IMPORTANT NOTICE

THIS OFFERING IS AVAILABLE ONLY TO INVESTORS WHO ARE EITHER (1) QUALIFIED INSTITUTIONAL BUYERS WITHIN THE MEANING OF RULE 144A UNDER THE US SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR (2) NON-US PERSONS OUTSIDE OF THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AND, IF INVESTORS ARE RESIDENT IN A MEMBER STATE OF THE EUROPEAN ECONOMIC AREA, A QUALIFIED INVESTOR).

IMPORTANT: You must read the following disclaimer before continuing. The following disclaimer applies to the attached preliminary offering memorandum, and you are therefore advised to read this disclaimer page carefully before reading, accessing or making any other use of the attached preliminary offering memorandum. In accessing the attached preliminary offering memorandum, you agree to be bound by the following terms and conditions, including any modifications to them from time to time, each time you receive any information from us as a result of such access.

NOTHING IN THIS ELECTRONIC TRANSMISSION CONSTITUTES AN OFFER OF SECURITIES FOR SALE IN ANY JURISDICTION WHERE IT IS UNLAWFUL TO DO SO. THE SECURITIES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE SECURITIES ACT OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR OTHER JURISDICTION AND THE SECURITIES MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, US PERSONS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE OR LOCAL SECURITIES LAWS.

THE FOLLOWING PRELIMINARY OFFERING MEMORANDUM MAY NOT BE FORWARDED OR DISTRIBUTED TO ANY OTHER PERSON AND MAY NOT BE REPRODUCED IN ANY MANNER WHATSOEVER. ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THIS DOCUMENT IN WHOLE OR IN PART IS UNAUTHORIZED. FAILURE TO COMPLY WITH THIS DIRECTIVE MAY RESULT IN A VIOLATION OF THE SECURITIES ACT OR THE APPLICABLE LAWS OF OTHER JURISDICTIONS.

Confirmation of your representation: In order to be eligible to view this preliminary offering memorandum or make an investment decision with respect to the securities, you must: (i) not be a US person (as defined in Regulation S under the Securities Act), and be outside the United States; or (ii) be a qualified institutional buyer (as defined in Rule 144A under the Securities Act), provided that investors resident in a Member State of the European Economic Area must be a qualified investor (within the meaning of Article 2(1)(e) of Directive 2003/71/EC and any relevant implementing measure in each Member State of the European Economic Area). You have been sent the attached preliminary offering memorandum on the basis that you have confirmed to the initial purchasers set forth in the attached preliminary offering memorandum (the "Initial Purchasers"), being the sender or senders of the attached, that either: (A)(i) you and any customers you represent are not US persons; and (ii) the e-mail address to which this preliminary offering memorandum has been delivered is not located in the United States, its territories and possessions, any state of the United States or the District of Columbia; "possessions" include Puerto Rico, the US Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands; or (B) you and any customers you represent are qualified institutional buyers and, in either case, that you consent to delivery by electronic transmission.

This preliminary offering memorandum has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of transmission and, consequently, none of the Initial Purchasers, any person who controls an Initial Purchaser, Techem GmbH, Techem Energy Metering Service GmbH & Co. KG (together with Techem GmbH, the "Issuers"), or any of its subsidiaries, nor any director, officer, employers, employee or agent of theirs, or affiliate of any such person, accepts any liability or responsibility whatsoever in respect of any difference between the preliminary offering memorandum distributed to you in electronic format and the hard copy version available to you on request from the Initial Purchasers.

You are reminded that the attached preliminary offering memorandum has been delivered to you on the basis that you are a person into whose possession this preliminary offering memorandum may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located and you may not nor are you authorized to deliver this preliminary offering memorandum to any other person. You may not transmit the attached preliminary offering memorandum (or any copy of it or part thereof) or disclose, whether orally or in writing, any of its contents to any other person except with the consent of the Initial Purchasers. If you receive this document by e-mail, you should not reply by e-mail to this announcement.

Any reply e-mail communications, including those you generate by using the "Reply" function on your e-mail software, will be ignored or rejected. If you receive this document by e-mail, your use of this e-mail is at your own risk and it is your responsibility to take precautions to ensure that it is free from viruses and other items of a destructive nature.

The materials relating to the offering do not constitute, and may not be used in connection with, an offer or solicitation in any place where offers or solicitations are not permitted by law. If a jurisdiction requires that the offering be made by a licensed broker or dealer and the Initial Purchasers or any affiliate of the Initial Purchasers is a licensed broker or dealer in that jurisdiction, the offering shall be deemed to be made by the Initial Purchasers or such affiliate on behalf of the Issuers in such jurisdiction.

Restrictions: The attached document is in preliminary form and is being furnished in connection with an offering exempt from registration under the Securities Act. Nothing in this electronic transmission constitutes an offer of securities for sale in the United States or to any US person. You are reminded that the information in the attached document is in preliminary form, is not complete and may be changed. An investment decision should only be made on the basis of the final offering memorandum.

Any securities to be issued will not be registered under the Securities Act or the securities laws of any other jurisdiction and may not be offered or sold within the United States or to, or for the account or benefit of, US persons (as such terms are defined in Regulation S under the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Notwithstanding the foregoing, prior to the expiration of a 40-day distribution compliance period (as defined under Regulation S under the Securities Act) commencing on the issue date, the securities may not be offered or sold in the United States or to, or for the account or benefit of, US persons, except pursuant to another exemption from the registration requirements of the Securities Act.

This communication is for distribution only to, and is directed solely at, persons who (i) are outside the United Kingdom, (ii) are investment professionals, as such term is defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Financial Promotion Order"), (iii) are persons falling within Article 49(2)(a) to (d) of the Financial Promotion Order, or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 in connection with the issue or sale of any Notes may otherwise be lawfully communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). This preliminary offering memorandum is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this preliminary offering memorandum relates is available only to relevant persons and will be engaged in only with relevant persons. Any person who is not a relevant person should not act or rely on this preliminary offering memorandum or any of its contents.

techem

€ % Senior Secured Notes due 2019
€ % Senior Subordinated Notes due 2020

Techem GmbH (the "**Senior Secured Notes Issuer**") is offering € aggregate principal amount of its % senior secured notes due 2019 (the "**Senior Secured Notes**") and Techem Energy Metering Service GmbH & Co. KG (the "**Senior Subordinated Notes Issuer**" and, together with the Senior Secured Notes Issuer, the "**Issuers**") is offering € aggregate principal amount of its % senior subordinated notes due 2020 (the "**Senior Subordinated Notes**" and together with the Senior Secured Notes, the "**Notes**"). We will pay interest on the Notes semi-annually on each and , commencing . All or a portion of the Senior Secured Notes may be redeemed prior to , 2015, and all or a portion of the Senior Subordinated Notes may be redeemed prior to , 2016, in each case, at a redemption price equal to 100% of the principal amount of the relevant Notes redeemed plus accrued and unpaid interest to the redemption date and a "make-whole" premium, as described in this offering memorandum. The Senior Secured Notes may be redeemed at any time on or after , 2015 and the Senior Subordinated Notes may be redeemed at any time on or after , 2016, in each case, at the redemption prices set forth in this offering memorandum. At any time prior to , 2015, we may redeem up to 35% of the Senior Secured Notes and Senior Subordinated Notes, in each case, with the net proceeds of one or more specified equity offerings at the redemption prices set forth in this offering memorandum.

All of the Notes may also be redeemed upon the occurrence of certain changes in applicable tax law. If certain change of control events occur, each holder of Notes may require us to repurchase all or a portion of its Notes.

The Senior Secured Notes will be senior secured obligations of the Senior Secured Notes Issuer and will be guaranteed on a senior basis (the "**Senior Secured Notes Guarantees**") by the limited partner of the Senior Subordinated Notes Issuer, MEIF II Germany Holdings S.à r.l ("**Germany Holdco**"), the general partner of the Senior Subordinated Notes Issuer, Techem Energie GmbH ("**Energie Holdco**" and together with Germany Holdco, the "**Holdcos**"), the Senior Subordinated Notes Issuer and certain of its subsidiaries that guarantee the Senior Secured Facilities (as defined herein). The Senior Subordinated Notes will be senior subordinated obligations of the Senior Subordinated Notes Issuer and will be guaranteed on a senior subordinated basis (the "**Senior Subordinated Notes Guarantees**" and together with the Senior Secured Notes Guarantees, the "**Note Guarantees**") by the Holdcos, the Senior Secured Notes Issuer and certain of its subsidiaries that guarantee the Senior Secured Facilities as set forth herein.

The Senior Secured Notes and the Senior Secured Notes Guarantees will be secured by a first-priority security interest in the same collateral which secures the Senior Secured Facilities. The Senior Subordinated Notes and the Senior Subordinated Notes Guarantees will be secured by a second-priority security interest in the general and limited partnership interests of the Senior Subordinated Notes Issuer, the shares of the Holdcos and the Senior Secured Notes Issuer receivables under an intercompany loan from MEIF II Finance Holdings S.à r.l. ("**MEIF II Finance**") to Germany Holdco and an intercompany loan from Germany Holdco to the Senior Subordinated Notes Issuer, receivables of the Senior Subordinated Notes Issuer and Energie Holdco and accounts of the Senior Subordinated Notes Issuer and Energie Holdco (the "**Senior Subordinated Collateral**").

Application will be made to have the Notes admitted to listing on the Official List of the Luxembourg Stock Exchange and to trading on the Euro MTF Market of the Luxembourg Stock Exchange.

Investing in the Notes involves a high degree of risk. See "Risk Factors" beginning on page 22.

The Notes and the Note Guarantees have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"). The Notes may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except to qualified institutional buyers in reliance on the exemption from registration provided by Rule 144A under the Securities Act ("**Rule 144A**") and to certain persons in offshore transactions in reliance on Regulation S under the Securities Act. You are hereby notified that sellers of the Notes may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. See "*Notice to Investors*" for additional information about eligible offerees and transfer restrictions.

We expect that delivery of the Notes will be made to investors in book-entry form through Euroclear Bank S.A./N.V. and Clearstream Banking, société anonyme, on or about September , 2012, which is expected to be more than five business days after the date of this offering memorandum. You should be advised, that trading of the Notes may be affected by the T+ settlement. Interests in each Global Note will be exchangeable for the relevant Definitive Notes only in certain limited circumstances. See "*Book-Entry, Delivery and Form.*"

Senior Secured Notes Price: % plus accrued interest, if any, from the issue date.
Senior Subordinated Notes Price: % plus accrued interest, if any, from the issue date.

Joint Bookrunners

J.P. Morgan	**Deutsche Bank**	**Crédit Agricole CIB**	**Commerzbank**	**RBS**	**UniCredit Bank**
Global Coordinator	*Global Coordinator*	*Global Coordinator*			

The date of this offering memorandum is , 2012

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IMPORTANT INFORMATION ABOUT THIS OFFERING MEMORANDUM

IN CONNECTION WITH THIS OFFERING, J.P. MORGAN SECURITIES PLC (THE "**STABILIZING MANAGER**") (OR PERSONS ACTING ON BEHALF OF THE STABILIZING MANAGER) MAY OVER-ALLOT NOTES OR EFFECT TRANSACTIONS WITH A VIEW TO SUPPORTING THE MARKET PRICE OF THE NOTES AT A LEVEL HIGHER THAN THAT WHICH MIGHT OTHERWISE PREVAIL. HOWEVER, THERE IS NO ASSURANCE THAT THE STABILIZING MANAGER (OR PERSONS ACTING ON BEHALF OF A STABILIZING MANAGER) WILL UNDERTAKE STABILIZATION ACTION. ANY STABILIZATION ACTION MAY BEGIN ON OR AFTER THE DATE ON WHICH ADEQUATE PUBLIC DISCLOSURE OF THE FINAL TERMS OF THE OFFER OF THE NOTES IS MADE AND, IF BEGUN, MAY BE ENDED AT ANY TIME, BUT IT MUST END NO LATER THAN THE EARLIER OF 30 DAYS AFTER THE ISSUE DATE OF THE NOTES AND 60 DAYS AFTER THE DATE OF THE ALLOTMENT OF THE NOTES.

We are providing this offering memorandum only to prospective purchasers of the Notes.

You are responsible for making your own examination of us and our business and your own assessment of the merits and risks of investing in the Notes. You may contact us if you need any additional information. By purchasing the Notes, you will be deemed to have acknowledged that:

- you have reviewed this offering memorandum;
- you have had an opportunity to request any additional information that you need from us; and
- the initial purchasers are not responsible for, and are not making any representation to you concerning, our future performance or the accuracy or completeness of this offering memorandum.

We are not providing you with any legal, business, tax or other advice in this offering memorandum. You should consult with your own advisors as needed to assist you in making your investment decision and to advise you whether you are legally permitted to purchase the Notes.

This offering memorandum does not constitute an offer to sell or an invitation to subscribe for or purchase any of the Notes in any jurisdiction in which such offer or invitation is not authorized or to any person to whom it is unlawful to make such an offer or invitation. You must comply with all laws that apply to you in any place in which you buy, offer or sell any Notes or possess this offering memorandum. You must also obtain any consents or approvals that you need in order to purchase any Notes. We and the initial purchaser are not responsible for your compliance with these legal requirements.

We are offering the Notes in reliance on exemptions from the registration requirements of the Securities Act. These exemptions apply to offers and sales of securities that do not involve a public offering. The Notes have not been recommended by any U.S. federal, state or any non-U.S. securities authorities, nor have any such authorities determined that this offering memorandum is accurate or complete. Any representation to the contrary is a criminal offense in the United States.

The Notes are subject to restrictions on resale and transfer as described under "*Notice to Investors*" and "*Plan of Distribution*." By purchasing any Notes, you will be deemed to have made certain acknowledgments, representations and agreements as described in those sections of this offering memorandum. You may be required to bear the financial risks of investing in the Notes for an indefinite period of time.

We accept responsibility for the information contained in this offering memorandum. To the best of our knowledge and belief (which we have taken all reasonable care to ensure is the case), the information contained in this offering memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.

To the fullest extent permitted by law, the initial purchaser does not accept any responsibility for the contents of this offering memorandum or for any other statement made or purported to be made by the Issuers in connection with the issue and offering of the Notes. The initial purchasers accordingly disclaim all and any liability whether arising in tort or contract or otherwise which it might otherwise have in respect of this offering memorandum or any such statement. The initial purchasers do not undertake to review the financial condition or affairs of either Issuer or any Guarantor during the life of the Notes or to advise any investor or potential investor in the Notes of any information coming to the attention of any initial purchaser.

We and the initial purchasers may reject any offer to purchase the Notes in whole or in part, sell less than the entire principal amount of the Notes offered hereby or allocate to any purchaser less than all of the Notes for which it has subscribed.

The information contained under the caption "*Currency Presentation*" and "*Exchange Rate Information*" includes extracts from information and data publicly released by official and other sources. While we accept responsibility for accurately summarizing the information concerning exchange rate information, we accept no further responsibility in respect of such information. The information set out in relation to sections of this offering memorandum describing clearing and settlement arrangements, including the section entitled "*Book-Entry, Delivery and Form*" is subject to change in or reinterpretation of the rules, regulations and procedures of Euroclear or Clearstream currently in effect. While we accept responsibility for accurately summarizing the information concerning Euroclear and Clearstream, we accept no further responsibility in respect of such information.

We expect that delivery of the Notes will be made against payment on the Notes on or about the date specified on the cover page of this offering memorandum, which will be business days (as such term is used for purposes of Rule 15c6-1 of the U.S. Exchange Act of 1934, as amended, (the "**U.S. Exchange Act**")) following the date of pricing of the Notes (this settlement cycle is being referred to as "T + "). Under Rule 15c6-1 of the U.S. Exchange Act, trades in the secondary market generally are required to settle in three business days unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes on the date of this offering memorandum or the following business days will be required to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the Notes who wish to make such trades should consult their own advisors.

Notice to New Hampshire Residents

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE UNIFORM SECURITIES ACT WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER CHAPTER 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT, ANY REPRESENTATION INCONSISTENT WITH THE PROVISION OF THIS PARAGRAPH.

Notice to U.S. Investors

The Notes will be sold outside the United States to non-U.S. persons pursuant to Regulation S of the Securities Act and within the United States to QIBs pursuant to Rule 144A. The Notes and the Note Guarantees have not been and will not be registered under the Securities Act and the Notes may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, registration requirements of the Securities Act. The Notes shall not be offered, sold or delivered (i) as part of an initial purchaser's distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the latest closing date, within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to Rule 144A and each dealer to which Notes have been sold during the distribution compliance period will be sent a confirmation or other notice setting forth the restrictions on offers and sales of the Notes within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings given to them by Regulation S. See "*Notice to Investors*."

Notice to Luxembourg Investors

The Notes may not be offered or sold to the public in the Grand Duchy of Luxembourg, directly or indirectly, and, neither this offering memorandum nor any other circular, prospectus, form of application, advertisement, communication or other material may be distributed, or otherwise made available in, or from or published in, the Grand Duchy of Luxembourg, except for the sole purpose of the admission to

listing of the Notes on the Official List and to trading of the Notes on Euro MTF Market of the Luxembourg Stock Exchange and except in circumstances which do not constitute an offer of securities to the public.

Notice to Investors in the United Kingdom

This offering memorandum is for distribution only to, and is only directed at, persons who (i) have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, (the "**Financial Promotion Order**"), (ii) are persons falling within Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the Financial Promotion Order or (iii) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any Notes may otherwise lawfully be communicated (all such persons together being referred to as "relevant persons"). This offering memorandum is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons. The Notes are being offered solely to "qualified investors" as defined in the Prospectus Directive and accordingly the offer of Notes is not subject to the obligation to publish a prospectus within the meaning of the Prospectus Directive.

Notice to Investors in Japan

The Notes have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each initial purchaser has agreed that it will not offer or sell any Notes, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Notice to Investors in the European Economic Area

This offering memorandum has been prepared on the basis that all offers of Notes will be made pursuant to an exemption under the Prospectus Directive, as amended, as implemented in member states of the European Economic Area ("**EEA**"), from the requirement to produce a prospectus for offers of the Notes. Accordingly, any person making or intending to make any offer within the EEA of the Notes which are subject of the offering contemplated in this offering memorandum must only do so in circumstances in which no obligation arises for the Issuers, Energie Holdco, MEIF II Finance, the Guarantors or any of the initial purchasers to produce a prospectus for such offer. Neither the Issuers, Energie Holdco, MEIF II Finance nor the Guarantors nor any initial purchaser has authorized, nor do they authorize, the making of any offer of the Notes through any financial intermediary, other than offers made by the initial purchasers, which constitute the final placement of the Notes contemplated in this offering memorandum. The expression "Prospectus Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC and amendments thereto (including the 2010 PD Amending Directive, in the case of Early Implementing Member States), and includes any relevant implementing measure in the Relevant Member State. The expression "2010 PD Amending Directive" means Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonization of transparency requirements in relation to information about Issuers whose securities are admitted to trading on a regulated market.

In relation to each Member State of the EEA which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), including each Relevant Member State that has implemented the 2010 PD Amending Directive (each an "**Early Implementing Member State**"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "**Relevant Implementation Date**"), no offer has been made and no offer will be made of the Notes to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Notes that has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State,

all in accordance with the Prospectus Directive, except that, with effect from and including the Relevant Implementation Date, an offer of the Notes may be made to the public in that Relevant Member State at any time to:

(a) "**qualified investors**" as defined in the Prospectus Directive, including:

  (i) (in the case of Relevant Member States other than Early Implementing Member States), legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities, or any legal entity which has two or more of (i) an average of at least 250 employees during the last financial year; (ii) a total balance sheet of more than €43 million and (iii) an annual turnover of more than €50 million as shown in its last annual or consolidated accounts; or

  (ii) (in the case of Early Implementing Member States), persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments, and those who are treated on request as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognized as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC unless they have requested that they be treated as non-professional clients; or

(b) fewer than 100 or, in the case of Early Implementing Member States, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive) in any Relevant Member State subject to obtaining the prior consent of the Issuer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of Notes shall result in a requirement for the publication by the Issuer, the Company for any initial purchaser of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression "offer of Notes to the public" in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes, as such expression may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State.

Each subscriber for or purchaser of the Notes in the offering located within a Relevant Member State will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive. The Issuers, the Guarantors, our legal advisors and others will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement. Notwithstanding the above, a person who is not a qualified investor and who has notified the initial purchasers of such fact in writing may, with the consent of the initial purchasers, be permitted to subscribe for or purchase the Notes in the offering.

Germany

In the Federal Republic of Germany, the Notes may only be offered and sold in accordance with the provisions of the Securities Prospectus Act of the Federal Republic of Germany (the "**Securities Prospectus Act**", *Wertpapierprospektgesetz*, *WpPG*) and any other applicable German law. No application has been made under German law to offer the Notes to the public in or out of the Federal Republic of Germany. The Notes are not registered or authorized for distribution under the Securities Prospectus Act and accordingly may not be, and are not being, offered or advertised publicly or by public promotion. This offering memorandum is strictly for private use and the offer is only being made to recipients to whom the offering memorandum is personally addressed and does not constitute an offer or advertisement to the public. In Germany, the Notes will only be available to, and this offering memorandum and any other offering material in relation to the Notes is directed only at, persons who are qualified investors (*qualifizierte Anleger*) within the meaning of Section 2 No. 6 of the Securities Prospectus Act or who are subject of another exemption in accordance with Section 3 para. 2 of the Securities Prospectus Act. Any resale of the Notes in Germany may only be made in accordance with the Securities Prospectus Act and other applicable laws.

Austria

The Notes may only be offered in the Republic of Austria in compliance with the provisions of the Austrian Capital Market Act (*Kapitalmarktgesetz*) and other laws applicable in the Republic of Austria

governing the offer and sale of the Notes in the Republic of Austria. The Notes are not authorized for public offer under either the Austrian Capital Market Act (*Kapitalmarktgesetz*) or Investment Fund Act 2011 (*Investmentfondsgesetz 2011*) and the Offering Memorandum has not been and/or will not be published pursuant to the Austrian Capital Market Act (*Kapitalmarktgesetz*) or Investment Fund Act 2011 (*Investmentfondsgesetz 2011*). The recipients of this Offering Memorandum and other selling material with respect to the Notes have been individually selected and identified before the offer is made and are targeted exclusively on the basis of a private placement. Accordingly, the Notes may not be, and are not being, offered or advertised publicly or offered similarly under either the Austrian Capital Market Act (*Kapitalmarktgesetz*) or Investment Fund Act 2011 (*Investmentfondsgesetz 2011*). No offer will be made to any persons in Austria other than the recipients to whom this Offering Memorandum is personally addressed.

France

The Notes may not be offered or sold, directly or indirectly, to the public in France and offers and sales of Notes shall only be made in France to (a) providers of investment services relating to portfolio management for the account of third parties (*personnes fournissant le service d'investissement de gestion de portefeuille pour compte de tiers*) and/or (b) qualified investors (*investisseurs qualifiés*) acting for their own account, all as defined in, and in accordance with, Articles L.411-1, L.411-2, D.411-1, D. 411-2 and D.411-3 of the French *Code monétaire et financier*.

This offering memorandum or any other circular, prospectus, form of application, advertisement, communication or other material relating to the Notes will not be distributed or caused to be distributed to the public in France other than to those investors (if any) to whom offers and sales of the Notes in France may be made, as described above.

The Netherlands

For selling restrictions in respect of the Netherlands, see "*—Notice to Investors in the European Economic Area*" above and in addition:

(a) *Specific Dutch selling restriction for exempt offers*: Each initial purchaser has represented and agreed that it will not make an offer of the Notes which are the subject of the offering contemplated by this offering memorandum to the public in the Netherlands in reliance on Article 3(2) of the Prospectus Directive unless:

  (i) such offer is made exclusively to legal entities which are qualified investors (as defined in the Prospectus Directive and which includes authorised discretionary asset managers acting for the account of retail investors under a discretionary investment management contract) in the Netherlands; or

  (ii) standard exemption logo and wording are disclosed as required by article 5:20(5) of the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*, the "**NLFMSA**"); or

  (iii) such offer is otherwise made in circumstances in which article 5:20(5) of the NLFMSA is not applicable,

provided that no such offer of the Notes shall require any Issuer or any initial purchaser to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expressions (i) an "offer of the Notes to the public" in relation to any Notes in the Netherlands; and (ii) "Prospectus Directive," have the meaning given to them above in the paragraph headed "*Notice to Investors in the European Economic Area*."

(b) *Regulatory capacity to offer the Notes in the Netherlands*: Each initial purchaser which did and does not have the requisite Dutch regulatory capacity to make offers or sales of financial instruments in the Netherlands has represented and agreed with the Issuers that it has not offered or sold and will not offer or sell any of the Notes of the relevant Issuer in the Netherlands, other than through one or more investment firms acting as principals and having the Dutch regulatory capacity to make such offers or sales.

Italy

The offering of the Notes has not been cleared by the *Commissione Nazionale per la Società e la Borsa* ("**CONSOB**") (the Italian securities exchange commission), pursuant to Italian securities legislation. Each initial purchaser has represented and agreed that any offer, sale or delivery of the Notes or distribution of copies of this offering memorandum or of any other document relating to the Notes in the Republic of Italy will be carried out in accordance with all Italian securities, tax and exchange control and other applicable laws and regulations.

Any such offer, sale or delivery of the Notes or distribution of copies of this offering memorandum or any other document relating to the Notes in the Republic of Italy must be:

(a) made by an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with Legislative Decree No. 58 of February 24, 1998, Legislative Decree No. 385 of September 1, 1993, CONSOB Regulation No. 16190 of October 29, 2007 (in each case, as amended from time to time) and any other applicable laws and regulations; and

(b) in compliance with any and all other applicable laws and regulations and any other condition or limitation that may be imposed by CONSOB, the Bank of Italy or any relevant Italian authorities.

Any initial purchaser of the Notes is solely responsible for ensuring that any offer or resale of the Notes by such investor occurs in compliance with applicable Italian laws and regulations.

For selling restrictions in respect of Italy, see also "*Notice to Investors in the European Economic Area*" above.

Internal Revenue Service Circular 230 Disclosure

TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, PROSPECTIVE INVESTORS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS OFFERING MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY PROSPECTIVE INVESTORS, FOR THE PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING BY US OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE INVESTORS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

DISCLOSURE REGARDING FORWARD LOOKING STATEMENTS

This offering memorandum includes forward-looking statements. These forward-looking statements can be identified by the use of forward-looking terminology, including the terms "believes," "estimates," "aims," "targets," "anticipates," "expects," "intends," "may," "will" or "should" or, in each case, their negative, or other variations or comparable terminology. These forward-looking statements include matters that are not historical facts. They appear in a number of places throughout this offering memorandum and include statements regarding our intentions, beliefs or current expectations concerning, among other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which we operate.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity and the development of the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this offering memorandum. In addition, even if our results of operations, financial condition and liquidity, and the development of the industry in which we operate are consistent with the forward-looking statements contained in this offering memorandum, those results or developments may not be indicative of results or developments in subsequent periods. Important factors that could cause those differences include, but are not limited to:

- risks related to our business and our industry;
- changes in underlying regulation;
- legislation and changes in the application of existing laws and regulations and consumer privacy legislation;
- competition;
- failure to develop attractive systems, technology, products or services that satisfy our customers' needs;
- technological disruptions and defects or errors in our transaction processing platform and software;
- reliance on third-party vendors to provide products and services;
- liability in connection with potentially defective measuring devices;
- difficulties implementing our corporate strategy;
- reliance on our management and key personnel;
- risks related to advancements in technology;
- interest rate and currency fluctuations;
- additional expenditures in connection with our international businesses and potential further expansion;
- risk and challenges associated with our entering into new markets;
- economic difficulties or downturns;
- markets for the services that we offer may fail to grow or may contract;
- failure to safeguard databases and consumer privacy;
- counterparty risk;
- environmental liabilities;
- failure to adequately protect intellectual property rights;
- infringement of the intellectual property rights of third parties;
- tax risks;
- liability based on actions of our employees and agents;
- risks resulting from legal proceedings;

- risks related to our substantial leverage;
- leverage and restrictive covenants in current and future indebtedness;
- interest rate risks;
- credit default risks;
- impairment to intangible assets and goodwill;
- risks associated with our structure, the Notes, the Guarantees, the security for the Notes and the Guarantees and our other indebtedness; and
- risks related to our ownership.

We urge you to read the sections of this offering memorandum entitled "*Risk Factors*", "*Management's Discussion and Analysis of Financial Condition and Results of Operations*", "*Industry and Competitive Environment*" and "*Business*" for a more detailed discussion of the factors that could affect our future performance and the industry in which we operate. In light of these risks, uncertainties and assumptions, the forward-looking events described in this offering memorandum may not occur.

We undertake no obligation, and do not expect, to publicly update or publicly revise any forward-looking statement, whether as a result of new information, future events or otherwise. All subsequent written and oral forward-looking statements attributable to us or to persons acting on our behalf are expressly qualified in their entirety by the cautionary statements referred to above and contained elsewhere in this offering memorandum.

CERTAIN DEFINITIONS

In this offering memorandum:

- "Adjusted EBITDA" refers to EBITDA adjusted for one-off effects;
- "Adjusted revenues" refers to total revenues less revenues of the unrestricted subsidiaries and from tax efficiency contracting in the Energy Contracting business segment, but including revenues of companies within the restricted group with companies outside the restricted group;
- "Capex and Acquisition Facility" refers to the €50.0 million capex and acquisition facility under the Senior Secured Facilities Agreement;
- "Clearstream" refers to Clearstream Banking, société anonyme;
- "EBITDA" refers to earnings before interest, tax and depreciation of metering devices for rent, fixed and intangibles assets;
- "Energie Holdco" means Techem Energie GmbH;
- "EU" refers to the European Union;
- "Euroclear" refers to Euroclear Bank SA/NV;
- "Existing Senior Secured Facilities Agreement" refers to the Senior Secured Notes Issuer's €1,000,000,000 senior facilities agreement dated November 3, 2007, as amended and restated through the date hereof;
- "free cash flow" refers to cash flows from operating activities less cash flows used in investing activities less interest paid / received and income tax paid / received;
- "Germany Holdco" means MEIF II Germany Holdings S.à r.l.;
- "Guarantors" refers to the Senior Secured Notes Guarantors and the Senior Subordinated Notes Guarantors;
- "GWE" refers to GWE Gesellschaft für wirtschaftliche Energieversorgung mbH (together with its subsidiaries, the "**GWE Group**"), one of our subsidiaries which will be an unrestricted subsidiary under the Notes;
- "Holdcos" means Energie Holdco together with Germany Holdco;
- "IFRS" refers to International Financial Reporting Standards as adopted by the EU;

- "Indentures" refers to the Senior Secured Notes Indenture and the Senior Subordinated Notes Indenture;
- "Issue Date" refers to the date of original issuance of the Senior Secured Notes and/or the Senior Subordinated Notes, as the context may require;
- "Issuers" refers to the Senior Secured Notes Issuer together with the Senior Subordinated Notes Issuer;
- "Junior Facilities" refers to facilities under the €150,000,000 junior term loan facility agreement ("**Junior Facilities Agreement**") dated November 3, 2007, as amended through the date hereof;
- "MEIF II Finance" means MEIF II Finance Holdings S.à r.l.;
- "Member State" means a member state of the European Economic Area;
- "Note Guarantees" refers to the Senior Secured Notes Guarantees together with the Senior Subordinated Notes Guarantees;
- "Notes" refers to the Senior Secured Notes together with the Senior Subordinated Notes;
- "Refinancing" refers to the Refinancing set forth in "*Summary—the Refinancing*";
- "Regulation S" refers to Regulation S under the Securities Act;
- "restricted subsidiary" refers to any subsidiary of the Senior Secured Notes Issuer not designated as an "unrestricted subsidiary" under the Indentures;
- "Revolving Credit Facility" refers to the €50.0 million multicurrency revolving credit facility under the Senior Secured Facilities Agreement;
- "Security Trustee" refers to UniCredit Bank AG, London Branch;
- "Security Documents" has the meaning ascribed to it under the "Description of Senior Secured Notes" and "Description of Senior Subordinated Notes;"
- "Senior Secured Collateral" has the meaning set forth in "*Summary—The Offering—Security—Senior Secured Notes*";
- "Senior Secured Facilities" refers to the Term Loan Facility, the Capex and Acquisition Facility and the Revolving Credit Facility made available under the Senior Secured Facilities Agreement;
- "Senior Secured Facilities Agreement" refers to the senior secured facilities agreement to be dated the Issue Date among, *inter alios*, the Senior Secured Notes Issuer and certain of its subsidiaries and UniCredit Bank AG, London Branch, as agent and security trustee;
- "Senior Secured Notes Guarantors" refers to the Holdcos, the Senior Subordinated Notes Issuer and certain of its subsidiaries that provide guarantees under the Senior Secured Facilities Agreement together with any future guarantors of the Senior Secured Notes;
- "Senior Secured Notes Indenture" refers to the indenture to be dated on the Issue Date governing the Senior Secured Notes by and among, *inter alios*, the Senior Secured Notes Issuer and the Senior Secured Notes Trustee;
- "Senior Secured Notes Issuer" refers to Techem GmbH;
- "Senior Secured Notes Trustee" refers to Deutsche Trustee Company Limited, as trustee under the Senior Secured Notes Indenture;
- "Senior Subordinated Collateral" has the meaning set forth in the cover page of this offering memorandum;
- "Senior Subordinated Notes Guarantors" refers to the Holdcos, the Senior Secured Notes Issuer and certain of its subsidiaries that provide guarantees under the Senior Secured Facilities Agreement together with any future guarantors of the Senior Subordinated Notes;
- "Senior Subordinated Notes Indenture" refers to the indenture to be dated on the Issue Date governing the Senior Subordinated Notes by and among, *inter alios*, the Senior Subordinated Notes Issuer and the Senior Subordinated Notes Trustee;
- "Senior Subordinated Notes Issuer" refers to Techem Energy Metering Service GmbH & Co. KG;

- "Senior Subordinated Notes Trustee" refers to Deutsche Trustee Company Limited, as trustee under the Senior Subordinated Notes Indenture;
- "Term Loan Facility" refers to the €450.0 million term loan facility under the Senior Secured Facilities Agreement;
- "Thermie Serres" refers to Thermie Serres S.A., one of our subsidiaries in Greece which will be an unrestricted subsidiary under the Indentures governing the Notes and is a partially-owned subsidiary of our wholly-owned subsidiary Techem Energy Contracting Hellas EPE;
- "United States," "U.S." or "US" refer to the United States of America and its territories and possessions;
- "U.S. GAAP" refers to generally accepted accounting principles in the United States;
- "unrestricted subsidiaries" refers to our subsidiaries that are not subject to the covenants under the Indentures governing the Notes or Senior Secured Facilities Agreement, including Thermie Serres and the GWE Group; and
- "we," "us," "our," "our Group" and other similar terms refer to the Senior Subordinated Notes Issuer and its consolidated subsidiaries, except where the context otherwise requires.

INDUSTRY AND MARKET INFORMATION

We operate in an industry in which it is difficult to obtain precise industry and market information. We have generally obtained the market and competitive position data in this offering memorandum from industry publications and from surveys or studies conducted by third-party sources, including:

- E.V.V.E.—Europäische Vereinigung zur verbrauchsabhängigen Energiekostenabrechnung—EWIV ("**E.V.V.E.**") (European Association for consumption based Energy Billing), Title: "Guidelines for the billing of heating, air-conditioning and hot water heating costs according to the actual consumption, 1998"; and
- ifeu—Institut für Energie- und Umweltforschung GmbH ("**ifeu**") (Institute for Energy- and Environmental Research), Title: "Wissenschaftliche Begutachtung der CO2-Einsparung in Gebäuden der Wankendorfer Baugenossenschaft für Schleswig-Holstein eG im Jahr 2008 und 2009—Endbericht, Januar 2011" (a scientific appraisal of the CO2-reduction in certain buildings in northern Germany during 2008 and 2009).

We believe that these industry publications, surveys, studies and websites are reliable. However, we cannot assure you of the accuracy and completeness of such information and we have not independently verified such industry and market data.

In addition, in many cases we have made statements in this offering memorandum regarding our industry and our position in the industry based on our experience and our own investigation of market conditions. We cannot assure you that any of these assumptions are accurate or correctly reflect our position in the industry, and none of our internal surveys or information have been verified by any independent sources.

PRESENTATION OF FINANCIAL INFORMATION

Unless otherwise indicated, financial information contained in this offering memorandum has been prepared in accordance with IFRS as adopted by the EU and considering the additional requirements according to sec. 315a (1) German Commercial Code (*Handelsgesetzbuch*, "**HGB**"). In this offering memorandum, the term "financial statements" refers to the audited consolidated financial statements of the Senior Subordinated Notes Issuer and its subsidiaries as at and for the financial years ended March 31, 2011 (including comparative financial information as at and for the financial year ended March 31, 2010) and 2012 and the unaudited condensed consolidated interim financial statements as at and for the three months ended June 30, including comparative financial information as at and for the three months ended June 30, 2011.

The financial information as at and for the financial year ended March 31, 2011 is derived from the comparative figures of the audited IFRS consolidated financial statement of the Senior Subordinated Notes Issuer as at and for the financial year ended March 31, 2012 due to a change in accounting policy in the financial year ended March 31, 2012 which was applied retrospectively in accordance with IAS 8 (for more information please refer to Section E. of the 2012 Audited Financial Statements). That change was

not made retroactively to the financial information as at and for the financial year ended March 31, 2010 contained in the comparative figures of the 2011 Audited Financial Statements, or to the financial information as at and for the financial year ended March 31, 2011 contained in the 2011 Audited Financials. Because of that change the comparability of financial information derived from the 2011 Audited Financial Statements and the 2012 Audited Financial Statements is limited.

As the Senior Secured Notes Issuer is a wholly-owned, direct subsidiary of the Senior Subordinated Notes Issuer, which will guarantee the Senior Secured Notes, and as the financial results of the Senior Secured Notes Issuer are consolidated with those of the Senior Subordinated Notes Issuer, this offering memorandum does not contain a complete set of financial figures for the Senior Secured Notes Issuer. In addition, certain figures for the Guarantor subsidiaries of the Senior Subordinated Notes Issuer have been included in this offering memorandum on an individual basis. Some of these figures were calculated based on the Senior Subordinated Notes Issuer's consolidated financial statements or were taken from statutory unconsolidated local GAAP numbers which, in some cases, have not been audited.

Some financial information in this offering memorandum has been rounded and, as a result, the figures shown as totals in this offering memorandum may vary slightly from the exact arithmetic aggregation of the figures that precede them.

In respect of financial data set out in the main body of the prospectus, a dash ("—") signifies that the relevant figure is not available, while a zero ("0") signifies that the relevant figure is available but has been rounded to zero. By contrast, no such differentiation has been made in respect of the financial data set out in the Financial Information section of the prospectus starting on Page F-1. In the Financial Information section, zero ("0") is used to signify both unavailable figures and figures which are either exactly zero or have been rounded to zero.

Certain parts of this offering memorandum contain non-IFRS measures and ratios, including Adjusted Revenues, EBITDA, Adjusted EBITDA, free cash flow, working capital and leverage and coverage ratios that are not required by, or presented in accordance with, IFRS. We believe that these measures are useful indicators of our ability to incur and service our indebtedness and can assist certain investors, security analysts and other interested parties in evaluating us. Because all companies do not calculate these measures on a consistent basis, our presentation of these measures may not be comparable to measures under the same or similar names used by other companies. Accordingly, undue reliance should not be placed on these measures in this offering memorandum. In particular, EBITDA and Adjusted EBITDA are not measures of our financial performance or liquidity under IFRS and should not be considered as an alternative to (a) net income/(loss) for the period as a measure of our operating performance, (b) cash flows from operating, investing and financing activities as a measure of our ability to meet our cash needs or (c) any other measures of performance under IFRS.

This offering memorandum includes certain unaudited consolidated financial information for the twelve months ended June 30, 2012. This information was derived by adding our consolidated financial information for the year ended March 31, 2012 to our unaudited consolidated financial information for the three months ended June 30, 2012 and subtracting our unaudited consolidated financial information for the three months ended June 30, 2011. This data has been prepared solely for the purpose of this offering memorandum and is not prepared in the ordinary course of our financial reporting.

This offering memorandum includes certain financial information on an as adjusted basis to give pro forma effect to the Refinancing, including this offering and the application of the proceeds therefrom, including combined financial data as adjusted to reflect the effect of the Refinancing on our indebtedness as if the Refinancing had occurred on June 30, 2012 and our interest expense as if the Refinancing occurred on July 1, 2011. The pro forma financial information has been prepared for illustrative purposes only and does not represent what our indebtedness or interest expense would have been had the Refinancing occurred on June 30, 2012 or July 1, 2011, respectively; nor does it purport to project our indebtedness or interest expense at any future date. The pro forma financial information has not been prepared in accordance with IFRS. Neither the assumptions underlying the pro forma adjustments nor the resulting pro forma financial information have been audited or reviewed in accordance with any generally accepted auditing standards.

The auditor's reports of PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, Germany, for the consolidated financial statements of the Senior Subordinated Notes Issuer, as at and for the year ended March 31, 2012 and March 31, 2011 refer to Group management reports. The examinations of and the auditor's reports upon such Group management reports are required under German auditing standards. Those examinations were not made in accordance with generally

accepted auditing or attestation standards in the United States. Accordingly, PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, Germany, does not express any opinion on this information or on the consolidated financial statements included in this offering memorandum, in each case in accordance with U.S. generally accepted auditing standards or U.S. attestation standards.

CURRENCY PRESENTATION AND EXCHANGE RATE INFORMATION

In this offering memorandum:

- "$," "dollars," "$U.S." or "U.S. dollar" refer to the lawful currency of the United States; and
- "€" or "Euro" refer to the single currency of the participating Member States in the Third Stage of European Economic and Monetary Union of the Treaty Establishing the European Community, as amended from time to time.

The following table shows for the periods indicated, the period end, average, high and low noon buying rates in the City of New York for cable transfers of Euro as certified for customs purposes by the Federal Reserve Bank of New York expressed as dollars per €1.00.

	U.S. dollar per €1.00			
Period	**End**	**Average[1]**	**High**	**Low**
Year Ended December 31,				
2009	1.43	1.40	1.51	1.26
2010	1.33	1.32	1.45	1.20
2011	1.30	1.39	1.49	1.29
Month ended				
January 2012	1.3053	1.2909	1.3192	1.2682
February 2012	1.3359	1.3238	1.3463	1.3087
March 2012	1.3225	1.3208	1.3336	1.3025
April 2012	1.3229	1.3160	1.3337	1.3064
May 2012	1.2364	1.2806	1.3226	1.2364
June 2012	1.2668	1.2541	1.2703	1.2420
July 2012	1.2315	1.2278	1.2620	1.2062
August 2012	1.2578	1.2406	1.2583	1.2149
September 1 through September 7, 2012	1.2796	1.2648	1.2796	1.2566

(1) The average of the noon buying rates on the last business day of each financial year or month during the relevant period.

The noon buying rate of the Euro on September 7, 2012 was $1.2796 = €1.00.

The above rates may differ from the actual rates used in the preparation of the consolidated financial statements and other financial information appearing in this offering memorandum. Our inclusion of these exchange rates is not meant to suggest that the Euro amounts actually represent such dollar amounts or that such amounts could have been converted into dollars at any particular rate, if at all.

