

## TÉRMINOS Y CONDICIONES

### Terms and Conditions of the Notes

*The following, save for the paragraphs in italics, are the terms and conditions of the Notes which will be incorporated by reference into the Global Certificate and endorsed on the Notes in definitive form. The use of the word “conversion” (and related terms) in the following terms and conditions of the Notes shall be construed as encompassing the exchange of Notes for existing Ordinary Shares and, when the New Issue Requirements have been met, the exchange of Notes for new Ordinary Shares.*

The issue of the euro 450,000,000 up to 500,000,000 6.50 per cent. Unsecured Convertible Notes due 2014 (the **Notes**, which expression shall, unless otherwise indicated, include any further notes issued pursuant to Condition 16 and consolidated and forming a single series with the Notes) was (save in respect of any such further notes to be issued pursuant to Condition 16) authorised by resolutions of the shareholders, the Board of Directors and the Executive Committee of Fomento de Construcciones y Contratas, S.A. (the **Issuer**) passed on 18 June 2008, 30 September 2009 and 6 October 2009, respectively. A fiscal, transfer and conversion agency agreement dated 30 October 2009 (the **Fiscal Agency Agreement**) has been entered into in relation to the Notes between the Issuer, The Bank of New York Mellon as fiscal agent (the **Fiscal Agent**, which expression shall include any successor as fiscal agent under the Fiscal Agency Agreement), the paying, transfer and conversion agents for the time being (such persons, together with the Fiscal Agent, being referred to below as the **Paying, Transfer and Conversion Agents**, which expression shall include their successors as Paying, Transfer and Conversion Agents under the Fiscal Agency Agreement) and The Bank of New York Mellon in its capacity as registrar (the **Registrar**, which expression shall include any successor as registrar under the Fiscal Agency Agreement).

Copies of the Fiscal Agency Agreement and these terms and conditions (the **Conditions**) are available during normal business hours at the specified office of each of the Paying, Transfer and Conversion Agents and the Registrar. The Noteholders are deemed to have notice of all the provisions of the Fiscal Agency Agreement and these Conditions which are applicable to them. The Fiscal Agency Agreement includes the form of the Notes. The statements in these Conditions include summaries of, and are subject to, the detailed provisions of the Fiscal Agency Agreement.

The Issuer, as required by Spanish law, has executed an *escritura pública* (the **Public Deed**) before a Spanish notary public in relation to the issue of the Notes and has registered the Public Deed with Barcelona's Mercantile Registry. The Public Deed contains, among other information, these Conditions.

Capitalised terms used but not defined in these Conditions shall have the meanings attributed to them in the Fiscal Agency Agreement unless the context otherwise requires or unless otherwise stated.

### 1 Form, Denomination, Title and Status

#### (a) *Form and Denomination*

The Notes are in registered form, serially numbered, in nominal amounts of euro 50,000 each (the **Authorised Denomination**).

(b) *Title*

Title to the Notes will pass by transfer and registration as described in Condition 4. The holder (as defined below) of any Note will (except as otherwise required by law or as ordered by a court of competent jurisdiction) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it or its theft or loss (or that of the related certificate, as appropriate) or anything written on it or on the certificate representing it (other than a duly executed transfer thereof)) and no person will be liable for so treating the holder.

(c) *Status of the Notes and Subordination*

The Notes constitute direct and (subject to Condition 2 (Negative Pledge)) unsecured obligations (*créditos ordinarios*) of the Issuer and rank *pari passu* and rateably, without any preference among themselves and shall rank, save for the Senior Liabilities (as specified below), at least equally with all other present and future unsecured and unsubordinated obligations of the Issuer, save for such obligations that may be preferred by provisions of law that are mandatory and of general application.

Up to and including the Subordination End Date, the Issuer's payment obligations under the Notes will be subordinated to the payment obligations of the Issuer in respect of the Senior Liabilities to the effect that (i) the Noteholders will not be entitled to accelerate payment of any amounts under the Notes prior to the due date thereof (including if an event of default occurs and is continuing) but will be entitled to demand and subject to paragraph (ii), receive payment of amounts to the extent not paid on the due date thereof; and (ii) in the event that the Issuer is in liquidation (*liquidación*), subject to insolvency proceedings (*concurso*) or generally unable to meet its payment obligations, the Noteholders' entitlement to any payment to be received in respect of the Notes will be subordinated.

After the Subordination End Date, the payment obligations of the Issuer under the Notes shall constitute direct and (subject to Condition 2 (Negative Pledge)) unsecured obligations (*créditos ordinarios*) of the Issuer ranking *pari passu* and rateably, without any preference among themselves and at least equally with all other present and future unsecured and unsubordinated obligations of the Issuer, save for such obligations that may be preferred by provisions of law that are mandatory and of general application.

## 2 **Negative Pledge**

So long as any of the Notes remain outstanding (as defined in the Fiscal Agency Agreement), the Issuer will not create or permit to subsist, and will ensure that none of its Material Subsidiaries will create or permit to subsist, any mortgage, charge, lien, pledge or other form of encumbrance or security interest (each a **Security Interest**) upon the whole or any part of its present or future property or assets (including any uncalled capital) to secure any Relevant Indebtedness or any guarantee of or indemnity in respect of any Relevant Indebtedness unless in any such case, before or at the same time as the creation of the Security Interest, any and all action necessary shall have been taken to ensure that:

- (i) all amounts payable by the Issuer under the Notes are secured equally and rateably with the Relevant Indebtedness or guarantee or indemnity, as the case may be; or

- (ii) such other Security Interest or guarantee or other arrangement (whether or not including the giving of a Security Interest) is provided in respect of all amounts payable by the Issuer under the Notes as shall be approved by a resolution of the Syndicate of Noteholders,

provided that any Subsidiary acquired after the Closing Date may have an outstanding Security Interest with respect to Relevant Indebtedness (or any guarantee or indemnity in respect of such Relevant Indebtedness) of such Subsidiary so long as:

- (a) such Security Interest was outstanding on the date on which such Subsidiary became a Subsidiary and was not created in contemplation of such Subsidiary becoming a Subsidiary or such Security Interest was created in substitution for or to replace either such outstanding Security Interest or any such substituted or replacement Security Interest; and
- (b) the nominal amount of the Relevant Indebtedness (or any guarantee or indemnity in respect of such Relevant Indebtedness) is not increased after the date that such Subsidiary became a Subsidiary.

### 3 Definitions

In these Conditions, unless otherwise provided:

**Additional Issuer Conversion Shares** has the meaning provided in Condition 6(a)(ii).

**Additional Ordinary Shares** has the meaning provided in Condition 6(d).

**Aggregate Value** has the meaning provided in Condition 6(a)(ii).

**Authorised Denomination** has the meaning provided in Condition 1(a).

**business day** means, in relation to any place, a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in that place.

**Closing Date** means 30 October 2009.

**Closing Price** means, in respect of any Trading Day, the last officially published price of the Ordinary Shares by the Relevant Stock Exchange on that Trading Day.

**CNMV** has the meaning provided in Condition 7(b).

**Commissioner** has the meaning provided in Condition 14(a).

**control** means (a) the acquisition or control of more than 50% of the Voting Rights or (b) the right to appoint and/or remove all or the majority of the members of the Issuer's board of directors or other governing body, whether obtained directly or indirectly, and whether obtained by ownership of share capital, the possession of Voting Rights, contract or otherwise and "controlled" shall be construed accordingly.

**Conversion Commencement Date** has the meaning provided in Condition 6(a)(i).

**Conversion Date** has the meaning provided in Condition 6(g).

**Conversion Notice** has the meaning provided in Condition 6(g).

**Conversion Period** has the meaning provided in Condition 6(a)(i).

**Conversion Price** has the meaning provided in Condition 6(a)(i).

**Conversion Right** has the meaning provided in Condition 6(a)(i).

**Current Market Price** has the meaning provided in Condition 6(b)(iv).

**Designated Person** has the meaning provided in Condition 6(a)(ii).

**Distribution** has the meaning provided in Condition 6(b)(iv).

**Distribution Date** has the meaning provided in Condition 6(b)(iv).

**equity share capital** means, in relation to any entity, its issued share capital excluding any part thereof which, neither as regards dividends, nor as regards capital, carries any right to participate beyond a specified amount in a distribution.

**Extraordinary Distribution** has the meaning provided in Condition 6(b)(v).

**Fair Market Value** means, with respect to any property on any date, the fair market value of that property as determined by an Independent Financial Adviser provided that:

- (i) the Fair Market Value of a cash Distribution shall be the amount of such cash Distribution;
- (ii) the Fair Market Value of any other cash amount shall be the amount of such cash;
- (iii) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by an Independent Financial Adviser), the Fair Market Value (a) of such Securities or Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities and (b) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (a) and (b) during the period of five Trading Days on the relevant market commencing on such date (or, if later, the first such Trading Day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded; and
- (iv) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be determined by an Independent Financial Adviser, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including the market price per Ordinary Share, the dividend yield of an Ordinary Share, the volatility of such market price, prevailing interest rates and the terms of such Securities, Spin-Off Securities, options, warrants or other rights, including as to the expiry date and exercise price (if any) thereof.

Such amounts shall, in the case of (i) above, be translated into the Relevant Currency (if declared or paid or payable in a currency other than the Relevant Currency) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Distribution in the Relevant Currency; and in any other case, shall be translated into the Relevant Currency (if expressed in a currency other than the Relevant Currency) at the Prevailing Rate on that date. In addition, in the case of (i) and (ii) above, the Fair Market Value shall be determined on a gross basis and disregarding any withholding or deduction required to be made on account of tax, and disregarding any associated tax credit.

**Final Maturity Date** means 30 October 2014.

**Iberclear** means the Spanish clearing and settlement system (*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.*).

**Independent Financial Adviser** means an independent financial institution of international repute appointed by the Issuer at its own expense from time to time and whenever required by these Conditions.

**Interest** has the meaning provided in Condition 6(e).

**Interest Payment Date** has the meaning provided in Condition 5(a).

**Issuer Conversion Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Notice** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Retroactive Adjustment** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Right** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Right Reference Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Notice** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Notice Cut-Off Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Period** has the meaning provided in Condition 6(a)(ii).

**Limited-Recourse Financing** means any indebtedness which is, or is expected to be, recorded as "limited recourse project financing loans" in the Issuer's annual consolidated financial statements.

**Limited-Recourse Subsidiary** means any present or future Subsidiary of the Issuer, the principal business of which involves the ownership, acquisition, construction, creation, development, maintenance and/or operation of an asset (whether or not an asset of the Issuer or any of its Subsidiaries), or any associated rehabilitation works which has been or is intended to be primarily financed with Limited-Recourse Financing.

**Madrid/Barcelona business day** means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in Madrid and Barcelona.

**Market Price** means the Volume Weighted Average Price of an Ordinary Share on the relevant Reference Date, provided that if any Distribution or other entitlement in respect of the Ordinary Shares is announced on or prior to the relevant Conversion Date in circumstances where the record date or other due date for the establishment of entitlement in respect of such Distribution or other entitlement shall be on or after the Conversion Date and if, on the relevant Reference Date, the Volume Weighted Average Price of an Ordinary Share is based on a price ex-Distribution or ex-any other entitlement, then such price shall be increased by an amount equal to the Fair Market Value of such dividend or entitlement per Ordinary Share as at the date of first public announcement of such Distribution or entitlement (or if that is not a Trading Day, the immediately preceding Trading Day).

