

# Agreement on Future Agreement for Sale of Business

entered into in accordance with the provisions of Section 289 et seq. of the Commercial Code  
by and between

future seller:

**Novácke chemické závody, a.s. v konkurze**

ID no.: 31 616 755

M. R. Štefánika 1, 972 71 Nováky

Slovak Republic

Registered in the Commercial Register of the District Court in Trenčín

Section: Sa, entry no.: 251/R

*with the Trustee acting on its behalf and account in accordance with the provisions of Section 44 (1) of the Bankruptcy Act*

**Slovenská správcovská a reštrukturalizačná, k.s.**

ID no.: 44 088 833

Horná 23, 974 01 Banská Bystrica

Slovak Republic

Registered in the Commercial Register of the District Court in Banská Bystrica

Section: Sr, entry no. 578/S

Office in the jurisdiction of the District Court in Trenčín:

Gen. M. R. Štefánika 379/19, 911 01 Trenčín

Slovak Republic

Acting through:

Miroslav Duračinský – general partner

(the “**Future Seller**”)

**and**

future purchaser:

**Name or business name or first name and surname**

ID no. (if assigned)

Address of the registered office, place of business or residence

Country

Registration in the relevant register

More specific identification of the entry in the register

*acting through (for legal entities):*

First name and Surname

Date of birth

Residence

title

(the “**Future Purchaser**”)

## Preamble

### WHEREAS:

- (A) *By decision of the District Court in Trenčín no. 29K 43/2009 – 15367 of 2 October 2009 published in Commercial Bulletin no. 193, Section B, of 7 October 2009, bankruptcy has been declared in respect to the Future Seller's assets and JUDr. Ján Súkeník, ID no: 340 56 777, with his registered office at Stred 60/55, 017 01 Považská Bystrica, was appointed trustee of the Future Seller as the bankrupt. By decision of the District Court in Trenčín no. 29K 43/2009 – 16075 of 29 December 2009, published in Commercial Bulletin no. 002, Section B, of 5 January 2010, JUDr. Ján Súkeník was recalled as the Future Seller's trustee, and the insolvency court appointed the Trustee as the Future Seller's trustee;*
- (B) *The provisions of Section 1 (1) (i) of the Bankruptcy Act provide for the resolution of a debtor's bankruptcy through the realisation of the debtor's assets, and through the collective satisfaction of the debtor's creditors. In accordance with the first sentence of Section 91 (1) of the Bankruptcy Act, realisation means the conversion into money of all the assets subject to the bankruptcy proceedings, denominated in euros, with the purpose of satisfying creditors. In accordance with the provisions of Section 91 (2) of the Bankruptcy Act, the purpose of the realisation of a bankruptcy estate is to gain the maximum possible proceeds, in the shortest possible time, while incurring the lowest possible costs. In realising a bankruptcy estate, the trustee shall proceed in a manner selected with due professional care in order to best meet the objective of the realisation while complying with the realisation rules set out by law;*
- (C) *In accordance with the provisions of Section 92 (1) (d) of the Bankruptcy Act, in order to realise the bankruptcy estate, the trustee may organise a tender or another type of competitive procedure aimed at disposing the assets;*
- (D) *In accordance with the provisions of Section 92 (2) of the Bankruptcy Act, in realising a business, the trustee shall transfer to the purchaser all things, rights, and other assets belonging to the business under an agreement. Only those liabilities of the business which arise in connection with the operation of the bankrupt's business after the declaration of bankruptcy, and the non-monetary employment-related liabilities specified in the agreement, shall be transferred to the purchaser. The provisions of the Commercial Code shall be reasonably applied to an agreement upon which the trustee realises the bankrupt business;*
- (E) *In accordance with the provisions of Section 44 (1) of the Bankruptcy Act, the right of the bankrupt to dispose of the assets subject to the bankruptcy proceedings, and the authorisation for the bankrupt to act in matters related to these assets, shall pass onto the trustee upon the declaration of bankruptcy; the trustee shall act on behalf and on account of the bankrupt;*
- (F) *In accordance with the provisions of Section 82 (1) of the Bankruptcy Act, a competent body shall give the trustee binding instructions and recommendations relating to the bankruptcy estate, the operation of the bankrupt's business or its part, the realisation of the bankruptcy estate, and other activities subject to the instructions of the competent body under this law. In accordance with the provisions of Section 83(1)(d) of the Bankruptcy Act, the competent body is authorised to give the trustee a binding instruction to be followed in transferring a business, or its part, for consideration;*
- (G) *For the purposes of the Bankruptcy Act, in accordance with the provisions of Section 82(2)(c) of the same act, for the joint realisation of assets forming the general estate, and one or more separate estates, the competent body shall be a creditor committee and the secured creditors who are concerned. In accordance with the provisions of Section 82(2)(e) of the same act, a court may also be the competent body for assets forming a separate estate where the secured claim of a secured creditor has been denied regarding the legal title, enforceability, or priority of the collateralisation by pledge; the same shall apply to concerned secured creditors under (b) through (d);*
- (H) *In accordance with the provisions of Section 83(4) of the Bankruptcy Act, if a court is a member of the competent body, the other members of the competent body shall submit an instruction or a recommended procedure, to be approved by the court, only after an opinion on the instruction or recommended procedure has been provided by the other members of the competent body. By its*

decision, the court shall approve the recommended procedure, or determine a relevant procedure; the trustee shall be bound by the decision of the court. The decision shall always be served to the trustee by the court. In accordance with Section 84(2) of the Bankruptcy Act, if the competent body fails to give the trustee the required instruction within a reasonable period of time determined by the trustee, or if the members of the competent body fail to provide their opinion on the instruction, in accordance with Section 83(4) of the Bankruptcy Act, within a reasonable period of time determined by the trustee, which failure could harm the legitimate interest of the concerned creditors, the trustee shall apply for the issuance of the court's decision determining the relevant procedure to be followed; the trustee shall be bound by such a decision of the court. The court shall take into account the legitimate interests of the creditors, their opinions, and the opinions of the competent body. The decision shall be always served to the trustee by the court;