SUMMARY

The following summary contains basic information about us and this offering and highlights information appearing elsewhere in this offering memorandum. This summary is not complete and does not contain all of the information that you should consider before investing in the Notes. For a more complete understanding of this offering, we encourage you to read this entire offering memorandum carefully, including "*Risk Factors*", "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and our financial statements and the notes to those financial statements contained elsewhere in this offering memorandum.

Overview

We are a leading global energy services provider. Our business model combines our primary business, sub-metering, with various additional products and services which target the energy contracting sector in particular. We provide our sub-metering services based on devices we install that are manufactured by third parties to meet our specification. Our business is organized in two business segments: "Energy Services" and "Energy Contracting".

Within the Energy Services business segment, we offer sub-metering services to approximately 400,000 customers, landlords and property managers, in 22 countries, with our core market being Germany. Sub-meters measure the heating use and water consumption of individual units within a commercial or residential multi-unit building with a central heating or cooling system and allow the landlord or property manager to subsequently allocate the costs to different tenants on the basis of the tenant's actual individual consumption. We provide our customers with measurement, sub-meter reading, cost allocation and billing services. In order to be able to provide the billing service, we rent or sell heat and water sub-meters as well as heat cost allocators to our customers and offer the maintenance services required for such devices. We provide sub-metering services for approximately 9.1 million units by means of approximately 45.9 million installed sub-metering devices. Utilizing the consumption data collected by our sub-metering devices, we also offer value added services that are designed to help landlords and property managers monitor consumption and increase the efficient use of energy.

In addition to sub-metering services, we offer supplementary services within our Energy Services business segment, which benefit from our knowledge of regulatory requirements and our process know-how in managing access to our customers' buildings. These supplementary services include the installation and maintenance of smoke detectors, which are required by law in many German federal states, and, recently, the performance of legionella analysis in drinking water, which also is required by law in Germany.

For the 2012 financial year, our Energy Services business segment generated total revenues of €530.1 million and Adjusted EBITDA of €201.5 million. Germany generated 75% of such revenues, with the remainder generated by our international operations outside of Germany.

Our Energy Contracting business segment was established in 1992. The system contracting solutions we offer in our Energy Contracting business segment mainly comprise the planning, financing, construction and operation of heat stations, boilers, cooling equipment and combined heating and power units ("**CHP-units**"). These projects are generally customer-specific and the fuel price risk remains with our customers. Our Energy Contracting business benefits from our expertise in energy consumption and our market access gained through our sub-metering activities.

For the 2012 financial year, our Energy Contracting business segment generated revenues of €162.8 million, with 47% of our revenue resulting from Energy Contracting services provided in the residential sector. The segment generated Adjusted EBITDA of €26.8 million, representing 12.0% of our total Adjusted EBITDA.

Our Strengths

We operate in an industry with favorable market dynamics and supporting regulations.

The public has become increasingly aware of the scarcity of natural resources, especially as energy prices continue to rise. As a result, there is greater demand for energy savings, both from the markets and from governments. Sub-metering is well positioned in this environment, as sub-metering and related services are an inexpensive option for reducing energy consumption and increasing energy efficiency. Sub-metering typically represents less than 5% of an end-user's utility bill. Studies have shown that billing energy costs on the basis of consumption leads to average energy savings of between 15% and 20%. Germany, our most

important market, recognized the value of consumption-based billing and adopted legislation mandating sub-metering of heating and hot water consumption in 1981. Other countries have adopted or are considering similar legislation and the European Union is currently considering a directive that contemplates sub-metering requirements. In addition to making sub-metering mandatory in many instances, German regulation also permits the costs of sub-metering to be passed through from a landlord or property manager (our direct customers) to its tenants.

We have been in business for over 60 years and are the market leader in Germany, the largest sub-metering market in the world.

Germany is the largest, most mature sub-metering market in the world, representing approximately a quarter of the total installed sub-metering device base in the EMEA region in 2011. The German government recognized early that the energy efficiency and cost savings resulting from sub-metering are important to individual households. As a result, Germany was one of the first countries to adopt regulation making sub-metering mandatory. We have been active in the German sub-metering market for over 60 years, and have grown with the industry to become the market leader in terms of both revenue and number of installed devices. Our German Energy Services business accounted for 75% of our Energy Services revenues in 2012. In addition, we have played an important role in making Germany the most technologically advanced sub-metering market. The expertise we have developed in our German business is a key advantage as we enter international markets.

We are a customer service-focused company with long-term customer relationships.

Customer satisfaction is a key decision factor in the energy services industry. We believe that service level and quality of the products and services that we deliver are the key decision and selection criteria for our customers, as regulation often allows them to pass the costs of sub-metering services through to their tenants. As the market leader in Germany, we believe we are well positioned to understand what customers value means and we are able to differentiate our company from competitors through our customer service, our technological leadership and the quality of our sub-metering and cost allocation services. We have experienced a high level of customer satisfaction as evidenced by our long-term customer relationships and low churn rates, which have been well under 5% during the past five years. By refocusing our efforts on customer service, we have reduced our churn rates by almost one-half over the last three years.

We are technological leaders in sub-metering and related value added services.

Our long operating history and focus on innovation have enabled us to become technological leaders in sub-metering. As a market leader that has grown with the sub-metering industry, we have been able to identify and pursue technological advances that have improved operational efficiency and service quality. For example, in 1996 we were the first energy services provider to offer radio-controlled sub-metering systems on a large-scale basis. We currently lead the radio-controlled sub-metering market, holding an estimated market share of about 58% of radio-controlled sub-meters in Germany. In addition, our radio-controlled systems are the basis for our integrated value-added platform *Techem Smart System*, which leverages the real-time information that radio-controlled devices provide. *Techem Smart System* enables our customers to combine prompt billing, regular device monitoring, online control of meter read-outs, monitoring of heating and water consumption and costs and intelligent consumption reduction through our energy saving system *adapterm*. These innovative value-added services, in connection with the development of new supplementary products such as our radio-controlled smoke detectors, allow us to increase quality and differentiate our company from competitors. Additionally, together with our energy contracting services, we offer the broadest product portfolio in the market, covering all aspects of energy services and energy contracting. We believe that the broad range of products we offer as a result of our technological leadership positions us as a key energy partner to our customers. This position serves as the foundation from which our energy services customers diversify into new products and our energy contracting services.

We have a strong management team.

Our CEO, Hans-Lothar Schäfer, has been with our company for more than 25 years. He has served in a variety of positions in our international business and software development teams, as well as leading our research and development program prior to being appointed as CEO in 2009. Our CFO, Steffen Bätjer, was also appointed in 2009, having joined our company from European commercial bank WestLB. In addition to his experience as a financial director, our CFO has worked as a management consultant with

McKinsey & Company and spent a total of seven years exercising managerial responsibility in positions prior to coming to Techem. The managers of our business units also have significant experience, most having been with the company for more than a decade, and bring relevant skills from both process- and sales-driven industries. Together, our management team has refocused our company in its core market, Germany, and reduced costs and expenses while improving customer service, which has contributed to a significant reduction in our already low customer churn rate. They have also driven platform development abroad so that we can offer a wider range of products in our international business and have strategically repositioned our energy contracting business by integrating it with our energy services business to offer a full spectrum of energy management service solutions.

Our core business generates relatively stable cash flows.

Our core sub-metering business generates relatively stable revenue due in part to its diversified customer base, with no single customer contributing more than 1% of our sales. In addition, we have long-term service contracts, with a typical tenure of between five and ten years in our energy services business and between ten and fifteen years in our energy contracting business, and a regulatory environment that favors the adoption of sub-metering and often allows the cost of sub-metering to be passed through to the end-users. These factors, combined with low customer churn rates and a predictable cost base and low capital expenditures, lead to strong and stable cash flows from operating activities. That positive business characteristic also continued during the past two years despite the general economic downturn in Europe. We generated total revenues of €692.9 million in 2012.We had cash flows from operating activities before interest paid/received and income tax paid/received of €233.3 million in 2012. Our net cash generated by operating activities in 2012 was €145.9 million, compared with €132.2 million in 2011.

Our Strategy

We aim to strengthen our position as a leading energy services provider, to leverage our large energy services customer base and expertise to build our value-added services, energy contracting and international businesses and to increase our profitability. The key components of our strategy are as follows:

Grow our core business in Germany through value-added services and supplementary products.

We intend to continue to grow our German business by implementing the following measures:

- *Transition from older sub-metering devices to radio-controlled devices.* The sub-metering market in Germany is highly saturated. While we expect only moderate growth in the total number of sub-metering units, we expect a continuation of the transition from older sub-metering devices, such as evaporators, to our higher quality radio-controlled devices. As we have seen in the last decade, the penetration of radio-controlled devices has continued to increase as the customers acceptance of such products increased and the end-users do not want to be bothered with in-unit sub-meter reading. In addition to improving the quality of our services, radio-controlled devices command higher rental and sale prices and we have the opportunity to increase the length of our customer relationships through new written rental contracts when our customers switch over. Most importantly, radio-controlled devices serve as the platform for our value-added services and products. We were able to increase the share of our customers who use our radio-controlled devices to 52.1% in 2012, compared with 47.1% in 2011 and 42.1% in 2010, and aim to transition the majority of the rest of our customers to radio-controlled devices by 2015.
- *Develop and improve value-added services and products.* We expect that our ability to grow our business in Germany solely by optimizing our traditional sub-metering services will be limited. As a result, we have invested in the development of new value-added products and services that can generate higher revenues and differentiate our company from competitors, and we continue to place particular emphasis on ongoing research and development projects. We launched our energy saving system *adapterm* in 2006 and followed that with the launch of the portal to our value-added services, the integrated *Techem Smart System* platform, in 2009. We also aim to leverage our experience in energy services, access to customers and knowledge of regulatory requirements to develop new supplementary products when we identify opportunities in the market, such as the development of our radio-controlled smoke detector product which we launched in 2007.
- *Collaborate with leading companies in sectors with growth potential.* In order to realize our growth potential in markets in which we lack some of the necessary expertise, assets, technology or

competitive position, we aim to enter into collaboration agreements with companies already operating in those markets. For example, we have entered into a collaboration agreement with laboratory analysis provider SGS Institut Fresenius GmbH in order to offer our customers legionella analysis for drinking water, which is required under German law. We have also entered into a collaboration agreement with Vattenfall Europe Wärme AG, a German subsidiary of the energy producer Vattenfall AB, to join CHP-units installed and operated by our energy contracting business together using Vattenfall's software to form a combined virtual power plant. Vattenfall Europe Wärme AG will centrally manage the operating schedule of Techem CHP-units in order to provide load balancing services to grid operators. These collaborations enable us to take advantage of business opportunities by offering one-stop shopping to our energy services and energy contracting customers.

Grow our core business in Germany through energy contracting.

We plan to grow our business in Germany by building our energy contracting business. In addition to seeking new customers that fit our energy contracting model for commercial customers, such as hospitals, our existing energy services customers are a key target group for our energy contracting services. Changes in the sub-metering and energy contracting markets have made the integration of our energy services and energy contracting business segments easier and more appealing. In the past, energy services were provided as individual offers of products or services and revenues were achieved through equipment sales, maintenance and rentals and "traditional" data collection and billing services. We believe that the sub-metering market today is better served by full-service energy management solutions that include value-added services and supplementary products and services. We also believe that, in the medium term, the market will demand more fully-integrated sub-metering services and energy contracting solutions. By integrating the products and services that we offer through our energy services and energy contracting business segments, our sales channels can be used more efficiently and more effectively as we target the same core customer groups for both types of products and services. In addition, as we leverage our existing customer data and relationships, our sales channels and our key account management, we aim to create synergies between the two business segments and increase our overall revenues and margins.

Grow in our established international markets and introduce or expand our business in smaller markets or in countries where we currently do not operate.

We seek to increase our market share and promote our value-added services in our established international markets and to expand our business in selective markets in which sub-metering penetration is low. We currently operate in 21 countries outside Germany, each of which involves varying levels of market development and regulation. We consider ourselves to be market leaders in certain of our international markets, including in Austria, Belgium, Bulgaria and Hungary where we estimate that he have approximately 50% market share or more, and believe we are gaining significant market share in other markets such as Denmark, France, Italy, the Netherlands, Poland and Switzerland. Based on our experience in these markets, we believe we are well positioned to address the nuances of the international markets in which we operate. For example, unlike in our core German market where device rentals are significant, in Poland we have focused on device sales because sales are more attractive from a local tax perspective to the customers. Since 2009, the sales and service revenue and margins have increased each year in our Polish business. We are also streamlining our international business operations by standardizing the software and processing techniques offered and used in our international operations. This will help us deliver our products and services to any country on a single platform, which will increase cost efficiency and margins and facilitate the expansion of our business abroad. We believe that this integrated product platform combined with our expertise and leadership in international sub-metering markets positions us to successfully expand into additional international markets where sub-metering penetration is low.

Maintain a focus on cost reduction and efficiency to improve our margins and cash flow.

We implemented a single process and systems platform throughout Germany in 2009 that reduced costs by consolidating our billing infrastructure and processes in seven specialized billing centers all working on the same platform. In the coming years, we aim to further reduce costs and consequently increase margins. For example, as part of our program to optimize each step in our energy services business, we are currently working to increase the efficiency of our meter replacement and installation processes. Our next focus will be on increasing the efficiency of our meter reading processes, which provides significant potential for cost savings as we read more than 30 million meters each year in Germany alone. We have seen evidence of the

cost-saving potential of more efficient meter-readings in the switch from older sub-metering devices such as evaporators to radio-controlled sub-metering and data collection devices that enable us to conduct radio-based meter-reading faster and cheaper than manual meter-reading. We also plan to implement our process optimization program internationally in order to realize the same process efficiencies that we have seen in Germany.

Recent Developments

The management of our company has decided to make our yearly distribution to our limited partner from profits accrued during the 2012 financial year. The amount of the distribution will be approximately €20 million and will be withdrawn by the limited partner on or around the Issue Date.

Principal Shareholder

The Issuers are beneficially owned by funds advised by the Macquarie Group, a global provider of banking, financial, advisory, investment and funds management services. Macquarie's main business focus is making returns by providing a diversified range of services to clients. Macquarie acts on behalf of institutional, corporate and retail clients and counterparties around the world. It has expertise in specific industries, including resources and commodities, energy, financial institutions, infrastructure and real estate. Macquarie Group Limited is listed in Australia, owns Macquarie Bank International Limited in the United Kingdom, and its activities are subject to scrutiny by regulatory agencies around the world. Macquarie's management approach fosters an entrepreneurial culture among staff. Strong prudential management is fundamental to this approach. Robust risk management practices are embedded in business unit management with central oversight of credit, market, funding, compliance and operational risk. These, together with a strong and committed team, are seen by Macquarie as the key drivers of its success. Founded in 1969, Macquarie now employs more than 14,200 people in 28 countries. At March 31, 2012, Macquarie had assets under management of €254 billion.

The Refinancing

On the Issue Date, we will enter into the Senior Secured Facilities Agreement. The proceeds from the Senior Secured Facilities and the offering of the Notes together with cash on hand, will be used on the Issue Date to repay in full the loans under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement at par (together with accrued fees, costs and expenses) and terminate the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement. On the Issue Date of the Notes, under the Senior Secured Facilities, we will have €450.0 million in aggregate principal amount outstanding under the Term Loan Facility, €50.0 million in unutilized commitments under our Capex and Acquisitions Facility and €50.0 million in unutilized commitments under our Revolving Credit Facility. In connection with the Senior Secured Facilities Agreement, we will also terminate certain of our existing interest rate swaps and enter into new interest rate swaps. We refer to the entry into the Senior Secured Facilities Agreement, this offering, the termination of, and repayment of the lenders under, the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, the termination of certain of our interest rate swaps and the entering into of new interest rate swaps and the payment of related fees and expenses as the "Refinancing" in this offering memorandum. The closing of the offering of the Notes is conditional upon the concurrent repayment of the lenders under the Existing Senior Secured Facilities Agreement and the Senior Secured Facilities Agreement being entered into.

The following table illustrates the estimated sources and uses of funds for the Refinancing. The actual amounts set forth in the table and in the accompanying footnotes, which are based on June 30, 2012 outstanding balances, are subject to adjustment and may differ at the time of the consummation of the Refinancing depending on several factors, including differences from our estimate of fees and expenses and any changes made to the sources of the contemplated debt financings.

You should read "*Use of Proceeds*," "*Capitalization*" and "*Description of Certain Financing Arrangements*" for a more detailed description of the expected use of proceeds and our capitalization and financing arrangements following the Refinancing.

Sources of funds: (€ millions)		**Uses of funds:**	
Senior Secured Facilities[1]	450.0	Repayment of Existing Senior Secured Facilities	898.0
Senior Secured Notes offered hereby[2]	410.0	Repayment of Junior Facilities	150.0
Senior Subordinated Notes offered hereby[2]	325.0	Payment in connection with swap termination[3]	123.4
Cash on hand	18.2	Fees and expenses[4]	31.8
Total sources of funds	**1,203.2**	**Total uses of funds**	**1,203.2**

(1) Represents the expected drawings under the Senior Secured Facilities as at the Issue Date. The Senior Secured Facilities also consist of the following: a €50 million Capex and Acquisition Facility and a €50 million Revolving Credit Facility. The Capex and Acquisition Facility will be undrawn as at the Issue Date, and the Revolving Credit Facility will be drawn in an amount of €15.6 million by way of guarantees.

(2) Amounts reflect the proceeds of the Notes without giving effect to any original issue discount.

(3) This amount represents the total amount of payments required in connection with terminating approximately €600 million face value of pre-existing interest rate swaps as a result of the Refinancing.

(4) This amount reflects our estimate of fees and expenses we will pay in connection with the Refinancing, including commitment, placement, financial advisory and other transaction costs and professional fees but excluding any original issue discount.

Corporate and Financing Structure

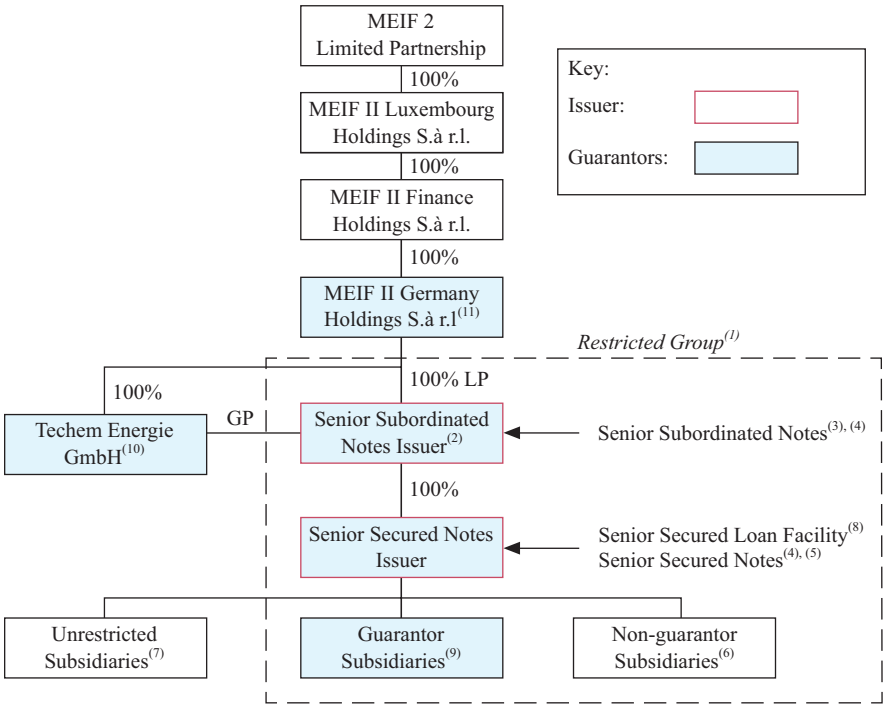
The Senior Subordinated Notes Issuer

The Senior Subordinated Notes Issuer, Techem Energy Metering Service GmbH & Co. KG, was established in its present form on March 16, 2006 as a German limited partnership (*Kommanditgesellschaft*) with a company with limited liability (*Gesellschaft mit beschränkter Haftung*) as general partner. The general partner of the Senior Subordinated Notes Issuer is Techem Energie GmbH, incorporated on November 27, 2003 and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under number HRB 57974. The Senior Subordinated Notes Issuer is registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under number HRA 43010. Its principal business address is Hauptstraße 89, 65760 Eschborn, Germany.

The Senior Secured Notes Issuer

The Senior Secured Notes Issuer, Techem GmbH, was reincorporated as a company with limited liability (*Gesellschaft mit beschränkter Haftung*) on March 5, 2009. It was previously a stock corporation (*Aktiengesellschaft*) organized under the laws of Germany. The Senior Secured Notes Issuer is registered with the commercial registry of the local court (*Amtsgericht*) of Frankfurt am Main under number HRB 85143. Its principal business address is Hauptstraße 89, 65760 Eschborn, Germany.

The following simplified chart sets forth certain aspects of our corporate and financing structure after giving effect to the Refinancing. Please refer to "*Description of Certain Financing Arrangements,*" "*Description of Senior Secured Notes*" and "*Description of Senior Subordinated Notes*" for more information.



(1) Entities in the Restricted Group are subject to the covenants in the Indentures and the Senior Secured Facilities Agreement.

(2) On the Issue Date, the Senior Subordinated Notes Issuer will use the net proceeds of the issuance of the Senior Subordinated Notes to repay intercompany indebtedness owed to the Senior Secured Notes Issuer.

(3) The Senior Subordinated Notes Issuer will issue € million aggregate principal amount of Senior Subordinated Notes. The Senior Subordinated Notes will be senior subordinated obligations of the Senior Subordinated Notes Issuer and will be guaranteed on a senior subordinated basis by the Holdcos, the Senior Secured Notes Issuer and the other Senior Secured Notes Guarantors. The Senior Subordinated Notes will be secured by a second-priority security interest in the Senior Subordinated Collateral. See "*Description of Senior Subordinated Notes*" for further information.

(4) The guarantees of the Senior Subordinated Notes and the Senior Secured Notes will be subject to certain limitations under applicable law, as described under "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*" and "*Certain Insolvency Law Considerations and certain limitations on Enforeceability*".

(5) The Senior Secured Notes Issuer will issue € million aggregate principal amount of Senior Secured Notes. The Senior Secured Notes will be senior obligations of the Senior Secured Notes Issuer and will be guaranteed on a senior basis by the Holdcos, the Senior Subordinated Notes Issuer and the other Senior Secured Notes Guarantors. The Senior Secured Notes will be secured by a first-priority security interest in the same collateral which secures the Senior Secured Facilities. See "*Description of Senior Secured Notes*" for further information.

(6) As at and for the twelve months ended June 30, 2012, the revenues, EBITDA and assets of the Restricted Subsidiaries not guaranteeing the Senior Secured Notes represented 8.0%, 1.8% and 3.5% of the revenues, EBITDA and assets of the Restricted Group, respectively. As at and for the twelve months ended June 30, 2012, the revenues, EBITDA and assets of the Restricted Subsidiaries not guaranteeing the Senior Subordinated Notes represented 9.8%, 3.6% and 4.0% of the revenues, EBITDA and assets of the Restricted Group, respectively. Techem Danmark A/S will guarantee the Senior Secured Notes, but due to restrictions under Danish law, will not guarantee the Senior Subordinated Notes.

(7) GWE and Thermie Serres will each be initially designated as an "Unrestricted Subsidiary" under the Indentures for the Notes. Unrestricted Subsidiaries will not be subject to the restrictive covenants in the Indentures and will not guarantee the Notes. As at and for the twelve-month period ended June 30, 2012, the Unrestricted Subsidiaries accounted for 6.6%, 8.3% and 5.4% of the revenue, EBITDA and assets of the Group, respectively.

(8) The Senior Secured Facilities will be senior obligations of the Senior Secured Notes Issuer and will be guaranteed on a senior basis by the Senior Secured Notes Guarantors. On the Issue Date of the Notes, or, with respect to the pledges of the shares of certain Senior Secured Notes Guarantors, within 30 days of the Issue Date, the Senior Secured Facilities will be secured by the general and limited partnership interests of the Senior Subordinated Notes Issuer, the shares of the Holdcos, the shares of the Senior Secured Notes Issuer, the shares of the other Senior Secured Notes Guarantors, certain receivables, certain intercompany loans and certain accounts. On the Issue Date, the Senior Secured Facilities will be comprised of €450 million in aggregate principal amount outstanding under our Term Loan Facility with unutilized commitments of €50 million under our Capex and Acquisition Facility and €50 million under our Revolving Credit Facility.

(9) Our subsidiaries that will guarantee the Senior Secured Facilities, Senior Secured Notes and Senior Subordinated Notes are: Techem Danmark A/S (only with respect to the Senior Secured Facilities and the Senior Secured Notes); Techem Messtechnik GmbH; Techem SAS; Techem Energie France SAS; Techem Energy Services GmbH; Techem Energy

Contracting GmbH; Techem GmbH; bautec Energiemanagement GmbH; Techem Verwaltungs GmbH; Techem Vermögensverwaltung GmbH & Co. KG; Techem Energy Metering Service GmbH & Co. KG; Techem Techniki Pomiarowe Sp.z.o.o.; Techem S.r.l.; Techem Energy Services B.V.; and Caloribel SA.

(10) Techem Energie GmbH is the general partner of the Senior Subordinated Notes Issuer. All of the shares of the general partner are owned by the limited partner of the Senior Subordinated Notes Issuer, MEIF II Germany Holdings S.à r.l., and will be pledged to secure the Senior Secured Notes and the Senior Secured Facilities, in each case on a first-priority basis, and the Senior Subordinated Notes on a second-priority basis. All of the general partnership interests in the Senior Subordinated Notes Issuer held by the general partner will be pledged to secure the Senior Secured Notes and the Senior Secured Facilities, in each case on a first-priority basis, and the Senior Subordinated Notes on a second-priority basis.

(11) MEIF II Germany Holdings S.à r.l. ("**Germany Holdco**") is the limited partner of the Senior Subordinated Notes Issuer. All of the shares of Germany Holdco are owned by MEIF II Finance. All of the limited partnership interests in the Senior Subordinated Notes Issuer owned by Germany Holdco and all of the shares of Germany Holdco owned by MEIF II Finance will be pledged to secure the Senior Secured Notes and the Senior Secured Facilities, in each case on a first-priority basis, and the Senior Subordinated Notes on a second-priority basis.

The Offering

The following summary of the offering contains basic information about the Notes, the Note Guarantees and the security. It is not intended to be complete and it is subject to important limitations and exceptions. For a more complete understanding of the Notes and the Note Guarantees, including certain definitions of terms used in this summary, see "*Description of Senior Secured Notes*" and "*Description of Senior Subordinated Notes*."

Issuers

Senior Secured Notes Issuer	Techem GmbH.
Senior Subordinated Notes Issuer . . .	Techem Energy Metering Service GmbH & Co. KG.

Notes offered

Senior Secured Notes	€ million aggregate principal amount of % Senior Secured Notes due 2019.
Senior Subordinated Notes	€ million aggregate principal amount of % Senior Subordinated Notes due 2020.

Maturity date

Senior Secured Notes	, 2019.
Senior Subordinated Notes	, 2020.
Interest payment dates	Semi-annually in arrears on each and , commencing . Interest will accrue from the issue date of the Notes.
Denominations	Notes in denominations of €100,000 and any integral multiple of €1,000 in excess thereof. Notes in denominations of less than €100,000 will not be available.

Ranking of the Notes

Senior Secured Notes . . . . . The Senior Secured Notes will:

- be general, senior obligations of the Senior Secured Notes Issuer, secured as set forth below under "—*Security*;"
- rank *pari passu* in right of payment with all the Senior Secured Notes Issuer's existing and future senior indebtedness, including indebtedness under the Senior Secured Facilities Agreement, and hedging obligations in respect of the Senior Secured Facilities, the Senior Secured Notes, the Senior Subordinated Notes and certain other future indebtedness;
- rank senior in right of payment to all existing and future subordinated indebtedness of the Senior Secured Notes Issuer, including the guarantee given by the Senior Secured Notes Issuer in favor of the Senior Subordinated Notes;
- be effectively subordinated to any existing and future indebtedness of the Senior Secured Notes Issuer that is secured by liens senior to the liens securing the Senior Secured Notes or secured by property or assets that do not secure the Senior Secured Notes, to the extent of the value of the property or assets securing such indebtedness; and
- be effectively subordinated to any existing and future indebtedness of subsidiaries of the Senior Secured Notes Issuer that do not guarantee the Senior Secured Notes.

Senior Subordinated Notes	The Senior Subordinated Notes will: • be general, senior subordinated obligations of the Senior Subordinated Notes Issuer, secured as set forth below under "*—Security*;" • be subordinated in right of payment to all of the Senior Subordinated Notes Issuer's existing and future senior indebtedness, including the guarantees given by the Senior Subordinated Notes Issuer in favor of the Senior Secured Facilities, the Senior Secured Notes and any hedging obligations in respect of the Senior Secured Facilities, the Senior Secured Notes and the Senior Subordinated Notes; • rank *pari passu* in right of payment with all the Senior Subordinated Notes Issuer's existing and future senior subordinated indebtedness; • rank senior in right of payment to all existing and future indebtedness of the Senior Subordinated Notes Issuer that is expressly subordinated in right of payment to the Senior Subordinated Notes; • be effectively subordinated to any existing and future indebtedness of the Senior Subordinated Notes Issuer that is secured by liens senior to the liens securing the Senior Subordinated Notes or property or assets that do not secure the Senior Subordinated Notes on an equal basis, to the extent of the value of the property or assets securing such indebtedness; and • be effectively subordinated to any existing and future indebtedness of subsidiaries of the Senior Subordinated Notes Issuer that do not guarantee the Senior Subordinated Notes. The Senior Subordinated Notes will be subject to the terms of the Intercreditor Agreement, including, subject to certain exceptions, payment blockage upon a senior default and certain limitations on enforcement actions with respect to the Senior Subordinated Notes Issuer. See "*Risk Factors—Risks Related to the Notes—The Senior Subordinated Notes and the Senior Subordinated Notes Guarantees will be subordinated to our existing and future senior debt and the Senior Subordinated Notes are subject to restrictions on payment and enforcement*" and "*Description of Certain Financing Arrangements—Intercreditor Agreement*."
Note Guarantees	
Senior Secured Notes	The Senior Secured Notes Issuer's obligations under the Senior Secured Notes will be guaranteed on a senior basis by the Holdcos, the Senior Subordinated Notes Issuer and certain of its subsidiaries that guarantee the Senior Secured Facilities.
Senior Subordinated Notes	The Senior Subordinated Notes Issuer's obligations under the Senior Subordinated Notes will be guaranteed on a senior subordinated basis by the Holdcos, the Senior Secured Notes Issuer and certain of its subsidiaries that guarantee the Senior Secured Facilities.

Ranking of the Note Guarantees

Senior Secured Notes . . . . . Each Senior Secured Notes Guarantee will be a general senior obligation of the relevant Guarantor and will:

- rank *pari passu* in right of payment with all the Senior Secured Notes Guarantors' existing and future senior indebtedness, including indebtedness under the Senior Secured Facilities Agreement, and hedging obligations in respect of the Senior Secured Facilities, the Senior Secured Notes, the Senior Subordinated Notes and certain other future indebtedness;
- rank senior in right of payment to all existing and future subordinated indebtedness of the Senior Secured Notes Guarantors, including the Senior Subordinated Notes Guarantees, and the Senior Subordinated Notes Issuer, the Senior Subordinated Notes; and
- be effectively subordinated to any existing and future indebtedness of the Senior Secured Notes Guarantors that is secured by liens senior to the liens securing the Senior Secured Notes Guarantees or property or assets that do not secure the Senior Secured Notes Guarantees on an equal basis, to the extent of the value of the property or assets securing such indebtedness.

The Senior Secured Notes Guarantees will be subject to release under certain circumstances. See "*Description of Senior Secured Notes—Guarantees*."

Senior Subordinated Notes . . . . . Each Senior Subordinated Notes Guarantee will be a general senior subordinated obligation of the relevant Guarantor and will:

- be subordinated in right of payment to all of the Senior Subordinated Notes Guarantors' existing and future senior indebtedness, including indebtedness under the Senior Secured Facilities Agreement, the Senior Secured Notes and hedging obligations in respect of the Senior Secured Facilities, the Senior Secured Notes, the Senior Subordinated Notes and certain other future indebtedness;
- rank *pari passu* in right of payment with all the Senior Subordinated Notes Guarantors' existing and future senior subordinated indebtedness;
- rank senior in right of payment to all existing and future indebtedness of the Senior Subordinated Notes Guarantors that is expressly subordinated to the Senior Subordinated Notes Guarantees; and
- be effectively subordinated to any existing and future indebtedness of the Senior Subordinated Notes Guarantors that is secured by liens senior to the liens securing the Senior Subordinated Notes Guarantees or property or assets that do not secure the Senior Subordinated Notes Guarantees on an equal basis, to the extent of the value of the property or assets securing such indebtedness.

The Senior Subordinated Notes Guarantees will be subject to the terms of the Intercreditor Agreement, including payment blockage upon a senior default and standstills on enforcement. See "*Risk Factors—Risks Related to the Notes—The Senior*

	Subordinated Notes Guarantees and the Senior Subordinated Notes will be subordinated to our existing and future senior debt and the Senior Subordinated Notes are subject to restrictions on payment and enforcement" and "*Description of Certain Financing Arrangements—Intercreditor Agreement.*" The Senior Subordinated Notes Guarantees will be subject to release under certain circumstances. See "*Description of Senior Subordinated Notes—Guarantees.*"
Security	
Senior Secured Notes	On the Issue Date or, with respect to the pledges of certain Senior Secured Notes Guarantors, within 30 days of the Issue Date, the Senior Secured Notes and the Senior Secured Notes Guarantees will be secured by first-priority security interests in the general and limited partnership interests of the Senior Subordinated Notes Issuer and the shares of the Senior Secured Notes Issuer, the Holdcos and the Senior Secured Notes Guarantors, certain accounts, certain intercompany loans and certain receivables (the "**Senior Secured Collateral**"). See "*Description of Senior Secured Notes—Security—Collateral*."
Senior Subordinated Notes	On the Issue Date, the Senior Subordinated Notes and the Senior Subordinated Notes Guarantees will be secured by second-priority security interests in the general and limited partnership interests of the Senior Subordinated Notes Issuer and the shares of the Senior Secured Notes Issuer and the Holdcos receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an intercompany loan from Germany Holdco to the Senior Subordinated Notes Issuer, receivables of the Senior Subordinated Notes Issuer and the Energie Holdco and accounts of the Senior Subordinated Notes Issuer and Energie Holdco. See "*Description of Senior Subordinated Notes—Security—Collateral*."
Additional amounts; tax redemption .	All payments in respect of the Notes will be made without withholding or deduction for any taxes or other governmental charges, except to the extent required by law. If withholding or deduction is required by law, subject to certain exceptions, the relevant issuer will pay additional amounts so that the net amount you receive is no less than that which you would have received in the absence of such withholding or deduction. See "*Description of Senior Secured Notes—Withholding Taxes*" and "*Description of Senior Subordinated Notes—Withholding Taxes*." The Senior Secured Notes Issuers or the Senior Subordinated Notes Issuer, as applicable, may redeem the Notes in whole, but not in part, at any time, upon giving prior notice, if certain changes in tax law impose certain withholding taxes on amounts payable on the Notes, and, as a result, the Senior Secured Notes Issuers or the Senior Subordinated Notes Issuer, as applicable, are required to pay additional amounts with respect to such withholding taxes. If the Senior Secured Notes Issuers or the Senior Subordinated Notes Issuer, as applicable, decides to exercise such redemption right, they must pay you a price equal to the principal amount of the relevant Notes plus interest and additional amounts, if any, to the date of redemption. See "*Description of Senior Secured Notes—Redemption for Taxation Reasons*" and "*Description of Senior Subordinated Notes—Redemption for Taxation Reasons*."

Optional redemption

Senior Secured Notes	Prior to , 2015, the Senior Secured Notes Issuer will be entitled at its option to redeem all or a portion of the Senior Secured Notes at a redemption price equal to 100% of the principal amount of the Senior Secured Notes plus the applicable "make-whole" premium described in this offering memorandum and accrued and unpaid interest to the redemption date. On or after , 2015, the Senior Secured Notes Issuer will be entitled at its option to redeem all or a portion of the Senior Secured Notes at the applicable redemption prices set forth under the caption "*Description of Senior Secured Notes—Optional Redemption*" plus accrued and unpaid interest to the redemption date. Prior to , 2015, the Senior Secured Notes Issuer will be entitled at its option on one or more occasions to redeem the Senior Secured Notes in an aggregate principal amount not to exceed 35% of the aggregate principal amount of the Senior Secured Notes with the net cash proceeds from certain equity offerings at a redemption price equal to % of the principal amount outstanding in respect of the Senior Secured Notes, plus accrued and unpaid interest to the redemption date, so long as at least 65% of the aggregate principal amount of the Senior Secured Notes remains outstanding immediately after each such redemption.
Senior Subordinated Notes	Prior to , 2016, the Senior Subordinated Notes Issuer will be entitled at its option to redeem all or a portion of the Senior Subordinated Notes at a redemption price equal to 100% of the principal amount of the Senior Subordinated Notes plus the applicable "make-whole" premium described in this offering memorandum and accrued and unpaid interest to the redemption date. On or after , 2016, the Senior Secured Notes Issuer will be entitled at its option to redeem all or a portion of the Senior Subordinated Notes at the applicable redemption prices set forth under the caption "*Description of Senior Subordinated Notes—Optional Redemption*" plus accrued and unpaid interest to the redemption date. Prior to , 2015, the Senior Subordinated Notes Issuer will be entitled at its option on one or more occasions to redeem the Senior Subordinated Notes in an aggregate principal amount not to exceed 35% of the aggregate principal amount of the Senior Subordinated Notes with the net cash proceeds from certain equity offerings at a redemption price equal to % of the principal amount outstanding in respect of the Senior Subordinated Notes, plus accrued and unpaid interest to the redemption date, so long as at least 65% of the aggregate principal amount of the Senior Subordinated Notes remains outstanding immediately after each such redemption.
Change of control	If the Issuers experience certain change of control events, they will be required to offer to repurchase the Notes at 101% of their principal amount plus accrued and unpaid interest to the date of repurchase. See "*Description of Senior Secured Notes—Repurchase at the Option of Holders—Change of Control*" and "*Description of Senior Subordinated Notes—Repurchase at the Option of Holders—Change of Control*."

Certain covenants	Each Indenture will limit, among other things, the ability of the Senior Subordinated Notes Issuer and its restricted subsidiaries, including the Senior Secured Notes Issuer, to: • incur or guarantee additional indebtedness and issue certain preferred stock; • pay dividends, redeem capital stock and make certain investments; • make certain other restricted payments; • create or permit to exist certain liens; • impose restrictions on the ability of subsidiaries to pay dividends or make other payments; • transfer, lease or sell certain assets, including shares of subsidiaries; • merge or consolidate with other entities; • amend certain documents; • enter into certain transactions with affiliates; and • impair the security interests for the benefit of the holders of the Notes. Each of these covenants is subject to a number of significant exceptions and qualifications. See "*Description of Senior Secured Notes—Certain Covenants*" and "*Description of Senior Subordinated Notes—Certain Covenants*" and the related definitions.
Transfer restrictions	The Notes and the Note Guarantees have not been, and will not be, registered under the Securities Act or the securities laws of any other jurisdiction. The Notes are subject to restrictions on transfer and may only be offered or sold in transactions that are exempt from or not subject to the registration requirements of the Securities Act. See "*Notice to Investors*" and "*Plan of Distribution*."
Absence of a public market for the Notes	The Notes will be new securities for which there is currently no market. Accordingly, we cannot assure you that a liquid market for the Notes will develop or be maintained.
Listing	Application will be made to have the Notes admitted to listing on the Official List and to trading on the Euro MTF Market of the Luxembourg Stock Exchange.
Senior Secured Notes Trustee and Senior Subordinated Notes Trustee . .	Deutsche Trustee Company Limited
Security Trustee	UniCredit Bank AG, London Branch
Principal Paying Agent for the Notes .	Deutsche Bank AG, London Branch
Listing agent, Registrar and Transfer Agent for the Notes	Deutsche Bank Luxembourg S.A.
Governing law of the Indentures, Notes and Note Guarantees	New York
Governing law of the Intercreditor Agreement	England and Wales

Governing law of the Security Documents	Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Poland
ISIN	
Senior Secured Notes	
Senior Subordinated Notes	
Common Codes	
Senior Secured Notes	
Senior Subordinated Notes	

Investing in the Notes involves a high degree of risk. You should refer to the section entitled "*Risk Factors*" for an explanation of certain risks involved in investing in the Notes.

SUMMARY CONSOLIDATED FINANCIAL AND OTHER INFORMATION

*The financial information contained in the following tables is derived from the audited IFRS consolidated financial statements of the Senior Subordinated Notes Issuer as at and for the financial year ended March 31, 2011, including comparative financial information as at and for the financial year ended March 31, 2010 (the "**2011 Audited Financial Statements**") and March 31, 2012 (the "**2012 Audited Financial Statements**") and the unaudited condensed consolidated interim financial statements of the Senior Subordinated Notes Issuer as at and for the three months ended June 30, 2012, including comparative financial information as at and for the three months ended June 30, 2011 (the "**Unaudited First Quarter Financial Statements**"), each prepared in accordance with the International Financial Reporting Standards as adopted by the European Union ("**IFRS**"). Some of the performance indicators and ratios shown below were taken from the Senior Subordinated Notes Issuer's accounting records and are not included in the 2011 Audited Financial Statements, the 2012 Audited Financial Statements and the Unaudited First Quarter Financial Statements.*

The financial information as at and for the financial year ended March 31, 2010 is derived from the comparative figures of the 2011 Audited Financial Statements. The financial information as at and for the three month period ended June 30, 2011 is derived from the comparative figures of the Unaudited First Quarter Financial Statements.

The financial information as at and for the financial year ended March 31, 2011 is derived from the comparative figures of the 2012 Audited Financial Statements due to a change in accounting policy in the financial year ended March 31, 2012 which was applied retrospectively to the financial information for the financial year ended March 31, 2011 contained in the 2012 Audited Financial Statements in accordance with IAS 8 (for more information please refer to Section E. of the 2012 Audited Financial Statements included elsewhere in this offering memorandum). That change was not made retroactively to the financial information as at and for the financial year ended March 31, 2010 contained in the comparative figures of the 2011 Audited Financial Statements, or to the financial information as at and for the financial year ended March 31, 2011 contained in the 2011 Audited Financials. Because of that change the comparability of financial information derived from the 2011 Audited Financial Statements and the 2012 Audited Financial Statements is limited.

Where financial information in the following tables is labeled "audited", this means that it was taken from the audited financial statements mentioned above. The label "unaudited" is used in the following tables to indicate financial information that was taken or derived from the Senior Subordinated Notes Issuer's accounting records or management reporting system and not included in its audited financials statements mentioned above. Unless stated otherwise, all of the financial data presented in the text and tables in this section of the offering memorandum is shown in millions of Euros (€ million), commercially rounded to a one decimal point. Because of this rounding, the figures shown in the tables do not in all cases add up exactly to the respective totals given.