**Material Subsidiary** means, at any relevant time, a Subsidiary of the Issuer (not being a Limited Recourse Subsidiary):

- (a) whose total assets or net sales (or, where the Subsidiary in question prepares consolidated accounts, whose total consolidated assets or net sales) at any relevant time represent no less than 5% of the total consolidated assets or net sales, respectively, of the Issuer and its Subsidiaries, as calculated by reference to the then latest consolidated audited accounts or consolidated six-monthly reports of the Issuer and the latest accounts or six-monthly reports of each relevant Subsidiary (consolidated or, as the case may be, unconsolidated) prepared in accordance with International Financial Reporting Standards, provided that in the case of a Subsidiary acquired after the end of the financial period to which the then

latest consolidated audited accounts or consolidated six-monthly reports of the Issuer relate, then for the purpose of applying each of the foregoing tests, the reference to the Issuer's latest consolidated audited accounts or consolidated six-monthly reports shall be deemed to be a reference to such accounts or reports as if such Subsidiary had been shown therein by reference to its then latest relevant financial statements, adjusted as deemed appropriate by the auditors of the Issuer for the time being after consultation with the Issuer; or

- (b) to which is transferred all or substantially all of the assets and undertaking of a Subsidiary which, immediately prior to such transfer, is a Material Subsidiary.

**New Issue Requirements** has the meaning provided in Condition 6(g).

**Non Pre-Emptive Issue of Securities** has the meaning provided in Condition 6(b)(iii).

**Noteholder** and **holder** mean the person in whose name a Note is registered in the Register (as defined in Condition 4(a)).

**Ordinary Shares** means fully paid ordinary shares in the capital of the Issuer currently with a par value of euro 1.00 each.

**Other Securities** means equity securities of the Issuer (including hybrid instruments) other than Ordinary Shares.

a **person** includes any individual, company, corporation, firm, partnership, joint venture, undertaking, association, unincorporated association, limited liability company, organisation, trust, state or agency of a state (in each case whether or not being a separate legal entity).

**Prevailing Rate** means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at or about 12.00 noon (London time) on that date as appearing on or derived from the Relevant Page or, if such a rate cannot be determined at such time, the rate prevailing as at or about 12.00 noon (London time) on the immediately preceding day on which such rate can be so determined or if such rate cannot be so determined by reference to the Relevant Page, the rate determined in such other manner as an Independent Financial Adviser shall prescribe.

**Purchase Rights** has the meaning provided in Condition 6(b)(ii).

**Put Date** has the meaning provided in Condition 7(b).

**Put Exercise Notice** has the meaning provided in Condition 7(b).

**Put Period** has the meaning provided in Condition 7(b).

**Put Price** has the meaning provided in Condition 7(b).

**Record Date** has the meaning provided in Condition 8(c).

**Reference Date** has the meaning provided in Condition 6(h).

**Registry Date** has the meaning provided in Condition 6(g).

**Regulations** has the meaning provided in Condition 14(a).

**Relevant Currency** means euro or, if at the relevant time or for the purposes of the relevant calculation or determination, the Spanish Stock Exchanges are not the Relevant Stock Exchange, the currency in which the Ordinary Shares are quoted or dealt in on the Relevant Stock Exchange at such time.

**Relevant Date** means, in respect of any Note, whichever is the later of (i) the date on which payment in respect of it first becomes due and (ii) if any amount of the money payable is improperly withheld or refused the date on which payment in full of the amount outstanding is made or (if earlier) the date on which notice is duly given by the Issuer or to the Noteholders in accordance with Condition 15 that, upon further presentation of the Note, where required pursuant to these Conditions, being made, such payment will be made, provided that such payment is in fact made as provided in these Conditions.

**Relevant Distribution** has the meaning provided in Condition 6(b)(v).

**Relevant Fiscal Year** has the meaning provided in Condition 6(b)(v).

**Relevant Indebtedness** means any present or future indebtedness (whether being principal, interest or other amounts), in the form of or evidenced by notes, bonds, debentures, loan stock or other similar debt instruments, whether issued for cash or in whole or in part for a consideration other than cash, and which are, or are capable of being, quoted, listed or ordinarily dealt in or traded on any recognised stock exchange, over-the-counter or other securities market but shall not in any event include any Limited-Recourse Financing.

**Relevant Page** means the relevant page on Bloomberg or Reuters or such other information services provider which displays the relevant information.

**Relevant Person** has the meaning provided in Condition 7(b).

**Relevant Person Triggering Event** has the meaning provided in Condition 7(b).

**Relevant Stock Exchange** means the Spanish Stock Exchanges or if at the relevant time the Ordinary Shares are not at that time listed and admitted to trading on the Spanish Stock Exchanges, the principal stock exchange or securities market on which the Ordinary Shares are then listed or quoted or dealt in.

**Retroactive Adjustment** has the meaning provided in Condition 6(d).

**Securities** means any securities including, without limitation, shares in the capital of the Issuer, or options, warrants or other rights to subscribe for or purchase or acquire shares in the capital of the Issuer.

**Senior Creditors** means the lenders (*Entidades Acreditantes* or *Prestamistas*) from time to time under each Senior Facilities Agreement.

**Senior Facilities Agreement** means each of:

- (i) the up to €1,225,000,000 credit facility agreement entered into on 8 May 2008 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders and repayable on the final maturity date of 8 May 2011;
- (ii) the up to €451,000,000 facility agreement entered into on 29 April 2009 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders and repayable on the final maturity date of 29 April 2012
- (iii) €25,000,000 credit facility agreement entered into on 9 June 2009 between the Issuer as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A. as guarantors, and Fortis Bank, S.A. Sucursal en España as lender, and repayable on the final maturity date of 9 June 2012;

- (iv) the up to €800,000,000 amortising credit facility agreement entered into on 19 July 2007 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders; and repayable in instalments, the final such instalment falling due on 19 July 2012;
- (v) the up to €175,00,000 credit facility agreement to be entered into by not later than 31 December 2009 between the Issuer as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A. as guarantors and the European Investment Bank as lender, and repayable on a final maturity date to fall due not later than 31 December 2012;
- (vi) the up to \$186,900,000 amortising credit facility agreement entered into on 10 July 2008 between the Issuer and Dedalo Patrimonial, S.L. Unipersonal, as borrowers, the Issuer, as guarantor, and the syndicate of financial institutions named therein, as lenders and repayable in instalments, the final such instalment falling due on 10 October 2013;
- (vii) the €630,554,225 and £153,850,000 amortising loan facility agreement entered into on 25 January 2007 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders; and repayable in instalments, the final such instalment falling due on 30 December 2013;

provided that if, on or after 6 October 2009, the Senior Creditors under any of the above Senior Facility Agreements agree in writing to (i) increase the principal amount and/or interest payable (other than on terms expressly contemplated in the applicable Senior Facilities Agreement in effect on 6 October 2009), or (ii) extend the due date for scheduled payments of any principal amount (including by virtue of the Senior Creditors agreeing to any extension request delivered under the terms of the applicable Senior Facilities Agreement), then the amounts owed by the Issuer to the Senior Creditors under such Senior Facilities Agreement shall no longer be considered Senior Liabilities for the purposes of these Conditions.

**Senior Liabilities** means amounts owed by the Issuer to the Senior Creditors under the Senior Facilities Agreement.

**Share Record Date** has the meaning provided in Condition 6(g).

**Shareholders** means the holders of Ordinary Shares.

**Spanish Stock Exchanges** means the Madrid, Barcelona, Bilbao and Valencia stock exchanges and the automated quotation system.

**Spin-Off** means:

- (a) a distribution of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (b) any issue, transfer or delivery of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class pursuant to any arrangements with the Issuer or any of its Subsidiaries.

**Spin-Off Securities** means equity share capital of an entity other than the Issuer or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than the Issuer.

**Subordination End Date** means the date upon which the Senior Liabilities (excluding, for the avoidance of doubt, those liabilities which have ceased to be Senior Liabilities by virtue of the operation of the proviso in the definition of Senior Facilities Agreement) have been paid in full.

**Subsidiary** of any person means (a) a company more than 50% of the Voting Rights of which is owned or controlled, directly or indirectly, by such person or by one or more other Subsidiaries of such person or by such person and one or more Subsidiaries thereof or (b) any other person in which such person, or one or more other Subsidiaries of such person or such person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

**Syndicate of Noteholders** has the meaning provided in Condition 14(a).

**TARGET Business Day** means a day on which the TARGET System is operating.

**TARGET System** means the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System.

**Tender Offer** has the meaning provided in Condition 7(b).

**Tender Offer Period** has the meaning provided in Condition 7(b).

**Tender Offer Triggering Event** has the meaning provided in Condition 7(b).

**Threshold Amount** has the meaning provided in Condition 6(b)(v).

**Trading Day** means any day (other than Saturday or Sunday) on which the Relevant Stock Exchange is open for business and Ordinary Shares may be dealt in and is also a Madrid/Barcelona business day.

**Triggering Event** has the meaning provided in Condition 7(b).

**Triggering Event Period** has the meaning provided in Condition 7(c).

**Volume Weighted Average Price** means, in respect of an Ordinary Share, Security or, as the case may be, a Spin-Off Security on any Trading Day, the order book volume-weighted average price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security published by or derived (in the case of an Ordinary Share) from Bloomberg page VAP or (in the case of a Security (other than Ordinary Shares) or Spin-Off Security) from the principal stock exchange or securities market on which such Securities or Spin-Off Securities are then listed or quoted or dealt in, if any or, in any such case, such other source as shall be determined to be appropriate by an Independent Financial Adviser on such Trading Day, provided that if on any such Trading Day such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share, Security or a Spin-Off Security, as the case may be, in respect of such Trading Day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding Trading Day on which the same can be so determined or, if such price cannot be so determined, as determined in good faith by an Independent Financial Adviser.

**Voting Rights** means the right generally to vote at a general meeting of shareholders of the Issuer (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

References to any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment.

References to any issue or offer or grant to Shareholders "as a class" or "by way of rights" shall be taken to be references to an issue or offer or grant to all or substantially all Shareholders, other than Shareholders to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange or securities market in any territory or

in connection with fractional entitlements, it is determined not to make such issue or offer or grant.

In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as an Independent Financial Adviser considers appropriate to reflect any consolidation or sub-division of the Ordinary Shares or any issue of Ordinary Shares by way of capitalisation of profits or reserves, or any like or similar event.

For the purposes of Conditions 6(b), (d), (g) and (h) and Condition 10 only, (a) references to the “issue” of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares, whether newly issued and allotted or previously existing or held by or on behalf of the Issuer or any of its Subsidiaries, and (b) Ordinary Shares held by or on behalf of the Issuer or any of its respective Subsidiaries (and which, in the case of Condition 6(b)(i), (ii) and (iv), do not rank for the relevant right or other entitlement) shall not be considered as or treated as “in issue”.

#### **4 Registration and Transfer of Notes**

##### *(a) Registration*

The Issuer will cause a register (the **Register**) to be kept at the specified office of the Registrar outside the United Kingdom on which will be entered the names and addresses of the holders of the Notes and the particulars of the Notes held by them and of all transfers, redemptions and conversions of Notes.

##### *(b) Transfer*

Notes may, subject to the terms of the Fiscal Agency Agreement and to Conditions 4(c) and 4(d), be transferred in whole or in part in an Authorised Denomination by lodging the relevant Note (with the form of application for transfer in respect thereof duly executed and duly stamped where applicable) at the specified office of the Registrar or any Paying, Transfer and Conversion Agent.

No transfer of a Note will be valid unless and until entered on the Register. A Note may be registered only in the name of, and transferred only to, a named person (or persons, not exceeding four in number).

The Registrar will within 7 (seven) business days or such longer period as may be required for the Registrar to comply with any fiscal or other requirements, in the place of the specified office of the Registrar, of any duly made application for the transfer of a Note, deliver a new Note to the transferee (and, in the case of a transfer of part only of a Note, deliver a Note for the untransferred balance to the transferor) at the specified office of the Registrar or (at the risk and, if mailed at the request of the transferee or, as the case may be, the transferor otherwise than by ordinary mail, at the expense of the transferee or, as the case may be, the transferor) mail the Note by uninsured mail to such address as the transferee or, as the case may be, the transferor may request.

