

## Tender Conditions

*selection of tenderer for acquisition of bankrupt company*  
**Novácke chemické závody, a.s. v konkurze**

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

Identification number of organization: 44 088 833

Registered office: Horná 23, 974 01 Banská Bystrica

Registered in the Business 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

Represented by: JUDr. Miroslav Duračinský –General Partner

(hereinafter referred to as the "**Trustee**")

bankruptcy trustee of:

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

Identification number of organization: 31 616 755

Registered office: M. R. Štefánika 1, 972 71 Nováky

Registered in the Business Register of the District Court in Trenčín

Section: Sa, entry no.: 251/R

(hereinafter referred to as the "**Bankrupt**")

hereby, in accordance with Section 92 (1) (d) of Act No. 7/2005 Zb. on bankruptcy and restructuring, as amended (hereinafter referred to as the "**Bankruptcy Act**"), calls for a public tender (hereinafter referred to as the "**Tender**") to find a tenderer to whom the Trustee, under the conditions laid down in the Bankruptcy Act, and specified in the contract for the sale of the company, would transfer the business of the Bankrupt.

This document and all annexes thereto constitute binding tender conditions (hereinafter referred to as the "**Tender Conditions**"). If needed, the Tender Conditions may be changed, amended, adapted, or otherwise modified by the Trustee, only under the conditions described below, in which case the Tender Conditions, together with any amendments, additions, or variations, will form one consistent document that will adjust the rules and the Tender process.

## **I. SUBJECT OF THE TENDER**

- 1.1 The subject of the tender is to find a tenderer to whom the Trustee would sell the business of the Bankrupt.
- 1.2 The business of the Bankrupt (hereinafter referred to as the "**Company**") is a set of tangible and intangible assets and personnel. In accordance with Section 92 (2) of the Bankruptcy Act, the Trustee will transfer all things, rights, and other property belonging to the Company, to the transferee. Only the financial obligations of the Company which occurred after the declaration of bankruptcy, and the employment-related non-monetary liabilities, shall pass to the transferee.
- 1.3 The Company's property is, particularly that described in the expert opinion, to determine the overall value of the Company no. 25/2010, dated 09.08.2010, and prepared by an expert (expert organization), specializing in business economy - PP CONSULT, with its registered office at Na Revíne 29, 831 01 Bratislava, Identification No. 35698381 (hereinafter referred to as the "**Expert**"). In accordance with Section 5 of Act No. 513/1991 Zb., the Commercial Code, as amended (hereinafter referred to as the "**Commercial Code**"), the bankrupt company is mainly comprised of the following:

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- 1.3.1 Immovable property belonging to the Bankrupt;
  - 1.3.2 Movable property belonging to the Bankrupt, including goods and stock of materials;
  - 1.3.3 Securities belonging to the Bankrupt;
  - 1.3.4 Monetary and non-monetary claims of the Bankrupt;
  - 1.3.5 Other assets owned by the Bankrupt, namely patents, trademarks, and industrial designs;
  - 1.3.6 Human business constituents (employees of the Bankrupt).
- 1.4 The tangible object of the Tender is the Company, in the condition in which it will be on the effective date of all the arrangements, under the contract on the sale of the Company made between the individual and a legal person, or another entity with legal personality, whose offer will be selected in this tender procedure, and, in compliance with the Tender Conditions, evaluated as successful (hereinafter referred to as the "**Decisive Day**").
- 1.5 During the Company's operation by the Trustee, in accordance with the Bankruptcy Act, the components of property belonging to the Company described in the expert opinion, the Information Memorandum (as defined below), in the documents constituting the Electronic Data Room (as defined below) or in the documents constituting the Hard Data Room (as defined below), including the personnel of the Company, do not necessarily have to coincide with the actual components of the property belonging to the Company, or the personnel of the Company, on the Decisive Day.
- 1.6 During the Company's operation by the Trustee, in accordance with the Bankruptcy Act, the obligations of the Company corresponding to third-party claims arisen from the operation of the Company under Section 88 (5) of the Bankruptcy Act, described in the expert opinion, the Information Memorandum (as defined below), in the documents constituting the Electronic Data Room (as defined below), or in the documents constituting the Hard Data Room (as defined below), do not necessarily have to coincide with the actual liabilities of the Company on the Decisive Day, which pass to the transferee within the meaning of Section 92 (2) of the Bankruptcy Act .
- 1.7 A part of the sales contract between the Trustee and the individual, legal person, or other entity with legal personality who (i) submits an offer pursuant to Clause 5.2 (ii) of these Tender Conditions, and (ii) whose offer is evaluated as successful in this tender procedure, in accordance with these Tender Conditions, the transferee's obligations will be as follows:
- 1.7.1 To ensure that, in a period of five (5) years from the Decisive Date, none of the plants will be abandoned that are used by the Company for (i) the production of calcium carbide (CaC<sub>2</sub>) and/or for (ii) electrolytic processes (each of these plants alone, or both together, hereinafter referred to as the "**Production Facilities**"), nor will the production capacity of the Production Facilities drop below the Cumulative Annual Rate (as defined below) of seventy-five percent (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 (hereinafter referred to as the "**First Commitment**"). The cumulative Annual Rate for the purposes of this Clause 1.7.1 is the sum of the Production Facilities production volume, 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 the production volume of any Production Facility, due to interrupted operation, and/or planned renovations, and/or measures taken to implement the Second Commitment, 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.
  - 1.7.2 To invest, by the end of calendar year 2012 at the latest, no less than EUR 11,000,000 (eleven million euro) in meaningful or necessary measures aimed at increased compliance

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with the requirements or binding indicators, rules, and applicable regulations, relating, or applicable, to any of the Production Facilities, and resulting from legislation 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 (hereinafter referred to as the "**Second Commitment**")

1.7.3 To ensure that, in a period of five (5) years following the Decisive Day, the transferee will not transfer the Company, as defined in Article 1.2 of the Tender Conditions by sale, donation, or any other legal act, to a third person in (i) the extent in which it was acquired on the Decisive Day, or (ii) in any other, greater or lesser, extent in which it was acquired on the Decisive Day, or (iii) in separate detachable parts (hereinafter referred to as 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**")

## II. CONDITIONS FOR PARTICIPATION IN THE TENDER AND APPLICATION

2.1 The Tender is open to any Slovak or foreign individual, legal person, or other entity who, under the laws governing its legal personality, has the ability to acquire rights and assume obligations, responsibility for its own actions in the range of the liability for breaches of private (including contractual) obligations, and also unlimited legal capacity (hereinafter referred to as the "**Applicant**"), and who meets all of the following conditions:

2.1.1 No insolvency proceedings have been initiated against the Applicant, such as bankruptcy proceedings or restructuring proceedings under the Bankruptcy Act, and the Applicant has not been declared bankrupt and is not subject of permitted restructuring under the Bankruptcy Act. Also, the property of the Applicant is not an object of the Applicant and is not subject to similar insolvency proceedings under foreign law, without prejudice to the status of the Applicant as a creditor in such proceedings;

2.1.2 The Applicant, who is a legal person, is not in liquidation, and no similar procedure is held against him under foreign law;

2.1.3 There has been no procedure of enforcement initiated against the Applicant in accordance with Act No. 233/1995 Zb. on court executors and execution (the Execution Code), as amended, nor enforcement proceedings under Part Six of Act No. 99/1963 Zb. on civil procedure, as amended, or similar proceedings under foreign law;

2.1.4 The Applicant has no outstanding financial obligations towards the Bankrupt.

2.2 Interested parties may participate in the Tender by delivering a written application containing all the substantive and procedural requirements and mandatory annexes, set by this article of Tender Conditions (hereinafter referred to as the "**Application**"), to the Trustee by 11<sup>th</sup> August 2011 till 16.00 hrs. (CET). The Application is considered properly received only if physically delivered, within the deadline stipulated in the preceding sentence, to the Trustee's office at: Horná 23, 974 01 Banská Bystrica, Slovakia; sending the Application by post, fax, electronically, or by telex or another similar way on the last day of the deadline shall not be sufficient.

2.3 Each Application to the Tender, delivered to the Trustee, in addition to other requirements under any of these Tender Conditions, must always include:

2.3.1 Precise identification of the Applicant; individuals without permits for business activity are required to state their name and surname, date of birth, and address of permanent or temporary residence; individuals authorized to carry out business activity are required to

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state their business name, identification number (if assigned), place of business, and identification of the relevant register; legal entities are required to state their name or trade name, identification number (if assigned), address of registered office, and identification of the relevant register;

- 2.3.2 Postal address in the Slovak Republic used during the Tender, as well as an e-mail address for electronic communication;
  - 2.3.3 Document, not older than 3 months, clearly showing the activities for which the Applicant is licensed;
  - 2.3.4 In the case of legal persons, a document, not older than three (3) months, certifying establishment and existence, such as an excerpt from the Commercial Register or a similar register of foreign legal persons;
  - 2.3.5 Affidavit of compliance with any and every condition specified in Clause 2.1 of the Tender Conditions (hereinafter referred to as the "Affidavit");
  - 2.3.6 Certain and clear expression of interest in participating in the Tender process, in accordance with these Tender Conditions.
- 2.4 Documents and papers, listed in the preceding Clause 2.3 of the Tender Conditions, shall be delivered to the Trustee in a single counterpart. The Application containing the particulars specified in Clauses 2.3.1, 2.3.2 and 2.3.6, as well as the Affidavit under Clause 2.3.5, must be submitted in the original versions. Documents under Clauses under 2.3.3 and 2.3.4 may be submitted in the form of certified photocopies of the original documents. In case the authentication of photocopies of documents (not the issue of these documents) by authorities of a foreign state are subject to apostillation under the Convention of Abolishing the Requirement of Legalization for Foreign Public Documents, the Applicant must submit a photocopy of such documents with the relevant apostille, without prejudice to the contents of international treaties by which the Slovak Republic is bound, and in accordance with which the signatory countries do not require an apostille in public documents.
- 2.5 The Application and all its annexes shall be submitted in the Slovak language. In the case of an Application and/or documents constituting its annexes, drafted in a language other than Slovak, the Applicant must always submit a certified translation in the Slovak language.
- 2.6 The Application and the Affidavit must be signed by hand by the Applicant himself, or by the person/persons acting on behalf of the Applicant (statutory body), or by a person representing the Applicant on the basis of a written power of attorney, granted under Clause 2.7 or Clause 2.8 of the Tender Conditions.
- If the authority to act on behalf of the Applicant is not clearly implied in the documents attached to the Application, as defined under Clause 2.3 of the Tender Conditions, the Applicant is required to prove such authorization to act by other credible documents, attached to the Application as an original or an certified photocopy; Clause 2.4 requiring an apostille shall apply equally.
- 2.7 The Applicant may be represented in the Tender by a third party, under a written power of attorney (hereinafter referred to as the "**Power of Attorney**"), where the scope of authority granted must include all acts and actions to which the Applicant is entitled or obligated under these Tender Conditions. The signature on the Power of Attorney of the person to act on behalf of the Applicant must be certified, and the original or a certified photocopy, of the Power of Attorney, including the relevant authentication clause, must be attached as an annex to the Application. Section 2.4 above requiring an apostille shall apply equally to authenticating the signature on the Power of Attorney.
- 2.8 If the Applicant is an individual residing or having its registered place of business in a country other than the Slovak Republic, or a legal entity established under a law other than that of the Slovak Republic, and/or located in a country other than the Slovak Republic (hereinafter referred to as the "**Foreign Entity**" ), it must be represented in the Tender process by (i) an individual

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residing in or having his registered place of business in the Slovak Republic, or (ii) a legal person with its registered office located in the Slovak Republic. Point 2.7 above on the Power of Attorney, the scope of the Power of Attorney, and the submitting of a proof thereof in the Tender procedure, shall apply equally to the representation of Foreign Entities under this Clause 2.8.