We include certain financial information on an adjusted basis to give pro forma effect to the Refinancing and the application of the proceeds therefrom, including combined financial data as adjusted to reflect the effect of the Refinancing on our indebtedness as if the Refinancing had occurred on June 30, 2012 and our interest expense as if the Refinancing occurred on July 1, 2011. The pro forma financial information has been prepared for illustrative purposes only and does not represent what our indebtedness or interest expense would have been had the Refinancing occurred on June 30, 2012 or July 1, 2011, respectively; nor does it purport to project our indebtedness or interest expense at any future date. The pro forma financial information has not been prepared in accordance with IFRS. Neither the assumptions underlying the pro forma adjustments nor the resulting pro forma financial information have been audited or reviewed in accordance with any generally accepted auditing standards. The following tables contain certain unaudited consolidated financial information for the twelve months ended June 30, 2012. This information was derived by adding our consolidated financial information for the year ended March 31, 2012 to our unaudited consolidated financial information for the three months ended June 30, 2012 and subtracting our unaudited consolidated financial information for the three months ended June 30, 2011. This data has been prepared solely for the purpose of this offering memorandum and is not prepared in the ordinary course of our financial reporting. The aggregated financial information represents the arithmetical sum of the corresponding items and neither represents financial information prepared in accordance with IFRS nor pro forma financial information and should not be read as such. It is presented for illustrative purposes only and does not purport to present the operations as they actually would have been.

As the Senior Secured Notes Issuer is a wholly-owned, direct subsidiary of the Senior Subordinated Notes Issuer, and as the financial results of the Senior Secured Notes Issuer are consolidated with those of the Senior

Subordinated Notes Issuer, this offering memorandum does not contain a complete set of financial figures for the Senior Secured Notes Issuer. The Senior Subordinated Notes Issuer will guarantee the Senior Secured Notes.

Results of operations for prior years or the interim period are not necessarily indicative of the result to be expected for the full year or any future period. Prospective investors should bear in mind that the performance indicators and ratios that we report herein, such as EBITDA, Adjusted EBITDA and free cash flow (each as defined in this offering memorandum) are not financial measures defined in accordance with IFRS, U.S. GAAP or HGB and, as such, may be calculated by other companies using different methodologies and having different result. Therefore, these performance indicators and ratios are not directly comparable to similar figures and ratios reported by other companies.

The following summary financial information should be read together with the section "Presentation of Financial Information", "Selected Consolidated Financial Information" and "Management's Discussion and Analysis of Financial Condition and Results of Operations", the consolidated financial statements contained in this offering memorandum and the related notes and the additional financial information contained elsewhere in this offering memorandum.

You should regard the selected financial and business data below only as an introduction and should base your investment decision on a review of the offering memorandum in its entirety.

Summary Consolidated Statement of Income Data

	Financial year ended March 31,			Three-month period ended June 30,		Twelve-month period ended June 30,
(€ million)	**2010**	**2011**	**2012**	**2011**	**2012**	**2012**
		Audited		**Unaudited**		**Unaudited**
Revenues	687.5	731.1	692.9	158.8	150.7	684.8
Capitalized internal work	8.5	9.8	12.0	2.6	2.7	12.1
Other income	5.2	7.5	6.7	1.1	1.3	6.9
Product expenses and purchased services	(283.0)	(299.2)	(238.2)	(59.0)	(48.4)	(227.6)
Personnel expenses	(160.7)	(160.8)	(170.0)	(42.2)	(43.4)	(171.2)
Depreciation of metering devices for rent, fixed and intangible assets	(96.7)	(95.4)	(105.2)	(25.0)	(24.9)	(105.1)
Other expenses	(90.2)	(84.8)	(85.4)	(19.8)	(20.9)	(86.5)
Earnings before interest and tax (EBIT)	**70.7**	**108.3**	**113.0**	**16.5**	**17.1**	**113.6**
Net share of loss/gain of associates	(1.7)	0.1	(0.4)	(0.6)	0.3	0.5
Impairment of associates	—	—	(14.5)	—	—	(14.5)
Financial income	5.2	41.1	3.4	0.4	0.6	3.6
Finance costs[1]	(115.7)	(97.4)	(159.5)	(52.4)	(40.6)	(147.7)
Earnings before tax	**(41.5)**	**52.2**	**(58.0)**	**(36.0)**	**(22.7)**	**(44.7)**
Income taxes	24.5	(8.7)	5.0	4.4	3.7	4.3
(Net loss)/Net income[2]	**(17.0)**	**43.4**	**(53.0)**	**(31.6)**	**(19.0)**	**(40.4)**

(1) Including finance costs of Unrestricted Subsidiaries in an amount of €0 for the financial years ended March 31, 2010 and 2011, €4.3 million for the financial year ended March 31, 2012, €1.3 million for the three-month period ended June 30, 2011 and €0.8 million for the three-month period ended June 30, 2012.

(2) As at all periods stated above there is no non-controlling interest in the Group.

Summary Consolidated Statement of Financial Position Data

(€ million)	As at March 31, 2010	As at March 31, 2011	As at March 31, 2012	As at June 30, 2012
		Audited		Unaudited
Cash and cash equivalents[1]	33.2	64.5	72.2	77.9
Total current assets	413.5	476.1	411.9	372.5
Total non-current assets	1,921.6	2,034.5	2,000.5	1,993.2
Total assets[2]	**2,335.1**	**2,510.6**	**2,412.4**	**2,365.8**
Total current liabilities	285.5	314.7	332.0	312.7
thereof:				
Financial liabilities (current)[3]	13.9	24.2	7.8	7.6
Other (current) financial liabilities	134.5	97.3	185.7	212.0
Total non-current liabilities	1,210.3	1,318.0	1,287.7	1,279.5
thereof:				
Financial liabilities (non-current)[4]	1,045.2	1,135.3	1,114.6	1,111.7
Other (non-current) financial liabilities	1.0	5.5	7.4	6.7
Total equity	**839.3**	**877.9**	**792.8**	**773.5**
Total liabilities and equity	**2,335.1**	**2,510.6**	**2,412.4**	**2,365.8**

(1) Including cash and cash equivalents of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €12.4 million as at March 31, 2011, €10.0 million as at March 31, 2012 and €10.0 million as at June 30, 2012.

(2) Including assets of Unrestricted Subsidiaries in an amount of €13.0 million as at March 31, 2010, €152.8 million as at March 31, 2011, €129.0 million as at March 31, 2012 and €127.2 million as at June 30, 2012.

(3) Including financial liabilities (current) of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €6.6 million as at March 31, 2011, €5.7 million as at March 31, 2012 and €5.7 million as at June 30, 2012.

(4) Including financial liabilities (non-current) of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €64.6 million as at March 31, 2011, €60.3 million as at March 31, 2012 and €60.4 million as at June 30, 2012.

Summary Consolidated Cash Flow Statement Data

The 2012 and 2011 consolidated statement of cash flows as presented in the 2012 Audited Financial Statements are not comparable to the 2010 consolidated statement of cash flows as presented in the 2011 Audited Financial Statements (see the Annual Financial Statements beginning on page F-2 of this offering memorandum). In the 2012 Audited Financial Statements, the structure and the calculation method of the consolidated statement of cash flows was changed, leading to differences in definitions of single line items. The 2010 consolidated statement of cash flows is presented in the changed structure and is based on the same calculation method and certain parts are therefore labeled unaudited.

(€ million)	Financial year ended March 31, 2010	Financial year ended March 31, 2011	Financial year ended March 31, 2012	Three-month period ended June 30, 2011	Three-month period ended June 30, 2012	Twelve-month period ended June 30, 2012
		Audited		Unaudited		Unaudited
Net cash generated by operating activities	94.8	132.2	145.9	30.3	26.5	142.1
Cash flows used in investing activities	(65.2)	(71.5)	(79.5)	(13.5)	(20.7)	(86.7)
Free cash flow[1]	29.6	60.7	66.4	16.8	5.8	55.4
Net cash used in financing activities	(129.3)	(29.5)	(58.5)	(16.3)	(0.1)	(42.3)

(1) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

Other Financial and Pro Forma Data

(€ million, unless stated otherwise)	Financial year ended March 31,			Three-month period ended June 30,		Twelve-month period ended June 30,
	2010	2011	2012	2011	2012	2012
	Unaudited, unless stated otherwise			Unaudited		Unaudited
Total revenues	687.5[1]	731.1[1]	692.9[1]	158.8	150.7	684.8
Germany	579.2	600.0	555.5	127.3	118.0	546.2
International[2]	108.3	131.1	137.4	31.5	32.7	138.6
Adjusted revenues[3],[4]	568.9	601.5	631.3	133.6	139.6	637.3
EBITDA[3],[5]	167.4	203.7[1]	218.2[1]	41.5	42.0	218.7
Adjusted EBITDA[3],[6]	195.3	207.7	223.9	41.6	42.3	224.6
Adjusted EBITDA restricted group[3],[6],[8]	195.3	207.7	209.2	41.8	37.7	205.1
Pro forma indebtedness[3],[7]						1,257.5
Pro forma indebtedness of restricted group[3],[7],[8]						1,190.4
Pro forma secured indebtedness of restricted group[3],[7],[8],[10]						865.4
Pro forma interest expense[3],[9]						99.5
Pro forma interest expense of restricted group[3],[8],[9]						97.0
Ratio of pro forma indebtedness of restricted group to Adjusted EBITDA of restricted group[3],[7],[8]						5.8x
Ratio of pro forma secured indebtedness of restricted group to Adjusted EBITDA of restricted group[3],[8],[10]						4.2x
Ratio of Adjusted EBITDA of restricted group to pro forma interest expense of restricted group[3],[8],[9]						2.1x

(1) Audited.

(2) International includes: Western Europe (Austria, Switzerland, Belgium, Luxembourg, Denmark, Netherlands, France and Italy), Eastern Europe (Poland, Czech Republic, Slovakia, Hungary, Serbia, Russia, Romania, Bulgaria and Turkey) and Asia/Southern America (Dubai, India and Brazil).

(3) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(4) Adjusted revenues represents total revenues less revenues of the unrestricted subsidiaries and from tax efficiency contracting in the Energy Contracting business segment, but including revenues of companies within the restricted group with companies outside the restricted group.

(5) EBITDA represents the net income or net loss for the relevant period before financial income, finance costs, income taxes, net share of loss/gain of associates, impairment of associates and depreciation of metering devices for rent, fixed and intangible assets.

(6) Please find below the reconciliation calculation from EBIT to EBITDA and Adjusted EBITDA and adjustment made to calculate Adjusted EBITDA for the restricted group for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,		Twelve-month period ended June 30,
	2010	2011	2012	2011	2012	2012
	Unaudited, unless stated otherwise			Unaudited		Unaudited
Earnings before interest and tax (EBIT)	**70.7**[a]	**108.3**[a]	**113.0**[a]	**16.5**	**17.1**	**113.6**
Depreciation of metering devices for rent, fixed and intangibles assets	96.7[a]	95.4[a]	105.2[a]	25.0	24.9	105.1
EBITDA Group[b]	**167.4**	**203.7**[a]	**218.2**[a]	**41.5**	**42.0**	**218.7**
Best in Sales and Services (BiSS)—reorganization program	21.3	4.5	2.3	0.1	0.1	2.3
Restructuring of GWE Group[d]	—	—	1.2	—	—	1.2
Transaction costs upon entry of GWE Group into the Group and acquisition of GWE PD[d]	—	1.3	—	—	—	—
Gain recognized upon entry of GWE Group into the Group and acquisition of GWE PD[d]	—	(2.8)	—	—	—	—
Compensation payments former directors	3.7	—	—	—	—	—
Restructuring of MESA[e]	1.5	—	—	—	—	—
Other	1.4	1.0	2.2	—	0.2	2.4
Total one-off effects	**27.9**	**4.0**	**5.7**	**0.1**	**0.3**	**5.9**
Adjusted EBITDA Group[b]	**195.3**	**207.7**	**223.9**	**41.6**	**42.3**	**224.6**
Thereof:						
Energy Services	171.0	183.9	201.5	39.3	36.8	199.0
Energy Contracting	27.6	27.7	26.8	3.0	6.6	30.4
Other	(3.3)	(3.9)	(4.4)	(0.7)	(1.1)	(4.8)
Adjustments to eliminate unrestricted subsidiaries[c]	—	—	(14.7)	0.2	(4.6)	(19.5)
Adjusted EBITDA Restricted Group[b]	**195.3**	**207.7**	**209.2**	**41.8**	**37.7**	**205.1**

(a) Audited.

(b) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(c) Adjustments to eliminate unrestricted subsidiaries excludes EBITDA of the GWE Group as GWE and its subsidiaries will be unrestricted subsidiaries under the Indentures governing the Notes. For the 2012 financial year and the twelve-month period ended June 30, 2012 it also excludes certain one-off effects recorded in GWE Group in an amount of €1.2 million. Our other unrestricted subsidiary, Thermie Serres, is accounted for under the equity method.

(d) GWE and its subsidiaries (referred to herein as the "GWE Group") will be unrestricted subsidiaries under the Indentures governing the Notes. The GWE Group became a part of our Group on March 31, 2011, as the result of a capital contribution in kind from MEIF II Germany Holdings S.à r.l., the limited partner of the Senior Subordinated Notes Issuer.

(e) MESA refers to MESA messen & abrechnen GmbH, which was merged into Techem Energy Services GmbH and became a member of our Group in October 2009.

For more information with respect to the Best in Sales and Services—reorganization program (BiSS), please see "*Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors Affecting Our Results of Operations and Financial Condition—Restructuring programs*." The line-item "Restructuring of GWE Group" relates to expenses in connection with the closing of one of the GWE Group's local offices in South Germany. The line-item "Compensation payments former directors" refers to a compensation payment to a former managing director of Techem GmbH in the 2010 financial year. The line-item "Restructuring of MESA" relates to expenses in connection with the merger of MESA messen & abrechnen GmbH into Techem Energy Services GmbH, which occurred in October 2009.

(7) Pro forma indebtedness represents our loans and borrowings (including financing lease obligations and deferred financing costs) after giving pro forma effect to the Refinancing and the application of the proceeds therefrom as if it occurred on June 30, 2012.

(8) The restricted group for the Notes will not include GWE Group and Thermie Serres, which will be designated as unrestricted subsidiaries under the Indentures.

(9) Pro forma interest expense represents our net interest expense on pro forma indebtedness after giving effect to the Refinancing and the application of the proceeds therefrom as if it occurred on July 1, 2011. The following table shows a sensitivity analysis with regard to interest on the Notes being 25 basis points higher or lower than assumed. Pro forma interest expense has been presented for illustrative purpose only and does not purport what our interest expense would have actually been had the

Refinancing occurred on the date assumed, nor does it purport to project our interest expense for any future period or our financial condition at any future date.

	Base case	plus 25 bps	less 25 bps
Total pro forma interest expense	99.5	102.5	96.7
Pro forma interest expense of pro forma indebtedness of restricted group	97.0	99.9	94.2
Ratio of Adjusted EBITDA of restricted group to pro forma interest expense	2.12x	2.05x	2.18x

(10) Pro forma secured indebtedness of restricted group represents our loans and borrowings (including financing lease obligations and deferred financing costs) other than the Senior Subordinated Notes after giving pro forma effect to the Refinancing and the application of the proceeds therefrom as if it occurred on June 30, 2012.

Summary Consolidated Business Segment Data

(€ million)	Financial year ended March 31,			Three-month period ended June 30		Twelve-month period ended June 30,
	2010	2011	2012	2011	2012	2012
	Unaudited, unless stated otherwise			Unaudited		Unaudited
Revenues						
Energy Services	488.6[1]	515.7[1]	530.1[1]	117.2	117.9	530.7
Energy Contracting	198.9[1]	215.4[1]	162.8[1]	41.5	32.8	154.1
Other[2]	—	—	—	—	—	—
Adjusted revenues[3][4]						
Energy Services	488.6	515.7	530.5	117.2	118.0	531.3
Energy Contracting	80.3	85.8	100.8	16.4	21.6	106.0
Other[2]	—	—	—	—	—	—
EBITDA[3]						
Energy Services	147.5	177.1	197.8	39.2	36.5	195.1
Energy Contracting	27.6	27.7	25.6	3.0	6.6	29.2
Other[2]	(7.7)	(1.1)	(5.2)	(0.7)	(1.1)	(5.6)
Adjusted EBITDA[3]						
Energy Services	171.0	183.9	201.5	39.3	36.8	199.0
Energy Contracting	27.6	27.7	26.8	3.0	6.6	30.4
Other[2]	(3.3)	(3.9)	(4.4)	(0.7)	(1.1)	(4.8)

(1) Audited.

(2) Other comprises the non-operating holding companies, as well as consolidation journal entries.

(3) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(4) Adjusted revenues represents total revenues less revenues of the unrestricted subsidiaries and from tax efficiency contracting in the Energy Contracting business segment, but including revenues of companies within the restricted group with companies outside the restricted group.

RISK FACTORS

An investment in the Notes involves risks. Before purchasing the Notes, you should consider carefully the specific risk factors set forth below, as well as the other information contained in this offering memorandum. Any of the risks described below could have a material adverse impact on our business, prospects, results of operations and financial condition and could therefore have a negative effect on the trading price of the Notes and our ability to pay all or part of the interest or principal on the Notes. Additional risks not currently known to us or that we now deem immaterial may also harm us and affect your investment.

This offering memorandum also contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including the risks described below and elsewhere in this offering memorandum.

Risks Relating to Our Business

Our sub-metering business is influenced by regulation aimed at promoting the efficient use of energy and water. Amendments to these regulations could have a negative impact on our business activities and significantly impair the future prospects of Techem.

In Germany and some other countries where we operate, the measuring and billing of heat and water consumption is influenced to a considerable degree by statutory provisions that are aimed at promoting the conservation of energy and water. Laws and regulations that require owners and landlords of commercial and residential units to provide consumption-based sub-metering and billing of heat and water consumption and that allow for an individual allocation of sub-metering costs to end-users have proven to be significant factors for our business and our growth.

In Germany, pursuant to the ordinance on the billing of heating costs (*Verordnung über Heizkostenabrechnung*) ("**Heating Cost Ordinance**"), the owner of a multi-unit commercial or residential building with a central heating or hot water system or commercially supplied with heat or hot water is required to measure heat and hot water consumption, respectively, of the individual units and allocate the respective costs at least in part based on the individual consumption of the end-users. The Heating Cost Ordinance is also applicable for condominium units (*Wohnungseigentum*). The Heating Cost Ordinance provides for various exceptions from the obligation to provide consumption-based measuring and billing of heat and hot water use. There can be no assurance that the Heating Cost Ordinance, or any other future statutory provisions, will maintain the current requirements with respect to sub-metering of heat and hot water consumption or that the exceptions to these requirements will not be broadened. Any changes to the Heating Cost Ordinance including a broadening of the exceptions to the requirements of the Heating Cost Ordinance or any other future statutory provisions reducing the sub-metering and consumption based billing requirements could have a negative impact on our business.

In addition to the Heating Cost Ordinance, the building codes of most German federal states (*Länder*) also provide for an obligation to install cold water sub-metering devices, at least in new buildings. Under German law, landlords are generally required to provide consumption-based billing of cold water if cold water sub-meters are installed for all tenants in a building. There can be no assurance that the building codes of German federal states or other provisions of German law or any other future statutory provisions requiring sub-metering of cold water consumption and providing for consumption-based billing will remain in force or unchanged. Any changes to these statutory provisions reducing the sub-metering requirements could have a negative impact on our business.

In Germany, the rules of the weight and measures regulations (for instance, the Weight and Measures Act (*Gesetz über das Eich- und Messwesen*)) currently require that installed water and heat meters have to be recalibrated at regular intervals. Generally for practical and cost reasons, devices are replaced, rather than recalibrated, at the expiration of the calibration period. If future legal regulations prolonged the validity of calibrations or the equipment replacement cycle, our revenues and profitability could be adversely affected.

Regulations also affect and may affect other current and future services, including value added services. For example, we currently profit from regulations requiring building owners to install and check smoke detectors and to undertake legionella analysis. There can be no assurance that these provisions will remain in force. Any changes to these provisions abolishing or restricting the duty to install smoke detectors and provide legionella analyses could have a negative impact on our business.

In most jurisdictions where we operate, most of the costs related to sub-metering, including rental charges and maintenance costs, can generally be passed through from landlords to their tenants through contractual agreement. This is also true for residential units in Germany, where the contractual allocation of costs to the tenant is regulated through legislation and regularly the subject of court decisions. While the costs for renting sub-metering devices may be allocated to the tenants as operating costs, the costs for purchasing the devices may only be passed through to tenants under certain conditions as costs for modernization by way of a rent increase. The passing through of costs to tenants for modernization measures directed at the more efficient use of energy and water is generally limited to an increase of the annual rent for residential units by up to 11% of the cost of modernization. The allocation of operating costs to the tenants is generally restricted by the principle of cost-effectiveness (*Gebot der Wirtschaftlichkeit*), which means that costs can only be allocated to if an adequate cost-benefit-ratio exists. Accordingly, there is a risk that not all innovations in the sub-metering industry promoting energy savings will result in products and services the costs of which can be passed on to tenants.

If costs are not allocable, owners and landlords may not be willing to invest in innovative technologies as they are not the ultimate beneficiary of the resulting cost savings. Furthermore, there can be no assurance that current statutory provisions enabling such allocation of costs will remain in place. Any changes to the statutory provisions or court decisions affecting the possibility to pass on costs for sub-metering or the realization of any of the other above mentioned risks could have a negative impact on our business.

With respect to our international sub-metering business, our business is also influenced by regulation in the countries in which we operate. Overarching changes to current regulatory frameworks like European Directives or introductions of new regulation, including price regulation, for the industry in certain markets (especially core markets like Germany) could have material adverse effects on our business, revenue or profit margins and general financial condition or results of operation.

As sub-metering and data collection devices become more complex, replacing devices and substituting services becomes increasingly difficult. With respect to certain key components of our devices such as our radio technology, we hold intellectual property rights. Key components differentiate our devices, in particular electronic devices, from the devices of our competitors and are thus incompatible with such third-party devices; customers who wish to switch from our products and services to those of a competitor may have to exchange their devices, which can result in considerable costs, or can opt to revert to manual, in-person readings of their radio-controlled devices. Conversely, convincing the customers of our competitors to switch to our products and services may be challenging due to the incompatibility of competitors' proprietary radio devices with our devices. Future regulations could require interchangeability of the sub-metering and data collection equipment used by energy service providers in the sub-metering market, e.g., by stipulating open meter standards, or could otherwise make it easier for customers to change energy service providers, which could in turn diminish our customer base and adversely affect our financial results.

The realization of any of the above mentioned risks could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Our energy contracting business is influenced by the possibility our customers have to allocate the costs of our services to their tenants. In addition, there is a risk that price adjustment provisions in contracts with our customers may be held invalid by courts.

In Germany, the costs of energy contracting can be allocated by landlords to their tenants if provided for in the rental contract. If a landlord decides to newly implement an energy contracting solution, under an existing rental contract that provides for the allocation of the energy contracting costs to the tenants either explicitly or implicitly, the tenants can generally only object to such cost allocation, if they can evidence that the costs for the energy contracting solution are, in the case at hand, disproportionate.

The German rules on allocation of energy contracting costs to tenants are currently under revision. Pursuant to draft legislation dated May 2012 regarding a reform of tenancy law in Germany, a landlord would be entitled to allocate the costs related to energy contracting to the tenants, provided that certain conditions are met, in particular the condition that the energy contracting solution is cost-neutral for the tenant. According to the draft legislation, cost neutrality would be achieved, if the expected annual costs of the energy contracting solution to the tenants do not exceed the average heating and hot water costs paid by the tenants in the last three years. The legislation, if adopted, would not require a contractual agreement between landlord and tenant specifically regarding the allocation of energy contracting cost for

such allocation to be permissible. Also, the draft legislation provides that deviating agreements to the disadvantage of a residential tenant are void.

The changes envisaged by the draft legislation, especially the requirement of cost-neutrality, as well as any further changes to the statutory provisions affecting the possibility to allocate costs for energy contracting to tenants, may have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Our energy contracting agreements usually contain price adjustment clauses. In Germany, the exact requirements under which such price adjustment clauses are enforceable are currently not entirely clear. If such clauses were declared void by a German court or legislation this could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Our business is highly competitive and the level of competition may increase in the future.

The geographic markets in which we do business tend to have only a few large providers of sub-metering services. For example, in Germany, five large providers serve the vast majority of the market. Due to the maturity of some geographic markets, including Germany, additional market share can be acquired only by displacing competitors, done typically through better service quality, broader service offering or competitive pricing. Additionally, large customers increasingly require energy service providers to tender for the services needed, which often leads to decreases in our margins. The price pressure could thus increase noticeably for us and force us to lower the prices for our products and services. Moreover, increased competition could slow down or prevent growth in markets in which we intend to increase market share. If we fail to protect or expand our market shares or if we are forced to lower the prices for our products or services, this will lead to lower revenues and may have a material adverse effect on our business, financial condition and results of operations and on our ability to fulfill our obligations under the Notes and the Guarantees.

Our competitors may develop sub-metering devices or technologies (including radio technology) that are superior to our sub-metering devices and technologies and we may have to make significant investments in more advanced technologies.

We endeavor to continually improve our sub-metering technology and data collection equipment and to develop new products and services. A major objective of these efforts is to reduce our costs for the sub-metering and data collection equipment by redesigning them to take advantage of new technology, such as modular technology, so that they can be produced more cost-efficiently. However, competitors may develop sub-metering and data collection equipment, sub-metering technologies or offer services that are superior to our products or services. This may result in more advanced technology or products or services of equivalent quality being offered at lesser cost. Based on the superior comfort of more advanced technology or a price advantage current or potential customers could decide to switch to or contract with our competitors, which would have a negative impact on our market shares, and our competitive positions could be adversely affected. In addition, we may have to make significant investments to upgrade our products and services with more advanced technology. This could have a material adverse effect on our business, financial condition and results of operations and on our ability to fulfill our obligations under the Notes and the Guarantees.

We are highly dependent on error-free functioning of our IT and communications systems for the delivery of our services.

Our business activities rely heavily on centralized information technology systems (hardware and software) and networks to support business processes, as well as internal and external communications. These systems and networks include, in particular, our self-developed billing software, heiztec/2 and heiztec/3, and the SAP and Exact ERP system environments that we use for administration. To a lesser extent, we rely on *Techem Portal*, our radio-based energy saving system *adapterm* and our integrated platform *Techem Smart System*. Our systems are potentially vulnerable to damage or interruption from various sources. An extended outage in a data center or telecommunications network we rely on or a similar event could lead to an extended unanticipated interruption of services and could result in delayed data and cost collection, the loss of data, claims for damages by our customers, and ultimately the loss of business. The realization of any risks related to our IT system and network could have a material adverse effect on our business,

financial condition and results of operations and on our ability to fulfill our obligations under the Notes and the Guarantees.

We are dependent on successful collaboration with companies from related industries in order to provide some of our services.

We offer a number of services in collaboration with companies that do business in related industries or via joint ventures such as our cooperation with SGS Institut Fresenius GmbH for legionella testing. Our ability to fully exploit the strategic potential of the new products and services that we offer through these joint ventures or collaborations could be impaired if we cease to agree with our respective partners on strategy and implementation, if our respective collaboration partners or joint venture companies no longer provide their services at competitive prices or with the desired quality or if they have financial difficulty or violate contractual obligations.

There is also a danger that our respective collaboration partners or joint venture partners may, for economic, strategic or other reasons outside our control, cease collaborating with us or have divergent views about business or strategy for the collaboration. As a result, we may be forced to acquire the partner's equity stake, to end the collaboration or to find a new partner, any of which may adversely affect our strategy or our business and financial results.

Additionally, there is a risk that the transfer of know-how and trade secrets to partners in the context of joint ventures and other collaborations could result in a drain of expertise from us. In particular, after a potential separation from a joint venture or collaboration partner, there is no guarantee that the know-how or trade secrets transferred to such partner will not be used by our partners or disclosed and used by third parties, thereby adversely affecting our competitive position.

These factors could, therefore, result in our collaborations failing to lead to the success anticipated or result in the loss of business, either of which could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Supply problems with or price increases by major suppliers may delay the delivery and installation of sub-metering devices and other equipment or otherwise adversely affect our business and financial results.

Price increases by or supply problems with any of our major suppliers could affect significant quantities of equipment, which, under certain circumstances, may not be able to be made up for by other suppliers. We pursue a second source strategy, but we order some devices in such large quantities that a failure of one of the suppliers could hurt our performance during times of high demand when inventory is low. The same would be true if supply agreements with major suppliers were terminated early by either of the parties or were not renewed. This could cause a delay in the delivery and installation of sub-metering devices and other equipment. Our supply risks will increase as we intend to reduce the amount of inventory we carry. Price increases and supply delays or failures could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We may not be able to successfully assert warranty claims against the suppliers of our metering devices or other equipment.

The agreements with the suppliers of our devices usually provide for warranty claims in the event of defective devices. Generally, the supply agreements contain an obligation to replace defective devices and reimburse the costs incurred in handling the repair as well as an obligation of the suppliers to hold us harmless with regard to product liability claims. However, in some, cases liability claims against our suppliers are limited to foreseeable typical damages. The suppliers' liability for further damages is limited either directly to a certain amount or to the amount of the claims to which the supplier is entitled under its business liability insurance.

Therefore, if defects in individual devices exist, but, most importantly, if production or design flaws exist, there is a risk that we will incur losses in an amount that we will not be able to claim either in full or at all in the form of warranty claims against our suppliers. Furthermore, there is a risk of consequential losses, such as damages in connection with billing errors and the loss of reputation which could potentially lead to early cancellations of contracts with customers. Suppliers may also contest any warranty claims, and we may have to make significant expenditures and invest management time and attention to pursue warranty

claims. Our suppliers may also experience financial difficulties, making recovery under warranty claims less likely.

An inability to hold ourselves harmless against our suppliers could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are exposed to liability in connection with potentially defective or incorrectly installed measuring devices or incorrect readings or billing errors.

We use a large number of sub-metering and data collection devices, in particular heat and water meters as well as heat cost allocators, for our various measuring activities. There are currently approximately 45.9 million devices installed in 9.1 million individual units in multi-tenant residential or commercial buildings. Customers who claim overpayments in connection with incorrect readings, such as due to defective or incorrectly installed devices or incorrect billings due to process errors, are reimbursed. On average, the reimbursements have typically been about 1% of our service revenues, ranging between two and three million euro per year, but could increase in the future. Moreover, if we violate applicable statutory or contractual requirements, we may be exposed to damage compensation claims by our customers or possibly be obligated to pay administrative fines. In addition, the affected devices might be recalled or have to be reinstalled and we may not be able to pass this cost on to manufacturers. This could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are exposed to liability to the extent the products we rent or sell have defects or security vulnerabilities or for other reasons do not meet the requirements of customers.

We rent or sell a large number of products that must meet high quality demands and product specifications that are either customary in the market, self-imposed or agreed with customers. Design defects and quality flaws in our equipment may expose us to liability and harm our reputation and business. For example, sub-metering and data collection equipment fitted with radio transmitters may be exposed to hacker attacks and security vulnerabilities may surface.

To the extent the products we sell or rent should have substantial production defects or security vulnerabilities, we may have to discontinue production of the relevant devices until the cause of the error in the product is identified and a remedy is found. In the case of products already delivered and installed, accurate consumption-based sub-metering for the affected customers might not be possible in the time prior to the discovery and remedying of such a defect. If, for example, a sub-metering and data collection device is defective for a long period of time and has to be replaced, a customer of ours might be liable for damages if the end-user has paid too much or too little over this time period or if it can no longer be determined how the costs are to be allocated to individual tenants. In addition, our customers may be in violation of certain laws, such as the Heating Cost Ordinance in Germany. Flaws in the sub-metering and data collection equipment could also impair the market acceptance of our other products and services and thus reduce revenues in all our business segments. In addition, product defects or incorrect installations and flaws in relation to customer specifications could result in us being liable for defects and consequential damages. This could lead to significant costs. Furthermore, it turned out that Techem had previously mounted data collectors in buildings' hallways although their fire protection classifications were not sufficient for this place of installation; although Techem was not contacted by authorities and there have been no known incidents, Techem has changed the installation places or covered the data collectors by fireproof cleading on its own initiative to attempt to rectify improper installations.

Each of these factors could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

The implementation of our corporate strategy entails risks.

The implementation of our corporate strategy is exposed to various risks. For instance, we plan to promote our value added services in addition to increasing installation of radio-controlled sub-metering and data collection equipment and replacing conventional sub-metering and data collection equipment to improve customer satisfaction and reduce costs. However, demand for our value added services and new products may fall short of our expectations and our competitors may be more successful at marketing their products. For example, value added services are in a nascent stage and customers may not accept our new technology due to higher costs or for any other reason. If demand falls short of our current expectations, there is a risk

that the investment in the development and production of the new devices and technology will not pay off or that the revenue or net income will not grow to the extent anticipated. Furthermore, we seek to optimize our integrated value added services so as to differentiate ourselves from our competitors. Should such differentiation not be successful, we run the risk of becoming a conventional billing and reading company and increasing price pressure could result in a loss of our competitive position or our market shares.

Any failure to successfully implement our corporate strategy could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are dependent on our executive management.

Our business success and future development depends significantly on our management board members and other qualified executives and employees in key functions. Our business activities and expansion could be significantly jeopardized if we had to continue without the services of our current CEO, our CFO, or one or more executive managers. The loss of an executive or key employee could have a material adverse effect on our market position and prospects. Furthermore, considerable expertise could be lost or access thereto gained by competitors. We try to retain the commitment of our qualified executives and key employees *inter alia* through performance-based remuneration systems, and we have implemented long-term incentive plans for our CEO and CFO. Even with attractive compensation packages, there is no guarantee that we will be successful in retaining these executives and the employees in key positions or in attracting new employees with corresponding qualifications. The realization of any of these risks could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Advanced building technologies and associated regulation as well as new heating technologies expose us to developments which could significantly reduce demand for our sub-metering devices or services.

With an increase in energy awareness and new technology, advanced building standards such as the passive house standard have developed. Buildings that meet the passive house standard consume so little heat that sub-metering is no longer economical. Therefore, buildings built in Germany that meet the passive house standard are exempted from regulatory requirements for consumption-based measuring and billing of heat and hot water consumption. Demand for our sub-metering services may be affected if the number of new and existing buildings meeting such a standard begins to increase or if construction pursuant to the passive house standard becomes a legal requirement. Similar effects may impact our business outside of Germany, especially in countries with high new construction and modernization levels as new construction would not use sub-metering and demand for our services would phase out.

The realization of any of these risks could have a material adverse affect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Property management companies could seek to in source measuring and billing of heat and water consumption.

Property management companies could begin to conduct the measuring or billing of heat and water consumption by themselves rather than engaging energy service providers for these services. Using this approach, property management companies could refrain from or discontinue the use of our sub-metering services. We see this as a particular threat in poor economic times as property managers look for ways to reduce layoffs or to generate earnings themselves. Any such development may have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are exposed to risks in connection with currency fluctuations.

We do business worldwide and consequently generate part of our revenues, costs and earnings in currencies other than the Euro, for example in Danish Crowns, Swiss Francs or Polish zlotys. In international markets, our devices are priced in Euros, which has fluctuated significantly over the recent past. This currency fluctuation has increased our cost position abroad and reduced our margins. Other currency risks result from the fact that the revenues of a group company are realized in currencies other than those of the costs assigned to them. Moreover, a number of our consolidated companies conduct their accounting in currencies other than the Euro, meaning that the corresponding items have to be translated

to Euros when consolidating such a group company. For the aforementioned reasons, we are exposed to risks that arise due to fluctuations in the relative values of the relevant currencies, particularly between the Euro and the Danish Crown, Swiss Franc and Polish zloty. These currency risks could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Our international business is exposed to various economic, political and other risks.

We offer our products and services in a large number of countries. Moreover, we plan to further expand our activities outside of our main customer base in Germany. In some of the countries where we offer our products or services, different framework conditions and less political, economic and legal stability prevail than compared with Germany or the European Union. This applies, in particular, to some of the countries that we have identified as growth markets or pioneer markets for our products and services (see "*Industry and Competitive Environment—Sub-metering—Market development*"). For this reason, we are exposed to a range of factors that we cannot easily influence and that could have an impact on our business activities in these countries. These factors include the following:

- political, social, economic, financial and market-related instability and volatility;
- foreign currency control provisions and other regulations or impairments in terms of exchange rates and foreign currencies, such as the lifting of exchange rate pegs;
- inadequate infrastructure;
- trade restrictions;
- inadequately developed and differentiated legal and administrative systems, which can lead for example to the inadequate protection of intellectual property rights or can jeopardize the enforcement of receivables and other claims; and
- the risk that regulatory framework conditions will become less favorable to our business.

The above-mentioned risks could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We could sustain losses or have to pay on existing guarantees should the Eurozone cease to exist or economic conditions in Europe, or Greece in particular, continue to decline.

Concerns persist regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations and the overall stability of the Euro. Should Germany begin using its own currency and should that currency then appreciate against other currencies and should we adopt the German currency as group currency, this might affect our financial results with respect to the conversion of non-German currency countries. In addition, we have outstanding guarantees which we may be required to pay for should the economic situation in Greece continue to deteriorate or should Greece cease using the Euro as its national currency. We indirectly own the majority of the shares in a non-consolidated entity in Greece with separate project financing with a local bank. The entity, Thermie Serres, is an Unrestricted Subsidiary under the Indentures. The project consists of an efficient cogeneration power plant which produces electricity for the national grid and heat for a district heating network in Serres, Macedonia, Greece. Our wholly-owned subsidiary, Techem Energy Contracting Hellas EPE, purchases that heat and resells it to customers of the district heating network. Techem Energy Services GmbH has issued guarantees in favor of certain lenders in connection with the financing for Thermie Serres in the amount of approximately ten million euro. Thermie Serres has received a notice sent on behalf of certain lenders alleging that an event of default has occurred, and expressly reserving their rights, powers and remedies with respect to such financing. Although Thermie Serres is in discussions with such lenders regarding the alleged default, if such allegations prove to be correct and the relevant lenders enforce any rights under such financing arrangements as a result of the event of default rather than provide an appropriate waiver, Techem Energy Services GmbH may be required to pay the lenders pursuant to such guarantee.

In addition, a worsening of the economic conditions in Greece, or a change in Greece's currency could force Thermie Serres to default on its obligations and trigger the guarantees. We may have recourse options against Thermie Serres' other shareholder, but it is probable that we would recoup very little, if any, in such a scenario. If the guarantees were triggered, we would, through the recourse and subsequent expected non-payment of the other shareholder, receive full ownership in the plant which we then could continue to operate (which would likely require us to subsidize purchases of natural gas for Thermie

Serres). Alternatively, due to lack of maintenance funds due to unclear claims and ownership structure or to customers who would no longer pay, we would have to decommission the plant, potentially leaving customers in the area without heating and possibly requiring us to repay any subsidies received by Thermie Serres. The costs and payments associated with such an event would be material and these and other resulting effects of the Eurozone crisis could negatively impact our business, reputation or financial condition and could make it more difficult for us to fulfill our obligations under the Notes and the Guarantees.

We collect and process personal data in our daily business, and the leakage of such data may violate laws and could adversely affect our business.

We collect, store and use personal data in the ordinary course of our business operations, especially with regard to sub-metering and the provision of billing services in relation to heat and water consumption to our customers, and are therefore subject to data protection legislation. Non-compliance or technical defects resulting in a leakage or misuse of such data could result in damages to our reputation and otherwise harm our business. It is also possible that future legislative changes may lead to stricter data protection requirements. Such changes may especially occur in connection with radio-controlled sub-metering devices and related services and may involve specific encryption and signature requirements. Independent from changes in the law, our customers may demand specific data protection measures going beyond those legally required to be applied to the sub-metering of water and heating. In these cases, we would have to adapt our products and services to these specific requirements. This may entail complex technical changes and significant investments. Should one or more of these risks materialize, they could have a material adverse effect on our business, financial condition and results of operation and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are exposed to general counterparty risk.

As part of our business, we have contracts with a variety of entities. We face exposure to risks associated with the financial well-being of these counterparties. Should a counterparty go bankrupt or back out of its contractual commitments to us, we may not realize the full value of our contractual investment or may incur costs enforcing our contractual rights. This risk holds especially true for our energy contracting business segment where single contracts are worth several hundreds of thousands of Euros to us over the lifetime of the contract. If we incur significant losses based on our exposure to counterparties, our results of operations and financial condition would be negatively impacted and we may not be able to fulfill our obligations under the Notes and the Guarantees as a result.

Our energy contracting business involves the operation of combined heat and power units. We could incur liabilities for damages or remediation obligations resulting from the operation of these units.

In the course of our energy contracting business, we operate combined heat and power units. In addition, our unrestricted subsidiary GWE operates two large industrial power plants, which, in particular as a result of their size and thermal firing capacity, have a high risk potential. As operator of these units and power plants, we may be liable for damages caused in the course of their operation under general rules of civil liability. Under certain circumstances we may be held strictly liable for damages, in particular for damages to individuals, property, water and soil. This could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We could face environmental liabilities in connection with our handling of hazardous substances.

We handle a variety of hazardous substances in the ordinary course of our business. Most prevalent is the chemical methylbenzoat which is used in our evaporator heat cost allocators. We take precautions to prevent the end-users of our products from harming themselves with this chemical and we are not aware of any cases in which methylbenzoat has caused harm to a customer or end-user of our evaporators.

In addition to methylbenzoat, we may also handle hazardous substances at the GWE Group's combined heat and power generation and waste incineration plant. The GWE Group incinerates approximately 120,000 tons of waste per year which may contain hazardous substances without our knowledge. Further, the filter dusts produced during the incineration process qualify as hazardous substances under German waste law and have to be specifically handled. Should we be found to have mishandled any hazardous substances within the GWE Group or in other parts of our Group, we could be held liable for any damage

caused and be required to pay fines or other penalties. This could cause us reputational harm or have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

A majority of our balance sheet assets consists of intangible assets, the valuation of which could be impaired from year to year by changing future prospects.

We have recognized extensive intangible assets which, at €1,634.8 million as at June 30, 2012, made up a majority of the consolidated balance sheet total. Our intangible assets primarily consist of capitalized customer agreements of €838.7 million and goodwill of €684.6 million, each as at June 30, 2012.

Customer agreements are regularly amortized using the straight-line method over their group-wide useful lives of three to 33 years, leading to an expense of €31.1 million in the 2012 financial year. In compliance with IFRS 3/IAS 36, goodwill is subject to an annual impairment test. The recoverable amount of each cash generating unit (CGU) is determined by calculating the value in use. Future cash flows are based on assumed growth rates which are based on historical trends; for more information please refer to Section D. and Section F. (note 6) of the 2012 Audited Financial Statements included elsewhere in this offering memorandum. If the carrying amount of a CGU exceeds the calculated value in use, respectively the fair value less costs to sell, an impairment loss must be recognized, which could have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

LEGAL RISKS

We develop intellectual property for our business and we may not be able to protect our intellectual property to an adequate degree.

We hold patents, utility models, other protective rights and applications for such rights, as well as business secrets. The issuance of patents does not necessarily mean that they are valid or that potential patent claims will be enforceable to the required or desired extent. Moreover, in the case of new technologies, there can be no assurance that patents will be issued for all these new technologies in all countries where we deem this useful or necessary and have accordingly applied or intend to apply for patents. Furthermore, it is possible that our patents and protective rights might be infringed by third parties and that for legal or factual reasons it might be impossible for us to prevent or remedy such infringement.

