

# Term Sheet Battle - Berlin 2013

## TERM SHEET

This Term Sheet ("**Term Sheet**") summarizes the terms and conditions of a proposed investment by Mixed Grill Capital Partners or associated funds ("**Mixed Grill**") and one or more additional investors yet to be determined ("**Co-Investors**", Mixed Grill and the Co-Investors, as the case may be, collectively, the "**Investors**") in Fruit Platter GmbH, a German company with limited liability registered at the local court of Berlin-Charlottenburg under no. HRB 11111 (the "**Company**").

Except as otherwise expressly indicated below, this term sheet is intended solely for discussion purposes and will not create legally binding obligations until definitive agreements are executed and delivered by all parties. This Term Sheet is not a commitment to invest, and is conditioned on the completion of due diligence, legal review and documentation that is satisfactory to the Investors.

### **Current Shareholding in Company:**

The Company has a share capital of EUR 25,000.00, divided in 25,000 shares currently held as follows:

- Naren UG	14,250
- Suzy	6,250
- Herbert	2,500
- SBC	2,000

Naren and Suzy hereinafter both referred to as "**Founder**".

### **Managers and Managers' Shareholding Entities:**

The sole managing director of the Company is Naren, hereinafter also referred to as the "**Manager**", who holds 100% of the shares of Naren UG hereinafter referred to as the "**Managers' Shareholding Entity**".

Mixed Grill to be entitled to appoint additional managing director. In this case, Manager shall only be authorized to represent the Company jointly with such managing director.

### **Transaction Structure:**

Shares in Company to be issued to Investors by way of capital increase for nominal amount (EUR 1.00 per share) plus additional payments into the Company's capital reserves within the meaning of § 272 para. 2 no. 4 of the German Commercial Code, such shares hereinafter referred to as "**Investor Shares**", shares held by other shareholders hereinafter referred to as "**Common Shares**". The issuance of Investor Shares hereinafter referred to as "**Investment**".

First Tranche:

8,334 shares (20%) at nominal amount plus additional payments into the Company's capital reserves of EUR 739,630.00 (EUR 750,000.00 in total, this total amount divided by the 8,334 hereinafter referred to as "**Original Share Price**") in the following installments:

- First installment: 75 % upon registration of capital increase;
- Second installment 25 % upon completion of First Milestone as described in Exhibit A;

Second Tranche (optional):

5,952 shares (further 10%) at nominal amount plus additional payments into the Company's capital reserves of EUR 369,048.00 (EUR 375,000.00 in total) upon completion of Second Milestone as described in Exhibit A.

Reaching of Milestones and exercise of option for Second Closing to be determined by Mixed Grill at reasonable discretion.

**Pre-Money Valuation:**

Fully-diluted pre-money valuation of EUR 3,000,000.00 and fully-diluted post-money valuation of EUR 3,750,000.00 (First Tranche; including an employee option pool representing 20% of the fully-diluted post-money capitalization) and EUR 4,125,000.00 (Second Tranche).

**Capitalization:**

The Company's capital structure before and after the Closing is set forth on Exhibit B.

**Use of Funds:**

The funds raised from the primary share acquisitions shall be used exclusively for the agreed expansion and development of the Company, operational and capital expenditures, general working capital purposes and investments as described in the business plan and in the annual budget to be agreed between the Company and the Investors.

**Voting Rights:**

The Investor Shares shall carry the same voting rights as Common Shares.

**Protective Provisions:**

The Company's Articles of Association will be amended to reflect that important shareholder resolutions, in particular but not limited to the following, need the approval of Mixed Grill:

- (i) liquidate, dissolve or wind-up the affairs of the Company, or effect any merger or consolidation or any other similar event;
- (ii) amend, alter, or repeal any provision of the Articles of Association;
- (iii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Investor Shares;
- (iv) purchase or redeem or pay any dividend on any shares prior to Investor Shares, other than shares repurchased from former employees or consultants in connection with the cessation of their employment/services, at the lower of fair market value or cost;
- (v) employee stock option plans;
- (vi) appointment/revocation of appointment of managing directors, conclusion/termination/alteration of service agreements with managing directors.

**Anti-dilution Provisions:**

In the event that the Company issues additional shares at a issue price less than the Original Share Price ("**Lower Down Round Price**") the Company shall issue each Investor an additional number of shares (at nominal value) or such numbers are to be transferred by holders of Common Shares in order to implement full ratchet anti dilution protection, i.e. such Investor shall receive such total number of shares he had received for his entire primary investment Investor Shares at the Lower Down Round Price.

This anti-dilution provision shall also apply if shares are issued upon the conversion of any debenture, warrant, option, or other convertible security. The anti-dilution provision shall, however, not be triggered if shares are issued to employees or directors of, or consultants to, the Company pursuant to any plan approved by way of shareholder resolution.

**Information Rights:**

Investors will be granted access to Company facilities and personnel during normal business hours and with reasonable advance notification. The Company will deliver to Investors (i) annual, quarterly, and monthly financial statements, and other information as reasonably requested; (ii) thirty days prior to the end of each fiscal year, a comprehensive operating budget forecasting the Company's revenues, expenses, and cash position on a month-to-month basis for the upcoming fiscal year; and (iii) promptly following the end of each quarter an up-to-date capitalization table.

