

**Terms and Conditions of the Convertible Bonds**  
(the "**Terms and Conditions**")

**§ 1 Definitions**

In these Terms and Conditions the following terms will have the following meaning:

(a) General Definitions

"**Agents**" has the meaning set out in § 13(a).

"**AktG**" means the German Stock Corporation Act (*Aktiengesetz*) as amended from time to time.

"**Bankruptcy Law**" means (i) for purposes of the Issuer or any of its Material Subsidiaries organized under the laws of the Federal Republic of Germany, any bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application (including, without limitation, the German Insolvency Code ("**Insolvenzordnung**") and (ii) for purposes of any of the Issuer's Subsidiaries organized outside of the Federal Republic of Germany, any bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application (including, without limitation, 11 U.S.C. §101 et seq., as amended).

"**Bond Market Price**" on a Trading Day means the market price per Principal Amount of the Bonds being the Bloomberg Generic Price (mid/last) per Principal Amount of the Bonds as derived from Bloomberg Page DE000A1YC3T6 Corp HP as at the close of business on such Trading Day (or, if such Bloomberg page is not available, as derived from any substitute Bloomberg page or from any successor to Bloomberg or derived from any other public source providing substantially similar data to such Bloomberg page, or failing such source from such other source displaying trading prices in respect of the Bonds provided by leading institutions as shall be considered appropriate).

"**Bond(s)**" has the meaning set out in § 2(a).

"**Bondholder**" means the holder of a co-ownership interest or similar right in the Global Bond.

"**Business Day**" means a day (other than a Saturday or Sunday) (a) on which the Trans-European Automated Real-time Gross-settlement Express Transfer System 2 (TARGET) settles payments and (b) which is a Clearing System Business Day and (c) on which commercial banks and foreign exchange markets in Frankfurt am Main and London are open for business.

"**Calculation Agent**" has the meaning set out in § 13(a).

"**Call Redemption Date**" means the date fixed for redemption in the Issuer's notice pursuant to § 5(b) which must be a Business Day.

"**Capital Markets Indebtedness**" has the meaning set out in § 3(b).

"**Clearing System**" means Clearstream Banking AG, Frankfurt am Main ("**Clearstream Frankfurt**") including any successor.

"**Clearing System Business Day**" means a day (other than a Saturday or Sunday) on which the Clearing System is open for business.

"**Conversion Agents**" has the meaning set out in § 13(a).

"**Custodian**" means any bank or other financial institution with which the Bondholder maintains a securities account in respect of any Bonds and having an account maintained with the Clearing System and includes Clearstream Frankfurt.

**"Early Redemption Amount"** means the higher of (i) the Principal Amount per Bond and (ii) the fair value per Bond on the Relevant Date as determined by an independent expert (appointed by the Issuer) using equitable discretion (§ 317 German Civil Code) taking into account, inter alia, the Bond Market Price on the Relevant Date, the Share Price on the Relevant Date, the yield to maturity of the 2.375% Senior Notes due 2019, ISIN XS1013954646, of Fresenius Finance B.V. and guaranteed by the Issuer, and any other market parameter the independent expert using equitable discretion (§ 317 German Civil Code) deems to be relevant for the valuation of the Bond on the Relevant Date.

**"Early Redemption Date"** means the fifteenth Business Day following the Relevant Date.

**"Ex Date"** means the first Trading Day on which the Shares are traded "ex dividend".

**"EUREX"** means EUREX Deutschland or any legal or functional successor thereof.

**"Financial Year"** means the financial year as set out in the Issuer's articles of association.

**"Financing"** has the meaning set out in § 12(a)(iv).

**"FMC AG & Co. KGaA"** means Fresenius Medical Care AG & Co. KGaA (or any successor thereto) but not any of its subsidiaries.

**"Fresenius Group"** means the Issuer and its Subsidiaries on a consolidated basis.

**"FSE"** means the Frankfurt Stock Exchange or any legal or functional successor.

**"Global Bond"** has the meaning set out in § 2(b).

**"Issue Date"** means 24 March 2014.

**"Issuer"** means Fresenius SE & Co. KGaA.

**"Material Subsidiary"** means any Subsidiary of Fresenius SE & Co. KGaA (excluding FMC AG & Co. KGaA and its Subsidiaries) falling under one of the following categories:

- (i) the Subsidiary Guarantors, provided that these Subsidiaries continue to satisfy the requirements of either (ii) or (iii) below;
- (ii) with EBITDA representing 5 per cent. or more of the consolidated EBITDA of the Fresenius Group (excluding FMC AG & Co. KGaA and its Subsidiaries); or
- (iii) with gross assets representing 5 per cent. or more of the gross assets of the Fresenius Group (excluding FMC AG & Co. KGaA and its Subsidiaries),

in each case as determined by reference to the latest audited annual financial statements prepared in accordance with IFRS or US GAAP, as the case may be.

**"Maturity Date"** means 24 September 2019.

**"Paying Agents"** has the meaning set out in § 13(a).

**"Principal Amount"** has the meaning set out in § 2(a).

**"Principal Conversion Agent"** has the meaning set out in § 13(a).

**"Principal Paying Agent"** has the meaning set out in § 13(a).

**"Relevant Date"** means (i) in respect of an early redemption of the Bonds pursuant to § 5(d) the date of announcement of a termination of any option contract in respect of the Shares traded on EUREX, (ii) in respect of a Nationalisation, the date of the first public announcement of the relevant event, (iii) in respect of a Change in Law, the day on which the Calculation Agent determines in good faith

and notifies Fresenius SE & Co. KGaA that a Change in Law has occurred and (iv) in the case of a Delisting, the date on which XETRA is required to make the public announcement.

**"Relevant Subsidiary"** means any Subsidiary of Fresenius SE & Co. KGaA excluding FMC AG & Co. KGaA and its Subsidiaries.

**"Settlement Date"** means the fifth Business Day following the last day of the relevant Calculation Period.

**"Shares"** means the no par value ordinary bearer shares of Fresenius SE & Co. KGaA, ISIN DE0005785604, and each a **"Share"**.

**"Share Price"** means the volume-weighted average price of the Share on XETRA on the relevant Trading Day appearing on or derived from the Bloomberg screen page FRE GY Equity VWAP on the Bloomberg information system (or any future successor screen page or information system) at 17.45 hours Frankfurt time, subject to the occurrence of a Market Disruption Event and the provisions of § 10.

**"Subsidiary"** means, with respect to any person, any corporation, limited liability company, association, partnership or other business entity whose results of operations are consolidated in accordance with U.S. GAAP with those of:

- (i) such person;
- (ii) such person and one or more other subsidiaries of such person; or
- (iii) one or more other subsidiaries of such person.

**"Subsidiary Guarantees"** has the meaning set out in § 3(c).

**"Subsidiary Guarantors"** means each of Fresenius Kabi AG and Fresenius ProServe GmbH.

**"Terms and Conditions"** means these terms and conditions of the Bonds.

**"Trading Day"** means each day on which the XETRA system of the FSE and EUREX are scheduled to be open for trading in accordance with the schedules prepared and published for the XETRA system and EUREX, respectively.

**"United States"** means the United States of America (including the States thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands).

**"WpHG"** means the German Securities Trading Act (*Wertpapierhandelsgesetz*) as amended from time to time.

**"WpÜG"** means the German Take Over Act (*Wertpapiererwerbs- und Übernahmegesetz*) as amended from time to time.

**"XETRA"** means the electronic trading system of Deutsche Börse AG including any successor.

(b) Definitions relating to Adjustment

**"Adjustment Event"** has the meaning set out in § 9(b)(i).

**"Allotment"** has the meaning set out in § 9(b)(i)(E).

**"Capital Increase Against Contributions with Subscription Rights"** has the meaning set out in § 9(b)(i)(C).

"**Capital Increase from Capital Reserves or Retained Earnings**" has the meaning set out in § 9(b)(i)(A).

"**Cash Dividend**" has the meaning set out in § 9(g).

"**Change in Share Classification**" has the meaning set out in § 9(b)(i)(B).

"**Demerger**" has the meaning set out in § 9(b)(i)(F).

"**Dividend Threshold**" has the meaning set out in § 9(g).

"**EUREX Corporate Actions Procedures**" has the meaning set out in § 9(g).

"**Merger Event**" has the meaning set out in § 9(a)(i).

"**Other Securities**" has the meaning set out in § 9(b)(i)(D).

"**Other Issue of Securities with Subscription Rights**" has the meaning set out in § 9(b)(i)(D).

"**Relevant Adjustment Date**" has the meaning set out in § 9(g).

"**Relevant Record Date**" has the meaning set out in § 9(g).

"**Settlement Cycle**" has the meaning set out in § 9(g).

"**Tender Offer**" has the meaning set out in § 9(a)(i).

"**Total Dividend**" has the meaning set out in § 9(g).

(c) Definitions relating to Change of Control

"**Affiliate**" of any specified person means (i) any other person, directly or indirectly, controlling or controlled by, or (ii) under direct or indirect common control with such specified person. For the purposes of this definition, "control" when used with respect to any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Change of Control**" has the meaning set out in § 5(c)(v).

"**Change of Control Triggering Event**" has the meaning set out in § 5(c)(v).

"**Control Record Date**" has the meaning set out in § 5(c)(i)(C).

"**Exchange Act**" has the meaning set out in § 5(c)(v).

"**Fitch**" has the meaning set out in § 5(c)(v).

"**General Partner**" means Fresenius Management SE, a *societas europaea* organised under the laws of Germany, including its successors and assigns and other persons, in each case who serve as the general partner (*persönlich haftender Gesellschafter*) of Fresenius SE & Co. KGaA from time to time.

"**KGaA**" has the meaning set out in § 5(c)(v).