Inadequate protection of our intellectual property may result in the inability to take profitable advantage of technological advances that have been achieved. Likewise, competitors might manufacture or market products that are similar to the products developed by us in collaboration with our collaboration partners. These factors could negatively impact our market positions and lead to revenue declines that could have a negative impact on our profitability and future prospects and a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

Our competitiveness could be impaired if our operating and business secrets cannot be adequately safeguarded.

Our competitiveness is essentially dependent on the safeguarding of our proprietary, non-publicly-available know-how against use by third parties. Currently, large parts of our know-how are not protected by patents. For instance, we document various business workflows in manuals that are made available to companies belonging to our Group, but also to subcontractors working for us. Although we endeavor to safeguard our extensive operating and business secrets comprehensively by means of contractual confidentiality obligations, including across national borders, there can be no assurance that a confidentiality agreement is entered into with every person who learns of our operating and business secrets and thus that comprehensive protection could be ensured. Moreover, copyright laws offer only limited protection. For these reasons third parties may infringe protected legal positions or attempt to obtain our proprietary know-how despite our protective measures. This could cause us to enter into protracted and costly litigation. Moreover, there can be no assurance that our measures to safeguard our own intellectual property rights will successfully prevent the development and design of products or technologies that are similar to our products or that could enter into competition with them. If our operating and business secrets become known to competitors, this could have a negative impact on our competitive position and a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

It is possible that we might infringe the intellectual property of third parties or have to rely on the intellectual property of third parties.

It is possible that we might infringe patents or other protective rights of third parties, since our competitors also apply for patents for inventions and receive patent protection frequently. If such infringement should occur, then we would be prevented from using the respective technologies in the relevant countries where protective rights were granted.

In such cases, we might be unable to market, rent or sell our products or products manufactured for us, and we could potentially be forced to purchase licenses or have our devices or the manufacturing processes of our suppliers rearranged. Moreover, we could be obliged to pay damages in such cases. However, there can be no assurance that we will obtain the licenses necessary for our business success to the required extent and under reasonable terms. Moreover, there is no certainty that existing licenses will continue to be maintained to the necessary extent. Even if we were successful in litigation, this could be time-consuming and costly and place considerable demands on our executive management's attention. Regardless of the outcome of such litigation, the negative external impact of litigation concerning the infringement of intellectual property could deter customers from a collaboration or have a negative impact on such a collaboration, merely on account of the risks associated with such litigation.

Further, we are licencee of some patents, especially with regard to two patents held by Prof. Dr. Ziegler and his Partners GbR, represented by Friedrich W. Ziegler, relating to our radio technology.

The suspension, restriction or interruption of delivery, sale or production by suppliers as a result of a protective rights infringement or the loss of a licence, the subsequent purchase of a corresponding license, or litigation in this regard may have a material adverse effect on our business, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We are regularly audited and could be required to pay additional taxes and other sums following audits of us or our subsidiaries.

We are regularly subject to audits of our financial statements and tax matters. The tax audits include reviews of interest paid on our debt as well as reviews of eco-tax payments we received before the legislature abolished the tax relief for our short-term efficiency contracting product in January 2011. Ongoing tax audits or tax audits for periods not yet reviewed may lead to higher tax assessments, particularly in the 2010 financial year in which we received tax relief payments for which an audit has not yet been completed. As we have not been subject to material assessments or penalties in the past, we have not set aside a reserve that could be used to cover any payments we might have to make with respect to subsidies or to previous tax or financial years. Additional German income taxes may become payable as a result of a denial of interest deductibility on the basis of German interest barrier rules (*Zinsschranke*), which may be the case if the German tax administration takes a view differing from ours on the applicability of such rules. While we have catered for potential future cash tax payments in our mid term cash flow plan, cash reserves created in that regard may turn out to be insufficient. Any additional taxes or other sums that become due could have a significant adverse effect on our cash flows, financial condition and results of operations and thus on our ability to fulfill our obligations under the Notes and the Guarantees.

We have exposure to liability based on the actions of our employees and agents.

Our business operates with several thousand employees. We have training and work guidelines in place, but we cannot exclude the risk that our employees may behave in such a way that we are exposed to risk or would have to defend ourselves based on the actions of the employee. We may also suffer reputational harm should an employee act inappropriately while representing us. In addition, we work with and rely on third-party sales agents who could also harm our reputation or expose us to liability should they fail to fulfill their obligations or act inappropriately. Should these risks materialize, our reputation and possibly our financial condition would be negatively impacted.

We are subject to risks from legal and arbitration proceedings.

The Senior Subordinated Notes Issuer is currently involved in litigation with former minority shareholders of Techem AG regarding adequate compensation for their squeeze-out. We could become involved in other legal and arbitration disputes which may involve material claims for damages or other payments. The outcome of such proceedings cannot be predicted. In the event of a negative outcome of any material legal

or arbitration proceeding, whether based on a judgment or a settlement agreement, we could be obligated to make payments which could have a material adverse effect on our business, financial condition and results of operations. In addition, the costs related to litigation and arbitration proceedings may be significant.

Risks related to Our Financing

Our substantial leverage and debt service obligations could adversely affect our business and prevent us from fulfilling our obligations with respect to the Notes and the Notes Guarantees.

After the issuance of the Notes, we will be highly leveraged. As at June 30, 2012, after giving effect to the Refinancing and the application of the proceeds therefrom, we would have had total debt of € , including € drawn under the Senior Secured Facilities Agreement. The terms of each of the Senior Secured Notes Indenture and the Senior Subordinated Notes Indenture will permit the Senior Subordinated Notes Issuer and its restricted subsidiaries to incur substantial additional indebtedness, including in respect of committed borrowings of up to €50.0 million under the Revolving Credit Facility and €50.0 million under the Capex and Acquisition Facility. See "*Capitalization*."

The degree to which we will be leveraged following the issuance of the Notes could have important consequences to holders of the Notes in this offering, including, but not limited to:

- making it difficult for us to satisfy our obligations with respect to the Notes;
- increasing our vulnerability to, and reducing our flexibility to respond to, general adverse economic and industry conditions;
- requiring the dedication of a substantial portion of our cash flow from operations to the payment of principal of, and interest on, indebtedness, thereby reducing the availability of such cash flow to fund working capital, capital expenditures, acquisitions, joint ventures, product research and development or other general corporate purposes;
- limiting our flexibility in planning for, or reacting to, changes in our business and the competitive environment and the industry in which we operate;
- placing us at a competitive disadvantage as compared to our competitors, to the extent that they are not as highly leveraged; and
- limiting our ability to borrow additional funds and increasing the cost of any such borrowing.

Any of these or other consequences or events could have a material adverse effect on our ability to satisfy our debt obligations, including the Notes.

We are subject to restrictive debt covenants that may limit our ability to finance our future operations and capital needs and to pursue business opportunities and activities.

Each of the Senior Secured Notes Indenture and the Senior Subordinated Notes Indenture will restrict, among other things, our ability to:

- incur or guarantee additional indebtedness and issue certain preferred stock;
- create or incur certain liens;
- make certain payments, including dividends or other distributions, with respect to the shares of the Senior Subordinated Notes Issuer or its restricted subsidiaries;
- prepay or redeem subordinated debt or equity;
- make certain investments;
- create encumbrances or restrictions on the payment of dividends or other distributions, loans or advances to, and on the transfer of, assets to the Senior Secured Notes Issuer or the Senior Subordinated Notes Issuer, as the case may be;
- sell, lease or transfer certain assets, including stock of restricted subsidiaries;
- engage in certain transactions with affiliates;
- consolidate or merge with other entities; and
- impair the security interest for the benefit of the holders of the relevant Notes.

All these limitations will be subject to significant exceptions and qualifications. See "*Description of Senior Secured Notes—Certain Covenants*" and "*Description of Senior Subordinated Notes—Certain Covenants*". The covenants to which we are subject could limit our ability to finance our future operations and capital needs and our ability to pursue business opportunities and activities that may be in our interest.

In addition, we will be subject to the affirmative and negative covenants contained in the Senior Secured Facilities Agreement. In particular, the Senior Secured Facilities Agreement requires us to maintain specified financial ratios and satisfy certain financial condition tests which become more restrictive over the life of such indebtedness. Our ability to meet those financial ratios and tests can be affected by events beyond our control, and we cannot assure you that we will meet them. A breach of any of those covenants, ratios, tests or restrictions could result in an event of default under our Senior Secured Facilities Agreement. Upon the occurrence of any event of default under our Senior Secured Facilities, subject to applicable cure periods and other limitations on acceleration or enforcement, the relevant creditors could cancel the availability of the facilities and elect to declare all amounts outstanding under the Senior Secured Facilities, together with accrued interest, immediately due and payable. In addition, any default or acceleration under the Senior Secured Facilities could lead to an event of default and acceleration under other debt instruments that contain cross-default or cross-acceleration provisions, including the Indentures for the Senior Secured Notes and the Senior Subordinated Notes. If our creditors, including the creditors under our Senior Secured Facilities Agreement, accelerate the payment of those amounts, we cannot assure you that our assets and the assets of our subsidiaries would be sufficient to repay in full those amounts, to satisfy all other liabilities of our subsidiaries which would be due and payable and to make payments to enable us to repay the Senior Secured Notes or the Senior Subordinated Notes, in full or in part. In addition, if we are unable to repay those amounts, our creditors could proceed against any collateral granted to them to secure repayment of those amounts.

We will require a significant amount of cash to meet our obligations under our indebtedness and to sustain our operations, which we may not be able to generate or raise.

Our ability to make principal or interest payments when due on our indebtedness, including the Senior Secured Facilities and our obligations under the Senior Secured Notes and the Senior Subordinated Notes, and to fund our ongoing operations, will depend on our future performance and our ability to generate cash, which, to a certain extent, is subject to general economic, financial, competitive, legislative, legal, regulatory and other factors, as well as other factors discussed in these "*Risk Factors*," many of which are beyond our control. Our Senior Secured Facilities Agreement provides for a term loan facility under which approximately €450.0 million will mature 60 months after the Issue Date. The Senior Secured Notes will mature in 2019 and the Senior Subordinated Notes will mature in 2020. See "*Description of Certain Financing Arrangements*," "*Description of Senior Secured Notes*" and "*Description of Senior Subordinated Notes*." At the maturity of these loans, the Senior Secured Notes, the Senior Subordinated Notes or any other debt which we may incur, if we do not have sufficient cash flows from operations and other capital resources to pay our debt obligations, or to fund our other liquidity needs or we are otherwise restricted from doing so due to corporate, tax or contractual limitations, we may be required to refinance our indebtedness. If we are unable to refinance all or a portion of our indebtedness or obtain such refinancing on terms acceptable to us, we may be forced to reduce or delay our business activities or capital expenditures, sell assets or raise additional debt or equity financing in amounts that could be substantial. The type, timing and terms of any future financing will depend on our cash needs and the prevailing conditions in the financial markets. We cannot assure you that we will be able to accomplish any of these measures in a timely manner or on commercially reasonable terms, if at all. In addition, the terms of our Senior Secured Facilities Agreement, the Senior Secured Notes Indenture, the Senior Subordinated Notes Indenture and any future debt may limit our ability to pursue any of these measures.

Despite our current level of indebtedness, we may still be able to incur substantially more debt in the future, which may make it difficult for us to service our debt, including the Notes, and impair our ability to operate our businesses.

We may incur substantial additional debt in the future. Any debt that we incur at our subsidiary level could be structurally senior to the Notes, and other debt could be secured or could mature prior to the Notes. In addition, such debt could be incurred on a basis senior to the guarantees of the Senior Subordinated Notes. Although the Senior Secured Facilities Agreement and the Indentures will contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and under certain circumstances the amount of indebtedness that could be incurred in compliance with these restrictions could be substantial. If new debt is added to our and our subsidiaries' existing debt levels, the related risks that we now face would increase. In addition, the Senior

Secured Facilities and the Indentures will not prevent us from incurring obligations that do not constitute indebtedness under those agreements.

Certain debt that we incur in the future may be entitled to be repaid with the proceeds of the collateral securing the Senior Secured Notes in priority to the Senior Secured Notes.

The Indentures will permit, in connection with a complete refinancing of the Senior Secured Facilities, "super priority" debt to be incurred under a credit facility and hedging obligations. The Intercreditor Agreement will also provide that, without the consent of holders of the Notes, another intercreditor agreement may be entered into which could include holders of "super priority" debt. Any such super priority credit facility or hedging obligations would be secured by the same property and assets that secure the Senior Secured Notes. However, the liabilities under such super priority credit facility or hedging obligations would have priority over amounts received from the sale of the collateral securing the Senior Secured Notes pursuant to an enforcement sale of such collateral. As such, in the event of enforcement of such collateral, you may not be able to recover on the collateral if the then-outstanding liabilities under such super priority credit facility and hedging obligations are greater than the proceeds realized in such enforcement sale.

The loans under our Senior Secured Facilities Agreement bear interest at floating rates that could rise significantly, increasing our costs and reducing our cash flow.

The loans under our Senior Secured Facilities Agreement bear interest at floating rates of interest per annum equal to LIBOR and/or Euribor, as adjusted periodically, plus a spread. These interest rates could rise significantly in the future. Although we are required to maintain certain hedging arrangements designed to fix a portion of these rates, there can be no assurance that hedging will continue to be available on commercially reasonable terms. To the extent that interest rates were to increase significantly, our interest expense would correspondingly increase, reducing our cash flow.

Our interest and currency hedging agreements may expose us to credit default risks and potential losses if our counterparties fall into bankruptcy.

We may enter into interest and currency hedging agreements to hedge our exposure to fluctuations in interest rates and foreign currency exchange rates, primarily under the Senior Secured Facilities and with respect to our ongoing business to manage dividend streams and our operational business with our foreign subsidiaries. Under these agreements, we are exposed to credit risks of our counterparties. If one or more of our counterparties falls into bankruptcy, claims we have under the swap agreements may become worthless. In addition, in the event that we refinance our debt or otherwise terminate hedging agreements, we may be required to make termination payments, which would result in a loss.

Market perceptions concerning the instability of the Euro could adversely affect the value of the Notes and have adverse consequences for us with respect to our outstanding debt obligations that are Euro-denominated.

As a result of the credit crisis in Europe, in particular in Greece, Italy, Ireland, Portugal and Spain, the European Commission created the European Financial Stability Facility (the "**EFSF**") and the European Financial Stability Mechanism (the "**EFSM**") to provide funding to Eurozone countries in financial difficulties that seek such support. In March 2011, the European Council agreed on the need for Eurozone countries to establish a permanent stability mechanism, the European stability mechanism, which will be activated by mutual agreement, to assume the role of the EFSF and the EFSM in providing external financial assistance to Eurozone countries after June 2013. Despite these measures, concerns persist regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations and the overall stability of the Euro. These potential developments, or market perceptions concerning these and related issues, could adversely affect the value of the Notes and could have adverse consequences for us with respect to our outstanding debt obligations that are Euro-denominated and, as we have a substantial amount of debt denominated in Euro, our financial condition may be materially affected. Furthermore, the Indentures and our Senior Secured Facilities contain or will contain, covenants restricting our and our subsidiaries' corporate activities. Certain of such covenants impose limitations based on Euro amounts (e.g., the amount of additional indebtedness we or our subsidiaries may incur). As such, if the Euro were to significantly decrease in value, the restrictions imposed by these covenants would become tighter, further restricting our ability to finance our operations and conduct our day-to-day business.

Risks Related to the Notes

Holders of the Notes may not control certain decisions regarding the collateral.

The Senior Secured Notes will be secured by the same collateral securing our obligations under our Senior Secured Facilities Agreement, and, with respect to certain of the collateral securing the Senior Secured Facilities and the Senior Secured Notes, the Senior Subordinated Notes will also share in such collateral on a second priority basis. In addition, under the terms of the Indentures and the Senior Secured Facilities Agreement, we will be permitted to incur significant additional indebtedness and other obligations that may be secured by the same collateral.

As a result of the voting provisions set forth in the Intercreditor Agreement, the lenders under the Senior Secured Facilities Agreement will initially have effective control of whether to enforce the collateral as a result of the covenants under the Senior Secured Facilities Agreement being more restrictive than under the Senior Secured Notes. The Intercreditor Agreement provides that a common security trustee will serve as the Security Trustee for the secured parties under the Senior Secured Facilities Agreement, the Notes and hedging arrangements with respect to the shared collateral. Subject to certain limited exceptions, the Security Trustee will act with respect to such collateral only at the direction of an "Instructing Group," which, for the purpose of instructing the Security Trustee, requires (in respect of an event of default under the Senior Secured Facilities Agreement that is not also a default under the Senior Secured Notes Indenture (ignoring any cross default under the Senior Secured Notes Indenture as a result of such event of default) and a decision whether or not, in principle, to enforce the collateral), votes cast by 66⅔% of the lenders (the "Majority Lenders") under the Senior Secured Facilities Agreement and (in respect of a decision whether or not to enforce the collateral in circumstances where the Majority Lenders have chosen not to enforce and there is a subsequent event of default under the Senior Secured Notes Indenture, or any decision as to the manner of enforcement of the collateral) votes cast by holders of more than 50% of the senior secured credit participations at that time (the "Majority Senior Secured Creditors"). The senior secured credit participations include drawn and undrawn uncanceled commitments under our Senior Secured Facilities Agreement and amounts payable in respect of certain hedging obligations that have been terminated or closed out or that would be payable if such hedging obligations had been terminated or closed out, as well as the principal amount of the Senior Secured Notes (with each holder thereof exercising its own vote). Upon the issuance of the Notes, the holder of the Senior Secured Notes and the lenders under the Senior Secured Facilities Agreement are expected to hold approximately % and % of the total senior secured credit participations, respectively. In addition, as described below under "Risk Factors—Risks Relating to the Notes—The Senior Secured Creditors have a limited period in which to respond to requests under the Intercreditor Agreement," if in relation to any request for a vote, action or decision by the Majority Senior Secured Creditors under the Intercreditor Agreement (including when constituting an Instructing Group), any holder of the Notes fails to respond within 20 business days of the date of the request, then that holder shall have its participation deemed to be zero for purposes of calculating the total participation and the relevant percentages. The holders of the Notes will not have separate rights to enforce the collateral. In addition, the holders of the Notes will not be able to instruct the Security Trustee, force a sale of collateral or otherwise independently pursue the remedies of a secured creditor under the relevant Security Documents, unless it comprises an Instructing Group, which, in turn, will depend on the quantum of the creditors in respect of the drawn and undrawn uncanceled commitments under the Senior Secured Facilities Agreement and creditors in respect of certain hedging obligations. In respect of an event of default under the Senior Secured Facilities Agreement when no event of default exists under the Senior Secured Notes Indenture, holders of Notes will not be party to the decision of whether or not, in principle, to enforce collateral. Disputes may occur between the holders of the Notes and creditors under our Senior Secured Facilities Agreement as to the appropriate manner of pursuing enforcement remedies and strategies with respect to the collateral. In such an event, the holders of the Senior Secured Notes will be bound by any decisions of the Instructing Group, which may result in enforcement action in respect of the collateral, whether or not such action is approved by the holders of the Notes or may be adverse to such holders. The creditors under our Senior Secured Facilities Agreement may have interests that are different from the interests of holders of the Notes and they may elect to pursue their remedies under the security documents at a time when it would otherwise be disadvantageous for the holders of the Notes to do so.

In relation to any enforcement of collateral pursued by an Instructing Group constituting the Majority Lenders, such enforcement process, subject to certain exceptions, may be stopped in certain circumstances, including:

(A) on a date which is not earlier than 270 days after such Instructing Group commences such enforcement action if there is no reasonable likelihood of a realisation of the collateral within another 90 days; and

(B) any secured party(s) holding more than 15% of the senior secured credit participations forming a reasonable view that an Instructing Group has not been taking reasonable and diligent steps to maximise, so far as possible, recovery by the Senior Secured Creditors.

In addition, if the Security Trustee sells collateral comprising the limited partnership interests of the Senior Subordinated Notes Issuer or the shares of Germany Holdco, of the General Partner, of the Senior Secured Notes Issuer or of any of our subsidiaries as a result of an enforcement action in accordance with the Intercreditor Agreement, claims under the Notes and the Notes Guarantees and the liens over any other assets securing the Notes and the Notes Guarantees may be released or transferred. See "*Description of Certain Financing Arrangements—Intercreditor Agreement,*" "*Description of Senior Secured Notes—Security—Release of Liens*" and "*Description of Senior Subordinated Notes—Security—Release of Liens.*" In such a situation, your ability to recover on the Notes could be materially impaired.

The Senior Secured Creditors have a limited period in which to respond to requests under the Intercreditor Agreement.

The Intercreditor Agreement provides that in relation to any request for a vote, action or decision by (among others) the Majority Senior Secured Creditors, including instructions to the Security Trustee to enforce the collateral, any Senior Secured Creditor, which includes holders of the Senior Secured Notes, which fails to respond to, or fails to provide details of its senior secured credit participation to, the Security Trustee within the timescale specified by the Security Trustee (which may be no less than 20 business days from the date of the relevant request) shall have its senior secured credit participation deemed as being zero for the purposes of calculating the Majority Senior Secured Creditors in respect of such vote, action or decision. If holders of the Senior Secured Notes are unable to or fail to respond within 20 business days, their ability to control or influence matters concerning their rights as holders of the Senior Secured Notes will be lost and such matters will be determined by other Senior Secured Creditors which may have interests different from the holder of the Senior Secured Notes.

The collateral may not be sufficient to secure the obligations under the Notes.

The Senior Secured Notes and the Senior Secured Notes Guarantees will be secured by security interests in the collateral described in this offering memorandum, which collateral also secures the obligations under the Senior Secured Facilities Agreement and, with respect to certain limited collateral, the Senior Subordinated Notes (on a second-priority basis). The collateral may also secure additional debt to the extent permitted by the terms of the Senior Secured Facilities Agreement, the Senior Secured Notes Indenture, the Senior Subordinated Notes Indenture and the Intercreditor Agreement. Your rights to the collateral may be diluted by any increase in the first-priority debt secured by the collateral or a reduction of the collateral securing the Notes.

The value of the collateral and the amount to be received upon an enforcement of such collateral will depend upon many factors, including, among others, the ability to sell the collateral in an orderly sale, economic conditions where operations are located and the availability of buyers. The book value of the collateral should not be relied on as a measure of realizable value for such assets. All or a portion of the collateral may be illiquid and may have no readily ascertainable market value. Similarly, we cannot assure you that there will be a market for the sale of the collateral, or, if such a market exists, that there will not be a substantial delay in its liquidation. In addition, the share pledges of an entity may be of no value if that entity is subject to an insolvency or bankruptcy proceeding. The collateral is located in more than one country, and the multi-jurisdictional nature of any foreclosure on the collateral may limit the realizable value of the collateral. For example, the bankruptcy, insolvency, administrative and other laws of the various jurisdictions may be materially different from, or conflict with, each other, including in the areas of rights of creditors, priority of government and other creditors, ability to obtain post-petition interest and duration of the proceedings.

It may be difficult to realize the value of the collateral securing the Notes.

The collateral securing the Notes will be subject to any and all exceptions, defects, encumbrances, liens and other imperfections permitted under the Senior Secured Notes Indenture, the Senior Subordinated Notes Indenture and/or the Intercreditor Agreement and accepted by other creditors that have the benefit of priority security interests in the collateral securing the Senior Secured Notes and the Senior Subordinated Notes from time to time, whether on or after the date the Notes are first issued. The existence of any such exceptions, defects, encumbrances, liens and other imperfections could adversely affect the value of the collateral securing the Notes, as well as the ability of the Security Trustee to realize or foreclose on such collateral. Furthermore, the ranking of security interests can be affected by a variety of factors, including, among others, the timely satisfaction of perfection requirements, statutory liens or recharacterization under the laws of certain jurisdictions.

In addition, our business operates under various national, state and local permits and licenses. The continued operation of properties that comprise part of the collateral and that depend on the maintenance of such permits and licenses may be prohibited or restricted. Our business is subject to regulations and permitting requirements and may be adversely affected if we are unable to comply with existing regulations or requirements or if changes in applicable regulations or requirements occur. In the event of foreclosure, the grant of permits and licenses may be revoked, the transfer of such permits and licenses may be prohibited or may require us to incur significant cost and expense. Further, we cannot assure you that the applicable governmental authorities will consent to the transfer of all such permits. If the regulatory approvals required for such transfers are not obtained, are delayed or are economically prevented, the foreclosure may be delayed, a temporary or lasting shutdown of operations may result, and the value of the collateral may be significantly decreased.

The security interests of the Security Trustee will be subject to practical problems generally associated with the realization of security interests in collateral. For example, under Luxembourg law, the enforcement of a share pledge, whether by means of a sale or an appropriation, is subject to certain specific requirements. The Security Trustee may also need to obtain the consent of a third party to enforce a security interest in certain jurisdictions. We cannot assure you that the Security Trustee will be able to obtain any such consent. We also cannot assure you that the consents of any third parties will be given when required to facilitate a foreclosure on such assets. Accordingly, the Security Trustee may not have the ability to foreclose upon those assets, and the value of the collateral may decline significantly.

The security interests in the collateral will be granted to the Security Trustee rather than directly to the holders of the Notes and certain collateral will be granted subsequent to the issuance of the Notes. The ability of the Security Trustee to enforce certain of the collateral may be restricted by local law.

The security interests in the collateral that will secure our obligations under the Notes and the obligations of the Guarantors under the Notes Guarantees will not be granted directly to the holders of the Notes but will be granted only in favor of the Security Trustee. The Senior Secured Notes Indenture and the Senior Subordinated Notes Indenture will each provide (along with the Intercreditor Agreement) that only the Security Trustee has the right to enforce the security documents. As a consequence, holders of the Notes will not have direct security interests and will not be entitled to take enforcement action in respect of the collateral securing the Notes, except through the Senior Secured Notes Trustee or Senior Subordinated Notes Trustee, as the case may be, which will (subject to the applicable provisions of the Senior Secured Notes Indenture or the Senior Subordinated Notes Indenture) provide instructions to the Security Trustee in respect of the collateral.

With respect to certain jurisdictions, including Austria, France, Germany, Poland and the Netherlands (with respect to the pledge of shares), due to the laws and other jurisprudence governing the creation and perfection of security interests and enforceability of such security interests, the collateral will secure only a so-called "parallel debt" obligation created under the Intercreditor Agreement in favor of the Security Trustee rather than secure the obligations under the Notes directly. The parallel debt is in the same amount and payable at the same time as the obligations of the Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer and the Guarantors under the Notes and the Guarantees (the "Principal Obligations"), and any payment in respect of the Principal Obligations will discharge the corresponding parallel debt and any payment in respect of the parallel debt will discharge the corresponding Principal Obligations. Although the Security Trustee will have, pursuant to the parallel debt, a claim against the Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer and the Guarantors for the full principal amount of the Notes, the parallel debt construct has not been tested in court in these jurisdictions (save for France) and we cannot assure you that it will be recognized or that it will eliminate or mitigate

the risk of invalidity and unenforceability of the pledge. Therefore, the ability of the Security Trustee to enforce the collateral may be restricted. In France, the highest French judicial court (*Cour de cassation*) set forth in its September 13, 2011 decision the conditions under which the concept of a parallel debt created under New York law would be deemed compatible with French international public order. This decision is not binding on other French courts and there is no assurance that the parallel debt would be recognized in each and every case by French courts or will meet such courts' interpretation of the *Cour de cassation* decision, and therefore the ability of the Security Trustee to enforce the collateral may be restricted.

In addition to this decision in France, there have been, however, several judgments issued by the bankruptcy courts under which validity of a foreign law parallel debt structure was not challenged (but there is no doctrine of "precedent" under Polish law). Consequently, although such risk should be mentioned in connection with security given by Polish entity, it is to some extent mitigated by the above mentioned judicial decisions.

Regarding Italian law, there is some uncertainty under Italian law as to whether obligations to beneficial owners of the Notes that are not identified as registered holders in a security document will be validly secured. Therefore, there are risks regarding the enforceability by the beneficial owners of the Notes of the security interest granted under any security document governed under Italian law.

The security interests governed by Danish law will not be granted only in favor of the Security Trustee, but will be granted, *inter alia*, in favor of the initial holders of notes and any subsequent holders of notes identified from time to time by the relevant securities clearing systems accounts represented by the Security Trustee as agent of the Issuers. While Danish courts will recognize a duly appointed agent's right to enforce security interests in court on behalf of named secured creditors, it is possible that the agent's right to enforce security interests in its own name on behalf of secured creditors from time to time may be successfully contested. If so contested, the agent may be forced to enforce the security interest under any Danish security document on behalf of a named noteholder and the realization in respect of such security interest could be delayed.

Noteholders must rely on the effectiveness of the Intercreditor Agreement to implement parity among the secured parties.

In certain jurisdictions, including, among others, France, Germany and the Netherlands, certain collateral granted in favor of the Notes will be junior-ranking if the security in favor of the lenders under the Senior Secured Facilities Agreement and certain other creditors is deemed to have been created prior to the issuance of the Senior Secured Notes. In certain other cases, due to the laws and other jurisprudence governing the creation and perfection of security interests and enforceability of such security interests, the collateral will secure only so-called "parallel debt" obligations created under the Intercreditor Agreement in favor of the Security Trustee rather than secure the obligations under the Notes directly. In these cases, the parity of the Senior Secured Notes and the other obligations secured by senior-ranking security over the assets which are also subject to the collateral will be implemented by way of the Intercreditor Agreement. As a result, the noteholders need to rely on the effectiveness of the Intercreditor Agreement to implement parity among the noteholders and the other *pari passu* secured creditors. In the event that the Intercreditor Agreement does not ensure parity among the *pari passu* secured creditors on a contractual basis, the proceeds from the enforcement of the collateral may not be sufficient to repay the obligations under the Senior Secured Notes. See "*Description of Certain Financing Arrangements—Intercreditor Agreement.*"

The rights to enforce remedies with respect to the collateral securing the Senior Subordinated Notes and the Senior Subordinated Notes Guarantees are limited as long as any senior secured debt is outstanding.

The security interests in all of the collateral securing the Senior Subordinated Notes and each Senior Subordinated Notes Guarantee will rank behind the first-priority security interests in such collateral in favor of the creditors under the Senior Secured Facilities Agreement, the Senior Secured Notes and in favor of institutions with whom we enter into certain hedging arrangements. The Intercreditor Agreement provides that a common security trustee will serve as the Security Trustee for the secured parties under the Senior Secured Facilities Agreement, the Senior Secured Notes, the Senior Subordinated Notes and certain hedging arrangements and will (subject to certain limited exceptions) act with respect to such collateral only at the direction of the relevant instructing group of creditors under the Senior Secured Facilities Agreement, holders of the Senior Secured Notes and certain hedging counterparties until amounts outstanding under such debt instruments are paid in full and discharged. Until the expiration of a standstill period on enforcement of such security on behalf of holders of the Senior Subordinated Notes,

the creditors under the Senior Secured Facilities Agreement, the Senior Secured Notes and certain hedging counterparties will have (subject to certain limited exceptions) the exclusive right to make all decisions with respect to the exercise of remedies relating to such collateral. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*." As a result, the holders of the Senior Subordinated Notes will not be able to force a sale of such collateral, or otherwise independently pursue the remedies of a secured creditor under the relevant security documents until the expiration of the applicable standstill period for so long as any amounts under our Senior Secured Facilities Agreement, certain of our hedging arrangements and the Senior Secured Notes remain outstanding. The creditors under our Senior Secured Facilities Agreement, certain hedging counterparties and the holders of the Senior Secured Notes may have interests that are different from the interests of holders of the Senior Subordinated Notes, and they may elect to pursue their remedies under the Security Documents at a time when it would be disadvantageous for the holders of the Senior Subordinated Notes to do so. This may affect the ability of holders of the Senior Subordinated Notes to recover under the collateral if the proceeds from the collateral, after having satisfied obligations under our Senior Secured Facilities Agreement, certain of our hedging arrangements and the Senior Secured Notes, are less than the aggregate amount owed in respect of the Senior Subordinated Notes. In addition, if the creditors or the agent under our Senior Secured Facilities, certain hedging counterparties or the holders of the Senior Secured Notes cause the sale of the shares of the Senior Secured Notes Issuer or the shares of any of our subsidiaries through an enforcement of their first-priority security interest, in accordance with the terms of the Intercreditor Agreement, the Senior Subordinated Notes Guarantees and the liens over any other assets securing the Senior Subordinated Notes and each Senior Subordinated Notes Guarantee may be released. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*" and "*Description of Senior Subordinated Notes—Security—Release of Liens*."

The Senior Subordinated Notes and the Senior Subordinated Notes Guarantees will be subordinated to our existing and future senior debt and the Senior Subordinated Notes are subject to restrictions on payment and enforcement.

The Senior Subordinated Notes and the Senior Subordinated Notes Guarantees will be senior subordinated obligations of the Senior Subordinated Notes Issuer and the Senior Subordinated Notes Guarantors and each will:

- be subordinated in right of payment to all of the Senior Subordinated Notes Issuer's and Senior Subordinated Notes Guarantors' existing and future senior indebtedness, including any indebtedness under the Senior Secured Facilities Agreement, the Senior Secured Notes and any hedging obligations in respect thereof;
- rank *pari passu* in right of payment with any existing and future senior subordinated indebtedness of the Senior Subordinated Notes Issuer and Senior Subordinated Notes Guarantors;
- rank senior in right of payment to all existing and future indebtedness of the Senior Subordinated Notes Guarantors that is expressly subordinated to the Senior Subordinated Notes; and
- be effectively subordinated to any existing and future indebtedness of the Senior Subordinated Notes Issuer and Senior Subordinated Notes Guarantors that is secured by property or assets that do not secure the Senior Subordinated Notes, to the extent of the value of the property or assets securing such indebtedness.

In addition, no enforcement action with respect to the Senior Subordinated Notes Guarantees (or any future guarantee of the Senior Subordinated Notes, if any) or any collateral granted in support of the Senior Subordinated Notes may be taken unless (subject to certain limited exceptions): (i) there is an event of default on the Senior Subordinated Notes outstanding after a period of 179 days after the date on which the Senior Subordinated Notes Trustee delivers written notice of such default to the Senior Agent and the Senior Secured Notes Trustee; (ii) the expiry of any other standstill period outstanding at the date the standstill period referred to in (i) above commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy); or (iii) the Majority Senior Secured Creditors have given their consent to the proposed action. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*."

In addition, the Intercreditor Agreement contains significant restrictions with respect to payments of the Senior Subordinated Notes, including payments by the Senior Subordinated Notes Issuer. If there is a payment default under the Senior Secured Facilities Agreement or the Senior Secured Notes, or if a payment stop notice is issued following an event of default other than non-payment under the Senior Secured Facilities Agreement or the Senior Secured Notes, then payments will not be permitted to be made in respect of the Senior Subordinated Notes until the expiration of the applicable payment stop

notice. In some circumstances, for instance where payments were received on the Senior Subordinated Notes in breach of the Intercreditor Agreement, holders would be required to turn over such payments to the Security Trustee for redistribution. In addition, although the holders of the Senior Subordinated Notes are generally entitled to enforce their claims against the Senior Subordinated Notes Issuer pursuant to the terms of the Indenture, nevertheless the Intercreditor Agreement places certain limits on enforcement. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*."

As at June 30, 2012, after giving effect to the offering and the application of the proceeds therefrom, we would have had an aggregate principal amount of outstanding financial liabilities (excluding derivative liabilities) that ranked senior to the Senior Subordinated Notes and Senior Subordinated Notes Guarantees of € and up to € would have been available for borrowing under the committed and undrawn portion of the Senior Secured Facilities. See "*Capitalization*."

Claims of our secured creditors will have priority with respect to their security over the claims of unsecured creditors, to the extent of the value of the assets securing such indebtedness.

Claims of our secured creditors will have priority with respect to the assets securing their indebtedness over the claims of our unsecured creditors. Not all of the assets that will secure our Senior Secured Facilities and the Senior Secured Notes will secure the Senior Subordinated Notes, including the pledges of shares of certain of our subsidiaries that guarantee the Notes, certain bank accounts and certain intercompany debt. Accordingly, each Senior Subordinated Notes Guarantee will be effectively subordinated to its obligations with respect to the Senior Secured Facilities Agreement and the Senior Secured Notes and any other indebtedness and obligations of the relevant Senior Subordinated Notes Guarantor that is secured by assets that do not also secure the Senior Subordinated Notes to the extent of the value of such assets. In the event of any foreclosure, dissolution, winding up, liquidation, reorganization, administration or other bankruptcy or insolvency proceeding of any Senior Subordinated Notes Guarantor that has any such secured obligations, holders of such secured indebtedness will have prior claims to the assets of such Senior Subordinated Notes Guarantor that constitute their collateral. To the extent the assets securing the Senior Subordinated Notes are not sufficient to repay all amounts owing in respect thereof, subject to the limitations referred to under the caption "*—Risk Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*," the holders of the Senior Subordinated Notes will participate ratably with all holders of the unsecured indebtedness of the relevant Senior Subordinated Notes Guarantor (other than indebtedness to which the Senior Subordinated Notes Guarantees have been expressly subordinated), and, potentially with all of their other general creditors, based upon the respective amounts owed to each holder or creditor, in the remaining assets of the relevant Senior Subordinated Notes Guarantor. In the event that any of the indebtedness of the relevant Senior Subordinated Notes Guarantor that is secured by assets that do not also secure the Senior Subordinated Notes becomes due or the creditors thereunder proceed against the operating assets that secured such indebtedness, the assets remaining after repayment of that secured indebtedness may not be sufficient to repay all amounts owing in respect of the relevant Senior Subordinated Notes Guarantee. As a result, holders of Senior Subordinated Notes may receive less, ratably, than holders of secured indebtedness of the relevant Senior Subordinated Notes Guarantor.

As at June 30, 2012, after giving effect to the Offering and the application of the proceeds therefrom, we would have had an aggregate principal amount of € of secured financial liabilities (excluding derivative liabilities) outstanding, and up to € would have been available for additional borrowings under the committed and undrawn portion of the Senior Secured Facilities. We will be permitted to borrow substantial additional indebtedness, including senior debt, in the future, under the terms of the Senior Subordinated Notes Indenture.

The ability of holders of Senior Subordinated Notes to recover under the Senior Subordinated Collateral.

In order to secure the obligations under the Senior Subordinated Notes and the Senior Subordinated Notes Guarantees, security interests on a second-priority basis will be granted over the Senior Subordinated Collateral. Security interests on an equal and ratable first-priority basis in such collateral will be granted for the benefit of creditors under our Senior Secured Facilities Agreement and the Senior Secured Notes as well as certain hedging counterparties. Holders of the Senior Subordinated Notes may not be able to recover on such collateral that is pledged or assigned because the creditors under the Senior Secured Facilities Agreement and Senior Secured Notes will have a prior claim on all proceeds realized from any enforcement of such pledges and any enforcement sale with respect to such collateral, and the

Senior Subordinated Notes will need to share any remaining proceeds from such enforcement with any other secured creditor. If the proceeds realized from the enforcement of such pledges or such sale or sales exceed the amount owed under our Senior Secured Facilities Agreement, certain of our hedging arrangements and the Senior Secured Notes, any excess amount of such proceeds will be paid to the Senior Subordinated Notes Trustee on behalf of itself and the registered holder of the Senior Subordinated Notes for the benefit of the holders of the Senior Subordinated Notes. If there are no excess proceeds, or if the amount of such excess proceeds is less than the aggregate amount of the obligations under the Senior Subordinated Notes, the holders of Senior Subordinated Notes will not fully recover (if at all) under such collateral.

Pursuant to the Intercreditor Agreement, until the expiration of a standstill period on enforcement of security on behalf of the holders of the Senior Subordinated Notes, the Senior Subordinated Notes Trustee, the Security Trustee and holders of the Senior Subordinated Notes will (subject to certain limited exceptions) not be able to force a sale of the collateral securing the Senior Subordinated Notes or otherwise independently pursue the remedies of a secured creditor under the Security Documents relating to such collateral for so long as any amounts under the Senior Secured Facilities Agreement, certain of our hedging arrangements and the Senior Secured Notes remain outstanding and, if the creditors under the Senior Secured Facilities Agreement, certain of our hedging arrangements or the Senior Secured Notes enforce their security, they will have priority over the holders of the Senior Subordinated Notes with respect to the proceeds from this collateral. See "*—The rights to enforce remedies with respect to the collateral securing the Senior Subordinated Notes and the Senior Subordinated Notes Guarantees are limited as long as any senior debt is outstanding*." As such, holders of the Senior Subordinated Notes may not be able to recover on the collateral, if the claims of the creditors under the Senior Secured Facilities Agreement, certain of our hedging arrangements or the Senior Secured Notes are greater than the proceeds realized from any enforcement of the collateral. In addition, if the creditors or the agent Trustee or the holders of the Senior Secured Notes under the Senior Secured Facilities Agreement or the Senior Secured Notes (as applicable) sell the Senior Subordinated Notes Issuer's or the Senior Secured Notes Issuer's shares through an enforcement of their first-priority security interest in accordance with the Intercreditor Agreement, the second-priority security interest over such shares securing the Senior Subordinated Notes and the Senior Subordinated Notes Guarantees can be released. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*" and "*Description of Senior Subordinated Notes—Security—Release of Liens*."

In the future, the general partner of the Senior Subordinated Notes Issuer may be registered in a jurisdiction other than Germany. Such a structure is permissible under German law to the extent that the general partner's place of actual management (*Ort der Verwaltung*) remains in Germany. Should such general partner move its place of actual management to a place outside of Germany, a mandatory liquidation of the Senior Subordinated Notes Issuer could be triggered.

Enforcement of the collateral across multiple jurisdictions may be difficult.

The collateral will be governed by the laws of multiple jurisdictions. In the event of bankruptcy, insolvency or a similar event, proceedings could be initiated in any of these jurisdictions. The rights under the collateral will thus be subject to the laws of the respective jurisdiction, and it may be difficult to effectively enforce such rights in multiple bankruptcies, insolvency and other similar proceedings. Moreover, such multi-jurisdictional proceedings are typically complex and costly for creditors and often result in substantial uncertainty and delay in the enforcement of creditors' rights. The application of these various laws in multiple jurisdictions could trigger disputes over which jurisdictions' law should apply and could adversely affect the ability to enforce the security and to realize any recovery under the Notes and the Guarantees. A summary description of certain aspects of the insolvency laws of Germany and certain jurisdictions where the providers of collateral are organized or have their center of main activities are set out in "*Certain Insolvency Law Considerations*."

If the Notes are redeemed early, an investor may not be able to reinvest such proceeds in a comparable security.

In the event that the Notes are redeemed early in accordance with "*Description of Senior Subordinated Notes—Optional Redemption*" and "*Description of Senior Secured Notes—Optional Redemption*" and depending on prevailing market conditions at the time, an investor who receives proceeds due to such an early redemption may not be able to reinvest such proceeds in a comparable security at an effective interest rate as high as that carried by the Notes.

There may not be an active trading market for the Notes, in which case your ability to sell the Notes may be limited.

We cannot assure you as to:

- the liquidity of any market in the Notes;
- your ability to sell your Notes; or
- the prices at which you would be able to sell your Notes.

Future trading prices for the Notes will depend on many factors, including, among other things, prevailing interest rates, our operating results and the market for similar securities. Historically, the market for non-investment grade securities has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the Notes. The liquidity of a trading market for the Notes may be adversely affected by a general decline in the market for similar securities and is subject to disruptions that may cause volatility in prices. The trading market for the Notes may attract different investors and this may affect the extent to which the Notes may trade. It is possible that the market for the Notes will be subject to disruptions. Any such disruption may have a negative effect on you, as a holder of the Notes, regardless of our prospects and financial performance. As a result, there is no assurance that there will be an active trading market for either the Senior Secured Notes or the Senior Subordinated Notes. If no active trading market develops, you may not be able to resell your holding of the Notes at a fair value, if at all.