- (I) *The Trustee has requested, in writing, (i) the creditor committee in the bankruptcy proceedings concerning the assets of the Future Seller and (ii) all the concerned secured creditors whose receivables, filed in a due and timely manner in the bankruptcy proceedings, concerning the assets of the Future Seller, have not been rejected by the Trustee within the statutory time-limit, with respect to their legal title, enforceability, collateralisation by pledge or priority of collateralisation by pledge, and acquired the procedural nature of the ascertained claims upon the lapse of the statutory time-limit for their rejection, to an extent to which they have not been rejected within the sense of the penultimate sentence of Section 32(4) of the Bankruptcy Act, as the members of the competent body, to order a binding instruction determining the procedure for the realisation of the assets forming the general estate, and several separate estates, of the secured creditors, through sale – a transfer of the Future Seller's entire business for consideration;*
- (J) *Acting in compliance with the provisions of Section 83(4) of the Bankruptcy Act, in its written filing, dated 4 April 2011, and its subsequent written filing, dated 6 May 2011, the Trustee applied at the District Court in Trenčín, as the court in charge of the bankruptcy proceedings, concerning the assets of the Future Seller, and, as the court acting in accordance with the provisions of Section 82(2)(e) of the Bankruptcy Act, as a member of the competent body for the approval of the binding instruction of the Trustee concerning the procedure for the realisation of assets forming the general estate and, at the same time, several separate estates, of the secured creditors through the disposal of the Future Seller's business, or for the issuance of a decision determining the relevant procedure;*
- (K) *On the basis of the Trustee's written application, in its decision no. 29K/43/2009-18985, issued on 7 June 2011 and published in Commercial Bulletin no.113, Section B, of 13 June 2011, concerning the Trustee's application for the approval of the proposed instruction, or for the issuance of a decision determining the relevant procedure, the District Court in Trenčín ordered the Trustee to realise the Bankrupt's assets through the sale of the business in a tender, in accordance with the conditions stipulated by the estate realisation principles, and in the binding tender conditions of 7 June 2001 which were prepared by the court;*
- (L) *In accordance with the express wording of Clause 10.1 (Announcement of Tender and Notices) of the Tender Conditions, in conjunction with Clause 3.3.1 of the Realisation Principles, on 12 July 2011 the Trustee placed a notice of a public Tender for the selection of a potential acquirer of the Future Seller's business to be transferred for consideration, with the objective to realise the Future Seller's assets subject to the bankruptcy proceedings in the nation-wide daily Hospodárske noviny;*
- (M) *By delivering a due Tender application and its annexes, the Future Purchaser expressly declared its interest in participating in the Tender, and became a Participant, as it duly fulfilled all the conditions for participation in the Tender, in accordance with Clause 3.1 of the Tender Conditions;*
- (N) *One of the obligatory prerequisites for the further participation of the Future Purchaser in the Tender, aimed at gaining the opportunity to acquire, for consideration, the Future Seller's business, realised by the Trustee under Clause 3.3, in conjunction with Clause 3.6.1 of the Tender Conditions, is the valid and effective execution of this Agreement, the wording of which shall be based primarily on the text of Clause 3.1.4 of the tender Conditions, and for the thorough review of which the Future Purchaser has an actual opportunity before the execution of this Agreement;*

- (O) *The Future Purchaser unconditionally agrees with the execution of this Agreement, with the purpose of its further participation in the Tender, with the prospects of acquiring the Future Seller's business for consideration and, if succeeding in the Tender, with the prospects of acquiring the Future Seller's business;*

*The Future Seller and the Future Purchaser agree to enter into an agreement with the following content:*

## **Article I Definitions and Interpretation**

- 1.1 Words and/or phrases with capitalised initial letters (terms) used in this Agreement shall have the meaning assigned to them by the Parties in this Article of the Agreement, and/or the meaning assigned to them by the word, words, phrases, sentences, or its part placed before simple parentheses ( ) containing the relevant term with the capitalised initial letter, separated from the surrounding text with quotation marks, and preceded with the phrase "hereinafter referred to as" (i) in this Agreement, or if the meaning of the term is not defined otherwise in this Agreement (ii) the meaning assigned to them in the same formal manner, and by the same expressions, as in the Tender Conditions. Based on the above, in this Agreement:

**Civil Code** means Act no. 40/1964 Coll., the Civil Code, as amended;

**Commercial Code** means Act no. 513/1991 Coll., as amended;

**Company** means a set of tangible and intangible assets and personnel of the Future Seller's Company, consisting mainly of immovable and movable things, securities held by the Future Seller, monetary and non-monetary claims, and other rights belonging to the Future Seller, and the personnel of the Future Seller, on the Decisive Date;

**Tender** means a public tender for the selection of a potential purchaser of the Future Seller's Company, announced on 12 July 2011 in a notice placed in the nation-wide daily *Hospodárske noviny*, and governed by the Tender Conditions in respect of the applicants and the participants, including the Future Purchaser;

**Decisive Date** means the effective date of all the provisions of the agreement on the sale of the business, concluded on the basis of the Future Seller's legal commitment to enter into an agreement arising under this Agreement;

**Trustee** means Slovenská správcovská a reštrukturalizačná, k.s., ID no.: 44 088 833, with its registered office at Horná 23, 974 01 Banská Bystrica, Slovak Republic, registered in the Commercial Register of the District Court in Banská Bystrica, section: Sr, entry no.: 578/S, with its office in the jurisdiction of the District Court in Trenčín: Gen. M. R. Štefánika 379/19, 911 01 Trenčín, Slovak Republic, registered in the list of trustees maintained by the Ministry of Justice of the Slovak Republic under item u S 1240;

**Labour Code** means Act no. 311/2001 Coll., the Labour Code, as amended;

**Tender Conditions** means the instruments and the content thereof, signed by the Trustee and entitled "Tender Conditions for the Selection of the Tenderer for the Acquisition of the Bankrupt Company, Novácke chemické závody, a.s. v konkurze" as worded in the inseparable fixed attachment hereto, which attachment and this Agreement form one deed;

**Realisation Principles** means the instrument and the contents thereof, dated 7 June 2011, issued by the District Court in Trenčín and entitled "Principles for the Realisation of the Bankruptcy Estate of Novácke chemické závody, a.s. v konkurze", as worded on sheets no. 18992 et seq. in the judicial file, kept by the District Court in Trenčín, for the bankruptcy proceedings concerning the Future Seller under no. 29K/43/2009;

**Bankruptcy Act** means Act no. 7/2005 Coll., on bankruptcy and restructuring, and on the amendment to certain laws, as amended;

**Agreement** means this agreement on the future agreement for the sale of the Company;

**Parties** means the Future Seller and the Future Purchaser collectively.

- 1.2 Unless this Agreement expressly provides otherwise, any reference to an article, clause, paragraph, or item made in this Agreement is a reference to an article, clause, paragraph, or item of this Agreement. Unless this Agreement provides otherwise, or the context clearly indicates any other intention of the Parties, the terms used in the singular form include their meaning in the plural form, and vice versa.
- 1.3 Terms not defined otherwise in this Agreement, or in the Tender Conditions, shall have a meaning assigned to them in the generally binding legal regulations of the Slovak Republic. Terms which are not defined in any valid, and effective generally binding, legal regulation of the Slovak Republic shall have the meaning typically assigned to them in (i) legal relationships created in the realisation of assets in bankruptcy proceedings, and, subsidiarily, in (ii) commercial relationships, however, always taking into account the economic purpose of this Agreement pursued by the Parties and the text of the Preamble hereof, that expresses the merits on which the Parties enter into this Agreement.
- 1.4 In this Agreement, any reference, explicit or implicit, to any legal regulation, is a reference to:
  - 1.4.1 the mandatory provisions of the relevant legal regulation, including any subsequent changes thereof, amendments or additions thereto, and/or binding interpretation rules thereof, under/in accordance with another legal regulation (before, on, or after the signing date of this Agreement);
  - 1.4.2 the mandatory provisions of any legal regulation which will supersede a legal regulation, under Article 1.4.1;
  - 1.4.3 the directory provisions of the relevant legal regulation, valid and effective at the time of execution hereof, provided that any subsequent changes of the directory provisions of the concerned legal regulation shall have no effect on the contents of the rights and duties of the Parties;
  - 1.4.4 any implementing legal procedure necessary for the application of the provisions of a legal regulation, under Articles 1.4.1 and/or 1.4.2 and/or 1.4.3.
- 1.5 If, in this Agreement, the Parties expressly refer to the content of any article, clause, paragraph, or item of the Tender Conditions, or any clearly defined part thereof, the content of the relevant article, clause, paragraph, or item of the Tender Conditions, or any clearly defined part thereof, shall become part of the arrangements between the Parties, expressed in this Agreement, to the extent of a reference made in this Agreement.
- 1.6 In the event of any future dispute concerning the interpretation of the expressions of will of any of the Parties contained in this Agreement, with the exception of its respective language expressions, in particular (i) the intent of the acting person in accordance with the provisions of Section 266(1) known to the other Party and/or (ii) the will of the acting person in accordance with the provisions of Section 35(2) of the Civil Code, shall be decisive, provided that these expressions of will are interpreted in such a manner that the explicitly expressed purpose of this Agreement remains preserved to the maximum possible extent. By expressing their consent to this Agreement, the Parties declare that, at the moment of entering into this Agreement, they are not aware of any intent or will of the other Party, other than the intent to achieve the purpose in accordance with the previous sentence.
- 1.7 Headings of the individual clauses of this Agreement serve only for the ease of reference, and therefore they do not create any rights or obligations of the Parties, and cannot be used for the interpretation of the content of this Agreement (*argumentum a rubrica*).

