

Draft

Term Sheet

between

("Investor")

and

[XXX GMBH]

("Company")

and [*if possible*]

[*Founders*]

(together **"Founders"**)

This Term Sheet outlines the terms and conditions of a proposed investment by Investors and the Co-Investors in the Company. This Term Sheet is intended solely as a basis for further discussions and is not intended to be and does not constitute a legally binding obligation. This is not a commitment on the part of any of the Investors to make an investment in the Company. This summary of terms is not an offer, or an agreement, and a legally binding obligation will only be made pursuant to definitive agreements to be negotiated and executed by the parties. This Term Sheet constitutes the entire understanding between the Parties, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties with respect to the subject matter hereof

Company: XXX GMBH, a German corporation limited by shares with its registered office in _____ (Local Court (*Amtsgericht*) of _____; HR B _____) having a share capital of EUR _____, divided in _____ par value, registered shares. The Company is active in the field _____.

Founders: *[if Founders are not party of the Term Sheef]*
_____.

**Investorss
Syndication:** / Investors, Co-Investors and/or entities affiliated with Investors or Co-Investors and/or equity funds managed or advised by it. Lead Investors will be Investors.
[Additional co-investors may join until the Closing.]
[New Outside Investorssacceptable to Investors may join within _____ months after the Closing ("2. Closing") by using a joinder.]

Pre-Money Valuation: EUR _____ on a fully diluted basis.

Investment Amount: The total Investment Amount amounts to EUR _____. It is composed of the nominal value of EUR 1,- per share (due within 10 days after Closing) and the contractual payments into the capital reserves according § 272 para. 2 No. 4 German Commercial Code. The latter in the amount of EUR _____ to be made in two tranches: (i) EUR _____ after the registration of the Series A Shares with the competent Commercial Register, and (ii) EUR _____ after fulfilment of the Milestone.

[Additional in case of New Outside Investorss, up to EUR _____ to be made in two tranches: (i) EUR _____ at the 2. Closing, (ii) EUR _____ after fulfilment of the Milestone and the 2. Closing.]

Amounts of nominal and the contractual payments:

Investorss	Nominal	1. Tranche	2. Tranche	Total
Investors				
Co-Investors				
[additional co-investors]				
New Outside Investorss				

Issued Shares / Issue Price : _____ Shares ("Shares") at a Issue Price of EUR_____ per share (nominal value plus pro rata contractual payments).

Milestone: _____.

The Supervisory Board will unanimously decide whether or not the Milestone has been reached successfully.

Use of Funds: The funds raised by the issue of Shares shall be used exclusively for the agreed expansion of the Company, operational and capital expenditures, general working capital purposes and investments as described in the business plan, and the annual budget to be agreed between the Company and the Investors. The budget for the first 3 years of operations is included as Schedule.

Closing: The parties agree to use their best efforts to sign legally binding agreements regarding this transaction on or before _____ or such other day as the parties may mutually agree.

Closing Conditions: (i) Technical, financial, legal and tax due diligence satisfying to Investors; (ii) execution of the documentation acceptable to the Investors reflecting the terms, (iii) no material or adverse change in the financial condition or the prospects of the Company as mentioned in the business plan and any documents sent to the Investors, (iv) final formal approval of the Investors' investment and partner committees.

Liquidation Preference: In the event of any liquidation, dissolution or winding up of the Company (including any merger or consolidation) or the sale and/or out-licensing of more than 50 % the Company's assets (at fair market value) or the sale or contribution of 50 % of all Company's shares in a single transaction or a series of transactions (also in connection with the exercise of any rights of first refusal, rights of co-sale and take-along rights) [and an IPO], (jointly "Exit Event") the proceeds shall be distributed as follows:

The Investors shall be entitled to receive, in preference to the holders of common shares such proceeds amounting to the Issue Price paid by them multiplied by a factor of 2 plus declared and unpaid dividends, if any.

Any remaining proceeds will be distributed to all shareholders pro rata to their respective ownership.

No Liquidation Preference shall apply if the total proceeds (transaction sum) exceed EUR _____. [*sliding scale to avoid dip*]

Liquidation: Upon a resolution adopted by a 66 % majority of the Investors all shareholders are obliged to resolve the liquidation of the Company.

Registration Rights: A 66 % majority of Investors may request from the Company and all shareholders the direct or indirect listing of the Company's shares at national, international or transnational stock exchange. Any listing expenses shall be paid by the Company.