##### *(c) Formalities Free of Charge*

Such transfer will be effected without charge subject to (a) the person making such application for transfer paying or procuring the payment of any taxes, duties and other governmental charges in connection therewith; (b) the Registrar being satisfied with the documents of title and/or identity of the person making the application; and (c) such reasonable regulations as the Issuer may from time to time agree with the Registrar.

(d) *Closed Periods*

Neither the Issuer nor the Registrar will be required to register the transfer of any Note (or part thereof) (a) during the period of 15 (fifteen) days immediately prior to the Final Maturity Date (b) in respect of which a Conversion Notice has been delivered in accordance with Condition 6(g) or where an Issuer Conversion Notice shall have been given pursuant to Condition 6(a)(ii); or (c) in respect of which a holder has exercised its right to require redemption pursuant to Condition 7(b); or (d) during the period of 15 (fifteen) days ending on (and including) any Record Date (as defined in Condition 8(c)) in respect of any payment of interest on the Notes.

## 5 **Interest**

(a) *Interest Rate*

The Notes bear interest from and including the Closing Date at the rate of 6.50% per cent. per annum calculated by reference to the nominal amount thereof and payable semi-annually in arrear in equal instalments on 30 April and 30 October in each year (each an **Interest Payment Date**), commencing with the Interest Payment Date falling on 30 April 2010.

Where interest is required to be calculated for any period which is shorter than an Interest Period it will be calculated on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of the number of days in the Interest Period in which the relevant period falls and the number of Interest Periods normally ending in any year.

**Interest Period** means the payment period beginning on (and including) the Closing Date and ending on (but excluding) the first Interest Payment Date and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date.

(b) *Accrual of Interest*

Each Note will cease to bear interest (i) where the Conversion Right shall have been exercised by a Noteholder or, if applicable, where the Issuer has exercised the Issuer Conversion Right, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the Closing Date; or (ii) where such Note is being redeemed or repaid pursuant to Condition 7 or Condition 10, from (but excluding) the due date for redemption thereof unless, upon due presentation thereof, payment of the principal amount of the Notes is improperly withheld or refused, in which event interest will continue to accrue as provided in Condition 7(a) (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Note up to that day are received by or on behalf of the relevant holder, and (b) the day 7 (seven) days after the Fiscal Agent has notified Noteholders of receipt of all sums due in respect of all the Notes up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant holders under these Conditions).

## 6 Conversion of Notes

### (a) *Conversion Period and Conversion Price*

#### (i) Exercise of Conversion Rights by Noteholders

Subject as provided below, each Note shall entitle the holder (a **Conversion Right**) to convert such Note into existing Ordinary Shares and/or, if the New Issue Requirements have been met, new Ordinary Shares, in each case credited as fully paid, subject to and as provided in these Conditions.

The number of Ordinary Shares to be issued or delivered on exercise of a Conversion Right in respect of a Note shall be determined by dividing the nominal amount of the relevant Note by the conversion price (the **Conversion Price**) in effect on the relevant Conversion Date.

The initial Conversion Price is euro 39.287 per Ordinary Share. On the basis of the initial Conversion Price, each euro 50,000 nominal amount of Notes would entitle the holder to receive (subject as provided in these Conditions) 1,272.68 Ordinary Shares. The Conversion Price is subject to adjustment in the circumstances described in Condition 6(b).

A Noteholder may exercise the Conversion Right in respect of a Note by delivering such Note (together with a duly completed Conversion Notice (as defined below)) to the specified office of any Paying, Transfer and Conversion Agent in accordance with Condition 6(g) whereupon the Issuer shall (subject as provided in these Conditions) procure the delivery, to or as directed by the relevant Noteholder of Ordinary Shares credited as paid up in full as provided in this Condition 6.

Subject to, and as provided in these Conditions, the Conversion Right in respect of a Note may be exercised, at the option of the holder thereof, at any time (subject to any applicable fiscal or other laws or regulations and as hereinafter provided) from 15 December 2009 (the **Conversion Commencement Date**) to the close of business (at the place where the relevant Note is delivered for conversion) on the date falling 7 (seven) Trading Days prior to the Final Maturity Date (both days inclusive) or, if the Issuer shall exercise the Issuer Conversion Right pursuant to Condition 6(a)(ii), up to the close of business on the sixth Trading Day prior to the last possible date on which the Issuer Conversion Settlement Period (as defined in Condition 6(a)(ii) could end, unless there shall be default in making payment in respect of such Note on such date fixed for redemption, in which event the Conversion Right shall extend up to (and including) the close of business (at the place aforesaid) on the date on which the full amount of such payment becomes available for payment and notice of such availability has been duly given in accordance with Condition 15 or, if earlier, the Final Maturity Date; provided that, in each case, if the final such date for the exercise of Conversion Rights is not a business day at the place aforesaid, then the period for exercise of the Conversion Right by Noteholders shall end on the immediately preceding business day at the place aforesaid.

Without prejudice to the foregoing paragraph of this Condition 6(a)(i), Conversion Rights may not be exercised in respect of a Note which the relevant holder has either (i) given notice pursuant to Condition 10; or (ii) exercised its right to require the Issuer to redeem pursuant to Condition 7(b).

Conversion Rights may not be exercised by a Noteholder in circumstances where the relevant Conversion Date would fall during the period commencing on the Record Date in respect of any payment of interest on the Notes and ending on the relevant Interest Payment Date (both days inclusive).

The period during which Conversion Rights may (subject as provided below) be exercised by a Noteholder is referred to as the **Conversion Period**.

Conversion Rights may only be exercised in respect of an Authorised Denomination. Where Conversion Rights are exercised in respect of part only of a Note, the old Note shall be cancelled and a new Note for the balance thereof shall be issued in lieu thereof without charge but upon payment by the holder of any taxes, duties and other governmental charges payable in connection therewith and the Registrar will within 7 (seven) business days, in the place of the specified office of the Registrar, following the relevant Conversion Date deliver such new Note to the Noteholder at the specified office of the Registrar or (at the risk and, if mailed at the request of the Noteholder otherwise than by ordinary mail, at the expense of the Noteholder) mail the new Note by uninsured mail to such address as the Noteholder may request.

Fractions of Ordinary Shares will not be issued or delivered on exercise of Conversion Rights or pursuant to Condition 6(d). However, and except where any individual entitlement would be less than euro one (1.00), a cash payment shall be made by the Issuer in respect of any such fraction determined by reference to the Current Market Price (as defined in Condition 6(b)) per Ordinary Share on the Trading Day (as defined in Condition 3) immediately preceding the relevant Conversion Date and the Issuer shall make payment of the relevant amount to the relevant holder not later than 5 (five) Madrid/Barcelona business days (as defined in Condition 3) following the relevant Conversion Date. If the Conversion Right in respect of more than one Note is exercised at any one time such that Ordinary Shares to be delivered on conversion pursuant to Condition 6(d) are to be registered in the same name, the number of such Ordinary Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate nominal amount of such Notes being so converted and rounded down to the nearest whole number of Ordinary Shares.

The Issuer will procure that Ordinary Shares to be delivered or transferred on conversion will be delivered or transferred to the holder of the Notes completing the relevant Conversion Notice or his nominee.

(ii) Issuer Conversion Right

The Issuer shall have the right to convert all but not some only of the Notes into Ordinary Shares at any time on or after the Conversion Commencement Date (the **Issuer Conversion Right**), subject as provided in these Conditions.

The Issuer may exercise the Issuer Conversion Right only:

- (A) at any time on or after 20 November 2012, if the Aggregate Value of a Note in the principal amount of €50,000 on at least 20 (twenty) Trading Days in any period of 30 (thirty) consecutive Trading Days ending not earlier than 5 (five) Trading Days prior to the giving of the relevant Issuer Conversion Notice, exceeds euro 65,000 on such Trading Day; or

- (B) if, at any time prior to the date the relevant Issuer Conversion Notice is given, Conversion Rights shall have been exercised and/or purchases (and corresponding cancellations) and/or redemptions effected in respect of 85% per cent. or more in nominal amount of the Notes originally issued (which shall include any further Notes issued pursuant to Condition 16); or
- (C) on a date not less than 15 (fifteen) nor more than 60 (sixty) days following the end of the Put Period.

As used above, **Aggregate Value** of a Note in the principal amount of €50,000 on a Trading Day means €50,000 divided by the Conversion Price on such day multiplied by the Closing Price of an Ordinary Share as derived from the Relevant Stock Exchange.

For the purposes of Condition 6(a)(ii)(A), if on any Trading Day in such 30 (thirty) Trading Day period the Closing Price on such Trading Day shall have been quoted cum-Distribution (or cum-any other entitlement) the Closing Price of an Ordinary Share on such Trading Day shall be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Distribution or entitlement per Ordinary Share as at the date of first public announcement of such Distribution (or entitlement), which amount shall be determined by an Independent Financial Adviser.

In order to exercise the Issuer Conversion Right, the Issuer shall give notice (an Issuer Conversion Notice) to the Noteholders in accordance with Condition 15.

An Issuer Conversion Notice shall specify:

- (i) the period (the **Issuer Conversion Settlement Period**) during which the date on which the Notes shall be converted and Ordinary Shares delivered to the converting Noteholders shall fall (the **Issuer Conversion Date**), which date shall fall not less than 12 (twelve) nor more than 15 (fifteen) Trading Days after the date of the Issuer Conversion Notice;
- (ii) the Conversion Price, the aggregate principal amount of the Notes outstanding and the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange, in each case as at the latest practicable date prior to publication of the Issuer Conversion Notice; and
- (iii) the Issuer Conversion Settlement Notice Cut-off Date (as defined below).

The Issuer may not exercise the Issuer Conversion Right if an Event of Default shall have occurred and is continuing on or prior to the date of the relevant Issuer Conversion Notice (and, if given, any such Issuer Conversion Notice shall be null and void) and any Issuer Conversion Notice shall be null and void if at any time on or prior to the relevant Issuer Conversion Date an Event of Default shall have occurred and is continuing.

The number of Ordinary Shares to be issued or transferred and delivered on exercise of the Issuer Conversion Right in respect of each €50,000 principal amount of Notes to be converted will be determined by dividing such principal amount by the Conversion Price in effect on the relevant Issuer Conversion Date, provided that fractions of Ordinary Shares will not be delivered on an exercise of the Issuer Conversion Right and no cash payment or other adjustment will be made in lieu thereof. However:

- (a) except where any individual entitlement would be less than euro one (1.00), a cash payment shall be made by the Issuer in respect of any such fraction determined by reference to the Current Market Price per Ordinary Share on the Trading Day immediately preceding the relevant Issuer Conversion Date and the Issuer shall make payment of the relevant amount to the relevant holder not later than 5 (five) Madrid/Barcelona business days (as defined in Condition 3) following the relevant Issuer Conversion Date;
- (b) if one or more Issuer Conversion Settlement Notices and relevant Notes are delivered by not later than the Issuer Conversion Settlement Notice Cut-off Date as provided below such that the Ordinary Shares to be issued or transferred and delivered in respect thereof are to be registered in the same name, the number of such Ordinary Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate principal amount of such Notes being so converted and rounded down to the nearest whole number of Ordinary Shares; and
- (c) where Ordinary Shares are to be issued to the Designated Person pursuant as provided below, the number of Ordinary Shares to be issued and transferred and delivered shall be calculated on the basis of the aggregate principal amount of Notes in respect of which such issue or transfer and delivery is to be made.

