (8) of the German Commercial Code (HGB), shall be transferred, subject to the setup or reversal of reserves in accordance with Sections 3.3 and 3.4. The profit to be transferred shall not exceed the amount specified in Section 301 of the German Stock Corporation Act (AktG) in its respectively valid version.

3.3 With the consent of KWS SAAT, KWS INTERSAAT can allocate amounts from the net income for the year to the revenue reserves (Section 272 (3) of the German Commercial Code (HGB)), with the exception of the legal reserves, to the extent permissible under German commercial law and economically justified in accordance with prudent business practice. If permitted under the law, other revenue reserves set up during the term of this Agreement shall be reversed at the request of KWS SAAT and transferred as profit.

3.4 Amounts from the reversal of revenue reserves and from net retained profits that were formed or generated before this Agreement took effect, as well as capital reserves in accordance with Section 272 (2) Nos. 1 to 4 of the German Commercial Code (HGB) (irrespective of whether they were set up before or during the term of this Agreement), shall not be transferred.

3.5 The obligation to transfer profits shall apply for the first time to the entire profit for the fiscal year of KWS INTERSAAT in which this Agreement becomes effective in accordance with Section 6.

3.6 KWS SAAT can demand payments on account on the anticipated profit to be transferred, if and insofar as that is permitted under the law.

3.7 If this Agreement is terminated for good cause in accordance with Section 6.4, KWS INTERSAAT shall only be obligated to transfer the pro-rata profit that has accrued up to the end of the Agreement under German commercial law.

3.8 The claim to the transfer of profits shall become due effective midnight on the day on which the shareholders adopt a resolution to approve the financial statements for each fiscal year of KWS INTERSAAT.

### **4. Assumption of losses**

4.1 The provisions of Section 302 of the German Stock Corporation Act (AktG) in its respectively valid version shall apply *mutatis mutandis* to the assumption of losses by KWS SAAT.

4.2 The obligation to assume losses shall apply for the first time to the assumption of losses for the fiscal year of KWS INTERSAAT in which this Agreement becomes effective in accordance with Section 6.

4.3 The claim to compensation for the annual net loss shall become due effective midnight on the final day of each fiscal year of KWS INTERSAAT.

### **5. Annual financial statements**

5.1 KWS INTERSAAT shall prepare its annual financial statements in such a way that the profit or loss is carried respectively as a liability to or a receivable from KWS SAAT.

5.2 The annual financial statements of KWS INTERSAAT shall be submitted to KWS SAAT for information, examination and agreement before being approved.

5.3 The annual financial statements of KWS INTERSAAT shall be prepared and approved before the annual financial statements of KWS SAAT.

5.4 If the fiscal year of KWS INTERSAAT ends at the same time as the fiscal year of KWS SAAT, the profit/loss of KWS INTERSAAT shall nevertheless be included in the annual financial statements of KWS SAAT for the same fiscal year.

## **6. Effective date, term and termination**

6.1 This Agreement shall not become effective until approved by the Annual Shareholders' Meeting of KWS SAAT and the Shareholders' Meeting of KWS INTERSAAT.

6.2 This Agreement shall become effective when it is registered in the commercial register of KWS INTERSAAT. With the exception of the authorization to manage KWS INTERSAAT and issue instructions defined in Section 1, it shall apply retroactively as of the start of the fiscal year of KWS INTERSAAT in which the Agreement is registered in the commercial register of KWS INTERSAAT.

6.3 This Agreement shall be concluded for an indefinite period of time and can be terminated for the first time effective midnight on June 30, 2025, but no earlier than five years in time as of the start of the fiscal year for which an integrated inter-company relationship for corporation income tax and trade tax purposes pursuant to this Company Agreement is recognized for the first time, with a period of notice of three months to the end of the fiscal year of KWS INTERSAAT. This shall also apply *mutatis mutandis* to any cancellation of the Agreement by mutual consent.

6.4 The right to terminate the Agreement without notice for good cause shall remain unaffected thereby. Good cause shall be in particular:

- Conclusion of an agreement relating to the sale or other form of disposal of shares in KWS INTERSAAT to an extent that means that the conditions for financial integration of KWS INTERSAAT in KWS SAAT in accordance with the requirements under tax law no longer exist, in particular if KWS SAAT no longer holds the majority of shares in KWS INTERSAAT;
- If the participating interest in the integrated inter-company relationship is contributed, hived off or carved out by KWS SAAT;
- The conversion, merger, break-up or liquidation of KWS SAAT or KWS INTERSAAT or similar legal acts;
- If good cause exists within the meaning of Section 60 (6) of the German Corporation Income Tax Regulations (KStR) 2004 // R 14.5 (6) Sentence 3 of the German Corporation Income Tax Regulations (KStR) 2015 or a corresponding regulation;
- Other loss of financial integration within the meaning of Section 14 (1) No. 1 of the German Corporation Income Tax Act (KStG).

6.5 Termination of the Agreement shall not be valid unless given in writing.

## 7. Security

When the Agreement ends, KWS SAAT shall be obligated to provide the creditors of KWS INTERSAAT with security in *mutatis mutandis* application of Section 303 of the German Stock Corporation Act (AktG).

## 8. Final provisions

8.1 Reference is made to Sections 14 and 17 of the German Corporation Income Tax Act (KStG) in their respectively valid version as regards interpretation of individual provisions of this Agreement; in particular, the dynamic reference to the obligation to assume losses shall have precedence over other contractual provisions, if the latter should conflict with it.

8.2 If provisions of this Agreement or a provision incorporated in it in the future are or become ineffective or unworkable, in full or in part, the other provisions of the Agreement shall not be affected thereby. The same shall apply if it transpires that the Agreement has a gap. The ineffective or unworkable provision shall be replaced or the gap filled by a reasonable arrangement that, as far as legally feasible, corresponds as closely as possible to what the Parties would have wanted if they had considered the matter when this Agreement was concluded or the provision was later incorporated in it.

8.3 This shall also apply if a provision is ineffective due to a measure of performance or time (period or deadline) prescribed in the Agreement. In such a case, a legally permissible measure of performance or time that corresponds as closely as possible to what was intended shall be deemed to have been agreed.

8.4 The costs incurred by and in connection with the conclusion of this Agreement shall be borne by KWS SAAT.

8.5 This Agreement shall be subject to German law.

Einbeck, September 23, 2020

**KWS SAAT SE & Co. KGaA**

\_\_\_\_\_  
Dr. Hagen Duenbostel  
Spokesperson of the Executive Board

\_\_\_\_\_  
Eva Kienle  
Member of the Executive Board

Einbeck, September 23, 2020

**KWS INTERSAAT GmbH**

\_\_\_\_\_  
Thomas Ladage  
Managing Director