"**Investment Grade**" means Baa3/BBB-, or their respective equivalents, or better, from any Rating Agency.

"**Moody's**" has the meaning set out in § 5(c)(v).

"**Permitted Holder**" has the meaning set out in § 5(c)(v).

"**Rating Agency**" has the meaning set out in § 5(c)(v).

"**Rating Category**" has the meaning set out in § 5(c)(v).

"**Rating Date**" has the meaning set out in § 5(c)(v).

"**Ratings Decline**" has the meaning set out in § 5(c)(v).

"**S&P**" has the meaning set out in § 5(c)(v).

"**Substitute Rating Agency**" has the meaning set out in § 5(c)(v).

(d) Definitions relating to Conversion

"**Adjusted Parity Value**" has the meaning set out in § 8(a)(ii)(C)(III);

"**Averaging Date**" has the meaning set out in § 8(d)(i).

"**Bond Price Determination Date**" has the meaning set out in § 8(a)(ii)(C)(III);

"**Bond Price Unavailability Period**" has the meaning set out in § 8(a)(ii)(C)(II);

"**Calculation Period**" has the meaning set out in § 8(d)(i).

"**Cash Amount**" has the meaning set out in § 8(d)(i).

"**Conversion Date**" means the Business Day on which the requirements for a valid exercise of the Conversion Right pursuant to § 8(b)(i) and (ii) are fulfilled. If such day falls after the last day of the Conversion Period as defined in § 8(a)(ii)(A), the Conversion Right will not have been validly exercised.

"**Conversion Notice**" has the meaning set out in § 8(b)(i).

"**Conversion Period**" has the meaning set out in § 8(a)(ii).

"**Conversion Premium**" means 35 per cent.

"**Conversion Price**" per Share is initially equal to the Share Reference Price multiplied by the sum of 1 and the Conversion Premium (rounded to four decimal places with 0.00005 being rounded upwards). The Conversion Price will be adjusted from time to time in accordance with these Terms and Conditions.

"**Conversion Ratio**" on any day means the result (rounded to five decimal places with 0.000005 being rounded upwards) of the division of the Principal Amount by the prevailing Conversion Price on such day.

"**Conversion Right**" has the meaning set out in § 8(a)(i).

"**Daily Cash Amount**" or "**DCA**" has the meaning set out in § 8(d)(i).

"**Intermediary**" means Credit Suisse Securities (Europe) Limited or any other financial institution appointed from time to time by the Issuer to act as the Intermediary. The Intermediary will not treat Bondholders as its clients for the purposes of the rules of the Financial Conduct Authority Limited. The Issuer shall not be required to give notice to Bondholders of any change in the Intermediary.

"**Notification Day**" has the meaning set out in § 8(f)(ii).

"**Parity Event**" has the meaning set out in § 8(a)(ii)(C)(III).

"**Parity Value**" has the meaning set out in § 8(a)(ii)(C)(III);

**"Physical Settlement Date"** means the date for the delivery of any Shares by the Intermediary which will be the fifth Business Day following the relevant Notification Day (in the case of § 8(e) and (f)) provided that if a Settlement Disruption Event occurs on such day, and delivery of any Shares cannot be effected on such day, then the Physical Settlement Date with respect to such Shares will be postponed until the first succeeding Business Day on which delivery of the Shares can take place through the Clearing System or in any other commercially reasonable manner, where **"Settlement Disruption Event"** means an event beyond the control of the Intermediary as a result of which the Clearing System cannot settle the book-entry transfer of such Shares. If such Settlement Disruption Event continues to exist for a period of more than eight successive Business Days, the Intermediary shall use any other customary delivery option (**"Delivery Alternative"**) on the eighth Business Day following the Business Day originally specified as applicable. If a Delivery Alternative is not available, the relevant settlement transaction affected shall be cancelled on the eighth Business Day following the Business Day originally specified as applicable either in whole or, if the relevant Clearing System can only clear a part of the transfer of the Shares to be delivered, in part, provided that the Calculation Agent shall determine the payable Cash Amount in respect of that part of the relevant transaction only which has not been fulfilled. The provisions of § 8(d) shall apply accordingly, provided that such eighth Business Day shall be the relevant Conversion Date.

**"Physical Settlement Notice"** has the meaning set out in § 8(f)(ii).

**"Physical Settlement Option"** has the meaning set out in § 8(f)(i).

**"Reference Period"** has the meaning set out in § 8(a)(ii)(C)(III).

**"Relevant Conversion Ratio"** means, in respect of the relevant date, the result (rounded to five decimal places with 0.000005 being rounded upwards) of the division of the aggregate Principal Amount of Bonds delivered by a Bondholder in respect of a single Conversion Notice as determined by the Principal Conversion Agent pursuant to § 8(b)(iii) by the Conversion Price prevailing on the relevant date.

**"Share Reference Price"** means the simple arithmetic average of the daily Share Prices on each of the 10 Trading Days commencing on and including 19 March 2014, as determined by the Calculation Agent and notified by the Issuer to the Bondholders in accordance with § 14 (such notice specifying the Share Reference Price and the resulting Conversion Price).

(e) Definitions relating to Disrupted Days

**"Disrupted Day"** has the meaning set out in § 10.

**"Exchange Disruption or Related Exchange Disruption"** has the meaning set out in § 10.

**"Failure to Open for Trading or Early Closure of the Exchange or Related Exchange"** has the meaning set out in § 10.

**"Market Disruption Event"** has the meaning set out in § 10.

**"Trading Disruption"** has the meaning set out in § 10.

**"Valuation Time"** has the meaning set out in § 10.

(f) Definitions relating to Nationalisation, Change in Law and Delisting

**"Change in Law"** has the meaning set out in § 11.

**"Delisting"** has the meaning set out in § 11.

**"Hedge Position"** has the meaning set out in § 11.

"Nationalisation" has the meaning set out in § 11.

## § 2 Form and Denomination

- (a) The issue by the Issuer of Bonds in the aggregate principal amount of

EUR 500,000,000

(in words: euro five hundred million)

is divided into bonds in bearer form with a principal amount of EUR 100,000 (the "**Principal Amount**") each, which rank *pari passu* among themselves (the "**Bonds**" and each a "**Bond**").

- (b) The Bonds are represented by a global bond in bearer form (the "**Global Bond**"). The Global Bond will be signed manually by two authorised signatories of the Issuer and will be authenticated by or on behalf of the Principal Paying Agent. Definitive Bonds will not be issued.

The Bondholders will have no right to require the issue of definitive Bonds.

The Global Bond will be deposited with the Clearing System until the Issuer has satisfied and discharged all its obligations under the Bonds. Copies of the Global Bond are available for each Bondholder at the Principal Paying Agent.

- (c) The Bondholders will receive proportional co-ownership interests or comparable rights in the Global Bond, which are transferable in accordance with applicable law and the rules and regulations of the Clearing System.
- (d) Pursuant to the book-entry registration agreement between the Issuer and Clearstream, Frankfurt, the Issuer has appointed Clearstream, Frankfurt as its book-entry registrar in respect of the Bonds. Without prejudice to the issuance of the Bonds in bearer form and their status as bonds in bearer form the Issuer has agreed to maintain a register showing the aggregate number of the Bonds represented by the Global Bond under the name of Clearstream, Frankfurt, and Clearstream, Frankfurt has agreed, as agent of the Issuer, to maintain records of the Bonds credited to the accounts of the accountholders of Clearstream, Frankfurt for the benefit of the holders of the co-ownership interests in the Bonds represented by the Global Bond, and the Issuer and Clearstream, Frankfurt have agreed, for the benefit of the holders of co-ownership interests in the Global Bond, that the actual number of Bonds from time to time shall be evidenced by the records of Clearstream, Frankfurt.

## § 3 Status of the Bonds; Negative Pledge; Subsidiary Guarantees

- (a) Status of the Bonds

The Bonds constitute unsubordinated and unsecured obligations of the Issuer which rank *pari passu* among themselves. In the insolvency or liquidation of the Issuer, the obligations of the Issuer under the Bonds rank at least *pari passu* with all other present and future unsubordinated and unsecured obligations of the Issuer, save for such obligations which may be preferred by applicable law.

- (b) Negative Pledge of Fresenius SE & Co. KGaA

So long as any amounts of principal remain outstanding under the Bonds, but only up to the time all amounts payable in accordance with these Terms and Conditions have been placed at the disposal of the Clearing System and/or all conversion obligations pursuant to § 8 to 10 have been fulfilled, Fresenius SE & Co. KGaA undertakes

- (i) not to provide any security upon any of its assets for Capital Market Indebtedness (including any guarantees or other indemnities assumed in respect thereof); and

- (ii) to procure (to the extent legally possible and permissible) that no Material Subsidiary of Fresenius SE & Co. KGaA will provide any security upon any of its assets for Capital Market Indebtedness (including any guarantees or other indemnities assumed in respect thereof),

without at the same time having the Bondholders share equally and rateably in such security.

The undertaking pursuant to the foregoing sentence shall not apply to a security (i) which is mandatory according to applicable laws, or (ii) which is required as a prerequisite for governmental approvals, or (iii) which is provided by Fresenius SE & Co. KGaA upon any claims of Fresenius SE & Co. KGaA against any company of the Fresenius Group or any third party, which claims exist now or arise at any time in the future as a result of the passing on of the proceeds from the sale by Fresenius SE & Co. KGaA of any Capital Market Indebtedness, provided that any such security serves to secure obligations under such Capital Market Indebtedness of Fresenius SE & Co. KGaA, or (iv) which secures a Capital Market Indebtedness that becomes an obligation of Fresenius SE & Co. KGaA or the Fresenius Group as a consequence of a future acquisition, provided that such Capital Market Indebtedness was not created in contemplation of such future acquisition. Any security which is to be provided pursuant to this § 3(b) may also be provided to a person acting as trustee for the Bondholders.