If the Issuer exercises the Issuer Conversion Right, the following provisions shall apply:

- (i) In order to obtain delivery of the relevant Ordinary Shares, the relevant Noteholder must deliver a duly completed notice substantially in the form set out in the Fiscal Agency Agreement (the **Issuer Conversion Settlement Notice**) a copy of which may be obtained from the specified office of any Paying, Transfer and Conversion Agent, together with the relevant Notes to the specified office of any Paying, Transfer and Conversion Agent at least 6 (six) Trading Days prior to the last possible day on which the Issuer Conversion Settlement Period could end (the **Issuer Conversion Notice Cut-off Date**). If the delivery of such Issuer Conversion Settlement Notice is made after the end of normal business hours at the specified office of the relevant Paying, Transfer and Conversion Agent or on a day which is not a business day in such place, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following such business day.
- (ii) If the Issuer Conversion Settlement Notice and relevant Notes are not delivered to a Paying, Transfer and Conversion Agent on or before the Issuer Settlement Conversion Notice Cut-off Date, then on the Issuer Conversion Date, the relevant Ordinary Shares will be issued or transferred and delivered to a person (the **Designated Person**) selected by the Issuer which shall be resident for tax purposes in the Kingdom of Spain. The Issuer shall procure that all of such Ordinary Shares shall be sold by or on behalf of the Designated Person as soon as practicable based on advice from an Independent Financial Adviser and subject to any necessary consents being obtained and to the deduction by or on behalf of the Designated Person of any amount payable in respect of its liability to taxation and, subject to subparagraph (vi) below, the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Designated Person in connection with the issue, allotment and sale thereof the net proceeds of sale

paid to, or to the order of, the Fiscal Agent. The net proceeds of such sale shall be paid to, or to the order of, the Fiscal Agent and such net proceeds shall be held by or on behalf of the Commissioner and distributed rateably to the holders of the relevant Notes in accordance with the provisions of the Agency Agreement and otherwise in such manner and at such time as the Fiscal Agent shall determine and notify to the Noteholders in accordance with Condition 15. Payment of such net proceeds to, or to the order of, the Fiscal Agent shall discharge in full the obligations of the Issuer in respect of the relevant Notes.

- (iii) The Fiscal Agent shall have no liability in respect of the exercise or non exercise of any power or discretion pursuant to subparagraph (ii) above or in respect of any sale of Ordinary Shares or Additional Issuer Conversion Shares, whether for the timing of any such sale or the price at or manner in which any such Ordinary Shares are sold or the inability to sell any such Ordinary Shares or Additional Issuer Conversion Shares.
- (iv) Subject as provided in this Condition 6(a)(ii), an Issuer Conversion Notice shall be irrevocable. Failure to properly complete and deliver an Issuer Conversion Settlement Notice and deliver the relevant Notes may result in such notice being treated as null and void and the Issuer shall in respect of the Notes the subject of such null and void Issuer Conversion Settlement Notice, be entitled to effect settlement in accordance with subparagraph (ii) above. Any determination as to whether such notice has been properly completed and delivered as provided in these Conditions shall be made by the or the Fiscal Agent in its sole and absolute discretion and shall be conclusive and binding on the relevant Noteholders.
- (v) Ordinary Shares to be issued or transferred and delivered as contemplated by this Condition 6(a)(ii) shall be deemed to be issued or transferred and delivered as of the Issuer Conversion Date or, in the case of any Additional Issuer Conversion Shares as of the date the relevant Issuer Conversion Retroactive Adjustment takes effect (each such date an Issuer Conversion Right Reference Date).
- (vi) A Noteholder or the Designated Person must pay (in the case of the Designated Person by means of deduction from the net proceeds of sale referred to in subparagraph (ii) above or from amounts otherwise available to the Designated Person for the purpose) any taxes and capital, stamp, issue and registration and transfer taxes and duties arising on the relevant Ordinary Shares (other than any capital, stamp, issue, registration and transfer taxes and duties payable in the United Kingdom, Spain, Belgium and Luxembourg in respect of the allotment, issue or transfer and delivery of the Ordinary Shares in respect of such exercise (including Additional Issuer Conversion Shares) which shall be paid by the Issuer) and such Noteholder or the Designated Person (as the case may be) must pay (in the case of the Designated Person, by way of deduction from the net proceeds of sale as aforesaid or from amounts otherwise available to the Designated Person for this purpose) all, if any, taxes arising by reference to any disposal or deemed disposal of a Note or interest thereon in connection with such conversion.
- (vii) Ordinary Shares to be issued on exercise of the Issuer Conversion Right will be issued in “book-entry” form eligible for deposit at Iberclear and will be credited to (a) the Iberclear account specified in the Issuer Conversion

Settlement Notice or (b) if a Noteholder does not specify a valid Iberclear account in the Issuer Conversion Settlement Notice, or the relevant Issuer Conversion Settlement Notice is null and void for any other reason (as specified above) the Iberclear account specified by the Designated Person, in each case, on the Issuer Conversion Date.

- (viii) Ordinary Shares to be issued or transferred and delivered pursuant to this Condition 6(a)(ii) will be fully paid and will in all respects rank pari passu with the fully paid Ordinary Shares in issue on the date of the relevant Issuer Conversion Notice or, in the case of Additional Issuer Conversion Shares, the relevant Issuer Conversion Right Reference Date, except in any such case for any right excluded by mandatory provisions of applicable law, and except that such Ordinary Shares or, as the case may be, Additional Issuer Conversion Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the date of the Issuer Conversion Notice or, as the case may be, the relevant Issuer Conversion Right Reference Date.
- (ix) If the date of the Issuer Conversion Notice shall be after the record date in respect of any event giving rise to an adjustment to the Conversion Price pursuant to Condition 6(b), but before the relevant adjustment becomes effective under Condition 6(b) (such adjustment, an **Issuer Conversion Retroactive Adjustment**), then the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued or transferred and delivered to the relevant Noteholder, in accordance with the instructions contained in the relevant Issuer Conversion Settlement Notice or, as the case may be, to the Designated Person, such additional number of Ordinary Shares (if any) (the **Additional Issuer Conversion Shares**) as, together with the Ordinary Shares issued or to be transferred and delivered on conversion of the relevant Note, is equal to the number of Ordinary Shares which would have been required to be issued or delivered on conversion of such Note if the relevant adjustment to the Conversion Price had been made and become effective immediately prior to the Issuer Conversion Date. Where such Additional Issuer Conversion Shares are to be issued to the Designated Person, the provisions of subparagraph (ii) above relating to the sale of Ordinary Shares shall apply mutatis mutandis.

*(b) Adjustment of Conversion Price*

Upon the occurrence of any of the events described in Condition 6(b)(i) to (v) below, the Conversion Price shall be adjusted as follows:

- (i) *Increase of capital by means of capitalisation of reserves, profits or premia by distribution of Ordinary Shares, or division or consolidation of Ordinary Shares:*

Subject to Condition 6(e), in the event of a change in the Issuer's share capital as a result of capitalisation of reserves, profits or premia, by means of the distribution of Ordinary Shares, and in the event of division or consolidation of Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such change by the result of the following formula:

$$N_{\text{Old}} / N_{\text{New}}$$

where:

$N_{Old}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{New}$  is the number of Ordinary Shares existing after the change in share capital.

Such adjustment shall become effective on the date on which such Ordinary Shares are distributed or, in the event of division or consolidation of Ordinary Shares, on the first day the Ordinary Shares are traded on the new basis on the Relevant Stock Exchange.

- (ii) *Issues of Ordinary Shares or Other Securities to Shareholders by way of conferring subscription or purchase rights:*

Subject to Condition 6(e), if (i) the Issuer issues or grants to Shareholders any rights or options, warrants or other rights per Ordinary Share to subscribe for or acquire Ordinary Shares, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities or (ii) any third party with the agreement of the Issuer issues to Shareholders any rights, options or warrants to purchase any Ordinary Shares, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities (the rights referred to in (i) and (ii) collectively and individually being the **Purchase Rights**), in each case in circumstances whereby such Purchase Rights are issued or granted to holders as a class, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the result of the following formula:

$$(P_{cum} - R) / P_{cum}$$

where:

$P_{cum}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to whichever is the later of (x) the last Trading Day preceding the date on which the Ordinary Shares are first traded ex-Purchase Rights on the Relevant Stock Exchange or (y) the Trading Day when the price for the Purchase Right is announced, or, if the day the subscription or purchase price is announced is not a Trading Day, the next following Trading Day; and

R is the value of the Purchase Right relating to one Ordinary Share or Other Security, such value to be calculated as follows:

- (A) in the event the Purchase Rights relate to Ordinary Shares:

$$R = P_{cum} - TERP$$

where:

$$TERP = (N_{old} \times P_{cum} + N_{new} \times (X_{rights} + Div)) / (N_{old} + N_{new})$$

and:

TERP is the theoretical ex-Purchase Rights price; and

$N_{old}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{\text{new}}$  is the number of Ordinary Shares being newly issued; and

$X_{\text{rights}}$  is the price at which one new Ordinary Share can be subscribed, exercised or purchased; and

Div is the amount (in euro), if any, by which the dividend entitlement per existing Ordinary Share exceeds the dividend entitlement per new Ordinary Share, (x) if dividends have already been proposed to the general meeting of Shareholders but not yet paid, based on the proposed dividend amount, or (y) if dividends have not yet been proposed based on the last paid dividend;

provided, however, that no such adjustment shall be made if the subscription or purchase price at which one new Ordinary Share can be subscribed or purchased is at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to whichever is the later of (x) the last Trading Day preceding the date on which the Ordinary Shares are first traded ex-Purchase Rights on the Relevant Stock Exchange or (y) the Trading Day when the price for the Purchase Right is announced, or, if the day the subscription or purchase price is announced is not a Trading Day, the next following Trading Day;

- (B) in the event the Purchase Rights relate to Other Securities or to securities convertible or exchangeable into Ordinary Shares or Other Securities and where such Purchase Rights are traded on a regulated stock exchange in Switzerland, the European Union, the United States of America, Canada or Japan:

$$R = N_{\text{rights}} \times P_{\text{rights}}$$

where:

$N_{\text{rights}}$  is the number of Purchase Rights granted per Ordinary Share; and

$P_{\text{rights}}$  is the average of the last paid prices on the Relevant Stock Exchange (or, if no dealing is recorded, the arithmetic mean of the bid and offered prices) on a spot basis of one Purchase Right on each Trading Day during the time period the Purchase Rights are traded, but not longer than the first 10 (ten) Trading Days.

- (C) in all other cases where neither of the previous paragraphs (A) or (B) is applicable:

R will be determined by an Independent Financial Adviser.

Such adjustment shall become effective

- (1) in the case of Condition 6(b)(ii)(A), on the first day on which the Ordinary Shares are traded ex-Purchase Rights on the Relevant Stock Exchange;
- (2) in the case of Condition 6(b)(ii)(B), 5 (five) Trading Days after (x) the end of the period during which the Purchase Rights are

traded or (y) the 10th (tenth) Trading Day of the subscription or purchase period, whichever is sooner; and

- (3) in the case of Condition 6(b)(ii)(C), on the date determined by the Independent Financial Adviser.

(iii) *Issues of Ordinary Shares or Other Securities to Third Parties:*

Subject to Condition 6(e), if (a) the Issuer issues (whether for cash or non-cash consideration or for no consideration) (otherwise than as mentioned in Condition 6(b)(ii) above) to a third party any Ordinary Shares or options, warrants or, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities or (b) any third party with the agreement of the Issuer issues (whether for cash or non-cash consideration or for no consideration) (otherwise than as mentioned in Condition 6(b)(ii) above) to a third party any Ordinary Shares or options, warrants or, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities, in each case in circumstances whereby Purchase Rights are not issued or granted to Shareholders, (the issuance of such securities referred to in (a) and (b) collectively and individually being a **Non Pre-Emptive Issue of Securities**), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the result of the following formula:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

$P_{\text{cum}}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the date of the first public announcement of the terms of the relevant Non Pre-Emptive Issue of Securities; and

D is the dilution as a result of the issue of Ordinary Shares or Other Securities, such dilution to be calculated as follows:

(A) in the event of the issue of Ordinary Shares:

$$D = P_{\text{cum}} - \text{TDP}$$

where:

$$\text{TDP} = (N_{\text{old}} \times P_{\text{cum}} + N_{\text{new}} \times (X_{\text{issue}} + \text{Div})) / (N_{\text{old}} + N_{\text{new}})$$

and:

TDP is the theoretical diluted price; and

$N_{\text{old}}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{\text{new}}$  is the number of Ordinary Shares being newly issued; and

$X_{\text{issue}}$  is the issue price at which one new Ordinary Share was issued to a third party as determined by an Independent Financial Adviser; and

Div is the amount (in euro), if any, by which the dividend entitlement per existing Ordinary Share exceeds the dividend entitlement per new Ordinary Share, (x) if dividends have

already been proposed to the general meeting of Shareholders but not yet paid, based on the proposed dividend amount, or (y) if dividends have not yet been proposed based on the last paid dividend;

provided, however, that no such adjustment shall be made if the issue price at which one new Ordinary Share is issued is at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the Trading Day when the Non Pre-Emptive Issue Securities is announced, or, if the day the Non Pre-Emptive Issue of Securities is announced is not a Trading Day, the next following Trading Day;

(B) in all other cases where the previous paragraph (A) is not applicable:

D will be determined by an Independent Financial Adviser.

