



**Virtual Annual General Meeting  
of DEUTZ AG, Cologne  
on Thursday, April 27, 2023**

**Reports of the Board of Management on  
agenda items 10, 11, 12, 13, and 14**

## **Preliminary notes**

At the time of the Annual General Meeting on April 27, 2023, the Company will no longer have any authorized capital available as the existing ones expire on April 25, 2023. There is currently no authorization to issue convertible bonds and/or warrant-linked bonds together with corresponding conditional capital.

At the time of the Annual General Meeting on April 27, 2023, there will therefore be no reserve capital.

Nor is there any authorization to purchase and use treasury shares.

Under the following agenda items, the Board of Management and Supervisory Board are therefore proposing resolutions to the Annual General Meeting for the creation of new reserve capital:

- 10 (Creation of a new authorized capital 2023/I and authorization to disapply pre-emption rights by amending Article 4 (2) of the Statutes)
- 11 (Creation of a new authorized capital 2023/II and authorization to disapply pre-emption rights by amending Article 4 (3) of the Statutes)
- 12 (Resolution on the authorization to issue convertible bonds and/or warrant-linked bonds and to disapply pre-emption rights and at the same time create conditional capital and to amend the Statutes (Article 4 of the Statutes) accordingly)
- 13 (Authorization to issue profit-sharing rights without conversion rights or option rights and to disapply pre-emption rights)

The amounts of the proposed reserve capital are stated below.

These proposed authorizations are all subject to the limitation that the issue of new shares or the creation of conversion rights and/or option rights or obligations is permitted only to the extent that the new shares issued and/or the conversion and/or option rights or obligations created do not in total exceed 40 percent of the issued capital. All utilizations of the above authorizations are thus to be aggregated, whereby the individual authorizations may be utilized only up to a maximum of 20 percent of the issued capital. The calculation is based on the issued capital of the Company at the time these authorizations come into effect or, if lower, when they are utilized.

In addition, under agenda item

- 14 (Resolution on the authorization to purchase and use treasury shares pursuant to section 71 (1) no. 8 of the German Stock Corporation Act (AktG) and to disapply pre-emption rights and rights to tender shares, and to retire treasury shares)

an authorization to purchase and use treasury shares under disapplication of pre-emption rights is to be granted, although there are currently no plans to make use of the authorization.

Agenda items 10, 11, 12, and 13 also provide for authorizations to disapply pre-emption rights to an extent that corresponds, as a maximum, to the quantitative requirements of section 186 (3) sentence 4 AktG, which have preferential status.

The total of all shares issued (or to be issued in the case of convertible bonds and warrant-linked bonds) under disapplication of pre-emption rights in accordance with these authorizations may not cumulatively exceed the limit of 10 percent of the issued capital (**‘General limitation for the disapplication of pre-emption rights’**). This limit is determined by the issued capital of the Company at the time this authorization takes effect or – if lower – the issued capital at the time this authorization is utilized.

**1. Report of the Board of Management on agenda item 10 pursuant to section 203 (2) and section 186 (4) sentence 2 AktG**

In accordance with item 9 of its agenda, the Annual General Meeting on April 26, 2018 authorized the Board of Management to increase the issued capital on or before April 25, 2023 by up to a total amount of €92,693,470.30 through the issue of up to 36,258,534 new no-par-value bearer shares for cash (authorized capital I). This authorization will have expired by April 27, 2023, the day of the Annual General Meeting. As of the date on which the Annual General Meeting was convened, this authorization had not been utilized.

To give the Company continued flexibility to cover any future funding requirement, a new authorized capital is to be created by amending Article 4 (2) of the Statutes (authorized capital 2023/I). In addition to the possibility of providing for an indirect pre-emption right, authorized capital 2023/I should, like the previous authorized capital I approved on April 26, 2018, only provide for disapplication of pre-emption rights for fractional amounts in order to simplify the process.

For this purpose, the Board of Management is to be authorized, subject to the consent of the Supervisory Board, to increase the issued capital of the Company on or before April 26, 2028 on one or more occasions in installments up to a total amount of €61,795,646.86 through the issue of up to 24,172,356 new no-par-value bearer shares for cash (authorized capital 2023/I). Rounded, this equates to 20 percent of the Company's existing issued capital at the time at which the Annual General Meeting was convened. Pre-emption rights must be granted to existing shareholders in accordance with the motion. In accordance with the motion, the new shares may also be transferred to banks, securities institutions, or a company operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or section 53b (7) of the German Banking Act (KWG) subject to an undertaking by the bank(s), institution(s), or company to offer the shares to existing shareholders (indirect pre-emption right). The sole reason for the interposition of banks or companies equivalent to banks under section 186 (5) sentence 1 AktG is to make the process of issuing the shares easier from a technical perspective. It does not lead to de facto disapplication of shareholders' pre-emption rights.

