

## TERMS AND CONDITIONS OF THE NOTES

### § 1 DEFINITIONS

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

“**Acquired Warehouse Financial Indebtedness**” has the meaning set out in § 8(c)(xii).

An “**Acquisition of Control**” will be deemed to have occurred if, after the date of issue of the Notes, any person or partnership or persons (“**Relevant Person(s)**”) and/or any person or persons acting on behalf of any such Relevant Person(s) (irrespective of whether the management board (*Vorstand*) or the supervisory board (*Aufsichtsrat*) of the Issuer has given its consent thereto), acquire

- (i) Control of the Issuer (unless the acquirer is a credit institution, financial service provider or agent that acquires the relevant Shares only temporarily in a transitory function in connection with the implementation of a capital measure or corporate action); or
- (ii) in one or a series of related transactions, all or substantially all of the assets of the Issuer and its Subsidiaries taken as a whole (other than by way of merger, consolidation or other business combination transaction or an acquisition by a Subsidiary of the Issuer).

“**Acquisition of Control Record Date**” means the Business Day fixed by the Issuer in accordance with § 5(e)(i) which will be not less than 40 nor more than 60 days after the notice of the Acquisition of Control.

“**Additional Amounts**” has the meaning set out in § 7 (*Taxes*).

“**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “**control**”, when used with respect to any specified Person, means the power to direct or cause the direction of 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.

“**Agents**” has the meaning set out in § 15(a).

“**Asset Sale**” means:

- (a) the sale, lease, conveyance or other disposition of any assets by the Issuer or any of its Subsidiaries; *provided that* the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer and its Subsidiaries taken as a whole will be governed by the provisions of the Terms and Conditions described under § 10 (*Merger, Consolidation or Sale of Assets*); and

- (b) the issuance of Equity Interests by any Subsidiary or the sale by the Issuer or any of its Subsidiaries of Equity Interests in any Subsidiary of the Issuer (in each case, other than directors' qualifying shares).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (i) the lease or sublease of any real estate asset in the ordinary course of business;
- (ii) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets;
- (iii) a transfer of assets or Equity Interests between or among the Issuer and any Subsidiary;
- (iv) an issuance of Equity Interests by a Subsidiary to the Issuer or to another Subsidiary;
- (v) the sale, lease or other transfer of accounts receivable, inventory or other assets (other than real property) in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets or assets that are no longer useful in the conduct of the business of the Issuer and its Subsidiaries;
- (vi) licenses and sublicenses by the Issuer or any of its Subsidiaries in the ordinary course of business;
- (vii) dispositions of investments in joint ventures or similar entities to the extent required by, or made pursuant to customary buy/sell arrangements between, the parties to such joint venture set forth in joint venture arrangements and similar binding arrangements;
- (viii) the granting of Security Interests not prohibited by § 9 (*Negative Pledge*);
- (ix) the sale or other disposition of cash and Cash Equivalents;
- (x) a Restricted Payment that does not violate § 12 (*Restricted Payments*), or any transaction specifically excluded from the definition of "Restricted Payments", or, solely for purposes of § 11(b) and (c), asset sales, the proceeds of which are used to make such Restricted Payment or such payment specifically excluded from the definition of "Restricted Payments";
- (xi) the disposition of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
- (xii) the foreclosure, condemnation or any similar action with respect to any property or other assets or a surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind, and the unwinding of any Hedging Obligations; and

- (xiii) the disposition of assets to a Person who is providing services (the provision of which have been or are to be outsourced by the Issuer or any Subsidiary to such Person) related to such assets.

“**Asset Sale Offer**” has the meaning set out in § 11(c).

“**Benchmark Yield**” has the meaning set out in § 5(b).

“**Business Day**” means each day (other than a Saturday or Sunday) on which (a)(i) the TransEuropean Automated Real-time Gross Settlement Express Transfer System 2 (TARGET2) and (ii) the Clearing System settle payments, and (b) commercial banks and foreign exchange markets in Frankfurt am Main are open for business.

“**Calculation Agent**” has the meaning set out in § 15(a).

“**Capital Lease Obligation**” means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet (excluding the footnotes thereto) prepared in accordance with IFRS as in effect on the Issue Date, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

“**Capital Stock**” of any Person means any and all shares of, rights to purchase, warrants or options for, or other equivalents of or partnership or other interests in (however designated), equity of such Person, including any preference shares, but excluding any debt securities convertible into such equity.

“**Cash Equivalents**” means:

- (a) securities or other direct obligations, issued or directly and fully guaranteed or insured by the United States of America, Canadian, Japanese, Australian, Swiss, Norwegian or United Kingdom governments, the European Union or any member state of the European Union (other than Cyprus, Greece, Portugal or Spain) or, in each case, any agency or instrumentality thereof (provided that the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;
- (b) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers’ acceptances having maturities of not more than one year from the date of acquisition thereof issued by any lender or by any bank or trust company (i) whose commercial paper is rated at least “A-1” or the equivalent thereof by S&P or at least “P-1” or the equivalent thereof by Moody’s (or if at the time neither is issuing comparable ratings, then a comparable rating of another recognized rating organization) or (ii) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of EUR 250,000,000;
- (c) repurchase obligations for underlying securities of the types described in clauses (a) and (b) entered into with any bank meeting the qualifications specified in clause (b) above;

- (d) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by S&P or “P-2” or the equivalent thereof by Moody’s or carrying an equivalent rating by a recognized rating organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;
- (e) indebtedness or preferred stock issued by Persons with a rating of “BBB-” or higher from S&P or “Baa3” or higher from Moody’s (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another recognized rating organization) with maturities of 12 months or less from the date of acquisition;
- (f) bills of exchange issued in the United States, Canada, the European Union or any member state of the European Union (other than Cyprus, Greece, Portugal or Spain), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent); and
- (g) interests in any investment company, money market, enhanced high yield fund or other investment funds which invests 90 per cent. or more of its assets in instruments of the type specified in clauses (a) through (g) above.

“**Clearing System**” means Clearstream Banking AG, Frankfurt am Main (“**Clearstream Frankfurt**”) and any successor in such capacity.

"**Condition Precedent**" means collectively the occurrence of all of the following events within the relevant time periods set out under paragraphs (a) and (b) below:

- (a) the Lock-up Agreement has been entered into by all parties thereto and has become effective, in each case on or before 2 December 2022, 24:00hrs CET, which is evidenced to have occurred by receipt of a notice by the Principal Paying Agent on or before 5 December 2022, 24:00hrs CET signed by (i) an attorney of Milbank LLP acting on behalf of the majority of the holders of the Notes and the majority of the holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer and (ii) a member of the Issuer’s management board in the following form (the "**Lock-up Agreement Notice**"):

"To: [BNP Paribas Securities Services S.C. A., Zweigniederlassung Frankfurt] in its capacity as Principal Paying Agent

**EUR 300,000,000 notes 2018/2023 issued by Corestate Capital Holding S.A. (ISIN DE000A19YDA9) (the "Notes")**

We refer to the resolution of the holders of the Notes of 28 November 2022 pursuant to which an amendment of the terms and conditions of the Notes has been resolved upon (the "**Amendment Resolution**"). This is the notice referred to in paragraph (a) of the definition of "Condition Precedent" in the terms and conditions of the Notes as amended by the Amendment Resolution.

We hereby confirm that (i) the Lock-up Agreement (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has been entered into by all parties thereto and has become effective, in each case on or before 2 December 2022, 24:00hrs CET, and (ii) with receipt of this notice by the Principal Paying Agent the event specified in paragraph (a) of the definition of "Condition Precent" (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has occurred.

[Signatures]";

and

- (b) the Principal Paying Agent has received a notice signed by each member of the Issuer's management board in the following form (the "**EGM Notice**") on or before 31 December 2022, 24:00hrs CET:

"To: [BNP Paribas Securities Services S.C. A., Zweigniederlassung Frankfurt] in its capacity as Principal Paying Agent

**EUR 300,000,000 notes 2018/2023 issued by Corestate Capital Holding S.A. (ISIN DE000A19YDA9) (the "Notes")**

We refer to the resolution of the holders of the Notes of 28 November 2022 pursuant to which an amendment of the terms and conditions of the Notes has been resolved upon (the "**Amendment Resolution**"). This is the notice referred to in paragraph (b) of the definition of "Condition Precedent" in the terms and conditions of the Notes as amended by the Amendment Resolution.

We hereby confirm that on or before 31 December 2022, 24:00hrs CET:

- (i) the composition of the supervisory board of the Issuer consisting of three (3) members has changed as follows:
- a. Not less than two (2) of the existing members of the supervisory board of the Issuer as of 21 November 2022 resigned with immediate effect on or after 24 November 2022;
  - b. Not less than two (2) candidates nominated by the majority of the holders of the Notes and the majority of the holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer have been appointed as members of the supervisory board of the Issuer on or after 24 November 2022; and
- (ii) the management board of the Issuer has presented its board report on the proposal that the management board of the Issuer shall be authorised to increase the share capital of the Issuer beyond the limits currently imposed by the articles of association of the Issuer as well as on the corresponding withdrawal of pre-emption rights of existing shareholders;
- (iii) an extraordinary general shareholders' meeting of the Issuer has resolved on the management board's proposal to be authorised to:

- a. issue new shares from an increased authorised share capital in the total amount of fifteen million Euro (EUR 15,000,000), represented by a maximum of two hundred million (200,000,000) shares without nominal value in the Issuer, for a duration of 5 years following the date of the general meeting, to withdraw pre-emption rights of existing shareholders and to consequently amend the articles of association of the Issuer; and
- b. carry out a free allocation of existing shares, to issue shares free of charge to certain persons and to determine the terms and conditions of any such allocation.

We hereby also confirm that with receipt of this notice by the Principal Paying Agent the event specified in paragraph (b) of the definition of Condition Precent (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has occurred.

[Signatures]“,

provided always that, if either (y) the Lock-up Agreement Notice has not been received by the Principal Paying Agent on or before 5 December 2022, 24:00hrs CET, or (z) the EGM Notice has not been received by the Principal Paying Agent on or before 31 December 2022, 24:00hrs CET, the occurrence of the Condition Precedent shall be excluded.

“**Consolidated EBITDA**” for any period means consolidated net profit (loss) of the Group for such period:

- (a) **plus** (to the extent deducted in calculating consolidated earnings for such period) any net expenses for paid or accrued interest, commission, fees, discounts and other finance payments incurred or payable by any member of the Group;
- (b) **plus** (to the extent deducted in calculating consolidated earnings for such period) net expenses for income taxes, current and deferred;
- (c) **excluding** the amount of any earnings of any member of the Group which is attributable to the minority interest of any shareholder of or, as the case may be, partner in such member of the Group who is not a member of the Group;
- (d) **plus** (to the extent deducted in calculating consolidated earnings for such period) depreciation, amortization and other non-cash charges and expenses (including, without limitation, write-downs and impairment of property, plant, equipment, intangibles, goodwill and other long-lived assets and the impact of purchase accounting on the Issuer and its Subsidiaries for such period);
- (e) **plus** (to the extent deducted in calculating consolidated earnings for such period) any fair value adjustments of investment properties;
- (f) **eliminating** impairment charges of at equity investments;
- (g) **eliminating** any unrealized exchange gains and losses from the marking to market of derivatives or primary financial instruments;

- (h) **plus** (to the extent deducted in calculating consolidated earnings for such period) restructuring expenses according to IAS 37 and termination expenses according to IAS 19;
- (i) **plus** (to the extent deducted in calculating consolidated earnings for such period) extraordinary, exceptional, unusual or non-recurring expenses, losses or charges, including, without limitation, expenses or charges related to the issuance of Capital Stock or indebtedness, any amendment, refinancing or early extinguishment of indebtedness, any acquisition, investment, disposition, recapitalization or listing (in each case whether or not successful), any reorganization, restructuring, redundancy or severance, or any expenses or charges of the types for which adjustments or add-backs were made in calculating “Adjusted EBITDA” for any of the years ended December 31, 2017, 2016 or 2015, included in the Prospectus of the Issuer, dated on or about March 26, 2018, relating to the offering of the Notes (in each case determined in good faith by the Issuer); and
- (j) **eliminating** extraordinary and non-recurring income.

