

[draft]

Control and Profit and Loss Transfer Agreement

between

ecolutions Trading GmbH
HRB 84861, Frankfurt am Main

and

ecolutions GmbH & Co. KGaA
HRB 79650, Frankfurt am Main

[Draft of 08 August 2011]

Control and Profit and Loss Transfer Agreement

between

ecolutions Trading GmbH

registered in the Commercial Register (*Handelsregister*) at the local court of Frankfurt am Main under no HRB 84861 with registered office at Grueneburgweg 18, 60322 Frankfurt am Main

hereinafter referred to as Subsidiary Company (*Organgesellschaft*)

and

ecolutions GmbH & Co. KGaA

registered in the commercial register at the local court of Frankfurt am Main under no HRB 79650 with registered office at Grueneburgweg 18, 60322 Frankfurt am Main

hereinafter referred to as Controlling Company (*Organträgerin*)

The Controlling Company is the direct holder of 100% of the shares and 100% of the voting rights of the Subsidiary company. On the basis of the aforementioned financial integration, the Subsidiary Company and the Controlling Company enter into the following Control and Profit Transfer Agreement.

§ 1 Management

The Subsidiary Company shall place the management of its company under the management of the Controlling Company. Accordingly, the Controlling Company shall be entitled to issue instructions to the management of the Subsidiary Company regarding the management of the Company. The right to issue instructions shall become effective as of the effective date of this Agreement.

§ 2 Transfer of Profits

- (1) The Subsidiary Company undertakes to transfer to the Controlling Company its entire profits, for the first time for the financial year that started on 01/01/2011, realised pursuant to the applicable provisions of commercial law. Subject to the creation or dissolution of reserves in accordance with paragraph 2, to be transferred is the accruing annual net income without the profit transfer, reduced by a potential loss carried forward from the previous year, the amount which is to be allocated to the reserves pursuant to the applicable statutory provisions as well as the amount which may not be distributed pursuant to Section 268 (8) of the German Commercial Code (Handelsgesetzbuch) is to be transferred. If some amount has been allocated to other revenue reserves during the term of this Agreement, this amount may be removed from the other revenue reserves and transferred as profit.
- (2) The Subsidiary Company may, subject to the consent of the Controlling Company, allocate parts of the annual net income to other revenue reserves insofar as this is permissible under commercial law and economically justified by a sound commercial judgment.
- (3) Any uncommitted reserves (other revenue reserves pursuant to Section 272 (3) of the German Commercial Code and capital reserves from the Controlling Company's additional payments pursuant to Section 272 (2) No 4 of the German Commercial Code) created during the term of this Agreement must be dissolved upon the request of the Controlling Company and used to compensate an annual net loss or transferred as profit. The transfer of any amounts from the dissolution of uncommitted reserves pursuant to Sentence 2, which were created prior to the beginning of this Agreement, shall be excluded.
- (4) The obligation to transfer profits shall apply for the first time to the Subsidiary Company's financial year in which this Agreement enters into force.

§ 3 Assumption of Losses and Statute of Limitations

- (1) Pursuant to Section 302 of the German Stock Corporation Act (Aktiengesetz), the Controlling Company shall be obligated to settle any annual net loss which would otherwise arise during the term of this Agreement unless such annual net loss is compensated by the withdrawal of amounts from the uncommitted reserves (other revenue reserves pursuant to Section 272 (3) of the German Commercial Code and capital reserves from the Controlling Company's additional payments pursuant to Section 272 (2) No. 4 of the German Commercial Code) which were allocated to them during the term of this Agreement. Section 302 (1) of the German

Stock Corporation Act shall apply accordingly. Section 2 (4) shall apply to the obligation to assume losses accordingly.

- (2) Prior to the expiry of three years after the date on which the registration of the end of this Agreement in the Commercial Register is deemed to have been announced pursuant to Section 10 of the German Commercial Code, the Subsidiary Company may neither waive its claim against the Controlling Company for the compensation of losses nor settle it. Section 302 (3) of the German Stock Corporation Act shall apply accordingly.
- (3) The claims under paragraphs 1 and 2 shall be time-barred 10 years after the date on which the registration of the end of the Agreement in the Commercial Register is deemed to have been announced pursuant to Section 10 of the German Commercial Code. Section 302 (4) of the German Stock Corporation Act shall apply accordingly.

§ 4 Effectiveness and Term

- (1) In order to become effective, this Agreement requires the consent of the shareholders' meeting of the Subsidiary Company and the consent of the Annual General Meeting of the Controlling Company.
- (2) This Agreement shall become effective upon its registration in the Commercial Register of the seat of the Subsidiary Company. The obligation to transfer the entire profit and to settle an otherwise accrued annual net loss, however, shall begin retroactively as of the beginning of the financial year in which it has become effective. This Agreement shall be entered into for a fixed period of five years, until 31/12/2015 and shall be renewed for one year unless it is terminated by giving the other contracting party at least six months' notice prior to its expiry.
- (3) If this Agreement does not become effective in 2011 because of a failure to register it in the Commercial Register, then it shall be deemed to have been entered into for a fixed period of time until 31/12/2016 (instead of 31/12/2015). Paragraph 2 Sentence 3 shall remain effective in all other respects.
- (4) The right to terminate this Agreement for cause without notice shall remain unaffected. In particular, the Controlling Company shall be entitled to terminate the Agreement for cause if it no longer has the majority of the voting rights resulting from shares in the Subsidiary Company. Termination for cause shall be allowed in particular if there are circumstances that are

recognised by the German tax authorities as giving cause for termination (R 60 (6) of the 2004 corporation tax guidelines).

- (5) When this Agreement ends, the Controlling Company must provide collateral to the creditors of the Subsidiary Company in accordance with Section 303 of the German Stock Corporation Act.

§ 5 Partial Nullity

- (1) If one of the provisions of this Agreement is or becomes ineffective or unenforceable, this shall not affect the validity of the rest of the provisions of the Agreement.
- (2) In the event that the rest of the provisions of the Agreement are valid, the parties undertake to replace the ineffective or unenforceable provision with such a new effective provision which financially most closely corresponds to the ineffective or unenforceable provision.”

(signature page follows)

ecolutions Trading GmbH
as Subsidiary Company

Ort, Datum

Petra Leue-Bahns

ecolutions GmbH & Co. KGaA
as Controlling Company
represented by the General Partner
Altira ecolutions Management GmbH

Ort, Datum

Petra Leue-Bahns

Albrecht Hanusch