However, the Board of Management is to be authorized, subject to the consent of the Supervisory Board, to disapply pre-emption rights where necessary for fractional amounts arising on the calculation of pre-emption rights.

Fractional amounts for which an authorization to disapply pre-emption rights is provided may result from the issue volume and the need for a manageable ratio in the pre-emption rights calculation. The disapplication of pre-emption rights for fractional amounts is necessary for the technical implementation of this calculation. The shares arising from the fractional amounts and made available as a consequence of the disapplication of the pre-emption rights of existing shareholders are either sold in the market or otherwise sold to generate the best possible benefit for the Company. The potential dilutive effect is low as only fractional amounts are involved. The disapplication of pre-emption rights is therefore practical and facilitates the implementation of any issue.

In addition, the general limitation for the disapplication of pre-emption rights is restricted to a cumulative 10 percent of the issued capital, as explained in the preliminary notes. This protects the shareholders as a whole from excessive dilution that would exceed the volume limit of section 186 (3) sentence 4 AktG and that, according to the legislator's intention as expressed in section 186 (3) sentence 4 AktG, might not be able to be reversed through a subsequent purchase of shares via the stock market and, as such, is given preferential status under the law.

## **2. Report of the Board of Management on agenda item 11 pursuant to section 203 (2) and section 186 (4) sentence 2 AktG**

In accordance with item 10 of its agenda, the Annual General Meeting on April 26, 2018 authorized the Board of Management, subject to the consent of the Supervisory Board, to increase the issued capital of the Company by up to a total amount of €61,795,646.86 on or before April 25, 2023 on one or more occasions in installments through the issue of up to 24,172,356 new no-par-value bearer shares for cash and/or non-cash contribution (authorized capital II).

On January 30, 2023, DEUTZ AG and Daimler Truck AG reached agreement on the acquisition of IP and license rights for medium-duty engines and of license rights for heavy-duty engines. On the same day, the Board of Management resolved, subject to the consent of the Supervisory Board, to use the existing authorized capital II to issue a total of 5,285,412 new no-par-value bearer shares (**'New Shares'**) by way of a capital increase in kind (on top of a payment in cash) to Daimler Truck AG in exchange (**'Capital Increase'**).

At the time at which the Annual General Meeting was convened, the implementation of the Capital Increase had not yet been entered in the commercial register and the New Shares had therefore not yet been created. Pursuant to Article 4 (3) of the Statutes, implementation of the Capital Increase must be recorded in the commercial register before the authorization expires, i.e. by April 25, 2023. This authorization will however have expired by the day of the Annual General Meeting on April 27, 2023.

To give the Company the continued flexibility to cover any future funding requirement, an additional new authorized capital is to be created by amending Article 4 (3) of the Statutes (authorized capital 2023/II).

### **2.1. Authorization to disapply pre-emption rights**

In addition to the possibility of providing for an indirect pre-emption right, authorized capital 2023/II should, like the previous authorized capital II approved on April 26, 2018, provide the usual possibilities for disapplication of pre-emption rights. For this purpose, the Board of Management is to be authorized, subject to the consent of the Supervisory Board, to increase the issued capital of the Company up to a total amount

of €61,795,646.86 on or before April 26, 2028 on one or more occasions in installments through the issue of up to 24,172,356 new no-par-value bearer shares for cash (authorized capital 2023/II). Rounded, this equates to 20 percent of the Company's existing issued capital at the time at which the Annual General Meeting was convened.

Pre-emption rights must be granted to existing shareholders. The new shares may also be transferred to banks, securities institutions, or a company operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or section 53b (7) of the German Banking Act (KWG) subject to an undertaking by the bank(s), institution(s), or company to offer the shares to existing shareholders (indirect pre-emption right). The sole reason for the interposition of banks or companies equivalent to banks under section 186 (5) sentence 1 AktG is to make the process of issuing the shares easier from a technical perspective. It does not lead to de facto disapplication of shareholders' pre-emption rights.

However, the Board of Management is authorized, subject to the consent of the Supervisory Board, to disapply the pre-emption rights of the existing shareholders in an amount equating to up to 10 percent of the issued capital,

- a) where necessary for fractional amounts arising from the calculation of pre-emption rights;
- b) for capital increases against non-cash contributions, in particular (i) when issuing new shares for mergers or acquisitions of entities, parts of entities or equity investments in entities, including increases in existing shareholdings or other assets eligible as capital contributions in connection with such acquisition plans, including receivables from the Company, (ii) when acquiring other assets or claims to the acquisition of assets, and (iii) when carrying out a so-called scrip dividend, where shareholders are offered the option of exchanging their rights to a dividend (wholly or in part) for new shares issued under the authorized capital 2023/I;
- c) for cash contributions, if the issue price of the shares is not significantly below the market price of the existing publicly listed shares in the Company on the date the final issue price is fixed. The total of the shares issued for cash with the disapplication of pre-emption rights must not exceed 10 percent of the issued capital. This limit is determined by the issued capital of the Company at the time this authorization takes effect or – if lower – at the time this authorization is utilized.