### III. PROCEDURE OF THE TRUSTEE AND PARTICIPANTS AFTER DELIVERY OF APPLICATIONS

- 3.1 The Trustee shall, without undue delay, but not later than 22<sup>nd</sup> August 2011 till 16.00 hrs. (CET), deliver to the Applicant who has submitted a valid Application, along with all required attachments, by the deadline set in the previous Clause (II) of these Tender Conditions, a written notice confirming that the Applicant has been admitted to participate in the Tender (hereinafter referred to as the "**Participant**"). The notification under the preceding sentence shall include:
- 3.1.1 A copy of these Tender Conditions in the Slovak language and a copy in the English language if the Participant is a Foreign Entity;
- 3.1.2 Information Memorandum in the Slovak language, and a copy in the English language if the Participant is a Foreign Entity, as a basic document containing identification of the Bankrupt, its business and other activities, a general description of the property of the Bankrupt, the number of employees, a description of the organizational structure, overall (aggregate) results of the Bankrupt's business operations in the last accounting periods, etc. (hereinafter referred to as the "**Information Memorandum**");
- 3.1.3 Questionnaire containing any specific questions about the Company or the Tender (hereinafter referred to as the "**Questionnaire**");
- 3.1.4 Unexecuted Agreement to enter into an agreement on the sale of business within the meaning of Section 289 of the Commercial Code (hereinafter referred to as the "**Future Agreement**"), in duplicate, together with a legally non-binding translation into the English language, if the Participant is a Foreign Entity. The Future Agreement shall, apart from the provisions resulting from the appropriate application of the Commercial Code, and/or directly and/or indirectly arising from the contents of these Tender Conditions, include the following:
- a) **Commitment of the Participant** to make a contract with the Trustee on the sale of the Company, within the period provided in Article 6.1 of these Tender Conditions;
  - b) **Method of determination of the purchase price for the Company:** the purchase price for the Company will be fixed according to the winning bid, in accordance with Article 5.10 of these Tender Conditions;
  - c) **Cancellation conditions** under which the commitment by the parties negotiated in the Future Agreement with the Trustee shall cease to exist if the Participant's bid is not evaluated as the winning bid, in accordance with the Tender Conditions;
  - d) **Agreement on the exclusion of application** of the non-mandatory provisions of Section 290 (2) of the Commercial Code regarding the possibility to claim, upon a breach of the contractual obligation to enter into an agreement on the sale of business, that the content of the future agreement shall be determined by a court or a third party; and Agreement on the exclusion of the application of the non-mandatory provisions of Section 290 (5) of the Commercial Code (the rebus sic stantibus clause) to the legal relations arising from the Future Agreement;
  - e) **Penalty clause** imposing a penalty of EUR 2,000,000 (two million euro) for a breach of the obligation under the Future Agreement to enter into the agreement on the sale of the Company, on the terms and subject to the conditions set out in Article 6.1 of these Tender Conditions; where the Bankrupt's claim for the penalty under this Clause 3.1.4 (e) shall be settled by the Trustee against the Participant's claim to receive back the

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Guarantee (as defined below). The same shall apply to the settlement of any other claim for penalty for the breach of other obligations under the Tender Conditions;

- f) **Agreement between the parties** under which, if the offer is not selected as the Winning Bid, or if the Trustee fails to enter into the sale contract with the Participant for reasons stipulated in Clause 6.4 of the Tender Conditions, the Participant shall recover the Guarantee deposited with no interest. Any interest accrued on the sum deposited shall be considered to be income of the Bankrupt;
- g) **The Trustee's right to rescind the Future Agreement** if the Participant breaches its obligation (commitment) to enter into an agreement on the sale of the Company, with the Trustee, within the period provided in Clause 6.1 of these Tender Conditions, thus frustrating the Tender, and the arrangements in accordance with Section 302 of the Commercial Code, whereas the claim for the contractual penalty, under Clause 3.1.4 (e) of these Tender Conditions, shall remain unaffected;
- h) **The Participant's declaration** that he acknowledges the fact that the Company is transferred "as is" and "where is", that he was not prevented from inspecting the Company, and was allowed to review the condition of the Company and carry out the necessary due diligence exercise. Therefore, the Participant shall have no claim whatsoever against the Bankrupt, and/or the Trustee, arising from any defects of the Company, or from any legal and/or factual status of the Company that may be contrary to the Participant's expectations. With regard to the arrangement made under Clause 3.1.4 (d) of these Tender Conditions, the condition of the transferred Company shall not be a relevant reason for a termination of the commitment of the Participant to enter into an agreement on the sale of the Company, in accordance with the Future Agreement;
- i) **Non-disclosure duty of the Participant** with respect to any facts (i) that became known to him as a result of his participation in the Tender, or in connection therewith, and (ii) that are not publicly available. **The Participant shall also protect any trade secrets** of the Bankrupt disclosed to him, within his participation in the Tender, or in connection therewith (hereinafter referred to as the "**Confidentiality Agreement**"), where the exact content of the Confidentiality Agreement will be determined by the Trustee;
- j) **A clause on a contractual penalty** of EUR 2,000,000 (two million euro) for a breach of obligation of the Participant under the Confidentiality Agreement;
- k) **Agreement between the parties** that the contract for the sale of the Company will, in the case that the Winning Bid, in accordance with Clause 5.10 of the Tender Conditions, is the bid submitted in line with Clause 5.5.2 (ii) of the Conditions, including all Commitments of the transferee of the Company, in accordance with Clause 1.7 of the Tender Conditions.
- l) Agreement between the parties, that, if the Winning Bid, in accordance with Article 5.10 of the Tender Conditions is the bid submitted in line with Clause 5.5.2 (ii) of these Tender Conditions, the contract for the sale of the Company shall include provisions on (i) a contractual penalty of EUR 20,000,000 (twenty million euro) for a breach of the First Commitment, under Clause 1.7.1 of the Tender Conditions, and for a breach of the Third Commitment, under Clause 1.7.3 of the Tender Conditions, and (ii) a contractual penalty for a breach of the Second Commitment, under Clause 1.7.2. of the Tender Conditions, equivalent to the difference between the sum that was to be invested by the transferee, and the sum actually expended by the transferee and/or a third person. The above liability of the transferee shall not occur if the violation occurred due to unforeseen and unavoidable, uncontrolled and uncontrollable events, beyond the control of the transferee (*vis maior*), and/or as a direct result of an objective, non-temporary, and significant decline in demand (i) in the relevant calcium carbide market and/or (ii) in the relevant electrolytic products market. An agreement of the parties that, if the creditors of the Bankrupt agree, before the drafting of the transaction documents, on a third party authorized to claim the contractual penalty from the transferee on behalf

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of the creditors, the creditors of the transferee shall be, jointly and severally, the Bankrupt and a third person specified by the Trustee, in the Transaction Document, at the latest; otherwise the creditors of the transferee shall be, jointly and severally, the Bankrupt and any creditor of the Bankrupt, whose claim had been admitted to the bankruptcy proceedings in an amount equivalent to the proceeds to which the creditor would be entitled, if the distributed proceeds equaled the agreed penalty.