## **Article II**

### **Purpose and Subject Matter of the Agreement**

- 2.1 The Parties are aware of and fully respect the legitimacy of (i) the need for due and undisturbed course of the Tender as follows, in particular, from the content of the basic principles of the bankruptcy proceedings, such as the principle of speed, purposefulness and efficiency, economy of the proceedings, the maximisation of proceeds from the realisation of the assets subject to the bankruptcy proceedings, and the minimisation of the costs of the proceedings and (ii) the increased level of protection of certain information, data, or facts concerning the Future Seller and/or the Company against any divulgence, use, or disclosure, and the protection of the Future Seller's certain subjective rights attached to intangible subjects of law, which could be threatened or violated during the Tender, particularly the rights arising from trade secret, or any other type of intellectual property of the Future Seller; both aiming at the protection of the subjective rights and legitimate interests of the participants in the bankruptcy proceedings, concerning the assets of the Future Seller, in particular the bankruptcy creditors of the Future Seller (hereinafter referred to as the **"Objective of the Agreement"**).
- 2.2 The Parties enter into this Agreement solely for the purpose of arranging their mutual rights and obligations aimed at achieving the Objective of the Agreement under the previous Article 2.1 in the most efficient manner, which rights and obligations will, or may, arise between them during the Tender, however, in particular, for the purpose of (i) creating the legal commitment of the Future Purchaser, as the potential successful participant in the Tender, to enter into an agreement on the sale of the Company, with the content implied directly by, and/or determined in, a manner stipulated in the Tender Conditions, (ii) securing the due fulfilment of the Future Purchaser's commitment, in accordance with previous Article 2.2 (i) with a contractual penalty, (iii) creating the Future Purchaser's legal commitment to protect any facts, information, and/or data disclosed during the Tender, and/or in connection therewith, against any unauthorised divulgence or use, (iv) securing the due fulfilment of the Future Purchaser's commitment in accordance with previous Article 2.2 (iii) with a contractual penalty and (v) creating the Future Purchaser's legal commitment to provide the Future Seller, within the time-limit and in a manner specified in the Tender Conditions, with an adequate security for the satisfaction of the Future Seller's potential claims towards the Future Purchaser in case of breach of any of the Future Purchaser's legal obligations, which security shall take the form of (a) a monetary deposit paid to the Future Seller's bank account or (b) a bank guarantee.
- 2.3 The Parties expressly agree that the failure to achieve the purpose of this Agreement in accordance with the previous Article 2.2 shall not constitute grounds for the withdrawal from this Agreement in accordance with the provisions of Section 356 of the Commercial Code.
- 2.4 The Parties agree that the subject matter of this Agreement ensuing from its objective in accordance with Articles 2.1 and 2.2 shall be, in particular:
- 2.4.1 the Future Purchaser's legal commitment to enter into an agreement on the sale of the Company within the time-limit stipulated in Article 3.2, and with the content agreed under Article IV, or in a manner specified in accordance with Article 4.3 hereof;
  - 2.4.2 an agreement on securing the due and timely fulfilment of the Future Purchaser's commitment in accordance with Article 2.4.1 with a contractual penalty;
  - 2.4.3 the Future Purchaser's legal commitment to protect the facts, information, and/or data defined in Article VII against their unauthorised divulgence, and/or use, and/or disclosure to any third party;
  - 2.4.4 an agreement to secure the due fulfilment of the continuing commitment of the Future Purchaser in accordance with Article 2.4.3 with a contractual penalty and
  - 2.4.5 the Future Purchaser's legal commitment to provide an adequate security for the purpose of adequately securing the satisfaction of the Future Seller's future claims towards the

Future Purchaser in case of a violation of some of the Future Purchaser's legal obligations arising hereunder and/or under the Tender Conditions, which commitment may be fulfilled either by (a) depositing a monetary security within the time-limit, in the amount and for the purpose stipulated under Article V hereof to the specified account of the Future Seller's bank account or by (b) a personal delivery of an original of the deed, the content of which creates a bank guarantee, within the time-limit and for the purpose stipulated under Article V hereof to the Future Seller, for the attention of the Trustee.

### **Article III** **Commitment to Enter into Future Agreement**

- 3.1 The Future Purchaser hereby unilaterally undertakes to enter, (i) within the time-limit agreed under Article 3.2 and (ii) in the form stipulated under Article 3.3, into a nominate legal act – an agreement on the sale of the Company, with the Future Seller within the sense of the provisions of Section 476 et seq. of the Commercial Code, in conjunction with the provisions of Section 92(2) et seq. of the Bankruptcy Act; the agreement shall (iii) be entered into in a manner stipulated under Article 3.4 hereof and (iv) have the content agreed between the Parties under Articles 4.1 to 4.2 and determined in a manner agreed between the Parties under Article 4.3 hereof (hereinafter referred to as “**Future Agreement**”). The Future Seller unconditionally agrees with the creation of the commitment of the Future Purchaser in accordance with the previous sentence.
- 3.2 The Future Purchaser undertakes to enter into the Future Agreement within thirty (30) calendar days from the delivery of the Future Seller's draft of the Future Agreement, sent in the course of the Tender in accordance with Clause 6.1 of the Tender Conditions. If the last day of the agreed deadline for the conclusion of the Future Agreement under the previous sentence falls on a Saturday, Sunday or public or other holiday, the deadline expires on the next working day, in accordance with the valid and effective laws of the Slovak Republic.
- 3.3 The Parties agree that the Future Agreement will be executed in a written form and that, in accordance with the provisions of the second sentence of Section 46(2) of the Civil Code, the expressions of will of both Parties to conclude the Future Agreement must be given in the same instrument and that the signatures of the authorised person(s) acting on behalf of the Parties or their authorised representatives, which are on the instrument containing the Future Agreement, must be authenticated (legalised) in accordance with the provisions of Section 476(2) of the Commercial Code.
- 3.4 On the basis of an agreement between the Parties, the Future Purchaser may fulfil its commitment to enter into the Future Agreement hereunder solely in one of the following manners:
  - 3.4.1 by signing the draft Future Agreement delivered to the Future Purchaser in accordance with Article 3.2 hereof, *inter praesentes*, in the presence of the Future Seller and the Trustee on the time and at a place previously agreed upon between the Parties, yet within the time-limit set out for the execution of the Future Agreement under Article 3.2 hereof, or
  - 3.4.2 in cases requiring particular attention, by delivering one counterpart of the draft Future Agreement in accordance with Article 3.2 hereof signed by the Future Purchaser in the form set out in Article 3.3 hereof to the Trustee's registered office at Horná 23, 974 01 Banská Bystrica, Slovak Republic. If the Future Purchaser delivers the signed draft Future Agreement in accordance with the previous sentence after the expiry of the deadline for the execution of the Future Agreement within the sense of Article 3.2, the Future Agreement shall not be deemed executed, and the Future Purchaser's commitment to enter into the agreement shall not be deemed fulfilled, unless promptly after the delayed delivery of the signed draft of the Future Agreement, the Future Seller notifies the Future Purchaser, in writing, that the agreement has been executed and that the late signature of the draft Future Agreement by the Future Purchaser is considered effective.
- 3.5 For the avoidance of any doubt, both the Parties state that the commitment to enter into the Future Agreement arising hereunder is a unilateral undertaking of the Future Purchaser, as an obligor, towards the Future Seller, as a beneficiary. In particular, no obligation or any other legal duty to deliver the draft Future Agreement as stipulated under Article 3.2, or obligation to accept