Consolidated EBITDA shall be calculated in accordance with IFRS (except to the extent expressly provided otherwise by these Terms and Conditions) by reference to the Consolidated Financial Statements of the Issuer for the relevant period, consistent with the accounting principles applying to the financial statements of the Issuer by reference to which such calculations are made and without deducting or crediting any item more than once in any calculation.

“**Consolidated Financial Statements**” means, with respect to any Person, the consolidated financial statements and notes to those financial statements and the group management report of that Person and its subsidiaries prepared in accordance with IFRS as well as interim consolidated financial statements and quarterly statements (as of the relevant date).

“**Consolidated Net Financial Indebtedness**” means the net financial indebtedness of the Issuer and any of its Subsidiaries, on a consolidated basis determined in accordance with IFRS, as “long-term financial liabilities to banks”, “short-term financial liabilities to banks”, “other long-term financial liabilities” and “other short-term financial liabilities”, less “cash and cash equivalents” (each as reflected on the balance sheet of the Consolidated Financial Statements of the Issuer), but excluding any lease, concession or license of property (or guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice.

“**Consolidated Net Income**” means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with IFRS and without any reduction in respect of preferred stock dividends; provided that:

- (a) the net income (loss) of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the

amount of dividends or similar distributions paid in cash to the specified Person or a Subsidiary which is a Subsidiary of the Person;

- (b) solely for the purpose of determining the amount available for Restricted Payments, any net income (loss) of any Subsidiary will be excluded if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Subsidiary, directly or indirectly, to the Issuer by operation of the terms of such Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Subsidiary or its shareholders (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to this Terms and Conditions or (iii) contractual restrictions in effect on the Issue Date with respect to the Subsidiary and other restrictions with respect to such Subsidiary that, taken as a whole, are not materially less favorable to the Noteholders of the Notes than such restrictions in effect on the Issue Date, except that the Issuer's equity in the net income of any such Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Subsidiary during such period to the Issuer or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Subsidiary, to the limitation contained in this clause);
- (c) any net gain (or loss) realised upon the sale or other disposition of any asset or disposed operations of the Issuer or any Subsidiaries (including pursuant to any sale leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by the Issuer) will be excluded;
- (d) any one-time non-cash charges or any amortization or depreciation resulting from purchase accounting, in each case, in relation to any acquisition of, or merger or consolidation with, another Person or business or resulting from any reorganization or restructuring involving the Issuer or its Subsidiaries will be excluded;
- (e) the cumulative effect of a change in accounting principles will be excluded;
- (f) any extraordinary, exceptional or non-recurring gains or losses or any charges in respect of any restructuring, redundancy or severance (in each case as determined in good faith by the Issuer) will be excluded;
- (g) any unrealised gains or losses in respect of Hedging Obligations or any ineffectiveness recognised in earnings related to qualifying hedge transactions or the fair value or changes therein recognised in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations will be excluded;
- (h) any non-cash compensation charge or expenses arising from any grant of stock, stock options or other equity-based awards will be excluded;



- (i) any goodwill or other intangible asset impairment charges will be excluded;
- (j) all deferred financing costs written off and premium paid in connection with any early extinguishment of Financial Indebtedness and any net gain or loss from any write-off or forgiveness of Financial Indebtedness will be excluded; and
- (k) all fair value adjustments on investment properties will be excluded.

“**Consolidated Net Interest**” for any period means:

- (a) consolidated interest and similar expenses (including amortization of original issue discount) of the Group incurred on Financial Indebtedness (including, for the avoidance of doubt (and without double counting), the interest expense on Financial Indebtedness of another Person to the extent such interest is actually paid by a member of the Group under any guarantee or indemnity) (calculated on a consolidated basis), whether payable in cash or capitalised;
- (b) **plus** the consolidated imputed interest from finance lease obligations of the Group in respect of that period;
- (c) **excluding** (i) accretion or accrual of discounted liabilities other than Financial Indebtedness, (ii) any expense resulting from the discounting of any Financial Indebtedness in connection with purchase accounting in connection with any acquisition to the extent otherwise included in interest expense under IFRS, (iii) penalties and interest related to taxes, (iv) amortization or write-off of deferred financing fees, debt issuance costs, terminated hedging obligations and other commissions, financing fees and expenses, (iv) any expensing of bridge, commitment or other financing fees and (v) any payments on any agreement that is classified as an “operating lease” under IFRS as in effect on the Issue Date; and
- (d) **minus** consolidated interest and similar income of the Group for such period.

Consolidated Net Interest shall be calculated in accordance with IFRS (except to the extent expressly provided otherwise by these Terms and Conditions) by reference to the Consolidated Financial Statements of the Issuer for the relevant period, consistent with the accounting principles applying to the financial statements of the Issuer by reference to which such calculations are made and without deducting or crediting any item more than once in any calculation.

“**Consolidated Net Leverage Ratio**” means, as of any date of determination, the ratio of (a) Consolidated Net Financial Indebtedness as of such date to (b) Consolidated EBITDA for the Relevant Period, in each case calculated with such pro forma and other adjustments as are consistent with the pro forma provisions set forth in the definition of “Interest Coverage Ratio”.

“**Control**” means direct or indirect, legal and/or beneficial, ownership of Shares by a person acting alone or as part of a concert (within the meaning of the Luxembourg Takeover Law), carrying an aggregate 33<sup>1</sup>/<sub>3</sub> per cent. or more of the voting rights for the Issuer (or instead a

higher percentage that will, in future after a change in law, trigger an obligation to make a mandatory takeover offer).

“**Credit Facility**” means one or more debt facilities, instruments or arrangements incurred (including revolving credit facilities, commercial paper facilities and overdraft facilities) or commercial paper facilities or indentures or trust deeds or note purchase agreements, in each case, with banks, other institutions, funds or investors, providing for revolving credit loans, term loans, performance guarantees, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit, bonds, notes debentures or other corporate debt instruments or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or trustees or other banks or institutions and whether provided under one or more credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term “**Credit Facilities**” shall include any agreement or instrument (a) changing the maturity of any indebtedness incurred thereunder or contemplated thereby, (b) adding Subsidiaries of the Issuer as additional borrowers, issuers or guarantors thereunder, (c) increasing the amount of indebtedness incurred thereunder or available to be borrowed thereunder or (d) otherwise altering the terms and conditions thereof.

“**Currency Agreement**” means, in respect of a Person, any spot or forward foreign exchange agreements and currency swap, currency option or other similar financial agreements or arrangements designed to protect such Person against or manage exposure to fluctuations in foreign currency exchange rates.

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

“**Day Count Fraction**” means, in respect of the calculation of an amount of interest on any Note for any period of time (from and including the first day of such period to but excluding the last day of such period) (the “**Interest Calculation Period**”):

- (a) if the Interest Calculation Period is equal to or shorter than the Determination Period during which it falls, the number of days in the Interest Calculation Period divided by the product of (i) the number of days in such Determination Period and (ii) the number of Determination Periods normally ending in any year; and
- (b) if the Interest Calculation Period is longer than one Determination Period, the sum of:

- (i) the number of days in such Interest Calculation Period falling in the Determination Period in which the Interest Calculation Period begins divided by the product of (A) the number of days in such Determination Period and (B) the number of Determination Periods normally ending in any year; and
- (ii) the number of days in such Interest Calculation Period falling in the next Determination Period divided by the product of (A) the number of days in such Determination Period and (B) the number of Determination Periods normally ending in any year.

**“Designated Non-Cash Consideration”** means the Fair Market Value of non-cash consideration received by the Issuer or one of its Subsidiaries in connection with an Asset Sale that is so designated as “Designated Non-Cash Consideration” pursuant to an Officers’ Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

**“Determination Date”** means each 15 April and 15 October.

**“Determination Period”** means each period from and including a Determination Date in any year to but excluding the next Determination Date.

**“Equity Interests”** means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

**“Equity Offering”** means a sale for cash after the Issue Date of Capital Stock of the Issuer.

**“Euro Equivalent”** means, with respect to any monetary amount in a currency other than euro, at any time for the determination thereof, the amount of euro obtained by converting such foreign currency involved in such computation into euro at the spot rate for the purchase of euro with the applicable foreign currency as published in *The Financial Times* in the “Currency Rates” section (or, if *The Financial Times* is no longer published, or if such information is no longer available in *The Financial Times*, such source as may be selected in good faith by the Issuer) on the date that is two Business Days prior to such determination.

**“Event of Default”** has the meaning set out in § 14(a).

**“Excess Proceeds”** has the meaning set out in § 11(c).

**“Fair Market Value”** means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress of either party, determined in good faith by the Issuer’s chief executive officer, chief financial officer or a responsible accounting or financial officer of the Issuer.

**“FATCA Withholding”** has the meaning set out in § 7 (*Taxes*).

**“Financial Indebtedness”** means, with respect to any Person, (without duplication) any indebtedness for or in respect of:

- (a) the principal of indebtedness of such Person for money borrowed;
- (b) the principal of obligations of such Person evidenced by bonds, notes, commercial papers or any similar instrument;
- (c) reimbursement obligations in respect of letters of credit, bankers' acceptances or similar instruments (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence), but only to the extent that the underlying obligation in respect of which the instrument was issued would be treated as Financial Indebtedness;
- (d) representing Capital Lease Obligations;
- (e) representing the balance deferred and unpaid of the purchase price of any property or services (except trade payables or similar obligations, including accrued expenses owed, to a trade creditor) due more than one year after such property is acquired or such services are completed;
- (f) representing any Hedging Obligations in respect of interest rate or currency hedging; and
- (g) the amount of any liability of such Person in respect of any guarantee or indemnity given by that Person for any Financial Indebtedness of another Person described in paragraphs (a) to (g) above,

in each such case only if and to the extent the relevant amount or obligation is recorded as "indebtedness" on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with IFRS; provided that in no event shall any of the following constitute Financial Indebtedness:

- (i) obligations under any cash management facilities, other than to the extent a net obligation for borrowed money is owed to any third party (other than the Issuer or a Subsidiary) thereunder;
- (ii) any lease, concession or license of property (or guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;
- (iii) in connection with the purchase by the Issuer or any Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;
- (iv) deposits collected from tenants in connection with lease agreements; and
- (v) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or

contributions or similar claims, obligations or contributions or social security or wage taxes.

“**Global Note**” has the meaning set out in § 2(b).

A “**Gross-up Event**” will occur if, as a result of any change in, or amendment or clarification to, the laws, regulations or other rules of the Issuer’s country of domicile for tax purposes, any of its political subdivisions or any authority or any other agency of or in such country having power to tax (including in case any such change, amendment or clarification has retroactive effect), or as a result of any change in, or amendment or clarification to, the interpretation or application, or as a result of any interpretation or application made for the first time, of any such laws, regulations or other rules by any legislative body, court or authority (including the enactment of any legislation and the publication of any decision of any court or authority), which change or amendment or clarification becomes effective on or after the date of issue of the Notes, the Issuer has or will become obliged to pay Additional Amounts pursuant to § 7 (*Taxes*) on the Notes, and that obligation cannot be avoided by the Issuer taking such measures it (acting in good faith) deems reasonable and appropriate.

“**Group**” means the Issuer and all of its direct or indirect Subsidiaries that are presently or in the future consolidated by it.