**Non-Competition and Non-Solicitation Agreements:**

The Investment is made in reliance upon the dedication of the Manager. For the duration of his participation in the registered share capital of the Company, the Manager is subject to a non-compete obligation in the field of activity of the Company. If the Founder breaches such obligation, he shall be obliged to either

- (i) assign to the other shareholders all shares in the Company held by him at the pro rata book value;
- (ii) pay to the Company a contractual penalty in the amount of EUR 50,000.00; in the case of a continuous breach, the contractual penalty will fall due consecutively for each month commenced under a continuous breach.

**Advisory Board:**

The Company shall have an Advisory Board consisting of three members, one to be appointed by holders of Common Shares, one to be appointed by Mixed Grill, one by way of shareholder resolution. Material management decisions need prior Advisory Board approval which cannot be granted without the consent of the Advisory Board member appointed by Mixed Grill. Such material management decisions are in particular but not limited to the following:

- (i) any sale of assets exceeding EUR 20,000.00;
- (ii) capital expenditures exceeding EUR 20,000.00;
- (iii) passing of annual budget;
- (iv) any actions deviating from annual budget;
- (v) enter into any agreements with Managers or holders of Common Shares;

- (vi) create or authorize the creation of any debt security if the Company's aggregate indebtedness would exceed EUR 50,000.00 other than equipment leases or bank lines of credit;
- (vii) establishment of subsidiaries or dispose of any subsidiary stock or all or substantially all of any subsidiary assets;
- (viii) enter into any exclusive license, lease, sale, distribution or other disposition of its products or intellectual property; (viii) make any gifts or charitable donations above EUR 5,000.00 in the aggregate per annum;
- (ix) other material decisions.

#### **Employee Stock Options:**

Immediately prior to the Investment, an unallocated option pool of 20% of the share capital will be created.

All employee options to vest as follows: 25% after one year, with remaining vesting monthly over next 36 months.

#### **Liquidation Preference**

In the event of a liquidation, dissolution or winding up of the Company (including any merger or consolidation) or the sale or contribution or other disposal of shares of different classes of the Company in a single transaction or a series of related transactions (any such event: an "**Exit Event**", including any such event in connection with the exercise of any rights of first refusal, tag along rights or drag along rights), the proceeds shall be distributed as follows:

(i) Each holder of Investor Shares shall first be entitled to receive, in preference to the holders of any other shares, an amount equal to twice (2) the Original Share Price per Investor Share that is subject to the Exit Event.

(ii) Any remaining proceeds will be distributed to all holders of shares in the Company (including both, Investor Shares and Common Shares), which are subject to the Exit Event, pro rata to the nominal amounts of such shares among themselves.

In case of a listing of the shares of the Company on a stock exchange, the above shall be equally applied by way of share transfer without further compensation based on the emission price per share in case of an IPO or the first trading price in

case of a listing without an IPO.

Equally, the above shall be applied to any dividends that the Company may pay, so that any dividends shall first and exclusively be paid to the holders of Investor Shares until the aggregate amount of all dividends paid per Investor Share equals the Original Share Price. Any such preferred dividend amount paid shall reduce the preference entitlement of the respective Investor Share accordingly.

**Lock Up:**

The Manager shall be prohibited from selling or otherwise disposing of the shares or other interests in the Managers' Shareholding Entities within a period of five years from the Signing without the consent by Mixed Grill. Any transfer of shares by Suzy during that time shall also require a prior written consent by Mixed Grill. Any such transfer to a third party shall – notwithstanding the above – not be permitted without such third party adhering to the agreement or agreements implementing the terms set forth in this Term Sheet.

**Right of first Refusal:**

Investors will have a right of first refusal with respect to any Common Shares proposed to be transferred by shareholders with a right of oversubscription for Investors of shares unsubscribed by the other Investors. Before holder of Common Shares may sell such shares, he will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of shares held by the seller and those held by the participating Investors.

**Drag-Along:**

All holders of Common Shares shall, upon request of a Mixed Grill, at any time sell, swap, contribute or otherwise dispose of their shares to, or merge the Company into or with, a bona fide third party offeror at terms offered by such third party offeror or negotiated by an M&A advisor selected by Mixed Grill. Equally, the Company and all shareholders shall take all steps to effect, upon a respective request of Mixed Grill on or after the date first stated in the preceding sentence, a sale and transfer of all or substantially all of the assets of the Company or of, and pertaining to, a specific business line of the Company.

**Tag-Along Right:**

Each Investor shall have a tag along right in case any other shareholder wishes to sell or otherwise dispose of shares in the Company.

**Vesting of Managers' Shares:** 100% of the shares directly or indirectly held by a Founder shall be subject to a reverse quarterly linear vesting over a period of four years with a one year cliff, with a compensation in the amount of the unvested shares' nominal value in case of a Bad Leaver Event and in the amount of the unvested shares' allocable portion of proceeds from a deemed liquidation at the post money valuation of the most recent financing round in case of a Good Leaver Event.