Anti-Dilution Protection: If new shares are issued for a consideration per share that is less than the Issue Price the Investors shall be entitled to subscribe for additional shares at the nominal value to compensate fully the dilution (full ratchet adjustment).

Dividends: Investors shall be entitled to receive dividends on equal terms as holders of common shares.

Voting Rights: Each Share will have the same voting rights.

Veto Right: To become effective the following resolutions of the shareholders' meeting require the separate approval of the Investors (special resolution):

- amendments of the articles of association;
- capital measures;
- creation of new classes of shares;
- distribution of dividends;
- appointment of the auditor;
- initial public offering;
- sale of 75% or more of the Company's assets;
- liquidation of the Company;
- transformation of the Company;
- enterprises contracts / integrations within the meaning of Stock Corporation Act.

Restriction of Transfer: All Company's shares shall be registered shares. The transferability shall be restricted (*Vinkulierung*); any transfer shall internally require the consent of the supervisory board. At no time prior to _____ will any Founder or other key board and management members, if any, (to be defined) dispose of any shares in the

Company in any manner, except with Series A Shareholders' prior approval. This lock-up will in any case lapse at the time when the Company is listed at a national or international stock exchange or a trade sale or other liquidity event.

- Right of First Refusal:** If a shareholder proposes to transfer his shares the Investors shall have the right of first refusal at the same price and conditions as the shares are offered. If not all of the other Investors intent to exercise their right of first refusal, the remaining Investors may acquire those shares, too. However the right of first refusal must be exercised for all offered shares otherwise the selling shareholder is entitled to sell all offered shares to the potential buyers.
- Tag-Along (Co-Sale):** The Investors may request that all or a part of their shares shall be co-sold on a pro rata basis in the event that any of the shareholders sells all or some of his shares to third parties. In the event the buyer is a competitor of the Company special Tag-Along Rights shall apply.
- Drag-Along Rights:** Upon a resolution adopted by a 66 % majority of Investors the remaining shareholders shall sell their shares in the course of a transfer of shares at terms and conditions accepted by a 66 % majority of the Investors at any time. The negotiator shall be determined by Investors. Such negotiator shall be granted PoAs by all shareholders to enter into sale agreement. Representations and Warranties of Investors shall be limited to unencumbered good title.
- Affiliated Companies:** In case of a transfer to entities affiliated with an Investors and/or to equity funds managed or advised by an Investors the Right of First Refusal and the Tag-Along (Co-Sale) shall not apply.
- Pre-emptive Rights:** In any case of an increase of the Company's capital the Investors shall have the right to maintain their percentage ownership in the Company.
- Most Favored Nation:** Where holders of other classes of shares have rights not specified in this Term Sheet, the Investors shall acquire the same rights. Where the rights conflict, Investors shall have whichever rights it reasonably considers more favorable.
- Supervisory Board:** The Supervisory Board shall consist of ___ members, ___ of which will be nominated by Investors, ___ of which will be nominated by Co-Investors, one of which will be nominated by the Founders and ___ of which will be nominated by mutual agreement.
- Information Rights:** The Company shall deliver, on a timely basis, to Investors:

- audited annual financial statements within 60 days from year-end;
- unaudited quarterly financial statements within 30 days of quarter's end;
- unaudited monthly financial statements within 30 days of month's end;
- annual business plan and budget no later than 30 days prior to the beginning of each fiscal year;
- monthly management letters.

Auditor: The shareholders will appoint an auditor for the annual audit suitable to the Investors. A "big four" auditing firm is in any case suitable to the Investors.

Stock Options: The Company shall implement a [*virtual*] stock option plan for current and future employees and management [*and a virtual stock option plan for members of the Supervisory Board*]. The volume of the stock option plan shall be equal to ____ % of the total outstanding shares immediately after Closing.

Reps & Warranties: Standard representations and warranties (including but not limited to those relating to financial statements, intellectual properties and securities) shall be granted by the Founders / existing shareholders . [*The liability of the Founders shall be limited to EUR ____.*]

Alternatively: A compensatory capital increase scheme according to which management grants standard representations and warranties. The Investors are entitled to subscribe to such amount of newly issued shares at nominal value to compensate damages caused (retroactive adjustment of valuation).

Fixed Voting If a resolution stated in negative covenants above (shareholder matters) has received an Investor Majority in an internal vote the measure stated, all shareholders are obliged to vote in favor of such a resolution in the shareholders' meeting of the Company.