d) where necessary in order to grant holders or creditors of option and/or conversion rights or of corresponding option and/or conversion obligations arising from warrant-linked bonds and/or convertible bonds and/or profit-sharing rights (where such bonds are issued or are to be issued in the future by the Company or by one of its direct or indirect majority shareholdings) a conversion or pre-emption right to the same amount of new shares in the Company that they would be entitled to as a shareholder following the exercise of their option or conversion rights or after fulfilling option or conversion obligations.

## **2.2. Justification of the disapplication of pre-emption rights in an amount equating to up to 10 percent of the Company's issued capital**

### Disapplication of pre-emption rights in the event of fractional amounts

Fractional amounts for which an authorization to disapply pre-emption rights is provided may result from the issue volume and the need for a manageable ratio in the pre-emption rights calculation. The disapplication of pre-emption rights for fractional amounts is necessary for the technical implementation of this calculation. The shares arising from the fractional amounts and made available as a consequence of the disapplication of the pre-emption rights of existing shareholders are either sold in the market or otherwise sold to generate the best possible benefit for the Company. The potential dilutive effect is low as only fractional amounts are involved. The disapplication of pre-emption rights is therefore practical and facilitates the implementation of any issue.

### Disapplication of pre-emption rights in the event of non-cash capital increases

In the event of a capital increase against non-cash contributions utilizing authorized capital 2023/II, the Board of Management is to be authorized, subject to the consent of the Supervisory Board, to disapply the pre-emption rights of the shareholders in an amount equating to up to 10 percent of the issued capital. This will enable the Board of Management, without recourse to the capital markets, to use the Company's shares in suitable individual cases as consideration for non-cash contributions, particularly in connection with mergers or the acquisition of entities, parts of entities or equity investments in entities, or of other assets, such as receivables or industrial property rights, or rights to acquire such other assets. The Company operates in a competitive environment. It therefore needs to be able to act swiftly and flexibly at all times in rapidly



changing markets. This includes being able to acquire entities, parts of entities or equity investments in entities, as well as other assets. Experience shows that a high price often has to be paid for the acquisition of entities, parts of entities or equity investments in entities, as well as other assets. In some cases, this price cannot or should not be paid in cash. This may be because the seller demands shares in the acquirer as consideration, or it may be in the interests of the Company to offer shares in the Company, particularly to know-how owners or strategic partners, as a means of securing long-term loyalty to the Company. The proposed authorization will put DEUTZ AG in a position to acquire assets and to grant shares in return – whether to protect liquidity or because the seller demands them – provided that the assets concerned are eligible as capital contributions. The proposed authorization gives the Company the necessary latitude to quickly and flexibly exploit any opportunities to acquire entities, parts of entities or equity investments in entities, and other assets. Otherwise a planned transaction could be subject to substantial delay. Furthermore, if the Company firstly had to raise funds through a subscription offer, it may not be possible to guarantee the confidentiality or transaction security stipulated by the sellers as a condition, and the transaction could fail for these reasons.

There are currently no specific plans to utilize this authorization. If specific acquisition opportunities present themselves, the Board of Management will carefully review them and will use the authorization granted to it only in the best interests of the Company. Only if these conditions are met will the Supervisory Board grant its consent.

By analogy with section 255 (2) AktG, the value of the acquired entity, part of an entity, equity investment, or other assets must not be unreasonably low in relation to the value of the shares to be issued, as determined by an overall assessment to be carried out by the Board of Management and Supervisory Board, so that there is no risk of any impairment of the shareholders' assets. The shares to be granted in the Company and the asset to be acquired will generally be valued at market price or, if no market price can be determined, on the basis of a valuation by an impartial expert e.g. an auditing firm and/or investment bank, in order to avoid the exercising of the authorization leading to any erosion of the Company's share value.

The authorization to disapply pre-emption rights against non-cash contributions also permits the issuance of shares for the purposes of a scrip dividend. The scrip dividend involves offering shareholders the option of exchanging all or part of their dividend entitlement – acquired by way of the profit appropriation resolution of the AGM – for new shares in the Company. A scrip dividend may be implemented as a rights issue, in compliance with the provisions of section 186 (1) AktG (minimum two-week subscription period) and section 186 (2) AktG (announcement of the issue price at least three days before the expiry of the subscription period), without the need for disapplication of pre-emption rights. Depending on the capital market situation, it may however be preferable in an individual case to structure the scrip dividend in such a way that the Board of Management offers new shares to all shareholders eligible for dividends (while complying with the general principle of equal treatment (section 53a AktG)) in exchange for their dividend entitlement, thus granting the shareholders a pre-emption right in economic terms, but at the same time excluding the pre-emption right of the shareholders to new shares in legal terms. Disapplication of pre-emption rights may also be necessary if not all shareholders are entitled to a dividend for a financial year, for example because there are different classes of shares. Such disapplication of the pre-emption right enables the scrip dividend to be implemented without the restrictions of section 186 (1) and (2) AktG referred to above, i.e. on more flexible terms. In view of the fact that all shareholders who are eligible for dividends are offered the new shares and surplus dividend amounts are settled through payment of a cash dividend, the disapplication of pre-emption rights would fundamentally appear to be justified and reasonable in such a case.