**"Capital Markets Indebtedness"** means any present or future obligation for the payment or repayment of money that is borrowed through the issuance of bonds, debentures, notes or other similar debt securities which are, or are capable of being, admitted to trading on, or included in, a securities exchange, a regulated market or unregulated market or which are, or are capable of being, traded on an over-the-counter market.

(c) **Subsidiary Guarantees**

Each of the Subsidiary Guarantors has given towards the Principal Paying Agent for the benefit of the Bondholders the unconditional and irrevocable guarantee for the payment of principal together with all other sums payable by the Issuer under these Terms and Conditions pursuant to the guarantees, each dated on or around 24 March 2014 (the **"Subsidiary Guarantees"**).

- (i) Each Subsidiary Guarantee constitutes unsubordinated and unsecured obligations of the relevant Subsidiary Guarantor. In the insolvency or liquidation of the relevant Subsidiary Guarantor, the obligations of the relevant Subsidiary Guarantor under the relevant Subsidiary Guarantee rank at least *pari passu* with all other present and future unsubordinated and unsecured obligations of the relevant Subsidiary Guarantor, save for such obligations which may be preferred by applicable law. Upon discharge of any payment obligation of a Subsidiary Guarantor subsisting under the Subsidiary Guarantee in favour of any Bondholder, the relevant guaranteed right of such Bondholder under these Terms and Conditions will cease to exist.
- (ii) Each Subsidiary Guarantee constitutes a contract in favour of the respective Bondholders as third party beneficiaries pursuant to § 328(1) of the German Civil Code (*Bürgerliches Gesetzbuch*) so that only the respective Bondholders will be entitled to claim performance of the Subsidiary Guarantee directly from each Subsidiary Guarantor and to enforce the Subsidiary Guarantee directly against each Subsidiary Guarantor.

(d) **Release of Subsidiary Guarantees**

Pursuant to its terms, a Subsidiary Guarantee (but not any payment obligation under any Subsidiary Guarantee which has already become due and payable) will be automatically and unconditionally released (and thereupon shall terminate and be discharged and be of no further force and effect)



- (i) upon discharge in full of the aggregate principal amount of all Bonds then outstanding and all other obligations under the Bonds then due and owing as provided in the Terms and Conditions; or
- (ii) concurrently with any consolidation or merger of a Subsidiary Guarantor or any sale, transfer, assignment, lease, conveyance or other disposition of the property or assets of a Subsidiary Guarantor as an entirety or substantially as an entirety, to the extent that
  - (A) if the surviving person or entity is not the Issuer or another guarantor under the Bonds, the obligations of that Subsidiary Guarantor in relation to the Bonds have been expressly or by operation of law assumed by the surviving person or entity in valid and binding form and notification of this assumption has been provided by the Issuer pursuant to § 15; and
  - (B) at the time of and immediately after such transaction, no Event of Default under § 12(a) has occurred and is continuing.

Any Subsidiary Guarantor not released from its obligations under its Subsidiary Guarantee shall remain jointly and severally liable for the full amount of principal of the Bonds and for the other obligations of a Subsidiary Guarantor under its Subsidiary Guarantee; or

- (iii) at any time when (i) a Subsidiary Guarantor is no longer an obligor under the 2013 Senior Credit Agreement, and (ii) the 2015 Notes are no longer outstanding.

**"2013 Senior Credit Agreement"** means the syndicated credit agreement, dated as of 20 December 2012, as amended, restated, modified, extended, renewed and/or supplemented or as refinanced or replaced from time to time, among Fresenius SE & Co. KGaA, Deutsche Bank AG New York Branch, as administrative agent, and the other borrowers, guarantors and lenders identified therein.

**"2015 Notes"** means, collectively, the existing \$500 million aggregate principal amount of 9.00% Senior Notes due 2015 and the existing €275 million aggregate principal amount of 8.75% Senior Notes due 2015, in each case issued by Fresenius US Finance II, Inc.

#### **§ 4 No Interest**

The Bonds will not pay any interest.

#### **§ 5 Maturity, Redemption and Purchase**

- (a) To the extent the Bonds have not previously been redeemed, converted, or repurchased and cancelled they will be redeemed at their Principal Amount on the Maturity Date.
- (b) The Issuer may, on giving not less than 45 nor more than 60 days' prior notice to the Bondholders in accordance with § 14, redeem all but not some only of the outstanding Bonds with effect from the Call Redemption Date fixed in the notice if at any time the aggregate principal amount of the Bonds outstanding is equal to or less than 15 per cent. of the aggregate principal amount of the Bonds originally issued (including any additional bonds issued in accordance with § 15). In the case such notice is given, the Issuer shall redeem the Bonds on the Call Redemption Date at their Principal Amount.
- (c) Redemption at the Option of Bondholders upon a Change of Control Triggering Event
  - (i) Each Bondholder, upon the occurrence of a Change of Control Triggering Event, will have the right to require that the Issuer repurchases such Bondholder's Bonds not previously converted or redeemed, on the Control Record Date at a purchase price in cash equal to 101% of the Principal Amount.

Within 30 days following a Change of Control Triggering Event, the Issuer will publish a notice in accordance with § 14 stating:

- (A) that a Change of Control Triggering Event has occurred and that each Bondholder has the right to require the Issuer to repurchase such Bondholder's Bonds not previously converted or redeemed, at a purchase price in cash equal to 101% of the Principal Amount;
  - (B) the circumstances and relevant facts regarding such Change of Control Triggering Event;
  - (C) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "**Control Record Date**");
  - (D) that each Bond will be subject to repurchase only in integral multiples of the Principal Amount; and
  - (E) the instructions determined by the Issuer, consistent with this § 5(c), that a Bondholder must follow in order to have its Bonds purchased.
- (ii) Any request by a Bondholder for a repurchase of Bonds pursuant to § 5(c)(i) is irrevocable and shall be made by means of a written declaration in the German or English language delivered to the specified office of the Principal Paying Agent together with proof that such Bondholder at the time of such notice is a holder of the relevant Bonds by means of a certificate of his Custodian or in any other appropriate manner. Such request together with the aforementioned proof must be received by the Principal Paying Agent by 4.00 p.m. (Frankfurt time) on the third Business Day prior to the Control Record Date. The respective Bondholder must deliver to the Principal Paying Agent the Bond(s) for which the right pursuant to § 5(c)(i) shall be exercised which must be received by the Principal Paying Agent by 4.00 p.m. (Frankfurt time) on the third Business Day prior to the Control Record Date.
- (iii) If any Bond is required by a Bondholder to be purchased by the Issuer pursuant to § 5(c)(i), the Conversion Right in respect of such Bond may no longer be exercised by such Bondholder from the time of despatch by the Bondholder of its notice to the Principal Paying Agent pursuant to § 5(c)(ii).
- (iv) All Bonds so purchased, if any, by the Issuer may be cancelled or may be held or resold.
- (v) In this § 5(c):

**"Change of Control"** means the occurrence of one or more of the following events:

- (A) so long as Fresenius SE & Co. KGaA is organised as a KGaA, if the General Partner of Fresenius SE & Co. KGaA charged with the management of Fresenius SE & Co. KGaA shall at any time fail to be a Subsidiary of Else Kroner-Fresenius-Stiftung, or if Else Kroner-Fresenius-Stiftung shall fail at any time to own or control more than 10% of the capital stock with ordinary voting power in Fresenius SE & Co. KGaA;
- (B) if Fresenius SE & Co. KGaA is no longer organized as a KGaA, any event the result of which is that (I) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the US Exchange Act of 1934, as amended (the "**Exchange Act**")), other than the Permitted Holder, is or becomes the beneficial owner (as defined in Rule 13d-3 and 13d-5 under the Exchange Act, except that such person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of

time), directly or indirectly, of more than 35% of the total voting power of the voting stock of Fresenius SE & Co. KGaA, and (II) the Permitted Holder does not "beneficially own" (as defined in Rules 13d-3 and 13d-5 of the Exchange Act), directly or indirectly, in the aggregate a greater percentage of the total voting power of the voting stock of Fresenius SE & Co. KGaA;

- (C) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of Fresenius SE & Co. KGaA to any person or group of related persons for purposes of Section 13(d) of the Exchange Act, together with any Affiliates thereof;
- (D) any event following which the financial results of FMC AG & Co. KGaA are not fully consolidated with the financial results of Fresenius SE & Co. KGaA in accordance with U.S. GAAP.

"**Change of Control Triggering Event**" means the occurrence of (i) a Change of Control and (ii) a Ratings Decline.

"**KGaA**" means a partnership limited by shares under German law (*Kommanditgesellschaft auf Aktien*).

"**Permitted Holder**" means Else Kroner-Fresenius-Stiftung and any of its Affiliates.

"**Rating Agency**" means Moody's Investors Service, Inc. ("**Moody's**"), Fitch Ratings Ltd. ("**Fitch**") or Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc. ("**S&P**") or any of their respective affiliates or successors or any rating agency (a "**Substitute Rating Agency**") substituted for any of them by the Issuer from time to time.

"**Rating Category**" means each category into which the rating chart is split by the relevant Rating Agency.

"**Rating Date**" means the date which is 90 days prior to the earlier of (1) the occurrence of the Change of Control and (2) the first public notice of the occurrence of a Change of Control or of the intention of Fresenius SE & Co. KGaA or any person to effect a Change of Control.

