

**MARLEY SPOON AG**  
(ASX: MMM)

**Berlin, Sydney, 27 February 2020**

## **CLEANSING NOTICE UNDER SECTION 708A(12C)(E) OF THE CORPORATIONS ACT 2001 (CTH)**

### **1. This Cleansing Notice**

- 1.1 Marley Spoon AG (ARBN 625 684 068) (**Company**), a stock corporation incorporated under the laws of Germany, gives this cleansing notice (**Cleansing Notice**) under section 708A(12C) of the Corporations Act 2001 (Cth) (**Corporations Act**) as amended by ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82 (**ASIC Instrument 2016/82**).
- 1.2 Following receipt by the Company of the necessary shareholder approvals on 29 January 2020, Marley Spoon has today issued three convertible notes and two option bonds with warrants:
- (a) one (1) convertible note (*Wandelschuldverschreibung*) in the principal amount of USD 2,651,892.62 has been issued to USV Marley Spoon A, LLC<sup>1</sup>;
  - (b) one (1) convertible note (*Wandelschuldverschreibung*) in the principal amount of USD 124,594.88 has been issued to USV Marley Spoon B, LLC<sup>2</sup>;
  - (c) one (1) convertible note (*Wandelschuldverschreibung*) in the principal amount of AUD 4,047,250.00 has been issued to Woolworths Group<sup>3</sup>;
  - (d) one (1) option bond in the nominal amount of EUR 5,000 with a detachable warrant to Venture Lending & Leasing VIII, LLC (**VLL 8**)<sup>4</sup>; and
  - (e) one (1) option bond in the nominal amount of EUR 5,000 with a detachable warrant to Venture Lending & Leasing IX, LLC (**VLL 9**)<sup>5</sup>.

For the purposes of this Cleansing Notice the following definitions apply

- paragraphs 1.2(a) through 1.2(c) together, the **Convertible Notes** and each a **Convertible Note**;
- paragraphs 1.2(d) and 1.2(e) together the **Option Bonds with Warrants** and each an **Option Bond with Warrant**;

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<sup>1</sup> As announced on 26 September 2019, the Company entered into a USD 2,776,487.50 loan agreement (the **USV Loan Agreement**) with USV Marley Spoon A, LLC and USV Marley Spoon B, LLC (together, **USV**). Following receipt by the Company of the necessary shareholder approvals on 29 January 2020, the Company elected to substitute the loan for two (2) convertible instruments with an aggregate principal amount of USD 2,776,487.50.

<sup>2</sup> As above fn. 1.

<sup>3</sup> As announced on 26 September 2019, the Company entered into a AUD 4,047,250.00 loan agreement (the **WOW Loan Agreement**) with W23 Investments Pty Limited (**Woolworths Group**). Following receipt by the Company of the necessary shareholder approvals on 29 January 2020, the Company elected to substitute the loan for one (1) convertible instrument with a principal amount of AUD 4,047,250.00.

<sup>4</sup> As announced on 21 November 2019, the Company entered into a loan agreement (the **WTI Loan Agreement**) with affiliates of VLL 8 and VLL 9. Following receipt by the Company of the necessary shareholder approvals on 29 January 2020, the Company elected to issue the option bonds with warrants as additional consideration for the financing provided under the WTI Loan Agreement pursuant to the terms of the WTI Loan Agreement.

<sup>5</sup> As above fn. 4.

- the warrants on their own, the **Warrants**;
- the Convertible Notes and the Option Bonds with Warrants together the **Instruments**; and
- USV Marley Spoon A, LLC, USV Marley Spoon B, LLC, Woolworths Group, VLL 8 and VLL 9 are referred to as the **Beneficiaries** and each as a **Beneficiary**.

1.3 The Instruments have been issued without disclosure under Part 6D.2 of the Corporations Act. The issue of this Cleansing Notice enables the shares (and consequently CDIs) in the Company to be issued by the Company on the conversion / exercise of the Instruments on the terms described below, to be on-sold to retail investors without further disclosure.

1.4 The Company gives notice that:

- (a) the Instruments were issued without disclosure to investors under Part 6D.2 of the Corporations Act; and
- (b) this Cleansing Notice has been given in accordance with section 708A(12C)(e) of the Corporations Act (as modified by ASIC Instrument 2016/82).

1.5 Neither ASIC nor ASX take responsibility for the contents of this Cleansing Notice. The key rights and liabilities of the Instruments were summarized in the Invitation and Agenda for the Extraordinary General Meeting of the Company held on 29 January 2020 which was released to ASX on 23 December 2019 and are reproduced again in Schedule 1 to this Cleansing Notice.

## 2. Contents of this Cleansing Notice

This Cleansing Notice sets out the following:

- (a) in relation to the Instruments:
  - (i) the effect of the issue on the Company;
  - (ii) a summary of the rights and liabilities attaching to the Instruments; and
  - (iii) a summary of the rights and liabilities attaching to the CDIs that will be issued on the conversion / exercise of the Instruments; and
- (b) any information that:
  - (i) has been excluded from continuous disclosure notice in accordance with the ASX Listing Rules; and
  - (ii) investors and their professional advisors would reasonably require for the purpose of making an informed assessment of:
    - A. the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
    - B. the rights and liabilities attaching to the CDIs; and
  - (iii) other information relating to the Company's status as a disclosing entity.

## 3. The effect of the issue on the Company

The principal effect of the issue of the Instruments on the Company will be that:

- (a) instead of repayment, the loan granted by USV to the Company under the USV Loan Agreement is being replaced by the Convertible Notes issued to USV;

- (b) any accrued interest and all other amounts accrued under the USV Loan Agreement are forfeited;
- (c) the USV Loan Agreement ceases to exist;
- (d) instead of repayment, the loan granted by Woolworths Group to the Company under the WOW Loan Agreement is being replaced by the Convertible Note issued to Woolworths;
- (e) any accrued interest under the WOW Loan Agreement is being replaced by an additional redemption amount under the Convertible Note issued to Woolworths Group which will only become due in the case of redemption of such Convertible Bond;
- (f) the WOW Loan Agreement ceases to exist;
- (g) the Company's obligation to issue the Option Bonds with Warrants under the WTI Loan Agreement will be discharged; and
- (h) the number of shares and CDIs on issue will be increased as a consequence of any issue of shares and CDIs on the conversion / exercise of the Instruments.

#### 4. **Rights and liabilities attaching to the Convertible Notes**

- 4.1 A broad summary of the key rights and liabilities attaching to the Instruments is set out in Schedule 1 to this Cleansing Notice.

#### 5. **Impact on the Company's Financial Position**

The pro-forma Consolidated Statement of Financial Position shown in the table set out in Schedule 2 to this Cleansing Notice has been prepared on the following basis:

- (a) The audited 31 December 2019 Consolidated Statement of Financial Position has been used as a base position to illustrate the impact of the issue of (i) the loans extended under the USV Loan Agreement and the WOW Loan Agreement and (ii) the Instruments.
- (b) The issue of the Convertible Notes to USV with an aggregated principal amount of USD 2,776,487.50.
- (c) The issue of the Convertible Note to Woolworths Group with a principal amount of AUD 4,047,250.00.
- (d) The issue of the Option Bonds with Warrants to VLL 8 and VLL 9, respectively with an aggregated principal amount of EUR 10,000.00.
- (e) The pro-forma financial information is presented in an abbreviated form in so far as it does not include all of the disclosures required by Australian accounting standards or International Financial Reporting Standards as issued by the International Accounting Standards Board (IASB) as adopted by the European Union. It has been prepared in accordance with the Company's normal accounting policies. The pro-forma financial information is not audited. The classification of the Instruments liability may change in the future.

#### 6. **Potential effect of the Convertible Notes and the Option Bonds with Warrants on the Company's Capital Structure**

- 6.1 As at the date of this Cleansing Notice, the issued capital of the Company is as follows:

- (a) 158,520 ordinary shares equivalent to 158,520,000 CDIs<sup>6</sup>;
- (b) 8,070 employee options over existing ordinary shares (included in (a) above);
- (c) 6 convertible notes issued by the Company in 2019 to USV, Woolworths Group, Acacia Conservation Fund, LP and Acacia Conservation Master Fund (Offshore), LP, respectively (**2019 Convertible Notes**); and
- (d) 3 Convertible Notes and 2 Option Bonds with Warrants - the subject of this Cleansing Notice

The Company has also issued 834 warrants over shares to Kreos Capital V (Expert Fund) LP (**Kreos Warrants**). A description of these warrants can be found in section 9.8.2 of the prospectus released by the Company on 2 July 2018 (**Prospectus**).

## USV Convertible Notes

6.2 If USV convert the USV Convertible Notes, the conversion ratio will be calculated by dividing the nominal amount of the respective USV Convertible Note by the conversion price of AUD 500.00 per share (the **USV Conversion Price**), which corresponds to a price of AUD 0.50 per CDI quoted by the ASX, since one CDI represents a beneficial ownership of 1/1000th in one share of the Company. The conversion of the nominal amount and the USV Conversion Price is 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 Convertible Note.