the potential draft Future Agreement of the Future Purchaser, or any other agreement, arrangement, or legal act or obligation, to execute or otherwise make such a legal act with the Future Purchaser, shall be created on the part of the Future Seller hereunder.

- 3.6 The Parties expressly agree that the directory provision of Section 292(5) of the Commercial Code shall not apply to the legal relationships between the Parties created by and/or on the basis of this Agreement. Based on that, the Future Purchaser's commitment to enter into the Future Agreement in accordance with this Agreement shall not cease to exist despite the potential existence of the merits described in the provision of Section 292(5) of the Commercial Code, or in any other cases falling under the legal institute of *rebus sic stantibus*. With regards to the fact that, during the Tender, the Future Purchaser will have an objective opportunity to inspect the Company, review its condition, and conduct the necessary due diligence, any legal and/or factual status of the company which might contradict the expectations of the Future Purchaser at the time of execution hereof, and/or any time thereafter, shall not constitute grounds for the cessation of the existence of the Future Purchaser's commitment to enter into the Future Agreement.
- 3.7 Furthermore, the Parties have expressly agreed that the directory provision of Section 290(2) of the Commercial Code shall not apply to the legal relationships between the Parties created by and/or on the basis of this Agreement. Based on that, if the Future Purchaser breaches its commitment to enter into the Future Agreement, the Future Seller may not seek to determine the content of the Future Agreement by a court or a third party. This shall have no effect on the Future Seller's right to compensation for any potential damage caused by the breach, or as a consequence of the breach of the Future Purchaser's commitment to enter into the Future Agreement in accordance with this Agreement.

#### **Article IV Content of Future Agreement**

- 4.1 The Parties have agreed that the essential elements (*essentialia negotii*) of the Future Agreement within the meaning of Section 476 (1) of the Commercial Code, together with Section 92 (2) of the Bankruptcy Act, shall be as follows:
- 4.1.1 an obligation of the Future Seller to transfer to the Future Purchaser the title to things and other transferrable rights and property values used for the operation of the Company. The Future Purchaser acknowledges that no public-law rights of the Future Seller relating to the Company (such as refund of excessive VAT deductions, other tax overpayments, overpayments of statutory levies, etc.), shall be transferred, passed, or otherwise become payable to him on the basis of the legal effects of the Future Agreement;
- 4.1.2 an obligation of the Future Purchaser to pay a purchase price for the Company, equivalent to the amount specified in the Winning Bid, pursuant to Clause 5.10 (Binding Offer and Evaluation) of the Tender Conditions (the "**Purchase Price**"). The Parties have agreed that the Purchase Price, determined in accordance with the preceding sentence, shall be final and subject to no additional changes, corrections, and/or modifications; due to which the Future Agreement shall also contain a clause excluding the application of the directory provisions of Section 482 of the Commercial Code;
- 4.1.3 an obligation of the Future Purchaser to assume all the liabilities which arise in connection with the operation of the Company after the declaration of bankruptcy of the Future Seller, and all the non-monetary employment-related obligations of the Future Seller within the meaning of Section 28 of the Labour Code, together with Section 480 of the Commercial Code and Section 92 of the Bankruptcy Act. For the avoidance of doubt, the Parties declare that, despite of the unequivocal wording of Sections 476 and 477 of the Commercial Code, and Section 92 (2) of the Bankruptcy Act, they are aware of the invariable decisions of the Supreme Court of the Slovak Republic (for instance Resolution of the Supreme Court of the Slovak Republic file no. 2MCdo 11/2004, published in the magazine *Zo súdnej praxe* No. 19/2007 and in the Collection of Resolutions and Opinions of the Courts of the Slovak Republic under no.38/2007) pursuant to which passage or assumption of the Future Seller's monetary obligations of a public-law nature (such as tax

and insurance payments) on the basis of the legal effects of the Future Agreement is legally impossible.

4.2 The Parties have expressly agreed that, apart from the essential elements pursuant to the preceding Article 4.1, the Future Agreement shall also contain other elements (*naturalia negotii*) as follows:

4.2.1 an agreement on the time and manner of the payment of the Purchase Price: the Future Purchaser shall pay the Purchase Price within thirty (30) days of the full fulfilment of the Term pursuant to Clause 7.2 of the Tender Conditions, but no later than within two hundred and twenty (220) days of the execution of the Future Agreement; if the Term is not agreed upon in the Future Agreement, the Future Purchaser shall pay the Purchase Price within thirty (30) days of the execution of the Future Agreement. The Future Purchaser's obligation to pay the Purchase Price shall be fulfilled once the amount of the Purchase Price has been credited to the Future Seller's bank account no. 20316037/6500, held with Poštová banka, a.s., Prievozská ul. 2/B, 821 09 Bratislava, BIC: POBNSKBA, IBAN: SK16650000000020316037. The Future Agreement shall also contain an express agreement of the Parties that the Future Seller's claim from the Future Purchaser for the Purchase Price may not be set off against any monetary or non-monetary claim of the Future Purchaser from the Future Seller, or any other claim of the Future Purchaser against a third party; which shall not affect the agreement made by the Parties under Article 4.2.2 below;

4.2.2 an agreement of the Parties under which, if paid, the Guarantee (as defined below), provided by the Future Purchaser, shall be considered an advanced payment on the Purchase Price, and any agreement under which the Future Seller, if he becomes entitled to a penalty to be paid by the Future Purchaser, may set off his claim for the penalty against the Future Purchaser's claim for the repayment of the paid advance on the Purchase Price;

