

# EFET

## European Federation of Energy Traders

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**WAIVER:** THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS GENERAL AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

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### General Agreement Concerning the Delivery and Acceptance of Electricity

Between

\_\_\_\_\_, a private limited company incorporated under the laws of \_\_\_\_\_

having its registered office at \_\_\_\_\_

and

**Syneco Trading GmbH**, a private limited company incorporated under the laws of Germany having its

registered office at Nymphenburger Straße 39, Munich, Germany

(referred to jointly as the "**Parties**" and individually as a "**Party**")

entered into on \_\_\_\_\_ (the "**Effective Date**").

shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

**2. Amendments:** Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

**3. Partial Invalidity:** If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

**4. Third Party Rights:** The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

\_\_\_\_\_  
**Syneco Trading GmbH**

\_\_\_\_\_  
*[Name of Signatory]*  
*[Title of Signatory]*

\_\_\_\_\_  
**Thomas Gollnow**  
**(Managing Director)**

\_\_\_\_\_  
*[Name of Signatory]*  
*[Title of Signatory]*

\_\_\_\_\_  
**Dr. Johannes Angloher**  
**(Managing Director)**

**EFET**  
**European Federation of Energy Traders**  
**Election Sheet**  
**to the**  
**General Agreement**  
**Concerning the Delivery and Acceptance of Electricity**

with an Effective Date of [.....]

between

[...]  
"Party A"

and

Syneco Trading GmbH  
"Party B"

**PART I: CUSTOMIZATION OF PROVISIONS IN THE GENERAL AGREEMENT**

**§1**

**Subject of Agreement**

**§ 1.2 Pre-Existing Contracts:** § 1.2 shall apply,

**§2**

**Definitions and Construction**

**§ 2.4 References to Time:** time references shall be as provided in the General Agreement (CET),

**§3**

**Concluding and Confirming Individual Contracts**

**§ 3.4 Authorised Persons:** § 3.4 shall not apply as written in the General Agreement but instead shall apply as follows:

**“Authorised Persons:** Individual Contracts may only be concluded between the authorized traders of the Parties. Absent prior notice to the contrary, each Party acknowledges and represents to the other Party that each of its employees purporting to represent, negotiate and enter into one or more binding Individual Contracts on such Party’s behalf shall be deemed to be an authorized trader of that Party.”

**§7**

**Non-Performance Due to Force Majeure**

**§ 7.1 Definition of Force Majeure:** § 7.1 shall apply as written in the General Agreement,

**§ 7.4 Effects of Force Majeure on Other Party:** § 7.4 shall be amended as follows: At the end of § 7.4 the following shall be inserted as last sentence: “For the

avoidance of doubt, this § 7.4 shall apply only if the Party which is not the Claiming Party is not responsible for the occurrence of the Force Majeure. Force Majeure specifically excludes: (i) the loss of Buyer's markets or Buyer's inability economically to use or resell Gas purchased hereunder; (ii) the loss or failure of Seller's Gas supply; (iii) Seller's ability to sell Gas to a market at a more advantageous price."

## §10

### **Term and Termination Rights**

**§ 10.2 Expiration Date:** § 10.2 shall apply **but there shall be no** Expiration Date

**§ 10.4 Automatic Termination:** §10.4 shall apply to Party A and B but only in respect of a *Material Reason* as described in § 10.5 (c) (iv) ("**Winding-up/Insolvency/Attachment**") and in either case with termination effective upon the occurrence of one of the *Material Reasons*.described in § 10.5 (c)(iv).

**§ 10.5 (a) Definition of Material Reason:** § 10.5 (a) and § 10.5 (a) (i) shall not apply as written but instead shall be as follows:

**5. Definition of Material Reason:** The Agreement may be terminated at any time for one or more of the following reasons (each, a "**Material Reason**"):

(a) **Non Performance:** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation other than when such obligation is released pursuant to § 7 (*Non-Performance Due to Force Majeure*) or suspended pursuant to § 9 (*Suspension of Delivery*):

(i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within three (3) Business Days of a written demand, in the case of a Performance Assurance such Performance Assurance is not delivered within the time period according to § 17.1, or, in the case of any other failure of performance, such failure is not cured within ten (10) days of a written demand;

**§ 10.5(b) Cross Default and Acceleration:** § 10.5(b)(i) and (ii) shall be deleted and replaced by the following wording that shall apply to Party A and Party B:

(i) any default, event of default or other similar condition or event (however described) in respect of such Party, such Party's Credit Support Provider (if such Party has a Credit Support Provider) or such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified for that Party under § 10.5 (b) (iii)) which has resulted in such Specified Indebtedness becoming due and payable before it would otherwise have been due or payable, or

(ii) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount for that Party under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period) and