Such adjustment shall become effective on the date the relevant security is issued.

(iv) *Spin-offs and capital distributions:*

Subject to Condition 6(e), if in respect of a Spin-Off or a capital distribution (including by way of a reduction in share capital and distribution of any distributable reserve and share premium or the payment of a cash Dividend from Reserves), other than a cash Distribution as referred to in Condition 6(b)(v) below, the Issuer shall issue or distribute to holders of its Ordinary Shares any assets, evidence of indebtedness of the Issuer, shares, put options or other rights per Ordinary Share (other than as referred to in Condition 6(b)(ii) above) (a **Distribution**), the Conversion Price shall be adjusted as follows:

(A) where the Distribution (x) consists of securities that are traded on a regulated stock exchange in Switzerland, the European Union, the United States of America, Canada or Japan or (y) has otherwise a value which is determinable by reference to a stock exchange quotation or otherwise, by multiplying the Conversion Price in force immediately prior to such issue or distribution by the result of the following formula:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

$P_{\text{cum}}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the date on which the Ordinary Shares are first traded ex-Distribution on the Relevant Stock Exchange following the relevant Distribution; and

D is the value of the Distribution (in euro) attributable to one Ordinary Share on the Trading Day immediately following the date in respect of which  $P_{\text{cum}}$  has been determined, as determined by an Independent Financial Adviser based, in principle, on the closing price on the Relevant Stock

Exchange in case of 6(b)(iv)(A)(x) or by an Independent Financial Adviser in case of 6(b)(iv)(A)(y);

- (B) in all other cases and where there is one (but not more than one) Distribution on a given Trading Day, by multiplying the Conversion Price in force immediately prior to such Distribution by the result of the following formula:

$$P_{\text{after}} / P_{\text{before}}$$

where:

$P_{\text{after}}$  is the Current Market Price per Ordinary Share after the date such Distribution was made (the **Distribution Date**); and

$P_{\text{before}}$  is the Current Market Price per Ordinary Share before the Distribution Date;

whereby for the purposes of these Conditions (but other than in respect of this provision) the Current Market Price per Ordinary Share in respect of any Trading Day shall be deemed to be the average of the Closing Prices on each of the 5 (five) consecutive Trading Days ending on the Trading Day immediately preceding such Trading Day and, for the purposes of this provision only, the Current Market Price per Ordinary Share shall be deemed to be the average of the Closing Prices (x) in the case of  $P_{\text{before}}$ , on the 5 (five) consecutive Trading Days before the Distribution Date, and (y) in the case of  $P_{\text{after}}$ , on the 5 (five) consecutive Trading Days after the Distribution Date, as determined by an Independent Financial Adviser.

When calculating the average of the Closing Prices, the gross amount, if any, of any cash Distribution paid during either of the above mentioned periods of 5 (five) consecutive Trading Days, shall be added back to the Closing Prices on each of the Trading Days on which the Ordinary Shares are traded ex-cash Distribution; and

- (C) in all other cases where there is more than one such Distribution on a given Trading Day, the Independent Financial Adviser will determine the necessary adjustment.

Such adjustment shall become effective, in the case of (A), on the date on which the Distribution is made and, in the case of (B) and (C), 5 (five) Trading Days after the Distribution Date.

In these Conditions “cash Dividend from Reserves” shall mean the excess, if any, of the aggregate amount of cash dividends paid in

respect of a fiscal year of the Issuer above the distributable profits of the Issuer for such fiscal year.

(v) *Extraordinary Distributions:*

Subject to Condition 6(e), in the event of an Extraordinary Distribution paid after 6 October 2009 other than a cash Dividend from Reserves by the Issuer to holders of its Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price by the following fraction:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

- $P_{\text{cum}}$  is the Closing Price on the Trading Day immediately preceding the date on which the Ordinary Shares are first traded ex-Distribution;
- D is the portion of the Fair Market Value of the Extraordinary Distribution attributable to one Ordinary Share (as adjusted for any split or consolidation of the Ordinary Shares pursuant to Condition 6(b)(i)) paid in the Relevant Fiscal Year (as defined below).

Such adjustment shall become effective on the Trading Day on which the Ordinary Shares are first traded ex-Distribution.

**Extraordinary Distribution** means any cash Distribution (including any repayments in part of the nominal amount of the Ordinary Shares but not including any distributions for which an adjustment is otherwise made according to Condition 6(b) or 6(d) or is excluded in accordance with Condition 6(e)) (the **Relevant Distribution**) paid in (i) the calendar year 2009, on any date falling after 6 October 2009, whatever the size of such cash Distribution and without reference to the Fair Market Value of such cash Distribution per Ordinary Share exceeding alone, or in aggregate with any other cash Distributions, a Threshold Amount and (ii) any other calendar year referenced below (the **Relevant Fiscal Year**) if the sum of:

- (a) the Fair Market Value of the Relevant Distribution per Ordinary Share; and
- (b) the aggregate of the Fair Market Value per Ordinary Share of any other cash Distribution or cash Distributions per Ordinary Share paid in the Relevant Fiscal Year (disregarding for such purpose any amount previously determined to be an Extraordinary Distribution in the Relevant Fiscal Year).

such sum being the Current Year's Dividends, exceeds the Threshold Amount for such Relevant Fiscal Year, and in such case the amount of the relevant Extraordinary Distribution shall be the lesser of (A) the amount by which the Current Year's Dividends exceeds the Threshold Amount and (B) the amount of the Relevant Distribution.

**Threshold Amount** means, for any Relevant Fiscal Year, the amount per Ordinary Share corresponding to the fiscal year set out below (adjusted *pro rata* for any adjustments to the Conversion Price made pursuant to the provisions of this Condition 6(b)).

|                              | Threshold<br>Amount<br>(€) |
|------------------------------|----------------------------|
| Relevant Fiscal Year ending: |                            |
| 31 December 2009.....        | 1.20                       |
| 31 December 2010.....        | 1.20                       |
| 31 December 2011.....        | 1.20                       |
| 31 December 2012.....        | 1.20                       |
| 31 December 2013.....        | 1.20                       |
| 31 December 2014.....        | 1.20                       |

*(c) Calculation of Adjustments*

Each adjustment to be made pursuant to Condition 6(b) or Condition 7(c) shall be determined by an Independent Financial Adviser appointed by the Issuer and shall (in the absence of manifest error) be binding on all parties concerned. In addition, any written opinion of the Independent Financial Adviser, where required by Condition 6(b), shall be conclusive and binding on all concerned save in the case of manifest error.

If in case of any adjustment the resulting Conversion Price is not an integral multiple of euro 0.01 (one hundredth of a euro), it shall be rounded down to the nearest whole or multiple of euro 0.01 (one hundredth of a euro). No adjustment shall be made to the Conversion Price where such adjustment (rounded down, if applicable) would be less than €0.01 (one hundredth of a euro) Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

The Issuer will procure that a notice is published in the manner described in Condition 15 as soon as practicable after either the date on which any adjustment to the Conversion Price becomes effective or, if no adjustment is required, the date on which it is possible to determine that such is the case.

*(d) Retroactive Adjustments*

If the Share Record Date in relation to the conversion of any Note shall be after an adjustment event specified in Condition 6(b), in any case in circumstances where the relevant Conversion Date falls before the relevant adjustment becomes effective under Condition 6(b) (such adjustment, a **Retroactive Adjustment**), then the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued or delivered to the converting Noteholder, in accordance with the instructions contained in the Conversion Notice, such additional number of Ordinary Shares (if any) (the **Additional Ordinary Shares**) as, together with the Ordinary Shares issued or to be issued or delivered on conversion of the relevant Note (together with any fraction of an Ordinary Share not so issued), is equal to the number of Ordinary Shares which would have been required to be issued or delivered on conversion of such Note if the relevant adjustment (more particularly referred to in the said provisions of Condition 6(b), Condition 6(f) or Condition 7(c)) to the Conversion Price had in fact been made and become effective immediately prior to the relevant Conversion Date.

*(e) Events not Giving Rise to Adjustments*

No adjustment to the Conversion Price will be made:

- (i) if the Issuer sells any share, right, warrant or other securities representing the same (an **Interest**) in any of its Subsidiaries to Shareholders at fair value, and for this purpose:
  - (I) where such Interest is listed, traded, or dealt in on any stock exchange, the fair value of such Interest shall be at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the day on which the Issuer officially announces the terms and conditions for such sale, as determined by an Independent Financial Adviser;
  - (II) where such Interest is not so listed, traded or dealt in, the fair value of such Interest shall be at least 95% of the intrinsic value thereof. The Issuer shall, at its own expense, instruct an Independent Financial Adviser to determine as soon as practicable the intrinsic value of such Interest; or
- (ii) if Ordinary Shares or Other Securities (including pre-emptive rights, options or warrants in relation to Ordinary Shares or Other Securities) are issued, offered or granted to, or for the benefit of, directors or employees, or former directors or employees or consultants or former consultants of the Issuer or any of its Subsidiaries or any associated company or to trustees to be held for the benefit of any such person in any such case pursuant to any employee share or option scheme; or
- (iii) if an increase in the Conversion Price would result from such adjustment, except in the case of an exchange of the Ordinary Shares for Other Securities or a consolidation of Ordinary Shares; or
- (iv) without prejudice to Condition 11, if the Conversion Price would fall below the nominal value of an Ordinary Share. In this case, the Conversion Price will be adjusted to the nominal value of an Ordinary Share and any remaining reduction of the Conversion Price resulting from such adjustment or from any further adjustment will be carried forward and only be applied if and to the extent the nominal value of an Ordinary Share will be reduced.

*(f) Other Events*

If the Issuer determines, at its discretion, that notwithstanding Condition 6(b) and Condition 6(d) an adjustment should be made to the Conversion Price as a result of one or more events or circumstances not referred to in Condition 6(b) or circumstances including circumstances listed in Condition 6(d) have arisen which have an adverse effect on the right to convert Notes and no adjustment to the Conversion Price under Condition 6(b) would otherwise arise or is excluded according to Condition 6(e), the Issuer shall engage the advice or services of an Independent Financial Adviser to determine as soon as practicable what adjustment, if any, to the Conversion Price or amendment, if any, to the terms of this Condition 6 is fair and reasonable to take account thereof and the date on which such adjustment should take effect. If several events occur which become effective on the same Trading Day and which would lead to an adjustment of the Conversion Price pursuant to Condition 6(b), the decision as to the manner of or calculating the adjustment of the Conversion Price shall be taken by the Independent Financial Adviser. The decision of the Independent Financial Adviser shall be binding on all concerned, save in the case of manifest error. The Fiscal Agent shall have no responsibility to make any inquiries as to whether or not any event has

occurred which might require an adjustment to the Conversion Price or amendment, if any, to the terms of Condition 6.