(hereinafter referred to as the "**Notice to Participants**")

- 3.2 The Applicant, whose Application had not met or proven all the requirements to participate in the Tender under Article II. of the Tender Conditions, will be invited by the Trustee within three (3) days of receipt of the faulty application to correct or amend his Application. If the so invited Applicant fails to correct his Application by delivering the missing documents or a new application by 23<sup>rd</sup> August 2011 till 16.00 hrs. (CET), the Trustee will, without delay, inform such a Participant, by a written notice, that they are not considered a Participant in the Tender. Applicants who have completed the application process successfully will, without undue delay, receive the Notice to Participants.
- 3.3 The Participant shall, by 12<sup>th</sup> September 2011 till 16.00 hrs. (CET), deliver to the Trustee (submitting, on the closing date, for posting, or sending by telex, fax, electronic mail, or otherwise will not suffice) two signed copies of the Future Agreement, as forwarded to him by the Trustee in the Notice to Participants, in accordance with Clause 3.1 of the Tender Conditions (hereinafter referred to as the "**Draft Future Agreement**"). The signature of the Participant, or the person(s) acting on behalf of the Participant, or the authorized representative of the Participant, under Clauses 2.7 or 2.8 of these Tender Conditions, on the Draft Future Agreement, shall be authenticated.
- 3.4 The Participant may, together with the Draft Future Agreement, signed in accordance with Clause 3.3 above, also deliver to the Trustee the Questionnaire, which shall be completed, or otherwise processed by the Trustee, by the time and in the manner set out in Clause 4.2.4 of these Tender Conditions.
- 3.5 The Participant shall, by 12<sup>th</sup> August 2011 till 16.00 hrs. (CET), (a) pay a deposit to the Bankrupt's account no. 20316037/6500 held with Poštová Banka, a.s., Prievozská ul. 2 / B, 821 09 Bratislava, BIC: POBNSKBA, IBAN: SK166500000000020316037 in the amount of EUR 1,000,000 (one million euro) (hereinafter referred to as the "**Collateral**"), or (b) deliver, to the Trustee, the original letter of guarantee, containing a "no objection" first-call bank guarantee, issued by a legal entity authorized to conduct banking activities, including the provision of guarantees in the territory of a Member State of the European Union, and/or in the territory of a Member State of the European Free Trade Association, with a wording identical to that of the sample guarantee, which forms annex no. 2 to these Tender Conditions, or any other wording the Trustee considers sufficient for the Tender (hereinafter the "**Bank Guarantee**", the Collateral and/or the Bank Guarantee, hereinafter "**Security**") Security is considered paid by crediting the sum of EUR 1,000,000 (one million euro) to the account of the bankrupt, as specified in the preceding sentence, or by the delivery of the Bank Guarantee to the Trustee; any other type of Security shall be excluded. The Security serves as (i) a deposit on the purchase price for the Company and also to (ii) ensure that the winning party fulfills the commitment, resulting from the Future Agreement, to duly and timely conclude an agreement for the sale of the Company, and also to (iii) secure the obligation of the Successful Participant (as defined below) to duly and timely pay the price for the Company, according to the Contract, for the sale of the Company, as well as (iv) to secure all commitments of the Participant under the Confidentiality Agreement. The Security shall be paid within the deadline, stated in the first sentence of this Clause 3.5, and duly and validly proven by a written document delivered to the Trustee. Unless the Participant indicates, in writing, a different account number to the Trustee before the release of the Security, the Trustee will remit the Collateral to the Participant, in accordance with these Tender Conditions, to the bank account, from which the sum equivalent to the Security had been credited. The warranty deed of the Bank Guarantee will always be returned by the Trustee by posting the original to the address of the Participant, specified in Clause 2.3.2. of the Tender Conditions.

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- 3.6 To Participants who duly and timely fulfill their obligations under Clauses 3.3 and 3.5 of this Article (III), i.e. deliver to the Trustee signed copies of Draft Future Agreement and prove payment of the Security, the Trustee shall promptly send the following:
- 3.6.1 One counterpart of the acceptance of the Draft Future Agreement (hereinafter referred to as the "**Acceptance**");
  - 3.6.2 Blank pre-printed envelope for the delivery of the Offer (as defined below);
  - 3.6.3 Blank pre-printed form for Offers (as defined below);
  - 3.6.4 Written information on the formal requirements for an Offer (defined below) under these Tender Conditions;
  - 3.6.5 Selected materials for an in-depth inspection of the Company (hereinafter referred to as a "**due diligence**") in electronic format (on a DVD) (hereinafter referred to as the "**electronic data room**").
- 3.7 The Trustee will, within three (3) days of the deadline for the receipt of the Draft Future Agreement, under Clause 3.3 of this Article (III), send a written notice of termination of participation in the Tender to any Participant who has not properly and timely fulfilled and/or proven the fulfillment of the obligations, under Clause 3.3 and 3.5 of these Tender Conditions. However, if the Participant fulfills all requirements, the breach of which resulted in the termination of his participation in the Tender, within an additional term of ten (10) days of the deadline for the delivery of the Draft Future Agreement, in accordance with Clause 3.3 of this Article (III), the Trustee has the right (but not an obligation) to decide that the Participant's participation in the Tender had never been terminated. The Trustee's decision, under the preceding sentence, does not have to be in writing or justified by the Trustee, but shall be, in any case, notified in writing and without delay to the person concerned.

#### IV. DUE DILIGENCE AND TRANSACTION DOCUMENT

- 4.1 Participants of the Tender will be able to obtain information and data on the Bankrupt, as well as the Company, to the extent determined by the Trustee, within the due diligence exercise which shall start, for each Participant, upon the fulfillment of his obligations under Clause 3.3 and 3.5 of these Tender Conditions.
- 4.2 Due diligence within the Tender procedures shall, in particular, be comprised of :
- 4.2.1 Electronic data room;
  - 4.2.2 Other selected papers, documents, data, information, and analyses related to the Bankrupt and or the Company, which will be made available for inspection at the headquarters of the Bankrupt from 30<sup>th</sup> September 2011 until 31<sup>st</sup> October 2011, always from 09.00 hrs. (CET) to 15.00 hrs. (CET) (hereinafter also referred to as the "**hard data room**"), specific date will be agreed with the Participants and confirmed by e-mail after the commencement of the due diligence exercise by the Participant; the Participant may also use the Questionnaire to propose a specific date to consult the hard data room;
  - 4.2.3 The premises of the Company may be inspected from 30<sup>th</sup> September 2011 until 31<sup>st</sup> October 2011, always from 09.00 hrs. (CET) to 15.00 hrs. (CET), when personal meetings with selected members of the Company's senior management may also take place (hereinafter referred to as the "**Inspection**"). The exact dates will be agreed upon with the Participant and confirmed by e-mail after the start of the due diligence exercise; the Participant may also use the Questionnaire to propose a specific date for the Inspection;
  - 4.2.4 The Trustee's answers to any specific questions of the Participant, regarding the Company or the Tender process contained in the Questionnaire, that may not be answered elsewhere within the due diligence. The Trustee shall answer the questions in the

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Questionnaire in an appropriate way; he also reserves the right to give a partial response, or no response at all, to any of the question.