4.2.3 a clause on the exclusion of liability of the Future Seller for the defects of the Company: The Future Agreement shall also contain an agreement of the Parties that the Company is being transferred "as is", and "where is", and, therefore, the Future Seller is not responsible for any quality, quantity, or other factual or legal defects of the Company, or for any discrepancy between the visions and/or expectations of the Future Purchase and the actual condition of the Company on the Decisive Day. In line with the above, the Future Agreement shall also contain a clause on the exclusion of the applicability of Sections 484, 485 and 486 of the Commercial Code in full, including any references contained therein to similar and/or appropriate application of Sections 428 (2), 433 through 435, 441 and 439 of the Commercial Code;

4.2.4 an agreement of the Parties on a contractual penalty for a breach of obligation: The Future Agreement shall also contain an agreement of the Parties on a contractual penalty of EUR 2,000,000 (two million euro) for a breach of the Future Purchaser's obligation to pay the Purchase Price in a due and timely manner, together with an agreement under which the payment of the penalty shall not release the Future Purchaser from the obligation secured by such penalty, nor affect the Future Seller's right to damages, even if the extent thereof exceeds the amount of the penalty. Pursuant to an agreement of the Parties contained in the Future Agreement, the penalty under this Article 4.2.4 shall be payable on the day following the breach that gave rise to the right to the penalty;

4.2.5 Conditions precedent:

(i) Agreement of the Parties under which the legal effects of the transfer of title to things and of rights and other property values associated with the Company, anticipated in the Future Agreement and/or generally applicable legislation, shall not occur before the Future Purchaser has fulfilled his obligation to pay the Purchase Price (reservation of property). For this reason, the Future Agreement shall also contain a clause under which the motion to record the title to the Company's immovable property into the Real

Estate Register shall be signed by both Parties, although the Future Seller may refuse to sign such motion until the Purchase Price has been paid in full;

- (ii) In the case assumed under Clause 7.2 of the Tender Conditions, also a condition subsequent clause within the meaning of Clause 7.2 of the Tender Conditions;

4.2.6 Agreement under which the Future Seller may rescind the Future Agreement: The Future Agreement shall also contain an agreement of the Parties on the Future Seller's right to rescind the Future Agreement if:

- (i) the Future Purchaser fails to pay the Purchase Price in a due and timely manner;
- (ii) the event anticipated in Clause 7.4 of the Tender Conditions occurs;

as well as an agreement of the Parties under which the rescission of the Future Agreement shall not affect the Future Seller's right to receive the agreed penalty.

4.2.7 Agreement of the Parties under which all expenses associated with the recording of the sale of the Company under the Future Agreement and/or the recording of a change of title, or any other right to the Company's property in public registers, shall be borne by the Future Purchaser;

4.2.8 Obligation of the Future Purchaser to keep and maintain the entire information system, as well as all databases, materials, documents, deeds, and certificates (the "**Documents**") required for the keeping of the Future Seller's accounting books, and the Documents relating to accounting and to other required documentation; to allow the Future Seller's trustee, and any persons authorised by him, to use the information system and the Documents until the trustee or the authorised person(s) are removed from their office within the meaning of Section 102 (5) of the Bankruptcy Act. The Future Seller's trustee, and the persons authorised by him, shall be authorised to inspect the Documents and use the information system at any time. For the performance of the above actions, the Future Purchaser shall agree to provide the Future Seller's trustee the right to use, for no consideration, an appropriate room or office equipped with technical and other equipment usual for office work, including a complete computer work station. The person shall be granted due access and be allowed to duly use the room in question. The Future Seller's trustee, and the persons authorised by him, shall be authorised to use the premises for no consideration until they are removed from their office within the meaning of Section 102 (5) of the Bankruptcy Act. The Future Purchaser shall also provide the Future Seller suitable premises to archive the Documents associated with the Company for a period of time required by law. The Future Purchaser shall also secure the premises, for no consideration, against loss, damage, or destruction of the Documents.

4.2.9 Agreement on the law governing the legal relationships between the Parties established by, or arising from or in connection with the Future Agreement. The governing law shall be the laws of the Slovak Republic, with the explicit exclusion of (i) conflict rules, and (ii) the UN Convention on Contracts for the International Sale of Goods. The Future Agreement shall also contain a clause establishing the exclusive competence and jurisdiction of the courts of the Slovak Republic over any dispute between the Parties arisen from, or in connection with, the Future Agreement.

4.2.10 If the Winning Bid pursuant to Clause 5.10 of the Tender Conditions is an Offer submitted in accordance with Clause 5.5.2 (ii) of the Tender Conditions, the Parties agree that the Future Agreement shall also contain a valid and effective obligation of the Future Purchaser to:

- (i) ensure that, in a period of five (5) years following the Decisive Day, none of the Company's plants used for (i) the production of calcium carbide (CaC<sub>2</sub>), and/or (ii) electrolytic processes (each of the plants alone, or both together, hereinafter referred to as the "**Production Facilities**") stops the production, and that the actual production capacity of the individual Production Facilities remains above the Cumulative Annual Rate (as defined below) of seventy-five per cent (75%) of the production capacity

reference level, calculated as the sum of the production volumes for a period of twelve (12) consecutive calendar months of the reference financial year 2010 (the "**First Commitment**"). For the purposes of the First Commitment, the Cumulative Annual Rate is the sum of the production volumes of the given Production Facility for a period of twelve (12) consecutive calendar months, with the exception of the Uncounted Months; where an Uncounted Month is a calendar month in which, due to interrupted operation, and/or planned renovations, and/or measures taken to implement the Second Commitment (as defined below), the production volume of any Production Facility has not reached half of the average monthly production volume of the reference financial year 2010 – the number of uncounted months for the calculation of the Cumulative Annual Rate shall be a maximum of six (6) per each Production Facility over the decisive period of five (5) years following the Decisive Day;

- (ii) invest, by the end of 2012, no less than EUR 11,000,000 (eleven million euro) into meaningful or necessary measures aimed at achieving or enhancing compliance with the requirements, binding indicators, rules, and regulations relating or applicable to any of the Production Facilities, as stipulated in the environmental legislation or other regulations directly or indirectly regulating environmental or ecological issues, and/or enforceable decisions of public authorities in the field of environment and/or ecology (hereinafter referred to as the "**Environmental Investment**"), or to ensure that the Environmental Investment of the same amount, and at the same time, is made jointly with a third party, or by a third party alone (the "**Second Commitment**");
- (iii) ensure that, in a period of five (5) years following the Decisive Day, the Future Purchaser does not transfer the Company, through sale, donation, or otherwise, to a third person (i) in the extent in which it was acquired on the Decisive Day, (ii) in any other, greater or lesser, extent compared to that in which it was acquired on the Decisive Day, or (iii) in separate detachable parts (the "**Third Commitment**"). This provision does not apply to the disposal of the property belonging to the Company that has been transferred to a third person in the ordinary course of business, corresponding to the company's scope of business and operation.

(First Commitment, Second Commitment, and Third Commitment hereinafter referred to as the "**Commitments of the Transferee**");

4.2.11 If the Winning Bid pursuant to Clause 5.10 of the Tender Conditions is an Offer submitted in accordance with Clause 5.5.2 (ii) of the Tender Conditions, the Future Agreement shall also contain an agreement of the Parties on:

- (i) a contractual penalty of EUR 20,000,000 (twenty million euro) for a breach of the First Commitment or the Third Commitment;
- (ii) a contractual penalty for a breach of the Second Commitment equivalent to the difference between the amount that was to be invested under the Second Commitment and the amount the Future Purchaser and/or a third person actually invested.