6.3 The applicable foreign exchange reference rate is 1 USD to 0.9225 EUR and 1 AUD to 0.6082 EUR, accordingly the total nominal amount of USD 2,776,487.50 would convert into EUR 2,561,335.33 and the conversion price of AUD 500.00 per ordinary share would translate to EUR 304.10. The conversion ratio of the USV Convertible Notes is generally fixed (except for adjustments under the terms of the Convertible Notes), such that the number of ordinary shares to be issued in aggregate if all USV Convertible Notes were converted would be 8,421 shares (EUR 2,561,335.33 / EUR 304.10, with one share less due to rounding differences), corresponding to 8,421,000 CDIs. This would represent 5.3% of the Company's nominal share capital / CDIs following the issue of the shares as follows:

USV Marley Spoon A, LLC:	8,044 shares (5.1%)
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USV Marley Spoon B, LLC:	377 shares (0.2%)
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## WOW Convertible Note

6.4 If Woolworths Group converts the WOW Convertible Note, the conversion ratio will be calculated based on the formula which results in the lower number of conversion shares, i.e. either:

- (a) (i) by multiplying the principal amount with a growth factor for the Company's Australian business and (ii) dividing the resulting product by the 30-day arithmetic volume-weighted average price per CDI of the Company immediately preceding the day on which a relevant conversion event occurs, multiplied by 1,000 since one (1) CDI represents the economic ownership of 1/1,000th in one share of the Company; or
- (b) by dividing the principal amount by AUD 300.00.

The maximum number of conversion shares to be issued to Woolworths Group would amount to 13,490 shares (8.5%).

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<sup>6</sup> 21,950,000 CDIs (equivalent to 21,950 ordinary shares) are subject to mandatory ASX escrow.

## VLL Option Bonds with Warrants

- 6.5 If VLL8 and VLL9 exercise the Warrants, the number of shares to be issued would amount to, in aggregate, 11,286 shares equivalent to 11,286,000 CDIs (subject to adjustments under the terms of the Warrants).
- 6.6 The figures set out above assume that all Convertible Notes and Option Bonds with Warrants are issued for their nominal amounts, that no permitted conversion adjustments have occurred (referred to further in Schedule 1 to this Cleansing Notice) and that no other shares have been issued by the Company.
- 6.7 If shares (and CDIs) were issued today on conversion of the Convertible Notes / exercise of the Warrants, the maximum issued capital of the Company would be as follows:
- (a) 33,197,000 CDIs equivalent to 33,197 ordinary shares;
  - (b) 8,070 employee options over existing ordinary shares (included in (a) above);
  - (c) Kreos Warrants; and
  - (d) 2019 Convertible Notes.

## 7. Rights and Liabilities attaching to shares and CDIs issued under the Instruments

- 7.1 The shares and CDIs issued upon conversion of the Instruments will rank equally in all respects with all of the Company's existing ordinary shares (and CDIs).
- 7.2 All issued shares in the Company are held by Chess Depositary Nominee Pty Ltd ACN 071 346 506 (**CDN**) on behalf of holders of CDIs (**CDI Holders**). The rights and liabilities attaching to the shares is described in section 9 of the Prospectus.
- 7.3 As noted above, CDN holds the legal title to shares in the Company. CDN has issued to all beneficial holders CDIs in the ratio of 1:1,000. That is, 1,000 CDIs represent an interest in one share in the Company. The rights and liabilities attaching to CDIs, including new CDIs to be issued to each Beneficiary on the conversion of the Convertible Notes and/or exercise of the Warrants, are regulated by the Corporations Act, the ASX Listing Rules, the ASX Settlement Operating Rules and general law. A summary of those rights is set out in Schedule 3 to this Cleansing Notice.

## 8. Compliance with disclosure obligations

- 8.1 The Company is a "**disclosing entity**" under the Corporations Act and, as such, is subject to regular reporting and disclosure obligations under both the Corporations Act and the ASX Listing Rules.
- 8.2 These obligations require the Company to notify ASX of information about specific events and matters as they arise. In particular, the Company is obliged to continuously disclose to the market promptly and without delay any information which a reasonable person would expect to have a material effect on the price or the value of the Company's CDIs.
- 8.3 The Company is also required to prepare and lodge yearly and half-yearly financial statements accompanied by a directors' statement and report, and an audit report or review. The Company is also required to prepare and lodge a quarterly report.
- 8.4 The Company will provide a copy of each of the following documents, free of charge, to any person on request:
- (a) any half-year financial report, full year report and quarterly report lodged by the Company after the lodgement of the Company's Prospectus and before the lodgement of this Cleansing Notice with ASX; and

- (b) any continuous disclosure documents given by the Company to ASX after the lodgement of the Prospectus and before the lodgement of this Cleansing Notice with ASX.

9. **No excluded information**

As at the date of this Cleansing Notice, the Company advises that it has complied with its disclosure obligations under the ASX Listing Rules and the Corporations Act, and, in particular, there is no information which the Company has excluded from any of its continuous disclosure notices given in accordance with the ASX Listing Rules and the Corporations Act as at the date of this Cleansing Notice which it would be reasonable for investors and their professional advisors to require for the purpose of making an informed assessment of:

- (a) the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
- (b) the rights and liabilities attaching to the Instruments and CDIs.

This announcement has been authorised for release to ASX by the Board of Directors of Marley Spoon AG

Signed for **Marley Spoon AG**:



**Mathias Hansen**  
Company Secretary

### Key Terms of the USV MS Convertible Bonds

<b>Issuer</b>	Marley Spoon AG (the “ <b>Company</b> ”).
<b>Aggregate Principal Amount of the 2 USV MS Convertible Bonds</b>	USD 2,776,487.50.
<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 2,651,892.62</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 124,594.88</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 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/I and the Authorized Capital 2020/I 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 <i>pari passu</i> 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 authorized 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 8,200 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 Depositary 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>	AUD 500.00 (the "USV MS Conversion Price").
<b>USV MS Issue Date</b>	To be determined for each USV MS Convertible Bond by the Management Board until April 29, 2020.



**Maturity** 3 years after the issue date of the respective USV MS Convertible Bond (the “**USV MS Maturity Date**”).

**Redemption and Early Termination of the USV MS Convertible Bonds** 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*).

<b>Restriction on new Restricted Indebtedness under the USV MS Convertible Bonds</b>	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.
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**“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, (C) the WOW Convertible Bond and (iii) 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.

<b>USV MS Events of Default (summary only)</b>	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.
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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). No Event of Default will occur under 3.) 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 3.) above (*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 3.) above (*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 preemptive 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 of the German Stock Corporation Act (*Aktiengesetz*) 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.)



## Key Terms of the WOW Convertible Bond

<b>Issuer</b>	Marley Spoon AG (the “ <b>Company</b> ”).
<b>Aggregate Principal Amount of the WOW Convertible Bond</b>	AUD 4,047,250.00.
<b>Form</b>	The WOW Convertible Bond (as defined below) will be in the form of a registered bond.
<b>WOW Convertible Bond, Principal Amount and Beneficiary</b>	<b>One (1)</b> convertible bond in the principal amount of <b>AUD 4,047,250.00</b> (“ <b>WOW Principal Amount</b> ”) will be issued to <b>W23 Investments Pty Limited</b> (the “ <b>WOW Convertible Bond</b> ” and W23 Investments Pty Limited hereafter (“ <b>Woolworths</b> ”).
<b>WOW Issue Price</b>	100% of the WOW Principal Amount.
<b>WOW Redemption Price</b>	100% of the WOW Principal Amount.
<b>Additional Redemption Amount</b>	Upon redemption, the Issuer will pay to Woolworths an additional redemption amount of AUD which will correspond to the interest amount that had accumulated under the WOW Loan Agreement up until the WOW Issue Date (as defined below).
<b>WOW Interest</b>	7.00 per cent. per annum. An interest payment will only be made at the WOW Maturity Date (as defined below) or on any early redemption of the WOW Convertible Bond. If the WOW Conversion Right (as defined below) is exercised, all accrued interest will be forfeited.
<b>WOW Conversion Right</b>	WOW has the right to convert the WOW Convertible Bond during the WOW Conversion Period (as defined below), in whole but not in part, into new no-

par-value registered shares of the Company (the “**WOW Conversion Shares**”) in accordance with the terms and conditions upon the occurrence of a WOW Conversion Event (as defined below) (the “**WOW Conversion Right**”). The WOW Conversion Right must be exercised within the WOW Exercise Period (as defined below).

<b>WOW Period</b>	<b>Conversion</b>	<p>Conversion Period means a period commencing five Business Days after the Authorized Capital 2020/I from which the WOW Conversion Shares shall be issued is registered in the commercial register of the local court of Berlin-Charlottenburg under the Issuer’s docket number and ending at 4 p.m. (local time Sydney, Australia) on the trading day prior to the WOW Maturity Date, provided that if the last day of the WOW Conversion Period falls in a Excluded Period, the WOW Conversion Period will terminate on the last trading day prior to the commencement of the Excluded Period (the “<b>WOW Conversion Period</b>”).</p>
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“**Excluded Period**”. The exercise of the WOW Conversion Right is excluded during any of the following periods:

- (a) in connection with an ordinary or other shareholders’ meeting (*Hauptversammlung*) of the Company, a period commencing on the fifth trading day prior to and including the last day for the registration for such shareholders’ meeting (*Hauptversammlung*) and ending on the trading day (excluding) following such shareholders’ meeting (*Hauptversammlung*);
- (b) a period of 14 days before the end of the financial year of the Company; and
- (c) a period commencing on the date on which an offer by the Company to its shareholders to subscribe shares, warrants on own shares, or notes/bonds with conversion or option rights, profit linked bonds or profit participation certificates, or a similar offer (including, but not limited to, offers with respect to split-up (§ 123(2) of the German Transformation Act (*Umwandlungsgesetz*)) is published in the German Federal Gazette (*Bundesanzeiger*) and ending on the last day of the relevant subscription period (*inclusive*), provided that such period shall not exceed 25 business days.