- 4.3 The Trustee will send to the participants a draft contract for sale of the Company (without the attachments defining the property and personal components belonging to the Company on the Decisive Day) in the Slovak language (hereinafter referred to as the "**Transaction Document**") via electronic mail (e-mail) by 20<sup>th</sup> September 2011. If the Participant is a Foreign Entity, the Transaction Document will be accompanied by a legally non-binding translation into the English language.
- 4.4 The Participants may ask the Trustee to incorporate their proposals, comments, suggestions, changes, or additions to the Transaction Document via electronic mail (e-mail) by 31<sup>st</sup> October 2011 till 16.00 hrs. (CET). The request for modification of the Transaction Document pursuant to this Clause 4.4 must be justified.
- 4.5 The Trustee shall respond to the Participants' requests for modification of the Transaction Document under Clause 4.4 above via electronic mail (e-mail) by classifying the proposals, comments, suggestions, or amendments as "accepted", "partially accepted", or "not accepted". The Trustee is not obliged to incorporate any of the proposed modifications to the Transaction Document or to justify the acceptance, partial acceptance, or rejection thereof, in any way whatsoever.
- 4.6 The final Transaction Document, reflecting relevant suggestions or modifications proposed by the participants (hereinafter referred to as the "**Unified Transaction Document**") will be sent to the Participants, by the Trustee, by 09<sup>th</sup> November 2011. Where the Participant is a Foreign Entity, the Trustee will include a legally non-binding translation of the Unified Transaction Document into English. After the lapse of the above deadline, the Trustee may, in justified cases, make other substantial modifications or amendments to the text of the Contract for the sale of the Company, differing from the text of the Unified Transaction Document. For the avoidance of doubt, it is agreed that the annexes to the Contract for the sale of the Company shall not form part of the Unified Transaction Document, and, likewise, a part of the Unified Transaction Document shall not be any arrangement regarding the effectiveness of the Contract for Sale, with respect to the Concentration pursuant to Article VII of these Tender Conditions, due to the independent application thereof.

## V. BINDING OFFER AND EVALUATION

- 5.1 Participants interested in the acquisition of the Company in this Tender, in accordance with these Tender Conditions, shall deliver all deeds and documents, subject to the formal requirements specified below, in this Clause 5.1 and 5.2, by 07<sup>th</sup> November 2011 16.00 hrs. (CET), to the Trustee's office at: Horná 23, 974 01 Banská Bystrica (submission on the closing date for posting or sending by fax, electronically, or by telex or other similar manners is not sufficient):
  - 5.1.1 If the Participant is not an individual, a written notice (hereinafter referred to as the "**Information on the Shareholder Structure**"), which states all partners, shareholders or other persons that have a share or other property or personal participation, or other interest in the business or other activities of the Participant (hereinafter referred to as the "**Shareholders**"), and all Shareholders of its Shareholders, as well as Shareholders of such Shareholders, and the Shareholders of such Shareholders, and so on. Information on Shareholders is not required if the Shareholder is an individual. In the case of a Shareholder, who is a legal entity whose shares, ownership interests, or a part thereof, are traded on a regulated market (hereinafter referred to as "**Publicly Traded Shares**"), the duty to provide the Information on Shareholders applies only to other than the Publicly Traded Shares of such Shareholder. All information and data outlined in the shareholder structure must be evidenced by standard, or usually submitted, documents, or deeds (e.g. a certificate of incorporation of a limited liability company, extract from the register of shareholders for a joint stock company, certificate of the operator of a regulated market certifying the fact that it is a publicly traded company, etc.);

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- 5.1.2 Written declaration of the Participants who are considering submitting an Offer, pursuant to Clause 5.5.2 (ii), on their financial stability and capacity to fulfill (i) the Commitments of the transferee, and/or (ii) the obligation to pay agreed upon contractual penalties for a breach of any Commitment of the transferee under Clause 3.1.4 (I) of these Tender Conditions, supported by documents or instruments evidencing that (a) the Participant has available cash funds (e.g. a confirmation from the bank of the Participant's balance account, a commitment letter, the bank's promise to grant a loan, or a loan agreement with a bank), or (b) the Participant's, or his Shareholder's, own resources, and the Participant's capacity to dispose of such resources if he acquires the Company (e.g. an auditor's statement of the Participant's, or his Shareholder's, net assets, accompanied by the Shareholder's promise to grant a loan) raising no doubts about their authenticity;
- 5.1.3. Written statement of the Participants who are considering submitting an Offer, pursuant to Clause 5.5.2 (ii), by which they acknowledge the obligations of the transferee of the Company, as well as the obligations incurred in the event of any delay in the fulfillment of the Commitments of the transferee, including the obligation to pay penalties agreed upon under Clause 3.1.4 (I), the wording of which shall be identical to that of the declaration that forms annex no. 3 to these Tender Conditions

(hereinafter the "**Statements and Declarations**").

- 5.2. The Statements and Declarations, under Clause 5.1 above, shall be signed (i) by the Participant, or (ii) by persons acting on behalf of the Participant, or (iii) by the Participant's authorized representatives, under Clauses 2.7 or 2.8 of these Tender Conditions; the declaration, under Clause 5.1.3 above, is that the signature must be authenticated (legalized), The Statements and Declaration must be delivered to the Trustee in the original versions, and any annexes thereto may be submitted as certified photocopies.
- 5.3 Participants interested in the acquisition of the Company in this Tender, in accordance with these Tender Conditions, shall deliver a written binding offer, compliant with the formal requirements, pursuant to this Article (V) (hereinafter referred to as the "**Offer**"), by 29<sup>th</sup> November 2011 till 10.00 hrs. (CET). The Offers received by the Trustee under the preceding sentence shall be considered valid only if delivered physically within the above deadline to the Trustee's office at: Horná 23, 974 01 Banská Bystrica; submitting Offers on the closing date specified above by posting, sending them by fax, electronically, by telex or in any other similar manner is not sufficient.
- 5.4 Offers must be delivered to the Trustee in a sealed and intact pre-printed envelope, sent to the Participants by the Trustee, as described in Clause 3.6.2 of the Tender Conditions, or in any other opaque, sealed, and intact envelope, while the upper face side of such envelope shall include the identification of the Trustee, and the following text in clear writing: "Call for tender - NOVÁCKE CHEMICKÉ ZÁVODY - Offer". The envelope containing the Participant's Offer must be properly (technically) closed, sealed, or otherwise similarly secured against tampering, e.g. by self-adhesive labels, signed by the Participants, or the person authorized to act on his behalf, with the signature overlapping from the label to the body of the envelope itself.
- 5.5 Offers may be submitted in properly completed pre-printed forms, sent to the Participant by the Trustee in accordance with Clause 3.6.3 of the Tender Conditions, or on any other document containing the following:
- 5.5.1 Exact identification of the Participant;
- 5.5.2 Indisputable, definite, and clear expression of the Participant's will expressed in the following words:
- (i) to acquire the Company and, for the acquisition thereof in the Tender, in accordance with these Tender Conditions, offer a consideration specified in Clause 5.3.3 below; without assuming the Commitments of the transferee; or

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- (ii) to acquire the Company and, for the acquisition thereof in the Tender, in accordance with these Tender Conditions, offer a consideration specified, in Clause 5.3.3 below; assuming, at the same time, the Commitments of the transferee.