The Parties have agreed that the Future Agreement shall also contain a clause under which the Future Purchaser's obligation to pay the penalty under this Article 4.2.11 for the breach of any of the Commitments of the Transferee, shall not occur if the breach is due to unforeseeable, unavoidable, and uncontrollable events beyond the Future Purchaser's will (*vis maior*) and/or as a direct result of an objective, non-temporary, and significant decline in demand (a) in the relevant calcium carbide market, and/or (b) in the relevant electrolytic products market.

4.2.12 If the Winning Bid pursuant to Clause 5.10 of the Tender Conditions is an Offer submitted in accordance with Clause 5.5.2 (ii) of the Tender Conditions, the Future Agreement shall also contain an agreement of the Parties stating that the creditors under the Commitments of the Transferee, including any future obligation of the Future Purchaser to pay a penalty pursuant to Article 4.2.11 hereof, shall be, jointly and severally:

- (i) the Future Seller and a third person identified in the Transaction Document delivered to the Future Purchaser in accordance with Clause 4.6 of the Tender Conditions, or
- (ii) the Future Seller and any creditor of the Future Purchaser whose claim has been admitted to the bankruptcy proceedings (the “**Legitimate Creditor**”); without prejudice to active solidarity, and within the relationship of the Future Seller with each Legitimate Creditor, each Legitimate Creditor shall be entitled exclusively to a portion of the joint claim(s) under the Commitments of the Transferee, including any future obligation of the Future Purchaser to pay a penalty pursuant to Article 4.2.11 hereof, equivalent to the proceeds to which the Legitimate Creditor would be entitled if the distributed proceeds equalled the joint claim(s).

The Parties have agreed that the question of whether the joint creditors under the Commitments of the Transferee, including any future obligation of the Future Purchaser to pay a penalty pursuant to Article 4.2.11 hereof, shall be those mentioned in paragraph (i) or those mentioned in paragraph (ii) of Article 4.2.12 above, shall be specified in the Agreement on Additional Content (as defined below) pursuant to Article 4.3 below.

- 4.3 The Parties have agreed that any content of the Future Agreement other than that listed in the preceding Articles (4.1 and 4.2) hereof, as well as the choice of one of the options under Article 4.1.12 hereof, shall be determined by a separate agreement (the “**Agreement on Additional Content**”). The Future Seller shall propose the execution of the Agreement on Additional Content by delivering to the Future Purchaser the Transactional Document pursuant to Clause 4.6 of the Tender Conditions, thus expressing his will that the additional content of the Future Agreement be identical to the content of the Transactional Document. The Future Purchaser shall accept the proposal to execute the Agreement on Additional Content pursuant to the preceding sentence by delivering, in time, his Offer to the Tender in accordance with Clause 5.3 of the Tender Conditions. The Agreement on Additional Content shall be considered executed on the day of the timely submission of the Future Purchaser’s Offer.
- 4.4 The Future Purchaser’s obligation to enter into the Future Agreement pursuant hereto, shall be fulfilled even if the content of the Future Agreement differs from that agreed under this Article IV, or that specified in accordance with Article 4.3 above, due to the Future Purchaser acting in line with Article 3.4 hereof and accepting the Future Seller’s proposal to enter into the Future Agreement with contents differing from those agreed upon under this Article IV.

## **Article V Guarantee**

- 5.1 The Future Purchaser shall, by 12 September 2011 16.00 (CET):
- 5.1.1 deposit EUR 1,000,000 (one million euro) (the “**Collateral**”) in the Future Seller’s bank account no. 20316037/6500, held with Poštová banka, a.s., BIC: POBNSKBA, IBAN: SK166500000000020316037. The Parties have agreed that the Collateral shall be considered paid as soon as the amount of EUR 1,000,000 is credited to the Future Seller’s bank account no. specified in this Article 5.5.1; **or**
  - 5.1.2 deliver to the Future Seller, to the attention of the Trustee, the original of the certificate constituting an unconditional first call bank guarantee, the content and issuer of which meet all the requirements set in Clause 3.5 of the Tender Conditions (the “**Bank Guarantee**”).

(The Collateral and/or the Bank Guarantee hereinafter “**Security**”). Security shall serve as (i) an advance on the Purchase Price of the Company, (ii) security for the Future Purchaser’s obligation to enter into the Future Agreement in accordance herewith, and (iii) to secure the Future Purchaser’s future obligation to duly and timely pay the Purchase Price of the Company, as well as (iv) to secure the Future Purchaser’s obligations arising from Article VII hereof.

- 5.2 The Parties have agreed that, should the obligation to enter into the Future Agreement cease to exist due to the condition subsequent under Article 6.1 hereof, the Future Seller shall return to the Future Purchaser the paid Collateral, in a manner described or in Article 5.3, or in Article 5.4 hereof, depending on the circumstances, without undue delay, but no later than within ten (10)

working days of the day when the Future Purchaser's obligation under the preceding sentence ceases to exist.

- 5.3 If the Future Purchaser indicates to the Future Seller no other bank account in writing before the refunding of the Collateral pursuant to the preceding Article 5.2, the Future Seller shall return the Collateral to the Future Purchaser via a bank transfer to the bank account from which the amount corresponding to the Collateral was paid by the Future Purchaser. The Future Purchaser expressly agrees that the Collateral shall be refunded under this Article 5.3 without any interest that accrued, or may have accrued, as a result of the amount being deposited to the bank account.
- 5.4 The Parties have agreed that, after the Future Purchaser's obligation pursuant to the first sentence of Article 5.2 above ceases to exist, the Future Seller shall return the certificate constituting the Bank Guarantee by delivering the original of the certificate to the address indicated by the Future Purchaser for the purposes of the Tender as described in Clause 2.3.2 of the Tender Conditions.
- 5.5 The Parties have agreed that, should the Future Seller become entitled to a penalty paid by the Future Purchaser under this Agreement, the Future Seller may unilaterally set off his claim against the Future Purchaser's claim for the refund of the Collateral, provided that Security was granted in the form of the Collateral.

#### **Article VI**

#### **Extinguishment of the Obligation to Enter into the Future Agreement, Rescission of Agreement**

- 6.1 The Parties have agreed that the Future Purchaser's obligation under Article 3.1 hereof to enter into the Future Agreement, and, under Article 5.1 hereof, to provide Security, shall be extinguished if any of the below conditions subsequent occur (unless it has already been discharged by performance):
  - 6.1.1 The Winning Bid of the Tender pursuant to Clause 5.10 of the Tender Conditions is an Offer submitted by a person other than the Future Purchaser;
  - 6.1.2 The Trustee has rejected all Offers, and no Winning Bid of the Tender pursuant to Clause 5.10 of the Tender Conditions is selected;
  - 6.1.3 The Future Purchaser fails to submit his Offer within the deadline pursuant to Clause 5.1 of the Tender Conditions, and no other document is delivered to the Trustee's office within the deadline pursuant to Clause 5.1 of the Tender Conditions that would be marked or suggest that it represented a bid for the acquisition of the Company;
  - 6.1.4 Once opened and read, the Future Purchaser's Offer, or another document marked or suggesting that it represents a bid for the acquisition of the Company, is not to be considered within the Tender, as specified in Clause 5.7 of the Tender Conditions.