#### Disapplication of pre-emption rights in the event of cash capital increases

The pre-emption right may also be disappplied for authorized capital 2023/II pursuant to section 186 (3) sentence 4 AktG in the event of a capital increase against cash contributions. The purpose of this authorization is to make use of the simplified disapplication of pre-emption rights pursuant to section 186 (3) sentence 4 AktG. The statutory disapplication of pre-emption rights provided for in section 186 (3) sentence 4 AktG puts the Company in a position where it can quickly, flexibly, and at low cost make use of the opportunities afforded by stock market conditions at any given time. This will enable the Company to strengthen its capital in the best interests of the Company and

all its shareholders. Relieved of the time-consuming and costly processing of pre-emption rights, the Company can rapidly cover any equity capital requirement. It can also attract new groups of shareholders in Germany and abroad. Having this option available is also important to the Company because it needs to be able to make use of opportunities arising in its markets quickly and flexibly, and therefore needs to be able to meet any need for capital, sometimes at very short notice. Pursuant to section 186 (3) sentence 4 AktG, the authorization is however limited to a maximum of 10 percent of the issued capital at the time this authorization takes effect or – if lower – the issued capital at the time the authorization is utilized. The authorization is also subject to the proviso that the issue price for the new shares is not significantly below the market price of the existing publicly listed shares in the Company on the date the final issue price is fixed. The issue price for the new shares will therefore be based on the market price of the already traded shares and will not be substantially below the relevant market price (generally no more than 3 percent lower, never more than 5 percent lower), so that the shareholders need not fear a significant dilution of their shareholdings.

#### Disapplication of pre-emption rights in favor of bond holders

The management should also be able to exclude pre-emption rights, where necessary, in order to grant holders or creditors of bonds with option or conversion rights or option or conversion obligations (where such bonds are issued or are to be issued in the future by the Company or by one of its direct or indirect majority shareholdings) a pre-emption right to the same amount of new shares in the Company that they would be entitled to as a shareholder following the exercise of their option or conversion rights or after fulfilling option or conversion obligations.

Bond conditions such as these are frequently provided for as an anti-dilution mechanism for bond holders or creditors, in order to facilitate the placement of bonds on the capital market. Pre-emption rights to new shares – equal to those pre-emption rights granted to existing shareholders – are granted to the holders or creditors of the aforementioned bonds in lieu of a discounted option or conversion price. This puts the bond holders or creditors in the same position they would have been in if they were already shareholders. It must be possible to disapply the pre-emption rights of the existing shareholders to these shares in order to allow the terms of the aforementioned bonds to include dilution protection of this nature. The advantage of this approach over dilution protection through

a reduction of the option or conversion price is that the Company can achieve a higher issue price for the shares to be issued when the option or conversion right or obligation is exercised.

### **2.3. General limitation for all disapplications of pre-emption rights**

In addition, the general limitation for the disapplication of pre-emption rights is restricted to a cumulative 10 percent of the issued capital, as explained in the preliminary notes. This protects the shareholders as a whole from excessive dilution that would exceed the volume limit of section 186 (3) sentence 4 AktG and that, according to the legislator's intention as expressed in section 186 (3) sentence 4 AktG, might not be able to be reversed through a subsequent purchase of shares via the stock market and, as such, is given preferential status under the law.

### **3. Report of the Board of Management on agenda item 12 pursuant to section 221 (4) sentence 2 and section 186 (4) sentence 2 AktG**

The Board of Management is to be authorized, subject to the consent of the Supervisory Board, to issue bearer and/or registered convertible bonds or warrant-linked bonds (together referred to as '**bonds**') on one or more occasions until April 26, 2028 up to a cumulative principal value of €100,000,000 with or without a limited maturity term and to grant the holders/creditors of bonds conversion or option rights to obtain new no-par-value bearer shares of the Company with a value of up to €61,795,646.86 of the issued capital (rounded, this equates to 20 percent of the Company's existing issued capital at the time at which the Annual General Meeting was convened) in accordance with the detailed terms and conditions of these bonds.