<b>WOW Event</b>	<b>Conversion</b>	<p>The exercise of the WOW Conversion Right requires the occurrence of one of the following WOW Conversion Events (each a “<b>WOW Conversion Event</b>”):</p>
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(a) the publication of the financial statements of the Company for its financial half-years ending June 30, 2021, June 30, 2022, June 30, 2023, and June 30, 2024;

(b) the publication of the financial statements of the Company for its financial years ending December 31, 2021, December 31, 2022, December 31, 2023, and December 31, 2024;

(c) the date falling 60 trading days prior to the respective Maturity Date (as defined below);

(d) an Event of Default (as defined below);

(e) the earlier of:

(i) the date on which the Company notifies Woolworths that it has become aware of, or has received, an offer, bid or approach that is reasonably likely to result in a WOW Change of Control (as defined below) or the sale of all or substantially all of the assets of the Company whether in a single transaction or a series of related transactions; or

(ii) the date on which the Company makes an announcement on the ASX in relation to a potential transaction that is reasonably likely to result in a WOW Change of Control or the sale of all or substantially all of the assets of the Company whether in a single transaction or a series of related transactions; or

(f) the date on which an announcement by ASX with respect to a removal of the Company from the Official List of ASX is being published.

**WOW Exercise Period** With respect to the WOW Convertible Bond, the WOW Conversion Right must be exercised within the following periods (the “**WOW Exercise Period**”)

- (a) with respect to a conversion upon the publication of the financial statements of the Company for its financial half-year ending June 30, 2021, June 30, 2022, June 30, 2023, and June 30, 2024 or the publication of the financial statements of the Company for its financial year ending December 31, 2021, December 31, 2022, December 31, 2023, and December 31, 2024, a period of five business days commencing on the occurrence of the relevant WOW Conversion Event;
- (b) with respect to a conversion upon the date falling 60 trading days prior to the WOW Maturity Date (as defined below), a period of five business days commencing on the date falling 60 trading days prior to the WOW Maturity Date (as defined below);
- (c) with respect to a conversion upon the occurrence of a WOW Conversion Event set out in paragraph (d) or (e) of the definition of “WOW Conversion Event” above, a period commencing on the relevant WOW Conversion Event and ending on the last day of the WOW Conversion Period; and
- (d) with respect to the publication of an announcement by ASX with respect to a removal of the Company from the official list of ASX, a period of five business days commencing on the date of such WOW Conversion Event.

**Underlying Shares**

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 WOW Convertible Bond will rank *pari passu* with, and on the same terms as, the existing ordinary shares (and CDIs) on issue.

**Number of WOW Conversion Shares to be Issued to Woolworths and WOW Conversion Price**

Under the WOW Convertible Bond, the respective number of conversion shares to be issued and delivered by the Company upon exercise of the WOW Conversion Right by Woolworths (the “**WOW Conversion Shares Number**”) is calculated by:

- (i) multiplying the WOW Principal Amount with the AustCo Growth Factor, and (ii) dividing the resulting product by the WOW Conversion Price.

The “**AustCo Growth Factor**” corresponds to the Relevant Revenue (as defined below) for the most recently reported financial half-year ending prior to the occurrence of the relevant WOW Conversion Event (for the avoidance of doubt, being, in the case of the publication of the financial statements of the Company for its financial half-years, the financial half-year to which the relevant half-year financial statements relate, and in the case of the publication of the financial statements of the Company for its financial years, the financial half-year ending December 31 of the financial year to which the relevant annual financial statements relate) as reported in the Australian segment of the relevant financial statements of the Company divided by the Relevant Revenue for the financial half-year ended June 30, 2019 or failing such as per the financial information provided to the Beneficiary in accordance with the terms and conditions.

“**WOW Conversion Price**” means the price per share of the Company which corresponds to the arithmetic volume-weighted average price per CDI on the ASX during the 30 trading days immediately preceding the day on which the relevant WOW Conversion Event occurs, multiplied by 1,000 since one (1) CDI represents the economic ownership of 1/1,000th in one (1) share of the Company, provided that the WOW Conversion Price may not be less than the fractional nominal amount per share in the Company’s nominal share capital.

“**Meal Kit Business**” means an online subscription food service business that sends customers pre-portioned or partially prepared food ingredients and recipes to enable customers to prepare home cooked meals as a standalone service.

“**Other Meal Kit Business**” means a business which provides or creates pre-portioned or partially prepared food ingredients and recipes to enable customers to prepare home cooked meals.

“**Relevant Revenue**” means the revenue of MarleySpoon Pty Ltd (ACN 603 969 571) (hereinafter “**AustCo**”) from goods sold with respect to its Meal Kit Business and Other Meal Kit Business as reported in the Australian segment of the relevant financial statements of the Company or failing such as per the financial information provided to Woolworths in accordance with the terms and conditions (for the avoidance of doubt, excluding any discounts granted to customers), adjusted, if applicable, by adding any revenue of the Company or any of the subsidiaries of the Company from goods sold in Australia with respect to their Meal Kit

Business and Other Meal Kit Business.

**Adjustment of Number of WOW Conversion Shares** With respect to the WOW Convertible Bond the number of WOW Conversion Shares may be adjusted upon exercise of the WOW Conversion Right if by:

- a) dividing the WOW Principal Amount by the Discounted WOW Issue Date Price (in each case the “**Adjusted Conversion Shares Number I**”); and/or
- b) dividing the WOW Principal Amount by the Discounted WOW Signing Date Price (the “**Adjusted WOW Conversion Share Number II**”)

the resulting number of WOW Conversion Shares is lower than the WOW Conversion Shares Number, the number of WOW Conversion Shares to be issued and delivered by the Company upon conversion will be adjusted and be equal to the lower of the respective Adjusted WOW Conversion Shares Number I and the respective Adjusted WOW Conversion Shares Number II.

“**Discounted WOW Issue Date Price**” means the price per share of the Company in the amount which corresponds to 80% of the arithmetic volume-weighted average price per CDI on the ASX during the 30 trading days immediately preceding the resolution of the Management Board of the Company to issue, with the consent of the Supervisory Board of the Company, the WOW Convertible Bond (“**Averaging Period**”), multiplied by 1,000 since one (1) CDI represents the economic ownership of 1/1,000th in one (1) share of the Company.

“**Discounted WOW Signing Date Price**” means a price per share of the Company in the amount of AUD 300.00.

**Additional Cash Payment** A. If the Adjusted WOW Conversion Shares Number I is lower than the lower of (i) the WOW Conversion Shares Number and (ii) the Adjusted WOW Conversion Shares Number II, the Company will pay to Woolworths upon conversion an additional cash amount which will be calculated as follows:

- (a) where the Adjusted WOW Conversion Shares Number II is higher than the WOW Conversion Shares Number, by multiplying (i) the result of the difference between the WOW Conversion Shares Number and the Adjusted WOW Conversion Shares Number I with (ii) the WOW Conversion Price.
- (b) where the WOW Conversion Shares Number is higher than the Adjusted WOW Conversion Shares Number II, by multiplying (i) the result of the difference between the Adjusted WOW Conversion Shares Number II and the Adjusted WOW Conversion Shares Number I with (ii) the WOW Conversion Price.

**Adjustments to Discounted WOW Issue Date Price** If, prior to the last day of the WOW Conversion Period or any earlier date relevant for conversion or redemption, the Company increases its share capital from reserves or retained earnings, 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 preemptive rights or the Company makes any kind of distributions in kind or in cash to its shareholders, an independent financial expert selected jointly by the Company and Woolworths and paid for by the Company shall determine, as soon as possible, based on generally accepted mathematical principles what adjustment to the Discounted WOW Issue Date Price, is fair and reasonable in order for it to economically still represent 80% of the arithmetic volume-weighted average price per CDI on the ASX during the respective Averaging Period.

On this date, such adjustment (if any) will be made and will take effect.

**Cash Option Settlement** Under the WOW Convertible Bond, if (i) the conversion would result in a participation of Woolworths in the Company's share capital exceeding 24.9% by number of shares in the Company's share capital on a fully diluted basis, (ii) the WOW Conversion Price would be less than the fractional nominal amount per share in the Company's nominal share capital, or (iii) the Company's aggregate available conditional and authorized capitals are not sufficient to meet the number of WOW Conversion Shares to be issued and delivered by the Company upon conversion (taking into account any adjustment to the number of WOW Conversion Shares), the Company will be entitled to settle in cash an amount calculated by multiplying the number of the WOW Cash Settlement Shares settled in cash with the WOW Conversion Price.

WOW Cash Settlement Shares means, in each case, (x) in the case of (i) above, the respective WOW Conversion Shares which upon issuance and delivery to Woolworths would result in the participation of Woolworths in the Company's share capital exceeding 24.9% by number of shares in the Company's share capital on a fully diluted basis, (y) in the case of (ii) above, all respective WOW Conversion Shares, and (z) in the case of (iii) above, the WOW Conversion Shares which cannot be met by the Company's aggregate available conditional and authorized capitals.