"**Ratings Decline**" means the occurrence on or within 90 days after the date of the first public notice of either the occurrence of a Change of Control or of a transaction which will effect a Change of Control, whichever is earlier (which period shall be extended so long as any of the Rating Agencies have publicly announced that it is considering a possible downgrade of the Bonds) of: (1) in the event the Bonds are rated by each of (i) Moody's, (ii) S&P and (iii) Fitch on the Rating Date as Investment Grade, a decrease in the rating of the Bonds by two of the three Rating Agencies to a rating that is below Investment Grade, or (2) in the event the Bonds are rated below Investment Grade by two of the three Rating Agencies on the Rating Date, a decrease in the rating of the Bonds by either such Rating Agency by one or more gradations (including gradations within Rating Categories as well as between Rating Categories).

- (d) If options contracts in respect of the Shares are traded on EUREX and any event occurs as a result of which such option contracts are settled in accordance with the EUREX Corporate Actions Procedures, for example following the occurrence of a Merger Event or Tender Offer as described in § 9(b)(ii)(G), the Issuer shall redeem all outstanding Bonds at their Early Redemption Amount on the Early Redemption Date.
- (e) Upon the occurrence of a Nationalisation, a Delisting and/or a Change in Law, § 11(a) applies.

- (f) The Issuer and any of its affiliates may at any time purchase Bonds, in the open market or otherwise. Any Bonds purchased by the Issuer or any of its affiliates may be cancelled or held and resold.

## § 6 Payments

- (a) All payments on the Bonds will be made in euro to the Principal Paying Agent for transfer to the Clearing System or to its order for credit to the accounts of the relevant account holders of the Clearing System outside the United States. Payments on the Bonds made to the Clearing System or to its order shall discharge the liability of the Issuer under the Bonds to the extent of the sums so paid.
- (b) If the due date for payment of any amount in respect of the Bonds is not a Business Day, then the Bondholder will not be entitled to payment until the next day which is a Business Day. In such case the Bondholders shall not be entitled to any interest or to any other compensation on account of such delay.

## § 7 Taxes

All payments with respect to the Bonds will be made without withholding or deduction for or on account of, any present or future taxes, duties, or governmental charges of any nature whatsoever imposed, levied or collected by way of deduction or withholding at source by, in or on behalf of the Federal Republic of Germany or by or on behalf of any political subdivision or authority thereof or therein having power to tax, unless the Issuer is required by applicable law to make any such payment with respect to the Bonds subject to any withholding or deduction for, or on account of, any present or future taxes, duties, or charges of whatever nature. In that case the Issuer shall effect such payment after such withholding or reduction has been made. Neither the Issuer nor the Subsidiary Guarantors shall be required to make additional payments to the Bondholders in respect of such withholding or reduction.

**The Issuer will not be obliged to pay any additional amounts as a result of such withholding or deduction.**

## § 8 Conversion

- (a) Conversion Right
  - (i) The Issuer grants to each Bondholder the right (the "**Conversion Right**") to require the Bond(s) held by it to be purchased in accordance with the provisions of § 8(c) on any Business Day during the Conversion Period (as defined in § 8(a)(ii) below).
  - (ii) Conversion Period

**"Conversion Period"** means:

    - (A) the period from and including 24 March 2017 to and including the earlier of the following days:
      - (I) the Business Day immediately preceding the 30<sup>th</sup> Trading Day before the Maturity Date; or
      - (II) if the Issuer declares the Bonds due for early redemption pursuant to § 5(b), the eighth Business Day preceding the Call Redemption Date fixed in the notice of early redemption; and
    - (B) any of the following periods occurring after the date of issue of the Bonds and prior to 24 March 2017:
      - (I) if the Issuer declares the Bonds due for early redemption pursuant to § 5(b), the period from and including the date on which the notice of early redemption

pursuant to § 5(b) is published to and including the eighth Business Day preceding the Call Redemption Date fixed in the notice of early redemption;

- (II) if Fresenius SE & Co. KGaA makes a distribution to shareholders of cash, assets, securities or other property where the fair market value of such distribution per Share is greater than 20 per cent. of the arithmetic mean of the Share Prices on each Trading Day in the 20 Trading Day period ending on (and including) the Trading Day immediately preceding the date on which such distribution was first publicly announced by Fresenius SE & Co. KGaA, the period from and including the date of first public announcement of such distribution to but excluding the Ex Date in respect of such distribution;
  - (III) if a Change of Control Triggering Event occurs, the period from and including the date of the notice of the Change of Control Triggering Event pursuant to § 5(c)(i) to and including the sixth Business Day prior to the Control Record Date; and
  - (IV) if any event of default set forth in § 12(a) occurs, the period from and including the date on which such event of default occurs to but excluding the date such Bondholder has terminated his Bonds in accordance with § 12; and
- (C) any of the following periods with respect to a Parity Event occurring prior to 24 March 2017:
- (I) if a Parity Event occurs, the period of ten consecutive Trading Days commencing on and including the first Trading Day following the last day of the relevant Reference Period; and
  - (II) if no market price per Principal Amount of the Bonds is available from the relevant Bloomberg Page or such other source as described in the definition of the term "Parity Event" (a "**Bond Price Unavailability Period**") for any Reference Period, then following the end of the Bond Price Unavailability Period the Calculation Agent shall determine the market price per Principal Amount of the Bonds as at the Bond Price Determination Date and if, as at the Bond Price Determination Date, the price per Principal Amount of the Bonds, as determined by the Calculation Agent, is less than the Adjusted Parity Value, then the term "Conversion Period" will include the period of 30 Trading Days following the later of the Bond Price Determination Date and the date of the notice by the Issuer to the Bondholders pursuant to § 8(a)(ii)(C)(IV) below.
  - (III) Where:
    - "**Adjusted Parity Value**" means 97 per cent. of the Parity Value in effect on each such Trading Day.
    - "**Bond Price Determination Date**" means the fifth Trading Day following the end of any Bond Price Unavailability Period.
    - A "**Parity Event**" occurs in relation to each Reference Period during which on each Trading Day of such Reference Period the Bond Market Price per Principal Amount of the Bonds on such Trading Day, as determined by the Calculation Agent, is less than the Adjusted Parity Value in effect on each such Trading Day.

**"Parity Value"** means, in respect of any Trading Day, the product of the Share Price on such Trading Day and the Conversion Ratio on such Trading Day.

**"Reference Period"** means each period of 10 consecutive Trading Days.

- (IV) The Issuer shall as soon as reasonably practicable following such determination give notice to Bondholders of any determination by the Calculation Agent as provided in § 8(a)(ii)(C)(III). Such notice shall specify the market price per Principal Amount of the Bonds, as determined by the Calculation Agent, as at the relevant Bond Price Determination Date and the Adjusted Parity Value as at the relevant Bond Price Determination Date.
- (iii) The Conversion Right may not be exercised by a Bondholder, if such Bondholder has required the Issuer to purchase his Bonds in accordance with § 5(c) or has terminated his Bonds in accordance with § 12 or if the Bonds are terminated in accordance with § 5(d) or § 11(a).
- (b) Exercise of Conversion Right
- (i) To exercise the Conversion Right, the Bondholder must deliver at his own expense during the Conversion Period during normal business hours to the Principal Conversion Agent via its Custodian and the Clearing System a duly completed and executed Conversion Notice (the "**Conversion Notice**") (which may be by facsimile) using a form (from time to time current) obtainable from the Principal Conversion Agent which must be received by the Principal Conversion Agent by 16.00 hours Frankfurt time on the last day of the Conversion Period. Any Conversion Notice received by the Principal Conversion Agent after 16.00 hours Frankfurt time on any Business Day will be deemed received by the Principal Conversion Agent on the immediately following Business Day. The Conversion Notice is irrevocable and will, among other things:
- (A) state the name and address (natural persons) or name, domicile and address (legal persons) of the exercising Bondholder;
- (B) specify the number of Bonds with respect to which the Conversion Right will be exercised;
- (C) designate the securities deposit account of the Bondholder or his nominee at a participant in, or account holder of, the Clearing System to which, in the case of § 8(e) and (f), the Shares are to be delivered;
- (D) give directions to the Principal Conversion Agent for the payment of any cash amount which the Bondholder is entitled to receive pursuant to these Terms and Conditions and which are to be paid by way of transfer to a euro account of the payee maintained with a bank in the European Union;
- (E) contain the certifications and undertakings set out in the form of the Conversion Notice relating to certain legal restrictions of the ownership of the Bonds and/or the Shares. If the Bondholder fails to deliver the above mentioned certifications and undertakings, the Issuer will not pay any amount of cash, or, in case of § 8 (e) or (f), the Intermediary will not deliver any Shares or pay any amount of cash, in respect of such a Conversion Notice.
- (ii) The exercise of the Conversion Right further requires that the Bonds will be delivered to the Principal Conversion Agent (A) by transferring the Bonds to the Clearing System account of the Principal Conversion Agent (book entry transfer or assignment) or (B) by irrevocable

instruction to the Principal Conversion Agent to withdraw the Bonds from a deposit account with the Principal Conversion Agent (book entry transfer or assignment), in either case not later than on the last day of the Conversion Period. The Principal Conversion Agent will hold the Bonds for the account of the Bondholders until all claims of such Bondholder thereunder have been satisfied.

- (iii) Upon fulfilment of all requirements specified in § 8(b)(i) and (ii) for the exercise of the Conversion Right, the Principal Conversion Agent will verify whether the aggregate Principal Amount of Bonds delivered to the Principal Conversion Agent exceeds or falls short of the aggregate Principal Amount of Bonds specified in the Conversion Notice. In the event of any such excess or shortfall, the Principal Conversion Agent will determine the Relevant Conversion Ratio on the basis of the lower of (A) the aggregate Principal Amount of Bonds set forth in the Conversion Notice, or (B) the aggregate Principal Amount of Bonds in fact delivered. Any Bonds delivered in excess of the aggregate Principal Amount of Bonds specified in the Conversion Notice will be redelivered to the Bondholder at his cost. The Principal Conversion Agent will act in accordance with the regulations of the Clearing System.
- (iv) The Conversion Right will be deemed validly exercised on the relevant Conversion Date.