The Participant is entitled to choose only one of the alternatives pursuant to this Clause 5.5.2 - for the avoidance of doubt, it is explicitly stated that the submission of an Offer, in accordance with Clause 5.5.2 (i) above, shall preclude submission, in accordance with Clause 5.5.2 (ii) above, and vice versa.

- 5.5.3 The amount of offered consideration is in euros, stated as a figure, and in words, together with the currency, so that there is no reasonable doubt about the amount and currency of the consideration. In the event of a conflict between the numerical and verbal amount offered, the lower amount will be taken into consideration (hereinafter referred to as the "**Price Offered**"); the offered consideration shall not be less than EUR 2,000,000 (two million euro) (hereinafter referred to as the "**Minimum Bid**").
- 5.5.4 Written declaration of the Participant, based on careful assessment of all relevant facts of the case (including the results of the due diligence), conducted with professional care, that the concentration resulting from the legal effects of the Contract for the sale of the Company, made with the Participant, within the Tender, and subject to these Tender Conditions, which will occur by the application of the de minimis rule:
  - (i) is not subject to the control of the Antimonopoly Office of the Slovak Republic, under Section 10 of Act No. 136/2001 Zb. on the Protection of Competition, and on amendments to Act of the Slovak National Council No. 347/1990 Zb. on ministries and other central bodies of the Slovak Republic, as amended, (hereinafter referred to as the "**Act**"), or
  - (ii) is subject only to the control of the Antimonopoly Office of the Slovak Republic under Section 10 of the Act, or
  - (iii) is subject only to a review by the Commission under Article 1 of Council Regulation (EC) 139/2004, on the control of concentrations between undertakings (the EC Merger Regulation) (hereinafter also referred to as the "**Regulation**");
- 5.5.5 The Participant's written statement regarding his intentions, as regards the manner and forms of financing, including his readiness to finance the Price Offered, supported by the standard and/or usual documents or instruments (e.g. term sheet, commitment letter, promise to grant a loan, loan agreement, etc..)
- 5.6 The Offer, including the written statements by the Participant, under Clause 5.3.4 above, must be personally signed by (i) the Participant, or (ii) the persons acting on his behalf, or (iii) the Participant's authorized representatives, under Clauses 2.7 or 2.8 of these Tender Conditions, where the signature of any such person shall always be authenticated (legalized). The Offer, and the written statement made under Clause 5.3.4, shall be delivered to the Trustee in their original versions; any attachments thereto may be submitted as certified photocopies.
- 5.7 Offers delivered to the Trustee after the deadline for delivery of Offers, pursuant to Clause 5.1 of the Tender Conditions, and/or Offers that do not meet the formal and/or content requirements pursuant to this Article (V), and/or binding Offers filed by a person other than the Participant, and/or Offers not containing at least the Minimum Bid, and/or Offers filed by Participants who have failed to duly and timely submit their Statements and Declarations, **will not be considered** in the selection procedure within. Offers of Participants who submitted a bid under Clause 5.5.2 (ii) and did not meet the deadline for delivering their Statements and Declarations, referred to in Clauses 5.1.2. and 5.1.3, shall not be considered either.
- 5.8 The Trustee shall open the envelopes containing the Offers at a meeting of the competent authority, convened so as to take place at 10.00 on the last day for the delivering of the tenders pursuant to Clause 5.1 of the Tender Conditions in the Trustee's office, and attended by a notary. The Trustee shall evaluate the Offers after a rigorous assessment, applying the criterion of the

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Price Offered by the Participants, and taking into account the content of the written statement under Clause 5.5.5 above, the written statement under Clause 5.1.2 above, and also the specific content of the Offers pursuant to Clause 5.5.2 of the Tender Conditions, within thirty (30) working days from the date of opening the envelopes which contain the Offers, in accordance with the preceding sentence of this Clause 5.8, or within thirty (30) working days after the end of the Bidding process (as defined below), or within 30 working days after the deadline, to even up the bid in accordance with Clause 5.9 below.

- 5.9 The Trustee is entitled to reject all Offers. In the case of equal Prices Offered in two or more Offers, submitted in accordance with Clause 5.5.2 (i), assuming that such bids will be higher than the bids made in accordance with Clause 5.5.2. (ii), the Trustee is also entitled to organize additional bidding, during which all Participants who delivered Offers containing the same Price Offered (hereinafter referred to as the "**Auctioning Entity**") will be able to create additional space to increase, or repeatedly increase, the Price Offered for the acquisition of the Company (also referred to as "**Bidding**"). If the highest bid, under Clause 5.5.2 (i) is higher than the bid under Clause 5.5.2 (ii), the tenderer or tenderers with the same highest bids, under Clause 5.5.2. (ii), will be invited to level up the highest bid, under Clause 5.5.2. (i), within 10 working days. The Trustee is also authorized to organize an additional bidding process in the event of equal consideration being offered in two or more bids, received under Clause 5.5.2. (ii), if such offers are, at the same time, higher than the bids under Clause 5.5.2. (i), or if the offers under Clause 5.5.2. (i) are evened up by two or more tenderers with the same highest amount of consideration, under Clause 5.5.2. (ii). Bidding, in this case, shall only concern the bids made pursuant to Clause 5.5.2. (ii). The terms and conditions of the Bidding, as well as the end point or method of determining the end point of the Bidding (hereinafter referred to as the "**Bidding Rules**"), shall be determined by the Trustee and delivered, in writing, to each Auctioning Entity at least five (5) working days prior to the Bidding.
- 5.10 The Participant, whose bid will be evaluated as the most advantageous by the Trustee (hereinafter referred to as the "**Winning Bid**") will be, without undue delay after the evaluation, sent a written notice, together with a brief information on how to proceed according to these Tender Conditions. The notification under this Clause 5.10 may form a separate document, or a part or Annex to the call, under Clause 6.1 of the Tender Conditions.
- 5.11 Participants whose bid will NOT be evaluated by the Trustee as the Winning Bid will be sent, without delay, but no later than in ten (10) working days from the date of the evaluation of the content of the Offers, a written notice to that effect (such notice, whether or not the participant is evaluated as successful, will not contain the name of the successful Participant, or any details on the Winning Bid) and will be returned the Guarantees deposited on a bank account or the original documents establishing the Bank Guarantee, without any interest that has, or could have, accrued on the Guarantee.