**Delivery of CDIs**

Woolworths will transfer to CDN all WOW Conversion Shares issued with respect to the WOW Convertible Bond, and endeavor to enter into a corresponding mutual agreement with CDN, with the obligation of CDN to hold the WOW Conversion Shares in trust for Woolworths and to deliver such number of CDIs to Woolworths which corresponds to the number of WOW Conversion Shares multiplied by 1,000 at the latest five business days after the WOW Conversion Shares have been issued to Woolworths, for the avoidance of doubt, not taking into consideration, if applicable, any WOW Conversion Shares which are settled in cash pursuant to the terms and conditions.

**WOW Issue Date**

To be determined for the WOW Convertible Bond by the Management Board until April 29, 2020.

**WOW Maturity**

5 years after the issue date of the WOW Convertible Bond (the "**WOW Maturity Date**").

**Redemption and Early Termination**

The WOW Convertible Bond will be redeemed at the WOW Maturity Date at the WOW Principal Amount plus accrued interest, up to, but excluding the date of redemption (the "**WOW Redemption Date**"), to the extent the WOW Convertible Bond has not previously been redeemed or repurchased and cancelled and no conversion notice has been issued by Woolworths.

Woolworths may terminate the WOW Convertible Bond for redemption before the WOW Maturity Date at the WOW Principal Amount together with accrued interest, up to, but excluding the WOW Redemption Date, early in the case of a WOW Event of Default (as defined below) or a WOW Change of Control (as defined below).



Woolworths may terminate the WOW Convertible Bond and demand immediate redemption thereof at the WOW Principal Amount, together with accrued interest, up to, but excluding the WOW Redemption Date, upon the publication of an announcement by ASX with respect to a removal of the Company from the official list of ASX (delisting).

<b>Status of the WOW Convertible Bond</b>	The WOW Convertible Bond constitutes a senior secured claim of Woolworths against the Company.
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<b>Restriction on new Restricted Indebtedness</b>	As long as any amounts of principal or interest remain outstanding under the WOW Convertible Bond, the Company undertakes that neither it nor AustCo will incur any Financial Indebtedness (as defined below) other than, with respect to the Company, Permitted Financial Indebtedness (as defined below) or, with respect to AustCo, Permitted AustCo Financial Indebtedness (as defined below) after the date on which the respective Convertible Bond is issued without the prior consent of the Beneficiary.
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**“Default”** means a WOW Event of Default or any event or circumstance specified in the terms and conditions which would (with the expiry of a grace period, the giving of notice, the making of any determination under the WOW Convertible Bond or a security agreement entered into with respect to it or any combination of any of the foregoing) be a WOW Event of Default.

**“Group”** means the Company and its subsidiaries for the time being.

**“Permitted AustCo Financial Indebtedness”** means Financial Indebtedness:

- (a) arising in connection with the WOW Convertible Bond;
- (b) arising in connection with a security agreement;
- (c) owed to the Company and which is subordinated on the terms set out in the AustCo share pledge agreement;
- (d) owed to any member of the Group (other than the Company) in an amount not exceeding AUD 250,000 in aggregate at any time;

- (e) which is subordinated on terms satisfactory to the Beneficiary;
- (f) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade;
- (g) under leases and hire purchase contracts constituting Financial Indebtedness of vehicles, plant, equipment or computers, provided that the aggregate amount of all such items so leased under outstanding leases by AustCo does not exceed AUD 500,000 (or its equivalent) in any financial year of AustCo;
- (h) which is a guarantee pursuant to Part 2M.6 of the Corporations Act or an equivalent provision;
- (i) in respect of 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 in connection with rental or lease payment obligations of AustCo;
- (j) arising under facilities between AustCo and National Australia Bank Limited existing at the date of the Loan Agreement provided that such Financial Indebtedness does not exceed the aggregate amount of AUD 3,000,000 at any time;
- (k) not permitted by the preceding paragraphs and the outstanding principal amount of which does not exceed AUD 500,000 (or its equivalent) in aggregate at any time provided that such Financial Indebtedness is not owed to any member of the group; and
- (l) otherwise with the prior written consent of the Beneficiary, which (other than if a Default is subsisting) shall not be unreasonably withheld or delayed.

**“Permitted Financial Indebtedness”** means Financial Indebtedness:

- (a) arising under the WOW Loan Agreement or the AustCo share pledge agreement;
- (b) arising in respect of the WOW Convertible Bond;
- (c) arising under transactions between the Company and its Subsidiaries;
- (d) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade;
- (e) in respect of 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 in connection with (i) rental or lease payment obligations or (ii) the ordinary course of business of the Company;
- (f) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 10,888,140 issued to USV Marley Spoon A, LLC on March 22, 2019;
- (g) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 511,860 issued to USV Marley Spoon B, LLC on March 22, 2019;
- (h) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 1,138,000 issued to Acacia Conservation Fund, LP on March 22, 2019;
- (i) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 1,138,000 issued to Acacia Conservation Master Fund (Offshore), LP on March 22, 2019;

- (j) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 23,000,000 issued to W23 Investments Pty Limited on September 26, 2019;
- (k) arising under the registered convertible bond (*auf den Namen lautende Wandelschuldverschreibung*) with a principal amount of USD 2,950,000 issued to W23 Investments Pty Limited on September 26, 2019;
- (l) for or in respect of 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;
- (m) arising under the finance lease agreement with BNP Paribas Lease Group S.A.,
- (n) arising under the finance lease agreement with BLG Bizerka Leasing GmbH dated March 2, 2018;
- (o) in respect of the guaranty agreement between CSC Leasing Company as lessor, Marley Spoon Inc. as lessee and Marley Spoon AG as guarantor relating to a master equipment lease agreement between CSC Leasing Company as lessor and Marley Spoon Inc. as lessee with a principal amount of up to USD 5,000,000 (including the principal amount outstanding thereunder on the issue date of the respective Convertible Bond);
- (p) for or in respect of any moneys borrowed under (i) any third-party asset-backed financing or (ii) any customary working capital financing (including, but not limited to, bank overdrafts, bank guarantees, letters of credit, factoring and reverse factoring), provided that the aggregate amount of any Financial Indebtedness permitted pursuant to this paragraph (o) and permitted pursuant to (j) of the definition “Permitted AustCo Financial Indebtedness” does not exceed EUR 8,000,000 (or the equivalent in any other currencies) in the aggregate at any time; and

- (q) arising under (i) USD 2,776,487.50 loan agreement dated September 25, 2019 between the Company and USV Marley Spoon A, LLC and USV Marley Spoon B, LLC as lenders and (ii) the USV MS A Convertible Bond and the USV MS B Convertible Bond, in each case provided that no amendment shall be made to any of the documents referred to under (i) and (ii) without the consent of Woolworths.

“**Subsidiary**” means a subsidiary within the meaning of §§ 15 – 17 of the German Stock Corporation Act (*Aktiengesetz*).

**WOW Default only)**      **Events of (summary**      Woolworths may declare the WOW Convertible Bond due and demand immediate redemption thereof at the WOW Principal Amount, together with accrued interest, up to, but excluding the WOW Redemption Date, in the following events or circumstances (each such event or circumstances a “**WOW Event of Default**”):

- (a) *Non-payment.* The Company or AustCo does not pay on the due date any amount payable with respect to the WOW Convertible Bond or a security agreement at the place and in the currency in which it is expressed to be payable unless (i) its failure to pay is caused by administrative or technical error; and (ii) payment is made within five business days of its due date.
- (b) *Other obligations.* The Company or AustCo does not comply with any provision of the terms and conditions or a security agreement. No WOW Event of Default will occur if the failure to comply is capable of remedy and is remedied within 20 business days of Woolworths giving notice to the Company of the failure to comply.
- (c) *Misrepresentation.* Any representation or statement made or deemed to be made by the Company or AustCo in the WOW Loan Agreement, a security agreement or any other document delivered by the Company or AustCo under or in connection with the WOW Loan Agreement or a security agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, provided that no WOW Event of Default pursuant to the foregoing will occur if the misrepresentation or misstatement, or the circumstances giving rise to it is/are capable of remedy and is/are

remedied within five business days of the earlier of (i) Woolworths giving notice to the Company and (ii) the Company becoming aware of the misrepresentation.

(d) *Cross default.*

- (iv) Any Financial Indebtedness of the Company or AustCo is not paid when due nor within any applicable grace period and the obligation to pay it is not being disputed in good faith.
- (v) Any Financial Indebtedness of the Company or AustCo 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).
- (vi) No WOW Event of Default will occur if the aggregate amount of Financial Indebtedness falling within paragraphs (i) and (ii) is less than EUR 100,000.00 (or its equivalent in any other currency or currencies).