The Company does not currently have the facility to issue convertible and/or warrant-linked bonds for funding purposes. Creating the facility to issue convertible bonds and/or warrant-linked bonds gives the Company greater scope to cover its funding needs flexibly, as the issuance of bonds not only offers traditional ways of raising debt and equity capital, but also allows the Company to make use of attractive alternative financing options in the capital market depending on market conditions.

#### **3.1. Authorization to disapply pre-emption rights**

Existing shareholders generally have pre-emption rights. The bonds may also be transferred to banks, securities institutions, or a company operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or section 53b (7) of the German Banking Act (KWG) subject to an undertaking by the bank(s), securities institution(s), or company to offer the shares to existing shareholders (indirect pre-emption right). The sole reason for the interposition of banks or companies equivalent to banks under section 186 (5) sentence 1 AktG is to make the process of issuing the bonds easier from a technical perspective. It does not lead to de facto disapplication of shareholders' pre-emption rights.

However, the Board of Management is authorized, subject to the consent of the Supervisory Board, to disapply such pre-emption rights:

- a) where necessary for fractional amounts arising from the calculation of pre-emption rights;
- b) if convertible and/or warrant-linked bonds are issued for cash and the issue price is not substantially below the theoretical market value of the convertible or warrant-linked bonds determined in accordance with recognized methods used in financial mathematics;
- c) if the bonds are issued against non-cash payments or contributions, especially in the context of company mergers or (direct or indirect) acquisitions of entities, businesses, parts of entities, equity investments in entities, or other assets, or entitlements to acquire assets, including receivables from the Company or its subsidiaries;
- d) where necessary in order to grant holders or creditors of option and/or conversion rights or of corresponding option and/or conversion obligations arising from warrant-linked bonds and/or convertible bonds and/or profit-sharing rights (where such bonds are issued or are to be issued in the future by the Company or by one of its direct or indirect majority shareholdings) a conversion or pre-emption right to the same amount of new shares in the Company that they would be entitled to as a shareholder following the exercise of their option or conversion rights or after fulfilling option or conversion obligations.

### **3.2. Justification of the disapplication of pre-emption rights in an amount equating to up to 10 percent of the Company's issued capital**

#### Disapplication of pre-emption rights in the event of fractional amounts

Fractional amounts for which an authorization to disapply pre-emption rights is provided may result from the issue volume and the need for a manageable ratio in the pre-emption rights calculation. The disapplication of pre-emption rights for fractional amounts is necessary for the technical implementation of this calculation. The bonds arising from the fractional amounts and made available as a consequence of the disapplication of the pre-emption rights of existing shareholders are either sold in the market or otherwise sold to generate the best possible benefit for the Company. The potential dilutive effect

is low as only fractional amounts are involved. The disapplication of pre-emption rights is therefore practical and facilitates the implementation of any issue.

#### Disapplication of pre-emption rights in the event of cash capital contributions

The Board of Management is to be authorized, subject to the consent of the Supervisory Board, to disapply pre-emption rights where the convertible bonds or warrant-linked bonds are issued for cash and the issue price of the convertible or warrant-linked bond is not substantially below the theoretical market value determined in accordance with recognized methods used in financial mathematics. The notional amount of the shares (to be issued upon conversion of the bonds issued in accordance with this authorization) as a proportion of the Company's issued capital must not exceed 10 percent of the issued capital at the time this authorization comes into effect or – if lower – 10 percent of the issued capital when this authorization is utilized. This ensures that convertible bonds and/or warrant-linked bonds are not issued if this would lead to disapplication of pre-emption rights for shares worth more than 10 percent of the Company's issued capital in direct or indirect application of section 186 (3) sentence 4 AktG without a specific objective reason. In the event that pre-emption rights are disappplied in this way, the issue price for the bonds must not be set significantly below the market value due to the direct or indirect applicability of section 186 (3) sentence 4 AktG. This provision is intended to protect existing shareholders against a dilution of their holdings. In order to ensure that this bond issuance requirement is met, the price at which the bonds are issued must not be significantly lower than the theoretical market value of the convertible bonds/warrant-linked bonds (or profit-sharing rights or income bonds with attached conversion/option rights, an attached conversion obligation, or an attached right of the Company to sell shares) as determined in accordance with recognized methods used in financial mathematics. The aforementioned provision for disapplication of pre-emption rights gives the Company the flexibility it needs to benefit from favorable capital market conditions at short notice and enables it to take advantage of low interest rates and/or strong demand by issuing these instruments at short notice and in a flexible manner. The decisive factor here is that unlike in the case of bond issuances with pre-emption rights, the issue price does not need to be determined until immediately before the placement, which avoids increased price risk during the subscription period and makes it possible to maximize the issue proceeds in the interest of all shareholders. The

disapplication of pre-emption rights also eliminates the need for an advance subscription period for shareholders, which has a positive impact on the cost of the capital increase and the placement risk. For further details, please refer to the comments in the report on agenda item 11.