## VI. CONTRACTING PROCESS

- 6.1 In order to transfer the Company, the Trustee will, within ten (10) working days from the date of evaluation of the content of Offers, in accordance with Clause 5.8 of these Tender Conditions, send to the Participant, whose bid was evaluated as the Winning Bid (hereinafter also referred to as the "**Successful Participant**"), two copies of the draft Contract for the sale of the Company (hereinafter referred to as the "**Contract**"), based particularly on the wording of the Transaction Document, together with a written invitation to the Successful Participant to validly and effectively execute the Contract no later than thirty (30) calendar days after receiving the draft Contract, as indicated in Clause 6.2 (preferably), or Clause 6.3, of the Tender Conditions. If the last day of the period for the execution of the Contract under the previous sentence is a Saturday, Sunday, or a public holiday, the deadline expires on the next working day.
- 6.2 The signing of the Contract shall be carried out by the Successful Participant, or by an authorized representative thereof, under Clauses 2.7 or 2.8 of these Tender Conditions, "inter praesentes" on the time and place agreed between the Trustee and the Successful Participant, but not later than thirty (30) calendar days from delivery of the draft, by the Trustee, to the Successful

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Participant, in accordance with Clause 6.1. Signatures of the persons acting on behalf of the contracting parties must be authenticated (legalized).

- 6.3 The Successful Participant is, in cases deserving special attention, entitled to execute the Contract by delivering, in time, one counterpart of the draft Contract with his authenticated signature attached thereto, where the draft Contract had been delivered by the Trustee, in accordance with Clause 6.1 of these Tender Conditions, to the Trustee's office at Horná ulica 23, 974 01 Banská Bystrica. In the event that the Successful Participant delivers the signed Contract to the Trustee after the time period set by these Tender Conditions, it is assumed that the execution of the contract did not occur, unless the Trustee informs the Successful Participant, without undue delay after the late delivery of the Contract, that the Contract has been executed, and that the late acceptance by the Successful Participant of the draft Contract is considered effective.
- 6.4 In the event that the Successful Participant fails to fulfill its obligation, under the Future Agreement, to enter into the Contract with the Trustee before the deadline, under Clause 6.1 of the Tender Conditions, the Trustee may exercise his right to rescind the Future Agreement. In order to set off the claim of the Bankrupt from the Successful Participant for the agreed penalties for a breach of his contractual obligation to enter into the Contract, the Trustee is entitled to make a unilateral compensatory act, addressed to the Successful Participant, or his representative, pursuant to Clauses 2.7 or 2.8 of these Tender Conditions, to set off the claim against the Successful Participant's right for the return of his Collateral.

## VII. CONCENTRATION

- 7.1 Under Section 10 (9) of the Act, *"a concentration that is subject to review by the Authority, under paragraph 1, must be notified before starting exercising the rights and obligations arising from the concentration and after a) the execution of a contract, b) the receipt of a bid in a tender, c) the delivery to the entrepreneur of a public authority's decision, d) the announcement of a takeover bid, e) the date when the Commission announced to the entrepreneur that the case would be held by the Authority, or f) the days when another event occurred, resulting in the concentration"*. Pursuant to Article 4 (1) of the Regulation, *"concentrations with a Community dimension defined in this Regulation shall be notified to the Commission prior to their implementation, and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest"*.
- 7.2 With regards to the above cited law, provided that the Successful Participant submitted a written statement, pursuant to Clause 5.5.4 (ii) or 5.5.4 (iii) of these Tender Conditions, the effectiveness of a substantial portion of the Contract (except for clauses establishing the obligation of the transferee to pay the purchase price for the Company, or to pay an advance on the purchase price for the Company (in an amount equal to the Guarantee paid), and hence the creation, termination, and/or modification of a substantial portion of the rights and obligations of the contracting parties, shall be subject to the following conditions precedent (hereinafter referred to as the "Terms"):
- 7.2.1 The Antimonopoly Office of the Slovak Republic, on the basis of the notice to Successful Participant or on its own initiative:
- a) by a final decision, issued in proceedings held under Part Five of the Act, determines that it agrees with the concentration which resulted, will, or may result, from the Contract (hereinafter referred to as the "**Concentration**"), or (alternatively);
  - b) by a final decision, issued in proceedings held under Part Five of the Act, determines that it agrees with the Concentration, but imposes on the parties conditions and/or obligations related to a condition, or (alternatively);
  - c) by a final decision which terminates the proceedings on the approval of the Concentration, initiated by a written notice to the Successful Participant, or on its own initiative in its entirety (not just in the part under Section 32 (3) of the Act), for any

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reason other than those stipulated in Sections 32 (1) (b), (c), 32 (2) (e), or 32 (2) (j) of the Act, or (alternatively);

- d) notifies the Successful Participant that the administrative proceedings on the approval of the Concentration will not commence;

7.2.2 The Commission, on the basis of information provided by the Successful Participant, or of the transfer of the case from the Antimonopoly Office of the Slovak Republic, or on its own initiative, decides otherwise than by declaring the Concentration incompatible with the common market. A decision, under the preceding sentence, shall be any other action, document, or communication by the Commission that does not result in the incompatibility of the Concentration with the common market, except for any decision, or referral, to the Antimonopoly Office of the Slovak Republic to conduct the proceedings concerning the Concentration.

7.3 Under Section 10 (11) of the Act, and pursuant to Article 4 (2) of the Regulation, a public notification requirement, i.e. the obligation of proper notification to the authority, competent to exercise control or assessment, applies only to Successful Participants, although the Trustee shall provide the Successful Participant all necessary and reasonable assistance.

7.4 A final decision of the Antimonopoly Office of the Slovak Republic prohibiting the Concentration, or a final decision of the Commission declaring the Concentration incompatible with the common market, regardless of their reviewability by a court or other judicial authority, shall result in the Trustee's right to rescind the Contract. If the Trustee exercises his right under the preceding sentence, he shall also decide to cancel the Tender procedure in accordance with Clause 9.1 of these Tender Conditions.

## **VIII. EXCLUSION AND WITHDRAWAL FROM TENDER**

8.1 The Trustee is entitled to exclude, from the Tender, any party who (i) makes an objectively false declaration and/or statement in any document, deed, or act in the course of the Tender, (ii) during the Tender, ceases to qualify as Participant in the Tender, or who (iii) otherwise violates the terms and conditions for the acquisition of the Company, under generally applicable legal regulations, or (iv) breaches any obligation under the Confidentiality Agreement. Notice on the exclusion of the Participant from the Tender will be delivered to him by the Trustee, stating the reasons for exclusion.