Extinguishment of the Future Purchaser's obligations pursuant to this Article 6.1 shall be without prejudice to other obligations of the Future Purchaser arising from this Agreement, particularly the existence of the confidentiality obligations set forth in Article VII of the Agreement.

- 6.2 The Future Seller and the Future Purchaser have agreed that the Future Seller may rescind this Agreement without prior call for the fulfilment within an additional term of any obligation breached. Rescission may be made through a unilateral legal act if the Future Purchaser fails to fulfil his obligation to duly and timely enter into the Future Agreement with the Future Seller as stipulated in this Agreement. Rescission under the preceding sentence shall be without prejudice to:
  - 6.2.1 the Future Seller's claim for any penalty agreed under Article VIII below, and
  - 6.2.2 the force and effect of the confidentiality agreement under Article VII below, and the agreement on penalties under Article VIII hereof for a breach of the Future Purchaser's obligations pursuant to Article VII, the governing law clause contained in Article 10.2, the

competent court clause contained in Article 10.3, or the governing law clause contained in Article 10.4 of the Agreement, as well as to other provisions of this Agreement that, given their nature, shall continue in force and effect after the termination hereof.

## **Article VII Confidentiality**

- 7.1 Being aware of the importance and necessity of keeping the facts, information, and data concerning the Future Seller, and/or the Company the Future Purchaser will or may acquire in the course of the Tender, in particular within the due diligence exercise, and given the fact that, by taking part in the Tender, the Future Purchaser has expressed serious interest in the sale of the Company, and, given the necessity to carry out a reasonable review of the legal and financial standing of the Company, the Parties have agreed to regulate their relationship with respect to disclosing, obtaining, using, and protecting confidential information that the Future Seller discloses to the Future Purchaser within, or in association with, the Tender, so as to protect the rights and legitimate interests of the Future Seller.
- 7.2 The Future Purchaser agrees to keep confidential any and all facts, information, data, trade secrets, know-how, and other details, including personal details, concerning, or relating to, the Tender, the Company, the Future Seller, any other person directly or indirectly involved in the Tender and not mentioned above, or the legal predecessor or successors of the above persons, that become known, disclosed, or otherwise available to him in the course of, or in connection with, the Tender – in particular, however, any and all facts, information, or details on the Future Seller or the Company, the unauthorised use of, or disclosure of which by the Future Purchaser or a third person could cause property or other damage to the legal or financial standing of the Future Seller or a third person (such as the Future Seller's business partners) (facts, information, and details pursuant to this sentence hereinafter “**Confidential Information**”). The Future Purchaser's non-disclosure duty hereunder shall continue after the termination of the Tender and of this Agreement in any manner whatsoever, and shall not be time-limited in any other way.
- 7.3 The Future Purchaser agrees not to disclose Confidential Information, or make it available to a third person, without prior written consent of the Future Seller, acting by and through the Trustee.
- 7.4 The non-disclosure duty shall not apply to:
- 7.4.1 Information known or available to the public already in the time of the execution hereof;
  - 7.4.2 Information that becomes known or available to the public after the execution hereof other than by a breach of the Future Purchaser's non-disclosure duty hereunder;
  - 7.4.3 Disclosure of Confidential Information to fulfil the Future Purchaser's statutory obligations. The Future Purchaser shall first inform the Future Seller in writing of the obligation imposed by, or on the basis of, the law to disclose Confidential Information, and of the manner and scope of the fulfilment thereof. In such an event, the Future Purchaser shall ensure, together with the Future Seller, that such authorised disclosure is made exclusively in the manner and scope required by law;
  - 7.4.4 Disclosure of Confidential Information for the purposes of court, administrative, or other similar (for instance, arbitration) proceedings to which the Future Purchaser is a direct party, if the Future Purchaser's expected benefit or advantage from such proceedings is clearly bigger than the damage possibly suffered by the Future Seller or a third person due to such disclosure; in the event of authorised disclosure under this Article 7.4.4, the Future Purchaser shall ensure, before such disclosure takes place and after he has consulted the Future Seller, that Confidential Information is disclosed only in the necessary scope.
- 7.5 The Parties have agreed that third persons within the meaning of Article 7.3 above shall not refer to the Future Purchaser's employees or the in-house or external advisors (the “**Authorised Persons**”) whom the Future Purchaser authorised, or otherwise asked, to perform for him any activities associated with his participation in Tender. The Future Purchaser shall be fully responsible for the fulfilment of the non-disclosure duty also with respect to Confidential

Information by the Authorised Persons. The Future Purchaser also agrees to ensure that all Authorised Persons, present and future, are informed of their non-disclosure duty, at least in the scope of this Article VII, before any Confidential Information is disclosed to them for the first time.

- 7.6 The Future Purchaser shall act in a manner ensuring that the Authorised Persons treat all Confidential Information so as to keep it in strictest confidence. The Future Purchaser shall only disclose Confidential Information to Authorised Persons who need it to perform their office or activity. The Future Purchaser shall make a written non-disclosure agreement with any Authorised Person who is to obtain Confidential Information, the scope of which shall be at least that of this Article VII, and which shall remain in effect after the employment, business, or other relationship of such an Authorised Person with the Future Purchaser terminates. If the Authorised Persons, including present or past employees, or other staff (in-house or external), fail to fulfil the non-disclosure duty in the scope agreed herein by the Future Purchaser, the Future Purchaser shall be fully responsible for such a breach as if he had committed the breach himself. The Future Purchaser agrees to submit to the Future Seller, upon request and without delay, a photocopy of any written confidentiality agreement made with the Authorised Persons with respect to the Confidential Information.
- 7.7 The Future Purchaser agrees to use Confidential Information only over the duration of the Tender and exclusively for the purposes for which it was disclosed to him by the Future Seller, i.e. to make decisions regarding his participation in the Tender. The Future Purchaser also agrees (i) not to use Confidential Information for any other purpose other than that specified in the preceding sentence; (ii) not to allow the Authorised Persons to use Confidential Information for any other purpose other than that specified in the preceding sentence; and (iii) not to allow, intentionally or unintentionally, anyone other than the Authorised Persons to use Confidential Information. Without prejudice to the preceding sentences of this Article 7.7, the Future Purchaser also agrees not to use Confidential Information in any manner that would directly or indirectly harm, or put at risk in any way, the rights or legitimate interests of the Future Seller or other persons involved.
- 7.8 The Future Purchaser agrees to inform the Future Seller in writing and without undue delay after learning of any unauthorised disclosure, submission, use or publication of Confidential Information, or any breach of the obligations hereunder committed by the Future Purchaser or by a third person. The Future Purchaser also agrees to provide the Future Seller with every reasonable assistance that may be required from him in order to re-establish protection of Confidential Information and prevent further unauthorised disclosure, dissemination, publication, or use thereof.
- 7.9 In case a breach of the Future Purchaser's obligation under this Article VII results in an obligation of the Future Seller to reimburse a third person (the "**Creditor**") for damage or other loss, or to pay any compensation (hereinafter also the "**Sanction**"), the Parties have agreed that, within the meaning of Section 534 of the Civil Code, the Future Purchaser shall pay the Sanction to the Creditor in lieu of the Future Seller.

