|  |  |
| --- | --- |
| Ihr Zeichen |  |
| Our reference: Project [xxx] |
|  |  |

|  |
| --- |
|  |
| **Private and confidential**  Address |
| [Date] | |
| **Project [xxx] – Process letter phase II** | |
|  | |
| Dear Mr. [xxx], | |

On behalf of CLIENT ("Client") we would like to thank you for submitting an indicative, non-binding offer (“the Indicative Offer”) and for your continued interest in Project [xxx], the potential acquisition of TARGET ("Target").

Client has decided to proceed with a limited number of selected parties which have demonstrated in their Indicative Offers that they understand the Company, are willing and able to comply with the terms and conditions of the potential transaction as laid out in the first process letter and demonstrate sufficient transaction security in their Indicative Offer. We are pleased to confirm that Client has decided to invite you to participate in the next phase of the process (“Second Phase”).

This letter (the “Process Letter”) sets forth the terms, procedures and timing requirements upon which you are invited to proceed to the Second Phase of the Proposed Transaction. This letter is issued to you with reference to our prior communication and should be read in conjunction with the letter Project [xxx] – Process letter phase I issued to you on [date].

During the Second Phase of the process you and your advisors will have the opportunity to conduct a comprehensive due diligence process comprising:

* a presentation from the management team of Target (the “Management Presentation”);
* access to an electronic data room (the “Data Room”);
* [access to Vendor initiated financial, tax, commercial and legal Due Diligence Reports (the “VDD Reports”);]
* [a meeting with members of the team which prepared the VDD Reports to discuss questions which you might have from reviewing the Reports (the “VDD Meeting”);]
* the opportunity to discuss questions with the management in a structured questions and answers process (the “Q&A Process”); and
* a meeting or telephone conference call for the discussion of the draft sale and purchase agreement (“Draft SPA”) governing the proposed transaction.

[Please note that you will have to sign reliance letters issued by VDD PROVIDERS in order to receive a copy of the VDDs. This hold-harmless letter will be provided to you in due course.]

You will be provided with access to the Data Room (please find key rules for the Q&A and Data Room usage in the Appendix II) and to the VDD Reports as soon as practicable. It is envisaged to schedule a VDD Meeting, Management Meeting and the Management Presentation including a Site Visit in the week commencing [xxx] (please find key rules for the VDD Meeting, Management Meeting and Site Visit in the Appendix II). Further we intend to provide a Draft SPA governing the transaction. It is envisaged to start negotiations of the SPA with you and with your advisors, parallel to the due diligence phase.

It is expected that the information provided in the Second Phase will enable you to submit a Final Offer including a thoroughly discussed and largely agreed SPA mark-up as well as a committed financing for the purchase price. Following the receipt of your Final Offer, Client intends to notarize the SPA with those investor(s) who have submitted the most attractive offer as soon as possible. Please note that Client intends to close the transaction before the end of this calendar year, which includes signing of the SPA and regulatory clearance.

**Final Offer**

We request your written confirmation of your Indicative Offer in the form of a final offer including the negotiated SPA (the “Final Offer”) by no later than

**5 p.m. CET** on **[xxx]**.

The Final Offer shall be signed by an officer duly authorized by your company and should be sent by facsimile or e-mail, with hard copy to follow to:

|  |  |
| --- | --- |
| Attention: [xxx and xxx]  Facsimile: +49 [xxx] Email: [xxx]@kpmg.com and: [xxx]@kpmg.com | KPMG AG Wirtschaftsprüfungsgesellschaft Deal Advisory  The SQUAIRE / Am Flughafen 60549 Frankfurt am Main Germany |

Your Final Offer should represent your final and best position and should include the information as detailed in Appendix I to this letter.

**Further Process**

The Vendor, assisted by KPMG Deal Advisory, will review the Final Offers as soon as reasonably practicable. In order to fully assess your Final Offer, Client and/or KPMG Deal Advisory may wish to discuss certain aspects of your Final Offer. Please ensure availability of your relevant team members following the submission of your Final Offer.

Based on the offers received, Client will select the potential investor(s) with which he intends to notarize a definitive SPA.