“**Hedging Obligations**” means, with respect to any specified Person, the obligations of such Person under:

- (a) interest rate swap agreements, (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;
- (b) other agreements or arrangements designed to manage interest rates or interest rate risk; and
- (c) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates, or commodity prices.

“**HL Group Acquisition**” means the acquisition by the Group of Hannover Leasing GmbH & Co. KG and its subsidiaries (the “**HL Group**”) on July 5, 2017 (the “**HL Acquisition Date**”).

“**IFRS**” means the International Financial Reporting Standards as published by the International Accounting Standards Board, as in effect from time to time.

“**incur**” means, with respect to any Financial Indebtedness or other obligation of any Person, to create, assume, guarantee or otherwise become liable in respect of such Financial Indebtedness or other obligation, and “**incurrence**” and “**incurred**” have the meanings correlative to the foregoing.

“**Initial Security Interest**” has the meaning set out in § 9.

“**Interest Coverage Ratio**” means, as of any date of determination, the ratio of (a) the aggregate amount of Consolidated EBITDA in the Relevant Period to (b) the aggregate amount of Consolidated Net Interest in the Relevant Period.

- (a) In the event that the Issuer or any of its Subsidiaries incurs, repays, repurchases, redeems, reprices, exchanges or otherwise discharges any Financial Indebtedness (other than ordinary working capital borrowings) subsequent to the commencement of the Relevant Period and on or prior to the date on which the event for which the calculation of the Interest Coverage Ratio is made (the “**Calculation Date**”), then the Interest Coverage Ratio will be calculated giving pro forma effect (as determined in good faith by an officer of the Issuer responsible for accounting or financial reporting), to such incurrence, repayment, repurchase, redemption, repricing, exchange or other discharge of Financial Indebtedness and the use of the proceeds therefrom, as if the same had occurred at the beginning of the Relevant Period; provided, however, that the pro forma calculation of Consolidated Net Interest shall not give effect to (x) any Financial Indebtedness incurred on the Calculation Date pursuant to one or more of the clauses under § 8(c) (other than for the purposes of the calculation of the Interest Coverage Ratio under clause (xi) thereunder) or (y) the discharge on the Calculation Date of any Financial Indebtedness to the extent that such discharge results from the proceeds of Financial Indebtedness incurred pursuant to one or more of the clauses under § 8(c).
- (b) In addition, for purposes of calculating the Interest Coverage Ratio:
- (i) acquisitions or investments that have been made by the Issuer or any of its Subsidiaries, including through mergers or consolidations, or by any Person or any of its subsidiaries acquired by the Issuer or any of its Subsidiaries, including increases in ownership of Subsidiaries, during the Relevant Period or subsequent to such Relevant Period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by an officer of the Issuer responsible for accounting or financial reporting), as if they had occurred on the first day of the Relevant Period;
  - (ii) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;
  - (iii) the Consolidated Net Interest attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Consolidated Net Interest will not be obligations of the Issuer or any of its Subsidiaries following the Calculation Date;
  - (iv) any Person that is a Subsidiary of the Issuer on the Calculation Date will be deemed to have been a Subsidiary of the Issuer at all times during the Relevant Period;

- (v) any Person that is not a Subsidiary of the Issuer on the Calculation Date will be deemed not to have been a Subsidiary of the Issuer at any time during such Relevant Period; and
  - (vi) if any Financial Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Financial Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Financial Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Financial Indebtedness).
- (c) Notwithstanding the foregoing, with respect to any Relevant Period beginning prior to the HL Acquisition Date, the preceding two paragraphs (a) and (b) shall not apply to the HL Group Acquisition (and no pro forma effect shall be given thereunder to the HL Group Acquisition or to the incurrence of Financial Indebtedness of HL Group existing at the time of the HL Group Acquisition); provided that for purposes of calculating the Interest Coverage Ratio for any such Relevant Period *pro forma* effect shall be given to the HL Group Acquisition as follows:
- (i) for the purpose of calculating Consolidated EBITDA, the actual amount of EBITDA of the HL Group for the period (the “**Actual HL Period**”) from the HL Acquisition Date until the last day of such Relevant Period shall be annualized (for the purpose of calculating the EBITDA of the HL Group, the definition “Consolidated EBITDA” shall apply *mutatis mutandis*); and
  - (ii) for the purpose of calculating Consolidated Net Interest, the actual amount of net interest of the HL Group for the Actual HL Period shall be annualized (for the purpose of calculating the net interest of the HL Group, the definition of “Consolidated Net Interest” shall apply *mutatis mutandis*),

provided, for the avoidance of doubt, that for purposes of calculating annualized net interest of the HL Group, interest expenses on Financial Indebtedness of the HL Group shall only be included, if and to the extent such Financial Indebtedness remains outstanding on the relevant Calculation Date.

- (d) For the purpose of calculating pro forma effects hereunder, pro forma effect may be given to anticipated acquisitions where the Financial Indebtedness to be incurred is to finance such acquisitions, in whole or in part, which have not yet occurred, but which have become subject to a definitive purchase agreement or contract.

“**Interest Payment Date**” means 15 April and 15 October in each year, commencing on 15 October 2018 (long first interest period).

“**Investment Grade Rating**”, with respect to the Notes, shall mean that the Notes (x) if the Notes have only one rating, one of the following, and (y) if the Notes have more than one

rating, at least two of the following: (a) a rating of “BBB-” or higher from Standard & Poor’s; (b) a rating of “Baa3” or higher from Moody’s; and (c) a rating of “BBB-” or higher from Fitch.

“**Investment Grade Status Commencement Date**” has the meaning set out in § 8(d).

“**Investment Grade Status End Date**” has the meaning set out in § 8(d).

“**Issue Date**” means 29 March 2018.

“**Issuer**” means Corestate Capital Holding S.A.

“**Lock-up Agreement**” means one or more agreements entered into between the Issuer, shareholders of the Issuer holding not less than 30% of the share capital of the Issuer, Noteholders holding not less than 50% of the aggregate outstanding principal amount of the Notes and holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer (“**2022 Convertible Notes**”) holding not less than 50% of the aggregate outstanding principal amount of the 2022 Convertible Notes, (whereas Notes and 2022 Convertible Notes, respectively, in relation to which the voting rights are suspended pursuant to section 6 of the German Bond Act (*Schuldverschreibungsgesetz*) are to be disregarded for the purposes of determining the relevant aggregate outstanding nominal amount of the Notes and the 2022 Convertible Notes, respectively) in relation to the restructuring of the Notes and the 2022 Convertible Notes.

“**Make-Whole Redemption Amount**” has the meaning set out in § 5(b).

“**Management Advances**” means loans or advances made to, or guarantees with respect to loans or advances made to, directors, officers or employees of the Issuer or any Subsidiary: (a) in respect of travel, entertainment or moving related expenses incurred in the ordinary course of business; (b) in respect of moving related expenses incurred in connection with any closing or consolidation of any facility or office; or (c) not exceeding EUR 2,000,000 in the aggregate outstanding at any time.

“**Market Capitalization**” means an amount equal to (a) the total number of issued and outstanding shares of common stock or common equity interests of the Issuer on the date of declaration of the relevant dividend multiplied by (b) the arithmetic mean of the closing prices per share of such common stock or common equity interests for the 30 consecutive trading days immediately preceding the date of declaration of such dividend.

“**Material Subsidiary**” means any Subsidiary of the Issuer (a) that has total assets as shown in the latest audited non-consolidated annual accounts (or, if such Subsidiary itself prepares consolidated annual accounts, whose consolidated total assets as shown in the latest audited consolidated annual accounts) of such Subsidiary and used for the purpose of preparing the latest audited consolidated annual accounts of the Issuer, of at least 5 per cent. of the total assets as shown in the latest audited consolidated annual accounts of the Issuer and its consolidated subsidiaries or (b) that contributes 5 per cent. or more of the annual revenue of the Group on a consolidated basis (measured on the basis of the aforementioned annual accounts).

“**Maturity Date**” means 31 July 2023.



**“Net Proceeds”** means the aggregate cash proceeds received by the Issuer or any of its Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration or cash equivalents substantially concurrently received in any Asset Sale), net of (a) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, (b) taxes paid or payable as a result of the Asset Sale, (c) all distributions and other payments required to be made to minority interest holders (other than the Issuer or any of its Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Sale, and (d) any reserve for adjustment or indemnification obligations in respect of the sale price of such asset or assets established in accordance with IFRS.

**“Noteholder”** means the holder of a proportional co-ownership interest or similar right in the Global Note.

**“Noteholders’ Representative”** has the meaning set out in § 19(e).

**“Notes”** and **“Note”** has the meaning set out in § 2(a).

**“Notes Offer”** has the meaning set out in § 11(b)(i).

**“Notice of Early Redemption”** has the meaning set out in § 5(b).

**“Obligations”** means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Financial Indebtedness.

**“Officers’ Certificate”** means a certificate signed by an officer of the Issuer.

**“Paying Agents”** has the meaning set out in § 15(a).

**“Permitted Business”** means (a) any businesses in activities engaged in by the Issuer or any of its Subsidiaries on the Issue Date or (b) any businesses that are related, complementary, incidental, ancillary or similar to the foregoing or are reasonable extensions or developments of any thereof in the European Union, the United Kingdom, Switzerland, Norway, Canada or any state of the United States.

**“Permitted Debt”** has the meaning set out in § 8(c).

**“Permitted Refinancing Indebtedness”** means any Financial Indebtedness that refinances any Financial Indebtedness in compliance with these Terms and Conditions, provided, however, that:

- (a) such Permitted Refinancing Indebtedness has a stated maturity that is either (i) no earlier than the stated maturity of the Financial Indebtedness being refinanced or (ii) after the final maturity date of the Notes;
- (b) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Permitted Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Financial Indebtedness being refinanced;

- (c) such Permitted Refinancing Indebtedness has an aggregate principal amount (or if issued with an original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if incurred with original issue discount, the aggregate accreted value) then outstanding or committed (plus all accrued interest on the Financial Indebtedness being refinanced and fees and expenses, including any premiums incurred in connection with such refinancing) under the Financial Indebtedness being refinanced; and
- (d) if the Financial Indebtedness being refinanced is expressly subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated to the Notes on terms at least as favorable to the holders of the Notes as those contained in the documentation governing the Financial Indebtedness being refinanced,

provided that if such refinancing in full or in part of the Financial Indebtedness is initially funded from sources other than Permitted Refinancing Indebtedness, the Permitted Refinancing Indebtedness is raised within 12 months of such refinancing and is identified in good faith by the Issuer as being a replacement of such Financial Indebtedness.