### **Article VIII Contractual Penalties**

- 8.1 The Parties have agreed that if the Future Purchaser breaches its obligation within the meaning of Article 3.1 above to duly and timely enter into the Future Agreement, the Future Seller shall become entitled to receive a penalty of EUR 2,000,000 (two million euro). Payment of the penalty shall be without prejudice to the Future Seller's right to compensation of damage, even if in a scope exceeding the contractual penalty. Further, payment of the penalty shall be without prejudice to the Future Purchaser's obligation to continue fulfilling his obligation secured by the penalty. The Parties declare that they consider the amount of the penalty agreed under this Article 8.1 appropriate, taking into account the value and importance of the obligation concerned for the due course of the Tender, and hereby express their unconditional consent therewith. The contractual penalty under this Article 8.1 shall be payable on the day following the breach of the obligation in question.

8.2 The Parties have agreed that, if the Future Purchaser breaches any of its obligations concerning Confidential Information under Articles 7.2, 7.3, 7.5, 7.6 and/or 7.7 hereof, the Future Seller shall become entitled to receive a penalty of EUR 2,000,000 (two million euro) for each breach. Payment of the penalty shall be without prejudice to the Future Seller's right to compensation of damage, even if in a scope exceeding the contractual penalty. Further, payment of the penalty shall be without prejudice to the Future Purchaser's obligation to continue fulfilling his obligation secured by the penalty. The Parties declare that they consider the amount of the penalty agreed under this Article 8.2 appropriate, taking into account the value and importance of each of the obligations concerned, and hereby express their unconditional consent therewith. A contractual penalty under this Article 8.2 shall be payable on the day following the breach of the relevant obligation.

#### **Article IX Notices**

- 9.1 All notices and other communication made in accordance with this Agreement shall be delivered to the addresses of the Parties specified for the purposes of the Tender in line with the Tender Conditions.
- 9.2 All notices and other communication shall be considered delivered on the day of delivery, if delivered; or on the day of fax transmission, if sent before 15:00 hrs. on a business day. In all other cases, notices shall be considered delivered on the business day following the day of dispatch. For effective delivery, notices sent via fax shall, on the day following the fax transmission at the latest, also be sent via registered mail.
- 9.3 All notices and other communication made in accordance with this Agreement duly posted as registered mail addressed as specified in Article 9.1 above, shall be considered delivered no later than on the third business day following the date of the posting, even if the addressee fails or refuses to receive it, or is not aware of the delivery thereof.

#### **Article X Severability Clause, Governing Law**

- 10.1 If any provision of this Agreement, not constituting an essential element thereof, is found by any competent court or other authority to be invalid, ineffective, or unenforceable, in full or in part, such a provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Parties agree to replace any such provision, or a part thereof, with a new provision so as to achieve the same or, if the same is not possible, the closest possible effect of the Agreement. If any arrangement arising from this Agreement and constituting an essential element thereof is, or becomes, invalid, ineffective, or unenforceable, in full or in part, the Parties shall execute the necessary amendments to this Agreement, or other agreements, in order to achieve the same or, if not possible, the closest possible effect of the respective invalid or unenforceable arrangement.
- 10.2 In accordance with Section 9 of Act No. 97/1963 Zb. on Private International Law and Rules of Procedure, as amended (the "**Private International Law Act**"), and Article 3 (1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), the obligations arising from this Agreement (including accessory legal relationships, liabilities, and legal relationships resulting from unjust enrichment), the form of this Agreement, its validity, and the legal consequences of the invalidity of this Agreement, shall be governed by the laws of the Slovak Republic, without regard to any conflict rules.
- 10.3 By signing this Agreement, the Parties agree that any disputes arising from, or in connection with, this Agreement, or directly from a law based on this Agreement, within the meaning of Section 37e of the Private International Law Act, and in accordance with Article 23 (1) Council Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, shall be resolved by the court of the Slovak Republic.

10.4 The Future Purchaser and the Future Seller enter into this Agreement assuming that, within the meaning of Section 261 (1) of the Slovak Commercial Code, their obligations hereunder shall be governed by the provisions of Part Three of the Slovak Commercial Code. For legal certainty, and exclusively in case the above assumption of the Parties turns out wrong, the Parties expressly agree that, in accordance with Section 262 (1) of the Slovak Commercial Code, their obligations hereunder (including the creation, termination, and content of liabilities and other obligations) shall be governed by the provisions of Part Three of the Slovak Commercial Code, even if any of the Parties is not an entrepreneur, and/or the execution and performance hereof is not related to a Party's business activity.

## **Article XI Final Provisions**

11.1 This Agreement shall enter into force and effect on the day it is signed by the Parties *inter praesentes*, or on the day it is signed by the last Party. The signature of the Future Purchaser, or the person acting on his behalf, shall be authenticated. This Agreement shall be equally binding on the legal successors, if any, of the Parties.

11.2 Any changes hereto shall be in writing in the form of numbered amendments and subject to agreement of the Parties. The number of counterparts to each amendment, expressly identified as an amendment hereto, shall be equivalent to that of the counterparts of this Agreement. The provisions of this Article 11.2 shall be without prejudice to the agreement of the Parties on the manner and form of execution of the Agreement on Additional Content pursuant to Article 4.3 above.

11.3 By signing this Agreement, each Party expressly certifies that:

- (i) it has consulted, or has had the opportunity to consult (which it has not used of its own will), the content, meaning, and consequences of each provision contained herein with all advisors, including external accounting and legal advisors, whom it considered appropriate;
- (ii) enters into this Agreement with a full understanding of the terms and conditions hereof, and that, within the negotiations on this Agreement and upon the execution hereof, none of the Parties assumed any fiduciary, or any other implicit obligation, towards the other Party.

11.4 This Agreement constitutes the entire agreement between the Parties and supersedes and/or cancels all previous agreements, arrangements, and understandings between the Parties, both oral and written, concerning the relationships regulated by this Agreement; without prejudice to the relationships between the Parties arisen, now or in the future, from the Future Purchaser's participation in the Tender in line with the Tender Conditions.

11.5 The fact that any of the Parties may not, on any occasion, insist on the strict fulfilment of any obligation or condition hereunder, shall not be considered as a waiver of rights granted hereunder, and the Party shall not be deprived from its right to insist on the strict fulfilment of such an obligation or condition, unless the waiver of right is made expressly and in writing.

11.6 This Agreement is executed in two (2) counterparts, of which each Party shall receive one counterpart. The Agreement is executed in the Slovak language only, and this language version shall prevail regardless of any translation made for any purpose.

11.7 The Parties declare that they have read the agreement before signing, agree with its content, and enter into the agreement as a free act and deed, not under duress or distress under markedly disadvantageous conditions, and consider the expressions of will contained herein clear and definite.

11.8 The Parties agree to the content of this Agreement and all obligations arising from this Agreement, in witness thereof they attach their own signatures, or those of the persons acting on their behalf in accordance with generally applicable legislation, or representing them under valid powers of attorney.