**Other provisions**

Please note that this letter and the information contained herein is subject to the terms of the Confidentiality Agreement signed by you. You are reminded that any communication in connection with a potential transaction **must be exclusively addressed to KPMG Deal Advisory**. Under no circumstances should you establish direct contact with the management, employees or parties involved with Client or Target.

|  |  |
| --- | --- |
| Kind regards, |  |
|  |  |
|  |  |
| [xxx] | [xxx] |

Enclosures

**Appendix I**

**Key information to be provided in the Final Offer:**

1. *Purchase Price*

The proposed exact cash consideration (no range), denominated in Euro, that you are unconditionally prepared to pay for all shares in Target on a debt-free and cash-free basis (the “Enterprise Value”). Please provide an overview of any positions and their values which you would either add or deduct from the Enterprise Value to derive the equity value.

Please use the following format to detail the purchase price you would be prepared to pay:

| **in €** |  |
| --- | --- |
| **Enterprise value** | **One amount for all shares in Target** |
| + Addition 1 |  |
| + Addition 2 |  |
| + Addition … |  |
| - Deduction 1 |  |
| - Deduction 2 |  |
| - Deduction … |  |
| **Equity Value** | **Offer price** |

1. *Transaction structure*

Please outline the transaction structure envisaged by you, including the acquiring entity, its ultimate shareholders, and any other aspects of the transaction structure that are relevant at this stage.

1. *Financing structure*

The Final Offer should be fully financed. Please outline the envisaged financing structure and provide details on the sources of equity and debt which will be used to finance the transaction. You should provide us with a binding financing commitment letter from the lending bank(s) with respect to the portion of the transaction consideration that will be financed by such bank(s).

1. *Necessary approvals*

Confirmation that your Final Offer has received all necessary internal approvals.

1. *Competition and any other regulatory approval*

You should immediately start all necessary competition or anti-trust or other regulatory filings that may arise in connection with the Proposed Transaction. Your Final Offer should include a description of any outstanding approvals and the expected timeline to obtain such approvals.

1. *Sale and purchase agreement*

Your final offer should include the negotiated SPA. The Draft SPA will be provided to you in electronic format in due course and you will have the opportunity to negotiate the SPA with Client prior to submission of your Final Offer.

1. *Description of the prospective purchaser and acting as principal*

A summary description of the prospective purchaser and disclosure of your interests in companies which either compete directly or indirectly with the Company or participate in related industries (if any) and a confirmation that you are acting as principal for your account and not as a broker or agent.

1. *Due diligence*

A statement that your due diligence review is complete. There will be no further due diligence available.

1. *No Closing conditions*

Your Final Offer and the submitted negotiated SPA shall not include any conditions to closing other than any outstanding antitrust approval.

1. *Acquisition rationale, strategy and intentions regarding the management*

Explanation of the business rationale for the proposed transaction including your plans and strategy for the business under your ownership. Please also describe your intentions regarding the future role of the Company’s management team.

1. *Contacts*

The identity of the principal contact with who KPMG Deal Advisory may clarify any issues with respect to the Final Offer.

1. *Other information*

Any other information which you may deem to be material to Client in his decision to select a purchaser for the Company.

**Appendix II**

**Key rules for the Q&A and Data Room usage:**

* Only questions posted in the Data Room will be answered by Target, Client or KPMG Deal Advisory. Questions sent via email or posted in another way will not be answered.
* You are asked to appoint a single contact person who will coordinate communications with KPMG Deal Advisory. This key contact person will be enabled to post questions in the Data Room and receive the corresponding answers that can be distributed within your team.
* Please provide us with the full names and contact details of the participants to be invited in the electronic Data Room in the file “List of due diligence participants” (attached to the email).

**Key rules for the [VDD Meeting,] Management Meeting and Site Visit:**

* Please provide us with the full names and contact details of the participants to be invited for the [VDD Meeting,] Management Meeting and Site Visit in the file “List of due diligence participants” (attached to the email). We request that the number of participants in the Management Meeting / Site Visit be limited to three.
* Please provide us with key areas to be discussed in the VDD Meeting and Management Meeting well in advance to allow a proper preparation and to ensure an efficient session.