#### Disapplication of pre-emption rights in the event of non-cash contributions

It should be possible for the Board of Management to disapply the pre-emption rights of shareholders to the bonds – subject to the consent of the Supervisory Board – if the bonds are issued against non-cash payments or contributions, especially in the context of company mergers or (direct or indirect) acquisitions of entities, businesses, parts of entities, equity investments in entities, or other assets, or entitlements to acquire assets, including receivables from the Company or its group companies. The above applies with the proviso that the value of the non-cash contribution must be appropriate in relation to the value of the bonds. For convertible bonds and/or warrant-linked bonds, the theoretical market value as determined in accordance with recognized methods used in financial mathematics applies. The issue of bonds for a non-cash contribution offers the possibility of using bonds as an acquisition currency in eligible individual cases involving acquisitions of entities, parts of entities or equity investments in entities. This creates flexibility to seize opportunities for acquisitions of entities, parts of entities or equity investments in entities using means other than authorized capital 2023/II, in order to conserve liquidity. In specific cases, this type of approach may also offer advantages with regard to optimization of the financing structure. For further details, please refer to the comments in the report on agenda item 11.

#### Disapplication of pre-emption rights in favor of bond holders

The management should also be able to exclude pre-emption rights, where necessary, in order to grant holders or creditors of other bonds with option or conversion rights or option or conversion obligations (where such bonds are issued or are to be issued in the future by the Company or by one of its direct or indirect majority shareholdings) a pre-emption right to the same amount of bonds that they would be entitled to as a shareholder following the exercise of their option or conversion rights or after fulfilling option or conversion obligations.



Bond conditions such as these are frequently provided for as an anti-dilution mechanism for bond holders or creditors, in order to facilitate the placement of bonds on the capital market. Pre-emption rights to bonds – equal to those pre-emption rights granted to existing shareholders – are granted to the holders or creditors of the aforementioned bonds in lieu of a discounted option or conversion price. This puts the bond holders or creditors in the same position they would have been in if they were already shareholders. It must be possible to disapply the pre-emption rights of the existing shareholders to these shares in order to allow the terms of the aforementioned bonds to include dilution protection of this nature. The advantage of this approach over dilution protection through a reduction of the option or conversion price is that the Company can achieve a higher issue price for the shares to be issued when the option or conversion right or obligation is exercised.

### **3.3. General limitation for all disapplications of pre-emption rights**

In addition, the general limitation for the disapplication of pre-emption rights is restricted to a cumulative 10 percent of the issued capital, as explained in the preliminary notes. This protects the shareholders as a whole from excessive dilution that would exceed the volume limit of section 186 (3) sentence 4 AktG and that, according to the legislator's intention as expressed in section 186 (3) sentence 4 AktG, might not be able to be reversed through a subsequent purchase of shares via the stock market and, as such, is given preferential status under the law.

#### **4. Report of the Board of Management on agenda item 13 pursuant to section 221 (4) sentence 2 and section 186 (4) sentence 2 AktG**

The Board of Management is to be authorized, subject to the consent of the Supervisory Board, to issue on or before April 26, 2028 on one or more occasions registered and/or bearer profit-sharing rights to a total value of up to €100,000,000 without conversion rights or option rights in respect of shares in the Company and with or without a limited maturity. Existing shareholders generally have pre-emption rights. The profit-sharing rights may also be transferred to banks, securities institutions, or a company operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or section 53b (7) of the German Banking Act (KWG) subject to an undertaking by the bank(s), securities institution(s), or company to offer the shares to existing shareholders (indirect pre-emption right). The sole reason for the interposition of banks or companies equivalent to banks under section 186 (5) sentence 1 AktG is to make the process of issuing the profit-sharing rights easier from a technical perspective. It does not lead to de facto disapplication of shareholders' pre-emption rights.

##### **4.1. Authorization to disapply pre-emption rights**

However, the Board of Management is to be authorized, subject to the consent of the Supervisory Board, to disapply the pre-emption rights of the existing shareholders in respect of the profit-sharing rights:

- a) for fractional amounts arising from the calculation of pre-emption rights;
- b) if the profit-sharing rights have terms and conditions similar to a bond, i.e. they do not confer any rights of membership in the Company, they grant no share of liquidation proceeds, and the amount of the coupon is not calculated on the basis of net income, accumulated income, or the dividend; in addition, in this case, the coupon and the issue price of the profit-sharing rights must reflect the prevailing market terms for comparable instruments at the time of issue;
- c) if profit-sharing rights are issued in return for a non-cash contribution for the purposes of carrying out business combinations or acquiring entities, parts of entities, equity investments in entities, or other assets, in particular receivables.