**"Good Leaver Event":** service, employment or consultancy agreements ("**Service Agreement**") with is terminated

- (i) by Founder for cause originated from Company;
- (ii) by mutual agreement between Founder and Company;
- (iii) Founder's death or permanent disability

**"Bad Leaver Event":** Service Agreement terminated by Company for cause.

**Best Buddy Agreement:** Company to conclude with Investor or third party appointed by Investor agreement for professional services (mentoring etc.) for monthly retainer of EUR 5,000.00 (hereinafter referred to as "**Best Buddy Agreement**").

**Representations and Warranties:** All existing holders of Common Shares shall give standard title guarantees to the Investors as to their respective shareholdings. All existing holders of Common Shares and the Manager shall give comprehensive guarantees to the Investor regarding the corporate relations, financial situation, assets, operations, contractual aspects, intellectual property and tax status of the Company.

**Restrictions on Managers:** The existing service agreements of the managers and senior employees will be subject to review and will be required to contain appropriate notice periods and other protections in favour of the Company including reasonable restrictive covenants and provisions dealing with the Company's ownership of intellectual property.

Separately, the Managers will be required in the investment documentation to give non-competition and non-solicitation undertakings and enter into IP transfer clauses securing that all IP relevant to the Company developed by the Managers in the

past has been, and in the future will be, transferred to or owned by the Company.

**Signing/Closing Conditions:** Conditions for Signing/Closing are, (i) satisfactory results of the due diligence review to be carried out by Mixed Grill, (ii) agreement on an investment documentation acceptable to Mixed Grill reflecting, inter alia, the terms of this Term Sheet, (iii) agreement on the business plan and annual budget for the Company for the years 2013 and 2014, and (iv) final formal approval of the Investors' investment committees.

**No Shop/Confidentiality:** The Company and the Founders agree that they will not, for a period of three months from the date these terms are accepted (hereinafter: "**Exclusivity Period**") take any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than the Investors relating to the sale or issuance, of any of the shares in Company or the acquisition, sale, lease, license or other disposition of the Company or any material part of the shares or assets of the Company and shall notify the Investors promptly of any inquiries by any third parties in regards to the foregoing.

The Company will not disclose the terms of this Term Sheet to any person other than officers, members of the Board of Directors and the Company's accountants and attorneys and other potential Investors acceptable to Mixed Grill, as lead Investor, without the written consent of the Investors.

**Penalty Clause** In cases of breaches of either of the No Shop or the Confidentiality Clause a penalty payment will have to be paid by the holder of Common Stock breaching such obligation or – at the election of Mixed Grill – by the Company in the amount of EUR 50,000.00. In case of a continuous breach, the penalty payment will fall due consecutively for each month commenced under a continuous breach.

**Counsel and Expenses:** Company to pay all legal and administrative costs reasonably incurred by the Investors in preparation an/or otherwise in connection with the transaction contemplated in this Term Sheet. The Investors shall be entitled to deduct such expenses from its investment into the Company. It is anticipated that such costs will not exceed EUR 25,000.00.



**Expiration:** This Term Sheet expires at the end of the Exclusivity Period if Signing has not occurred by that date.

**Binding Effect:** This Term Sheet is not legally binding except for the provisions set forth in the sections

No Shop/Confidentiality;  
Penalty Clause;  
Counsel and Expenses;  
Expiration;  
Governing Law;  
Binding Effect;  
Severability.

**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 such provision the parties would have agreed on had they been aware of the invalidity of the section concerned.

EXECUTED this \_\_\_day of \_\_\_\_\_, 2013.

[SIGNATURE BLOCKS]

## **EXHIBIT A**

### Milestones

#### Milestone 1

Company shall achieve each of the following:

1. 5,000.00 fruit platter sales/month
2. Revenue shall meet or exceed EUR 150,000.00/month for three consecutive months.
3. Gross profit shall meet or exceed EUR 10,000.00/month for three consecutive months.

#### Milestone 2

1. 10,000.00 fruit platter sales/month
2. Revenue shall meet or exceed EUR 300,000.00/month for three consecutive months.
3. Gross profit shall meet or exceed EUR 25,000.00/month for three consecutive months.

## EXHIBIT B

### Pre and Post-Financing Capitalization

	<b>Current</b>		<b>Tranche 1</b>		<b>Tranche 2</b>	
Naren UG	14,250	57 %	14,250	34,2 %	14,250	29,9 %
Suzy	6,250	25 %	6,250	15 %	6,250	13,1 %
Herbert	2,500	10 %	2,500	6 %	2,500	5,3 %
SBC	2,000	8 %	2,000	4,8 %	2,000	4,2 %
Investors	0	0	8,334	20 %	14,286	30 %
ESOP	0	0	8,333	20 %	8,333	17,5 %
<b>Total</b>	<b>25,000</b>	<b>100 %</b>	<b>41,667</b>	<b>100 %</b>	<b>47,619</b>	<b>100 %</b>