*(g) Procedure for exercise of Conversion Rights*

The Conversion Right may be exercised by a Noteholder during the Conversion Period by delivering the relevant Note to the specified office of any Paying, Transfer and Conversion Agent, during its usual business hours, accompanied by a duly completed and signed notice of conversion (a **Conversion Notice**) in the form (for the time being current) obtainable from any Paying, Transfer and Conversion Agent. Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations applicable in the jurisdiction in which the specified office of the Paying, Transfer and Conversion Agent to whom the relevant Conversion Notice is delivered is located. If such delivery is made after the end of normal business hours or on a day which is not a business day in the place of the specified office of the relevant Paying, Transfer and Conversion Agent, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following such business day.

A Conversion Notice, once delivered, shall be irrevocable.

The conversion date in respect of a Note (the **Conversion Date**) shall be the Madrid/Barcelona business day immediately following the date of the delivery of the Notes and the Conversion Notice and, if applicable, the making of any payment to be made as provided below.

A Noteholder exercising a Conversion Right must pay directly to the relevant authorities any taxes and capital, stamp, issue and registration duties arising on conversion (other than any taxes or capital duties or stamp duties payable in the United Kingdom, Luxembourg, Belgium or the Kingdom of Spain in respect of the allotment and issue and/or transfer of any Ordinary Shares on such conversion (including any Additional Ordinary Shares), which shall be paid by the Issuer) and such Noteholder must pay all, if any, taxes arising by reference to any disposal or deemed disposal of a Note or interest therein in connection with such conversion.

The Issuer may, in its own discretion, decide to fulfil its obligations, in connection with any Conversion Notice received, by the transfer of existing Ordinary Shares or, if the New Issue Requirements have been met, the allotment and issue of new Ordinary Shares provided that the Issuer shall treat all Noteholders converting their Notes on the same Conversion Date equally.

For the purposes of these Conditions, **New Issue Requirements** shall comprise the approval by the Issuer's shareholders' meeting of a resolution authorising the Issuer to satisfy the exercise of Conversion Rights by the issue and allotment of new Ordinary Shares and the registration with the relevant Mercantile Registry of such resolution. The Issuer undertakes to give notice promptly to Noteholders (in accordance with Condition 15) of the New Issue Requirements having been met.

Subject as provided in the immediately following paragraph, Conversion Notices will be acted upon by the Issuer on the first day of each calendar month or, if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day, in relation to Conversion Notices in respect of which the Conversion Dates occurred at least 7 (seven) Madrid/Barcelona business days prior to such day. Any Conversion Notice in respect of which the Conversion Date falls after the seventh Madrid/Barcelona business day prior to the first day of the relevant calendar month or if such day is not a

Madrid/Barcelona business day, the following Madrid/Barcelona business day, will be acted upon on the first day of the immediately following calendar month or if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day.

Notwithstanding the provisions of the preceding paragraph, (a) in the case of Conversion Notices delivered in respect of which the Conversion Date falls on any date during December 2009 or January 2010, the Issuer shall act upon any such Conversion Notice on the tenth day of February 2010 or, if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day, and (b) in the case of Conversion Notices delivered in respect of which the Conversion Date falls after the seventh Madrid/Barcelona business day prior to the last calendar month immediately prior to the Final Maturity Date or the last day of the Triggering Event Period (as the case may be), the Issuer shall act upon any such Conversion Notice not later than the Madrid/Barcelona business day prior to the Final Maturity Date or the last day of the Triggering Event Period (as the case may be).

The date upon which the Board of Directors of the Issuer, the Executive Committee (*Comisión Ejecutiva*) of the Issuer or any member of any of them acts upon the relevant Conversion Notice will be the date upon which the Notes are converted into Ordinary Shares and shall be the date from which the relevant Noteholder shall be without prejudice to Condition 6(a)(ii) in relation to Issuer Conversion Rights entitled to the economic rights of a holder of Ordinary Shares and is referred to herein as the **Share Record Date**. On the Share Record Date, subject to the next following sentence, and without prejudice to Condition 6(a)(ii), the relevant Noteholder will become entitled to the economic rights of a Shareholder for the purposes of dividend entitlement and otherwise. However, the relevant Noteholder will not be able to transfer newly-issued Ordinary Shares until they have been registered in Iberclear or existing Ordinary Shares until they have been credited to the account of the relevant Noteholder or its nominee with Iberclear. The date that the newly-issued Ordinary Shares are registered in, or existing Ordinary Shares are credited to, Iberclear, is referred to herein as the **Registry Date**.

The Issuer shall use its reasonable endeavours to register newly-issued Ordinary Shares and have these Ordinary Shares listed on the Spanish Stock Exchanges or credit existing Ordinary Shares (as applicable) in Iberclear as soon as practicable but in no event later than 15 (fifteen) Trading Days, in the case of new Ordinary Shares, and 5 (five) Trading Days, in the case of existing Ordinary Shares, after the relevant Share Record Date.

*The Registry Date for existing Ordinary Shares and for newly-issued Ordinary Shares is generally expected to occur between one and two weeks after the relevant Share Record Date.*

On or as soon as reasonably practicable after the Share Record Date with respect to any Notes in respect of which the Conversion Right has been exercised, the Issuer, through the Fiscal Agent, will notify the relevant Noteholder of the Share Record Date and the number of existing Ordinary Shares and/or newly-issued Ordinary Shares (as the case may be) to be transferred and/or issued upon such conversion. On or as soon as reasonably practicable after the Registry Date, the Issuer, through the Fiscal Agent, will notify the relevant Noteholder of the Registry Date and in the event that any newly-issued Ordinary Shares are issued, the Issuer will also notify the relevant Noteholder of the date of listing. In the relevant Conversion Notice the Noteholder is required to designate, *inter alia*, details of the Iberclear account and the name or names in which

the newly-issued Ordinary Shares shall be issued and registered (or in the case of existing Ordinary Shares, credited).

Notwithstanding delivery by a Noteholder of a Conversion Notice with respect to any Notes, such Noteholder shall remain a Noteholder for the purposes of and subject to these Conditions until the relevant Share Record Date, provided that once Conversion Rights with respect to a Note have been exercised, such Note will not be redeemable, subject to this Condition 6(g), on the Final Maturity Date or otherwise.

(h) *Ordinary Shares*

- (i) Without prejudice to Condition 6(a)(ii), Ordinary Shares delivered or issued upon conversion of the Notes will be fully paid and will in all respects rank *pari passu* with the fully paid Ordinary Shares in issue on the relevant Share Record Date or, in the case of Additional Ordinary Shares, on the relevant Reference Date, except that such Ordinary Shares or, as the case may be, Additional Ordinary Shares will not rank for any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the relevant Share Record Date or, as the case may be, the relevant date upon which any retroactive adjustment under Condition 6(d) becomes effective (the **Reference Date**).
- (ii) No payment or adjustment shall be made on conversion for any interest which otherwise would have accrued on the relevant Notes since the last Interest Payment Date preceding the Conversion Date relating to such Notes (or, if such Conversion Date falls before the first Interest Payment Date, since the Closing Date).

(i) *Purchase or Redemption of Ordinary Shares*

The Issuer may exercise such rights as it may from time to time enjoy to purchase or redeem or buy back its own shares (including Ordinary Shares) or any depositary or other receipts representing the same without the consent of the Noteholders.

(j) *Consolidation, Amalgamation or Merger*

Without prejudice to Condition 7(c), in the case of any consolidation, amalgamation or merger of the Issuer with any other corporation (other than a consolidation, amalgamation or merger in which the Issuer is the continuing corporation), or in the case of any sale or transfer of all, or substantially all, of the assets of the Issuer, the Issuer will forthwith notify the Noteholders of such event and take such steps as shall be required to ensure that each Note then outstanding will (during the period in which Conversion Rights may be exercised) be converted into the class and amount of shares and other securities property and cash receivable upon such consolidation, amalgamation, merger, sale or transfer by a holder of the number of Ordinary Shares which would have become liable to be issued or delivered if the Conversion Rights had been exercised immediately prior to such consolidation, amalgamation, merger, sale or transfer. The above provisions of this Condition 6(j) will apply, *mutatis mutandis* to any subsequent consolidations, amalgamations, mergers, sales or transfers.

## 7 **Redemption, Purchase and Triggering Event Protections**

(a) *Final Redemption*

Unless previously purchased and cancelled, redeemed or converted as herein provided, the Notes will be redeemed at their principal amount on the Final Maturity Date.

*(b) Redemption at the option of Noteholders following a Triggering Event*

From the Subordination End Date if a Triggering Event shall occur, the holder of each Note will have the right to require the Issuer to redeem that Note on the Put Date at the Put Price, together with accrued interest to (but excluding) the Put Date.

To exercise the right set out in the previous paragraph, the holder of the relevant Note must present such Note at the specified office of any Paying, Transfer and Conversion Agent together with a duly completed and signed notice of exercise, in the form for the time being current, obtainable from the specified office of any Paying, Transfer and Conversion Agent (a **Put Exercise Notice**) at any time in the period (the **Put Period**) of 60 days commencing on the occurrence of the Triggering Event (as defined below) and ending 60 days thereafter, or, if later, 60 days following the date upon which notice as required by Condition 7(d) is given to Noteholders by the Issuer. The **Put Date** shall be, the fourteenth calendar day after the expiry of the Put Period.

Payment in respect of any such Note shall be made by transfer to a bank in a city in which banks have access to the TARGET System specified by the relevant Noteholder in the applicable Put Exercise Notice.

In these Conditions:

**CNMV** means Spain's Comisión Nacional del Mercado de Valores.

**Put Price** means, in respect of a Note, the principal amount of such Note.

**Relevant Person** means B 1998, S.L. and/or any person or persons controlled by B 1998, S.L.

A **Relevant Person Triggering Event** shall occur if a Relevant Person and/or any person or persons acting together with a Relevant Person acquires or becomes entitled to control more than 75% of the Voting Rights of the Issuer.

**Tender Offer** means a tender offer (including a competing tender offer) made in accordance with applicable Spanish laws and regulations following publication of its approval from the CNMV.

**Tender Offer Period** means the period during which Shareholders are able to tender Ordinary Shares pursuant to the relevant Tender Offer.

A **Tender Offer Triggering Event** shall occur where a Tender Offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any person or persons acting together with the offeror) to acquire all or any of the issued Ordinary Share capital of the Issuer and which would result, immediately following completion of the Tender Offer, in the offeror having control of the Issuer, where for this purpose "control" means (a) the acquisition or holding of legal or beneficial ownership or control of more than 50% of the Voting Rights of the Issuer or (b) the right to appoint and/or remove all or the majority of the members of the Issuer's Board of Directors or other governing body, whether obtained directly or indirectly and whether obtained by ownership of share capital, the possession of Voting Rights, contract or otherwise.

**Triggering Event** means a Relevant Person Triggering Event or a Tender Offer Triggering Event, as the case may be.

(c) *Conversion Price and Protection in relation to a Triggering Event*

If a Triggering Event shall occur, the Conversion Price shall be adjusted in accordance with the formula set out below, provided that any adjustment to the Conversion Price pursuant to this Condition 7(e) shall apply only to Notes in respect of which Conversion Rights are exercised and the relevant Conversion Date falls within the period (the **Triggering Event Period**) commencing on and including the date the relevant Triggering Event occurs and ending on and including the date falling (a) 60 (sixty) days thereafter or, if later, 60 (sixty) days after the date on which notice of the Relevant Person Triggering Event is given to Noteholders, or (b) the last date upon which the Tender Offer is open for acceptance:

Conversion Price =  $RP \times (1 + (CP \times (1 - c/t)))$  where:

- RP is the Conversion Price prevailing on the relevant Conversion Date, divided by  $(1 + CP)$ ;
- CP is 28% (expressed as a fraction);
- c is the number of days from and including the first day when the adjusted Conversion Price is applicable to but excluding the Final Maturity Date, calculated on an Act/Act ICMA basis; and
- t is the number of days from and including the Closing Date to but excluding the Final Maturity Date, calculated on an Act/Act ICMA basis.