**“Permitted Security Interests”** means:

- (a) Security Interests in favor of the Issuer or any Subsidiary;
- (b) Security Interests on property (including Capital Stock) of a Person existing at the time such Person becomes a Subsidiary (or at the time the Issuer or any of its Subsidiaries acquires such property) or is merged with or into or consolidated with the Issuer or any Subsidiary; provided that (i) such Security Interests were not incurred in contemplation of such Person becoming a Subsidiary or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Subsidiary or is merged with or into or consolidated with the Issuer or any Subsidiary or that are otherwise acquired and (ii) such Security Interests are securing Financial Indebtedness permitted pursuant to § 8 (*Limitations on the Incurrence of Financial Indebtedness*);
- (c) Security Interests to secure the performance of statutory obligations, trade contracts, insurance, surety or appeal bonds, workers’ compensation obligations, leases (including, without limitation, statutory and common law landlord’s liens), performance bonds, surety and appeal bonds or other obligations of a like nature incurred in the ordinary course of business (including Security Interests to secure letters of credit issued to assure payment of such obligations);
- (d) Security Interests existing on the Issue Date;
- (e) Security Interests for taxes, assessments or governmental charges or claims that (i) are not yet due and payable or (ii) are being contested in good faith by appropriate proceedings;

- (f) Security Interests imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Security Interests, in each case, incurred in the ordinary course of business;
- (g) Security Interests created for the benefit of (or to secure) the Notes;
- (h) Security Interests to secure any Permitted Refinancing Indebtedness permitted to be incurred under these Terms and Conditions; provided, however, that the new Security Interest is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Security Interest arose, could secure the original Security Interest (plus improvements and accessions to such property or proceeds or distributions thereof);
- (i) Security Interests on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;
- (j) bankers' Security Interests, rights of setoff or similar rights and remedies as to deposit accounts, Security Interests arising out of judgments or awards not constituting an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;
- (k) Security Interests on cash and Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Financial Indebtedness;
- (l) Security Interests on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (m) Security Interests arising solely by virtue of banks' standard business terms and conditions;
- (n) leases (including operating leases), licenses, subleases and sublicenses of assets in the ordinary course of business;
- (o) Security Interests arising out of conditional sale, title retention, consignment or similar arrangements for the sale of assets entered into in the ordinary course of business;
- (p) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on property over which the Issuer or any Subsidiary has easement rights or on any real property leased by the Issuer or any Subsidiary and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings or compulsory purchase order affecting real property;

- (q) Security Interests on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
- (r) Security Interests securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities;
- (s) pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the Issuer or any Subsidiary's business or operations as Security Interests only for Financial Indebtedness to a bank or financial institution directly relating to the goods or documents on or over which the pledge exists;
- (t) Security Interests over cash paid into an escrow account pursuant to any purchase price retention arrangement as part of any disposal by the Issuer or a Subsidiary on condition that the cash paid into such escrow account in relation to a disposal does not represent more than 15 per cent. of the net proceeds of such disposal;
- (u) limited recourse Security Interests in respect of the ownership interests in, or assets owned by, any joint ventures which are not Subsidiaries securing obligations of such joint ventures;
- (v) Security Interests created on any asset of the Issuer or a Subsidiary established to hold assets of any stock option plan or any other management or employee benefit or incentive plan or unit trust of the Issuer or a Subsidiary securing any loan to finance the acquisition of such assets;
- (w) Security Interests on escrowed proceeds for the benefit of the related holders of debt securities or other Financial Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the incurrence of any Financial Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Financial Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;
- (x) Security Interests pursuant to (i) Section 8a of the German Partial Retirement Act (*Altersteilzeitgesetz*); (ii) Section 7d of the German Social Law Act No. 4 (*Sozialgesetzbuch IV*); or (iii) Section 1136 (alone or in conjunction with Section 1192(1)) of the German Civil Code (*Bürgerliches Gesetzbuch*);
- (y) Security Interests created or subsisting by virtue of hereditary building rights (*Erbbaurechte*);
- (z) Security Interest securing Acquired Warehouse Financial Indebtedness or Warehouse Acquisition Additional Financial Indebtedness;
- (aa) Security Interests securing Financial Indebtedness of the Issuer and its Subsidiaries that does not exceed EUR 10,000,000 at any one time outstanding;

- (bb) Security Interests on property or assets of a Subsidiary of the Issuer securing Financial Indebtedness of any Subsidiary of the Issuer;
- (cc) Security Interests securing Financial Indebtedness permitted by § 8(c)(iv), covering only the assets acquired, improved, constructed or leased with the proceeds of such Financial Indebtedness, and any improvements or accessions to such assets; and
- (dd) Security Interests securing Hedging Obligations permitted to be incurred under § 8 (*Limitations on the Incurrence of Financial Indebtedness*).

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company or government (or any agency or political subdivision thereof) or any other entity.

“**Present Value**” has the meaning set out in § 5(b).

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

“**Principal Paying Agent**” has the meaning set out in § 15(a).

“**Qualified Majority**” has the meaning set out in § 9(b).

“**Redemption Calculation Date**” has the meaning set out in § 5(b).

“**Redemption Date**” means the date fixed for redemption in the Issuer’s notice in accordance with § 5(b) or § 5(c), which must be a Business Day.

“**Relevant Period**” means, as of any date of determination, the most recent four consecutive fiscal quarters ending prior to such date of determination for which internal Consolidated Financial Statements of the Issuer are available.

“**Restricted Payments**” means any of the following:

- (a) to declare or pay any dividend on or make any distribution (whether made in cash, securities or other property, but excluding dividends or distributions made in the form of Equity Interests of the Issuer) with respect to any of the Capital Stock of the Issuer or any of its Subsidiaries (including, without limitation, any payment in connection with any merger, consolidation, amalgamation or other combination involving the Issuer or any Subsidiary of the Issuer) (other than to the Issuer or any wholly owned Subsidiary of the Issuer);
- (b) to purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger, consolidation, amalgamation or other combination), directly or indirectly, any shares of the Issuer’s Capital Stock or any Capital Stock of any direct or indirect parent company of the Issuer held by Persons other than the Issuer or a Subsidiary of the Issuer or any options, warrants or other rights to acquire such shares of Capital Stock; or
- (c) to make any principal payment on, or repurchase, redeem, defease or otherwise acquire or retire for value, prior to any scheduled principal payment, sinking fund payment or stated maturity, any Subordinated Debt (other than intercompany

Financial Indebtedness between the Issuer and any of its Subsidiaries or among Subsidiaries of the Issuer).

If any Restricted Payment described above is not made in cash, the amount of the proposed Restricted Payment will be the fair market value of the asset to be transferred as at the date of transfer.

“**SchVG**” has the meaning set out in § 19(a).

“**Security Interest**” means a mortgage, land charge, charge, pledge, lien, assignment or transfer of title for security purposes, retention of title arrangement or other *in rem* security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Shares**” means the dematerialised ordinary share of the Issuer.

“**Subordinated Debt**” means Financial Indebtedness of the Issuer that is subordinated in right of payment to the Notes.

“**Subsidiary**” means any Person that must be consolidated with the Issuer for the purposes of preparing Consolidated Financial Statements of the Issuer.

“**Taxes**” has the meaning set out in § 7 (*Taxes*).

“**Terms and Conditions**” means these terms and conditions of the Notes.

“**Total Assets**” means, as of any date of determination, the total assets of the Issuer and its Subsidiaries on a consolidated basis in accordance with IFRS as shown on the most recent available consolidated balance sheet of the Issuer preceding such date.

“**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).

“Warehouse Acquisition Additional Financial Indebtedness” has the meaning set out in § 8(c)(xii).

“**Warehouse Asset Acquisition**” means any acquisition of Warehouse Assets, including by way of the acquisition, directly or indirectly, of Capital Stock of any Person owning Warehouse Assets.

“**Warehouse Asset**” means any asset used or useful for a Permitted Business (including Capital Stock or other securities of any Person primarily engaged in a Permitted Business); *provided* such asset is acquired by the Issuer or any of its Subsidiaries with a view (at the time of such acquisition) to disposing of it within 15 months of acquisition.

“**Weighted Average Life to Maturity**” means, when applied to any Financial Indebtedness, at any date, the quotient obtained by dividing: (a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Financial Indebtedness, multiplied by the amount of such payment by (b) the sum of all such payments.

## § 2 FORM AND DENOMINATION

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

EUR 300,000,000

(in words: Euro three-hundred million)

is divided into notes in bearer form with a principal amount of EUR 100,000 (the “**Principal Amount**”) each (the “**Notes**” and each a “**Note**”).

- (b) The Notes are represented by a global Note (the “**Global Note**”) without interest coupons. The Global Note will be signed manually by one or more authorised signatories of the Issuer and will be authenticated by or on behalf of the Principal Paying Agent.

Definitive Notes and interest coupons will not be issued. The Noteholders will have no right to require the issue of definitive Notes or interest coupons.

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

- (c) The Noteholders will receive proportional co-ownership interests or similar rights in the Global Note, 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 Notes and Clearstream Frankfurt has agreed to maintain a register showing the aggregate number of the Notes represented by the Global Note under the name of Clearstream Frankfurt, and Clearstream Frankfurt has agreed, as agent of the Issuer, to maintain records of the Notes credited to the accounts of the accountholders of Clearstream Frankfurt for the benefit of the holders of the co-ownership interests in the Notes represented by the Global Note, and the Issuer and Clearstream Frankfurt have agreed, for the benefit of the holders of co-ownership interests in the Notes, that the actual number of Notes from time to time will be evidenced by the records of Clearstream Frankfurt.

## § 3 STATUS OF THE NOTES

The Notes constitute unsubordinated and unsecured obligations of the Issuer ranking *pari passu* among themselves and, in the event of the dissolution, liquidation or insolvency of the Issuer or any proceeding to avoid insolvency of the Issuer, *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.

#### § 4 INTEREST

- (a) The Notes will bear interest on their Principal Amount at a rate of 3.50 per cent. per annum from and including 29 March 2018. Interest is payable semi-annually in arrear on each Interest Payment Date, commencing on 15 October 2018 (long first interest period).
- (b) If a Note is redeemed, such Note will cease to bear interest from the end of the day immediately preceding the due date for redemption.
- (c) If the Issuer fails to redeem the Notes when due, interest will continue to accrue on the Principal Amount beyond the end of the day immediately preceding the due date for redemption until the end of the day immediately preceding the actual date of redemption of the Notes. In this case the applicable rate of interest will correspond to the statutory default rate of interest established by German law.
- (d) Where interest is to be calculated in respect of any period of time, the interest will be calculated on the basis of the Day Count Fraction.
- (e) The interest originally payable on 15 April 2023, as well as any interest payable on a subsequent Interest Payment Date is payable on the Maturity Date.

#### § 5 MATURITY, REDEMPTION AND PURCHASE

- (a) To the extent that the Notes have not previously been redeemed or repurchased and cancelled they will be redeemed at their Principal Amount plus accrued interest on the Maturity Date.
- (b) The Issuer may, at any time, on giving not less than 30 nor more than 60 days' prior notice to the Noteholders in accordance with § 16 (*Notices*), redeem all, but not some only, of the outstanding Notes with effect from the Redemption Date.

Where such notice is given, the Issuer will redeem the Notes on the Redemption Date at their Make-Whole Redemption Amount plus accrued interest to but excluding the Redemption Date.

The notice of early redemption (the "**Notice of Early Redemption**") is irrevocable and must state the Redemption Date and the Make-Whole Redemption Amount calculated by the Calculation Agent.

The "**Make-Whole Redemption Amount**" per Note shall be the higher of:

- (i) the Principal Amount; or
- (ii) the Present Value.

The "**Present Value**" will be the sum, rounded to 2 decimal places with EUR 0.005 being rounded upwards, of



- (i) the Principal Amount to be redeemed which would otherwise become due on the Maturity Date discounted from the Maturity Date to the Redemption Date on the basis of the Benchmark Yield plus 0.50 per cent; and
- (ii) each remaining interest payment which would otherwise become due on each Interest Payment Date falling after the Redemption Date to and including the Maturity Date (excluding any interest accrued to but excluding the Redemption Date), each discounted from its scheduled Interest Payment Date to the Redemption Date on the basis of the Benchmark Yield plus 0.50 per cent.

The Calculation Agent will calculate the Present Value by applying the Day Count Fraction set out in subparagraph (d) of § 4 (*Interest*).

The "**Benchmark Yield**" means the yield determined by the Calculation Agent at or around noon (Frankfurt time) on the Redemption Calculation Date of the "Bundesobligation 0% due 14 April 2023" of the Federal Republic of Germany (ISIN DE0001141778). If such yield is not available at that time on such date the Benchmark Yield shall be the yield of a substitute benchmark security chosen by the Calculation Agent in its reasonable discretion, which has a maturity comparable to the remaining term of the Note to the Maturity Date, that would be used at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Maturity Date.