(iii) for the purposes of the above, the Threshold Amount shall be for

**Party A:** 3% of the TNW of Party A  
**Party B:** 3% of the TNW of Thüga Aktiengesellschaft

**§ 10.5(c) Winding-up/Insolvency/Attachment:** § 10.5(c) (iv) shall apply as written in the General Agreement and the applicable time period shall be in respect of a Party, either:

- (i) **zero** (0) days, if a Party or its Credit Support Provider institutes such a proceeding against itself;
- (ii) **zero** (0) days, if any third party institutes any of the proceedings specified in § 10.5(c) (iv) against a Party or its Credit Support Provider **and** such Party or its Credit Support Provider, as the case may be, is unable to pay its debts as they fall due, or is otherwise in a position which justifies the commencement of such insolvency proceedings;
- (iii) **fifteen** (15) calendar days in any other case, the Non-Defaulting Party has the right to call for Performance Assurance according to § 17.1, § 10.5 (a) (i) within this period, or
- (iv) **in any event**, at the latest, immediately prior to the time of the formal commencement of such insolvency proceedings (in German: "Eröffnung des Insolvenzverfahrens") against Party A or B or its Credit Support Provider, whichever occurs earlier.

**§ 10.5(d) Failure to Deliver or Accept:** § 10.5(d) shall apply to Party A and to Party B.

**§ 10.5 Other Material Reasons:** Material Reasons shall be limited to those stated in the General Agreement, except that the following additional Material Reason shall also apply for both Parties:

- (i) defaults under any Specified Transaction (as defined below) and, after giving effect to any applicable notice requirement or grace period, which results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction in an aggregate amount of at least € 100.000,
- (ii) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment date or delivery date of any Specified Transaction in an aggregate amount of at least € 100.000; or
- (iii) disaffirms, disclaims or repudiates any Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

For the purposes of this clause: the word "Specified Transactions" means (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Parties to this Agreement or between a Party and any Affiliate of the other Party which is a Commodity swap, Commodity option, cap transaction, floor transaction, collar transaction, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading or Commodity derivative transaction or any other similar transaction (including any option with respect to any of these transactions) and (b) any combination of these transactions.

For the purposes of this clause, the word "Commodity" means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, natural gas, natural gas capacity, natural gas storage capacity, natural gas liquids, coal, heating oil, oil and other petroleum by-products or fuels, greenhouse gas emissions allowances and tradable renewable energy credits).

For the avoidance of doubt, Specified Transactions shall not comprise Individual Contracts under this Agreement.

## §12

### Limitation of Liability

#### § 12.1 Application of Limitation

Subject to the following amendment of § 12.3 and 12.4 below § 12 shall apply as written in the General Agreement and it is expressly acknowledged that the provisions of the limitation of liability set out in § 12 have been specifically negotiated and agreed between the Parties.

## §13

### Invoicing and Payment

§ 13.2 Payment: initial billing and payment information for each Party is set out in § 23 of this Election Sheet.

§ 13.3 Payment Netting: § 13.3 shall apply.

§ 13.5 Interest Rate: the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus **two** percent (2 %) per annum.

§ 13.6 Disputed Amounts: §13.6 (a) shall apply amended as follows: in the first line the words „subject to manifest errors“ shall be inserted before the words „the full amount invoiced no later“

## §14

### VAT and Taxes

§ 14.8 Termination for New Tax: Unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8.

§ 14.9 Withholding Tax: § 14.9 shall apply.

## §15

### Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 15.5 Calculation Agent: the Calculation Agent shall be the Seller, provided that Seller is not in default. Should Seller be in default, then Buyer will act as Calculation Agent. Default for this purpose shall be defined as experiencing a Material Reason as defined in § 10.5.

## §16

### Guarantees and Credit Support

#### § 16 Credit Support Documents:

Party A shall provide Party B with the following Credit Support Document(s): Performance Assurance or Credit Support Document(s) as may be provided from time to time to Party B in respect of Party A's obligations under this Agreement or an Individual Contract

Party B shall provide Party A with any such Credit Support Document(s): a letter of awareness evidencing the execution of a valid profit and loss transfer agreement between Party B and Thüga Aktiengesellschaft and such

other Performance Assurance or Credit Support Document(s) as may be provided from time to time to Party A in respect of Party B's obligations under this Agreement or an Individual Contract,

**§ 16 Credit Support Provider:**

Credit Support Provider(s) of Party A shall be: [..]