## **4.2. Justification of the disapplication of pre-emption rights**

The proposed authorization is intended to extend the Company's range of operational funding options during its period of validity, and to enable the Board of Management, subject to the consent of the Supervisory Board, to seize flexible funding opportunities at short notice in the interest of the Company, especially when capital market conditions are favorable, while precluding any changes in the total issued capital resulting from options with attached conversion rights or obligations. It is intended that profit-sharing rights may be issued in exchange for cash or non-cash contributions in order to provide further flexibility and enable their use as a currency in acquisitions of equity investments or rights.

### Disapplication of pre-emption rights in the event of fractional amounts

Fractional amounts for which an authorization to disapply pre-emption rights is provided may result from the issue volume and the need for a manageable ratio in the pre-emption rights calculation. The disapplication of pre-emption rights for fractional amounts is necessary for the technical implementation of this calculation. The profit-sharing rights arising from the fractional amounts and made available as a consequence of the disapplication of the pre-emption rights of existing shareholders are either sold in the market or otherwise sold to generate the best possible benefit for the Company. The potential dilutive effect is low as only fractional amounts are involved. The disapplication of pre-emption rights is therefore practical and facilitates the implementation of any issue.

### Disapplication of pre-emption rights in the event of profit-sharing rights with terms and conditions similar to a bond

The Board of Management is also to be authorized, subject to the consent of the Supervisory Board, to disapply the pre-emption rights of existing shareholders if the profit-sharing rights have terms and conditions similar to a bond, i.e. they do not confer any rights of membership in the Company, they grant no share of liquidation proceeds, and the amount of the coupon is not calculated on the basis of net income, accumulated income, or the dividend. In addition, the coupon and the issue price of the profit-sharing rights must reflect the prevailing market terms for comparable instruments at the time of issue. If the specified preconditions are satisfied, shareholders will not suffer any disadvantage from the disapplication of pre-emption rights because the profit-sharing rights do not confer any rights of membership in the Company, nor do they grant the

holders any share in the proceeds of liquidation or in the profits of the Company. Although the coupon can be linked to the availability of net income, accumulated income, or a dividend, the Board of Management would not be permitted to include any arrangement in which higher net income, higher accumulated income, or a higher dividend would lead to a higher coupon. The issue of profit-sharing rights does not therefore change or dilute shareholders' voting rights, investment in the Company, or share of profits. In addition, in this case, the pre-emption rights have little value because of the arm's-length terms and conditions of issue that are mandatory for this type of disapplication of pre-emption rights.

#### Disapplication of pre-emption rights in the event of non-cash contributions

The pre-emption rights of existing shareholders are also to be disapplied in cases where profit-sharing rights are issued in return for non-cash considerations for the purposes of acquiring entities, equity investments in entities, or parts of entities, for carrying out business combinations, or for acquiring other assets for which contributions are required, in particular receivables.

In appropriate individual cases, this allows the Board of Management to fund the acquisition of entities, parts of entities, equity investments in entities, or other assets, in particular receivables, by issuing profit-sharing rights while at the same time protecting liquidity. The Company therefore has a tool to make the most of any acquisition opportunities using flexible funding options. The ability to respond quickly and effectively to appropriate, advantageous offers, or to opportunities presented by the market, also helps the Company to maintain and enhance its competitiveness. In the aforementioned instances, profit-sharing rights often need to be issued at short notice and, for reasons of cost and practicability, the issue of such profit-sharing rights cannot therefore be approved directly by the Annual General Meeting, which only takes place once a year. The Company is not disadvantaged in any way by this because the issue of profit-sharing rights for a non-cash contribution requires the value of the non-cash consideration to be appropriate in relation to the value of the profit-sharing rights. In establishing the valuation ratio, the Board of Management will ensure that the interests of the Company and its shareholders are appropriately protected and that a suitable issue price for the profit-sharing rights is achieved. For further details, please refer to the comments in the report on agenda item 11.

**5. Report of the Board of Management on agenda item 14 concerning the authorization to disapply pre-emption rights and rights to tender shares when purchasing and using treasury shares in accordance with section 71 (1) no. 8 sentence 5 in conjunction with section 186 (4) sentence 2 AktG**

The Board of Management is to be authorized, subject to the consent of the Supervisory Board, to purchase treasury shares on or before April 26, 2028 in an amount equating to up to a total of 10 percent of the Company's issued capital in existence when the resolution is adopted or, if lower, of the Company's issued capital in existence when the authorization is exercised. The shares purchased on the basis of this authorization, together with other treasury shares that the Company has already purchased and still holds or which are attributable to the Company pursuant to sections 71a et seq. AktG must at no time account for more than 10 percent of the Company's issued capital.

**5.1. Disapplication of rights to tender shares**

The treasury shares may be purchased via the stock market or by means of a public purchase offer or a public request to submit offers of sale.