(e) *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*);
- (C) by reason of actual or anticipated financial difficulties, commences negotiations with a class or category of its creditors (excluding the Beneficiary in its capacity as such) 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) *In respect of AustCo:*

- (A) an administrator is being appointed;
- (B) (x) it resolving to appoint a controller or analogous person in its respect or in respect of its property; (y) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person in its respect or in respect of its property; or (z) an appointment of the kind referred to in subparagraph (B)(y) being made (whether or not following a resolution or application);
- (C) the holder of a security (including such under the Australian Personal Property Securities Act 2009 (Cth) (“PPSA”) or any agent on its behalf, appointing a controller or taking possession of any of its property (including seizing its property within the meaning of section 123 of the PPSA) where the amount secured is in excess of AUD 100,000;
- (D) it being taken under section 459F(1) of the Australian Corporations Act to have failed to comply with a statutory demand where the amount demanded is in excess of AUD 100,000;

- (E) an application being made to a court for an order for its winding up;
- (F) an order being made, or it passing a resolution, for its winding up;
- (G) it (x) suspending payment of its debts, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or (y) being unable to pay its debts or otherwise insolvent;
- (H) by reason of actual or anticipated financial difficulties, commences negotiations with a view to entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (I) a court or other authority enforcing any judgment or order against it for payment of money or the recovery of any property; or
- (J) any analogous event under the laws of any applicable jurisdiction, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Lender (such consent not to be unreasonably withheld).

Paragraphs (ii)(A), (B)(y), (B)(z), (C), (D) or (J) shall not apply to any action, proceeding or step which is frivolous or vexatious and is discharged, stayed or dismissed within 20 business days of commencement.

- (iii) A moratorium is declared in respect of all or any substantial part of the indebtedness of the Company or AustCo.

(f) *Insolvency proceedings.* Any corporate action, legal proceedings or other formal procedure or formal step is taken in relation to:



- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
- (ii) a composition, compromise, assignment or arrangement with any class or category of creditor of the Company (excluding Woolworths in its capacity as such) with a view to avoiding actual or anticipated financial difficulties;
- (iii) 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
- (iv) the enforcement of any Security over any assets of the Company,

or any analogous formal procedure or formal step is taken in any jurisdiction.

Lit. (f) 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.

- (g) *Creditors' process.* Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Company or AustCo 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.
- (h) *Cessation of business.* The Company or AustCo ceases, threatens to cease, or suspends to carry on all or a material part of its business.
- (i) *Unlawfulness and repudiation.* It is or becomes unlawful or impossible for the Company or AustCo to perform any of its

obligations under the respective terms and conditions or a security agreement to which it is a party or to comply with any other obligation which Woolworths, acting reasonably, considers material under the respective terms and conditions. The Company or AustCo repudiates the respective terms and conditions or a security agreement to which it is a party or evidences an intention to repudiate the respective terms and conditions or a security agreement.

- (j) *Material adverse change*. An event or circumstance occurs which has a Material Adverse Effect (as defined below).

**“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 1 January 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) 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) 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.

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002.

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

“**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, capitalization, 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 WOW Convertible Bond; or

(c) subject to the Legal Reservations, the validity or enforceability of the obligations of the Company with respect to the WOW Convertible Bond or the rights or remedies of the Beneficiary under these terms and conditions or the validity or enforceability of the obligations of the Company under the AustCo share pledge agreement or the AustCo security agreement or the effectiveness of ranking of the Security created or expressed to be created pursuant to the AustCo share pledge agreement or AustCo security agreement.

“**Security**” means a mortgage, land charge, charge, pledge, lien, assignment or transfer for security purposes, retention of title arrangement or other

security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

*Effect of remedy.* The right to declare the WOW Convertible Bond due and demand immediate redemption thereof or to exercise the WOW Conversion Right in respect of a WOW Event of Default (other than a WOW Event of Default pursuant to (e) and (f) above shall expire if the event or circumstances giving rise to such WOW Event of Default have been remedied before any of such rights is exercised.

**WOW Change of Control**      Upon the occurrence of (i) a WOW Change of Control, or (ii) the sale of all or substantially all of the assets of the Company whether in a single transaction or a series of related transactions, the Beneficiary may, by giving no less than 20 business days' notice of termination declare the WOW Convertible Bond due and demand immediate redemption thereof at the WOW Principal Amount, together with accrued interest, up to, but excluding the WOW Redemption Date.

**“WOW Change of Control”** means any person or group of persons acting in concert 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 (*Hauptversammlung*) 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 § 30 (2) of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*).

<b>Transfer Restrictions</b>	Woolworths may not assign the WOW Convertible Bond or any of the rights under the WOW Convertible Bond ( <i>Abtretungsverbot</i> ), except with the consent of the Company or if the beneficiary assigns the WOW Convertible Bond to Woolworths Group Limited.
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<b>No Quotation</b>	The WOW Convertible Bond will not be quoted by ASX.
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<b>Participation/Voting Rights</b>	Before Woolworths has exercised the WOW Conversion Right and been delivered shares/CDIs, it will not be allowed to participate or vote at general meetings of the Company as a result of being a holder of the WOW Convertible Bond. (The foregoing does not impact any rights of Woolworths which arise by virtue of Woolworths being a shareholder (or CDI holder) in the Company.)
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## Key Terms of the Option Bonds with Warrants

<b>Issuer</b>	Marley Spoon AG (the “ <b>Company</b> ”).
<b>Aggregate Nominal Amount of the Option Bonds</b>	EUR 10,000.00.
<b>Form</b>	The Option Bonds (as defined below) will be in the form of bearer bonds.
<b>Option Bonds with Warrants, Nominal Amount, Beneficiary and Warrants</b>	<p>(1) <b>one (1)</b> option bond in the nominal amount of <b>EUR 5,000</b> (the “<b>VLL8 Option Bond</b>”) will be issued to Venture Lending &amp; Leasing VIII, LLC (“<b>VLL8</b>”), which shall have <b>one (1)</b> warrant attached to it (“<b>VLL8 Warrant</b>”), and</p> <p>(2) <b>one (1)</b> option bond in the nominal amount of <b>EUR 5,000</b> (the “<b>VLL9 Option Bond</b>” and together with the VLL8 Option Bond, the “<b>Option Bonds</b>” and each an “<b>Option Bond</b>”) will be issued to Venture Lending &amp; Leasing IX, LLC (“<b>VLL9</b>”), which shall have <b>one (1)</b> warrant attached to it (“<b>VLL9 Warrant</b>”).</p>
<b>Issue Price of Option Bonds</b>	100% of respective nominal amount of Option Bond.
<b>Repayment Price of Option Bonds</b>	100% of respective nominal amount of Option Bond.
<b>Option Bond Issue Date</b>	To be determined for each Option Bond by the Management Board until April 29, 2020.
<b>Repayment of Option Bonds</b>	On the fifth anniversary of the day of termination of the WTI Loan Agreement, the latest date of such termination to occur being January 31, 2023 (“ <b>WTI Loan Termination Date</b> ”).
<b>Interest on Option Bonds</b>	4.00 per cent per annum on the nominal amount of each Option Bond from and including the date of receipt by the Company of the purchase price for the

respective Option Bond (“**Option Bond Issue Date**”), to (but excluding) the day of the fifth anniversary of the WTI Loan Termination Date (“**Option Bond Payment Date**”). Interest falls due for the whole term of the Option Bonds on the Option Bond Payment Date. Interest shall cease to accrue on the day immediately prior to the day at which the respective Option Bond is due for redemption. The amount of interest accrued at any time will not bear interest itself (no compounding of interest).

**Status of the Option Bonds** The Option Bonds will rank *pari passu* among themselves.

**Termination of the Option Bonds** Each of the Option Bonds may be terminated by its holder and will have to be repaid at its respective nominal amount plus interest accrued in the event that:

- (a) insolvency proceedings are commenced by a court against the Company’s assets or in case the Company applies for the commencement of such proceedings or offers an out-of-court settlement in order to avoid insolvency proceedings being brought, or
- (b) the Company is in liquidation.

**Warrants** The VLL8 Option Bond and the VLL9 Option Bond shall each have one (1) warrant attached to it (respectively the “**VLL8 Warrant**” and the “**VLL9 Warrant**” and together the “**Warrants**”). The VLL8 Warrant and the VLL9 Warrant shall each entitle the respective holder of the VLL8 Warrant and the VLL9 Warrant (respectively a “**Warrant Holder**”) in accordance with the respective terms and conditions of the Warrants (respectively the “**VLL8 Warrant Terms and Conditions**” and the “**VLL9 Warrant Terms and Conditions**” and together the “**Warrant Terms and Conditions**”) to subscribe, against payment of the Warrant Share Subscription Price (as defined below) per Warrant Share (as defined below), up to 5,643 Warrant Shares representing a fractional amount of the nominal share capital of the Company of EUR 1.00 each, i.e. in aggregate up to a maximum of 11,286 Warrant Shares. The VLL8 Warrant is to be separated from the VLL8 Option Bond and the VLL9 Warrant is to be separated from the VLL9 Option Bond, in each case on the Option Bond Issue Date of the respective Option Bond and each Warrant shall then be transferable separately.

**Warrant Exercise Period** The Warrants may be exercised in (x) whole or, (y) solely in the case of a liquidation of the respective Warrant Holder which requires the distribution of the Warrant Holder’s assets to its limited partners also in part (on one or more occasions), in each case of (x) and (y) by the respective Warrant Holder within the following periods (each such period an “**Exercise Period**”):

- (a) for as long as the Listing of the Company continues or following a New Listing during the period from the Option Bond Issue Date until 5.30 pm local time Frankfurt a.M., Germany, on the Option Bond Termination Date, or
- (b) following a delisting at any time during the period from the Option Bond Issue Date and until 5.30 pm local time Frankfurt a.M., Germany, on the Option Bond Termination Date.