8.2 Until the execution of the Future Agreement, the Applicant, or the Participant, may withdraw from the Tender by delivering a written notice of withdrawal to the Trustee.

## **IX. CANCELLATION AND AMENDMENT TO TENDER CONDITIONS**

9.1 The Trustee reserves the right to change or amend these Tender Conditions, in any way, and at any time during the Tender process, and/or to suspend, or completely cancel, the Tender. The Trustee's decision to change or amend the Tender Conditions, or suspend or cancel the Tender, shall require no specific form or justification; the Trustee shall communicate any amendments to the Tender Conditions, as well as a cancellation of the Tender, to the Participants in writing. Such an amendment to the Tender Conditions shall not result in the termination of the obligation to pay back the Collateral, or prevent the fulfillment of such obligation.

9.2 All costs incurred in connection with the Tender shall be borne, in full, by the Applicants, or the Participants, even if excluded or withdrawn from the Tender, or in the event of the cancellation of the Tender, or any changes or amendments to these Tender Conditions.

9.3 If these Tender Conditions set a deadline for an act to be performed, or a document to be delivered, by the Trustee, a failure of the Trustees to meet such a deadline shall not give rise to any claim or right of the Participants, or a third party, against the Trustee, or establish any obligation of the Trustee; Clause 9.4 of the Tender Conditions shall remain unaffected. No such

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failure shall affect, in any manner, the course of the Tender in accordance with these Tender Conditions.

- 9.4 The Trustee is bound by the deadlines set in these Tender Conditions for returning the Collaterals, unless the compliance with a specific deadline is prevented by an objective obstacle. For the purposes of this Clause 9.4, an objective obstacle shall be particularly (i) the absence of a decision of a competent authority, or of an order of a court acting in the capacity of the competent authority in the bankruptcy proceedings, regarding a question of the decision, on which is explicitly or otherwise entrusted to the relevant authority, by the Bankruptcy Act, and/or other generally applicable regulations, and/or any decision or document binding on the Trustee, and which is decisive from the start of the deadline, set for the repayment of the Collateral, and (ii) a legal obligation to carry out a certain operation, or a set of operations, before returning the Collateral, imposed on the Trustee by a generally applicable regulation, these Tender Conditions, and/or by any decision or document binding on the Trustee, until the completion or termination of such operation, or set of operations.
- 9.5 Unless these Tender Conditions stipulate otherwise, the Participant, whose participation in the Tender terminated is due to the exclusion or cancellation of the Tender, or the Participant who failed to submit his Offer in the set period of time, shall be returned his Collateral without undue delay after the exclusion or cancellation of the tender, or after the lapse of the deadline for the submission of bids.

## **X. ANNOUNCEMENT OF TENDER AND NOTICES**

- 10.1 The Tender process shall be considered declared on 12<sup>th</sup> July 2011 upon publication of a notice in the daily HOSPODÁRSKE NOVINY.
- 10.2 Applications submitted by interested entities shall contain their contact details, in particular the postal address and e-mail address, for the delivery of notices, invitations, and other written documents (hereinafter also referred to as the "**Documents**"). The Documents shall be considered delivered on the date when the relevant Document was sent to the relevant e-mail address or fax number; if the document is only sent to the Participant in a printed form, to the postal address specified in Clause 2.3.2 of these Tender Conditions, it is considered delivered no later than on the third (3rd) business day after the dispatch, or, more specifically, after handing the Documents over to the postal or other delivery service, even if the Applicant, or the Participant, did not accept the consignment containing the document, refused to accept it, or even if they did not learn at all about the delivery.
- 10.3 All documents of the Applicants, Participants, or any third party relating to the Tender process, under these Tender Conditions, shall be delivered, in printed form, to the below postal address; other notices for which these Tender Conditions, or directly generally applicable legal regulations, do not require a printed form, may be sent to the e-mail address or via fax as indicated below:

Address:  
Slovenská správcovská a reštrukturalizačná, k.s.  
Horná 23, 974 01 Banská Bystrica, Slovak Republic  
Handed to: JUDr. Miroslav Duračinský  
E-mail: nchz@ssr.sk  
Fax. +421 48 471 73 41

## **XI. LANGUAGE OF THE TENDER**

- 11.1 The Tender process shall take place in the Slovak language. All documents, acts, and filings within the tender shall be made or executed in the Slovak language. Where a deed, action, application, or document is produced or made in a language other than Slovak, a certified translation into the Slovak language shall be provided, forming an integral part of such a deed, act, or document. In the event of a dispute, however, the Slovak version shall be decisive.

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11.2 If the document, executed in a language other than Slovak, is the writ of the bank guarantee, it must always include an explicit statement of the issuer that, in the event of a dispute, the decisive version shall be the certified translation into the Slovak language, attached to the original of the bank guarantee in the foreign language, in accordance with Clause 11.1 of these Tender Conditions.

11.3 Unless these Tender Conditions expressly state otherwise, all notices, documents, tasks, filings, and documents made by the Trustee for the Tender, or in connection with the Tender, in accordance with these Tender Conditions, including documents containing the Future Agreement and the Contract, shall be made, or carried out, solely in the Slovak language. In the case that, in accordance with the Tender Conditions, a notice, instrument, act, filing, or other document is executed also in a language other than the Slovak language, the foreign language version shall serve only informative purposes, and is the decisive version, the text of the notice, instrument, act, filing, or document shall always be in the Slovak language.

## **XII. APPLICABLE LAW**

12.1 These Tender Conditions, as well as the content, creation, cessation, and change of all legal relations arising in connection with the Tender, shall be governed by the laws of the Slovak Republic, in particular the relevant provisions of the Commercial Code and the Bankruptcy Act, with the explicit exclusion of (i) conflict rules, and (ii) the UN Convention on Contracts for the International Sale of Goods.

12.2 The Tender process is not a public proposal of a contract, within the meaning of Section 276 et seq. of the Commercial Code, or a public tender, within the meaning of Section 281 et seq. of the Commercial Code.

## **XIII. ANNEXES**

13.1 An integral part of these Tender Conditions is Annex 1, containing an informative and legally non-binding model of sample arrangements of the Future Agreement, including the wording of the Confidentiality Agreement, Annex 2, containing a sample bank guarantee, and Annex 3, containing a sample declaration, under Clause 5.1.3 of these Tender Conditions.

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