If a public purchase offer or a public request to submit offers of sale is made and the number of shares tendered or offered exceeds the available repurchase volume, the shares will be purchased or the sale offer accepted under partial disapplication of the shareholders' right to tender their shares in proportion to the total shares tendered. Preferential acceptance of small quantities (up to 100 per shareholder) of the Company's shares that are offered for purchase can be provided for, under partial disapplication of the other shareholders' right to tender shares. The quantities may also be rounded according to commercial principles to avoid fractional amounts of shares.

The related partial disapplication of any right of shareholders to tender their shares facilitates the technical processing and should avoid fractional amounts when setting the quotas to be purchased and should avoid small residual shareholdings; it is therefore objectively justified because it is in the Company's interests. Because the partial disapplication of any right of shareholders to tender their shares has only a minor impact on shareholders' rights, it appears reasonable in view of the intended purpose.

## **5.2. Disapplication of pre-emption rights**

The Board of Management is also to be authorized to sell the purchased treasury shares, subject to the consent of the Supervisory Board, by other means than via the stock market or by means of a public offer to all shareholders, if they are sold for cash at a price that is not more than 5 percent below the average (arithmetic mean) of the closing prices of the shares in Xetra trading (or a comparable successor system) on the Frankfurt Stock Exchange on the last three trading days before the obligation to sell the shares is entered into. The shareholders' pre-emption right to the purchased treasury shares is thereby disappplied. The total value of the treasury shares sold under disapplication of pre-emption rights must not exceed 10 percent of the issued capital, whether based on the value of the issued capital at the time this authorization comes into effect or the value at the time the authorization is utilized.

The purpose of this authorization is to make use of the simplified disapplication of pre-emption rights pursuant to section 186 (3) sentence 4 AktG. The statutory disapplication of pre-emption rights provided for in section 186 (3) sentence 4 AktG puts the Company in a position where it can quickly, flexibly, and at low cost make use of the opportunities afforded by stock market conditions at any given time. This will enable the Company to strengthen its capital in the best interests of the Company and all its shareholders. Relieved of the time-consuming and costly processing of pre-emption rights, the Company can rapidly cover any equity capital requirement. It can also attract new groups of shareholders in Germany and abroad. Having this option available is also important to the Company because it needs to be able to make use of opportunities arising in its markets quickly and flexibly, and therefore needs to be able to meet any need for capital, sometimes at very short notice. Pursuant to section 186 (3) sentence 4 AktG, the authorization is however limited to a maximum of 10 percent of the issued capital at the time this authorization takes effect or – if lower – the issued capital at the time the authorization is utilized. The authorization is also subject to the proviso that the issue price for the new shares is not significantly below the market price of the existing publicly listed shares in the Company on the date the final issue price is fixed. Consequently, there is no risk of any impairment of the shareholders' assets. For further details, please refer to the comments in the report on agenda item 11.

### **5.3. General limitation for all disapplications of pre-emption rights**

In addition, the general limitation for the disapplication of pre-emption rights is restricted to a cumulative 10 percent of the issued capital, as explained in the preliminary notes. This protects the shareholders as a whole from excessive dilution that would exceed the volume limit of section 186 (3) sentence 4 AktG and that, according to the legislator's intention as expressed in section 186 (3) sentence 4 AktG, might not be able to be reversed through a subsequent purchase of shares via the stock market and, as such, is given preferential status under the law.

## **6. Final assessment of the Board of Management on the disapplications of pre-emption rights described above**

In the opinion of the Board of Management, taking into account all circumstances presently known, the proposed authorizations to disapply pre-emption rights set out above thus serve legitimate purposes, are in the Company's interest, and appear to be suitable and necessary for achieving these purposes. The possibilities for disapplying pre-emption rights are also proportionate with regard to the shareholders' interests, as they take account of the interests of the Company in disapplying pre-emption rights in the specific circumstances referred to, while at the same time taking appropriate account of the interests of the shareholders. This appears to be the case here, partly because the possibility of disapplying pre-emption rights cumulatively across all authorizations is limited to a maximum of 10 percent of the issued capital and thus does not exceed the benchmark specified by the requirements of section 186 (3) sentence 4 AktG, to which preferential status has been given.

There are currently no specific plans to utilize the authorizations.

The Board of Management will utilize the requested authorizations with the disapplication of pre-emption rights only if, in the specific instances, this is suitable, necessary and – in view of the impaired shareholder interests – proportionate to achieve a legitimate objective in the Company's interest. In instances of simplified disapplication of pre-emption rights pursuant to section 186 (3) sentence 4 AktG, the Board of Management will also take account of the conditions under which the shareholders are able to repurchase shares via the stock market.

Only if the required conditions are met will the Supervisory Board grant its consent.

If the Board of Management utilizes an authorization, it will report on this at the next Annual General Meeting.

Cologne, March 2023

DEUTZ AG

*The Board of Management*