Although an application will be made for each of the Senior Secured Notes and the Senior Subordinated Notes to be listed on the Official List of the Luxembourg Stock Exchange and to be admitted to trading on the Euro MTF market of the Luxembourg Stock Exchange, we cannot assure you that either the Senior Secured Notes or the Senior Subordinated Notes will become or remain listed and traded. Although no assurance is made as to the liquidity of either the Senior Secured Notes or the Senior Subordinated Notes as a result of the admission to trading on the Euro MTF market of the Luxembourg Stock Exchange, failure to be approved for listing or the delisting (whether or not for an alternative admission to listing on another stock exchange) of the relevant Notes, as applicable, from the Official List of the Luxembourg Stock Exchange may have a material effect on a holder's ability to resell the relevant Notes, as applicable, in the secondary market.

In addition, each Indenture will allow us to issue additional notes of such series in the future which could adversely impact the liquidity of the relevant Notes.

Additional Notes issued in further offerings by the Issuer may not be fungible for U.S. federal income tax purposes with the Notes issued in an existing offering.

Additional Notes that are treated for non-tax purposes as a single series with previously issued Notes may not be treated as fungible with previously outstanding Notes of that series for U.S. federal income tax purposes. In such case, the Additional Notes may be considered to have been issued with original issue discount ("**OID**") for U.S. federal income tax purposes. The market value of the previously outstanding Notes of a series may be adversely affected if Additional Notes are issued with a greater amount of OID than the OID with which the originally issued Notes were issued, if any, unless the additional Notes can be distinguished from the originally issued Notes (for example by use of a different Common Code and International Securities Identification Number ("**ISIN**") and, where applicable, CUSIP number). See "*Certain Tax Consequences—U.S. Taxation—Additional Notes*."

The Notes will initially be held in book-entry form, and therefore you must rely on the procedures of the relevant clearing systems to exercise any rights and remedies.

Unless and until Notes in definitive registered form, or definitive registered notes are issued in exchange for book-entry interests (which may occur only in very limited circumstances), owners of book-entry interests will not be considered owners or holders of Notes. The common depository (or its nominee) for Euroclear and Clearstream will be the sole registered holder of the global notes. Payments of principal, interest and other amounts owing on or in respect of the relevant global notes representing the Notes will be made to Deutsche Bank AG, London Branch as principal paying agent, which will make payments to Euroclear and Clearstream. Thereafter, these payments will be credited to participants' accounts that hold book-entry interests in the global notes representing the Notes and credited by such participants to indirect participants. After payment to the common depositary for Euroclear and Clearstream, we will have no responsibility or liability for the payment of interest, principal or other amounts to the owners of book-entry interests. Accordingly, if you own a book-entry interest in the relevant Notes, you must rely on

the procedures of Euroclear and Clearstream and if you are not a participant in Euroclear and/or Clearstream, on the procedures of the participant through which you own your interest, to exercise any rights and obligations of a holder of the relevant Notes under the relevant Indenture.

Unlike the holders of the Notes themselves, owners of book-entry interests will not have any direct rights to act upon any solicitations for consents, requests for waivers or other actions from holders of the Notes. Instead, if you own a book-entry interest, you will be permitted to act only to the extent you have received appropriate proxies to do so from Euroclear and Clearstream or, if applicable, from a participant. There can be no assurance that procedures implemented for the granting of such proxies will be sufficient to enable you to vote on any matters or on a timely basis.

Similarly, upon the occurrence of an event of default under an Indenture, unless and until the relevant definitive registered Notes are issued in respect of all book-entry interests, if you own a book-entry interest, you will be restricted to acting through Euroclear and Clearstream. We cannot assure you that the procedures to be implemented through Euroclear and Clearstream will be adequate to ensure the timely exercise of rights under the Notes.

Risks Related to Our Structure

Each of the Issuers is dependent upon cash flow from subsidiaries to meet its obligations on the Notes and the Notes Guarantees.

Each of the Issuers is a company with limited business operations and each Issuer depends upon the receipt of sufficient funds from their subsidiaries to meet its obligations. We intend to provide funds to the Issuers in order to meet the obligations on the Notes through a combination of dividends and intercompany loans. If the dividends and intercompany loans do not distribute sufficient cash to the relevant Issuer to make scheduled payments on the Notes, the Issuers' ability to make payments may be limited and depend on factors beyond its control.

Various agreements governing our debt may restrict and, in some cases may actually prohibit, the ability of these subsidiaries to move cash within their restricted group. Applicable tax laws may also subject such payments to further taxation. Applicable law may also limit the amounts that some of our subsidiaries will be permitted to pay as dividends or distributions on their equity interests, or even prevent such payments. In particular, the ability of the Senior Subordinated Notes Issuer's and the Senior Secured Notes Issuer's subsidiaries to pay dividends to the Senior Subordinated Notes Issuer and the Senior Secured Notes Issuer will generally be limited to the amount of distributable reserves available to it. Under German law, all dividends may only be distributed out of distributable reserves, and, in principle, interim dividend distributions are not allowed under German law. However, it is uncertain under German law whether interim dividends may be allowed in certain circumstances, subject to strict conditions. The subsidiaries of the Issuers that do not guarantee the Notes have no obligation to make payments with respect to either series of the Notes.

The inability to transfer cash among entities within their respective consolidated groups may mean that, even though the entities, in aggregate, may have sufficient resources to meet their obligations, they may not be permitted to make the necessary transfers from one entity in their restricted group to another entity in their restricted group in order to make payments to the entity owing the obligations.

There are circumstances other than repayment or discharge of the Notes under which the collateral securing the Notes and the Notes Guarantees will be released automatically, without your consent or the consent of the relevant Trustee.

Under various circumstances, the Notes Guarantees and the collateral securing the Notes will be released automatically, including, without limitation:

- in the case of collateral, in connection with any disposition to any third party of the property or assets constituting collateral, so long as the sale or other disposition is permitted by the relevant Indenture, or to the Senior Subordinated Notes Issuer or any restricted subsidiary consistent with the Intercreditor Agreement;
- in the case of a Guarantor that is released from its Notes Guarantee pursuant to the terms of the relevant Indenture, the release of the property and assets of such Guarantor constituting collateral;
- in accordance with the "*Amendments and Waivers*" provisions of the relevant Indenture;

- upon legal defeasance, covenant defeasance or satisfaction and discharge of the relevant Indenture as provided under the captions "*Description of Senior Secured Notes—Defeasance*," "*Description of Senior Subordinated Notes—Defeasance*," "*Description of Senior Secured Notes—Satisfaction and Discharge*" and "*Description of Senior Subordinated Notes—Satisfaction and Discharge*";
- with respect to the property and assets securing the Senior Secured Notes, automatically if a security interest granted in favor of the Senior Secured Facilities, public debt or such other indebtedness that gave rise to the obligation to grant the security interest over such property and assets is released (other than pursuant to the payment and discharge thereof); or
- in accordance with the Intercreditor Agreement and the relevant Indenture.

Unless consented to by the holders of the Senior Subordinated Notes, the Intercreditor Agreement provides that the Security Trustee shall not, in an enforcement scenario, exercise its rights to release the Senior Subordinated Notes liabilities or release or dispose of security interests in the collateral unless the relevant sale or disposal is made:

- for consideration all or substantially all of which is in the form of cash or marketable securities;
- to the extent there is a release of Notes liabilities or security granted for the benefit of the holders of Senior Subordinated Notes, concurrently with the discharge or release of the indebtedness of the disposed entities of certain other creditors, including the creditors under the Senior Secured Facilities and holders of the Senior Secured Notes, unless each agent for the senior creditors determines that the senior creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser of the disposed entities and not released and discharged; and
- pursuant to a public auction, or a fairness opinion has been obtained from a financial adviser selected by the Security Trustee.

The Intercreditor Agreement also provides that the collateral securing the Notes may be released and retaken in connection with the refinancing of certain indebtedness, including the Notes, if due to operation of necessary law that release cannot reasonably be avoided, (provided that any such release will only be effective if any consent required under the Senior Finance Documents or the Senior Secured Notes Finance Documents or the Senior Subordinated Notes Finance Documents in respect of such release of Security Interest has been obtained).

The Intercreditor Agreement also provides that if upon any refinancing of certain indebtedness the liabilities in respect of such refinancing indebtedness cannot be secured *pari passu* with the collateral securing the Notes without such collateral being released, the creditors in respect of such refinancing indebtedness shall be granted a second ranking or lesser security interest in the collateral and will be treated under the Intercreditor Agreement (including for the purposes of the enforcement waterfall) as secured by the collateral pari passu with the collateral securing the Notes.

See "*Description of Certain Financing Arrangements—Intercreditor Agreement*" and "*Description of Senior Secured Notes*."

The Senior Secured Notes, the Senior Subordinated Notes and each of the Notes Guarantees will each be structurally subordinated to the liabilities and preference shares (if any) of our non-Guarantor subsidiaries.

Generally, claims of creditors of a non-Guarantor subsidiary, including trade creditors, and claims of preference shareholders (if any) of the subsidiary, will have priority with respect to the assets and earnings of the subsidiary over the claims of creditors of its parent entity, including claims under any intercompany loans and claims by holders of the Notes under the Notes Guarantees. In the event of any foreclosure, dissolution, winding-up, liquidation, reorganization, administration or other bankruptcy or insolvency proceeding of any of our non-Guarantor subsidiaries, holders of their indebtedness and their trade creditors will generally be entitled to payment of their claims from the assets of those subsidiaries before any assets are made available for distribution to such subsidiary's parent entity. As such, the Senior Secured Notes, the Senior Subordinated Notes and each Notes Guarantee will each be structurally subordinated to the creditors (including trade creditors) and preference shareholders (if any) of our non-Guarantor subsidiaries for the Senior Secured Notes and the Senior Subordinated Notes. As at and for the twelve months ended June 30, 2012, the revenues, EBITDA and assets of the Restricted Subsidiaries not guaranteeing the Senior Secured Notes represented 8.0%, 1.8% and 3.5% of the revenues, EBITDA and assets of the Restricted Group, respectively. As at and for the twelve months ended June 30, 2012, the revenues, EBITDA and assets of the Restricted Subsidiaries not guaranteeing the Senior

Subordinated Notes represented 9.8%, 3.6% and 4.0% of the revenues, EBITDA and assets of the Restricted Group, respectively.

Techem Danmark A/S will guarantee the Senior Secured Notes, but due to restrictions under Danish law, will not guarantee the Senior Subordinated Notes.

Certain of the collateral will not be taken as of the Issue Date.

Certain of the collateral securing the Senior Secured Notes offered hereby will not be taken as of the Issue Date of the Notes, namely the first-priority security interest in the shares of Techem Energie France SAS, Techem SAS, Techem Messtechnik GmbH, Danmark A/S, Techem Techniki Pomiarowe Sp.z.o.o., Techem S.r.l., Techem Energy Services B.V., Caloribel S.A. and Techem Techniki Pomiarowe Sp.z.o.o. will be granted within 30 days of the Issue Date. In addition, the collateral may be subject to certain perfection requirements in order to be enforced. See "*—Your rights in the collateral may be adversely affected by the failure to perfect security interests in the collateral*," "*Description of Senior Secured Notes—Security—The Collateral*" and "*Description of Senior Subordinated Notes—Security—The Collateral.*"

Your rights in the collateral may be adversely affected by the failure to perfect security interests in the collateral.

Under applicable law, a security interest in certain assets can only be properly perfected, and its priority retained, through certain actions undertaken by the secured party and/or the grantor of the security. The liens on the collateral securing the Notes may not be perfected with respect to the claims of the Notes if we, or the Security Trustee, fail or are unable to take the actions required to perfect any of these liens.

Under German law, the creation of a valid security interest under a German law governed pledge agreement is subject to a delivery of a notice of pledge by the Security Trustee or the security provider to the pledged company or a third party (e.g. notice of pledge to the account bank in case of a pledge over bank accounts).

Under French law, the securities account pledge agreement relating to the shares in the French Guarantor will be validly established after execution of a statement of pledge (*déclaration de nantissement de compte titres financiers*) by each security provider in favour of the Security Agent. Each statement of pledge will have to be registered in the relevant shareholder's account (*compte d'actionnaire*) and shares registry (*registre de movement de titres*) of each French Guarantor and be notified to each French bank account holder holding the special pledged cash account.

Under Polish law, the security interest over the shares in the Polish Guarantor will be validly established after fulfillment of certain perfection requirements. The pledge will be established not upon execution of respective pledge agreement between the pledgor and the Security Trustee, but only upon entering such pledge into the registry of pledges maintained by the pertinent court. There will be a time lapse between (a) filing of the application for the entry of the security interests encumbering the shares in the Polish Guarantor and (b) the registration of such security interests by the relevant register. In the case of pledges, registration typically takes four weeks, in all cases depending on a given register and provided that the applications were properly filed and paid for. Moreover, the pledge will become effective against the Polish Guarantor only after the Polish Guarantor is notified of the establishment of such pledge.

Under Italian law, the security interest, i.e. a pledge, over the quotas of a limited liability company (*società a responsabilità limitata*), such as the Italian Guarantor, will be validly established only after fulfillment of certain perfection requirements. The pledge will be established not upon execution of the relevant pledge agreement between the pledgor and the Security Agent, but only upon the perfection of the relevant formalities, mainly consisting in the filing of the pledge with the competent Companies' Register (*Registro delle Imprese*).

Under Danish law, perfection of the pledge of shares in the Danish Guarantor requires notification to the Danish Guarantor. A recorded pledge of shares pledged with a stated priority may nevertheless be held by a Danish court not to be with such priority if the pledgee acted in bad faith in that, at the time of notification, it was aware of a prior existing pledge which was not recorded in the share register. A Danish court may find that pledges of dividends and voting rights in a share pledge agreement are not perfected until the parties secured by the pledge take control of the dividend payments and voting rights. When perfected, the share pledge may be deemed to be security for old debt and may be voidable for a period of three months following such perfection. The pledge of shares governed by Danish law will be granted inter alia in favor of the initial holders of notes and any subsequent holders of notes identified from time to time by the relevant securities clearing systems accounts represented by the Security Trustee as agent. The

creation and perfection of security interests granted to certain creditors from time to time without specifically identifying such creditors have not been tested by Danish courts. Accordingly, the pledge of shares in the Danish Guarantor may not be valid and enforceable. Further, in case of a transfer of Notes where the transfer does not include all the transferor's Notes, the transferee's security interest may not be protected against the transferor's creditors if the transfer of the Notes and the related security interests governed by Danish law have not been perfected in favor of the transferee holder of Notes and the transferor enters into insolvency proceedings or other creditor proceedings.

Absent perfection, the holder of the security interest may have difficulty enforcing such holder's rights in the collateral with regard to third parties, including a trustee in bankruptcy and other creditors who claim a security interest in the same collateral. In addition, a debtor may discharge its obligation by paying the security provider until, but not after, the debtor receives a notification of the existence of the security interest granted by the security provider in favor of the security taker over the claims the security taker (as creditor) has against the debtor. Finally, since the ranking of pledges is determined by the date on which they became enforceable against third parties, a security interest created on a later date over the same collateral, but which come into force for third parties earlier (by way of registration in the appropriate register or by notification) has priority.

Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability.

The Senior Secured Notes Guarantors will guarantee the payment of the Senior Secured Notes on a senior basis and the Senior Subordinated Notes Guarantors will guarantee the Senior Subordinated Notes on a senior subordinated basis. Each Notes Guarantee will provide the relevant holders of the Notes with a direct claim against the relevant Guarantor. In addition, MEIF II Finance, Germany Holdco, the Senior Subordinated Notes Issuer and the Senior Secured Notes Issuer and certain subsidiaries will secure the payment of the Senior Secured Notes on a first priority basis by granting security under the relevant Security Documents. MEIF II Finance, Germany Holdco and the Senior Subordinated Notes Issuer will secure payment of the Senior Subordinated Notes on a second-priority basis by granting security under the relevant Security Documents. However, each Indenture will provide for general limitation language to the effect that each Notes Guarantee and each security interest granted as well as any other obligation, liability or indemnification under a Security Document will be limited to the maximum amount that can be guaranteed/secured by the relevant Guarantor or security provider with respect to the aggregate obligations and exposure of the Guarantor or security provider without rendering the relevant Notes Guarantee or security interest voidable or otherwise ineffective under German and other applicable law, and enforcement of each Notes Guarantee or Security Document would be subject to certain generally available defenses. These laws and defenses include those that relate to corporate benefit, fraudulent conveyance or transfer, voidable preference, financial assistance, corporate purpose, capital maintenance or similar laws, regulations or defenses affecting the rights of creditors generally.

Although laws differ among various jurisdictions, in general, under fraudulent conveyance and other laws, a court could subordinate or void the Notes Guarantees or the security interest granted under the Security Documents and, if payment had already been made under a Notes Guarantee or enforcement proceeds applied under a Security Document, require that the recipient return the payment to the relevant Guarantor/security provider, if the court found that:

- the amount paid or payable under the relevant Notes Guarantee or the enforcement proceeds under the relevant Security Document was in excess of the maximum amount permitted under applicable law;
- the relevant Notes Guarantee or security interest under a Security Document was incurred with actual intent to hinder, delay or defraud creditors or shareholders of the Guarantor/security provider or, in certain jurisdictions, even when the recipient was simply aware that the Guarantor/security provider was insolvent when it granted the relevant Notes Guarantee or security interest;
- the Guarantor/security provider did not receive fair consideration or reasonably equivalent value for the relevant Notes Guarantee/security interest and the Guarantor/security provider was: (i) insolvent or rendered insolvent because of the relevant Notes Guarantee/security interest; (ii) undercapitalized or became undercapitalized because of the relevant Notes Guarantee/Security Document; or (iii) intended to incur, or believed that it would incur, indebtedness beyond its ability to pay at maturity; or

- the relevant Notes Guarantees/Security Documents were held to exceed the corporate objects/ corporate purposes of the Guarantor/security provider or not to be in the best interests or for the corporate benefit of the Guarantor/security provider.

For more information, see "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests*."

The insolvency laws of Germany and the respective jurisdictions of incorporation of the Guarantors may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes from recovering payments due on the Notes.

Germany

The Issuers and certain of their subsidiaries are organized under the laws of Germany, have their registered offices in Germany and substantially all of their assets are located in Germany (each a "**German Company**"). Consequently, any insolvency proceedings with regard to the German Companies are likely to be initiated in Germany and would most likely be governed by the insolvency laws of Germany.

The provisions of German insolvency law differ substantially from U.S. bankruptcy laws, including with respect to priority of creditors' claims, the ability to obtain post-petition interest and the duration of the insolvency proceedings, and hence may be less favorable to holders of the Notes than comparable provisions of U.S. law. Thus, your ability to recover payments due on the Notes may be more limited than would be the case under U.S. bankruptcy laws.

For holders of the Notes, the opening of formal insolvency proceedings against the German Companies subject to the German insolvency regime include the following important consequences:

- unless debtor-in-possession status (*Eigenverwaltung*) is granted by the court upon application by the relevant debtor, the right to administer and to dispose of our assets generally passes to the insolvency administrator (*Insolvenzverwalter*);
- also subject to the granting of debtor-in-possession status (*Eigenverwaltung*), disposals effected by the management of any German Company after the opening of formal insolvency proceedings are generally null and void by operation of law;
- if, during the final month preceding the date of filing for the opening of insolvency proceedings or after that date, a creditor in the insolvency proceedings acquires by way of enforcement a security interest in part of the debtor's assets that would normally form part of the insolvency estate, such security interest becomes null and void by operation of law upon opening of the insolvency proceedings; and
- claims against any German Company may generally only be pursued in accordance with the rules set forth in the German Insolvency Code (*Insolvenzordnung*).

For more information, see "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests*."

Other countries

At least one Guarantor is incorporated under the laws of Austria, Beligum, Denmark, France, Italy, Luxembourg, the Netherlands and Poland. Accordingly, law and insolvency proceedings for the respective Guarantor's country may apply with respect to such Guarantors. These laws may adversely affect the enforcement of your rights under the Notes and may not be as favorable to your interests as a creditor as under U.S. bankruptcy laws.

For more information, see "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests*."

Insolvency avoidance rights under German law may limit your rights as a holder of the Notes to enforce the security provided by us or any other German Company providing security.

The German Companies have granted certain security interests for the benefit of the Notes. Under the German Insolvency Code (*Insolvenzordnung*), an insolvency administrator may avoid (*anfechten*) transactions, performances or other acts that are deemed detrimental to insolvency creditors and which were effected prior to the opening of formal insolvency proceedings during applicable avoidance periods.

Generally, if transactions, performances or other acts are successfully avoided by the insolvency administrator, any amounts or other benefits derived from such challenged transaction, performance or act will have to be returned to the insolvent estate (*Insolvenzmasse*). The administrator's right to avoid transactions can, depending on the circumstances, extend to transactions having occurred up to ten years prior to the filing for the commencement of insolvency proceedings. In particular, an act (*Rechtshandlung*) or a legal transaction (which term includes the granting of a guarantee, the provision of security or the payment of debt) detrimental to the creditors of the debtor may be avoided according to the German Insolvency Code in certain cases. See "*Certain Insolvency Law Considerations*" for more detail and for information on the similar principles which apply to the French Guarantors.

GWE and Thermie Serres will each be an Unrestricted Subsidiary under the Indentures for the Notes, will not be subject to the covenants in the Indentures, will not guarantee the Notes and will not provide any collateral for the Notes.

The GWE Group and Thermie Serres will be Unrestricted Subsidiaries under the Indentures for the Notes. Unrestricted Subsidiaries will not be subject to the restrictive covenants in the Indentures, will not guarantee the Notes and will not provide any collateral securing the Notes.

As a consequence, holders of the Notes will have no recourse to any Unrestricted Subsidiary or its properties if there is an event of default under the Indentures for the Notes. Our access to the cash flow generated by our Unrestricted Subsidiaries is limited to amounts actually distributed to us, including as dividends. Such dividends are received in proportion to our economic interest in the Unrestricted Subsidiary (see "*Summary—Our Corporate and Financing Structure*"). Unrestricted Subsidiaries may also be subject to restrictions on their ability to make distributions to us, further limiting our access to their cash flow. Since our Unrestricted Subsidiaries are not subject to the restrictive covenants in the Indenture for the Notes, they are free, among other things, to incur and secure indebtedness, sell assets and use the proceeds therefrom at their own discretion. In addition, we currently guarantee certain indebtedness of Thermie Serres, and the Indentures governing the Notes will permit us in the future to guarantee or otherwise assume liability with respect to additional debt of Thermie Serres or our other Unrestricted Subsidiaries. As at June 30, 2012, we guaranteed approximately €10 million of indebtedness of Thermie Serres. In certain circumstances, such guarantees or future liabilities could be triggered and we could be required to make payments to creditors on behalf of Thermie Serres or our other Unrestricted Subsidiaries.

We may not have the ability to raise the funds necessary to finance an offer to repurchase the Senior Secured Notes and the Senior Subordinated Notes upon the occurrence of certain events constituting a change of control as required by each Indenture and the change of control provision contained in the Indentures may not necessarily afford you protection in the event of certain important corporate events.

Upon the occurrence of certain events constituting a "change of control," the Senior Secured Notes Issuer would be required to offer to repurchase all outstanding Senior Secured Notes and the Senior Subordinated Notes Issuer will be required to offer to repurchase all outstanding Senior Subordinated Notes, in each case, at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase plus accrued and unpaid interest to the date of purchase. If a change of control were to occur, we cannot assure you that we would have sufficient funds available at such time, or that we would have sufficient funds to provide to the relevant Issuer to pay the purchase price of the outstanding Senior Secured Notes or the Senior Subordinated Notes or that the restrictions in our Senior Secured Facilities Agreement, the Senior Secured Notes Indenture, the Senior Subordinated Notes Indenture, the Intercreditor Agreement or our other then existing contractual obligations would allow us to make such required repurchases. A change of control event may result in an event of default under, or acceleration of, our Senior Secured Facilities Agreement and other indebtedness. The repurchase of the Senior Secured Notes and the Senior Subordinated Notes pursuant to such an offer could cause a default under such indebtedness, even if the change of control itself does not. The ability of either the Senior Secured Notes Issuer and the Senior Subordinated Notes Issuer to receive cash from their respective subsidiaries to allow them to pay cash to the holders of the Senior Secured Notes or the Senior Subordinated Notes, respectively, following the occurrence of a change of control, may be limited by our then existing financial resources. In addition, under the terms of the Senior Secured Facilities Agreement, under certain circumstances, we are required to repay an equal amount of debt under our Senior Secured Facilities Agreement if we repay all or a portion of the principal under the Notes. Sufficient funds may not be available when necessary to make any required repurchases. If an event constituting a change of control

occurs at a time when we are prohibited from providing funds to any of the Issuers for the purpose of repurchasing the Notes, we may seek the consent of the lenders under such indebtedness to the purchase of the Notes or may attempt to refinance the borrowings that contain such prohibition. If such a consent to repay such borrowings is not obtained, the Issuers will remain prohibited from repurchasing any Notes. In addition, we expect that we would require third-party financing to make an offer to repurchase the Senior Secured Notes and the Senior Subordinated Notes upon occurance of a change of control event. We cannot assure you that we would be able to obtain such financing.

Any failure by the relevant Issuer to offer to purchase the Senior Secured Notes and the Senior Subordinated Notes would constitute a default under each of the Senior Secured Notes Indenture and the Senior Subordinated Notes Indenture, respectively, which would, in turn, constitute a default under the Senior Secured Facilities Agreement and certain other indebtedness. See "*Description of Senior Secured Notes—Change of Control*" and "*Description of Senior Subordinated Notes—Change of Control*."

The change of control provision contained in the Indentures may not necessarily afford you protection in the event of certain important corporate events, including a reorganization, restructuring, merger or other similar transaction involving us that may adversely affect you, because such corporate events may not involve a shift in voting power or beneficial ownership or, even if they do, may not constitute a "Change of Control" as defined in the relevant Indenture. Except as described under "*Description of Senior Secured Notes—Change of Control*" and "*Description of Senior Subordinated Notes—Change of Control*," each Indenture will not contain provisions that would require the relevant Issuer to offer to repurchase or redeem the Notes in the event of a reorganization, restructuring, merger, recapitalization or similar transaction.

The definition of "Change of Control" in each Indenture will include a disposition of all or substantially all of the assets of the relevant Issuer and its restricted subsidiaries, taken as a whole, to any person. Although there is a limited body of case law interpreting the phrase "all or substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances, there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the relevant Issuer's assets and its restricted subsidiaries taken as a whole. As a result, it may be unclear as to whether a change of control has occurred and whether the Issuers are required to make an offer to repurchase the relevant Notes.

Investors may face foreign exchange risks by investing in the Notes.

The Senior Secured Notes and the Senior Subordinated Notes will be denominated and payable in Euros. If investors measure their investment returns by reference to a currency other than Euros, an investment in the Notes will entail foreign exchange-related risks due to, among other factors, possible significant changes in the value of the Euro relative to the currency by reference to which investors measure the return on their investments because of economic, political and other factors over which we have no control. Depreciation of the Euro against the currency by reference to which investors measure the return on their investments could cause a decrease in the effective yield of the relevant Notes below their stated coupon rates and could result in a loss to investors when the return on such Notes is translated into the currency by reference to which the investors measure the return on their investments.

You may not be able to recover in civil proceedings for U.S. securities law violations.

Each of the Issuers and the Guarantors and their respective subsidiaries are organized outside the United States. The directors and executive officers of the Issuers and the Guarantors are non-residents of the United States and substantially all of their assets are located outside of the United States. Although we and the Guarantors will submit to the jurisdiction of certain New York courts in connection with any action under U.S. securities laws, you may be unable to effect service of process within the United States on these directors and executive officers. In addition, as the assets of the Issuers and the Guarantors and their respective subsidiaries and those of their directors and executive officers are located outside of the United States, you may be unable to enforce judgments obtained in the U.S. courts against them. Moreover, in light of recent decisions of the U.S. Supreme Court, actions of the Issuers and the Guarantors may not be subject to the civil liability provisions of the federal securities laws of the United States.

It may also not be possible for investors to effect service of process within Germany or other countries in which the Guarantors are organized, as the case may be, upon the Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer or the Guarantors or those persons under the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the German and other relevant

laws implementing such convention if such service were deemed to infringe German sovereignty or security, particularly if such service violated the German Basic Law (*Grundgesetz*), or other applicable law. If a judgment is obtained in a U.S. court against the Issuers or any Guarantor or a security provider, investors will need to enforce such judgment in jurisdictions where the relevant company has assets. The noteholders should consult with their advisors in any pertinent jurisdictions as needed to enforce a judgment in those countries or elsewhere outside the United States. See "*Service of Process and Enforcement of Civil Liabilities*."

According to the Austrian Enforcement Act (*Exekutionsordnung*), foreign judgments are only enforceable if the reciprocity is warranted by a bilateral or multilateral treaty between the countries involved or by an ordinance (*Verordnung*) of the Austrian government (in which ordinance the Austrian government confirms the reciprocity). The United States and Austria do not currently have a treaty providing for reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for payment of money rendered by a federal or state court in the United States based on civil liability, whether or not predicated solely upon U.S. federal securities laws, may not be enforceable, either in whole or in part, in Austria. However, if the party in whose favor such final judgment is rendered brings a new suit in a competent court in Austria, such party may submit to the Austrian court the final judgment rendered in the United States. Under such circumstances, a judgment by a federal or state court of the United States against the Austrian Guarantor or its managing directors will be regarded by an Austrian court only as evidence of the outcome of the dispute to which such judgment relates, and an Austrian court may choose to re-hear the dispute. In addition, awards of punitive damages in actions brought in the United States or elsewhere are unenforceable in Austria.

With respect to French Guarantors and Guarantors from other jurisdictions, please refer to "*Service of Process and Enforcement of Civil Liabilities*".

Credit ratings may not reflect all risks, are not recommendations to buy or hold securities and may be subject to revision, suspension or withdrawal at any time.

One or more independent credit rating agencies may assign credit ratings to the Notes. The ratings may not reflect the potential impact of all risks related to the structure, market, additional risk factors discussed herein and other factors that may affect the value of the Notes. A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal by the rating agency at any time. No assurance can be given that a credit rating will remain constant for any given period of time or that a credit rating will not be lowered or withdrawn entirely by the credit rating agency if, in its judgment, circumstances in the future so warrant. A suspension, reduction or withdrawal at any time of the credit rating assigned to the relevant Notes by one or more of the credit rating agencies may adversely affect the cost and terms and conditions of our financing and could adversely affect the value and trading of such Notes.

The transfer of the Notes is restricted, which may adversely affect their liquidity and the price at which they may be sold.

The Notes and the Notes Guarantees have not been registered under, and we are not obliged to register the Notes or the Notes Guarantees under, the U.S. Securities Act or the securities laws of any other jurisdiction and, unless so registered, may not be offered or sold except pursuant to an exemption from, or a transaction not subject to, the registration requirements of the U.S. Securities Act and any other applicable laws. See "*Notice to Investors*." We have not agreed to or otherwise undertaken to register any of the Senior Secured Notes, the Senior Subordinated Notes or the Notes Guarantees, and do not have any intention to do so.

Risks Related to our Ownership

The interests of our principal shareholders may conflict with your interests.

The interests of our principal shareholders, in certain circumstances, may conflict with your interests as holders of the Notes. Investment funds or limited partnerships associated with or managed or designated by the Macquarie Group control us. See "*Shareholders*". The Macquarie Group will be able to appoint a majority of our Management Board and to determine our corporate strategy, management and policies. In addition, the Macquarie Group will have control over our decisions to enter into any corporate transaction and will have the ability to prevent any transaction that requires the approval of shareholders regardless of whether holders of the Notes believe that any such transactions are in their own best interests. For

example, the shareholders could vote to cause us to incur additional indebtedness, to sell certain material assets or make dividends, in each case, so long as the Senior Secured Notes Indenture, the Senior Subordinated Notes Indenture, the Senior Secured Facilities Agreement and the Intercreditor Agreement so permit. The incurrence of additional indebtedness would increase our debt service obligations and the sale of certain assets could reduce our ability to generate revenues, each of which could adversely affect holders of the Notes.

Additionally, funds managed by Macquarie are in the business of making investments in companies and may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. Macquarie may also pursue acquisition opportunities that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us. So long as investment funds associated with or designated by Macquarie collectively continue to own a significant amount of our capital stock, even if such amount is less than 50%, Macquarie will continue to be able to strongly influence or effectively control our decisions. The interests of Macquarie may not coincide with your interests.

USE OF PROCEEDS

On the Issue Date, we will enter into the Senior Secured Facilities Agreement. The proceeds from the Senior Secured Facilities and the offering of the Notes together with cash on hand, will be used on the Issue Date to repay the loans under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement at par (together with accrued fees, costs and expenses) and terminate the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement. On the Issue Date of the Notes, under the Senior Secured Facilities, we will have €450.0 million in aggregate principal amount outstanding under the Term Loan Facility, €50.0 million unutilized commitments under our Capex and Acquisitions Facility and €50.0 million in unutilized commitments under our Revolving Credit Facility. In connection with the Senior Secured Facilities Agreement, we will also terminate certain of our existing interest rate swaps and enter into new interest rate swaps. We refer to the entry into the Senior Secured Facilities Agreement, this offering, the termination of, and repayment of the lenders under, the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, the termination of certain of our interest rate swaps and the entering into of new interest rate swaps and the payment of related fees and expenses as the "Refinancing" in this offering memorandum. The closing of the offering of the Notes is conditional upon the concurrent repayment of the lenders under the Existing Senior Secured Facilities Agreement and the Senior Secured Facilities Agreement being entered into.

A portion of the proceeds of the offering of Notes will be used to repay our lenders under the Existing Senior Secured Facilities Agreement and to break part of our existing swap agreements. Certain of the initial purchasers or their affiliates are lenders under our Existing Senior Secured Facilities Agreement or are our current hedge counterparties and, as such, such parties may receive a portion of the proceeds of the offering the Notes. See "*Plan of Distribution*".

The following table illustrates the estimated sources and uses of funds for the Refinancing. The actual amounts set forth in the table and in the accompanying footnotes, which are based on June 30, 2012 outstanding balances, are subject to adjustment and may differ at the time of the consummation of the Refinancing depending on several factors, including differences from our estimate of fees and expenses and any changes made to the sources of the contemplated debt financings.

You should read "*Capitalization*" and "*Description of Certain Financing Arrangements*" for a more detailed description of our capitalization and financing arrangements following the Refinancing.

Sources of funds: (€ millions)		**Uses of funds:**	
Senior Secured Facilities[1]	450.0	Repayment of Existing Senior Secured Facilities	898.0
Senior Secured Notes offered hereby[2]	410.0	Repayment of Junior Facilities	150.0
Senior Subordinated Notes offered hereby[2]	325.0	Payments in connection with swap termination[3]	123.4
Cash on hand	18.2	Fees and expenses[4]	31.8
Total sources of funds	**1,203.2**	**Total uses of funds**	**1,203.2**

(1) Represents the expected drawings under the Senior Secured Facilities as at the Issue Date. The Senior Secured Facilities also consist of the following: a €50 million Capex and Acquisition Facility and a €50 million Revolving Credit Facility. The Capex and Acquisition Facility will be undrawn as at the Issue Date, and the Revolving Credit Facility will be drawn in an amount of €15.6 million by way of guarantees.

(2) Amounts reflect the proceeds of the Notes without giving effect to any original issue discount.

(3) This amount represents the total amount of payments required in connection with terminating approximately €600 million face value of pre-existing interest rate swaps as a result of the Refinancing.

(4) This amount reflects our estimate of fees and expenses we will pay in connection with the Refinancing, including commitment, placement, financial advisory and other transaction costs and professional fees but excluding any original issue discount.

CAPITALIZATION

The following table sets forth, in each case, as at June 30, 2012, the cash and cash equivalents and capitalization of the Senior Subordinated Notes Issuer and its restricted subsidiaries on an actual and adjusted basis after giving effect to the Refinancing and the application of the proceeds therefrom, as described in "*Use of Proceeds*."

You should read this table in conjunction with "*Selected Consolidated Financial Information,*" "*Use of Proceeds,*" "*Management's Discussion and Analysis of Financial Condition and Results of Operations,*" "*Description of Certain Financing Arrangements,*" "*Description of Senior Secured Notes*," "*Description of Senior Subordinated Notes,*" our Audited Financial Statements and our Unaudited First Quarter Financial Statements included in this offering memorandum (see pages beginning on F-2 in this offering memorandum).

	As at June 30, 2012	
(€ million) (Restricted Group)	**Actual**	**As Adjusted**
	Unaudited	
Cash and cash equivalents	**67.9**	**29.7**[1]
Debt:		
Senior Credit Facilities:[2]		
Senior Facility[3]	829.8	—
Capital Expenditure Facility[4]	67.0	—
Junior Facilities[5]	150.9	—
Other bank loans[6]	1.3	1.3
Senior Secured Facilities[7][8]	—	450.0
Liabilities from finance leases	4.1	4.1
Liabilities due to banks	**1,053.1**	**455.4**
Senior Secured Notes offered hereby[7]	—	410.0
Senior Subordinated Notes offered hereby[7]	—	325.0
Total debt	**1,053.1**	**1,190.4**
Shareholders' equity[9][10]	772.4	734.3
Total capitalization	**1,825.5**	**1,924.7**

(1) We intend to use approximately €38.2 million of cash and cash equivalents to partially pay certain fees and expenses in connection with the Refinancing and to make a distribution to our limited partner in the amount of €20.0 million.

(2) Furthermore, we have a working capital facility as at June 30, 2012 in the amount of €50.0 million, of which €15.6 million has been drawn down by way of guarantees.

(3) The actual figure as at June 30, 2012 includes capitalized fees in an amount of negative €1.2 million.

(4) As at June 30, 2012 an amount of €33.0 million under this facility is undrawn.

(5) The actual figure as at June 30, 2012 includes positive effects due to the application of the effective interest method, amounting to €0.9 million.

(6) As at June 30, 2012 an amount of €0.6 million is undrawn.

(7) The adjusted figures show nominal values and disregard fees that must be deducted in accordance with applicable accounting standards.

(8) Represents the expected drawings under the Senior Secured Facilities as at the Issue Date. The Senior Secured Facilities also will consist of the following: a €50.0 million Capex and Acquisition Facility and a €50.0 million Revolving Credit Facility. The Capex and Acquisition Facility will be undrawn as at the Issue Date, and the Revolving Credit Facility will be drawn in an amount of €15.6 million by way of guarantees.

(9) The adjusted figure disregards (deferred) tax effects of movements in retained earnings.

(10) The adjusted figure includes an expense of €16.0 million due to the swap mark-to-market for the full nominal amount as at June 30, 2012 to the swap value as at September 11, 2012.

SELECTED CONSOLIDATED FINANCIAL INFORMATION

*The financial information contained in the following tables is derived from **2011 Audited Financial Statements,** the **2012 Audited Financial Statements** and the **Unaudited First Quarter Financial Statements**, each prepared in accordance with the International Financial Reporting Standards as adopted by the European Union ("**IFRS**"). Some of the performance indicators and ratios shown below were taken from the Senior Subordinated Notes Issuer's accounting records and are not included in the 2011 Audited Financial Statements, the 2012 Audited Financial Statements and the Unaudited First Quarter Financial Statements.*

The financial information as at and for the financial year ended March 31, 2010 is derived from the comparative figures of the 2011 Audited Financial Statements. The financial information as at and for the three month period ended June 30, 2011 is derived from the comparative figures of the Unaudited First Quarter Financial Statements.

The financial information as at and for the financial year ended March 31, 2011 is derived from the comparative figures of the 2012 Audited Financial Statements due to a change in accounting policy in the financial year ended March 31, 2012 which was applied retrospectively to the financial information for the financial year ended March 31, 2011 contained in the 2012 Audited Financial Statements in accordance with IAS 8 (for more information please refer to Section E. of the 2012 Audited Financial Statements included elsewhere in this offering memorandum). That change was not made retroactively to the financial information as at and for the financial year ended March 31, 2010 contained in the comparative figures of the 2011 Audited Financial Statements, or to the financial information as at and for the financial year ended March 31, 2011 contained in the 2011 Audited Financials. Because of that change the comparability of financial information derived from the 2011 Audited Financial Statements and the 2012 Audited Financial Statements is limited.

Where financial information in the following tables is labeled "audited," this means that it was taken from the audited financial statements mentioned above. The label "unaudited" is used in the following tables to indicate financial information that was taken or derived from the Senior Subordinated Notes Issuer's accounting records or management reporting system and not included in its audited financials statements mentioned. Unless stated otherwise, all of the financial data presented in the text and tables in this section of the offering memorandum is shown in millions of Euros (€ million), commercially rounded to a one decimal point. Because of this rounding, the figures shown in the tables do not in all cases add up exactly to the respective totals given.

As the Senior Secured Notes Issuer is a wholly-owned, direct subsidiary of the Senior Subordinated Notes Issuer, and as the financial results of the Senior Secured Notes Issuer are consolidated with those of the Senior Subordinated Notes Issuer, this offering memorandum does not contain a complete set of financial figures for the Senior Secured Notes Issuer. The Senior Subordinated Notes Issuer will guarantee the Senior Secured Notes.

Results of operations for prior years or the interim period are not necessarily indicative of the result to be expected for the full year or any future period.

The following selected financial information should be read together with the section "Presentation of Financial Information," "Summary Consolidated Financial Information" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," the consolidated financial statements contained in this offering memorandum and the related notes and the additional financial information contained elsewhere in this offering memorandum.

You should regard the selected financial and business data below only as an introduction and should base your investment decision on a review of the offering memorandum in its entirety.

Selected Consolidated Statement of Income Data

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
		Audited		Unaudited	
Revenues	687.5	731.1	692.9	158.8	150.7
Capitalized internal work	8.5	9.8	12.0	2.6	2.7
Other income	5.2	7.5	6.7	1.1	1.3
Product expenses and purchased services	(283.0)	(299.2)	(238.2)	(59.0)	(48.4)
Personnel expenses	(160.7)	(160.8)	(170.0)	(42.2)	(43.4)
Depreciation of metering devices for rent, fixed and intangible assets	(96.7)	(95.4)	(105.2)	(25.0)	(24.9)
Other expenses	(90.2)	(84.8)	(85.4)	(19.8)	(20.9)
Earnings before interest and tax (EBIT)	**70.7**	**108.3**	**113.0**	**16.5**	**17.1**
Net share of loss/gain of associates	(1.7)	0.1	(0.4)	(0.6)	0.3
Impairment of associates	—	—	(14.5)	—	—
Financial income	5.2	41.1	3.4	0.4	0.6
Finance costs[1]	(115.7)	(97.4)	(159.5)	(52.4)	(40.6)
Earnings before tax	**(41.5)**	**52.2**	**(58.0)**	**(36.0)**	**(22.7)**
Income taxes	24.5	(8.7)	5.0	4.4	3.7
(Net loss)/Net income[2]	**(17.0)**	**43.4**	**(53.0)**	**(31.6)**	**(19.0)**

(1) Including finance costs of Unrestricted Subsidiaries in an amount of €0 for the financial years ended March 31, 2010 and 2011, €4.3 million for the financial year ended March 31, 2012, €1.3 million for the three-month period ended June 30, 2011 and €0.8 million for the three-month period ended June 30, 2012.