"**Redemption Calculation Date**" means the tenth day prior to the day on which the Notice of Early Redemption is deemed to have become effective pursuant to § 16 (*Notices*), or in case such tenth day is not a Business Day, the immediately preceding Business Day.

- (c) The Issuer may, on giving not less than 30 nor more than 60 days' prior notice to the Noteholders in accordance with § 16 (*Notices*), redeem all, but not some only, of the outstanding Notes with effect from the Redemption Date if at any time:
  - (i) a Gross-up Event occurs; or
  - (ii) the aggregate principal amount of the Notes outstanding and held by persons other than the Issuer and its Subsidiaries is equal to or less than 15 per cent. of the aggregate principal amount of the Notes originally issued (including any Notes additionally issued in accordance with § 17 (*Issue of Additional Notes*)).

Where such notice is given, the Issuer will redeem the Notes on the Redemption Date at their Principal Amount plus accrued interest to but excluding the Redemption Date.

The notice of early redemption is irrevocable and must state the Redemption Date and the facts which establish the right of the Issuer to redeem the Notes.

In the event of the occurrence of a Gross-up Event, no such notice of redemption may be given earlier than 90 days prior to the earliest date on which the Issuer would be for the first time obliged to pay the Additional Amounts pursuant to § 7 (*Taxes*).

- (d) Acquisition of Control.

- (i) If an Acquisition of Control occurs, the Issuer will, without undue delay after becoming aware thereof, fix the Acquisition of Control Record Date and give notice in accordance with § 16 (*Notices*) of the Acquisition of Control and the Acquisition of Control Record Date.
- (ii) If the Issuer gives notice in accordance with § 5(e)(i) of an Acquisition of Control, each Noteholder may at its option on giving not less than 10 days' notice prior to the Acquisition of Control Record Date declare all or some only of its Notes not previously redeemed due by giving notice in accordance with § 5(e)(iii), which notice will take effect on the Acquisition of Control Record Date.
- (iii) Any notice declaring Notes due in accordance with this § 5(d) will be made by means of a declaration in text form in the German or English language to the Principal Paying Agent in accordance with the then applicable rules and procedures of the Clearing System together with evidence which may be in the form of a certificate of the Noteholder's Custodian certifying that such Noteholder, at the time of such notice, is the holder of the relevant Notes or in any other appropriate manner. The notice shall be irrevocable.

If a Noteholder gives notice in accordance with this § 5(d)(iii), the Issuer must redeem the Note(s) for which the put right is being exercised on the Acquisition of Control Record Date at 101 per cent. of their Principal Amount plus accrued interest to but excluding the Acquisition of Control Record Date.

- (e) The Issuer and any of its affiliates may at any time purchase Notes, in the open market or otherwise.

Any Notes purchased by the Issuer or any of its affiliates may be cancelled or held and resold.

## **§ 6 PAYMENTS**

- (a) All payments on the Notes 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 Notes made to the Clearing System or to its order will discharge the liability of the Issuer under the Notes to the extent of the sums so paid.
- (b) If the due date for payment of any amount in respect of the Notes is not a Business Day, then the Noteholder will not be entitled to payment until the next day which is a Business Day. In such case, the Noteholders will not be entitled to further interest or to any other compensation on account of such delay.

## **§ 7 TAXES**

All payments of principal and interest in respect of the Notes will be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature ("**Taxes**") imposed, levied, collected, withheld or assessed by the Issuer's country of domicile for tax purposes or any political subdivision or any authority or

any agency of or in the Issuer's country of domicile for tax purposes that has power to tax, unless the Issuer is compelled by law to make such withholding or deduction. If the Issuer is required to make such withholding or deduction, the Issuer will pay such additional amounts (the "**Additional Amounts**") to the Noteholders as the Noteholders would have received if no such withholding or deduction had been required, except that no such Additional Amounts will be payable for any such Taxes in respect of any Note:

- (a) which are payable by any person acting as custodian bank or collecting agent on behalf of a Noteholder, or otherwise in any manner which does not constitute a deduction or withholding by the Issuer from payments of principal or interest made by it; or
- (b) which are payable by reason of the Noteholder having, or having had, some personal or business connection with the Issuer's country of domicile for tax purposes and not merely by reason of the fact that payments in respect of the Notes are, or for purposes of taxation are deemed to be, derived from sources in, or are secured in, the Issuer's country of domicile for tax purposes; or
- (c) which are deducted or withheld pursuant to (i) any European Union directive or regulation concerning the taxation of interest income, or (ii) any international treaty or understanding relating to such taxation and to which the Issuer's country of domicile for tax purposes or the European Union is a party, or (iii) any provision of law implementing, or complying with, or introduced to conform with, such directive, regulation, treaty or understanding; or
- (d) which are payable by reason of a change in law that becomes effective more than 30 days after the relevant payment becomes due, or is duly provided for and notice thereof is published in accordance with § 16 (*Notices*), whichever occurs later.

In any event, the Issuer is authorised to withhold or deduct from payments on the Notes any withholding or deduction of any amounts required by the rules of U.S. Internal Revenue Code of 1986 Sections 1471 through 1474 (or any amended or successor provisions or any associated regulations or other official guidance), pursuant to any inter-governmental agreement or implementing legislation adopted by another jurisdiction in connection with these provisions, or pursuant to any agreement with the U.S. Internal Revenue Service ("**FATCA Withholding**"), and will have no obligation to indemnify any investor or pay additional amounts in relation to any FATCA Withholding deducted or withheld by the Issuer, the relevant Paying Agent or any other party.

## § 8 LIMITATIONS ON THE INCURRENCE OF FINANCIAL INDEBTEDNESS

### (a) *Limitation*

The Issuer undertakes that, subject to the exceptions set out below under § 8(b) and (c), the Issuer will not, and will procure that none of its Subsidiaries will, after the Issue Date, incur any Financial Indebtedness.

### (b) *Ratio Debt*

The provisions of § 8(a) will not limit the incurrence of Financial Indebtedness by the Issuer or its Subsidiaries if, on the date of the incurrence of such Financial Indebtedness:

- (i) after giving effect to the incurrence of such Financial Indebtedness and the application of the net proceeds therefrom, on a pro forma basis, the Consolidated Net Leverage Ratio does not exceed 3.50 to 1.00; and
- (ii) after giving effect to the incurrence of such Financial Indebtedness and the application of the net proceeds therefrom, on a pro forma basis, the Interest Coverage Ratio is at least 2.00 to 1.00;

provided that the Financial Indebtedness that may be incurred by Subsidiaries of the Issuer pursuant to this §8(b) at any time outstanding does not exceed the greater of (x) EUR 25,000,000 and (y) 2.0 per cent. of Total Assets.

### (c) *Permitted Debt*

The provisions of § 8(a) will not limit the incurrence of Financial Indebtedness by the Issuer or its Subsidiaries of (and the Issuer and its Subsidiaries will at all times be permitted to incur) the following Financial Indebtedness (“**Permitted Debt**”):

- (i) the incurrence by the Issuer or any Subsidiary of Financial Indebtedness under Credit Facilities in an aggregate principal amount at any one time outstanding under this § 8(c)(i) not to exceed the greater of (A) EUR 60,000,000 and (B) 4.0 per cent. of Total Assets, plus in the case of any refinancing of any Financial Indebtedness permitted under this § 8(c)(i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing;
- (ii) Financial Indebtedness outstanding on the Issue Date (other than Financial Indebtedness described in § 8(c)(iii)) after giving effect to the use of proceeds of the Notes;
- (iii) the incurrence by the Issuer of Financial Indebtedness represented by the Notes;
- (iv) the incurrence by the Issuer or any Subsidiary of Financial Indebtedness representing Capital Lease Obligations, mortgage financings, purchase money obligations or other financings incurred for the purpose of financing all or any part of the purchase price, lease expense, rental payments or cost

of design, construction, installation or improvement of property, plant or equipment or other assets (including Capital Stock) used in the business of the Issuer or any of its Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred or issued to renew, refund, refinance, replace, defease or discharge any Financial Indebtedness incurred pursuant to this § 8(c)(iv), not to exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets at any time outstanding;

- (v) the incurrence by the Issuer or any Subsidiary of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Financial Indebtedness (other than intercompany Financial Indebtedness) incurred under § 8(b) or § 8(c)(ii) and (iii) or § 8(c)(v) or (xi);
- (vi) the incurrence by the Issuer or any Subsidiary of intercompany Financial Indebtedness between or among the Issuer or any Subsidiary; provided that:
  - (A) if the Issuer is the obligor on such Financial Indebtedness, such Financial Indebtedness must be unsecured and ((I) except in respect of the intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Issuer and its Subsidiaries and (II) only to the extent legally permitted (the Issuer and its Subsidiaries having completed all procedures required in the reasonable judgment of directors or officers of the obligee or obligor to protect such Persons from any penalty or civil or criminal liability in connection with the subordination of such Financial Indebtedness)) expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Issuer; and
  - (B) any subsequent issuance or transfer of Equity Interests that results in any such Financial Indebtedness being held by a Person other than the Issuer or a Subsidiary and any sale or other transfer of any such Financial Indebtedness to a Person that is not either the Issuer or a Subsidiary, will be deemed, in each case, to constitute an incurrence of such Financial Indebtedness by the Issuer or such Subsidiary, as the case may be, that was not permitted by this § 8(c)(vi);
- (vii) the incurrence by the Issuer or any Subsidiary of Hedging Obligations for bona fide hedging purposes of the Issuer and its Subsidiaries not for speculative purposes (as determined in good faith by the Issuer or such Subsidiary, as the case may be);
- (viii) the incurrence by the Issuer or any of its Subsidiaries of Financial Indebtedness in respect of workers' compensation claims, self-insurance

obligations, captive insurance companies, bankers' acceptances, performance and surety bonds in the ordinary course of business;

- (ix) the incurrence by the Issuer or any of its Subsidiaries of Financial Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Financial Indebtedness is covered within 30 Business Days;
- (x) Financial Indebtedness represented by guarantees of any Management Advances;
- (xi) (A) Financial Indebtedness of any Person outstanding on the date on which such Person becomes a Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Issuer or any Subsidiary or (B) Financial Indebtedness incurred by the Issuer to provide all or any portion of the funds used to consummate the transaction or series of related transactions pursuant to which such Person became a Subsidiary or was otherwise acquired by the Issuer or a Subsidiary; provided, however, with respect to this § 8 (c)(xi), that, at the time of the acquisition or other transaction pursuant to which such Financial Indebtedness was incurred or deemed to be incurred, (I) the Issuer would have been able to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to paragraph (b) above after giving effect to the incurrence of such Financial Indebtedness pursuant to this §8(c)(xi) calculated on a pro forma basis or (II) the Interest Coverage Ratio would not be less and the Consolidated Net Leverage Ratio would not be greater than it was immediately prior to giving effect to such acquisition or other transaction on a pro forma basis;
- (xii) Financial Indebtedness of any Person (A) outstanding on the date on which such Person becomes a Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Issuer or any Subsidiary in connection with a Warehouse Asset Acquisition (the “**Acquired Warehouse Financial Indebtedness**”) or (B) incurred to provide all or any portion of the funds used to consummate a Warehouse Asset Acquisition (the “**Warehouse Acquisition Additional Financial Indebtedness**”) and, in each case, Permitted Refinancing Indebtedness in respect thereof, *provided that*:
  - (I) any Financial Indebtedness incurred under this § 8(c)(xii) shall no longer be permitted under this § 8(c)(xii) if it remains outstanding longer than 15 months from the date on which the related Warehouse Asset Acquisition is consummated; and
  - (II) the aggregate principal amount of Financial Indebtedness incurred pursuant to this § 8(c)(xii) at any time outstanding does not exceed

the greater of (x) EUR 150,000,000 and (y) 100 per cent. of Consolidated EBITDA for the Relevant Period;