“**Listing**” means the admission of the CDIs to the official list of ASX.

“**Delisting**” means the publication of an announcement by ASX with respect to a removal of the Company from the official list of ASX.

“**New Listing**” means the admission to an official listing, other than the Listing, of any part of the Shares or the admission of any of the Shares to trading on any segment of the Frankfurt Stock Exchange or on any other Recognized Stock Exchange becoming effective.

“**Recognized Stock Exchange**” means the New York Stock Exchange, Nasdaq Capital Market, Nasdaq Global Market, Regulated Market Frankfurt Stock Exchange, SIX Swiss Exchange, Euronext Stock Exchange, the London Stock Exchange and, following a Delisting, the ASX.

For as long as the Listing continues, or following a New Listing, the exercise of the Warrants is excluded during any of the following periods (each an “**Excluded Period**”):

- (a) in connection with an ordinary or other shareholders’ meeting (*Hauptversammlung*) of the Company, a period commencing on the fifth trading day prior to and including the last day for the registration for such shareholders’ meeting (*Hauptversammlung*) and ending on the trading day (excluding) following such shareholders’ meeting (*Hauptversammlung*);
- (b) a period of 14 days before the end of the financial year of the Company; and
- (c) a period commencing on the date on which an offer by the Company to its shareholders or CDI-holders to subscribe shares, CDIs, warrants on own shares, or notes/bonds with conversion or option rights, profit linked bonds or profit participation certificates, or a similar offer (including, but not limited to, offers with respect to a split-up (§ 123(2) of the German Transformation Act (*Umwandlungsgesetz*)) is published in the German Federal Gazette (*Bundesanzeiger*) and ending on the last day of the relevant subscription period (inclusive); provided that such period shall not exceed 35 business days.

## Warrant Shares

- (i) Ordinary no-par-value shares in the Company or (ii) following a Delisting



and no New Listing having occurred, the New Shares (as defined below), in each case with the rights, preferences and privileges as set forth in the constitution of the Company and as elected by the respective Warrant Holder of the VLL8 Warrant and the VLL9 Warrant. If the respective Warrant Holder exercises the Warrant in connection or after a Reorganisation (as defined below) of the Company and provided that the share class does not exist anymore due to a conversion of those shares into a different class of shares, then the Warrant Shares shall be the share class that any other holder of the respective class of Warrant Shares has received in the course of such conversion.

Following a Delisting and no New Listing having occurred, “**New Shares**” means the shares in the Company of such (sub-)class as issued by the Company in any next round of equity financing of the Company (consummated after the issue date of the Warrants and whilst the Warrants are still outstanding) for which the Warrant Holder has opted at the corresponding New Issue Price (as defined below) of such equity financing round for which the Warrant Holder has opted, and “**New Share**” shall mean, following a Delisting and no New Listing having occurred, any one of them. For the avoidance of doubt, the Warrant Holder’s option to have the Warrants be exercisable for New Shares shall be a continuing option as to each and every round of equity financing the Company consummates after the issue date and following a Delisting, whilst no New Listing has occurred, whilst the Warrants are still outstanding, provided that such option shall apply to the Warrants.

Following a Delisting and no New Listing having occurred, “**New Issue Price**” means the lowest price (including nominal amount as well as any statutory and non-statutory payments to the Company’s capital reserves) which an existing or new investor has agreed to pay per one corresponding New Share; provided, however, that in case a discount on such a New Share has been granted to certain investors of the respective equity financing round entered into by the Company after the issue date of the Warrants (but excluding in any event any instruments pursuant to which newly issued shares, options or contingent rights are granted exclusively to members of the management board of the Company or employees or directors of the Company or of a subsidiary, as the case may be), such discounted price shall also apply in favour of the Warrant Holder to the effect that it shall be deemed the New Issue Price of the respective financing round for which the Warrant Holder has opted. It is understood, for the avoidance of doubt, that any deductions made by an existing or new investor of the Company in respect of external costs incurred by such investor or reimbursement of costs by the Company to such investor in accordance with the then applicable investment and/or shareholders’ agreement shall not be deemed a discount for the purposes of determination of (and shall not reduce) the New Issue Price.

„**Reorganisation**” means (A) the consolidation, subdivision or reduction of

shares in the capital of the Company, or (B) any corporate restructuring in accordance with the German Act on the Transformation of Companies (*Umwandlungsgesetz*)); it is, however, understood, that any measure in accordance with the German Act on the Transformation of Companies (*Umwandlungsgesetz*) which results in an acquisition of all shares in the Company by a third party or parties (e.g. merger) shall not qualify (and shall not be deemed and treated) as “Reorganisation” within the meaning and for the purposes of this definition, if in the context of such measure the shareholders or CDI-holders of the Company do not obtain 50% or more of the total voting rights conferred on all shares in the equity share capital of the acquiring entity.

<b>Warrant Share Subscription Price</b>	<p>AUD 390.00 per Warrant Share (the “<b>Warrant Share Subscription Price</b>”). This corresponds to a price of AUD 0.39 per CDI, since one (1) CDI represents a beneficial ownership of 1/1000<sup>th</sup> in one (1) share of the Company.</p> <p>The Warrant Share Subscription Price may be adjusted in certain events in accordance with the Warrant Terms and Conditions, provided that the Warrant Share Subscription Price may not be less than the fractional nominal amount per share in the Company’s nominal share capital of EUR 1.00.</p>
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<b>Number of Warrant Shares to be Issued to the Warrant Holder and Warrant Share Subscription Price</b>	<p>The respective Warrant Holders may only exercise the Warrants and subscribe for Warrant Shares as follows:</p> <ul style="list-style-type: none"> <li>(a) 50% of the Total Warrant Entitlement (as defined below) upon and following closing of the WTI Loan Agreement,</li> <li>(b) 25% of the of the Total Warrant Entitlement (as defined below) upon and following the Borrower drawing the first tranche under the WTI Loan Agreement, and</li> <li>(c) 25% of the Total Warrant Entitlement (as defined below) upon and following the Borrower drawing the second tranche under the WTI Loan Agreement.</li> </ul>
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Each Warrant Holder may exercise the respective Warrant in accordance with the respective Warrant Terms and Conditions to subscribe, against payment of the Warrant Share Subscription Price per Warrant Share, up to 5,643 Warrant Shares representing a fractional amount of the nominal share capital of the Company of EUR 1.00 each, i.e. in aggregate up to a maximum of 11,286 Warrant Shares, corresponding to 11,286,000 CDIs, may be issued under the Warrants.

The number of Warrant Shares which the respective Warrant Holder may subscribe is calculated as follows:

$$x = m / n$$

Whereby:

$x$  = number of Warrant Shares to be issued to the Warrant Holder, brought down to a whole figure (“**Total Warrant Entitlement**”);

$m$  = the sum of (i) 1,100,483.76 Australian Dollars, plus (ii) the product of ( $x$ ) 1,100,483.76 Australian Dollars and ( $y$ ) a fraction, the numerator of which is the aggregate, original nominal amount of all loans advanced to Marley Spoon Inc. by, with respect to the VLL8 Warrant, Venture Lending & Leasing VIII, Inc. and, with respect to the VLL9 Warrant, by Venture Lending & Leasing IX, Inc., pursuant to the WTI Loan Agreement, and the denominator of which is 11,004,837.68 Australian Dollars (such sum, the “**Total Warrant Amount**”);

$n$  = Warrant Share Subscription Price

It is understood that in case the Warrant Holder in the respective exercise notice chooses to exercise the Warrants only partially in the case of a liquidation of the respective Warrant Holder which requires the distribution of such Warrant Holder’s assets to its limited partners in accordance with the Warrant Terms and Conditions, “ $m$ ” for the purposes of calculation of the “ $x$ ” pursuant to the above formula shall equal such part of the Total Warrant Amount in respect of which the Warrants have been exercised. For the purposes of subsequent exercise(s) of the Warrants, “ $m$ ” within the meaning of the above formula shall equal the Total Warrant Amount less the aggregate portions of the Total Warrant Amount in respect of which the Warrants have been previously exercised. Once the Warrants have been exercised in respect of the entire Total Warrant Amount, all rights of the Warrant Holder under the Warrant shall lapse. For an example calculation see item 10 no. 2 a) of the invitation.

#### **Cash Settlement of Warrants**

If and to the extent that due to legal reasons the Company is unable to issue the Warrant Shares from its conditional or authorized capital and in addition the Company is also unable to deliver treasury shares as Warrant Shares upon the exercise of the Warrants, the Warrant Shares which the Company is unable to issue and deliver to the respective Warrant Holder shall be settled in cash by payment of an amount to the Warrant Holder within five business days of the day the Warrants were exercised (“**Exercise Date**”) and which is calculated as follows:

- (a) for as long as the Listing continues, or following a New Listing, by multiplying the Market Price with the number of the Warrant Shares which the Company is unable to issue and deliver to the Warrant Holder. “**Market Price**” means the price per share of the Company which corresponds to the arithmetic volume-weighted average price per CDI on the ASX on the Exercise Date, multiplied by 1,000 since one CDI represents the economic ownership of 1/1,000th in one share of the

Company, and converted into USD at the euro foreign exchange reference rates between euro (EUR) and Australian dollar (AUD) and US dollar (USD) as published on the official website of the European Central Bank (ECB) on the Exercise Date, rounded to the nearest full cent with USD 0.005 being rounded upwards, or

- (b) following a Delisting and no New Listing having occurred, by multiplying the New Issue Price with the number of the Warrant Shares which the Company is unable to issue and deliver to the Warrant Holder.