(2) As at all periods stated above there is no non-controlling interest in the Group.

Selected Consolidated Statement of Financial Position Data

(€ million)	As at March 31,			As at June 30, 2012
	2010	2011	2012	
		Audited		Unaudited
Cash and cash equivalents[1]	33.2	64.5	72.2	77.9
Total current assets	413.5	476.1	411.9	372.5
Total non-current assets	1,921.6	2,034.5	2,000.5	1,993.2
Total assets[2]	**2,335.1**	**2,510.6**	**2,412.4**	**2,365.8**
Total current liabilities	285.5	314.7	332.0	312.7
thereof:				
Financial liabilities (current)[3]	13.9	24.2	7.8	7.6
Other (current) financial liabilities	134.5	97.3	185.7	212.0
Total non-current liabilities	1,210.3	1,318.0	1,287.7	1,279.5
thereof:				
Financial liabilities (non-current)[4]	1,045.2	1,135.3	1,114.6	1,111.7
Other (non-current) financial liabilities	1.0	5.5	7.4	6.7
Total equity	**839.3**	**877.9**	**792.8**	**773.5**
Total liabilities and equity	**2,335.1**	**2,510.6**	**2,412.4**	**2,365.8**

(1) Including cash and cash equivalents of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €12.4 million as at March 31, 2011, €10.0 million as at March 31, 2012 and €10.0 million as at June 30, 2012.

(2) Including assets of Unrestricted Subsidiaries in an amount of €13.0 million as at March 31, 2010, €152.8 million as at March 31, 2011, €129.0 million as at March 31, 2012 and €127.2 million as at June 30, 2012.

(3) Including financial liabilities (current) of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €6.6 million as at March 31, 2011, €5.7 million as at March 31, 2012 and €5.7 million as at June 30, 2012.

(4) Including financial liabilities (non-current) of Unrestricted Subsidiaries in an amount of €0 as at March 31, 2010, €64.6 million as at March 31, 2011, €60.3 million as at March 31, 2012 and €60.4 million as at June 30, 2012.

Selected Consolidated Cash Flow Statement Data

The 2012 and 2011 consolidated statement of cash flows as presented in the 2012 Audited Financial Statements are not comparable to the 2010 consolidated statement of cash flows as presented in the 2011 Audited Financial Statements (see Annual Financial Statements beginning on page F-2 of this offering memorandum). In the 2012 Audited Financial Statements, the structure and the calculation method of the consolidated statement of cash flows has been changed, leading to differences in definitions of single line items. The 2010 consolidated statement of cash flows is presented in the changed structure and is based on the same calculation method and certain parts are therefore labeled unaudited.

	Financial year ended March 31,			Three-month period ended June 30,	
(€ million)	**2010**	**2011**	**2012**	**2011**	**2012**
		Audited		**Unaudited**	
Net cash generated by operating activities	94.8	132.2	145.9	30.3	26.5
Cash flows used in investing activities	(65.2)	(71.5)	(79.5)	(13.5)	(20.7)
Free cash flow[1]	29.6	60.7	66.4	16.8	5.8
Net cash used in financing activities	(129.3)	(29.5)	(58.5)	(16.3)	(0.1)

(1) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Investors should read the following discussion of our financial condition and results of operations in conjunction with our consolidated financial statements, the related notes to those consolidated financial statements, the additional financial information contained elsewhere in this offering memorandum and together with "Presentation of Financial Information." Some of the statements contained below, including those concerning future revenues, costs, capital expenditures, acquisitions and financial condition, contain forward-looking statements. As such statements involve inherent uncertainties, actual results may differ materially from the results expressed in or implied by such forward-looking statements. Investors can find a discussion of such uncertainties under "Disclosure Regarding Forward Looking Statements." In addition, investing in our notes involves undertaking certain risks. Investors can find a discussion of the risks accompanying an investment in our notes under "Risk Factors."

The financial information contained in the following discussion relates to the Senior Subordinated Notes Issuer and its subsidiaries. As the Senior Secured Notes Issuer is a wholly-owned, direct subsidiary of the Senior Subordinated Notes Issuer, and as the financial results of the Senior Secured Notes Issuer are consolidated with those of the Senior Subordinated Notes Issuer, this offering memorandum does not contain a complete set of financial figures for the Senior Secured Notes Issuer. The Senior Subordinated Notes Issuer will guarantee the Senior Secured Notes.

The financial information as at and for the financial years ended March 31, 2010 (the "2010 financial year"), March 31, 2011 (the "2011 financial year") and March 31, 2012 (the "2012 financial year") contained in the following discussion is based on the 2011 Audited Financial Statements and the 2012 Audited Financial Statements. The financial information as at and for the three-month periods ended June 30, 2012 (the "three-month period ended June 30, 2012") and June 30, 2011 (the "three-month period ended June 30, 2011") contained in the following discussion is based on the Unaudited First Quarter Financial Statements. All of these consolidated financial statements have been prepared in accordance with IFRS. The aforementioned IFRS financial statements of the Senior Subordinated Notes Issuer are included in this offering memorandum beginning on page F-1.

The financial information as at and for the financial year ended March 31, 2010 is derived from the comparative figures of the 2011 Audited Financial Statements. The financial information as at and for the three-months period ended June 30, 2011 is derived from the comparative figures of the Unaudited First Quarter Financial Statements.

The financial information as at and for the financial year ended March 31, 2011 is derived from the comparative figures of the 2012 Audited Financial Statements due to a change in accounting policy in the financial year ended March 31, 2012 which was applied retrospectively to the financial information for the financial year ended March 31, 2011 contained in the 2012 Audited Financial Statements in accordance with IAS 8 (for more information please refer to Section E. of the 2012 Audited Financial Statements included elsewhere in this offering memorandum). That change was not made retroactively to the financial information as at and for the financial year ended March 31, 2010 contained in the comparative figures of the 2011 Audited Financial Statements, or to the financial information as at and for the financial year ended March 31, 2011 contained in the 2011 Audited Financials. Because of that change the comparability of financial information derived from the 2011 Audited Financial Statements and the 2012 Audited Financial Statements is limited.

Where financial information in the following tables is labeled "audited," this means that it was taken from the audited financial statements mentioned above. The label "unaudited" is used in the following tables to indicate financial information that was taken or derived from the Senior Subordinated Notes Issuer's accounting records or management reporting system and not included in its audited financials statements mentioned. Unless stated otherwise, all of the financial data presented in the text and tables in this section of the offering memorandum is shown in millions of Euros (€ million), commercially rounded to a one decimal point. Because of this rounding, the figures shown in the tables do not in all cases add up exactly to the respective totals given.

Results of operations for prior years or the interim period are not necessarily indicative of the result to be expected for the full year or any future period. Prospective investors should bear in mind that the performance indicators and ratios that we report herein, such as Adjusted revenues, EBITDA, Adjusted EBITDA, free cash flow and working capital (each as defined in this offering memorandum) are not financial measures defined in accordance with IFRS, U.S. GAAP or HGB and, as such, may be calculated by other companies using different methodologies and having different result. Therefore, these performance indicators and ratios are not directly comparable to similar figures and ratios reported by other companies.

The following financial information should be read together with the section "Presentation of Financial Information," the consolidated financial statements contained in this offering memorandum and the related notes and the additional financial information contained elsewhere in this offering memorandum.

Overview

We are a leading global energy services provider. Our business model combines our primary business, sub-metering, with various additional products and services which target the energy contracting sector in particular. We provide our sub-metering services based on devices we install that are manufactured by third parties to meet our specification. Our business is organized in two business segments: "Energy Services" and "Energy Contracting".

Within the Energy Services business segment, we offer sub-metering services to approximately 400,000 customers, landlords and property managers, in 22 countries, with our core market being Germany. Sub-meters measure the heating use and water consumption of individual units within a commercial or residential multi-unit building with a central heating or cooling system and allow the landlord or property manager to subsequently allocate the costs to different tenants on the basis of the tenant's actual individual consumption. We provide our customers with measurement, sub-meter reading, cost allocation and billing services. In order to be able to provide the billing service, we rent or sell heat and water sub-meters as well as heat cost allocators to our customers and offer the maintenance services required for such devices. We provide sub-metering services for approximately 9.1 million units by means of approximately 45.9 million installed sub-metering devices. Utilizing the consumption data collected by our sub-metering devices, we also offer value added services that are designed to help landlords and property managers monitor consumption and increase the efficient use of energy.

In addition to sub-metering services, we offer supplementary services within our Energy Services business segment, which benefit from our knowledge of regulatory requirements and our process know-how in managing access to our customers' buildings. These supplementary services include the installation and maintenance of smoke detectors, which are required by law in many German federal states, and, recently, the performance of legionella analysis in drinking water, which also is required by law in Germany.

For the 2012 financial year, our Energy Services business segment generated total revenues of €530.1 million and Adjusted EBITDA of €201.5 million. Germany generated 75% of such revenues, with the remainder generated by our international operations outside of Germany.

Our Energy Contracting business segment was established in 1992. The system contracting solutions we offer in our Energy Contracting business segment mainly comprise the planning, financing, construction and operation of heat stations, boilers, cooling equipment and combined heating and power units ("**CHP-units**"). These projects are generally customer-specific and the fuel price risk remains with our customers. Our Energy Contracting business benefits from our expertise in energy consumption and our market access gained through our sub-metering activities.

For the 2012 financial year, our Energy Contracting business segment generated revenues of €162.8 million, with 47% of our revenue resulting from Energy Contracting services provided in the residential sector. The segment generated Adjusted EBITDA of €26.8 million, representing 12.0% of our total Adjusted EBITDA.

Key Factors Affecting Our Results of Operations and Financial Condition

Factors affecting our results of operations include the following:

- *Demand and prices for our devices and services.* The volume of revenues we generate generally depends on the demand for our devices and services, as well as our prices for those devices and services.

  In Germany, we benefit from long-term and established customer relationships. The duration of our typical customer contract in Energy Services is between 5 and 10 years, whereas in Energy Contracting, our average contract duration is between 10 and 15 years. In addition, more than 95% of our contracts in Energy Services have historically been renewed at or prior to expiry. We have consistently had churn rates well under 5% over the past five years and have managed to further reduce our customer churn levels in the last three years. As our customers are primarily landlords and property managers of multi-tenant residential buildings and public and commercial buildings, the revenues we generate also depend on the total number of such buildings in a relevant market, the

number that are equipped or can be equipped with sub-metering devices, the average number of devices per building and the number of related services we render. For example, demand for our devices decreases as a result of the deconstruction of apartment buildings, which primarily occurs in the former Eastern German federal states. In our core market Germany, an amendment to the legislation that makes sub-metering mandatory requires that the oldest versions of evaporator-based heat cost allocators (*Altverdunster*) be phased out by December 31, 2013. This change offers the opportunity to increase the number of rented, revenue-generating devices in an otherwise saturated market by upgrading our customers from evaporators, which are typically purchased and do not generate rental revenue over several years, to rented equipment. Moreover, it will allow us to offer to those customers our value-added services that require modern radio-controlled technology.

In mature international markets, where sub-metering penetration is similar to the German market, demand is typically determined by drivers similar to those in Germany. In other international markets where sub-metering penetration is lower and the industry is less established, the most important driver of demand is the number of buildings that can be equipped with sub-metering devices.

With respect to our billing services, we increased our prices in Germany by 3.75% in the 2012 financial year, 3.36% in the 2011 financial year and 1.76% in the 2010 financial year. Prices are adjusted on a yearly basis mainly following the development of consumer prices and cost of labor. The rental and sales prices we charge for our devices depend on the technology utilized in the device. For instance, we can charge higher prices for radio-controlled devices than for mechanical or electronic devices. There has been a shift from mechanical (evaporator) and electronic devices to more sophisticated and efficient radio-controlled devices due to technology advancements, demand from tenants for increased service levels and favorable regulation in Germany. Outside Germany, our service prices are overall also typically increased.

- *Seasonality.* In our Energy Services segment, the major part of our revenues is derived from equipment rental, maintenance and billing agreements. In general, these are invoiced once a year, leading to the recognition of billed receivables. Revenues from rental and maintenance agreements are recognized as accruals on a straight-line basis over the term of the agreement. Revenues from billing services are recognized with respect to the services already rendered following the degree-of-completion. Most of our reading and billing activity occurs during the winter months as December 31 is the most popular annual determination date for sub-metering data. Hence, most of the billing revenue is recognized according to the progress of the completion of the reading and billing between November and April.

  In general, as we improve internal processes and increase the automation of our billing, we achieve greater progress of completion than previously. Hence, we accrue billing revenue faster and invoice faster, concentrating even more revenue recognition in a shorter time period around December 31st. This means that over time the amount of billing revenue recognized in the final quarter of our financial year increases relative to the billing revenue recognized in the other quarters of our financial year, especially with respect to the first quarter of our financial year. Similarly, our working capital pattern is therefore linked to this annual cycle. In addition, in January 2012, a near-time billing practice was introduced in the Energy Services business segment in Germany pursuant to which part of the rental and maintenance services are invoiced directly after the end of the rental period in December, leading to an earlier settlement of related receivables.

- *Innovation.* Product and service innovation is an important factor in the business environment in which we operate. For instance, we were the first to introduce radio-based technologies to the market on a large scale. Since bringing them to the market and building them into devices we have seen growing demand for such radio-controlled devices and we have been able to increase our margins through the use of these devices because the purchase and rental prices are higher, the costs for reading them are lower compared to evaporators or electronic devices and we are able to offer our value added services to customers using such devices. We believe that, with the range and quality of our products and services, we are highly competitive in the market. For example, we initiated and expanded our "bautec-system," which enables our customers to fully integrate our billing services and invoices into their individual IT-systems. Furthermore, through our energy saving system *adapterm* and our *Techem Smart System* we offer our customers the opportunity to, on a tailor-made basis, limit energy usage and reduce energy costs. Additionally, we provide customer support and advice to our customers as to the most efficient means to purchase energy and possible steps our customers may take to reduce energy costs for their buildings.

- *Social, political and regulatory developments.* In certain countries in Europe there are signs of increased public awareness for the need and political intention to implement energy-saving measures, both in business as well as in private life. Higher prices for energy and water increase the need for individuals to reduce energy and water consumption, fostering the interest of individuals to inform themselves about energy costs related to their housing. As a result, such individuals desire to only pay for their own consumption.

  These social developments are supported by favorable regulatory developments. In Germany, several regulations have supported the development of sub-metering. For instance, pursuant to the Heating Cost Ordinance (*Verordnung über Heizkostenabrechnung—HeizkostenV*), the owner of a multi-unit commercial or residential building is required to perform measuring and billing of heating and hot water based on individual consumption by the end-user. In addition, the building codes (*Landesbauordnungen*) of most German federal states also provide for an obligation to measure the consumption of cold water in residential units, at least with respect to new buildings. We believe that there also is an international trend toward an increase in legislation aimed at saving energy. In Europe, in addition to the regulation already being in place in certain European countries, the EU Parliament adopted a directive on energy efficiency on September 11, 2012. The directive imposes an obligation to provide final customers with individual sub-meters that accurately measure and make available their energy consumption, provide information on the actual time of use of energy and ensure that billing is accurate and based on actual consumption. Currently, it is envisaged that the directive will be implemented into national law by the first quarter of 2014. For further information please see "*Regulation—Energy Services—European legislation to limit energy consumption and implementation in Germany—Directive on energy end-use efficiency and energy services*."

  The regulatory environment also affects our energy contracting business, in particular the discontinued offer of efficiency contracting. In 1999, the German legislator implemented a tax which increased the costs of energy for companies and individuals in order to induce them to consume energy more efficiently. To maintain the international competitiveness, manufacturing companies (including contracting companies) (*Unternehmen des Produzierenden Gewerbes*) could claim tax reliefs. Based on these provisions, manufacturing companies were able to offer energy consulting services to certain customers that could achieve a reduction in the customers' energy costs in the range of 10% to 20% ("**Efficiency Contracting**"). New legislation (the *Haushaltsbegleitgesetz*) came into effect on January 1, 2011 and limited the scope of the tax reliefs for the energy contracting companies. According to this new legislation, tax reliefs are only granted if the company using the secondary energy is also a manufacturing company. Due to this limitation, our Efficiency Contracting services became less attractive to our customers as they usually were not manufacturing companies. We therefore decided to discontinue the Efficiency Contracting such that revenue declined significantly from €129.6 million in the 2011 financial year to €17.6 million in the 2012 financial year (and to €1.0 million for the three-month period ended June 30, 2012 and we expect it to be zero for all periods thereafter). As margin on these products was relatively low, our results were not affected as strongly as our revenue.

- *Competition and price pressure.* Our businesses are subject to strong competition. However, in our sub-metering business, entry into the market is cost intensive, customers are under long-term contracts and our radio-controlled devices are not compatible with those of our competitors, resulting in a relatively stable market position for us. In our energy contracting business, the market in Germany is characterized by many service providers, of which we are one of the larger independent companies not affiliated with a local utility or an equipment provider. Our energy contracting business, aside from our activities related to GWE's operations, is primarily focused on the residential market in order to leverage our existing customer relationships in energy services. In the commercial clients market, some of our competitors with ancillary business interests, such as the provision of primary energy or equipment, offer their services at very low margins in order to protect existing customer relationships. However, as a consequence of the abolishment of tax reliefs for energy contracting, some of our competitors have exited the energy contracting market due to a decrease in the financial attractiveness of their products.

- *Internal reorganization.* In the financial year 2009, we initiated our "Best in Sales and Services" reorganization program ("**BiSS**"). The main objectives of the BiSS program, which has now been almost fully implemented—were the reduction of the number of branches in Germany, the specialization of employees in one of three areas of the business (sales, customer relationship or operations), as well as the standardization and automation of our production and service operations

processes. The BiSS program led to a reduction in the number of employees in our field organization and headquarters due to the automation of work processes. We expect to realize the full benefit of the cost savings from the BiSS program by the end of the 2014 financial year. The cost savings are the result of improved efficiency together with a higher quality in our meter-reading, billing and installation processes. We restructured our field organization into seven regions with individual profit and loss responsibility and introduced specialization for each individual step in our operational processes. We have incurred costs in connection with the BiSS program in the amount of €2.3 million in the 2012 financial year, €4.5 million in the 2011 financial year and €21.3 million in the 2010 financial year. As a result of the BiSS program, we have experienced increased revenues resulting from an improved churn rate and about 15% more working time invested by our sales employees in sales activity.

In addition to the BiSS program, we have initiated further ongoing initiatives, in particular regarding our IT operations and our mass processes (reading, billing and installation), in order to further reduce costs and improve quality by automation.

- *Acquisitions.* While we typically develop our business organically, we opportunistically consider small acquisitions from time to time, primarily in Energy Services, to increase our market share.

  On March 31, 2012, Techem Energy Services GmbH acquired MessKom Energiemanagement GmbH, located in Magdeburg, Germany, for a purchase price of €4.4 million. The business focuses on the recording, allocation and billing of energy and water consumption, the core business activities of Techem Energy Services GmbH in Germany. The acquisition was undertaken primarily to increase market share and realize synergy effects. Costs directly attributable to the purchase of MessKom Energiemanagement GmbH were €29 thousand, which have been recognized in other expenses.

  On March 25, 2011, Techem Energy Services GmbH acquired GWE Projectdevelopment GmbH ("**GWE PD**") from GWE Holding GmbH for a purchase price of €0.3 million. Immediately thereafter, GWE Holding GmbH became a member of the Group through a capital contribution in kind of €40.7 million from MEIF II Germany Holding S.à r.l., the limited partner of the Senior Subordinated Notes Issuer, as part of an intra fund reorganization (which was treated as an acquisition under IFRS 3). GWE Holding GmbH directly and indirectly held the shares of nine subsidiaries and two associated companies (the "**GWE Group**"). The acquisition was recognized as at March 31, 2011. The business activities of the GWE Group involve the development, construction and operation of combined heat and energy generating plants of different sizes. Costs directly attributable to the transaction were €1.3 million, which have been recognized in other expenses. During the 2012 financial year the GWE Group was restructured to reduce the number of entities. GWE PD was merged into Techem Energy Contracting GmbH (and thus is part of the restricted group) and ultimately GWE Holding GmbH was renamed to GWE Gesellschaft für wirtschaftliche Energieversorgung mbH. GWE and its subsidiaries will be unrestricted subsidiaries under the Indentures governing the Notes.

  On December 1, 2009, Techem Energy Services GmbH acquired all the shares in MEIF II Energie France SAS, which were ultimately owned by MEIF II Luxembourg Holding S.à r.l., an indirect parent company of the Senior Subordinated Notes Issuer. MEIF II Energie France SAS directly and indirectly held all the shares in Holding Farnier SAS and Compteurs Farnier SAS. The purchase price in an amount of €20.1 million was financed by a capital contribution in kind by way of contributing the shares of the acquired company into Techem Energy Services GmbH. MEIF II Energie France SAS and its subsidiaries are primarily in the business of recording, cost-allocation and billing services, maintenance and the rental and sale of metering devices. The acquisition was undertaken with a view to expand our business operations in France. Costs directly attributable to the purchase of MEIF II Energie France SAS and its subsidiaries were €36 thousand. The company name of MEIF II Energie France SAS had been changed to Techem Energie France SAS. Subsequently Holding Farnier SAS was merged into Compteurs Farnier SAS and the company name of Compteurs Farnier SAS was changed to Techem SAS.

- *Leverage, interest rates and hedging.* We are, and following the consummation of the Refinancing, including the offering of the Notes, will continue to be, highly leveraged and we have substantial debt service obligations. As a major part of our financing obligations are subject to floating interest rates, we have engaged in significant hedging transactions in an attempt to reduce our exposure to interest rate fluctuation risk. As at March 31, 2012, 95.5% of our floating interest rate exposure was hedged through to maturity. As at March 31, 2012, the notional amount of our interest hedges amounted to

€2,046 million. We hedged €1,000 million of debt float-to-fix on a six-month Euribor level fixed through 2018. Further, we have entered into basis swaps for the same notional amount but which mature at the end of October 2012. These basis swaps swap six-month to three-month Euribor, the current interest period under the loan documents. Additionally, we have some swaps in place at the GWE level. The interest rate hedges are measured at fair value, using the mark-to-market method. Changes in the market value are mainly recognized (except for hedges of IHKW Industrieheizkraftwerk Andernach GmbH which qualify for hedge accounting) in the income statement. For instance, the decrease of the forward market interest rate level in the 2012 financial year compared to the 2011 financial year led to an increase in the negative market value of our hedging instruments and a loss in our income statement of €81.3 million (recorded in finance costs). In the 2011 financial year, as interest rates increased compared to the 2010 financial year, we recognized a gain in the amount of €38.6 million. For more information regarding our hedges, please refer to "*—Quantitative and Qualitative Disclosures Regarding Market Risk*."

In connection with the Refinancing, which will lead to a partial termination of the described interest rate hedges, the respective negative market value of our terminated hedging instruments will have to be paid to the respective hedge counterparties. For further detail see "*Summary—The Refinancing*," "*Description of Certain Financing Agreements—Hedging Agreements*" and "*—Quantitative and Qualitative Disclosure Regarding Market Risk—Interest rate instruments not subject to hedge accounting*."

Results of Operations

The following table summarizes our financial performance for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
		Audited		Unaudited	
Revenues	687.5	731.1	692.9	158.8	150.7
Capitalized internal work	8.5	9.8	12.0	2.6	2.7
Other income	5.2	7.5	6.7	1.1	1.3
Product expenses and purchased services	(283.0)	(299.2)	(238.2)	(59.0)	(48.4)
Personnel expenses	(160.7)	(160.8)	(170.0)	(42.2)	(43.4)
Depreciation of metering devices for rent, fixed and intangibles assets	(96.7)	(95.4)	(105.2)	(25.0)	(24.9)
Other expenses	(90.2)	(84.8)	(85.4)	(19.8)	(20.9)
Earnings before interest and tax (EBIT)	**70.7**	**108.3**	**113.0**	**16.5**	**17.1**
Net share of loss/gain of associates	(1.7)	0.1	(0.4)	(0.6)	0.3
Impairment of associates	—	—	(14.5)	—	—
Financial income	5.2	41.1	3.4	0.4	0.6
Finance costs[1]	(115.7)	(97.4)	(159.5)	(52.4)	(40.6)
Earnings before tax	**(41.5)**	**52.2**	**(58.0)**	**(36.0)**	**(22.7)**
Income taxes	24.5	(8.7)	5.0	4.4	3.7
(Net loss)/Net income[2]	**(17.0)**	**43.4**	**(53.0)**	**(31.6)**	**(19.0)**

(1) Including finance costs of Unrestricted Subsidiaries in an amount of €0 for the financial years ended March 31, 2010 and 2011, €4.3 million for the financial year ended March 31, 2012, €1.3 million for the three-month period ended June 30, 2011 and €0.8 million for the three-month period ended June 30, 2012.

(2) As at all periods above there is no non-controlling interest in the Group.

Segment Results

Revenues

The following table shows the revenues of our segments with third parties for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
	Unaudited, unless stated otherwise			Unaudited	
Energy Services	488.6[3]	515.7[3]	530.1[3]	117.2	117.9
Thereof:					
Energy Services Germany	383.4	389.1	397.7	86.0	85.3
Energy Services International[1]	105.2	126.6	132.4	31.3	32.6
Energy Contracting	198.9[3]	215.4[3]	162.8[3]	41.5	32.8
Including, but not limited to:					
Efficiency Contracting	118.6	129.6	17.6	14.8	1.0
GWE Group[2]	—	—	45.3	10.5	10.6
Other	—	—	—	—	—
Total Revenues Group	**687.5[3]**	**731.1[3]**	**692.9[3]**	**158.8**	**150.7**

(1) International includes: Western Europe (Austria, Switzerland, Belgium, Luxembourg, Denmark, Netherlands, France and Italy), Eastern Europe (Poland, Czech Republic, Slovakia, Hungary, Serbia, Russia, Romania, Bulgaria and Turkey) and Asia/ Southern America (Dubai, India and Brazil).

(2) GWE and its subsidiaries will be designated as unrestricted subsidiaries under the Indentures governing the Notes. To obtain revenues of the restricted Group, revenues of the GWE Group have to be excluded. Additionally, revenues of Group companies with GWE Group which are eliminated for the consolidated revenue number have to be added back (€1.3 million in the 2012 financial year, €0.1 million in the three-month period ended June 30, 2011 and €0.5 million in the three-month period ended June 30, 2012).

(3) Audited.

The following tables set forth our revenues by region for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
		Audited		Unaudited	
Germany	579.2	600.0	555.5	127.3	118.0
International[1]	108.3	131.1	137.4	31.5	32.7
Total Revenues Group	**687.5**	**731.1**	**692.9**	**158.8**	**150.7**

(1) International includes: Western Europe (Austria, Switzerland, Belgium, Luxembourg, Denmark, Netherlands, France and Italy), Eastern Europe (Poland, Czech Republic, Slovakia, Hungary, Serbia, Russia, Romania, Bulgaria and Turkey) and Asia/ Southern America (Dubai, India and Brazil).

The revenues we generated outside Germany amounted to 19.8% of our total revenue in the 2012 financial year (17.9% in the 2011 financial year and 15.8% in the 2010 financial year).

EBITDA

Management evaluates each of our business segments using a measure that reflects all of the segment's revenues and expenses. Management believes the most appropriate measure in this regard is EBITDA as it is helpful for investors as a measurement of the segment's ability to generate cash and to service financing obligations. We adjust our EBITDA for one-off extraordinary expenses and income in order to obtain Adjusted EBITDA.

The following tables show the EBITDA of our segments and the Adjusted EBITDA for the periods indicated:

EBITDA[1]

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
	Unaudited, unless stated otherwise			Unaudited	
Energy Services	147.5	177.1	197.8	39.2	36.5
Energy Contracting	27.6	27.7	25.6	3.0	6.6
Other[2]	(7.7)	(1.1)	(5.2)	(0.7)	(1.1)
Total EBITDA Group[1]	**167.4**	**203.7[3]**	**218.2[3]**	**41.5**	**42.0**

(1) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(2) Other comprises the non-operating holding companies, as well as consolidation journal entries.

(3) Audited.

ADJUSTED EBITDA

Please find below the reconciliation calculation from EBIT to EBITDA and from EBITDA to Adjusted EBITDA for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
	Unaudited, unless stated otherwise			Unaudited	
Earnings before interest and tax (EBIT)	**70.7[1]**	**108.3[1]**	**113.0[1]**	**16.5**	**17.1**
Depreciation of metering devices for rent, fixed and intangibles assets	96.7[1]	95.4[1]	105.2[1]	25.0	24.9
EBITDA Group[2]	**167.4**	**203.7[1]**	**218.2[1]**	**41.5**	**42.0**
Best in Sales and Services (BiSS)—reorganization program	21.3	4.5	2.3	0.1	0.1
Restructuring of GWE Group[4]	—	—	1.2	—	—
Transaction costs upon entry of GWE Group into the Group and acquisition of GWE PD[4]	—	1.3	—	—	—
Gain recognized upon entry of GWE Group into the Group and acquisition of GWE PD[4]	—	(2.8)	—	—	—
Compensation payments former directors	3.7	—	—	—	—
Restructuring of MESA[5]	1.5	—	—	—	—
Other	1.4	1.0	2.2	—	0.2
Total one-off effects	**27.9**	**4.0**	**5.7**	**0.1**	**0.3**
Adjusted EBITDA Group[2]	**195.3**	**207.7**	**223.9**	**41.6**	**42.3**
Thereof:					
Energy Services	171.0	183.9	201.5	39.3	36.8
Energy Contracting	27.6	27.7	26.8	3.0	6.6
Other	(3.3)	(3.9)	(4.4)	(0.7)	(1.1)
Adjustments to eliminate unrestricted subsidiaries[3]	—	—	(14.7)	0.2	(4.6)
Adjusted EBITDA Restricted Group[2]	**195.3**	**207.7**	**209.2**	**41.8**	**37.7**

(1) Audited.

(2) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(3) Adjustments to eliminate unrestricted subsidiaries excludes EBITDA of the GWE Group as GWE and its subsidiaries will be unrestricted subsidiaries under the Indentures governing the Notes. For the 2012 financial year it also excludes certain one-off effects recorded in GWE Group in an amount of €1.2 million. Our other unrestricted subsidiary, Thermie Serres, is accounted for under the equity method.

(4) GWE and its subsidiaries (referred to herein as the "GWE Group") will be unrestricted subsidiaries under the Indentures governing the Notes. The GWE Group became a part of our Group on March 31, 2011, as the result of a capital contribution in kind from MEIF II Germany Holdings S.á r.l., the limited partner of the Senior Subordinated Notes Issuer.

(5) MESA refers to MESA messen & abrechnen GmbH, which was merged into Techem Energy Services GmbH and became a member of our Group in October 2009.

For more information with respect to the Best in Sales and Services—reorganization program (BiSS), please see "*—Key Factors Affecting Our Results of Operations and Financial Condition—Restructuring programs*." The line-item "Restructuring of GWE Group" relates to expenses in connection with the closing of one of the GWE Group's local offices in South Germany. The line-item "Compensation payments former directors" refers to a compensation payment to a former managing director of Techem GmbH in the 2010 financial year. The line-item "Restructuring of MESA" relates to expenses in connection with the merger of MESA messen & abrechnen GmbH into Techem Energy Services GmbH, which occurred in October 2009.

Three-month period ended June 30, 2012 compared with three-month period ended June 30, 2011

Revenues

Our total revenues decreased 5.1% to €150.7 million in the three-month period ended June 30, 2012 from €158.8 million in the three-month period ended June 30, 2011. The revenues in our segments developed as follows:

- Our revenues in the Energy Services segment increased 0.6% to €117.9 million in the three-month period ended June 30, 2012 from €117.2 million in the three-month period ended June 30, 2011 and as a percentage of our total revenues, increased to 78.2% from 73.8%. Revenues of Energy Services Germany slightly decreased 0.8% to €85.3 million in the three-month period ended June 30, 2012 from €86.0 million in the three-month period ended June 30, 2011. Revenues of Energy Services International increased 4.2% to €32.6 million in the three-month period ended June 30, 2012 from €31.3 million in the three-month period ended June 30, 2011 due to the growth in our international sub-metering business (e.g. the number of installed sub-metering devices increased 8.6% and the share of radio-controlled sub-metering devices increased from 32.9% to 41.8%).
- Our revenues in the Energy Contracting segment decreased 21.0% to €32.8 million in the three-month period ended June 30, 2012 from €41.5 million in the three-month period ended June 30, 2011 and, as a percentage of our total revenues decreased to 21.8% in the three-month period ended June 30, 2012 from 26.1% in the three-month period ended June 30, 2011. This decrease was primarily attributable to the discontinuation of the Efficiency Contracting product range following the discontinuation of tax reliefs for energy contracting services. For more info, please refer to "*—Key Factors Affecting Our Results of Operations and Financial Condition—Cultural, political and regulatory developments.*" Revenues relating to the system contracting product range increased 18.8% to €17.1 million in the three-month period ended June 30, 2012 from €14.4 million in the three-month period ended June 30, 2011. This increase was primarily attributable to a higher gas price and an increase in incoming orders at the end of last financial year which led to higher revenues in the three-month period ended June 30, 2012.

Capitalized internal work

Capitalized internal work consists primarily of costs which have been capitalized relating to internal projects (mainly software projects) and to the installation of rental meters. Capitalized internal work increased 3.8% to €2.7 million in the three-month period ended June 30, 2012 from €2.6 million in the three-month period ended June 30, 2011.

Other income

Other income consists of gains on foreign exchange, gains on the disposal of fixed and intangible assets and other sundry gains. Other income increased 18.2% to €1.3 million in the three-month period ended June 30, 2012 from €1.1 million in the three-month period ended June 30, 2011.

Product expenses and purchased services

Product expenses and purchased services decreased 18.0% to €48.4 million in the three-month period ended June 30, 2012 from €59.0 million in the three-month period ended June 30, 2011. This decrease primarily relates to the Energy Contracting segment where product expenses and purchased services

decreased to an amount of €21.6 million in the three-month period ended June 30, 2012 (a decrease of €10.3 million compared to the three-month period ended June 30, 2011). This was primarily due to the decrease in revenues relating to the discontinuation of the Efficiency Contracting product range. Revenues in the system contracting product range increased, which as a consequence, led to higher product expenses and purchased services relating to this product range in the amount of €10.4 million in the three-month period ended June 30, 2012 (an increase of €1.4 million compared to the three-month period ended June 30, 2011).

Personnel expenses

Personnel expenses increased 2.8% to €43.4 million in the three-month period ended June 30, 2012 from €42.2 million in the three-month period ended June 30, 2011. This was mainly due to a higher number of full-time employees in the Energy Services business segment in Germany. In order to make our operations more efficient we have specified the number of full-time equivalent employees we believe is necessary to run our business in this segment and, as a result, changed the status of employment of part of our temporary employees to a permanent employment status.

Other expenses

Other expenses consist of costs for rent, IT, consultancy, advertising and promotion, communication costs, losses on foreign exchange, write-downs and valuation allowance on receivables and other sundry expenses. Other expenses slightly increased 5.6% to €20.9 million in the three-month period ended June 30, 2012 from €19.8 million in the three-month period ended June 30, 2011.

Earnings before interest and tax (EBIT)

EBIT increased 3.6% to €17.1 million in the three-month period ended June 30, 2012 from €16.5 million in the three-month period ended June 30, 2011. EBIT margin (the ratio of EBIT to revenues) increased to 11.3% in the three-month period ended June 30, 2012 from 10.4% in the three-month period ended June 30, 2011.

EBITDA and Adjusted EBITDA

EBITDA increased 1.2% to €42.0 million in the three-month period ended June 30, 2012 from €41.5 million in the three-month period ended June 30, 2011. Adjusted EBITDA increased 1.7% to €42.3 million in the three-month period ended June 30, 2012 from €41.6 million in the three-month period ended June 30, 2011. The EBITDA and Adjusted EBITDA in our segments developed as follows:

- EBITDA in the Energy Services segment decreased 6.9% to €36.5 million in the three-month period ended June 30, 2012 from €39.2 million in the three-month period ended June 30, 2011. Adjusted EBITDA in the Energy Services segment decreased 6.4% to €36.8 million in the three-month period ended June 30, 2012 from €39.3 million in the three-month period ended June 30, 2011. This decrease was due to various minor effects, as well as a result of a higher number of full-time employees in the Energy Services business segment in Germany leading to higher personnel expenses.
- EBITDA as well as Adjusted EBITDA in the segment Energy Contracting increased 120.0% to €6.6 million in the three-month period ended June 30, 2012 from €3.0 million in the three-month period ended June 30, 2011. The increase of the EBITDA was primarily due to higher profitability at the GWE Group in the interim period, which was primarily due to higher product expenses and purchased services in the three-month period ended June 30, 2011 due to annual maintenance of the central boiler at one of GWE's energy generating plants. In the current financial year this maintenance will take place after first quarter. Furthermore, personnel expenses are lower in the three-month period ended June 30, 2012 compared to the three-month period June 30, 2011.

In the three-month period ended June 30, 2012, adjustments to EBITDA in order to obtain Adjusted EBITDA consist of costs for our BiSS program (€0.1 million) and other costs (€0.2 million). In the three-month period ended June 30, 2011, adjustments to EBITDA in order to obtain Adjusted EBITDA consist of costs for our BiSS program (€0.1 million).

Net share of loss/gain of associates

Net share of loss/gain of associates increased to a gain of €0.3 million in the three-month period ended June 30, 2012 from a loss of €0.6 million in the three-month period ended June 30, 2011.

Impairment of associates

In the three-month period ended June 30, 2012 as well as in the three-month period ended June 30, 2011, no impairment of associates were recorded.

Financial income and finance costs

Financial income and finance costs decreased 23.1% to a net cost of €40.0 million in the three-month period ended June 30, 2012 from a net cost of €52.0 million in the three-month period ended June 30, 2011. Financial income increased to €0.6 million in the three-month period ended June 30, 2012 from €0.4 million in the three-month period ended June 30, 2011. Finance costs decreased to €40.6 million in the three-month period ended June 30, 2012 from €52.4 million in the three-month period ended June 30, 2011. This development mainly resulted from a decline in interest rates.

Income taxes

Income taxes have decreased to tax income of €3.7 million in the three-month period ended June 30, 2012 from tax income of €4.4 million in the three-month period ended June 30, 2011. The effective income tax rate for the three-month period ended June 30, 2012 increased to 16.3% compared with 12.2% in the three-month period ended June 30, 2011. For both three-month periods the enacted tax rate was approximately 12.9%. In the three-month period ended June 30, 2012, the effective income tax rate was higher than the enacted tax rate, mainly as a result of an unplanned claim of tax loss carry forwards in the tax group of an unrestricted subsidiary. Deferred tax assets relating to tax loss carry forwards of this tax group were only recorded partially in the 2012 financial year.

Net income

In the three-month period ended June 30, 2012, we generated a net loss of €19.0 million compared to a net loss of €31.6 million in the three-month period ended June 30, 2011. This decrease was mainly caused by a decrease of finance costs due to lower interest rates.

Year ended March 31, 2012, compared with year ended March 31, 2011

Revenues

Our total revenues decreased 5.2% to €692.9 million in the 2012 financial year from €731.1 million in the 2011 financial year as we discontinued our Efficiency Contracting product range following the discontinuation of tax reliefs for energy contracting services (see "*—Key Factors Affecting Our Results of Operations and Financial Condition—Cultural, political and regulatory developments.*"). The revenues in our segments developed as follows:

- Our revenues in the Energy Services segment increased 2.8% to €530.1 million in the 2012 financial year from €515.7 million in the 2011 financial year and, as a percentage of our total revenues, increased to 76.5% from 70.5%. Revenues of Energy Services Germany increased 2.2% to €397.7 million in the 2012 financial year from €389.1 million in the 2011 financial year due to an increase in the prices for our devices and services generally in line with inflation and the increase of sales and rentals of radio-controlled sub-metering devices. The share of radio-controlled sub-metering devices increased to 52.1% from 47.1%. Revenues of Energy Services International increased 4.6% to €132.4 million in the 2012 financial year from €126.6 million in the 2011 financial year due to the growth in our international sub-metering business, primarily as the number of our installed sub-metering devices increased 6.7% and the share of radio-controlled sub-metering devices increased to 39.5% from 30.8%.
- Our revenues in the Energy Contracting segment decreased 24.4% to €162.8 million in the 2012 financial year from €215.4 million in the 2011 financial year and as a percentage of our total revenues decreased to 23.5% in the 2012 financial year from 29.5% in the 2011 financial year. The decrease was primarily attributable to the discontinuation of the Efficiency Contracting product range following the discontinuation of tax reliefs for energy contracting services (see "*—Key Factors Affecting Our Results of Operations and Financial Condition—Cultural, political and regulatory developments*."). Inverse to this decrease, revenues relating to the system contracting product range increased 7.9% to €87.1 million in the 2012 financial year from €80.7 million in the 2011 financial year. This increase was mainly attributable to a higher gas price and an increase in incoming orders at the end of the 2011 financial year which led to higher revenues in the 2012 financial year. Furthermore, the negative effect in the 2012 financial year was partly offset by the contribution of the GWE Group into the Group in

March 2011. In the 2011 financial year, no revenues of GWE Group were included, as the contribution was effective at the end of March 2011. In the 2012 financial year, €45.3 million of revenues of the GWE Group were included.

Capitalized internal work

Capitalized internal work increased 22.4% to €12.0 million in the 2012 financial year from €9.8 million in the 2011 financial year.

Other income

Other income decreased 10.7% to €6.7 million in the 2012 financial year from €7.5 million in the 2011 financial year. In the 2011 financial year, a gain in the amount of €2.8 million has been recognized as a result of the GWE Group entering the Group and the acquisition of GWE PD.

Product expenses and purchased services

Product expenses and purchased services decreased 20.4% by €61.0 million to €238.2 million in the 2012 financial year from €299.2 million in the 2011 financial year. The primary reason for this development was the decrease in revenues in the Energy Contracting segment relating to tax efficiency contracting, which resulted in lower product expenses and purchased services. This effect was partly offset by an increase of product expenses and purchased services relating to the GWE Group in an amount of €28.5 million.

Personnel expenses

Personnel expenses increased 5.7% to €170.0 million in the 2012 financial year from €160.8 million in the 2011 financial year. First, the GWE Group was contributed to the Group as at March 31, 2011, resulting in increased personnel expenses for the 2012 financial year. Second, the number of full-time equivalent employees in the Energy Services segment in Germany increased in the 2012 financial year compared to the 2011 financial year. In order to make our operations more efficient, we have specified the number of full-time equivalent employees we believe is necessary to run our business in the Energy Services segment and, as a result, changed the status of employment of part of our temporary employees to a permanent employment status. This led to higher overall personnel expenses in the 2012 financial year compared to the 2011 financial year in the Energy Services segment in Germany. As a result, we reduced our costs for temporary employees to €3.1 million in the 2012 financial year from €5.4 million in the 2011 financial year, a decrease of €2.3 million as recorded in other expenses. Last, as we expanded our international operations, the number of employees working for our international operations within the Energy Services segment has increased.

Other expenses

Other expenses slightly increased 0.7% to €85.4 million in the 2012 financial year from €84.8 million in the 2011 financial year.

Earnings before interest and tax (EBIT)

EBIT increased 4.3% to €113.0 million in the 2012 financial year from €108.3 million in the 2011 financial year. EBIT margin (the ratio of EBIT to revenues) increased to 16.3% in the 2012 financial year from 14.8% in the 2011 financial year.