- (xiii) Financial Indebtedness arising from agreements of the Issuer or a Subsidiary providing for customary indemnification, obligations in respect of earnouts or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Equity Interests of a Subsidiary, provided that the maximum liability of the Issuer and its Subsidiaries in respect of all such Financial Indebtedness shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Issuer and its Subsidiaries in connection with such disposition;
- (xiv) Financial Indebtedness of the Issuer and its Subsidiaries in respect of (A) letters of credit, surety, performance or appeal bonds, completion guarantees, judgment, advance payment, customs, VAT or other tax guarantees or similar instruments issued in the ordinary course of business of such Person and not in connection with the borrowing of money, including letters of credit or similar instruments in respect of self-insurance and workers' compensation obligations; provided, however, that upon the drawing of such letters of credit or other instrument, such obligations are reimbursed within 30 Business Days following such drawing; (B) any customary cash management, cash pooling or netting or setting off arrangements with Affiliates; and (C) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (xv) the guarantee by the Issuer or any Subsidiary of Financial Indebtedness of the Issuer or any Subsidiary to the extent that the guaranteed Financial Indebtedness was permitted to be incurred under another provision of this § 8;
- (xvi) Financial Indebtedness in an aggregate outstanding principal amount which, when taken together with any Permitted Refinancing Indebtedness in respect thereof and the principal amount of all other Financial Indebtedness incurred pursuant to this § 8(c)(xvi) and then outstanding, will not exceed 100 per cent. of the net cash proceeds received by the Issuer from the issuance or sale (other than to a Subsidiary) of its Capital Stock or otherwise contributed to the equity of the Issuer, in each case, subsequent to the Issue Date; provided, however, that (A) any such net cash proceeds that are so received or contributed shall be excluded for purposes of making Restricted Payments under § 12(b)(ii) or § 12(c)(iv) to the extent the Issuer and its Subsidiaries incur Financial Indebtedness in reliance thereon and (B) any net cash proceeds that are so received or contributed shall be excluded for purposes of incurring Financial Indebtedness

pursuant to this §8(c)(xvi) to the extent the Issuer or any of its Subsidiaries makes a Restricted Payment using such net cash proceeds under paragraph § 12(b)(ii)(B) in reliance thereon; and

- (xvii) the incurrence by the Issuer or any Subsidiary of Financial Indebtedness in an aggregate principal amount at any time outstanding, including all Financial Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Financial Indebtedness incurred pursuant to this § 8(c)(xvii), not to exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets.

For purposes of determining compliance with this § 8, in the event that an item of Financial Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in § 8(c)(i) through (xvii), or is entitled to be incurred pursuant to § 8(b), the Issuer, in its sole discretion, will be permitted to classify such item of Financial Indebtedness on the date of its incurrence and only be required to include the amount and type of such Financial Indebtedness in one of such clauses and will be permitted on the date of such incurrence to divide and classify an item of Financial Indebtedness in more than one of the types of Financial Indebtedness described in § 8(b) and this § 8(c), from time to time to reclassify all or a portion of such item of Financial Indebtedness, in any manner that complies with this § 8. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Financial Indebtedness in the form of additional Financial Indebtedness, will not be deemed to be an incurrence of Financial Indebtedness for the purposes of this § 8. For purposes of determining compliance with this § 8, with respect to Financial Indebtedness incurred under a Credit Facility, re-borrowings of amounts previously repaid pursuant to “cash sweep” or “clean down” provisions or any similar provisions under a Credit Facility that provide that Financial Indebtedness is deemed to be repaid periodically shall only be deemed for the purposes of this § 8 to have been incurred on the date such Financial Indebtedness was first incurred and not on the date of any subsequent re-borrowing thereof.

For purposes of determining compliance with, and the outstanding principal amount of any particular Financial Indebtedness incurred pursuant to, this § 8, in the case of any Permitted Refinancing Indebtedness, when measuring the outstanding amount of such Financial Indebtedness, such amount shall not include any amounts necessary to pay accrued and unpaid interest and any fees and expenses, including any premium and defeasance costs, indemnity fees, discounts, premiums and other costs and expenses incurred in connection with such refinancing. Notwithstanding anything in this § 8 to the contrary, in the case of any Financial Indebtedness incurred to refinance Financial Indebtedness initially incurred in reliance on a clause of this § 8(c) measured by reference to a percentage of Total Assets at the time of incurrence, if such refinancing would cause the percentage of Total Assets restriction to be exceeded if calculated based on the percentage of Total Assets on the date of such refinancing, such percentage of Total Assets restriction shall not be deemed to be exceeded so long as the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of such Financial Indebtedness being refinanced, and giving effect to the manner of measurement described in the immediately preceding sentence.



For purposes of determining compliance with any restriction on the incurrence of Financial Indebtedness in euro where Financial Indebtedness is denominated in a different currency, the amount of such Financial Indebtedness will be the Euro Equivalent determined on the date of such determination; provided that if any such Financial Indebtedness denominated in a different currency is subject to a Currency Agreement (with respect to euro) covering principal amounts payable on such Financial Indebtedness, the amount of such Financial Indebtedness expressed in euro will be adjusted to take into account the effect of such agreement. The principal amount of any Permitted Refinancing Indebtedness incurred in the same currency as the Financial Indebtedness being refinanced will be the Euro Equivalent of the Financial Indebtedness refinanced determined on the date such Financial Indebtedness being refinanced was initially incurred, except to the extent that such Euro Equivalent was determined based on a Currency Agreement (with respect to euro), in which case the amount of such Permitted Refinancing Indebtedness will be adjusted to take into account the effect of such agreement. Notwithstanding any other provision of this § 8, for purposes of determining compliance with this § 8, increases in Financial Indebtedness solely due to fluctuations in the exchange rates of currencies or currency values will not be deemed to exceed the maximum amount that the Issuer or a Subsidiary may incur under this § 8.

The amount of any Financial Indebtedness outstanding as of any date will be:

- (i) in the case of any Financial Indebtedness issued with original issue discount, the amount of the liability in respect thereof determined in accordance with IFRS;
- (ii) the principal amount of the Financial Indebtedness, in the case of any other Financial Indebtedness;
- (iii) in respect of Financial Indebtedness of another Person secured by a Security Interest on the assets of the specified Person, the lesser of:
  - (A) the Fair Market Value of such assets at the date of determination; and
  - (B) the amount of the Financial Indebtedness of the other Person.

The Issuer will not incur any Financial Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer unless such Financial Indebtedness is also contractually subordinated in right of payment to the Notes on substantially identical terms; provided, however, that no Financial Indebtedness will be deemed to be contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of not being guaranteed by another Person or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Financial Indebtedness.

**(d) *Suspension of Limitations upon Achievement of Investment Grade Status***

If on any date following the Issue Date the Notes have achieved an Investment Grade Rating and no Event of Default has occurred and is continuing, then beginning on that day (the “**Investment Grade Status Commencement Date**”) and continuing until such time, if any,

at which the Notes cease to have an Investment Grade Rating (the “**Investment Grade Status End Date**”), if any, the restrictions and limitations to incur Financial Indebtedness pursuant to § 8(a) shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such restrictions and undertakings will again apply according to its terms from the Investment Grade Status End Date, if any; provided that any Financial Indebtedness incurred during the time between an Investment Grade Status Commencement Date and the related Investment Grade Status End Date will, as of the Investment Grade Status End Date, be classified as having been incurred pursuant to § 8(c)(ii).

## **§ 9 NEGATIVE PLEDGE**

The Issuer will not, and will not cause or permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Security Interest of any kind securing Financial Indebtedness (such Security Interest, the “**Initial Security Interest**”) upon any of their property or assets, now owned or hereafter acquired, except (a) Permitted Security Interests or (b) Security Interests on property or assets that are not Permitted Security Interests if the Notes are secured equally and rateably with such Financial Indebtedness for so long as such Financial Indebtedness is so secured. The terms of any such Security Interest created for the benefit of the Noteholders pursuant to clause (b) of the preceding sentence shall provide that such Security Interest shall be automatically and unconditionally released and discharged (and where not automatically released and discharged, the Person having granted such security will be entitled to seek such Security Interest’s unconditional release and discharge) and shall authorize and instruct the security agent, trustee or similar agent holding such Security Interest for the benefit of the Noteholders to take all actions necessary or desirable to effect and evidence such release and discharge, upon any one or more of the following circumstances:

- (i) the release and discharge of the Initial Security Interest to which it relates;
- (ii) the sale, disposition or transfer of the assets which are subject to such Security Interest (including by way of merger, consolidation, amalgamation or combination) to a Person that is not (either before or after giving effect to such transaction), the Issuer or a Subsidiary of the Issuer, if such sale, disposition or transfer does not violate § 11 (*Sale of Assets*);
- (iii) the sale, disposition or transfer of Capital Stock of the Subsidiary of the Issuer that has granted such Security Interest (or Capital Stock of a parent of the relevant Subsidiary of the Issuer (other than the Issuer)) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Subsidiary of the Issuer, if (i) after giving effect to such sale, disposition or transfer, such Person is no longer a Subsidiary of the Issuer; and (ii) the sale, disposition or transfer does not violate §11 (*Sale of Assets*); and
- (iv) full and final repayment of the Notes.

## **§ 10 MERGER, CONSOLIDATION OR SALE OF ASSETS**

### **(a) Restriction**

The Issuer will not, directly or indirectly: (x) consolidate or merge with or into another Person (whether or not one of the Group or the Issuer (as applicable) is the surviving corporation), or (y) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole in one or more related transactions, to another Person, unless:

- (i) either: (A) the Issuer is the surviving corporation; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is an entity organized or existing under the laws of any member state of the European Union, the United Kingdom, Switzerland, Norway, Canada or any state of the United States;
- (ii) the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Issuer under the Notes (whether by operation of law or by contract);
- (iii) immediately after such transaction, no Event of Default has occurred and is continuing; and
- (iv) (A) the Person (as applicable) formed by or surviving any such consolidation or merger (if other than the Issuer), or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made would, on the date of such transaction after giving pro forma effect thereto, and any related financing transactions as if the same had occurred at the beginning of the Relevant Period, be permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Interest Coverage Ratio test in § 8(b)(ii) or (B) the Interest Coverage Ratio would not be less than it was immediately prior to giving effect to such transaction.

### **(b) Applicability of Restriction**

This “Merger, Consolidation or Sale of Assets” covenant will not apply to (i) any consolidation or merger of any Subsidiary of the Issuer into the Issuer, or (ii) any consolidation or merger among Subsidiaries, or (iii) any sale, assignment, transfer, conveyance, lease or other disposition of assets among the Issuer and its Subsidiaries. § 10(a)(iii) and (iv) shall not apply to any merger or consolidation of the Issuer with or into an Affiliate solely for the purpose of reincorporating the Issuer in another jurisdiction.

### **(c) Suspension of Limitations upon Achievement of Investment Grade Status**

From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the requirement to comply with § 10(a) shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement

to comply with § 10(a) will again apply according to its terms from the Investment Grade Status End Date, if any.

## **§ 11 SALE OF ASSETS**

### ***(a) Restriction***

The Issuer will not, and will not cause or permit any of its Subsidiaries to, directly or indirectly, consummate an Asset Sale unless:

- (i) the Issuer (or the Subsidiary, as the case may be) receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at the time of the Asset Sale at least equal to the Fair Market Value (determined at the time of contracting such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and
- (ii) at least 75 per cent. of the consideration received in the Asset Sale by the Issuer or such Subsidiary is in the form of cash and Cash Equivalents.