**Adjustment of Number of Warrant Shares and/or Warrant Share Subscription Price** In the event of a capital increase from corporate funds (stock split), the Total Warrant Entitlement shall be increased in the same proportion as the registered capital of the Company, and the Warrant Share Subscription Price be adjusted downwards considering the increased capital of the Company and vice versa (i.e. the Total Warrant Entitlement shall be reduced and the Warrant Share Subscription Price be adjusted upwards proportionately) in the event of a capital reduction from corporate funds (stock combination).

If any Reorganisation shall take place during the Exercise Period prior to completion of the exercise of the Warrants, then all Warrant Shares which shall derive (whether directly or indirectly) from the Warrants shall be deemed to be subject to such Reorganisation so that references in the Warrant Terms and Conditions to the Warrant Shares and the Warrant Share Subscription Price shall be appropriately adjusted to take account of such Reorganisation. Any dispute as to the Reorganisation and the adjustment to the Warrant Shares and the Warrant Share Subscription Price (if any) shall be referred to the auditors of the Company without delay by the Company, who shall act as experts and not as arbitrators and their certificate as to the Reorganisation, Warrant Shares and the Subscription Price (if any) shall be final and binding on the parties.

**Calculation of any preferences under Warrants** Following a Delisting and no New Listing having occurred and for purposes of any preference calculation (e.g. in connection with a liquidation preference or the payment of preferred dividends based on a certain fixed or guaranteed interest rate or the like) under the Company's constitution:

- (a) the calculation starts for the Warrant Holder as from the later of (i) the date on which the Warrant Shares are issued to the Warrant Holder or (ii) the date applicable for the other investors in the respective class of stock to which the Warrant Shares belong to; and
- (b) provided that the Warrant Holder has fulfilled its payment obligations under the Warrant Terms and Conditions, the deemed subscription price of the Warrant Shares shall be the price paid by investors for the class of shares corresponding to the Warrant Shares ("**Deemed Subscription Price**") and the Company, if and to the extent it is in the Company's legal

power and is permissible under applicable laws, undertakes to procure that any payment or other distribution to be made to the Warrant Holder which is based on or calculated by reference to the issue price or subscription price of a share of the class corresponding to the Warrant Shares shall in respect of the Warrant Shares be based on or calculated by reference to the Deemed Subscription Price.

**Pay-to-Play Clause**

Following a Delisting and no New Listing having occurred and in the event that the rights, preferences or privileges of the Warrant Shares are amended or modified, or a recapitalization, reclassification, conversion or exchange of the outstanding Warrant Shares is effected in connection with an equity or debt financing transaction which occurs after the date hereof (each, as applicable, a **“Pay-to-Play Transaction”**), the Warrants (and the Warrant Shares issuable thereunder) shall be exempt from such Pay-to-Play Transaction, and shall automatically and without any action required by the Warrant Holder become exercisable for the type of securities as would have been issued or exchanged, or would have remained outstanding or been purchasable, as the case may be, in respect of the Warrant Shares issuable thereunder had the Warrant Holder exercised its respective Warrant in full prior to such event.

**Pro-rata investment right under Warrants (anti-dilution protection)**

Until the earlier of (i) completion of the exercise of Warrants in full and (ii) the expiry of the Exercise Period and (iii) the occurrence of an Exit Event (as defined below) the Company will in connection with any equity or convertible debt securities that the Company may propose to offer or sell after the Option Bond Issue Date (**“Future Offering”**) grant to the respective Warrant Holder one of the following rights:

- (a) such number of subscription rights which is necessary to invest up to the greater of (x) USD 500,000.00 and (y) such amount of cash as is required to enable the Warrant Holder to purchase that number of any equity or convertible debt securities as will enable the Warrant Holder to own or acquire the same percentage of the securities of the Company as it owned immediately prior to commencement of such offering (the **“Pro-Rata Investment”**), except if such pro-rata offering by the Company would breach any law, regulation or stock exchange requirement, or
- (b) adjust the Total Warrant Entitlement as is required to enable the Warrant Holder to partially exercise the Warrants as will enable it to own or acquire upon partial exercise of the Warrants the same percentage of securities of the Company as if the Warrant Holder had acquired securities pursuant to the Pro-Rata Investment (with the subscription price for those Warrant Shares corresponding to the price per security payable in the Future Offering).

In case any offer or invitation is made to any holders of any class of shares in

the Company or CDIs to acquire any of their shares or CDIs by way of purchase or pursuant to a scheme of arrangement or if any proposal or arrangement is put to any holders of any class of shares in the Company or CDIs while the Warrants remain to be exercised in full, the Company shall use reasonable endeavors to convince the relevant parties involved that such offer is made or put pro-rata to the Warrant Holder and shall notify the Warrant Holder not less than ten (10) business days' notice of the happening of such event to enable the Warrant Holder to participate in such proposal or arrangement.

**Consequences of an Exit Event and/or Sale Event**

In the case of an Exit Event (as defined below) the Company shall, to the extent legally permissible, give the respective Warrant Holder not less than ten (10) business days advance notice of the proposed occurrence of an Exit Event and provide additional information on the proposed Exit Event.

The Warrant Holder shall have the right at any time within the Exercise Period to subscribe, and (at its option) – if in respect of an Exit Event – conditionally on or immediately prior to completion of the Exit Event, subscribe the Warrant Shares it is entitled to against payment of the Warrant Share Subscription Price. Subject to the Company having complied with its notification obligations in full, if the Warrants have not been exercised on the occurrence of (i) a Share Sale where (A) 50% or more of the Company's shares are being sold or (B) one single party, except for CDN or any equivalent depository, becomes the sole shareholder or CDI-holder of the Company or (ii) a liquidation of the Company, the Warrants shall lapse. For the avoidance of doubt (save as set out before in relation to a Share Sale where (A) 50% or more of the Company's Shares are being sold or (B) one single party, except for CDN, becomes the sole shareholder or CDI-holder of the Company), the Warrants shall not lapse on the occurrence of any other Exit Event and shall be exercisable (in accordance with Warrant Terms and Conditions) prior to, upon or following an Exit Event, until the lapse of the Exercise Period.

In the event that during the Exercise Period the entire issued share capital of the Company is sold or is to be sold where as a result of such sale the shareholders, except for CDN or any other depository, or CDI-holders of the Company would hold shares in the capital of the acquirer of the Company (the "**New Purchaser**") which confer in aggregate more than 50% of the total voting rights conferred on all the shares in the equity share capital of that New Purchaser, provided that the Warrants have not been exercised and completed prior to the date of such sale, the Company shall use all reasonable endeavors to procure that the New Purchaser issues warrants to the Warrant Holders in place of the Warrants on terms approved by the respective Warrant Holder, substantially similar to the Warrant Terms and Conditions and with the same economic benefit to the respective Warrant Holder (the "**New Warrants**").

Upon issue of the New Warrants the Warrants shall lapse.

**“Exit Event”** means any signing of a binding agreement providing for an obligation to consummate (or the occurrence of) a liquidation of the Company, a Sale Event or, following a Delisting a New Listing.

**“Sale Event”** means sale to a bona fide third party (the **“Purchaser”**), in each case in one transaction or a series of one or more related transactions, of (i) more than 50% (according to their nominal value) of all of the Company’s shares (**“Share Sale”**) or (ii) more than 50% of the Company’s assets including non-activated assets or assets that cannot be activated (at market value) (**“Asset Sale”**), whereby the term “sale” shall include, for clarification purposes, any disposal (*Veräußerung bzw. Übertragung*) of shares by the Company’s shareholders, or assets by the Company, respectively, due to a swap (*Tausch*) or a contribution (*Einbringung*) or a conversion (*Umwandlung*), as the case may be, within the meaning of the German Act on the Transformation of Companies (*Umwandlungsgesetz*)) resulting in a transformed company (and/or surviving entity, as the case may be) in which the shareholders of the Company hold less than 50% of the shares.

**Termination  
Warrants**

**of** Pursuant to the WTI Loan Agreement, Marley Spoon Inc. agreed that upon the first to occur of either (i) the closing of a change of control at the Company or (ii) December 31, 2024, Venture Lending & Leasing VIII, Inc. and Venture Lending & Leasing IX, Inc. shall each have the option to exchange their respective Warrant (if same has not been exercised as of such time) for a cash payment (such cash payment, respectively the **“VLL8 Payment”** and the **“VLL9 Payment”**) in an amount equal to the sum of (1) USD 1,437,500 and (2) the product of (x) USD 1,437,500 and (y) a fraction, the numerator of which is the aggregate, original principal amount of all loans advanced to Marley Spoon Inc. by, with respect to the VLL8 Warrant, Venture Lending & Leasing VIII, Inc. and, with respect to the VLL9 Warrant, by Venture Lending & Leasing IX, Inc., and the denominator of which is USD 7,500,000. If Venture Lending & Leasing VIII, Inc. opts to receive the VLL8 Payment and/or Venture Lending & Leasing IX, Inc. opts to receive the VLL9 Payment, the respective Warrant shall terminate upon receipt of such payment.