EBITDA and Adjusted EBITDA

EBITDA (earnings before interest, taxes, depreciation and amortization) increased 7.1% to €218.2 million in the 2012 financial year from €203.7 million in the 2011 financial year. Adjusted EBITDA increased 7.8% to €223.9 million in the 2012 financial year from €207.7 million in the 2011 financial year. EBITDA and Adjusted EBITDA in our segments developed as follows:

- EBITDA in the Energy Services segment increased 11.7% to €197.8 million in the 2012 financial year from €177.1 million in the 2011 financial year. Adjusted EBITDA in the Energy Services segment increased 9.6% to €201.5 million in the 2012 financial year from €183.9 million in the 2011 financial year. The increases were primarily a result of an increase in revenues in the segment.
- EBITDA in the Energy Contracting segment decreased 7.6% to €25.6 million in the 2012 financial year from €27.7 million in the 2011 financial year. The decrease of EBITDA was primarily

attributable to the discontinuation of the Efficiency Contracting product range following the discontinuation of tax reliefs for energy contracting services, offset by the inclusion of the results of the GWE Group beginning in the 2012 financial year. For more information regarding the contribution of the GWE Group into the Group please refer to "*—Key Factors Affecting Our Results of Operations and Financial Condition—Acquisitions*." Adjusted EBITDA decreased 3.2% to €26.8 million in the 2012 financial year from €27.7 million in the 2011 financial year.

In the 2012 financial year, the extraordinary expenses and income, by which we adjusted our EBITDA in order to obtain Adjusted EBITDA mainly referred to costs for our BiSS program (€2.3 million), restructuring costs for GWE Group (€1.2 million) and other costs (€2.2 million). In the 2011 financial year, such extraordinary expenses and income mainly referred to costs for our BiSS program (€4.5 million), transactions costs upon entry of the GWE Group into the Group and the acquisition of GWE PD (€1.3 million), other costs (€1.0 million) and a gain recognized upon entry of the GWE Group into the Group and the acquisition of GWE PD (€2.8 million).

Net share of loss/gain of associates

Net share of loss/gain of associates decreased to a loss of €0.4 million in the 2012 financial year from a gain of €0.1 million in the 2011 financial year.

Impairment of associates

In the 2012 financial year, an impairment of associates in the amount of €14.5 million was recorded. This development was due to an impairment of the investment in Thermie Serres because of the higher investment risk in Greece. In the 2011 financial year, no such impairment was recorded.

Financial income and finance costs

Financial income and finance costs increased 177.3% to a net cost of €156.1 million in the 2012 financial year from a net cost of €56.3 million in the 2011 financial year. Financial income decreased to €3.4 million in the 2012 financial year from €41.1 million in the 2011 financial year and finance costs increased to €159.5 million in the 2012 financial year from €97.4 million in the 2011 financial year. This development was primarily due to a loss of €81.3 million on hedging instruments measured at fair value in the 2012 financial year compared to a gain of €38.6 million in the 2011 financial year. A decline in interest rates in the capital markets led to a much higher negative value of our interest hedging instruments in the 2012 financial year than in the 2011 financial year. In the 2011 financial year, we gained a profit from our interest hedging instruments due to an inverse development in interest rates. Our interest expenses decreased to €75.3 million in the 2012 financial year from €94.1 million in the 2011 financial year. This development mainly resulted from the use of the effective interest method based on which interest and transaction costs are spread over the terms of the loans. As this method takes into account interest forward rates, and as these forward rates have declined as at March 31, 2012 in comparison to March 31, 2011, this resulted in reduced interest expenses. We also commenced making mandatory principal prepayments on our Existing Senior Secured Facilities in January 2011, which also resulted in a further reduction in our interest expense in the 2012 financial year.

Income taxes

Income taxes changed to tax income of €5.0 million in the 2012 financial year from a tax expense of €8.7 million in the 2011 financial year. The effective income tax rate for the 2012 financial year decreased to 8.6% compared with 16.7% in the 2011 financial year. For both financial years the enacted tax rate was approximately 12.9%. In the 2012 financial year, the effective income tax rate was lower than the enacted tax rate mainly as a result of an impairment of the investment in our affiliate in Greece, Thermie Serres, which was not tax deductible. In the 2011 financial year, the effective income tax rate was higher than the enacted tax rate, mainly as a result of an adjustment of opening balances relating to tax loss carried forwards from trade tax of the tax group (*steuerliche Organschaft*) of the Senior Subordinated Notes Issuer in Germany. For more information please refer to Note 27 of our consolidated financial statements for the 2012 financial year.

Net income

In the 2012 financial year, we generated a net loss of €53.0 million compared to net income of €43.4 million in the 2011 financial year. This decrease was primarily caused by increased finance costs due to the loss on

hedging instruments measured at fair value as well as the impairment loss relating to Thermie Serres. Both were partially offset by the increased EBIT.

Year ended March 31, 2011, compared with year ended March 31, 2010

Revenues

Our total revenues increased 6.3% to €731.1 million in the 2011 financial year from €687.5 million in the 2010 financial year. The development in our segments was as follows:

- Our revenues in the Energy Services segment increased 5.5% to €515.7 million in the 2011 financial year from €488.6 million in the 2010 financial year and, as a percentage of our total revenues, decreased slightly to 70.5% from 71.1%. Revenues of Energy Services Germany increased 1.5% to €389.1 million in the 2011 financial year from €383.4 million in the 2010 financial year due to an increase in the prices for our devices and services, which was generally in line with inflation and an increase in sales and rentals of radio-controlled sub-metering devices. The share of radio-controlled sub-metering devices increased to 47.1% from 42.1%. Revenues of Energy Services International increased 20.3% to €126.6 million in the 2011 financial year from €105.2 million in the 2010 financial year due to the growth in our international sub-metering business. In our international sub-metering business, growth was primarily driven by an increase of 6.4% of the number of our installed sub-metering devices and an increase of the share of radio-controlled sub-metering devices to 30.8% from 23.0%.
- Our revenues in the Energy Contracting segment increased 8.3% to €215.4 million in the 2011 financial year from €198.9 million in the 2010 financial year and, as a percentage of our total revenues increased to 29.5% from 28.9%. This increase was primarily due to orders of two new major customers for our Efficiency Contracting products in the 2010 financial year. We first recognized revenues from these orders in the 2011 financial year.

Capitalized internal work

Capitalized internal work increased 15.3% to €9.8 million in the 2011 financial year from €8.5 million in the 2010 financial year.

Other income

Other income increased 44.2% to €7.5 million in the 2011 financial year from €5.2 million in the 2010 financial year. This increase was primarily the result of a gain recognized in the amount of €2.8 million as a result of the GWE Group entering the Group and the acquisition of GWE PD.

Product expenses and purchased services

Product expenses and expenses for purchased services increased 5.7% to €299.2 million in the 2011 financial year from €283.0 million in the 2010 financial year. This was due to new orders of two new major customers for our Efficiency Contracting products in the 2010 financial year. As we first recognized revenues from these new orders in the 2011 financial year, this led to higher costs for purchased energy in the 2011 financial year than in the 2010 financial year.

Personnel expenses

Personnel expenses slightly increased 0.1% to €160.8 million in the 2011 financial year from €160.7 million in the 2010 financial year.

Other expenses

Other expenses decreased 6.0% to €84.8 million in the 2011 financial year from €90.2 million in the 2010 financial year. This development resulted primarily from decreased expenses for rent as well as for temporary employment, mainly relating to our BiSS program.

Earnings before interest and tax (EBIT)

EBIT increased 53.2% to €108.3 million in the 2011 financial year from €70.7 million in the 2010 financial year. EBIT margin increased to 14.8% in the 2011 financial year from 10.3% in the 2010 financial year.

EBITDA and Adjusted EBITDA

EBITDA (earnings before interest, taxes, depreciation and amortization) increased 21.7% to €203.7 million in the 2011 financial year from €167.4 million in the 2010 financial year. Adjusted EBITDA increased 6.3% to €207.7 million in the 2011 financial year from €195.3 million in the 2010 financial year. The 2010 financial year was influenced to a greater extent by one-off expenses and income than the 2011 financial year. In the 2010 financial year, these expenses amounted to €27.9 million whereas in the 2011 financial year they amounted to €4.0 million. The one-off expenses and income mainly originated from our BiSS restructuring program, which resulted in costs of €4.5 million in the 2011 financial year and €21.3 million in the 2010 financial year.

The EBITDA and the Adjusted EBITDA in our segments developed as follows:

- EBITDA in the Energy Services segment increased 20.1% to €177.1 million in the 2011 financial year from €147.5 million in the 2010 financial year. Adjusted EBITDA in the Energy Services segment increased 7.5% to €183.9 million in the 2011 financial year from €171.0 million in the 2010 financial year. The primary reason for the increase in EBITDA and Adjusted EBITDA was an increase in revenues in our international markets within the Energy Services segment. Additionally, costs relating to the BiSS program had a greater impact on EBITDA of the 2010 financial year than of the 2011 financial year.
- EBITDA and Adjusted EBITDA in the Energy Contracting segment slightly increased 0.4% to €27.7 million in the 2011 financial year from €27.6 million in the 2010 financial year.

In the 2011 financial year, adjustments to EBITDA in order to obtain Adjusted EBITDA mainly consisted of costs for our BiSS program (€4.5 million), transactions costs relating to GWE Group (€1.3 million), other costs (€1.0 million) and a gain recognized upon entry of GWE Group into the Group and acquisition of GWE PD (€2.8 million). In the 2010 financial year, adjustments primarily consisted of costs for our BiSS program (€21.3 million), compensation payments for former directors (€3.7 million), expenses in connection with the merger of MESA messen & abrechnen GmbH into Techem Energy Services GmbH, which occurred in October 2009 (€1.5 million) and other costs (€1.4 million).

Net share of loss/gain of associates

Net share of loss/gain of associates increased to a gain of €0.1 million in the 2011 financial year from a loss of €1.7 million in the 2010 financial year.

Financial income and finance costs

Financial income and finance costs decreased 49.0% to a net cost of €56.3 million in the 2011 financial year from a net loss of €110.5 million in the 2010 financial year. This development was primarily due to a net gain of €38.6 million on hedging instruments measured at fair value in the 2011 financial year compared to a net loss of €8.2 million on hedging instruments measured at fair value in the 2010 financial year. A rise in interest rates in the capital markets led to a much lower negative value of our interest hedging instruments in the 2011 financial year than in the 2010 financial year. In the 2010 financial year, we incurred a loss from our interest hedging instruments due to a disadvantageous development in interest rates. As a result of the method of calculation of the effective interest rate, our interest expense decreased to €94.1 million in the 2011 financial year from €100.5 million in the 2010 financial year. Interest expense on provisions decreased to €1.3 million in the 2011 financial year from €3.9 million in the 2010 financial year.

Income taxes

In the 2011 financial year, an income tax expense in the amount of €8.7 million was recorded whereas in the 2010 financial year, a tax profit of €24.5 million was recorded. The effective income tax rate for the 2011 financial year changed to 16.7% compared with 59.0% in the 2010 financial year. For the 2011 financial year, the enacted tax rate was approximately 12.9% and for the 2010 financial year, it was approximately 12.8%. In the 2010 financial year the large tax profit was mainly due to tax loss carry forwards relating to prior financial years being recognized for the first time in the 2010 financial year, which resulted from deductible interest expenses. Additionally, the tax profit in the 2010 financial year was caused in part by one-time adjustments of the opening balance of deferred taxes resulting from two subsidiaries which joined the tax group (*steuerliche Organschaft*) of the Senior Subordinated Notes Issuer in Germany in the 2010 financial year.

Net income

In the 2011 financial year, we generated a net income of €43.4 million compared to a net loss of €17.0 million in the 2010 financial year. The increase in the 2011 financial year compared to the 2010 financial year was primarily caused by increased revenues and, as a result, increased EBIT. Additionally, the gain on hedging instruments in the 2011 financial year as well as reduced one-off expenses and income in the 2011 financial year contributed to the positive change in net income.

Liquidity and Capital Resources

Overview

We have financed our capital requirements through a combination of cash flows from our operating activities and bank loans. The bank loans originating under our Existing Senior Secured Facilities Agreement total €1,000 million, consisting of a €850 million senior facility (divided into two tranches of €431 million and €419 million), €100 million capital expenditure facility and a €50 million working capital facility, Junior Facilities of €150 million as well as bank debt, based on individual loan agreements, in a total amount of €86.2 million (which includes used as well as unused credit lines) as at March 31, 2012. The figures presented in this preceding sentence refer to the respective nominal values. For further information, please refer to Note 13 in our audited financial statements for the 2012 financial year beginning on page F-2.

Cash flows from our operating activities are impacted by EBITDA and the development of working capital.

Working Capital

Working capital consists of inventories and billed and unbilled trade accounts receivable less trade accounts payable.

In our Energy Services segment, for the major part receivables represent revenues from equipment rental, maintenance and billing agreements. In general, rental, maintenance and billing services are related to each other and therefore invoiced together once a year, leading to the recognition of billed receivables.

Revenues from rental and maintenance agreements are recognized on a straight-line basis over the term of the agreement. Revenues from billing services are recognized equivalent to the services already rendered. This leads to the recognition of unbilled trade accounts receivable.

Most of the measuring activity occurs during the winter months, leading to a high volume of billed receivables in the months of March and April, when we invoice our services rendered.

In January 2012, a near-time billing practice was introduced in the Energy Services Germany segment, pursuant to which part of the rental and maintenance services fees are billed in January after completion of the contract terms, separately from the billing services fees.

In the Energy Contracting segment, revenue in respect of the delivery of heat is recognized to the amount of the services already rendered, leading to a high volume of trade accounts receivable in the winter months.

The following table summarizes our historical working capital as at the dates indicated:

	As at March 31,			As at June 30,	
(€ million)	**2010**	**2011**	**2012**	**2011**	**2012**
	Audited, unless stated otherwise			**Unaudited**	
Billed trade accounts receivable, including finance lease receivables and valuation allowances[1]	82.0	84.5	87.2	64.7	54.6
Unbilled trade accounts receivable	249.8	269.9	205.9	234.4	185.6
Trade accounts receivable	**331.8**	**354.4**	**293.1**	**299.1**	**240.2**
Inventories	31.1	37.6	30.9	41.7	34.6
Trade accounts payable	57.8	101.4	39.9	66.6	22.2
Working capital[1][2]	**305.1**	**290.6**	**284.1**	**274.2**	**252.6**

(1) Unaudited.

(2) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

Three-month period ended June 30, 2012, compared with three-month period ended June 30, 2011

Working capital was €252.6 million as at June 30, 2012 compared to €274.2 million as at June 30, 2011. This decrease of €21.6 million is mainly caused by a decrease of trade accounts receivable of €58.9 million. Trade accounts receivable decreased in the Energy Contracting segment as a result of the discontinuation of our products related to Efficiency Contracting and in the Energy Services segment in Germany due to the introduction of the near-time billing practice, which was implemented in January 2012. This new practice has led to an earlier invoicing of part of the rental and maintenance services, leading to an earlier settlement of receivables. Additionally, trade accounts payable decreased by €44.4 million. This was caused by a decrease in trade accounts payable of the Energy Contracting segment, primarily due to the discontinuation of our products related to Efficiency Contracting.

Year ended March 31, 2012, compared with year ended March 31, 2011

Working capital was €284.1 million as at March 31, 2012 compared to €290.6 million as at March 31, 2011. The decrease of our working capital by €6.5 million in the 2012 financial year was primarily caused by two developments affecting working capital inversely: unbilled trade accounts receivable decreased by €64.0 million (€205.9 million as at March 31, 2012 compared to €269.9 million as at March 31, 2011). Unbilled trade accounts receivable decreased in the Energy Contracting segment as a result of the discontinuation of our products related to Efficiency Contracting and in the Energy Services Germany segment due to the introduction of the near-time billing practice in the 2012 financial year with respect to rental and maintenance agreements, which has been implemented in the Energy Services segment in Germany in January 2012. Trade accounts payable decreased by €61.5 million from March 31, 2011 (€101.4 million) to March 31, 2012 (€39.9 million). This was primarily caused by trade accounts payable the Energy Contracting segment in Germany decreasing by €46.8 million due to the discontinuation of our products related to Efficiency Contracting.

Year ended March 31, 2011, compared with year ended March 31, 2010

Working capital was €290.6 million as at March 31, 2011 compared to €305.1 million as at March 31, 2010. Unbilled trade accounts receivable increased from €249.8 million as at March 31, 2010 to €269.9 million as at March 31, 2011 due to the increase in Efficiency Contracting revenues in the Energy Contracting segment as well as due to a change in the invoicing practice for a great number of customers from monthly billing to quarterly billing. Trade accounts payable increased from €57.8 million as at March 31, 2010 to €101.4 million as at March 31, 2011. This was mainly due to suppliers changing from monthly to quarterly invoicing.

Capital Expenditures

Our capital expenditures mainly consist of purchases of metering devices for rent (capitalized as a result of new installations and the replacement of meters) as well as property, plant and equipment and intangible assets. We only incur capital expenditures related to the purchase of metering devices for rent if we are actually able to rent our devices and generate revenues there from.

The following table shows our capital expenditures for the periods indicated:

	Financial year ended March 31,			Three-month period ended June 30,	
(€ million)	**2010**	**2011**	**2012**	**2011**	**2012**
		Audited		**Unaudited**	
Metering devices for rent	47.6	57.7	58.6	11.3	11.6
Property, plant and equipment	12.9	12.0	10.7	2.0	1.3
Intangible assets	10.2	15.2	13.0	2.1	4.0
Total capital expenditure[(1)]	**70.7**	**84.9**	**82.3**	**15.4**	**17.0**

(1) Includes capital expenditures of Unrestricted Subsidiaries in an amount of €0 for the financial years ended March 31, 2010 and 2011, €3.2 million for the financial year ended March 31, 2012, €0.0 million for the three-month period ended June 30, 2011 and €0.3 million for the three-month period ended June 30, 2012.

In the three-month period ended June 30, 2012, our capital expenditures were €17.0 million compared to €15.4 million in the three-month period ended June 30, 2011, an increase of 10.4%. In both periods, our capital expenditures were primarily for the acquisitions of sub-metering devices.

In the 2012 financial year, our capital expenditures decreased 3.1% to €82.3 million from €84.9 million in the 2011 financial year. In both years, our capital expenditures primarily related to the acquisition of sub-metering devices. Investments in intangible assets were lower in the 2012 financial year than in the 2011 financial year due to lower investments in our IT because of a planned IT outsourcing project and due to higher additions in intangible assets in the 2011 financial year because of rights-in-use relating to two plant generating heat and cold for a new customer in the segment Energy Contracting and because of the capitalization of software (primarily in connection with the BiSS program).

In the 2011 financial year, our capital expenditures increased by 20.1% to €84.9 million from €70.7 million in the 2010 financial year. In both financial years, our capital expenditures were primarily related to the acquisition of sub-metering devices. The increase in capital expenditures for sub-metering devices in the 2011 financial year compared to the 2010 financial year was due to an increase in new customers, replacement of devices for existing customers as well as an increase in smoke detectors. In addition, the capital expenditures for intangible assets increased in comparison to the 2010 financial year due to the capitalization of software (primarily in connection with the BiSS program) and due to the capitalization of rights-in-use relating to two plant generating heat and cold for a new customer in the Energy Contracting segment.

We expect our capital expenditures for the 2013 financial year to be in the same range as in the past three financial years, depending in part on the number of devices that we are able to rent to customers.

Historical Consolidated Statement of Cash Flows

The 2012 and 2011 consolidated statement of cash flows as presented in the 2012 Audited Financial Statements are not comparable to the 2010 consolidated statement of cash flows as presented in the 2011 Audited Financial Statements (see financial statements beginning on page F-2 of this offering memorandum). In the 2012 Audited Financial Statements, the structure and the calculation method of the consolidated statement of cash flows has been changed, leading to differences in definitions of single line items. The 2010 consolidated statement of cash flows is presented in the changed structure and is based on the same calculation method and certain parts are therefore labeled unaudited.

The following table summarizes our cash flow activity (including our Unrestricted Subsidiaries) for the periods indicated:

(€ million)	Financial year ended March 31,			Three-month period ended June 30,	
	2010	2011	2012	2011	2012
	Audited, unless stated otherwise			Unaudited	
Earnings before interest and tax (EBIT)	70.7	108.3	113.0	16.5	17.1
Depreciation and amortization[1]	96.7	95.4	105.2	25.0	24.9
EBITDA[5]	**167.4**[6]	**203.7**	**218.2**	**41.5**	**42.0**
Changes in working capital[2][5]	4.0[6]	16.3	6.6	16.7	31.7
Changes in other receivables	0.4[6]	(1.3)	(0.9)	(1.0)	(5.5)
Changes in other liabilities	(5.4)[6]	9.4	14.5	(5.1)	(21.9)
Changes in provisions	(0.6)[6]	(6.7)	(4.7)	(11.9)	(10.8)
Other changes	0.0[6]	(3.3)	(0.3)	0.0	0.0
Cash flows from operating activities before interest paid/received and income tax paid/received	**165.8**	**218.2**	**233.3**	**40.2**	**35.6**
Changes in fixed and intangible assets[3]	(72.1)[6]	(84.2)[6]	(79.6)[6]	(13.5)	(16.8)
Changes in the scope of consolidation[4]	6.9	12.7	0.0	—	(3.9)
Cash flows used in investing activities	**(65.2)**	**(71.5)**	**(79.5)**	**(13.5)**	**(20.7)**
Free cash flow before interest paid/received and income tax paid/received[5]	**100.6**[6]	**146.7**[6]	**153.7**[6]	**26.7**	**14.8**
Interest paid	(78.0)	(81.1)	(83.4)	(9.3)	(8.4)
Interest received	1.4	1.1	1.5	0.3	0.3
Income tax paid/received	5.6	(6.0)	(5.4)	(0.8)	(0.9)
Free cash flow[5]	**29.6**	**60.7**	**66.4**	**16.8**	**5.8**
Net change in debt (incl. finance leases)	16.6[6]	15.5	(28.5)	(16.3)	(0.1)
Drawings by limited partner	(145.9)	(45.0)	(30.0)	—	—
Net cash used in financing activities	**(129.3)**	**(29.5)**	**(58.5)**	**(16.3)**	**(0.1)**
Change in cash and cash equivalents	**(99.7)**	**31.2**	**7.8**	**0.5**	**5.7**

(1) Including amortization on customer contracts of €33.2 million in the 2010 financial year (including €3.8 million one-off impairment), €29.1 million in the 2011 financial year, €31.1 million in the 2012 financial year, €7.7 million in the three-month period ended June 30, 2011 and €7.7 million in the three-month period ended June 30, 2012.

(2) Changes in working capital consist of changes in trade accounts receivable, changes in unbilled receivables, changes in inventories and changes in trade accounts payable.

(3) Including "cash flows from investments and loans" in the amount of negative €2.8 million in the 2010 financial year, negative €0.5 million in the 2011 financial year, €0.2 million in the 2012 financial year, €0.1 million in the three-month period ended June 30, 2011 and €0.1 million in the three-month period ended June 30, 2012.

(4) Including acquired cash.

(5) This measure is not a defined financial indicator under IFRS. It should be noted in this context that not all companies calculate the items that are not defined under IFRS in the same manner, and that consequently the measures reported are not necessarily comparable with similarly described measures employed by other companies.

(6) Unaudited.

The amounts in the statement of cash flows for the financial year ended March 31, 2011 cannot be reconciled with the movements in the balance sheets as at March 31, 2010 to March 31, 2011, respectively. The balance sheet items as at March 31, 2010 are derived from the comparative figures of the 2011 Audited Financial Statements which had not been restated for changes in accounting policy. The consolidated statement of cash flows for the financial year ended March 31, 2011 is calculated on the basis of restated balance sheets.

Three-month period ended June 30, 2012 compared with three-month period ended June 30, 2011

Cash flows from operating activities before interest paid/received and income tax paid/received. Our cash generated by operating activities before interest paid/received and income tax paid/received was €35.6 million in the three-month period ended June 30, 2012, compared with €40.2 million in the three-month period ended June 30, 2011. The primary movements in cash generated by operating activities

before interest paid/received and income tax paid/received in the three-month period ended June 30, 2012, compared with the three-month period ended June 30, 2011, were the following:

- Our working capital decreased and generated a cash-inflow of €31.7 million in the three-month period ended June 30, 2012 compared to a cash-inflow of €16.7 million in the three-month period ended June 30, 2011. For further details see "*—Working Capital—Three month period ended June 30, 2012 compared with three month period ended June 30, 2011*."
- Changes in other receivables generated a cash-outflow of €5.5 million in the three-month period ended June 30, 2012 and a cash-outflow of €1.0 million in the three-month period ended June 30, 2011.
- The cash-outflow caused by changes in other liabilities was €21.9 million in the three-month period ended June 30, 2012, which was higher by €16.8 million than the cash-outflow of €5.1 million in the three-month period ended June 30, 2011. This was mainly due to an increased cash-outflow of other tax liabilities of €15.0 million (primarily for value-added tax) in the three-month period ended June 30, 2012 compared to €0.9 million in the three-month period ended June 30, 2011.

Cash flows used in investing activities. Cash flows used in investing activities increased to €20.7 million in the three-month period ended June 30, 2012 from €13.5 million in the three-month period ended June 30, 2011. This was due to our payment of the unconditional part of the purchase price for MessKom Energiemanagement GmbH amounting to €3.9 million in April 2012. The three-month period ended June 30, 2011 included a cash-inflow of €1.6 million relating to the sale of the district heating network Olching (for more information, please refer to Note 19 of our consolidated financial statements of the 2012 financial year).

Based on our cash flows from operating activities before interest paid/received and income tax paid/received and investing activities, our free cash flow decreased to €5.8 million in the three-month period ended June 30, 2012 compared to €16.8 million in the three-month period ended June 30, 2011.

Net cash used in financing activities. Net cash used in financing activities amounted to €0.1 million in the three-month period ended June 30, 2012, compared to €16.3 million in the three-month period ended June 30, 2011. The three-month period ended June 30, 2011 included a repayment of our working capital facility in the amount of €15.0 million.

Cash and cash equivalents were €77.9 million as at June 30, 2012, compared with €65.0 million as at June 30, 2011.

Year ended March 31, 2012, compared with year ended March 31, 2011

Cash flows from operating activities before interest paid/received and income tax paid/received. Cash flows generated by operating activities before interest paid/received and income tax paid/received was €233.3 million in the 2012 financial year, compared with €218.2 million in the 2011 financial year. The primary movements in cash generated by operating activities before interest paid/received and income tax paid/received in 2012 compared with 2011 were the following:

- EBITDA was €14.5 million higher in the 2012 financial year than in the 2011 financial year.
- Working capital decreased and generated a cash-inflow of €6.6 million in the 2012 financial year compared to a cash-inflow of €16.3 million in the 2011 financial year. For further detail see "*—Working Capital—Year ended March 31, 2012, compared with year ended March 31, 2011*."
- Changes in other liabilities were impacted by changes in other tax liabilities, which led to a cash-inflow of €10.9 million in the 2012 financial year compared to a cash-inflow of €7.7 million in the 2011 financial year as well as changes in deferred income, which caused a cash-inflow of €3.6 million in the 2012 financial year compared to a cash-outflow of €0.5 million in the 2011 financial year.

Cash flows used in investing activities. Cash flows used in investing activities increased to €79.5 million in the 2012 financial year from €71.5 million in the 2011 financial year. The 2011 financial year number was positively impacted by the consolidation of GWE PD and the GWE Group, which both held cash upon the entry into the Group in a total amount of € 12.7 million. Excluding the 2011 financial year figure for this cash, cash flow used in investing activities in the 2011 financial year was €84.2 million. The decrease to €79.5 million in the 2012 financial year was due to two minor effects: a cash-inflow in the 2012 financial year of €1.6 million from the sale of the district heating network in Olching, which was "held for sale" until then (for more information, please refer to Note 19 of our consolidated financial statements of

the 2012 financial year) and investments in intangible assets were lower than previous year. For more information about our capital expenditures, see "*—Capital Expenditures—Year ended March 31, 2012, compared with year ended March 31, 2011*."

Based on our cash flows from operating activities before interest paid/received and income tax paid/received and from investment activities, our free cash flow increased to €66.4 million in the 2012 financial year compared to €60.7 million in the 2011 financial year.

Net cash used in financing activities. Net cash used in financing activities amounted to €58.5 million in the 2012 financial year, compared to €29.5 million in the 2011 financial year. In the 2012 financial year, net change in debt amounted to an cash-outflow of €28.5 million compared to an cash-inflow of €15.5 million in the 2011 financial year. This was primarily due to the redemption of our working capital facility by €15.0 million in the 2012 financial year, the repayment of our senior facility by €6.6 million and the net repayment of debt of the GWE Group by €5.2 million. In the 2011 financial year, the net change in debt was mainly affected by increased borrowings of €25.0 million under our capital expenditure facility as well as the repayment of our senior facility in the amount of €12.4 million.

Drawings by the limited partner (MEIF II Germany Holdings S.à r.l.) amounted to €30.0 million in the 2012 financial year compared to €45.0 million in the 2011 financial year.

Cash and cash equivalents were €72.2 million as at March 31, 2012, compared with €64.5 million as at March 31, 2011.

Year ended March 31, 2011, compared with year ended March 31, 2010

Cash flows from operating activities before interest paid/received and income tax paid/received. Net cash provided by operating activities before interest paid/received and income tax paid/received was €218.2 million in the 2011 financial year, compared to €165.8 million in the 2010 financial year. The primary movements in cash generated by operating activities before interest paid/received and income tax paid/received in the 2011 financial year, compared with the 2010 financial year were the following:

- EBITDA was €36.3 million higher in the 2011 financial year than in the 2010 financial year.
- Working capital decreased and generated a cash-inflow of €16.3 million in the 2011 financial year compared to a cash-inflow of €4.0 million in the 2010 financial year. For further detail see "*—Working Capital—Year ended March 31, 2011, compared with year ended March 31, 2010*".
- Changes in other liabilities led to a cash-inflow of €9.4 million in the 2011 financial year compared to a cash-outflow of €5.4 million in the 2010 financial year.
- Changes in other provisions caused a cash-outflow of €6.7 million in the 2011 financial year compared to a cash-outflow of €0.6 million in the 2010 financial year.

Cash flows used in investing activities. Cash flows used in investing activities increased to €71.5 million in the 2011 financial year from €65.2 million in the 2010 financial year. This increase was primarily caused by two partly inverse developments:

- We generated a cash-inflow of €12.7 million as a result of cash held by GWE PD and the GWE Group at the time we consolidated these entities in the 2011 financial year. In the 2010 financial year, we acquired Techem Energie France SAS, and generated a cash-inflow of €6.9 million from acquired cash.
- The purchase of non-current assets led to a cash-outflow of €84.9 million in the 2011 financial year compared to €70.7 million in the 2010 financial year. For more information relating to this cash-outflow see "*Capital Expenditures—Year ended March 31, 2011 compared with year ended March 31, 2010*" above.

Based on our cash flows from operating activities before interest paid/received and income tax paid/received and investment activities, our free cash flow increased to €60.7 million in the 2011 financial year from €29.6 million in the 2010 financial year.

Net cash used in financing activities. Net cash used in financing activities decreased to €29.5 million in the 2011 financial year from €129.3 million in the 2010 financial year. This was primarily due to higher drawings made by our limited partner (MEIF II Germany Holdings S.à r.l.) in the 2010 financial year than in the 2011 financial year. In the 2010 financial year, our limited partner withdrew €145.9 million, whereas in the 2011 financial year, the limited partner withdrew €45.0 million. In the 2010 financial year, the limited

partner's withdrawal partly (in the amount of €85.9 million) resulted from a debt push down from MEIF II Germany Holdings S.à r.l.

Net change in debt did not change materially in the 2011 financial year compared to the 2010 financial year.

Cash and cash equivalents were €64.5 million as at March 31, 2011, compared with €33.2 million as at March 31, 2010.

Available Sources of Liquidity

We expect that our principal sources of liquidity in the medium term will be cash provided by operations and cash from short- and long-term borrowings.

Liquidity before the Refinancing

The following table summarizes our available sources of liquidity from borrowings as at March 31, 2012:

(€ million)	As at March 31, 2012
	Unaudited
Senior facilities	67.3[1]
Other unused lines of credit	2.7[2]
Total	**70.0**

(1) Consisting of €33.0 million relating to the capital expenditure facility and €50.0 million relating to working capital facility, after deducting €15.7 million drawn down from the working capital facility by way of guarantees.

(2) Thereof unused lines of credit of our unrestricted subsidiary GWE in the amount of €2.0 million.

In addition, we have Junior Facilities, which were fully drawn as at March 31, 2012.

For additional information about the historical financing arrangements listed above, see Notes 11 and 13 to our consolidated financial statements for the financial year ended March 31, 2012.

Refinancing

In connection with the Refinancing, we will enter into the Senior Secured Facilities Agreement. The proceeds from the Senior Secured Facilities and the offering of the Notes together with cash on hand, will be used on the Issue Date to repay in full the loans under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement at par (together with accrued fees, costs and expenses) and terminate the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement. On the Issue Date of the Notes, under the Senior Secured Facilities, we will have €450.0 million in aggregate principal amount outstanding under our Term Loan Facility, €50.0 million in unutilized commitments under our Capex and Acquisition Facility and €50.0 million in unutilized commitments under our Revolving Credit Facility. Drawings under the Capex and Acquisition Facility and Revolving Credit Facility will be subject to certain conditions. In connection with the Senior Secured Facilities Agreement, we will also terminate certain of our existing interest rate swaps and enter into new interest rate swaps. We refer to the entry into the Senior Secured Facilities Agreement, this offering, the termination of, and repayment of the lenders under, the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, the termination of certain of our interest rate swaps and the entering into of new interest rate swaps and the payment of related fees and expenses as the "Refinancing" in this offering memorandum. The closing of the offering of the Notes is conditional upon the concurrent repayment of the lenders under the Existing Senior Secured Facilities Agreement. See "*Description of Certain Financing Arrangements*."

We believe the proceeds of this offering and our new Senior Secured Facilities, cash generated from our operations and other current sources of financing will be adequate to meet our foreseeable financial needs. We currently expect to reduce our consolidated leverage ratio to around 4.5x in the long term. Any such deleveraging of our business will be at the discretion of our board of directors and subject to our financial condition, operating results, current and anticipated financing needs, strategy and available cash. See also "*Risk Factors*."

Commitments and Contingent Liabilities

The tables below summarize our obligations and commitments to make future payments.

Operating leases

We have entered into leases for buildings, including our head office in Eschborn, Germany (with a fixed term until January 31, 2024) and other leases for subsidiaries and field organizations, vehicles and office equipment. The leases have renewal options and various terms. The total expense for these leases in the 2012 financial year was €22.8 million.

The minimum lease obligations as at March 31, 2012 were as follows:

(€ million)	As at March 31, 2012
	Audited
Financial year:	
2013	25.1
2014	19.0
2015	12.9
2016	10.7
2017	8.8
After 2017	37.3
Total minimum lease obligations	**113.7**

Other financial obligations/financial guarantees

The table below summarizes our other financial obligations and financial guarantees, as at March 31, 2012 (excluding those relating to indebtedness).

(€ thousand)	As at March 31, 2012	Up to one year	Between one year and five years	Over five years
		Audited		
Supply contracts	27,351	27,342	9	—
Maintenance contracts	1,669	677	992	—
Insurance premiums	1,072	1,072	—	—
Warranty contracts	200	200	—	—
Service contracts	100	100	—	—
Other financial obligations	78	66	12	—
Total other financial obligations	**30,470**	**29,457**	**1,013**	**—**

We have entered into financial obligations under supply agreements of €27.4 million. These agreements include long-term supply agreements for radio-controlled sub-metering equipment and IT services as part of ongoing maintenance agreements and projects, as well as sub-contracting agreements relating to reading and billing services.

Certain obligations of our Greek subsidiary Thermie Serres are secured by bank guarantees in an amount of €10.0 million, which have been drawn on the working capital facility (see Note 13 to our consolidated financial statements for the financial year ended March 31, 2012).

Additionally, as at March 31, 2012, financial guarantees in an amount of €243 thousand have been issued.

Off-Balance Sheet Arrangements

We are not a party to any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our financial condition or results of operations.

Quantitative and Qualitative Disclosures Regarding Market Risk

Our segments operate in competitive markets and are subject to changes in business, economic and competitive conditions. Our business is subject to:

- credit risks;
- liquidity risks;
- interest rate risks and interest rate management;

- risks relating to interest rate instruments not subject to hedge accounting;
- risks relating to interest rate instruments subject to hedge accounting; and
- currency risks and risks relating to currency management.

Developments in any of these risk areas could cause our results to differ materially.

Credit risks

We offer our services to a large number of customers active in various sectors and geographical regions. We grant credit terms to eligible customers and believe we are not exposed to an unreasonable concentration of risk. Imminent or actual irrecoverable receivables are accounted for by write-downs of 50 to 75% respectively depending on the age of the receivable concerned. Several dunning stages are also used. When a certain dunning stage is reached, legal action is initiated and the receivable is automatically written down by 75%.

As at March 31, 2012, the total of trade accounts receivable, including receivables from finance lease (each current and non-current), was €312.8 million. The historical write-offs of our trade accounts receivables were €1.5 million in the 2012 financial year, €1.8 million in the 2011 financial year and €2.3 million in the 2010 financial year.

Liquidity risks

After the Refinancing, we will have long-term loan agreements with a bank consortium to secure financing until 2017. In addition, the GWE Group has loan agreements with different terms, the longest lasting until March 2023. Our long-term budget shows a positive development of our financial position, financial results and cash flows.

Interest rate risks and interest rate management

Interest rate risks arise from the fact that the major part of the financial liabilities are subject to a floating rate of interest. Our interest rate risk is analyzed centrally and managed by the treasury department. Interest rate risk items are separated from the liquidity commitment in individual hedge agreements with the help of interest rate derivatives, such as interest rate swaps and caps, and are managed as an overall portfolio to balance the risks. Interest rate derivatives are used exclusively to optimize credit terms and limit interest rate risks as part of our financing strategies and are not used for trading or speculative purposes. Hedging instruments are only used in the Group to hedge interest rate risks on variable cash flows.

In accordance with internal guidelines, the use of derivatives is restricted to the hedging of existing risks. Generally, we use hedging instruments that are measurable and have a transparent risk profile. All derivatives are measured at fair value. This is determined using the mark-to-market method. The market values of interest rate swaps and caps are reported as other financial assets or other financial liabilities or in retained earnings in the case of hedge accounting.

Interest rate instruments not subject to hedge accounting

Changes in market value are recognized in the income statement but do not affect cash. For our senior and junior facilities, we have payer-swap-agreements (nominal value March 31, 2012: €1,000 million), which swap the six-month EURIBOR against a 10-year fixed interest rate. Furthermore, IHKW Industrieheizkraftwerk Heidenheim GmbH has a swap agreement with a term until June 30, 2020 (nominal value as at March 31, 2012: €8.9 million). This interest rate swap includes an additional right of cancellation. By entering into a basis-swap-agreement (swapping the six-month EURIBOR for the one-month EURIBOR), the interest payments according to the loan agreement are made based on the one-month EURIBOR plus margin. This was valid until July 2012 and resulted in an interest benefit of 51 basis points for the 2012 financial year on the agreed nominal value of €1,000 million. Techem has entered into two new basis swap agreements swapping the six month EURIBOR for the three month EURIBOR. The duration of those new agreements is July, 31 until September 30, 2012 and September 30 until October 31, 2012. These agreements were established as the underlying credit facilities have an actual rollover period from July 31 until October 31.

Details of instruments at the balance sheet date related to the senior and junior facilities as well as to the financing of IHKW Industrieheizkraftwerk Heidenheim GmbH, together with market values and maturities, are as follows:

(€ thousand)	As at March 31, 2011		As at March 31, 2012	
	Nominal amount	Market value	Nominal amount	Market value
		Audited		
Interest rate swaps				
Up to one year	1,000,000	396	1,000,000	(139)
Between one year and five years	—	—	—	—
More than five years	1,009,944	(83,634)	1,008,869	(164,366)
Interest rate instruments	**2,009,944**	**(83,238)**	**2,008,869**	**(164,505)**

The negative market value of €139 thousand relates to the additional swap agreements swapping the six-month EURIBOR for the one-month EURIBOR, as mentioned above. As at March 31, 2012, we have also entered into an interest rate cap outside Germany with a market value of €6 thousand and a nominal amount of €3,260 thousand.

The hedging strategy we are required to enact in connection with the Refinancing requires that, in respect of the interest rate exposure of the Senior Subordinated Notes Issuer (and certain of its subsidiaries) regarding certain of our obligations under the Senior Credit Facilities, the Senior Secured Notes and the Senior Subordinated Notes, a minimum of 66.67% (but not more than 110%) must be fixed rate obligations or hedged. Hedges will be made by the Senior Secured Notes Issuer through the restructuring of existing interest rate hedging agreements or by entering into new interest rate hedging agreements.

Accordingly, the existing interest rate hedges are or will be partially restructured to be in line with the new structure. This restructuring and the resulting decrease of the notional amounts of the existing interest rate hedges results due to the negative market value of the existing interest rate hedges in respective payment obligations to the hedge counterparties. The overall payment obligation in course of the restructuring amounts to approximately €123 million.

New interest rate hedges may be entered into to replace existing interest rate hedges or based on the terms of existing interest rate hedges and therefore might also have a negative market value. The restructured interest rate hedges will further be restructured to match the maturity date of the Term Loan Facility. Hedge counterparties of the restructured and new interest rate hedging agreements are JPMorgan Chase Bank, N.A., Commerzbank AG, the Royal Bank of Scotland Plc and Credit Agricole Corporate and Investment Bank. The hedges swap floating-to-fix on a six-month Euribor level. Further, in connection with the Existing Senior Secured Facilities Agreement and Junior Facilities Agreement, two basis swaps for €1,000 million each are in place that mature on September 28 (having started on July 31) and October 31, 2012 (starting on September 28, 2012). These basis swaps swap six-month Euribor to three-month Euribor, the current interest period under the Existing Senior Secured Facilities Agreement and Junior Facilities Agreement. Basis swaps may be used also after the Refinancing to swap six-months to three-month Euribor to match the length of the respective interest periods under the Term Loan Facility as necessary.

The total notional amount of the restructured interest rate hedges is €400 million. The negative market value of the restructured interest rate hedging agreements as of September 10, 2012 is approximately €88 million.

Our hedging strategy may further include to enter into spot or forward foreign exchange hedging contracts which will be unsecured. Once the liabilities owing to the senior lenders under the Senior Secured Facilities Agreement have been fully and finally discharged, spot or forward foreign exchange hedging contracts may be secured pari passu with the Senior Secured Notes.

Interest rate instruments subject to hedge accounting

The effective part of the change in market value is recognized in other comprehensive income in equity. The effective part is the part of change in the fair value of the interest rate instrument that offsets the change in the fair value of the hedged item. The ineffective part is recognized in the income statement. IHKW Industrieheizkraftwerk Andernach GmbH has entered into three interest rate swaps with terms until December 31, 2022 and until March 31, 2023. Details of instruments at the balance sheet date related

to the financing of IHKW Industrieheizkraftwerk Andernach GmbH, together with market values and maturities, are as follows:

(€ thousand)	As at March 31, 2011		As at March 31, 2012	
	Nominal amount	Market value	Nominal amount	Market value
	Audited			
Interest rate swaps				
Up to one year	—	—	—	—
Between one year and five years	—	—	—	—
More than five years	37,448	(2,270)	36,938	(4,848)
Interest rate instruments	**37,448**	**(2,270)**	**36,938**	**(4,848)**

Currency risk and currency management

A large part of our revenues was generated in the Euro-area and was not subject to major currency risks. However, currency risks may originate from loans, that Techem Energy Services GmbH grants to its subsidiaries as part of intercompany financings.