For purposes of this provision, each of the following will be deemed to be cash:

- (A) the assumption by the transferee of Financial Indebtedness or other liabilities, contingent or otherwise, of the Issuer or any of its Subsidiaries and the release of the Issuer or such Subsidiary from all liability on such Financial Indebtedness or other liability in connection with such Asset Sale;
- (B) any securities, notes or other obligations received by the Issuer or any such Subsidiary from such transferee that are converted by the Issuer or such Subsidiary into cash or Cash Equivalents within 180 days following closing of the Asset Sale, to the extent of the cash or Cash Equivalents received in that conversion;
- (C) any Capital Stock or assets of the kind referred to in § 11(b)(iii) or (v);
- (D) Financial Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Asset Sale, to the extent that the Issuer and each Subsidiary are released from any guarantee of such Financial Indebtedness in connection with such Asset Sale;
- (E) consideration consisting of Financial Indebtedness of the Issuer or any Subsidiary received from Persons who are not the Issuer or any Subsidiary that is cancelled; and
- (F) any Designated Non-Cash Consideration received by the Issuer or any of its Subsidiaries in such Asset Sales having an aggregate Fair Market Value, when taken together with all other Designated Non-Cash Consideration received pursuant to this § 11(a)(F) that is at

that time outstanding, not to exceed the greater of EUR 30,000,000 and 2.5 per cent. of Total Assets, measured at the time of the receipt of such Designated Non-Cash Consideration (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).

**(b) Application of Net Proceeds**

Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Issuer (or the applicable Subsidiary, as the case may be) may only apply such Net Proceeds (at the option of the Issuer or such Subsidiary):

- (i) to repay, repurchase, prepay or redeem (A) Financial Indebtedness of (1) the Issuer that is secured by a Security Interest or (2) any Subsidiary of the Issuer; (B) the Notes pursuant to an offer to all holders of Notes at a purchase price equal to at least 100 per cent. of the principal amount, plus accrued and unpaid interest and additional amounts, if any, to the date of purchase (a “**Notes Offer**”) or pursuant to § 12 (*Restricted Payments*); or (C) *pari passu* Financial Indebtedness of the Issuer so long as the Issuer makes a Notes Offer on a pro rata basis;
- (ii) in the case of a sale of Warehouse Assets, to repay, repurchase, prepay or redeem any Acquired Warehouse Financial Indebtedness or any Warehouse Acquisition Additional Financial Indebtedness;
- (iii) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Subsidiary;
- (iv) to make a capital expenditure;
- (v) to acquire other assets (other than Capital Stock) not classified as current assets under IFRS that are used in a Permitted Business or to make any other investment in any Permitted Business (including by acquiring Capital Stock of a Permitted Business);
- (vi) to enter into a binding commitment to apply the Net Proceeds pursuant to § 11(b)(iii), (iv) or (v); *provided that* such commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment until the earlier of (A) the date on which such acquisition or expenditure is consummated, and (B) the 180th day following the expiration of the aforementioned 365-day period, or any combination of the foregoing.

**(c) Excess Proceeds**

Any Net Proceeds from Asset Sales that are not applied or invested as provided in § 11(b) will constitute “**Excess Proceeds**”. When the aggregate amount of Excess Proceeds exceeds EUR 30,000,000, within 10 Business Days thereof, or at any earlier time at the Issuer’s

election, the Issuer will make an offer (an “**Asset Sale Offer**”) to all holders of Notes, and may, to the extent the Issuer so elects, make an offer to holders of other Financial Indebtedness that is *pari passu* with the Notes to purchase, prepay or redeem with the proceeds of sales of assets the maximum principal amount of Notes and such other *pari passu* Financial Indebtedness (plus all accrued interest on the Financial Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased, prepaid or redeemed out of the Excess Proceeds. The offer price for the Notes in any Asset Sale Offer will be equal (solely in the case of the Notes) to 100 per cent. of the principal amount and (solely in the case of any other *pari passu* Financial Indebtedness) no greater than 100 per cent. of the principal amount, in each case, plus accrued and unpaid interest and additional amounts, if any, to the date of purchase, prepayment or redemption, subject to the rights of holders of Notes on the relevant record date to receive interest due on the relevant interest payment date, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Issuer and its Subsidiaries may use those Excess Proceeds for any purpose not otherwise prohibited by the Terms and Conditions.

**(d) Suspension of Limitations upon Achievement of Investment Grade Status**

From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the restriction pursuant to this § 11 shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement and restriction will again apply according to its terms from the Investment Grade Status End Date, if any.

**§ 12 RESTRICTED PAYMENTS**

**(a) Limitation**

The Issuer undertakes that it will not, and will procure that none of its Subsidiaries will, directly or indirectly, make any Restricted Payment.

**(b) Exceptions – Build-up Basket**

Notwithstanding § 12(a), the Issuer or any of its Subsidiaries may make a Restricted Payment if:

- (i) no Event of Default has occurred and is continuing at the time of the Restricted Payment;
- (ii) the Issuer would, at the time of such Restricted Payment and giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the (d) Suspension of Limitations upon Achievement of Investment Grade Status (a) Limitation applicable Relevant Period, have been permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Interest Coverage Ratio test in § 8(b)(ii); and
- (iii) at the time of, and after giving pro forma effect to, such proposed Restricted Payment, the aggregate amount of all Restricted Payments declared or

made after the Issue Date (including Restricted Payments made pursuant to § 12(c)(i) and (ii), but excluding all other Restricted Payments permitted by § 12(c), does not exceed the sum of:

- (A) 50 per cent. of the Consolidated Net Income of the Group on a cumulative basis during the period beginning on 1 January 2018 and ending on the last day of the Issuer's last fiscal quarter ending prior to the date of such proposed Restricted Payment for which internal Consolidated Financial Statements of the Issuer are available (or, if such Consolidated Net Income for such period is a deficit, less 100 per cent. of such deficit);
- (B) 100 per cent. of the aggregate net cash proceeds and the Fair Market Value of marketable securities or other property received by the Issuer since the Issue Date as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Issuer or from the issue or sale of convertible or exchangeable debt securities of the Issuer, in each case that have been converted into or exchanged for Equity Interests of the Issuer (other than Equity Interests sold to a Subsidiary of the Issuer).

**(c) Exceptions – Permitted Payments**

The restriction in § 12(a) will not prohibit:

- (i) Restricted Payments, *provided that* the total aggregate amount of all Restricted Payments made under this § 12(c)(i) does not exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets;
- (ii) Restricted Payments if, at the time of, and after giving pro forma effect to, such proposed Restricted Payments, the Consolidated Net Leverage Ratio does not exceed the ratio of 3.00 to 1.00;
- (iii) the payment of any dividend within 60 days after the date of its declaration if, at such date of its declaration, such payment would have complied with the provisions of these Terms and Conditions;
- (iv) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Issuer) of, Equity Interests of the Issuer or from the substantially concurrent contribution of common equity capital to the Issuer;
- (v) the repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Debt (x) made by exchange for, or with the net cash proceeds from an incurrence of, Permitted Refinancing Indebtedness or (y) following the occurrence of an Acquisition of Control (or other similar event described therein as an “acquisition of control,” a “change of control” or any similar term) or an Asset Sale (or other similar event described therein as an “asset disposition” or “asset sale”) to the

extent required by the agreements governing such Subordinated Debt at a purchase price not greater than 101 per cent. of the principal amount of such Subordinated Debt, but only if (and to the extent required) the Issuer shall have complied with the terms described under §12(d) (Acquisition of Control) or §11 (Sale of Assets), as the case may be, and, if required, redeemed or purchased all Notes with respect to which Noteholders have exercised their put right pursuant to §12(d)(ii) or tendered pursuant to an Asset Sale Offer, as the case may be, all the Notes required thereby, prior to repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Debt;

- (vi) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Issuer or any Subsidiary held by any current or former officer, director, employee or consultant of the Issuer or any of its Subsidiaries pursuant to any equity subscription agreement, stock option agreement, restricted stock grant, shareholders' agreement or similar agreement, provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed EUR 2,000,000 in any calendar year with unused amounts from such calendar year (but not including unused amounts from any prior calendar year) being available for use during the immediately succeeding calendar year, and provided, further, that such amount in any calendar year, may be increased by an amount not to exceed the cash proceeds from the sale of Equity Interests of the Issuer or a Subsidiary received by the Issuer or a Subsidiary during such calendar year;
- (vii) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;
- (viii) payments of cash, dividends, distributions, advances or other Restricted Payments by the Issuer or any of its Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon (A) the exercise of options or warrants or (B) the conversion or exchange of Capital Stock of any such Person;
- (ix) advances or loans to (A) any future, present or former officer, director, employee or consultant of the Issuer or a Subsidiary to pay for the purchase or other acquisition for value of Equity Interests of the Issuer, or any obligation under a forward sale agreement, deferred purchase agreement or deferred payment arrangement pursuant to any management equity plan or stock option plan or any other management or employee benefit or incentive plan or other agreement or arrangement or (B) any management equity plan, employee benefit trust or stock option plan or any other management or employee benefit or incentive plan or unit trust or the trustees of any such plan or trust to pay for the purchase or other acquisition for value of Equity Interests of the Issuer, provided that the total aggregate



amount of Restricted Payments made under this § 12(c)(ix) does not exceed EUR 2,000,000 in any calendar year with unused amounts from such calendar year (but not including unused amounts from any prior calendar year) being available for use during the immediately succeeding calendar year;

- (x) the payment of any dividend (or, in the case of any partnership or limited liability Issuer, any similar distribution) by a Subsidiary to the holders of its Equity Interests (other than the Issuer or any Subsidiary) then entitled to participate in such dividends on a pro rata basis or otherwise in compliance with the terms of the instruments governing such Equity Interests;
- (xi) the payment of dividends on the Capital Stock of the Issuer the calendar year ending 31 December 2018 in an aggregate amount not exceeding EUR 50,000,000; and
- (xii) payments pursuant to any tax sharing agreement among the Issuer or any Subsidiary and any other Person with which the Issuer or any Subsidiary files or filed a consolidated tax return or with which the Issuer or any Subsidiary is or was part of a consolidated group for tax purposes, provided, however, that such payments shall not exceed the amount of tax that the Issuer or such Subsidiaries would owe on a stand-alone basis without taking into account such other Person.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the purpose of determining compliance with this § 12, in the event that a Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in § 12(c)(i) to (xii) and/or is permitted pursuant to § 12(b), the Issuer will be entitled to classify such Restricted Payment (or portion thereof) on the date of its payment or later reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment (or portion thereof) in any manner that complies with this § 12.

***(d) Suspension of Limitations upon Achievement of Investment Grade Status***

From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the restriction pursuant to this § 12 shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement and restriction will again apply according to its terms from the Investment Grade Status End Date, if any, provided that, where such covenant applies again following an Investment Grade Status End Date, this § 12 will be interpreted as if it has been in effect since the Issue Date and prior to the Investment Grade Status Commencement Date (but not during the period from the Investment Grade Status Commencement Date until the Investment Grade Status End Date). Accordingly, Restricted Payments made during the period from the Investment

Grade Status Commencement Date until the Investment Grade Status End Date will not reduce the amount available to be made as Restricted Payments under this § 12.

### **§ 13 REPORTS**

For so long as any Notes are outstanding, the Issuer shall post on its website:

- (a) within 120 days or, only in the case of the Company's fiscal year ending December 31, 2022, within 365 days, after the end of each of the Issuer's fiscal years, annual reports containing the audited Consolidated Financial Statements in accordance with IFRS as adopted by the European Union and as in effect from time to time, the management report in accordance with Article 68 of the Luxembourg law of 19 December 2002 on the register of commerce and companies, and the accounting and annual accounts of undertakings, as amended from time to time; and
- (b) within 60 days after the end of each of the first three fiscal quarters in each fiscal year of the Issuer, unaudited condensed consolidated quarterly financial statements in accordance with IFRS as adopted by the European Union and as in effect from time to time or a quarterly statement in accordance with the requirements of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*).