(c) Purchase of the converted Bond(s) by the Issuer

Upon the valid exercise of the Conversion Right by a Bondholder, the Issuer will be required to purchase the relevant Bond(s) at the Cash Amount calculated in accordance with § 8(d), unless the Issuer elects to procure the acquisition by the Intermediary of the relevant Bond(s) delivered by the relevant Bondholder pursuant to § 8(e) below.

The Conversion Notice will constitute the irrevocable acceptance by the relevant Bondholder of the Issuer's offer to purchase the Bonds constituted by these Terms and Conditions. All Bonds so purchased, if any, by the Issuer may be cancelled or may be held or resold.

(d) Cash Amount

- (i) Upon any exercise of the Conversion Right with respect to one or more Bonds, the Issuer shall pay as consideration for purchasing the Bonds the Cash Amount to the converting Bondholder on the relevant Settlement Date, subject to § 8(e) and (f).

"**Averaging Date**" means, subject to an adjustment for Disrupted Days pursuant to § 10, each Trading Day within the Calculation Period; and

"**Calculation Period**" means the period of 20 consecutive Trading Days commencing on the fifth Trading Day immediately following the Conversion Date.

"**Cash Amount**" means in respect of a Calculation Period the sum (rounded to two decimal places with EUR 0.005 being rounded upwards) of the Daily Cash Amounts, where "**Daily Cash Amount**" or "**DCA**" means an amount in euro calculated by the Calculation Agent in accordance with the following formula:

$$DCA = \frac{1}{N} \times RCR_n \times P_n$$

Where:

N = 20;

P<sub>n</sub> = the Share Price on the nth Averaging Date; and

$RCR_n$  = the Relevant Conversion Ratio prevailing on the nth Averaging Date.

No interest will be payable with respect to the Cash Amount. The Issuer will pay the Cash Amount on the relevant Settlement Date.

- (ii) If following the valid exercise by a Bondholder of its Conversion Right and prior to the relevant Settlement Date an event occurs as a result of which the Bond(s) delivered for conversion would be terminated in accordance with § 5(d) had the Bondholder not exercised its Conversion Right, the Issuer shall pay as consideration for purchasing the Bonds the Early Redemption Amount on the Early Redemption Date instead of the Cash Amount pursuant to § 8(c) or § 8(e)(i).

- (e) Purchase of the converted Bond(s) by the Intermediary at the election of the Issuer

Upon the valid exercise of the Conversion Right by a Bondholder requiring the Issuer to purchase the relevant Bond(s), the Issuer may, in its sole discretion (and without the requirement to make any notification to the relevant Bondholder in respect thereof), elect to procure the acquisition by the Intermediary of the relevant Bond(s) delivered by the relevant Bondholder in accordance with § 8(e) and (f).

In the case of such acquisition the Intermediary will in its sole discretion purchase the relevant Bond(s)

- (i) at the Cash Amount calculated pursuant to the formula set forth in § 8(d); or
- (ii) at such number of Shares calculated and delivered in accordance with § 8(f)(iii) if the Intermediary has exercised its Physical Settlement Option pursuant to § 8(f)(ii),

in respect thereof, and as consideration therefor.

Such payment and/or delivery of Shares shall, as against the relevant Bondholder, be made by the Intermediary in fulfilment of the obligation of the Issuer but for its own account (*Leistung für eigene Rechnung auf eine fremde Schuld*) and shall as such discharge and satisfy the Issuer's obligations under § 8(a) towards the relevant Bondholder.

Bonds which are acquired by the Intermediary as provided above shall not be redeemed or cancelled and may be held or resold at any time by the Intermediary in its sole discretion and without any requirement to notify Bondholders, and such Bonds will continue to entitle the holder thereof to exercise the Conversion Right in the future.

Nothing in the foregoing shall affect or reduce the obligations of the Issuer or the Subsidiary Guarantors in respect of the Bonds, and for the avoidance of doubt, no Bondholder shall by virtue of these Terms and Conditions have any rights against the Intermediary.

- (f) Physical Settlement Option

- (i) Upon any exercise by the Issuer of its right to procure the acquisition by the Intermediary of the relevant Bond(s) delivered by the relevant Bondholder, the Intermediary may elect, in its sole discretion, to satisfy the Bondholder's claim for the payment of the Cash Amount in whole but not in part by physically delivering to the converting Bondholder such number of full Shares equal to the Relevant Conversion Ratio prevailing on the Conversion Date (the "**Physical Settlement Option**"), in which case the Intermediary will physically deliver to the converting Bondholder such number of full Shares in accordance with § 8(g).
- (ii) To exercise the Physical Settlement Option, the Intermediary will dispatch a notice to the relevant Bondholder that the Intermediary will exercise the Physical Settlement Option (the



"**Physical Settlement Notice**") not later than on the Notification Day. The Intermediary will dispatch the Physical Settlement Notice in writing, by fax, email or otherwise using the address stated in the Conversion Notice, if the Conversion Notice by the Bondholder that has been received by the Principal Conversion Agent includes the address of the Bondholder, otherwise via the Principal Conversion Agent to the Clearing System for forwarding to the relevant Bondholder. "**Notification Day**" means the fourth Business Day after the relevant Conversion Date.

- (iii) Upon any exercise of the Physical Settlement Option, the Intermediary will deliver such number of full Shares as is equal to the Relevant Conversion Ratio prevailing on the Conversion Date. Any remaining fraction of a Share shall not be delivered and shall not be compensated in cash. The Shares to be delivered will be transferred to the securities account of the relevant Bondholder specified in the Conversion Notice on the Physical Settlement Date. Upon delivery of the Shares to the securities account of the relevant Bondholder, such Bondholder's payment claim in respect of the Cash Amount pursuant to § 8(a) and § 8(e) shall extinguish to the extent of such delivery (delivery instead of performance by payment (*Leistung an Erfüllungs statt*)). Until transfer of the Shares has been made no claims arising from the Shares shall exist.
- (g) Procurement of Shares
  - (i) The Shares to be delivered by the Intermediary upon exercise of the Conversion Right by a Bondholder and exercise by the Intermediary of the right pursuant to § 8(f) above will be existing Shares with unrestricted dividend entitlement.
  - (ii) The Intermediary may in its discretion procure delivery of the Shares through the Principal Conversion Agent.

## § 9 Adjustment of the Conversion Price

- (a) The Calculation Agent will adjust the Conversion Price as follows:
  - (i) If options contracts in respect of the Shares are traded on EUREX and EUREX adjusts such options contracts, in light of any corporate actions and/or capital adjustments, including for example, a Merger Event or a Tender Offer, the Calculation Agent shall, to the extent required and with effect as of the same date, adjust the Conversion Price and, conversely, the Conversion Ratio of the Bonds to reflect the adjustments effected by EUREX, provided that in relation to the distribution by Fresenius SE & Co. KGaA to its shareholders of a Cash Dividend the Calculation Agent shall make the adjustments as set out in § 9(a)(ii) instead of the corresponding adjustments under the applicable EUREX Corporate Actions Procedures.

If no options contracts in respect of the Shares are traded on EUREX, the Calculation Agent shall make the necessary adjustments in light of any corporate actions and/or capital adjustments, other than in relation to the distribution by Fresenius SE & Co. KGaA to its shareholders of a Cash Dividend, in analogous application of the relevant EUREX Corporate Actions Procedures.

Where:

"**Merger Event**" means that, prior to the relevant Settlement Date, any (I) reclassification or change of the Shares that results in a transfer of or an irrevocable commitment to transfer all of such Shares outstanding to another entity or person, (II) consolidation, amalgamation, merger or binding share exchange of Fresenius SE & Co. KGaA with or into another entity or person (other than a consolidation, amalgamation,

merger or binding share exchange in which Fresenius SE & Co. KGaA is the continuing entity and which does not result in a reclassification or change of all of such Shares outstanding), (III) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100% of the outstanding Shares of Fresenius SE & Co. KGaA that results in a transfer of or an irrevocable commitment to transfer all such Shares (other than such Shares owned or controlled by such other entity or person), (IV) consolidation, amalgamation, merger or binding share exchange of the Issuer or its subsidiaries with or into another entity in which Fresenius SE & Co. KGaA is the continuing entity and which does not result in a reclassification or change of all such Shares outstanding but results in the outstanding Shares (other than Shares owned or controlled by such other entity) immediately prior to such event collectively representing less than 50% of the outstanding Shares immediately following such event; and

"**Tender Offer**" means that, prior to the relevant Settlement Date, any takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 10% and less than 100% of the outstanding voting Shares of Fresenius SE & Co. KGaA, as determined by the Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as the Calculation Agent deems relevant.

- (ii) In relation to the distribution by Fresenius SE & Co. KGaA to its shareholders of a Cash Dividend or if the annual shareholders' meeting of Fresenius SE & Co. KGaA does not resolve to pay any Cash Dividend in relation to a Financial Year, the Calculation Agent shall apply the following adjustments instead of the corresponding adjustments under the applicable EUREX Corporate Actions Procedures:

$$X_n = X_o \times R$$

Where:

- $X_n$  = the adjusted Conversion Price;
- $X_o$  = the Conversion Price on the Relevant Record Date;
- $R$  =  $(S_{prev} - D) / (S_{prev} - T)$ ;
- $S_{prev}$  = the official closing price of the Share on the Relevant Record Date;
- $D$  = the Total Dividend paid;
- $T$  = the Dividend Threshold.