Future Financing Rounds Each of the Shareholders shall enter into investment agreements and shareholders' agreements and related agreements for further rounds of financing of the Company, to the extent that a simple majority of capital or more of all shares in the Company and an Investor Majority agree to the terms and conditions of the future financing Agreements;

Nominee Each of the Shareholders who holds less than 3 % of the total share capital of the Company shall grant within ten days after the closing and maintain at all times during the term of the shareholders' Agreement a power of attorney to an nominee as appointed by an Investor Majority, who shall have the right to represent such

Shareholders in all shareholders' meetings and all internal votes and resolutions.

- Trustee** In the event that a Shareholder holds less than 3 % of the total share capital of the Company, the Investors with an Investor Majority may require such Shareholder to transfer all of his shares in the Company to a trustee to be nominated by the Investors.
- Negotiator** The Investors with an Investor Majority may determine that a person be authorized to negotiate the terms and conditions of an exit transaction. Such negotiator shall be given mandate (Beauftragung) and shall be authorized (Bevollmächtigung) by all Shareholders and the Company to negotiate all terms and conditions with the prospective acquirer(s) and to enter into the contract with the acquirer(s)
- Assignment of IP:** Any Founder shall assign for free to the Company all their relevant existing and future intellectual property rights.
- Most favored nation** Where holders of other classes of shares have rights not specified in this Term Sheet, the Investors shall acquire the same rights. Where the rights conflict, holders of Series A Shares shall have whichever rights they reasonably consider more favourable.
- Vesting:** The Founders shall be subject to a 4 year straight line vesting. [*Cliff / accelerated vesting*].
- Non-Competition Obligation** Founder shall not compete to Company's business in any form except for private investments in public companies up to 2 % of such Company's outstanding stock.
- Corporate Documents:** The Company's corporate documents (Articles of Association and Internal Rules for the Management as well as the Supervisory Board) shall be amended in order to reflect the Term Sheet.
- Confidentiality:** This Term Sheet and its contents are confidential and all parties hereby agree to keep confidential and not to disseminate this Term Sheet or any of its contents except to legal, technical and financial advisors who have agreed to be bound by the confidentiality obligations in this paragraph or to bona fide co-investors for the sole purpose of evaluating the proposed financing
- Exclusivity:** After signing of this Term Sheet by all parties, Investors and the Investors obtain an exclusivity period until January _____. This means that the Company, the Management and the current shareholders will not enter into any negotiations or sign any legally binding investment agreement with possible other investors about investment terms different from this Term Sheet without the written

consent of Investors. In case of a violation of the exclusivity agreement, the Company will upon presentation of invoices reimburse Investors and / or the Investors for such normal and reasonable external transaction costs incurred during the participation process by Investors and / or the Investors up to the amount of EUR _____ (excl. VAT).

Expenses: The Company shall reimburse the Investors for all reasonable out of pocket expenses and fees and expenses of the Investors' legal and tax advisers. In the event of the Closing such obligation by the Company shall not exceed an aggregate amount of EUR _____. *[In case the Closing does not take place such obligation by the Company shall not exceed an aggregate amount of EUR _____.] [The break up fee shall amount to EUR _____.]*

Break-up: In case the Management and/or the Company should decide, after signature of this Term Sheet, not to enter into a definite agreement with the Investors the Company shall be liable to the Investors for such normal and reasonable transaction costs incurred by the Investors from the date of signing of this term sheet, up to an amount of EUR _____ (excl. VAT).

Binding Effect: This Term Sheet is non-binding. Only the following clauses of this Term Sheet shall legally bind the parties:

- Confidentiality;
- Exclusivity;
- Expenses;
- Jurisdiction;
- Severability;
- Binding Effect;
- Validity.

Jurisdiction: Insofar as permissible, exclusive jurisdiction for all disputes arising from and in connection with the Term Sheet shall be Munich. The laws of Germany shall apply exclusively, excluding its provisions concerning private international law and excluding the UN Sales Convention.

Severability: If individual of the binding sections of this Term Sheet are wholly or in part invalid, the other binding sections shall retain their validity. The ineffective sections shall be deemed replaced by the provision the parties would probably have agreed had they been aware of the invalidity of the section concerned.

Validity: This Term Sheet is valid until _____.

_____, this _____

Investors

Co-Investors

Company

Founder 1

Founder 2

Founder 3