**Title to Warrants**

The respective Warrant Holder will be recognized by the Company as the sole absolute owner of the Warrants.

**No Quotation**

The Option Bonds will not be quoted on ASX or any other stock exchange.

**Participation/Voting**

Before the Warrant Holders have exercised their respective Warrants and been

**Rights**

delivered Shares/CDIs, it will not be allowed to participate or vote at shareholders' meetings of the Company. The foregoing does not impact any rights of a Warrant Holder which arises by virtue of it either being a shareholder or a CDI holder in the Company.

\* \* \* \*



## Schedule 2 pro-forma Consolidated Statement of Financial Position

EUR in thousands	Audited Consolidated Statement of Financial Position as of 31 12 2019	Unaudited pro-forma adjustment - WTI warrants (Feb20)	Pro Forma Consolidated Statement of Financial Position as of 31 12 2019
<b>Assets</b>			
<b>Non-current assets</b>			
Property, plant and equipment	7.716		7.716
Right of use assets	12.432		12.432
Intangible assets	3.439		3.439
Financial Assets available for sale	26		26
Other non-current financial assets	1.330		1.330
<b>Total Non-current assets</b>	<b>24.943</b>		<b>24.943</b>
<b>Current assets</b>			
Inventories	3.736		3.736
Trade and other receivables	522		522
Other current non-financial assets	2.353		2.353
Cash and cash equivalents	5.433	10	5.443
<b>Total Current assets</b>	<b>12.044</b>	<b>10</b>	<b>12.054</b>
<b>Total assets</b>	<b>36.987</b>	<b>10</b>	<b>36.997</b>
<b>Equity and liabilities</b>			
<b>Equity</b>			
Share capital	(159)		(159)
Capital reserve	(99.417)		(99.417)
Other reserves	(5.736)		(5.736)
FCTA reserves	(17)		(17)
Accumulated net earnings (losses)	140.246		140.246
<b>Equity attributable to equity holders of the parent</b>	<b>34.916</b>		<b>34.916</b>
Non-controlling interests	800		800
<b>Total equity</b>	<b>35.717</b>		<b>35.717</b>
<b>Liabilities</b>			
<b>Non-current liabilities</b>			
Lease liability	(8.192)		(8.192)
Long-term debt	(36.369) *	(10)	(36.379)
Financial instruments	(2.521) **		(2.521)
<b>Total Non-current liabilities</b>	<b>(47.082)</b>	<b>(10)</b>	<b>(47.092)</b>
<b>Current liabilities</b>			
Trade and other payables	(12.919)		(12.919)
Derivative financial instruments	(62)		(62)
Deferred income	(234)		(234)
Long term debt – current	(772)		(772)
Lease liability - current	(5.143)		(5.143)
Other current financial liabilities	(5.279)		(5.279)
Other current non financial liabilities	(1.213)		(1.213)
<b>Total Current liabilities</b>	<b>(25.622)</b>		<b>(25.622)</b>
<b>Total equity and liabilities</b>	<b>(36.987)</b>	<b>(10)</b>	<b>(36.997)</b>
<b>*included in long-term debt:</b>			
USV Convertible Notes	(1.799)		
WOW Convertible Note	(2.321)		
<b>**included in derivative financial instruments:</b>			
USV Convertible Notes	(179)		
WOW Convertible Note	(199)		

## Schedule 3 CDIs - Rights and Liabilities

<p><b>What are the voting rights of a CDI Holder?</b></p>	<p>CDI Holders will be able to vote at Marley Spoon's general meetings by:</p> <ol style="list-style-type: none"> <li>1. instructing Chess Depositary Nominee Pty Ltd ACN 071 346 506 (<b>CDN</b>), as the legal owner, to vote the Shares underlying their CDIs in a particular manner. A voting instruction form will be sent to CDI Holders with the notice of meeting or proxy statement for the meeting and this must be completed and returned to Marley Spoon's Registry prior to the meeting; or</li> <li>2. informing Marley Spoon 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; or</li> <li>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).</li> </ol> <p>In order to vote in person, the conversion must be completed prior to the record date for the general meeting. See above for further information regarding the conversion process and applicable timing constraints.</p> <p>As CDI Holders will not appear on Marley Spoon's share register as the holders of the Shares, they will not be entitled to vote at general meetings unless one of the above steps is undertaken.</p> <p>As 1,000 CDIs represent an interest in one Share, to vote a certain way (e.g. for or against a resolution) 1,000 CDIs will represent a vote of one Share.</p> <p>Where a CDI Holder holds less than 1,000 CDIs, or a number of CDIs which is not a multiple of 1,000, they should consider using Option 1 above if they wish to vote their CDIs. In this circumstance, all votes of CDIs cast a certain way (e.g. for or against a resolution) using this option will be aggregated first, with that aggregated number only then rounded down to the nearest multiple of 1,000, to determine the number of Shares to be voted in that way. Proxy forms, CDI voting instruction forms and details of these alternatives will be included in each notice of meeting sent to CDI Holders by Marley Spoon. These voting rights exist only under the ASX Settlement Operating Rules, rather than under German company law. Since CDN is the holder of applicable shares but the CDI Holders are not themselves the holder of the applicable Shares, the CDI Holders do not have any directly enforceable rights under Marley Spoon's Constitution. The Company intends to hold its general meetings in Germany. Under the ASX Listing Rules and the ASX Settlement Operating Rules, Marley Spoon as an issuer of CDIs must allow CDI Holders to attend any meeting of the holders of Shares unless relevant German law at the time of the meeting prevents CDI Holders from attending those meetings. The Company intends to facilitate an audio or video transmission of its general meetings to allow an opportunity for a CDI Holder to observe those meetings. If a CDI Holder wishes to ensure that it can formally attend a general meeting with the full rights of a shareholder, the CDI Holder should inform Marley Spoon that its wishes to nominate itself or another person to be appointed as CDN's proxy with respect to Shares underlying their CDIs, or first convert their CDIs into a holding of Shares. Further information in relation to general meetings and voting will be provided by the Company to CDI Holders in advance of those meetings.</p>
<p><b>What dividend and other distribution entitlements do CDI Holders have?</b></p>	<p>Despite legal title to the Shares being vested in CDN, ASX Settlement Operating Rules provide that CDI Holders are to receive all direct economic benefits and other entitlements in relation to the underlying Shares. These include dividends and other entitlements which attach to the underlying Shares. These rights exist only under the ASX Settlement Operating Rules (which have the force of law by virtue of the Corporations Act), rather than under German company law. It is possible that marginal differences may exist between the resulting entitlement of a CDI Holder and the entitlements that would have accrued if a CDI Holder held their holding directly as Shares. As the ratio of CDIs to Shares is not one-to-one and any entitlement will be determined on the basis of Shares rather than CDIs, a CDI Holder may not always benefit to the same extent, for example from the rounding up of fractional entitlements in a rights issue (or other corporate actions as referred to below). The Company is required by the ASX Settlement Operating Rules to minimise any such differences where legally permissible. If the Company pays a dividend, it will adopt procedures as required by the ASX Settlement Operating Rules to facilitate payment in respect of holdings of CDIs which are not multiples of 1,000 (or less than 1,000). Whilst the Company does not anticipate declaring any dividends in the foreseeable future, should it do so in the longer term, Marley Spoon will declare any dividends in € as that is its main functional currency. In that event, Marley Spoon may pay any dividends in EUR or AUD depending on the country of residence of the CDI Holder.</p>
<p><b>What corporate action entitlement (such as rights</b></p>	<p>The ASX Settlement Operating Rules provide that CDI Holders are to receive all direct economic benefits and other entitlements in relation to the underlying Shares. These</p>

<b>issues and bonus issues) do CDI Holders have?</b>	include an entitlement to participate in rights issues, bonus issues and capital reductions. These rights exist only under the ASX Settlement Operating Rules, rather than under German company law. For further information refer to the row above in relation to marginal differences that may exist between the resulting entitlement of a CDI Holder and the entitlements that would have accrued if a CDI Holder held their holding directly as Shares.
<b>What rights do CDI Holders have in the event of a takeover?</b>	If a takeover bid or similar transaction is made in relation to the Shares of which CDN is the registered holder, under the ASX Settlement Operating Rules, CDN must not accept the offer made under the takeover bid except to the extent that acceptance is authorised by the relevant CDI Holder. CDN must ensure that the offeror processes the takeover acceptance of a CDI Holder if such CDI Holder instructs CDN to do so. These rights exist only under the ASX Settlement Operating Rules, rather than under German company law. Refer to Section 9.3 of the Prospectus released by the Company on 2 July 2018.
<b>What notices and announcement will CDI Holders receive?</b>	CDI Holders will receive all notices and company announcements (such as annual reports) that shareholders are entitled to receive from Marley Spoon. These rights exist only under the ASX Settlement Operating Rules, rather than under German company law.
<b>What rights do CDI Holders have on liquidation or winding up?</b>	In the event of Marley Spoon's liquidation, dissolution or winding up, a CDI Holder will be entitled to the same economic benefit on their CDIs as shareholders. These rights exist only under the ASX Settlement Operating Rules, rather than under German company law.