- (b) As at the Issue Date, the EUREX Corporate Actions Procedures provide for adjustments of option contracts in respect of shares, including the Shares, that would be applied by the Calculation Agent when determining adjustments of the Conversion Price, if any, pursuant to § 9(a) of the Terms and Conditions as set out above. The EUREX Corporate Actions Procedures are subject to changes from time to time. Neither the Issuer nor the Calculation Agent is responsible for informing Bondholders of any change to the EUREX Corporate Actions Procedures. This § 9(b) and the below summary are for information purposes only and have been prepared in order to provide Bondholders with information of potential adjustments following the occurrence of the specified Adjustment Events. The information has been adjusted to fit with the terminology of the Bonds. However, EUREX may apply the EUREX Corporate Actions Procedures differently, in particular the definition and

determination of the Adjustment Events below. In the case of any discrepancy between this description and the EUREX Corporate Actions Procedures, the EUREX Corporate Actions Procedures shall prevail.

(i) Adjustment Events

For the purposes of this § 9(b) "**Adjustment Event**" means any of the following events:

- (A) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA increases its share capital out of capital reserves or retained earnings by means of issuance of new Shares or increasing the nominal amount of existing Shares (a "**Capital Increase from Capital Reserves or Retained Earnings**");
- (B) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA:
  - (I) increases the number of outstanding shares by reduction of the interest in the share capital represented by each share (share split) or reduces the number of outstanding shares by increasing the interest in the share capital represented by each share without reducing the share capital (reverse share split); or
  - (II) reduces its share capital by combining its shares,  
(a "**Change in Share Classification**");
- (C) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA increases its share capital through the issuance of new shares against cash contributions while granting its shareholders a direct or indirect subscription right (§§ 182, 186 of the AktG) (a "**Capital Increase Against Contributions with Subscription Rights**");
- (D) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA grants to its shareholders direct or indirect subscription rights in relation to (I) own shares, (II) securities with subscription or option or conversion rights in relation to shares of Fresenius SE & Co. KGaA (but excluding the granting of subscription rights in the course of share capital increases pursuant to a Capital Increase Against Contributions with Subscription Rights or (III) other debt securities, participation rights or other securities of Fresenius SE & Co. KGaA (the securities listed in (I) through (III) together, "**Other Securities**") (an "**Other Issue of Securities with Subscription Rights**");
- (E) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA distributes, allots or grants to its shareholders (I) assets other than a Cash Dividend (whether in the form of a dividend in kind (including a dividend paid in Shares) or in the form of a capital decrease for the purpose of repaying parts of the share capital (in which case the repayment will constitute assets for purposes of (I); or (II) debt securities or warrants or conversion rights (with the exclusion of the rights mentioned in relation to Other Issue of Securities); or (III) put options in the case of a share repurchase (an "**Allotment**"); and
- (F) if a demerger (*Aufspaltung*, § 123(1) of the UmwG) or a spin-off (*Abspaltung*, § 123(2) of the UmwG) of Fresenius SE & Co. KGaA occurs prior to the relevant Settlement Date (a "**Demerger**").

(ii) Consequences of Adjustment Events

Upon the occurrence of any Adjustment Event, the following adjustments are likely to occur in respect of certain terms of the Bonds, as derived from and subject to the EUREX Corporate Actions Procedures:

(A) In the case of a Capital Increase from Capital Reserves or Retained Earnings:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $N_o / N_n$ ;

$N_n$  = the number of issued Shares of Fresenius SE & Co. KGaA after the share capital increase; and

$N_o$  = the number of issued Shares of Fresenius SE & Co. KGaA before the share capital increase.

(B) In the case of a Change in Share Classification, the adjustment as provided in subparagraph (A) will apply. Notwithstanding, that, if prior to the relevant Settlement Date Fresenius SE & Co. KGaA decreases the share capital of Fresenius SE & Co. KGaA by way of a reduction of the interest in the share capital represented by each share, the Conversion Price will remain unchanged. In this case, the Shares will be delivered with their respective new portion of the share capital allotted to them and, in the case of any cash settlement, the Cash Amount will be adjusted accordingly.

(C) In the case of a Capital Increase Against Contributions with Subscription Rights:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $((N_o / N_n) \times (1 - (E / S_o))) + (E / S_o)$ ;

$E$  = the issue price of the new Shares increased by the amount of any potential dividend disadvantage;

$S_o$  = old Share price;

$N_n$  = the number of issued shares of Fresenius SE & Co. KGaA after the dilution event; and

$N_o$  = the number of issued Shares of Fresenius SE & Co. KGaA before the dilution event.

- (D) In the case of an Other Issue of Securities with Subscription Rights:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $S_{ex} / S_{cum}$ ;

$S_{ex}$  =  $S_{cum} - E$ ;

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market (last day of the Share trading cum entitlement); and

$E$  = the value of the Subscription Rights as determined by the Calculation Agent.

- (E) In the case of an Allotment:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $S_{ex} / S_{cum}$ ;

$S_{ex}$  =  $S_{cum} - E$ ;

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market (last day of the Share trading cum entitlement); and

$E$  = the value of the Allotment as determined by the Calculation Agent.

- (F) In the case of a Merger Event or Tender Offer where the offer consideration is shares or a combination of shares and cash where the share component is at least 33% of the total value:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $x / y$ ; and

$y$  = the number of shares offered for every  $x$  shares held in the underlying company, provided that where combined cash and share considerations are applicable,  $y$  shall be the actual number of shares offered plus the value of the cash amount offered expressed as a number of shares.

- (G) In the case of a Merger Event or Tender Offer where the offer consideration is cash or a combination of cash and shares where the share component is less than 33% of the total value, the Bonds (in line with any related options contract traded at EUREX) would be settled in cash in accordance with § 5(d) above.

- (H) In the case of a Demerger EUREX applies the package method where the old share is replaced by a basket of two or more shares. When a Demerger becomes effective the sum of the basket components in theory matches the value of the old share. However, under certain circumstances the package method might not be the appropriate procedure to adjust options contracts. In such cases the following adjustment shall apply:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $(S_{cum} - \text{value of the demerged company per share}) / (S_{cum})$ ; and

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market.

- (I) An adjustment of the Conversion Price pursuant to a Capital Increase Against Contributions with Subscription Rights or an Issue of Other Securities will not take effect if Fresenius SE & Co. KGaA grants each Bondholder the direct or indirect subscription rights to the number of new Shares or Other Securities, as the case may be, to which such Bondholder would have been entitled had the Bondholder exercised the Conversion Right immediately prior to the date of the adjustment.
- (c) Adjustments in accordance with this § 9 will become effective as of (i) in the case of an adjustment stipulated by EUREX, on the same date as any corresponding adjustments made by EUREX; and (ii) in all other cases, the beginning of the Relevant Adjustment Date. Adjustments in accordance with this § 9 will not be made, if the effective date for such adjustments is later than, in the case of Bonds in respect of which the Conversion Right has been exercised, the date on which the Shares have been credited to the securities account specified by the relevant Bondholder or the relevant Cash Amount has been paid by the Paying Agent to the Clearing System or, in relation to Bonds not converted, the first day after the end of the Conversion Period pursuant to § 8(a)(ii), as the case may be.
- (d) Adjustments will be calculated by the Calculation Agent, subject to § 14(c). The Conversion Price determined in accordance with this § 9 will be rounded to four decimal places with EUR 0.00005 being rounded upwards.
- (e) The Issuer will give notice in accordance with § 14 of an adjustment to the Conversion Price and/or any other adjustment to the terms of the Conversion Right made by the Calculation Agent pursuant to this § 9 without undue delay.
- (f) In the event that any Share Price relevant for the calculation of a price or cash amount is subsequently corrected by the exchange and the correction is published within less than one Settlement Cycle after the original publication, the Calculation Agent shall notify the Bondholders of the corrected Share Price, the Cash Amount re-calculated taking into account this Share Price and any necessary further adjustment of the terms of the Bond.
- (g) In this § 9 the following terms shall have the following meaning:
- "Cash Dividend"** means the amount of any cash dividend (calculated on a per share basis) distributed by Fresenius SE & Co. KGaA prior to deduction of any withholding tax.

The "**Dividend Threshold**" means, in relation to any particular Financial Year, EUR 1.10. If adjustments of the Conversion Price are required to be made pursuant to § 9 except pursuant to § 9(a)(ii), the Dividend Threshold shall be adjusted concurrently on a proportionate basis.

"**EUREX Corporate Actions Procedures**" means the manual published by EUREX Frankfurt AG addressing the capital adjustments to equity options at the EUREX exchange, as amended from time to time or any successor publication by EUREX Frankfurt AG.

"**Relevant Adjustment Date**" means, in case Fresenius SE & Co. KGaA distributes to its shareholders a Cash Dividend, the Ex Date and, in case the annual shareholders' meeting of Fresenius SE & Co. KGaA does not resolve to pay any Cash Dividend in relation to a Financial Year, the first Trading Day following the date of the annual shareholders' meeting.

"**Relevant Record Date**" means the Trading Day which immediately precedes the Relevant Adjustment Date.

"**Settlement Cycle**" means the period of Trading Days following a trade in the Shares on XETRA in which settlement will customarily occur according to the rules of XETRA.

"**Total Dividend**" means, calculated on a per share basis, the amount of any Cash Dividend, the Relevant Record Date of which falls during a particular Financial Year together with the aggregate amount of any other Cash Dividends per Share previously paid the Relevant Record Dates of which fell during the same Financial Year less any amount for which an adjustment of the Conversion Price was previously made hereunder, i.e. the difference between a dividend per Share previously distributed in respect of such Financial Year and the Dividend Threshold.

## § 10 Disrupted Days

If any Averaging Date is a Disrupted Day, then the Averaging Date affected by a Market Disruption Event shall be postponed to the first Trading Day on which such Market Disruption Event has ceased, irrespective of whether or not such date is already an Averaging Date. If a Market Disruption Event continues to exist for a period of more than eight successive Trading Days, the eighth Trading Day following the day originally specified as applicable shall be deemed to be the Averaging Date. On that eighth Trading Day the Calculation Agent shall determine the value of the Share at the Valuation Time.