Credit Support Provider(s) of Party B shall be: Thüga Aktiengesellschaft, München, Germany

**§17**

**Performance Assurance**

**§ 17.2 Material Adverse Change:** the following categories of Material Adverse Change shall apply to Party A:

- §17.2 (a) (**Credit Rating**), and the minimum rating shall be: Baa3 (Moody's Investor Services) or BBB- (Standard & Poor's) respectively, whichever will be the lower;
- §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**); and the minimum rating shall be: A3 (Moody's Investor Services) or A- (Standard & Poor's) respectively, whichever will be the lower;
- §17.2 (d) (**Decline in Tangible Net Worth**), and the relevant figure is: and the relevant amount shall be more than 30% (thirty percent) decline within one fiscal year in the Tangible Net Worth of Party A
- §17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period shall be 30 days
- §17.2 (f) (**Failure of Performance Assurance or Credit Support**);
- §17.2 (g) (**Failure of Control & Profit Transfer Agreement**);
- §17.2 (i) (**Amalgamation/Merger**)

the following categories of Material Adverse Change shall apply to Party B:

- §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**); and the minimum rating shall be: A3 (Moody's Investor Services) or A- (Standard & Poor's) respectively, whichever will be the lower;
- §17.2 (d) (**Decline in Tangible Net Worth**), and the relevant amount shall be more than 30% (thirty percent) decline within one fiscal year in the Tangible Net Worth of Thüga Aktiengesellschaft;
- §17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period shall be 30 days
- §17.2 (f) (**Failure of Performance Assurance or Credit Support**);
- §17.2 (g) (**Failure of Control & Profit Transfer Agreement**);
- §17.2 (i) (**Amalgamation/Merger**)

**§18**

**Provision of Financial Statements and Tangible Net Worth**

**§ 18.1 (a) Annual Reports:** Party A shall deliver annual reports, to the extent that they are not available on the internet at: [..].

Party B shall deliver annual reports, to the extent that they are not available on the internet at: [www.syneco.de](http://www.syneco.de) or [www.thuega.de](http://www.thuega.de).

**§ 18.1(b) Quarterly Reports:** Party A need not deliver quarterly reports, and Party B need not deliver quarterly reports

**§18.2 Tangible Net Worth:** Party A shall have a duty to notify as provided in §18.2, and Party B shall have a duty to notify as provided in §18.2

**§19**  
**Assignment**

**§ 19.2 Assignment to Affiliates:** Party A may not assign in accordance with § 19.2,  
Party B may not assign in accordance with § 19.2,

**§20**  
**Confidentiality**

**§ 20.1 Confidentiality Obligation:** § 20 shall apply.

**§21**  
**Representation and Warranties**

The Following Representations and Warranties are made:

	<b>by Party A:</b>	<b>by Party B:</b>
§21(a)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(b)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(c)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(d)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(e)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(f)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(g)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(h)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(i)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(j)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(k)	deleted	deleted
§21(l)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no
§21(m)	<input type="checkbox"/> yes [ ] no	[ ] yes <input checked="" type="checkbox"/> no
§21(n)	<input checked="" type="checkbox"/> yes [ ] no	<input checked="" type="checkbox"/> yes [ ] no

**§22**  
**Governing Law and Arbitration**

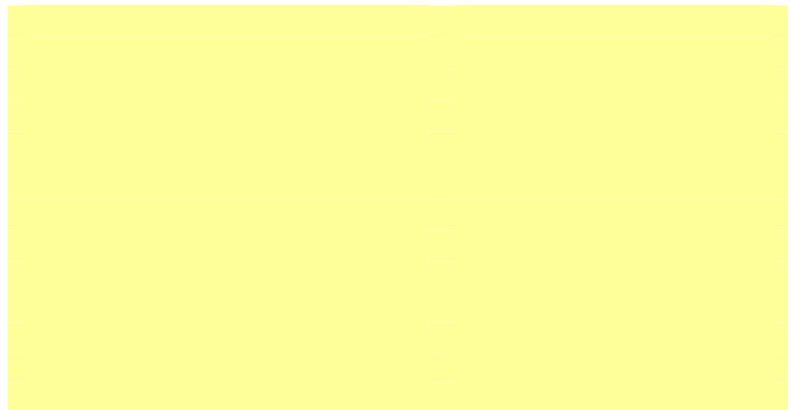
**§ 22.1 Governing Law:** § 22.1 shall apply as written

**§ 22.2 Arbitration:** § 22.2 shall apply as written and the language of the arbitration shall be:  
**German**; the venue for arbitration shall be Munich, Germany.

**§23**  
**Miscellaneous**

**§ 23.2 Notices, Invoices and Payments:**

- (a) **TO PARTY A:**  
**Notices & Correspondence**  
Address:  
Telephone No:  
Fax No:
- Attention:  
**Confirmations & Invoices**  
Fax No:  
Attention:  
**Payments**  
Bank account details  
Umsatzsteuer- Identifikations- Nr.