(d) *Notice of Triggering Event*

Within 14 (fourteen) calendar days following the occurrence of a Triggering Event, the Issuer shall give notice thereof to the Noteholders in accordance with Condition 15. Such notice shall contain a statement informing Noteholders of their entitlement to exercise their Conversion Rights as provided in these Conditions, and (if applicable) to exercise their rights to require redemption of their Notes pursuant to Condition 7(b).

Such notice shall also specify:

- (a) all information material to Noteholders concerning the Triggering Event;
- (b) the Conversion Price immediately prior to the occurrence of the Triggering Event and the Conversion Price applicable pursuant to Condition 7(c) during the Triggering Event Period on the basis of the Conversion Price in effect on the date the Triggering Event occurs;
- (c) the Closing Price of the Ordinary Shares as derived from the Relevant Stock Exchange as at the latest practicable date prior to the publication of the relevant notice;
- (d) the Triggering Event Period and (if applicable) the last day of the Put Period; and
- (e) the Put Date.

A Put Exercise Notice, once delivered, shall be irrevocable and the Issuer shall redeem all Notes the subject of Put Exercise Notices delivered as aforesaid on the relevant Put Date.

(e) *Purchase*

Subject to the requirements (if any) of any stock exchange on which the Notes may be admitted to listing and trading at the relevant time and subject to compliance with applicable laws and regulations, the Issuer or any Subsidiary of the Issuer may at any

time after the Subordination End Date purchase Notes in the open market or otherwise at any price. Such Notes shall be surrendered to the Fiscal Agent for cancellation.

*(f) Cancellation*

All Notes which are redeemed or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold.

*(g) Multiple Notices*

If more than one notice of redemption is given pursuant to this Condition 7, the first of such notices to be given shall prevail.

## **8 Payments**

*(a) Principal and Premium*

Payment of principal and premium in respect of the Notes and accrued interest payable on a redemption of the Notes (other than on an Interest Payment Date) will be made to the persons shown in the Register at the close of business on the Record Date and subject to the surrender (or, in the case of partial payment only, endorsement) of the relevant Notes at the specified office of the Registrar or of any of the Paying, Transfer and Conversion Agents.

*(b) Interest and other Amounts*

- (i)* Payments of interest due on an Interest Payment Date will be made to the persons shown in the Register at close of business on the Record Date.
- (ii)* Payments of all amounts other than as provided in Condition 8(a) and 8(b)(i) will be made as provided in these Conditions.

*(c) Record Date*

**Record Date** means the seventh business day, in the place of the specified office of the Registrar, before the due date for the relevant payment.

*(d) Payments*

Each payment in respect of the Notes pursuant to Condition 8(a) and 8(b)(i) will be made by transfer to a euro account maintained by the payee with a bank in a city in which banks have access to the TARGET System.

*(e) Payments subject to fiscal laws*

Without prejudice to the application of the provisions of Condition 9, all payments in respect of the Notes are subject in all cases to any applicable fiscal or other laws and regulations. No commissions or expenses shall be charged to the Noteholders in respect of such payments.

*(f) Delay in payment*

Noteholders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due (a) as a result of the due date not being a business day or (b) if the Noteholder is late in surrendering the relevant Note (where such surrender is required pursuant to these Conditions as a precondition to any payment).

(g) *Business Days*

In this Condition, **business day** means a day (other than a Saturday or Sunday) which is a TARGET Business Day and in the case of presentation or surrender of a Note on which commercial bank and foreign exchange markets are open for business in the place of the specified office of the Registrar or relevant Paying, Transfer and Conversion Agent, to whom the relevant Note is presented or surrendered.

(h) *Paying, Transfer and Conversion Agents, etc.*

The initial Paying, Transfer and Conversion Agents and Registrar and their initial specified offices are listed below. The Issuer reserves the right under the Fiscal Agency Agreement at any time to vary or terminate the appointment of any Paying, Transfer and Conversion Agent or the Registrar and appoint additional or other Fiscal Agents, provided that it will (a) maintain a Fiscal Agent, (b) maintain Paying, Transfer and Conversion Agents having specified offices in at least two major European cities, (c) maintain a Paying, Transfer and Conversion Agent with a specified office in a European Union member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive and (d) maintain a Registrar with a specified office outside the United Kingdom. Notice of any change in the Paying, Transfer and Conversion Agents or the Registrar or their specified offices will promptly be given by the Issuer to the Noteholders in accordance with Condition 15. In addition, at any time when a determination is required to be made by an Independent Financial Adviser, the Issuer shall promptly appoint and maintain such an Independent Financial Adviser.

(i) *Fractions*

When making payments to Noteholders, if the relevant payment is not of an amount which is a whole multiple of the smallest unit of the relevant currency in which such payment is to be made, such payment will be rounded down to the nearest unit.

## 9 Taxation

All payments in respect of the Notes by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature, unless such withholding or deduction is required by applicable laws or regulations. If any such withholding or deduction is so required, the relevant payment shall be made subject to and after any such withholding or deduction and no additional amounts shall be payable by the Issuer in respect of any such withholding or deduction.

## 10 Events of Default

If any of the following events (each an **Event of Default**) shall have occurred and is continuing:

- (a) default is made in the payment on the due date of principal, premium or interest or any other amount in respect of any of the Notes and such failure continues for a period of 5 (five) days in the case of principal or premium and 7 (seven) days in the case of interest; or
- (b) the Issuer does not perform or comply with any one or more of its other obligations in respect of the Notes, which default is incapable of remedy or, is not remedied within 30 (thirty) days after written notice of such default shall have been given to the Fiscal Agent at its specified office by any Noteholder; or

(c)

- (i) any other present or future indebtedness for or in respect of moneys borrowed or raised of the Issuer or any Material Subsidiary becomes, or is declared, due and payable prior to its stated maturity otherwise than at the option of the Issuer or the relevant Material Subsidiary; or
- (ii) any such indebtedness for or in respect of moneys borrowed or raised is not paid when due or, as the case may be, within any applicable grace period; or
- (iii) the Issuer or any Material Subsidiary fails to pay when due any amount payable by it under any present or future guarantee for, or indemnity in respect of, any indebtedness for or in respect of moneys borrowed or raised,

provided that the aggregate amount of the indebtedness, guarantees or indemnities in respect of which one or more of the events mentioned above in this paragraph (c) have occurred equals or exceeds €100,000,000 or its equivalent; or

- (d) a distress, attachment, execution or other legal process is levied, enforced or sued out on or against any part of the property, assets or revenues of the Issuer or any Material Subsidiary and is not discharged or stayed within 30 (thirty) days provided that the aggregate amount of property, assets and/or revenues involved in any such distress, attachment, execution or legal process equals or exceeds €100,000,000 or its equivalent; or
- (e) any mortgage, charge, pledge, lien or other encumbrance, present or future, created or assumed by the Issuer or any Material Subsidiary in respect of an obligation the principal amount of which equals or exceeds €100,000,000 or its equivalent is enforced (including by the taking of possession or the appointment of a receiver, administrative receiver, administrator manager or other similar person); or
- (f) the Issuer or any Material Subsidiary is insolvent or bankrupt (*concurso*) or unable to pay its debts, or is declared or a voluntary request has been submitted to a relevant court for the declaration of insolvency or bankruptcy, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, proposes or makes any agreement for the deferral, rescheduling or other readjustment of all of its debts, proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts or a moratorium is agreed or declared or comes into effect in respect of or affecting all or any part of the debts of the Issuer or any Material Subsidiary; or
- (g) an order is made or an effective resolution passed for the winding-up (*liquidación*) or dissolution (*disolución*) of any Material Subsidiary, or the Issuer or any Material Subsidiary ceases or threatens to cease to carry on all or substantially all of its business or operations, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation (i) on terms approved by a resolution of the Syndicate of Noteholders; or (ii) in the case of a Material Subsidiary, whereby the undertaking and assets of the Material Subsidiary are transferred to or otherwise vested in the Issuer or another Material Subsidiary; or
- (h) any action, condition or thing (including the obtaining or effecting of any necessary consent, approval, authorisation, exemption, filing, licence, order, recording or registration) at any time required to be taken, fulfilled or done in order (i) to enable the Issuer lawfully to enter into, exercise its rights and perform and comply with its obligations under the Notes; (ii) to ensure that those obligations are legally binding and enforceable; and (iii) to make the Notes admissible in evidence is not taken, fulfilled or done; or

- (i) any event occurs which under the laws of any relevant jurisdiction has a similar effect to any of the events referred to in any of the foregoing paragraphs; or
- (j) it is or will become unlawful for the Issuer to perform or comply with any of its obligations under or in respect of the Notes,

then, (A) up to and including the Subordination End Date, any Note may, by notice in writing given to the Fiscal Agent at its specified office by (i) the Commissioner acting upon a resolution of the Syndicate of Noteholders, in respect of all Notes, or (ii) unless there has been a resolution to the contrary by the Syndicate of Noteholders, any Noteholder in respect of such Note, be placed on demand, whereupon, subject as provided for in Condition 1(c) (Status of the Notes and Subordination), they shall become immediately payable on demand by the Commissioner or Noteholders as the case may be and (B) following the Subordination End Date, any Note may, by notice in writing to the Fiscal Agent at its specified office by (i) the Commissioner acting upon a Resolution of Noteholders, in respect of all Notes, or (ii) unless there has been a resolution to the contrary by the Syndicate of Noteholders, any Noteholder in respect of such Note, be declared immediately due and payable whereupon it shall become immediately due and payable at its principal amount together with accrued interest, without further formality.

## 11 Undertakings

Whilst any Conversion Right remains exercisable, the Issuer will, save with the approval of a resolution of the Syndicate of Noteholders:

- (a) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves, other than:
  - (i) by the issue of fully paid Ordinary Shares to Shareholders and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive Ordinary Shares or other shares or securities on a capitalisation of profits or reserves; or
  - (ii) by the issue of Ordinary Shares paid up in full (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive equity share capital (other than Ordinary Shares); or
  - (iv) by the issue of Ordinary Shares or any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive office of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any one or more of them,

unless, in any such case, the same constitutes a Distribution or otherwise gives rise (or would, but for the provisions of Condition 6(c) relating to roundings or the carry forward of adjustments, give rise) to an adjustment to the Conversion Price;

- (b) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity share capital carrying any rights

which are more favourable than the rights attaching to the Ordinary Shares but so that nothing in this Condition 11(b) shall prevent:

- (i) any consolidation, reclassification or subdivision of the Ordinary Shares; or
  - (ii) any issue of Ordinary Shares or any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive office of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any or more of them; or
  - (iii) any modification of such rights which is not, in the opinion of an Independent Financial Adviser (acting as an expert), materially prejudicial to the interests of the holders of the Notes; or
  - (iv) any issue of equity share capital where the issue of such equity share capital results, or would, but for the fact that the consideration per Ordinary Share receivable therefore is at least 95% of the Current Market Price per Ordinary Share, otherwise result, in an adjustment to the Conversion Price; or
  - (v) any issue of equity share capital or modification of rights attaching to the Ordinary Shares, where prior thereto the Issuer shall have instructed an Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and such Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment resulting in an increase in the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (c) procure that no Securities (whether issued by the Issuer or any Subsidiary of the Issuer or procured by the Issuer or any Subsidiary of the Issuer to be issued or issued by any other person pursuant to any arrangement with the Issuer or any Subsidiary of the Issuer) issued without rights to convert into, or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last Trading Day preceding the date of the first public announcement of the proposed inclusion of such rights unless the same gives rise to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;
- (d) not make any issue, grant or distribution or any other action taken if the effect thereof would be that, on the exercise of Conversion Rights, Ordinary Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- (e) not reduce its issued share capital, share premium (*prima de emisión de acciones*) account or capital redemption reserve (*reserva por capital amortizado*) or any uncalled liability in respect thereof, or any non-distributable reserves, except:
  - (i) pursuant to the terms of issue of the relevant share capital; or
  - (ii) a reduction of share premium (*prima de emisión de acciones*) account or capital redemption reserve to facilitate the writing off of goodwill arising on consolidation which does not involve the return, either directly or indirectly, of an amount standing to the credit of the share premium (*prima de emisión acciones*) account or capital

redemption reserve (reserva por capital amortizado) of the Issuer and in respect of which the Issuer shall have tendered to the court of competent jurisdiction such undertaking as it may require (if any) limiting, so long as any of the Notes remains outstanding, the extent of any distribution (except by way of capitalisation issue) of any reserve which arise in the books of the Issuer as a result of such reduction; or