Where the following definitions shall apply:

"**Disrupted Day**" means a day on which the Calculation Agent determines that a Market Disruption Event has occurred.

"**Exchange Disruption or Related Exchange Disruption**" means any event that disrupts or impairs the ability of market participants in general (i) to effect transactions in, or obtain market values for, the Share on XETRA, or (ii) to effect transactions in, or obtain market values for, futures or options contracts on EUREX relating to the Share at any time during the one hour period that ends at the relevant Valuation Time.

"**Failure to Open for Trading or Early Closure of the Exchange or Related Exchange**" means the failure to open for trading of XETRA or EUREX or the closure of XETRA or EUREX prior to its scheduled closing time unless such earlier closing time is announced by the relevant exchange(s) at least one hour earlier, in any case, however, one hour prior to the submission deadline for orders to be entered into the relevant exchange system for execution on the relevant Trading Day.

"**Market Disruption Event**" means each of (i) Trading Disruption, (ii) Exchange Disruption or Related Exchange Disruption and (iii) Failure to Open for Trading or Early Closure of the Exchange

or Related Exchange but in respect of (i) and (ii) only if the Calculation Agent determines that such event is material.

**"Trading Disruption"** means any suspension of or limitation imposed on trading (i) relating to the Share on XETRA or (ii) in futures or options contracts relating to the Share on EUREX at any time during the one hour period that ends at the relevant Valuation Time.

**"Valuation Time "** means the close of trading in respect of the relevant day.

## § 11 Nationalisation, Change in Law and Delisting

(a) (i) If a Nationalisation and/or a Delisting occurs, the Issuer shall and (ii) if a Change in Law occurs the Issuer may, by providing notice of the occurrence of such event in accordance with § 14 within five Business Days of the Relevant Date specifying the date of such termination (or such lesser notice as may be required to comply with the Change in Law) redeem all but not only some of the outstanding Bonds at their Early Redemption Amount on the Early Redemption Date.

(b) Where the following definitions shall apply:

**"Change in Law"** means that, on or after the issue date of the Bonds, (A) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (B) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), if, after the receipt by the Calculation Agent of notification by the Issuer, the Calculation Agent determines in good faith it has become illegal for the Issuer, or for any party to a Hedge Position, to hold, acquire or dispose of a Hedge Position relating to the Bonds or to a Hedge Position relating to an option contract under which the Issuer hedges its equity price risk relating to the Bonds, provided that it will not comprise a Change in Law if in the reasonable determination of the Calculation Agent such party could have taken reasonable steps to avoid such illegality.

**"Delisting"** means that the Shares cease (or will cease) to be listed, traded or publicly quoted on XETRA pursuant to the rules of XETRA, and are not immediately re-listed, re-traded or re-quoted on another organised market or trading facility located in the same country as XETRA (or, where XETRA is within the European Union, in any member state of the European Union), as determined by the Calculation Agent.

**"Hedge Position"** means a transaction or asset the hedging party deems appropriate to hedge the equity price risk of entering into and performing its obligations with respect to the Bonds or with respect to an option contract under which the Issuer hedges its equity price risk relating to the Bonds.

**"Nationalisation"** means that all Shares or all or substantially all the assets of Fresenius SE & Co. KGaA have been nationalised, expropriated or are otherwise required to be transferred to any authority, legal entity under public law (*juristische Person des öffentlichen Rechts*) or other governmental agency, as determined by the Calculation Agent.

## § 12 Events of Default and Termination Rights of the Bondholders

(a) Each Bondholder will be entitled to declare all or some only of his Bonds due and demand immediate redemption of such Bonds at the Principal Amount as provided hereinafter, if:

(i) the Issuer fails to pay principal in respect of the Bonds when due, whether at maturity, upon redemption or otherwise; or



- (ii) the Issuer fails to pay any other amount in respect of the Bonds within 30 days from the relevant due date; or
- (iii) the Issuer fails to observe or perform any other material obligation arising from the Bonds and such default, except where such default is incapable of remedy, continues unremedied for 60 or more days after the Issuer (through the Principal Paying Agent) has received notice thereof from a Bondholder; or
- (iv) Fresenius SE & Co. KGaA or any of its Relevant Subsidiaries fails to perform one or several payment obligations under any bond, note, loan or other indebtedness for borrowed money (each a "**Financing**") including any guarantees or other indemnities assumed in respect of any Financing in an aggregate amount in excess of EUR 75 million, and such default continues for more than 15 days following the day on which the Principal Paying Agent received notice of the default by a Bondholder, or any such payment obligation falls due prematurely as a result of a failure by Fresenius SE & Co. KGaA or any of its Relevant Subsidiaries to perform its obligations, or any security granted to secure any such payment obligation is being enforced; or
- (v) any final judgment or judgments (not covered by insurance) which can no longer be appealed for the payment of money in excess of EUR 75 million shall be rendered against Fresenius SE & Co. KGaA or any of its Relevant Subsidiaries and shall not be discharged for any period of 60 consecutive days during which a stay of enforcement shall not be in effect; or
- (vi) Fresenius SE & Co. KGaA or any of its Material Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:
  - (A) suspends its payments or announces its inability to meet its financial obligations; or
  - (B) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors or, for any of the reasons set out in Sections 17-19 of the German Insolvency Code (*Insolvenzordnung*), files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the board of directors (*Geschäftsführer*) is required by law to file for insolvency, a creditor files for the opening of insolvency proceedings and such fil-ing is not frivolous and not dismissed within a period of one month by the competent insolvency court, or the competent court takes any of the actions set out in Section 21 of the German *Insolvenzordnung* or a competent court institutes insolvency proceedings (*Eröffnung des Insolvenzverfahrens*) or denies a petition for commencement of insolvency proceeding by reason of insufficient assets; or
  - (C) commences a voluntary case; or
  - (D) consents to the entry of an order for relief against it in an involuntary case; or
  - (E) consents to the appointment of a custodian of it or for all or substantially all of its property; or
  - (F) makes a general assignment for the benefit of its creditors; or
  - (G) takes any corporate action to authorize or effect any of the foregoing.
- (viii) the Issuer is wound up, unless this is effected in connection with a merger or another form of amalgamation with another company or in connection with a restructuring, and the other or the new company assumes all obligations of the Issuer arising under the Bonds; or

- (ix) any law, governmental order, decree or enactment will gain recognition in the Federal Republic of Germany whereby the Issuer is legally prevented from performing its obligations under the Bonds and this situation is not cured within 90 days; or
- (x) any Subsidiary Guarantee shall cease to be in full force and effect in accordance with its terms for any reason except pursuant to the terms of the relevant Subsidiary Guarantee governing the release of the Subsidiary Guarantee or the satisfaction in full of all the obligations thereunder or shall be declared invalid or unenforceable other than as contemplated by its terms, or any Subsidiary Guarantor shall repudiate, deny or disaffirm any of its obligations thereunder or under the terms of the relevant Subsidiary Guarantee.

The right to declare Bonds due will terminate if the situation giving rise to it has been cured before such right is exercised.

- (b) Any notice declaring Bonds due in accordance with § 12(a) shall be made by means of a written declaration in the German or English language delivered to the specified office of the Principal Paying Agent together with proof that such Bondholder at the time of such notice is a holder of the relevant Bonds by means of a certificate of his Custodian or in any other appropriate manner.
- (c) In the event specified in § 12(a)(iii), any notice declaring Bonds due shall, unless at the time such notice is received any of the events specified in § 12(a)(i), (ii) and (iv) through (xi) entitling Bondholders to declare their Bonds due has occurred, become effective only, if the Principal Paying Agent has received such default notices from Bondholders representing at least 25 per cent. of the aggregate principal amount of Bonds then outstanding.
- (d) If any Bond is declared due for early redemption by a Bondholder pursuant to this § 12, the Conversion Right in respect of such Bond may no longer be exercised by such Bondholder from the time of despatch by the Bondholder of its notice of termination to the Principal Paying Agent pursuant to § 12(b).

### § 13 **Paying Agents, Conversion Agents and Calculation Agent**

- (a) Deutsche Bank Aktiengesellschaft will be the principal paying agent (the "**Principal Paying Agent**", and together with any additional paying agent appointed by the Issuer in accordance with § 13(b), the "**Paying Agents**"). Deutsche Bank Aktiengesellschaft will also be the principal Conversion Agent (the "**Principal Conversion Agent**", and together with any additional Conversion Agent appointed by the Issuer in accordance with § 13(b), the "**Conversion Agents**"). Credit Suisse International will be the calculation agent (the "**Calculation Agent**" and together with the Paying Agents and the Conversion Agents, the "**Agents**"). The address of the specified offices of the Agents are:

#### **Principal Paying Agent and Principal Conversion Agent**

Deutsche Bank Aktiengesellschaft  
 Taunusanlage 12  
 60325 Frankfurt am Main  
 Federal Republic of Germany

#### **Calculation Agent**

Credit Suisse International  
 One Cabot Square  
 London E14 4QJ  
 United Kingdom

Each Agent will be exempt from the restrictions set forth in § 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions of other applicable laws.

In no event will the specified office of any Agent be within the United States or its possessions.

- (b) The Issuer will procure that there will at all times be a Principal Paying Agent, a Principal Conversion Agent and a Calculation Agent. The Issuer is entitled to appoint other banks of international standing as Agents. Furthermore, the Issuer is entitled to terminate the appointment of any Agent. In the event of such termination or such bank being unable or unwilling to continue to act as Agent in the relevant capacity, the Issuer will appoint another bank of international standing as Agent in the relevant capacity. Such appointment or termination will be published without undue delay in accordance with § 14, or, should this not be possible, be published in another appropriate manner.
- (c) All determinations, calculations and adjustments made by any Agent will be made in conjunction with the Issuer and will, in the absence of manifest error, be conclusive in all respects and binding upon the Issuer and all Bondholders.