Steuer- Nummer

- (b) **TO PARTY B:** **Syneco Trading GmbH**  
 Notices & Correspondence  
**Address:** Nymphenburger Str. 39  
**80335 München**  
**Telephone No:** +49 (0) 89 38197-4417  
**Fax No:** +49 (0) 89 38197-4491  
**Attention:** Dominique Schreiber  
**Back Office**
- Invoices  
 Fax No: +49 (0) 89 38197-4491  
 Attention: Dominique Schreiber  
 Back Office
- Payments**  
 Bank account details Bayerische Landesbank  
 BLZ: 700 500 00  
 Kt.-Nr.: 353 03 13  
 Swift: BYLA DE MM  
 IBAN: DE12700500000003530313

## PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

### 1. Additional VAT Representations

For the purposes of 38(2) of the EU Council Directive 2006/112/EC of 28th November 2006 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (the "Directive"), Party A and Party B, on the date of this Agreement, and thereafter each time they enter into, Schedule, deliver, receive and settle an Individual Contract, hereby make the following representations:

#### (a) Party A Representations.

Party A represents that it is either a "Taxable Dealer" as defined in the Directive or the place of supply of the, as applicable, natural gas or electricity under the EFET General Agreement(s) and each underlying Individual Contract shall be deemed to be in accordance with Article 38(2) of the above Directive.

Party A further represents to Party B that the establishment(s) to which the, as applicable, electricity/natural gas supplied under the EFET General Agreement(s) and each underlying Individual Contract is/are made, and the true and correct VAT number(s) of that/(those) establishment(s), are as follows:

Party A's establishment(s)	Party A's VAT number(s)

#### (b) Party B Representations.

Party B represents to Party A that it is either a "Taxable Dealer" as defined in the Directive or the place of supply of the, as applicable, natural gas or electricity under the EFET General Agreement(s) and each underlying Individual Contract shall be deemed to be in accordance with Article 38(1) of the above Directive.

Party B further represents to Party A that the establishment(s) to which the, as applicable, electricity/natural gas supplied under the EFET General Agreement(s) and each underlying Individual Contract is/are made, and the true and correct VAT number(s) of that/those establishment(s), are as follows:

Party B's establishment(s)	Party B's VAT number(s)
Syneco Trading GmbH, München	DE 219741801

2. § 11.3 Set- Off:

§ 11 is amended by the addition of the following new § 11.3:

“§ 11.3 Set-Off:

- (a) The Terminating Party may, at its option, set off the Termination Amount against any or all other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set off shall be without prejudice and in addition to any right of set off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- (b) If the amount of a claim to be set-off is unascertained, the Terminating Party may reasonably determine the amount of the relevant claim by a fair estimation taking into consideration all information available, including all relevant market data (e.g. interest rates) and developments (the amount so determined referred to as the “**Estimate Amount**”). For the purpose of the set-off, the Estimate Amount shall become binding between the Parties. However, such set-off shall be without prejudice to any compensation payments to be made according to § 11.3 (c) below.
- (c) The Terminating Party shall be obliged to ascertain and notify to the other Party the actual value of the relevant claim without undue delay. Where the Estimate Amount deviates from the actual value of the relevant claim so ascertained, the Parties shall make any compensation payment (amounting to the difference between the ascertained actual value of the relevant claim and the Estimate Amount) within 3 (three) Business Days after the actual value of the relevant claim has been ascertained and notified accordingly. The Party being obliged to make such compensation payment shall pay interest at the one month EURIBOR interest rate for 11.00 a.m. on the effective date of the set-off plus three percent (3%) per annum on the compensation payment amount for the period between the effective date of the set-off and receipt of the compensation payment by the other party.
- (d) Amounts owing, not matured or due (in German: *fällig*) shall become due on the earlier of the Early Termination Date or the effective Date of the Automatic Termination.”

**ANNEX 1 TO THE GENERAL AGREEMENT:**

The Parties agree to amend the following provisions of Annex 1 to the General Agreement (Defined Terms) as follows:

The definition of “Credit Rating“ shall be amended by deleting the words “Standard and Poor’s Rating Group (a division of McGraw-Hill Inc.)” and substituting it with the words “Standard and Poor’s, a division of The McGraw-Hill Companies, Inc. and any successor thereto” and further by deleting the words “Moody’s Investor Services Inc.” and by substituting in with the words “Moody’s Investors Service and any successor thereto”.

The definition of “**Specified Indebtedness**” in Annex 1 is amended so that it now reads as follows:

“**Specified Indebtedness**” means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts and debt instruments payable to financial institutions, but which excludes debts payable to Affiliates);

The definition of “**Tangible Net Worth**” shall be amended by the replacement of the words “*but limited to, goodwill*”, with the words “*but not limited to, goodwill*”.

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Executed by the duly authorised representatives of each Party effective as of the Effective Date.

“Party A”  
[...]

“Party B”  
Syneco Trading GmbH

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*Thomas Gollnow*  
*Managing Director*

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*Dr. Johannes Angloher*  
*Managing Director*