- (iii) as permitted under applicable law and whether by way of transfer to reserves or otherwise, as long as no Distribution is made to Shareholders; or
  - (iv) where the reduction is the result of the cancellation of treasury Ordinary Shares (*autocartera*); or
  - (v) where the reduction is permitted by applicable law and either it results in an adjustment to the Conversion Price or the Independent Financial Adviser (acting as expert) advises that the interests of the Noteholders will not be materially prejudiced,
  - (vi) provided that, without prejudice to the other provisions of these Conditions, the Issuer may exercise such rights as they may from time to time enjoy pursuant to applicable law to purchase its Ordinary Shares and any depositary or other receipts or certificates representing Ordinary Shares without the consent of Noteholders;
- (f) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offeror and/or any associate (or affiliate) of the offeror) to acquire the whole or any part of the issued Ordinary Shares, or if any person proposes a scheme with regard to such acquisition, give notice of such offer or scheme to the Noteholders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the specified offices of the Paying, Transfer and Conversion Agents and, where such an offer or scheme has been recommended by the board of directors of the Issuer, or where such an offer has become or been declared unconditional in all respects, use all reasonable endeavours to procure that a like offer is extended to the holders of any Ordinary Shares issued during the period of the offer arising out of the exercise of the Conversion Rights by the Noteholders;
- (g) use its reasonable endeavours to ensure that (i) its issued and outstanding Ordinary Shares shall be admitted to listing and to trading on the Relevant Stock Exchange, (ii) the Ordinary Shares issued upon exercise of Conversion Rights will, as soon as is practicable, be admitted to listing and to trading on the Relevant Stock Exchange and will be listed, quoted or dealt in, as soon as is practicable, on any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in and comply with such requirements and conditions as may be imposed by the managing companies of the Spanish Stock Exchanges (*Sociedades Rectoras de las Bolsas*) or the CNMV for the official admission to listing of shares and (ii) the Notes are admitted to listing on the Official List of the Luxembourg Stock Exchange and to trading on the Luxembourg Stock Exchange's Euro MTF Market and that such admissions are maintained for so long as any Notes remain outstanding, unless to do so proves unduly onerous, in which case, it shall use its reasonable endeavours to maintain a listing and admission to trading for the Notes on such other international stock exchange as it may reasonably decide;
- (h) issue and allot or, as the case may be, transfer and deliver Ordinary Shares on exercise of Conversion Rights and at all times following the date on which the New Issue Requirements have been met keep available for issue free from pre-emptive rights out of its authorised but unissued capital sufficient authorised but unissued Ordinary Shares to enable the exercise of a

Conversion Right, and all rights of subscription and conversion for Ordinary Shares, to be satisfied in full;

- (i) ensure that in respect of any Distribution made by the Issuer after any Share Record Date or, as the case may be, the date of any Issuer Conversion Notice but prior to the relevant Registry Date or, as the case may be, the Issuer Conversion Date, and which would not otherwise give rise to adjustment pursuant to the provisions of Condition 6(b), any converting Noteholder is treated as a shareholder for such purposes;
- (j) appoint an Independent Financial Adviser to carry out any action requested of them under the Notes;
- (k) not take any action (nor refrain from taking any action) that would cause the Issuer to be subject generally to the taxing jurisdiction of a territory or a taxing authority of or in that territory with power to tax other than or in addition to the Kingdom of Spain if, at such time and under current laws and regulations, the Issuer would be required generally to make any withholding or deduction for or on account of any taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of such territory or any political subdivision thereof or therein having power to tax in respect of payments of interest on the Notes and where any such withholding or deduction exceeds any such withholding or deduction imposed or levied by or on behalf of the Kingdom of Spain; and
- (l) notify the Noteholders in accordance with Condition 15 promptly (i) if any amounts owing to the Senior Creditors under any Senior Facilities Agreement no longer constitute a Senior Liability by virtue of the operation of the proviso in the definition of Senior Facilities Agreement; and (ii) of the date upon which any or all of the Senior Liabilities have been paid in full.

## 12 Prescription

Claims against the Issuer for payment in respect of the Notes shall be prescribed and become void unless made within 10 (ten) years (in the case of principal or premium) or 5 (five) years (in the case of interest) from the appropriate Relevant Date in respect of such payment and thereafter any principal, premium interest or other sums payable in respect of such Notes shall be forfeited and revert to the Issuer.

## 13 Replacement of Notes

If any Note is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of any Paying, Transfer and Conversion Agent subject to all applicable laws and stock exchange requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Issuer may require. Mutilated or defaced Notes must be surrendered before replacements will be issued.

## 14 Syndicate of Noteholders, Modification and Waiver

### (a) *Syndicate of Noteholders*

Noteholders shall meet in accordance with certain regulations governing the Syndicate of Noteholders (the **Regulations**). The Regulations contain the rules governing the Syndicate of Noteholders and the rules governing its relationship with the Issuer and are attached to the Public Deed (as defined in the introduction to these Conditions) and are included in the Fiscal Agency Agreement.

BNY Corporate Trustee Services Limited has been appointed as a temporary Commissioner for the Noteholders. Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have agreed to: (i) the appointment of the temporary Commissioner; (ii) grant the temporary Commissioner full power and authority to take any action and/or to execute and deliver any document or notices necessary to implement the New Issue Requirements; and (iii) become a member of the Syndicate of Noteholders. Upon the subscription of the Notes, the temporary Commissioner will call a general meeting of the Syndicate of Noteholders to ratify or reject the acts of the temporary Commissioner, confirm its appointment or appoint a substitute Commissioner for it and to ratify the Regulations. Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have granted to the Fiscal Agent full power and authority to take any action and/or to execute and deliver any document or notices for the purposes of attending on behalf of the Noteholders the first meeting of the Syndicate of Noteholders called to confirm the appointment of the temporary Commissioner, approve its actions and ratify the Regulations contained in the Fiscal Agency Agreement, and vote in favour of each of those resolutions.

Provisions for meetings of the Syndicate of Noteholders are contained in the Regulations and in the Fiscal Agency Agreement. Such provisions shall have effect as if incorporated herein.

The Issuer may, with the consent of the Commissioner, but without the consent of the holders of the Notes amend these Conditions insofar as they may apply to the Notes to correct a manifest error or which amendments are of a formal minor or technical nature or to comply with mandatory provisions of law. Subject as aforesaid, no other modification may be made to or waiver of any breach or proposed breach of, these Conditions except with the sanction of a resolution of the Syndicate of Noteholders.

For the purposes of these Conditions,

- (i) **Commissioner** means the *comisario* as this term is defined under the Spanish Corporations Law (*Ley de Sociedades Anónimas*) of the Syndicate of Noteholders; and
- (ii) **Syndicate of Noteholders** means the *sindicato* as this term is described under the Spanish Corporations Law (*Ley de Sociedades Anónimas*).

*In accordance with Spanish law, a general meeting of the Syndicate of Noteholders shall be validly constituted upon first being convened provided that Noteholders holding or representing two-thirds of the Notes outstanding attend. If the necessary quorum is not achieved at the first meeting, a second general meeting may be convened one month after the first general meeting and shall be validly constituted regardless of the number of Noteholders who attend. A resolution shall be passed by holders holding an absolute majority in nominal amount of Notes at any properly constituted assembly.*

**(b) Modification of Fiscal Agency Agreement**

The Issuer shall only permit any modification, waiver or authorisation of any breach or proposed breach or any failure to comply with the Fiscal Agency Agreement if to do so could not reasonably be expected to be prejudicial to the interests of the Noteholders.

(c) *Notification to the Noteholders*

Any modification, waiver or authorisation in accordance with this Condition 14 shall be binding on the Noteholders and shall be notified by the Issuer to the Noteholders as soon as practicable thereafter in accordance with Condition 15.

## 15 Notices

All notices regarding the Notes will be valid if sent to the address of the relevant Noteholder as specified in the Register. The Issuer shall also ensure that all notices are duly published in a manner which complies with the rules and regulations of any stock exchange or other relevant authority on which the Notes are for the time being listed and/or admitted to trading. Any such notice shall be deemed to have been given on the date of such notice. If publication as provided above is not practicable, notice will be given in such other manner, and shall be deemed to have been given on such date, as the Fiscal Agent may approve.

Notwithstanding the above, while all the Notes are represented by the Global Certificate and the Global Certificate is deposited with a common depositary for Euroclear Bank SA/NV (**Euroclear**) and/or Clearstream, Luxembourg, *société anonyme* (**Clearstream, Luxembourg**), notices to Noteholders may be given by delivery of the relevant notice to Euroclear or Clearstream, Luxembourg and such notices shall be deemed to have been given to Noteholders on the day following the day of delivery to Euroclear and/or Clearstream, Luxembourg; provided that for so long as any of the Notes are listed on the Official List of the Luxembourg Stock Exchange and traded on the Euro MTF Market of the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange so require, a notice will also be published in a leading newspaper having general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, alternatively on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)).

## 16 Further Issues

The Issuer may from time to time without the consent of the Noteholders create and issue further notes, Notes or debentures either having the same terms and conditions in all respects as the outstanding notes, Notes or debentures of any series (including the Notes) or in all respects except for the first payment of interest on them and so that such further issue shall be consolidated and form a single series with the outstanding notes, bonds or debentures of any series (including the Notes) or upon such terms as to interest, conversion, premium, redemption and otherwise as the Issuer may determine at the time of their issue.

## 17 Waiver of Statutory Pre-Emption Rights

Without prejudice to Condition 6(b), Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have:

- (a) waived any pre-emption rights (*derecho de suscripción preferente/ asignación gratuita*) in relation to Ordinary Shares or further issues by the Issuer of securities convertible into or exercisable or exchangeable for, Ordinary Shares which may arise from Spanish statutory provisions; and
- (b) granted the Commissioner full power and authority to take any action and/or to sign or execute and deliver any documents or notices that may be necessary or desirable for the Noteholders to comply with, and to give effect to, the waiver of pre-emption rights (*derecho de suscripción preferente/ asignación gratuita*) pursuant to Condition 17(a) above.

## **18 Contracts (Rights of Third Parties) Act 1999**

No person shall have any right to enforce any term or condition of the Notes under the Contracts (Rights of Third Parties) Act 1999.

## **19 Governing Law and Jurisdiction**

### *Governing Law*

Save as described below, the Fiscal Agency Agreement and the Notes and any non-contractual obligations arising out of or in connection with them are governed by, and shall be construed in accordance with, English law. The status and subordination of the Notes as described in Condition 1(c) and the provisions of Condition 14 relating to the appointment of the Commissioner and the Syndicate of Noteholders are governed by, and shall be construed in accordance with, Spanish law.

### *Jurisdiction*

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Notes and accordingly any legal action or proceedings arising out of or in connection with the Notes (**Proceedings**) may be brought in such courts. The Issuer irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the Noteholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

### *Agent for Service of Process*

The Issuer has appointed Law Debenture Corporate Services Limited at its registered office for the time being, currently at Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England to receive service of process in any Proceedings in England. If for any reason the Issuer does not have such an agent in England, it will promptly appoint a substitute process agent and notify the Noteholders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