In respect of each of the reports under § 13(a) and (b), the financial statements or related management report should set forth the consolidated adjusted EBITDA and the consolidated net interest expenses of the Issuer for the period to which such report relates and the Issuer's consolidated net financial indebtedness as of the end of such period.

No later than 30 days after becoming aware of the occurrence of an Event of Default that is continuing, the Issuer shall notify the Noteholders thereof in accordance with § 16.

### **§ 14 TERMINATION RIGHTS OF THE NOTEHOLDERS IN CASE OF AN EVENT OF DEFAULT**

- (a) Each Noteholder will be entitled to declare all or some only of its Notes due and demand immediate redemption of such Notes at the Principal Amount plus accrued interest to but excluding the date of redemption as provided hereinafter, if any of the following events (each an "**Event of Default**") occurs:
  - (i) the Issuer fails to pay principal (at maturity, upon redemption or otherwise) when due in respect of the Notes;
  - (ii) the Issuer fails to pay interest, any Additional Amount or any other amount in respect of the Notes (other than principal (at maturity, upon redemption or otherwise)) within 30 days from the relevant due date; or
  - (iii) the Issuer fails to duly perform any other obligation arising from the Notes, and such default, except where such default is incapable of remedy,

continues unremedied for more than 60 days after the Issuer (through the Principal Paying Agent) has received notice thereof from a Noteholder; or

- (iv) (A) any present or future indebtedness of the Issuer or any Material Subsidiary for or in respect of monies borrowed or raised is declared to be, or otherwise becomes, due and payable prior to its stated maturity as a result of any actual or potential default (however described); or
- (B) any such indebtedness of the Issuer or any Material Subsidiary is not paid when due or within any applicable grace period, as the case may be; or
- (C) any security granted by the Issuer or any Material Subsidiary for any such indebtedness is declared enforceable upon the occurrence of an event entitling to enforcement; or raised unless, in each case, the aggregate amount of all such indebtedness is less than EUR 25,000,000 (or its equivalent in any other currency or currencies); or
- (v) the Issuer or any Material Subsidiary suspends its payments or announces its inability to meet its financial obligations; or
- (vi) a competent court opens insolvency proceedings against the Issuer or any Material Subsidiary which is not dismissed or stayed within 60 days after the commencement thereof, or the Issuer or any Material Subsidiary institutes such a proceeding; or
- (vii) the Issuer ceases all or substantially all of its business operations; or
- (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 Notes; 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 Notes and this situation is not cured within 90 days; or
- (x) Termination of the Lock-up Agreement by one or more parties to the Lock-up Agreement.

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

- (b) Any notice declaring Notes due in accordance with § 14(a) will be made by means of a declaration in text form in the German or English language to the Principal Paying Agent in accordance with the then applicable rules and procedures of the Clearing System together with evidence which may be in the form of a certificate of the Noteholder's Custodian certifying that such Noteholder, at the time of such

notice, is the holder of the relevant Notes or in any other appropriate manner. The notice shall be irrevocable.

- (c) In the events specified in § 14(a)(iii) and (iv), any notice declaring Notes due shall, unless, at the time such notice is received, any of the events specified in § 14(a)(i) and (v) to (ix) entitling Noteholders to declare their Notes due has occurred, become effective only when the Principal Paying Agent has received such default notices from the Noteholders representing at least 10 per cent. of the aggregate principal amount of the Notes then outstanding.
- (d) Termination notices received by the Principal Paying Agent after 4:00 p.m. (Frankfurt time) shall only become effective on the immediately succeeding Business Day.

## § 15 PAYING AGENTS AND CALCULATION AGENT

- (a) BNP Paribas Securities Services S.C.A., Zweigniederlassung Frankfurt am Main will be the principal paying agent (the “**Principal Paying Agent**”, and together with any additional paying agent appointed by the Issuer in accordance with § 15(b), the “**Paying Agents**”).

The address of the specified offices of the Principal Paying Agent is:

BNP Paribas Securities Services S.C.A.  
Zweigniederlassung Frankfurt  
Europa-Allee 12  
60327 Frankfurt am Main  
Federal Republic of Germany

Conv-Ex Advisors Limited will be the calculation agent (the “**Calculation Agent**”, and together with the Principal Paying Agent and any Paying Agent, the “**Agents**”).

The address of the specified offices of the Calculation Agent is:

Conv-Ex Advisors Limited  
30 Crown Place  
London EC2A 4EB  
United Kingdom

Each Agent shall be exempt from the restrictions set forth in Section 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.

- (b) The Issuer will procure that there will at all times be a principal paying agent and a calculation agent. The Issuer is entitled to appoint other banks of international standing as Paying Agents or another calculation agent. Furthermore, the Issuer is entitled to terminate the appointment of any Agent. In the event of such termination or such Agent being unable or unwilling to continue to act as Agent in the relevant capacity, the Issuer will appoint another bank of international

standing as paying agent or another calculation agent. Such appointment or termination will be published without undue delay in accordance with § 16 (*Notices*), 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 Noteholders.
- (d) 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 Noteholders 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.
- (e) Each Agent acting in such capacity acts only as agent of, and upon request from, the Issuer. There is no agency or fiduciary relationship between any Agent and the Noteholders, and no Agent shall incur any liability as against the Noteholders or any other Agent.

#### **§ 16 NOTICES**

- (a) All notices regarding the Notes will, subject to § 19(f), be published (so long as the Notes are listed on the regulated market of the Luxembourg Stock Exchange) on the website of the Luxembourg Stock Exchange on [www.bourse.lu](http://www.bourse.lu). Any notice so published will become effective for all purposes on the third day following the date of the first such publication.
- (b) If the publication of notices pursuant to subparagraph (a) of this § 16 (*Notices*) is no longer required by the rules and regulations of the Luxembourg Stock Exchange, the Issuer may, in lieu of publication in the media set forth in subparagraph (a) of this § 16, deliver all notices concerning the Notes to the Clearing System for communication by the Clearing System to the Noteholders. Any notice so delivered will become effective for all purposes on the seventh day following the date of delivery.

#### **§ 17 ISSUE OF ADDITIONAL NOTES**

The Issuer reserves the right from time to time, without the consent of the Noteholders, to issue additional Notes with identical terms (if applicable, save for, *inter alia*, the issue date, the interest commencement date and the first interest payment date), so that the same will be consolidated, form a single issue with and increase the aggregate principal amount of these Notes. The term “Notes” will, in the event of such increase, also comprise such additionally issued Notes.

## § 18 PRESENTATION PERIOD, PRESCRIPTION

The period for presentation of the Notes pursuant to Section 801(1) sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) is reduced to 10 years. The period of limitation for claims under the Notes presented during the period for presentation will be two years calculated from the expiration of the relevant presentation period.

## § 19 AMENDMENTS TO THE TERMS AND CONDITIONS BY RESOLUTION OF THE NOTEHOLDERS; NOTEHOLDERS' REPRESENTATIVE

- (a) The Issuer may agree with the Noteholders on amendments to the Terms and Conditions or on other matters by virtue of a majority resolution of the Noteholders pursuant to Section 5 et seqq. of the German Act on Issues of Debt Securities (*Gesetz über Schuldverschreibungen aus Gesamtemissionen – “SchVG”*), as amended from time to time. In particular, the Noteholders may consent to amendments which materially change the substance of the Terms and Conditions, including such measures as provided for under Section 5(3) SchVG by resolutions passed by such majority of the votes of the Noteholders as stated under § 19(b). A duly passed majority resolution shall be binding equally upon all Noteholders.
- (b) Except as provided by the following sentence, and provided that the quorum requirements are being met, the Noteholders 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 Section 5(3) numbers 1 through 9 SchVG, or relating to material other matters 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 Noteholders can pass resolutions (i) in a meeting (*Gläubigerversammlung*) in accordance with Section 9 and Sections 5 et seqq. SchVG, or (ii) by means of a vote without a meeting (*Abstimmung ohne Versammlung*) in accordance with Section 18 and Sections 5 et seqq. SchVG.
  - (i) Attendance at the Noteholders' meeting and exercise of voting rights is subject to the Noteholders' 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, Noteholders must provide evidence of their eligibility to participate in the vote by means of a special confirmation of the Custodian in accordance with § 20(d)(i)(A) and (B) in text form and by submission of a blocking instruction by the Custodian stating that the relevant Notes are not transferable from and including the day such registration has been sent until and including the stated end of the meeting.
  - (ii) In the case of a vote without a meeting, Noteholders must, when casting their vote, provide evidence of their eligibility to participate in the vote

without a meeting by means of a special confirmation of the Custodian in accordance with § 20(d)(i)(A) and (B) in text form and by submission of a blocking instruction by the Custodian stating that the relevant Notes are not transferable from and including the day such vote has been cast until and including the day the voting period ends.

- (d) If it is ascertained that no quorum exists for the meeting pursuant to § 19(c)(i) or the vote without a meeting pursuant to § 19(c)(ii), in the case of a meeting, the chairman (*Vorsitzender*) may convene a second meeting in accordance with Section 15(3) sentence 2 SchVG, or, in the case of a vote without a meeting, the scrutineer (*Abstimmungsleiter*) may convene a second meeting within the meaning of Section 15(3) sentence 3 SchVG. Attendance at the second meeting and exercise of voting rights are subject to the Noteholders' registration. The provisions set out in § 19(c)(i) shall apply *mutatis mutandis* to Noteholders' registration for a second meeting.
- (e) The Noteholders may, by majority resolution, provide for the appointment or dismissal of a holders' representative (the "**Noteholders' Representative**"), the duties and responsibilities and the powers of such Noteholders' Representative, the transfer of the rights of the Noteholders to the Noteholders' Representative and a limitation of liability of the Noteholders' Representative. Appointment of a Noteholders' Representative may only be passed by a Qualified Majority if such Noteholders' Representative is to be authorised to consent, in accordance with § 19(b), to a material change in the substance of the Terms and Conditions or other material matters.
- (f) Any notices concerning this § 19 shall be made exclusively pursuant to the provisions of the SchVG.

## **§ 20 FINAL CLAUSES**

- (a) The form and content of the Notes and the rights of the Noteholders and the obligations of the Issuer will in all respects be governed by the laws of the Federal Republic of Germany. Articles 86 to 94-8 of the Luxembourg law of 10 August 1915 on commercial companies, as amended, regarding the representation of Noteholders and meetings of Noteholders, do not apply to the Notes. To the fullest extent permitted by applicable law, no Noteholder may initiate any proceedings under Article 98 of the Luxembourg act dated 10 August 1915 on commercial companies, as amended.
- (b) The place of performance is Frankfurt am Main, Federal Republic of Germany.
- (c) 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 Notes. This is subject to any exclusive court of venue for specific legal proceedings in connection with the SchVG.

- (d) Any Noteholder may, in any proceedings against the Issuer or to which the Noteholder and the Issuer are parties, protect and enforce, in its own name, its rights arising under its Notes on the basis of:
  - (i) a certificate issued by its Custodian:
    - (C) stating the full name and address of the Noteholder;
    - (D) specifying the aggregate principal amount of Notes credited on the date of such statement to such Noteholder's securities account maintained with such Custodian; and
    - (E) confirming that the Custodian has given a notice to the Clearing System and the Principal Paying Agent containing the information specified in § 20(d)(i)(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 Note, certified as being a true copy by a duly authorised officer of the Clearing System or the Principal Paying Agent.