Each Agent may engage the advice or services of any lawyers or other experts whose advice or services it deems necessary and may rely upon any advice so obtained. No Agent will incur any liability as against the Issuer or the Bondholders in respect of any action taken, or not taken, or suffered to be taken, or not taken, in accordance with such advice in good faith.

- (d) Each Agent acting in such capacity, acts only as agent of the Issuer. There is no agency or fiduciary relationship between any Agent and the Bondholders.

#### **§ 14 Notices**

All notices concerning the Bonds to be given by the Issuer under these Terms and Conditions, except as stipulated in § 17(h), will be made as follows:

- (a) The Issuer shall publish all its notices concerning the Bonds on its homepage ([www.fresenius.de](http://www.fresenius.de)). Any such notice will be deemed to have been given when so published or despatched by the Issuer.
- (b) If the Bonds are listed on any stock exchange and the rules of that stock exchange so require, the Issuer will make all its notices concerning the Bonds in accordance with the rules of the stock exchange on which the Bonds are listed.
- (c) In addition the Issuer will deliver all its notices concerning the Bonds to the Clearing System for communication by the Clearing System to the Bondholders.
- (d) A notice effected pursuant to § 14(a) to (c) above will be deemed to be effected on the day on which the first such communication is, or is deemed to be, effective.

#### **§ 15 Issue of Additional Bonds**

The Issuer reserves the right from time to time without the consent of the Bondholders to issue additional Bonds with identical terms (save for inter alia the issue date), so that the same shall be consolidated, form a single issue with and increase the aggregate principal amount of these Bonds. The term "Bonds" shall, in the event of such increase, also comprise such additionally issued Bonds.

#### **§ 16 Presentation Period, Prescription**

The period for presentation of the Bonds pursuant to § 801(1) sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) will be ten years. The period of limitation for claims under the Bonds presented

during the period for presentation will be two years calculated from the expiration of the relevant presentation period.

**§ 17 Amendments to the Terms and Conditions, by resolution of the Bondholders; Joint Representative**

- (a) The Issuer may agree with the Bondholders on amendments to the Terms and Conditions by virtue of a majority resolution of the Bondholders pursuant to § 5 et seqq. of the German Act on Issues of Debt Securities (*Gesetz über Schuldverschreibungen aus Gesamtemissionen* - "**Bond Act**"), as amended from time to time. In particular, the Bondholders may consent to amendments which materially change the substance of the Terms and Conditions, including such measures as provided for under § 5 paragraph 3 of the Bond Act, by resolutions passed by such majority of the votes of the Bondholders as stated under § 17(b) below. A duly passed majority resolution shall be binding equally upon all Bondholders.
- (b) Except as provided by the following sentence and provided that the quorum requirements are being met, the Bondholders may pass resolutions by simple majority of the voting rights participating in the vote. Resolutions which materially change the substance of the Terms and Conditions, in particular in the cases of § 5 paragraph 3 numbers 1 through 9 of the Bond Act, may only be passed by a majority of at least 75 per cent. of the voting rights participating in the vote (a "**Qualified Majority**").
- (c) The Bondholders may pass resolutions in a meeting (*Gläubigerversammlung*) in accordance with § 5 et seqq. of the Bond Act or by means of a vote without a meeting (*Abstimmung ohne Versammlung*) in accordance with § 18 and § 5 et seqq. of the Bond Act.
- (d) If resolutions of the Bondholders shall be made by means of a meeting the convening notice (*Einberufung*) will provide for further details relating to the resolutions and the voting procedure. The subject matter of the vote as well as the proposed resolutions shall be notified to the Bondholders together with the convening notice. Attendance at the meeting and exercise of voting rights is subject to the Bondholders' registration. The registration must be received at the address stated in the convening notice no later than the third day preceding the meeting. As part of the registration, Bondholders must demonstrate their eligibility to participate in the vote by means of a special confirmation of their Custodian in accordance with § 19(d)(i)(A) and (B) hereof in text form and by submission of a blocking instruction by the Custodian stating that the relevant Bonds are not transferable from and including the day such registration has been sent until and including the stated end of the meeting.
- (e) If resolutions of the Bondholders shall be made by means of a vote without a meeting the request for voting (*Aufforderung zur Stimmabgabe*) will provide for further details relating to the resolutions and the voting procedure. The subject matter of the vote as well as the proposed resolutions shall be notified to the Bondholders together with the request for voting. The exercise of voting rights is subject to the Bondholders' registration. The registration must be received at the address stated in the request for voting no later than the third day preceding the beginning of the voting period. As part of the registration, Bondholders must demonstrate their eligibility to participate in the vote by means of a special confirmation of their Custodian in accordance with § 19(d)(i)(A) and (B) hereof in text form and by submission of a blocking instruction by the Custodian stating that the relevant Bonds are not transferable from and including the day such registration has been sent until and including the day the voting period ends.
- (f) If it is ascertained that no quorum exists for the meeting pursuant to § 17(d) or the vote without a meeting pursuant to § 17(e), in case of a meeting the chairman (*Vorsitzender*) may convene a second meeting in accordance with § 15 paragraph 3 sentence 2 of the Bond Act or in case of a vote without

a meeting the scrutineer (*Abstimmungsleiter*) may convene a second meeting within the meaning of § 15 paragraph 3 sentence 3 of the Bond Act. Attendance at the second meeting and exercise of voting rights is subject to the Bondholders' registration. The registration must be received at the address stated in the convening notice no later than the third day preceding the second meeting. As part of the registration, Bondholders must demonstrate their eligibility to participate in the vote by means of a special confirmation of their Custodian in accordance with § 19(d)(i)(A) and (B) hereof in text form and by submission of a blocking instruction by the Custodian stating that the relevant Bonds are not transferable from and including the day such registration has been sent until and including the stated end of the meeting.

- (g) The Bondholders may by majority resolution provide for the appointment or dismissal of a joint representative (the "**Joint Representative**"), the duties and responsibilities and the powers of such Joint Representative, the transfer of the rights of the Bondholders to the Joint Representative and a limitation of liability of the Joint Representative. Appointment of a Joint Representative may only be passed by a Qualified Majority if such Joint Representative is to be authorised to consent, in accordance with § 17(b) hereof, to a material change in the substance of the Terms and Conditions.
- (h) Any notices concerning this § 17 shall be made exclusively in accordance with the Bond Act.
- (i) The provisions set out above in this § 17 applicable to the Bonds shall apply *mutatis mutandis* to the Subsidiary Guarantees.

## **§ 18 Issuer Substitution**

- (a) Substitution

The Issuer may at any time, without the consent of the Bondholders, substitute for the Issuer any other company which is directly or indirectly controlled by the Issuer, as new issuer (the "**New Issuer**") in respect of all obligations arising under or in connection with the Bonds with the effect of releasing the Issuer of all such obligations, if:

- (i) the New Issuer assumes any and all obligations of the Issuer arising under or in connection with the Bonds and, if service of process vis-à-vis the New Issuer would have to be effected outside the Federal Republic of Germany, appoints a process agent within the Federal Republic of Germany;
  - (ii) the Issuer and the New Issuer have obtained all authorisations and approvals necessary for the substitution and the fulfilment of the obligations arising under or in connection with the Bonds;
  - (iii) the New Issuer is in the position to pay to the Clearing System or to the Principal Paying Agent in Euro and without deducting or withholding any taxes or other duties of whatever nature imposed, levied or deducted by the country (or countries) in which the New Issuer has its domicile or tax residence all amounts required for the performance of the payment obligations arising from or in connection with the Bonds; and
  - (iv) the Issuer irrevocably and unconditionally guarantees such obligations of the New Issuer under the Bonds on terms which ensure that each Bondholder will be put in an economic position that is at least as favourable as that which would have existed if the substitution had not taken place.
- (b) References
    - (i) In the event of a substitution pursuant to § 18(a), any reference in these Terms and Conditions to

- (A) the Issuer shall be a reference to the New Issuer; and
  - (B) the Federal Republic of Germany (except in § 19) shall be a reference to the New Issuer's country of domicile for tax purposes.
- (ii) In § 13 a further event of default shall be deemed to have been included; such event of default shall exist in the case that the guarantee pursuant to § 18(a)(iv) is or becomes invalid for any reasons.

**§ 19 Final Clauses**

- (a) The form and content of the Bonds and the rights and duties of the Bondholders and the Issuer will in all respects be governed by the laws of the Federal Republic of Germany.
- (b) Place of performance is Frankfurt am Main, Federal Republic of Germany.
- (c) Subject to any mandatory jurisdiction for specific proceedings under the Bond Act, and to the extent legally permitted, the courts of Frankfurt am Main, Federal Republic of Germany will have jurisdiction for any action or other legal proceedings arising out of or in connection with the Bonds.
- (d) Any Bondholder may in any proceedings against the Issuer or to which the Bondholder and the Issuer are parties protect and enforce in his own name his rights arising under his Bonds on the basis of:
  - (i) a certificate issued by his Custodian
    - (A) stating the full name and address of the Bondholder;
    - (B) specifying an aggregate principal amount of Bonds credited on the date of such statement to such Bondholder's securities account(s) maintained with his Custodian; and
    - (C) confirming that his Custodian has given a written notice to the Clearing System and the Principal Paying Agent containing the information specified in (A) and (B) and bearing acknowledgements of the Clearing System and the relevant account holder in the Clearing System; as well as
  - (ii) a copy of the Global Bond relating to the Bonds, certified as being a true copy by a duly authorised officer of the Clearing System or the Principal Paying Agent.