In the 2012 financial year, the following currency instruments without hedge accounting were entered into for the first time:

(€ thousand)	March 31, 2012	
	Nominal amount	Market value
	Audited	
Currency swaps		
Czech Crowns (CZK 30,000 thousand)—term until June 8, 2012	1,212	1
Danish Crowns (DKK 18,000 thousand)—term until June 25, 2012	2,423	(3)
Currency instruments	**3,635**	**(2)**

Critical Accounting Policies

In the opinion of the management of our Group, the following accounting policies and topics are critical for the consolidated financial statements in the present economic environment. The influences and judgments, as well as the uncertainties which affect them are also important factors to be considered when looking at present and future operating earnings of our Group.

The preparation of the consolidated financial statements under IFRS requires assumptions and estimates to be made which can impact the valuation of the assets and liabilities recognized, the income and expenses, as well as the disclosure of contingent liabilities. Assumptions and estimations also relate to the accounting and measurement of provisions. All assumptions and estimations made are based on the circumstances as at the balance sheet date. The actual future circumstances may differ. When this occurs the assumptions are adjusted, and, if applicable, the book values of the respective assets and liabilities are also adjusted.

We have summarized below our accounting policies that require the more subjective judgment of our management in making assumptions or estimates regarding the effects of matters that are inherently uncertain and for which changes in conditions may significantly affect our results of operations and financial condition. For more information see the notes to our consolidated financial statements included in the financial statements included elsewhere in this offering memorandum.

Revenue recognition. We believe that revenue recognition is critical for our financial statements because consolidated net income is directly affected by the timing of revenue recognition. Using the percentage-of-completion method, accrued income is recognized for billing services to an amount equivalent to the cost of services already rendered plus a profit margin. The calculation is based on the percentage of completion of the billing process of the buildings as at the balance sheet date. Revenue in respect of the delivery of heat is recognized to the amount of the services already rendered plus a profit margin. Accrued income is recognized for services not yet billed.

Revenue recognition is less critical regarding rental and maintenance as well as sales revenues. Rental and maintenance agreements are billed as part of fixed-price agreements in accordance with IAS 18 and recognized on a straight-line basis over the term of the agreement. Revenue from the sale of goods is

recognized when the significant risks and rewards of ownership have been transferred to the buyer, it is probable that the economic benefits associated with the transaction will flow to the Company and the amount of revenue can be measured reliably.

Impairment of non-current assets. Property, plant and equipment and other non-current assets, including intangible assets, are tested for impairment as soon as events highlight, or there are indicators, that their carrying amount exceeds the recoverable amount. An impairment loss is recognized equal to the amount by which the carrying amount of an asset exceeds its recoverable amount, the recoverable amount being the higher of fair value less costs to sell or the value in use of the asset concerned. The value in use is defined as the present value of estimated future cash flows to be derived from an asset or a cash generating unit. The fair value of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction. For the purposes of determining impairment, assets are grouped together into the smallest group for which separate cash flows can be identified.

Goodwill is not subject to straight-line amortization, but is subject to an impairment test at least once a year. The impairment test is carried out on a cash generating unit basis. The trademark, as another asset with an indefinite useful life, is also tested for impairment at least once a year. Goodwill and trademark are measured at their original cost less any accumulated impairment. Impairment losses recognized for goodwill are not reversed.

Non-current provisions. The discount rate is an important estimate. It is based on market yields of high-quality, fixed-rate corporate bonds observable on the financial markets as on the balance sheet date. For pension provisions, assumptions about life expectancy, future salary and pension increases are made.

Deferred tax assets. These are recognized to the extent that the recoverability of future tax benefits is probable. The actual usability of deferred tax assets depends on the future actual taxable profit situation. This situation may differ from the estimations at the date of capitalization of the deferred tax assets.

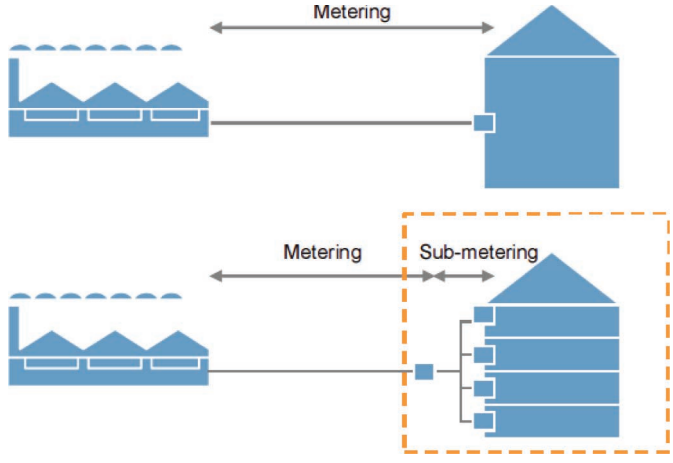
Derivative financial instruments. The valuation of interest and foreign exchange derivatives is dependent upon future interest and exchange rate developments as well as upon assumptions on which these are based.

SUB-METERING

Industry Overview

Heating, water and electricity delivery to buildings is generally metered by utility companies. The gas, oil and district heating (*Fernwärme*) meters in centrally heated buildings and water meters provided by utility companies, however, can generally only monitor the consumption of the entire building and are not equipped to monitor the consumption of individual units within a multi-unit building.

To also monitor consumption of individual units, multi-unit buildings in many countries are equipped with additional measuring devices called sub-meters. Sub-meters measure the heating use and water consumption within commercial and residential multi-unit buildings and allow landlords or property managers to subsequently allocate the costs to different tenants on the basis of their actual, individual consumption. Sub-metering generally covers heating and water only as electricity consumption is usually measured and billed directly by utility companies on an individual basis. Sub-metering is important where multiple units within a building share a common heating or water system, as only the sub-metering system enables the measuring of the actual consumption of each unit. While metering for the whole building is provided by utility companies, sub-metering services are typically provided by specialized energy services providers such as Techem.



Sub-metering services are generally provided as follows: first, a measuring device is installed in each unit (e.g., on each radiator or in each main water line) within a multi-unit building. The energy services providers typically ensure the regular reading of the sub-metering devices and the maintenance of the devices. Joining those individual sub-meter readings with the overall costs of the heating and water supply and related data, which is provided to the energy services provider by the landlord or property manager, allows the energy services provider to provide an individualized consumption-based cost allocation for each tenant. Subsequently the landlord or property manager can invoice the individual costs for water or heating to the landlords or the property managers from the tenant. Generally, a sub-metering company therefore provides the following services: installation and management of sub-metering devices, interaction with landlords to gather the overall cost and tenants data for the entire building, reading of the sub-metering devices and allocation of the overall costs to individual dwellings. Costs are generally allocated based partially on consumption (typically weighted between 50% and 70%) and partially on size of the individual unit (typically weighted between 30% and 50%).

Supportive Regulation

The provision of sub-metering services benefits from a favorable regulatory environment. As both energy and water are becoming increasingly scarce and expensive resources, consumers and legislators are focused on the more efficient use of energy resources. Sub-metering has proven to lead to a more efficient use of energy and to reduce waste, as the allocation of costs based on individual consumption provides an incentive to use energy and water more economically. A series of pan-European studies has shown that the implementation of consumption-based billing of energy costs leads to energy-savings quotas varying between 10% and 40%, with average savings of approximately 15–20%.

The level of regulation governing the provision of sub-metering services can range from regulation on federal, municipal or state regulation to no legislation. In addition, there is supra-national legislation on EU level as well as certain financial incentives, such as in Brazil, where state-funded financing for new apartments is only available if the apartment building is fitted with sub-meters. In Germany, the German Heating Cost Ordinance requires landlords to provide consumption-based billing of heating and hot water

consumption; landlords are generally required by law to provide sub-metering capabilities in residential and commercial multi-unit buildings with more than two units. The German Heating Cost Ordinance was enacted in Germany in the early 1980s and was amended with effect from January 2009, to implement the European Directive 2006/32/EC on energy use efficiency and energy services.

While a supportive regulatory regime is helpful, it is not a pre-requisite to the implementation of sub-metering. Sociological pressure to fairly allocate costs and efficiently use energy is significant. For example, both Denmark and Belgium have penetration rates for sub-meters of approximately 99% despite the lack of any mandatory national sub-metering legislation.

Devices and Contracts

Energy services providers offer sub-metering services by reading their sub-metering devices (i.e., heat and water sub-meters). Readings from the sub-meters are processed by the energy services provider and converted into consumption data for each unit within a multi-unit building. The sub-meters are read for cost allocation purposes at least once a year, usually at the end of a calendar year or after the heating period. Sub-metering devices that measure the consumption of water are subject to mandatory calibration and in Germany must be replaced after five years (in the case of hot water meters) or six years (in the case of cold water meters). Heat cost allocators ("**HCAs**") have a life span of about 12 to 17 years and are not subject to recalibration requirements. Heat meters, which can be subject to recalibration requirements, have a life span of about five years. Depending on the devices, sub-meters can be read in different ways:

- *Manual sub-meter reading*: The consumption data is read directly from each sub-meter, either visually or by an electronic meter reader that connects with the device through an optical, infrared-like connection. The meter's reading values are then entered manually or by optical data transfer into a mobile meter-reading device. Subsequently, the meter-reading device is connected via data-link with a central data center to transmit the reading values, which is usually done once a day. This method of reading requires a meter reader to enter the apartment or other individual unit where the sub-meters are located. It is most commonly used with evaporator-based HCAs, electronic HCAs and standard water meters.
- *Radio-controlled sub-meter reading*: Newer sub-meters are equipped with radio transmitters. Radio-controlled sub-meters record consumption information and send it to a receiver outside the individual unit (data collector). Such devices enable a simple and secure reading of consumption data without a meter reader having to enter an apartment or other individual unit, or even the building. In case of "walk-by reading" the data collector is carried by a meter reader, walking through the floors or even outside the building. The collected data is transmitted to the energy services provider's data center by public networks. In case of remote reading, data collectors are connected with a mobile telephony network and transmit the readings regularly, typically once a day to the data centre. This significantly accelerates the reading and therefore the overall cost allocation process and minimizes the time until customers receive the final consumption data. Techem, which was the first energy services provider to introduce radio transmitting sub-meters on a large scale in 1996, has an estimated market share in Germany of approximately 58% in this market segment. Radio-controlled devices have higher rental payments or sales prices. As a result, a higher level of customer service, including fast and error-free reading and processing of consumption data, is important.

Sub-metering customers are typically offered two types of contracts, both of which intrinsically link the service and the sub-metering devices and are typically long-term (multiple years) in nature:

- *Rental contract*: With a rental contract, the customer rents the sub-metering devices from the energy services provider, and the energy services provider agrees to install and maintain the devices, including regular checks to confirm functionality and to replace defective or aging devices, including for battery life or calibration. Rental contracts typically have a duration between five and ten years.
- *Sales contract*: With a sales contract, the customer purchases the sub-metering devices from the energy services provider and the energy services provider agrees to install the devices in the customer's building. Most customers also enter into maintenance contract for the devices, with the energy services provider undertaking essentially the same services as under a rental contract. The maintenance contract typically has a comparable contract duration as a rental contract.

Customers

The cost allocation of a jointly used resource requires that the entire building is monitored and managed by the same energy services provider using the same measuring technique. For that reason, the direct customers of energy services providers are professional and private property managers and owners of residential and commercial buildings, who rely on the data collected and processed by the energy services provider to invoice consumption-based heating and water costs to their tenants. The relationship between the tenant and the energy services provider is mostly indirect, with the tenant being required to grant the energy services provider access to the premises for the installation and servicing of the sub-metering devices and, depending on the device, for the reading of the measurements.

The actual sub-metering customer base is highly fragmented, differing in size from the owner of a house with three apartments to managers and owners of large residential apartment building portfolios with more than 100,000 units. The vast majority of customers are smaller, private property managers and home owners with a few dwellings under management.

While the provision of sub-metering services is a regulatory requirement in some cases, the contracts governing the services are not subject to specific regulation. Contracts are typically entered into with customers who also pay the water and heating costs to the utiliy companies for the entire building. To cover their energy and other costs and spread payments from their tenants over time, customers often receive pre-determined monthly installments from their tenants together with rental payments. These monthly installments cover all costs of the operation of the building, such as heating, water, insurance, cleaning of public spaces and elevator maintenance (referred to as *Nebenkosten* in Germany). Based on annual sub-metering data, actual heating and water consumption costs are then allocated to the individual tenants (i.e., consumption-based billing) who receive an individual cost itemization and, according to their actual consumption and amount paid in installments, either receive a refund or must make an additional payment.

The costs related to sub-metering (including hardware costs) are often passed on from landlords to tenants, typically making the costs of sub-metering only of secondary importance to the landlords, compared to service-quality. In addition, sub-metering costs usually represent less than 5% of a tenant's utility costs, further reducing customers' price sensitivity. As a result, the main criteria for obtaining sub-metering services are quality and performance levels, including timeliness and accuracy of meter readings and cost allocation, breadth and depth of services offered, quality and accessibility of after-sales services and device reliability.

Key Market Drivers

While the sub-metering markets in different countries develop at different rates and under different structures according to national conditions, there are certain macroeconomic factors relevant across all countries, including the following:

- *Number of multi-unit houses in a market*: Sub-metering is required where the meters used by utility companies cannot measure each individual unit of a building separately. For that reason, multi-unit buildings, residential or commercial, represent the target properties for energy services providers. Overall market potential for sub-metering services is therefore strongly linked to the overall number of multi-unit buildings in a market.
- *Increased cost of energy and water*: The world's energy consumption grew by 5.6% in 2010 and is forecast to continue to increase. Meanwhile, over a time span of almost 40 years, oil and gas prices have increased at roughly four times the rate of inflation. On the basis of rising energy and raw material prices, costs are in-turn passed on to end users, who as a result seek to reduce their energy consumption and costs. Sub-metering has been proven to reduce energy consumption and therefore is an attractive option for consumers facing increasing energy and water costs.
- *Scarcity of natural resources and government awareness*: The public and governments are increasingly focused on the scarcity of natural resources and reducing energy consumption by promoting energy efficiency. Public awareness campaigns are common place and governments are also turning to direct regulation (such as the European Union's Energy Services Directive). Sub-metering has been recognized as a viable option for reducing energy consumption while fairly allocating energy and water costs among tenants in multi-unit buildings. Over the long-term, we expect the increasing scarcity of natural resources and related price increases to result in sub-metering regulations in additional countries.

- *Supportive legislative environment*: The adoption of consumption-based billing has been driven not only by the fundamental fairness of allocating costs based on usage, but also by market regulation. Energy services providers continue to benefit from the implementation of European Union regulation and directives (see "*Regulation*"). In Germany, sub-metering of heating and hot water consumption is compulsory, with several non-governmental institutions and alliances ensuring compliance with the regulatory framework, such as the consumer protection agency (*Verbraucherschutz*) and tenants' association (*Mieterbund*).
- *Relatively low cost of sub-metering services*: Costs related to sub-metering can be passed on by the customers to their tenants. Those costs are low in relation to the average overall heating and water bill (sub-metering costs depend on the size of the building but are typically less than 5% of total utility costs) and also lower than the average savings on energy costs. As a result of the low cost level, price sensitivity of customers is limited but correlates with the number of apartments managed or owned by the customer.
- *Acceptance with respect to service-based business models*: Sub-metering services entail both installation of sub-metering devices and the reading and billing based on the data collected. The acceptance of service-based business models and the willingness of customers, not only to equip apartments with sub-metering devices, but also to pay for related services like reading and billing, are key market drivers.
- *Trend to small households (single and double income/no kids) drives demand for radio*: The market has seen a trend towards radio-controlled devices for the past three years driven by an increasing number of small households with single parents or two working adults without children. The convenience of radio-transmitted readings is particularly attractive for this group as manual readings typically occur during normal business hours and would require them to be at home to grant meter reader access to the sub-meters.

Market Development

Market growth and sub-metering penetration continue to evolve and vary by country due to different market phases and regulatory environments. The industry can typically be distinguished by three market phases: (i) the initial establishment of the energy services model ("pioneer markets"), (ii) established energy services model with growing levels of market saturation ("growth markets") and (iii) established energy services model with high degrees of market penetration and saturation ("mature markets"). These three phases are further explained below:

(i) *Pioneer markets* have a saturation rate of sub-metering services of less than approximately 15%. Typically such markets are fragmented with few international suppliers and emerging regulatory frameworks. Low capital expenditure requirements allow for entrants to 'pilot test' processes, products and services within these markets. Business is predominantly based on device sales in combination with some service contracts. Brazil, India and Russia are examples of pioneer markets.

(ii) *Growth markets* have a saturation rate of sub-metering services between approximately 15% and 80%. Typically such markets have either an established framework of legislation supportive of consumption-based billing or the service is well accepted by the general population. Saturation levels permit the introduction of value added services on top of core sub-metering services. France, Italy and Poland are examples of growth markets.

(iii) *Mature markets* have a saturation rate of more than approximately 80%. Typically such markets have at least either a fully established and supportive regulatory framework in support of consumption-based billing or a strong sociological sense for individual and consumption-based cost allocation. Overall, these markets tend to be relatively stable with long-term customer contracts and steady market shares. With an established installed device base in place and little new building activity, value added services are increasingly important. Customers place a premium on timeliness of delivery and quality of service. Germany, Austria, Belgium and Denmark are examples of mature markets.

German Sub-metering market

Germany is the world's largest sub-metering market and the most important market for heating and water sub-metering devices in the EMEA region as it is home to several of the world's leading sub-metering companies. Germany implemented a favorable regulatory regime already in the 1980s and technology, processes and services are developed by companies there before being implemented in other regions.

Initially established in the 1950s, the German sub-metering market expanded rapidly on the basis of the sociological desire to pay a fair bill for heating and water usage. In the aftermath of the first oil crisis, supportive legislation was launched in Germany in the early 1980s.

Due to regulation and new product offers (both from a product offering and from an individual service standpoint) over the past ten years, the German sub-metering market has evolved into a market with full sub-metering solutions comprising a variety of devices and services. In line with the characteristics of a mature market, customers are increasingly offered value added services. These value added services are enabled, for example, by the use of radio-controlled metering devices, first introduced on a large scale in Germany by Techem in 1996.

In terms of competitive landscape, the German market has five key sub-metering providers. Techem has established itself as the overall market leader with about 29% market share (measured by devices under management) and as the market leader in terms of revenues. The other key sub-metering providers are ista and Brunata-Metrona (with market shares of 24% and 17%, respectively), both of whom also operate internationally, and Minol and Kalorimeta, which hold a collective market share of 15% and are focused solely on the German market.

International Sub-metering Market

While Germany remains the largest single market for sub-metering services, sub-metering has become increasingly relevant within the member states of the European Union. In addition, the macro-trend towards energy efficiency and individual allocation of energy costs (whether due to legal or market requirements) creates opportunities in markets outside the European Union for energy services providers to expand into such markets.

ENERGY CONTRACTING

Industry Overview

Energy contracting is a comprehensive energy service concept for residential and commercial building managers and owners. Energy contractors generally offer to increase energy efficiency and decrease energy costs by taking on certain planning, construction, maintenance and operating tasks from their customers. The energy contractor typically acts as a general manager that plans, finances and develops measures designed to save energy, such as the development and installation of new heating or cooling devices. Energy contracting has grown over the last six years (12.1% per annum from 2004 to 2010) to revenues of approximately €2.8 billion in 2010 in Germany.

Energy services providers have significant insight into their customers' heating systems through their sub-metering businesses. Energy services providers therefore gain the knowledge and expertise required to advise their customers regarding the replacement and improvement of their heating systems. As a result, energy services providers are in a favorable position to also offer energy contracting services. As a key provider of sub-metering services, Techem can leverage its energy services business to grow its energy contracting business.

Contracts in the energy contracting industry can be classified into two typical types of contracts:

System contracting: System contracting typically refers to the planning, building or renovating, financing and operating of equipment by a contractor. System contracting accounted for 86% of the energy contracting market in 2010 based on number of contracts. CHP-units, heat stations and boilers are pieces of equipment often installed and operated pursuant to system contracting agreements. In system contracts, the cost for the unit (or the renovation of an existing unit) is typically financed over time and paid through the base price. The contracts typically set forth the pricing for the heat and energy produced as well as administration and maintenance charges payable to the system contractor over the duration of the contract. In order to allow for amortization of the relatively high investment costs, the contracts typically have a duration of ten to 15 years.

Efficiency contracting: Efficiency contracting typically refers to the planning, financing and implementation of measures (such as replacing smaller component parts of a heating system) to achieve reduced energy consumption or the provision of consulting services to that extent. Those contracts typically have a shorter duration (one to five years). As the shorter duration does not allow for an economically feasible way to repay for the initial investments, tax reliefs in Germany were used to make those contracts

feasible. The tax reliefs are shared between the contractor and the customer, which enables the contractor to recoup the cost of its investments in the energy saving measures.

Customers

Within energy contracting, customers can be divided into four segments;

- the residential sector, including private real estate owners;
- the commercial sector, including property management companies and building companies;
- the industrial sector, typically requiring larger power sources; and
- the public sector, including schools, local authorities and public buildings such as hospitals.

Key Market Drivers

Similar to the sub-metering market, while the energy contracting markets in individual countries develop at different rates and under different structures according to national conditions, there are certain macroeconomic factors relevant across all countries, including the following:

Increasing energy prices: World energy consumption grew by 5.6% in 2010, the largest increase since 1973, and is forecasted to continue to grow. Meanwhile, over a time span of almost 40 years, oil and gas prices have increased at roughly four times the rate of inflation. Within this context of rising energy and raw material costs, which in turn are paid for by end users, customers have a strong incentive to invest into new heating and cooling systems that have a higher degree of energy efficiency than existing systems. Also, the complexity in planning, managing and operating such systems has increased significantly over the past several decades, incentivizing customers to turn to outside contractors to manage their facilities, increase energy efficiency and reduce costs.

Increasing awareness for alternative energy production environments: Modern CHP-units use primary energy in an efficient manner. They produce electricity and use the waste heat to heat buildings or the whole area. In addition, decentralized CHP-units reduce the strain on electricity grids. These benefits and increasing public awareness of the need to increase the efficient use of energy and use renewable energy has led to an increased demand for CHP-units. In Germany, that trend is fostered by the *Energiewende*, a decision of the German government to abandon nuclear energy and to phase out nuclear power plants by 2022, forcing Germany to find other efficient electricity production methods.

Changing legislative framework: Energy contracting is not regulated. Rather, it is influenced by various provisions and legal frameworks (for details, see "*Regulation*"). For example, in May 2010, a revision to the EU Directive on energy performance in buildings (2002/91/EC) was adopted in an attempt to heighten energy performance requirements. Individual countries within the European Union must implement the directive by July 9, 2012.

Need for financing solutions: Outdated heating systems and the opportunity to finance high cost investments without the need for bank borrowing serve as primary economic drivers in the residential sector. In the commercial sector further need for a single energy supplier to provide efficient energy supply facilities and low cost heating is of high priority. Given the lack of financing sources, public sector contracting tends to involve the upfront investment in heating plants as a replacement for old heating systems.

Competitive Position

Given the broad market definition and the more than 500 energy contracting companies in Germany, the competitive landscape within the energy contracting sector is characterized by a high level of market fragmentation. Consolidation in the short term is not expected, according to the German association for Energy Supply. Key participants include pure play contractors, multinational energy utilities and construction companies. The participants can be divided into five main sub-groups:

- Utility providers: either national or municipal providers that are primarily focused on contracts that provide the secure delivery of gas.
- Equipment providers: mostly companies that are primarily focused on specific equipment sales.

- Independent contracting companies: companies that provide complete contracting solutions from conception to execution and maintenance of units for private and industry customers.
- Independent consultant companies: mostly engineering consultancies, which primarily offer strategic advice without executing the implementation of cost saving measures.
- Facility managers: traditionally have managed buildings and ancillary facilities, where they often already care for heating equipment, and have added higher margin energy contracting services as part of their maintenance role such as the replacement of outdated heating equipment as part of their maintenance role.

Utility providers and independent contracting companies, including energy service providers such as Techem, held the largest share of the market in 2011 with 36% and 30% of market share, respectively.

BUSINESS

Overview

We are a leading global energy services provider. Our business model combines our primary business, sub-metering, with various additional products and services which target the energy contracting sector in particular. We provide our sub-metering services based on devices we install that are manufactured by third parties to meet our specification. Our business is organized in two business segments: "Energy Services" and "Energy Contracting".

Within the Energy Services business segment, we offer sub-metering services to approximately 400,000 customers, landlords and property managers, in 22 countries, with our core market being Germany. Sub-meters measure the heating use and water consumption of individual units within a commercial or residential multi-unit building with a central heating or cooling system and allow the landlord or property manager to subsequently allocate the costs to different tenants on the basis of the tenant's actual individual consumption. We provide our customers with measurement, sub-meter reading, cost allocation and billing services. In order to be able to provide the billing service, we rent or sell heat and water sub-meters as well as heat cost allocators to our customers and offer the maintenance services required for such devices. We provide sub-metering services for approximately 9.1 million units by means of approximately 45.9 million installed sub-metering devices. Utilizing the consumption data collected by our sub-metering devices, we also offer value added services that are designed to help landlords and property managers monitor consumption and increase the efficient use of energy.

In addition to sub-metering services, we offer supplementary services within our Energy Services business segment, which benefit from our knowledge of regulatory requirements and our process know-how in managing access to our customers' buildings. These supplementary services include the installation and maintenance of smoke detectors, which are required by law in many German federal states, and, recently, the performance of legionella analysis in drinking water, which also is required by law in Germany.

For the 2012 financial year, our Energy Services business segment generated total revenues of €530.1 million and Adjusted EBITDA of €201.5 million. Germany generated 75% of such revenues, with the remainder generated by our international operations outside of Germany.

Our Energy Contracting business segment was established in 1992. The system contracting solutions we offer in our Energy Contracting business segment mainly comprise the planning, financing, construction and operation of heat stations, boilers, cooling equipment and combined heating and power units ("**CHP-units**"). These projects are generally customer-specific and the fuel price risk remains with our customers. Our Energy Contracting business benefits from our expertise in energy consumption and our market access gained through our sub-metering activities.

For the 2012 financial year, our Energy Contracting business segment generated revenues of €162.8 million, with 47% of our revenue resulting from Energy Contracting services provided in the residential sector. The segment generated Adjusted EBITDA of €26.8 million, representing 12.0% of our total Adjusted EBITDA.

Competitive Strengths

We operate in an industry with favorable market dynamics and supporting regulations.

The public has become increasingly aware of the scarcity of natural resources, especially as energy prices continue to rise. As a result, there is greater demand for energy savings, both from the markets and from governments. Sub-metering is well positioned in this environment, as sub-metering and related services are an inexpensive option for reducing energy consumption and increasing energy efficiency. Sub-metering typically represents less than 5% of an end-user's utility bill. Studies have shown that billing energy costs on the basis of consumption leads to average energy savings of between 15% and 20%. Germany, our most important market, recognized the value of consumption-based billing and adopted legislation mandating sub-metering of heating and hot water consumption in 1981. Other countries have adopted or are considering similar legislation and the European Union is currently considering a directive that contemplates sub-metering requirements. In addition to making sub-metering mandatory in many instances, German regulation also permits the costs of sub-metering to be passed through from a landlord or property manager (our direct customers) to its tenants.

We have been in business for over 60 years and are the market leader in Germany, the largest sub-metering market in the world.

Germany is the largest, most mature sub-metering market in the world, representing approximately a quarter of the total installed sub-metering device base in the EMEA region in 2011. The German government recognized early that the energy efficiency and cost savings resulting from sub-metering are important to individual households. As a result, Germany was one of the first countries to adopt regulation making sub-metering mandatory. We have been active in the German sub-metering market for over 60 years, and have grown with the industry to become the market leader in terms of both revenue and number of installed devices. Our German Energy Services business accounted for 75% of our Energy Services revenues in 2012. In addition, we have played an important role in making Germany the most technologically advanced sub-metering market. The expertise we have developed in our German business is a key advantage as we enter international markets.

We are a customer service-focused company with long-term customer relationships.

Customer satisfaction is a key decision factor in the energy services industry. We believe that service level and quality of the products and services that we deliver are the key decision and selection criteria for our customers, as regulation often allows them to pass the costs of sub-metering services through to their tenants. As the market leader in Germany, we believe we are well positioned to understand what customers value means and we are able to differentiate our company from competitors through our customer service, our technological leadership and the quality of our sub-metering and cost allocation services. We have experienced a high level of customer satisfaction as evidenced by our long-term customer relationships and low churn rates, which have been well under 5% during the past five years. By refocusing our efforts on customer service, we have reduced our churn rates by almost one-half over the last three years.

We are technological leaders in sub-metering and related value added services.

Our long operating history and focus on innovation have enabled us to become technological leaders in sub-metering. As a market leader that has grown with the sub-metering industry, we have been able to identify and pursue technological advances that have improved operational efficiency and service quality. For example, in 1996 we were the first energy services provider to offer radio-controlled sub-metering systems on a large-scale basis. We currently lead the radio-controlled sub-metering market, holding an estimated market share of about 58% of radio-controlled sub-meters in Germany. In addition, our radio-controlled systems are the basis for our integrated value-added platform *Techem Smart System*, which leverages the real-time information that radio-controlled devices provide. *Techem Smart System* enables our customers to combine prompt billing, regular device monitoring, online control of meter read-outs, monitoring of heating and water consumption and costs and intelligent consumption reduction through our energy saving system *adapterm*. These innovative value-added services, in connection with the development of new supplementary products such as our radio-controlled smoke detectors, allow us to increase quality and differentiate our company from competitors. Additionally, together with our energy contracting services, we offer the broadest product portfolio in the market, covering all aspects of energy services and energy contracting. We believe that the broad range of products we offer as a result of our technological leadership positions us as a key energy partner to our customers. This position serves as the foundation from which our energy services customers diversify into new products and our energy contracting services.

We have a strong management team.

Our CEO, Hans-Lothar Schäfer, has been with our company for more than 25 years. He has served in a variety of positions in our international business and software development teams, as well as leading our research and development program prior to being appointed as CEO in 2009. Our CFO, Steffen Bätjer, was also appointed in 2009, having joined our company from European commercial bank WestLB. In addition to his experience as a financial director, our CFO has worked as a management consultant with McKinsey & Company and spent a total of seven years exercising managerial responsibility in positions prior to coming to Techem. The managers of our business units also have significant experience, most having been with the company for more than a decade, and bring relevant skills from both process- and sales-driven industries. Together, our management team has refocused our company in its core market, Germany, and reduced costs and expenses while improving customer service, which has contributed to a significant reduction in our already low customer churn rate. They have also driven platform development abroad so that we can offer a wider range of products in our international business and have strategically

repositioned our energy contracting business by integrating it with our energy services business to offer a full spectrum of energy management service solutions.

Our core business generates relatively stable cash flows.

Our core sub-metering business generates relatively stable revenue due in part to its diversified customer base, with no single customer contributing more than 1% of our sales. In addition, we have long-term service contracts, with a typical tenure of between five and ten years in our energy services business and between ten and fifteen years in our energy contracting business, and a regulatory environment that favors the adoption of sub-metering and often allows the cost of sub-metering to be passed through to the end-users. These factors, combined with low customer churn rates and a predictable cost base and low capital expenditures, lead to strong and stable cash flows from operating activities. That positive business characteristic also continued during the past two years despite the general economic downturn in Europe. We generated total revenues of €692.9 million in 2012.We had cash flows from operating activities before interest paid/received and income tax paid/received of €233.3 million in 2012. Our net cash generated by operating activities in 2012 was €145.9 million, compared with €132.2 million in 2011.

Our strategy

We aim to strengthen our position as a leading energy services provider, to leverage our large energy services customer base and expertise to build our value-added services, energy contracting and international businesses and to increase our profitability. The key components of our strategy are as follows:

Grow our core business in Germany through value-added services and supplementary products.

We intend to continue to grow our German business by implementing the following measures:

- *Transition from older sub-metering devices to radio-controlled devices.* The sub-metering market in Germany is highly saturated. While we expect only moderate growth in the total number of sub-metering units, we expect a continuation of the transition from older sub-metering devices, such as evaporators, to our higher quality radio-controlled devices. As we have seen in the last decade, the penetration of radio-controlled devices has continued to increase as the customers acceptance of such products increased and the end-users do not want to be bothered with in-unit sub-meter reading. In addition to improving the quality of our services, radio-controlled devices command higher rental and sale prices and we have the opportunity to increase the length of our customer relationships through new written rental contracts when our customers switch over. Most importantly, radio-controlled devices serve as the platform for our value-added services and products. We were able to increase the share of our customers who use our radio-controlled devices to 52.1% in 2012, compared with 47.1% in 2011 and 42.1% in 2010, and aim to transition the majority of the rest of our customers to radio-controlled devices by 2015.
- *Develop and improve value-added services and products.* We expect that our ability to grow our business in Germany solely by optimizing our traditional sub-metering services will be limited. As a result, we have invested in the development of new value-added products and services that can generate higher revenues and differentiate our company from competitors, and we continue to place particular emphasis on ongoing research and development projects. We launched our energy saving system *adapterm* in 2006 and followed that with the launch of the portal to our value-added services, the integrated *Techem Smart System* platform, in 2009. We also aim to leverage our experience in energy services, access to customers and knowledge of regulatory requirements to develop new supplementary products when we identify opportunities in the market, such as the development of our radio-controlled smoke detector product which we launched in 2007.
- *Collaborate with leading companies in sectors with growth potential.* In order to realize our growth potential in markets in which we lack some of the necessary expertise, assets, technology or competitive position, we aim to enter into collaboration agreements with companies already operating in those markets. For example, we have entered into a collaboration agreement with laboratory analysis provider SGS Institut Fresenius GmbH in order to offer our customers legionella analysis for drinking water, which is required under German law. We have also entered into a collaboration agreement with Vattenfall Europe Wärme AG, a German subsidiary of the energy producer Vattenfall AB, to join CHP-units installed and operated by our energy contracting business together using Vattenfall's software to form a combined virtual power plant. Vattenfall Europe Wärme AG will

centrally manage the operating schedule of Techem CHP-units in order to provide load balancing services to grid operators. These collaborations enable us to take advantage of business opportunities by offering one-stop shopping to our energy services and energy contracting customers.

Grow our core business in Germany through energy contracting.

We plan to grow our business in Germany by building our energy contracting business. In addition to seeking new customers that fit our energy contracting model for commercial customers, such as hospitals, our existing energy services customers are a key target group for our energy contracting services. Changes in the sub-metering and energy contracting markets have made the integration of our energy services and energy contracting business segments easier and more appealing. In the past, energy services were provided as individual offers of products or services and revenues were achieved through equipment sales, maintenance and rentals and "traditional" data collection and billing services. We believe that the sub-metering market today is better served by full-service energy management solutions that include value-added services and supplementary products and services. We also believe that, in the medium term, the market will demand more fully-integrated sub-metering services and energy contracting solutions. By integrating the products and services that we offer through our energy services and energy contracting business segments, our sales channels can be used more efficiently and more effectively as we target the same core customer groups for both types of products and services. In addition, as we leverage our existing customer data and relationships, our sales channels and our key account management, we aim to create synergies between the two business segments and increase our overall revenues and margins.

Grow in our established international markets and introduce or expand our business in smaller markets or in countries where we currently do not operate.

We seek to increase our market share and promote our value-added services in our established international markets and to expand our business in selective markets in which sub-metering penetration is low. We currently operate in 21 countries outside Germany, each of which involves varying levels of market development and regulation. We consider ourselves to be market leaders in certain of our international markets, including in Austria, Belgium, Bulgaria and Hungary where we estimate that he have approximately 50% market share or more, and believe we are gaining significant market share in other markets such as Denmark, France, Italy, the Netherlands, Poland and Switzerland. Based on our experience in these markets, we believe we are well positioned to address the nuances of the international markets in which we operate. For example, unlike in our core German market where device rentals are significant, in Poland we have focused on device sales because sales are more attractive from a local tax perspective to the customers. Since 2009, the sales and service revenue and margins have increased each year in our Polish business. We are also streamlining our international business operations by standardizing the software and processing techniques offered and used in our international operations. This will help us deliver our products and services to any country on a single platform, which will increase cost efficiency and margins and facilitate the expansion of our business abroad. We believe that this integrated product platform combined with our expertise and leadership in international sub-metering markets positions us to successfully expand into additional international markets where sub-metering penetration is low.

Maintain a focus on cost reduction and efficiency to improve our margins and cash flow.

We implemented a single process and systems platform throughout Germany in 2009 that reduced costs by consolidating our billing infrastructure and processes in seven specialized billing centers all working on the same platform. In the coming years, we aim to further reduce costs and consequently increase margins. For example, as part of our program to optimize each step in our energy services business, we are currently working to increase the efficiency of our meter replacement and installation processes. Our next focus will be on increasing the efficiency of our meter reading processes, which provides significant potential for cost savings as we read more than 30 million meters each year in Germany alone. We have seen evidence of the cost-saving potential of more efficient meter-readings in the switch from older sub-metering devices such as evaporators to radio-controlled sub-metering and data collection devices that enable us to conduct radio-based meter-reading faster and cheaper than manual meter-reading. We also plan to implement our process optimization program internationally in order to realize the same process efficiencies that we have seen in Germany.

Our Business Activities

Our business model combines our primary business, sub-metering, with various additional products and services.

Our business is organized in two business segments:

- Energy Services, which offers
  - sub-metering services to approximately 400,000 customers in 22 countries. Our sub-metering services include measuring of individual heating and water consumption in approximately 9.1 million individual units in multi-unit residential or commercial buildings. These measurements are the basis for the subsequent cost allocation , billing and value added services that we offer; and
  - supplementary services such as smoke detectors and legionella analysis.
- Energy Contracting, which offers services solutions in the fields of:
  - system contracting, where we handle the planning, financing, construction and operation of heat stations, boilers, cooling equipment and CHP-units tailored to our customers needs acting in our own name and on our own account; and
  - energy consulting, where we assist our customers with their energy procurement by offering online administration of the customers' energy consumption and energy contract data, monitoring market prices and consulting on cost-efficient energy procurement.

Through GWE, a wholly owned subsidiary, we currently operate two cogeneration plants. GWE and its subsidiaries will be designated as Unrestricted Subsidiaries under the Indentures governing the Notes.

Energy Services

Our energy services business segment offers sub-metering services, value added services and supplementary services.

Sub-metering services

Our Energy Services business segment provides sub-metering services to our customers, mainly landlords and property managers of multi-unit buildings. We provide our customers with the measurement, allocation and billing of the actual heating and water consumption for each end-user. Based on such consumption data our customers invoice heating and water costs to their tenants. In order to provide such service, we rent or sell sub-metering devices to our customers, offer the maintenance services required for the devices, read the sub-meters, aggregate the consumption data, and allocate the costs based on the collected consumption data to each individual end-user.

Our sub-metering business consists of three integral steps for of measuring individual consumption and consumption-based billing of heating and water costs:

- Product sales and care, which comprises the rental or sale of our sub-metering devices. Product sales and care also includes services such as consultation on the best and most efficient sub-metering devices for a particular customer's needs.
- Data aggregation and analysis, which comprises sub-meter-reading, data collection, aggregation and analysis of the consumption data, and the allocation of costs for heating and/or water consumption to the respective end-user. We compile and process consumption data to allow our customers to accurately bill their tenants.
- Customer care, which comprises answering of questions from our customers to us as their energy service provider.

The use of more advanced radio controlled devices enables us to provide our customers with additional value added services designed to increase the efficiency of energy consumption through energy monitoring or the energy saving system *adapterm*. For details, see "*—Value added services*."

Devices

Our devices comprise an integral aspect of our sub-metering business model. Our measuring and billing services require the use of our sub-metering devices. We do not manufacture or assemble our sub-metering devices ourselves. Some of our devices and our supplementary equipment are produced exclusively for us by our equipment suppliers, with whom we have long-term contractual relationships, according to specifications we provide. In other situations we use more basic meters, have them customized (so that they can be used with our radio technology only) and equip them with our radio technology. For details, see "*—Customers and Suppliers—Suppliers*". However, with respect to certain key components of our sub-metering devices such as radio and leak detection technology, we hold exclusive intellectual property rights. For details, see "*—Intellectual Property Rights.*" Our radio-equipped devices are proprietary and not compatible with third party systems. Therefore, customers who wish to switch from our products and services to those of a competitor must either have their devices read manually by the competitor, which would render the benefits of the advanced radio technology superfluous, or replace their current equipment with equipment provided by the competitor.

Types of sub-metering devices

Devices for measuring heating consumption:

We offer two types of heating sub-metering and data collection devices to measure heating consumption: *heat cost allocators* and *heat meters*.

Heat cost allocators are available as evaporators or electronic heat cost allocators which are directly installed on all radiators in the buildings of our customers. Evaporators measure the heat emitted by a radiator based on the amount of the liquid contained in the device that evaporates during the heating period. Electronic heat-cost allocators measure the heat emitted by a radiator through electronic sensors and display the amount consumed digitally. Most of our electronic heat-cost allocators can be equipped with radio transmitters, which convey the consumption data to a central data collection device.

Heat meters are available in different versions to suit the varying needs of our customers, some of whom use floor heating, radio-based systems, or heating systems that are not easily accessible. Our standard heat meters have an integrated radio module. In several countries, heat meters are subject to calibration requirements and, in Germany for example, must be replaced after five years.

Devices for measuring water consumption:

With respect to the measuring of water consumption, we offer water meters with different mechanisms. All water meters are installed in the piping system of a building and consumption is displayed in liters and cubic meters. Our standard water meters are prepared to be equipped with a clip-on radio module. In several countries, water meters are subject to mandatory calibration and, in Germany for example, have to be replaced after five years (hot water meters) or six years (cold water meters).

Devices for measuring cooling consumption:

Our cold and heat meters are specifically designed for installation in combined cooling and heating circuits or in cooling circuits only. Accordingly, they are able to record cooling and heating energy consumption separately. They are prepared to be equipped with a clip-on radio-module.

Radio-controlled measuring of consumption data:

In the one and a half previous decades, we have equipped an increasing number of new devices with radio transmitters. As at June 30, 2012, 49.4% of our installed devices world-wide are radio-controlled. In Germany, we have an estimated market share of approximately 58% of the market for radio-controlled sub-metering devices. Our radio controllers send the recorded consumption data to a mobile receiver, which is either carried by a technician or installed permanently and records the consumption data transmitted by our devices and retransmits it via GPRS to our data center.

Radio-controlled measuring can be established without complications because it is adaptable, given the current technology, to most installation situations. As no wiring is required, installation of radio-controlled

devices does not require invasive structural work in a building. In addition, radio-controlled sub-metering has the following advantages:

- *Consumer friendliness:* The collection of consumption data via radio-controlled sub-metering devices does not require that residents of the sub-metered unit are present during read-outs. This renders the entering of the respective premise by a meter reader as well as read-out appointments obsolete.
- *Accuracy:* Radio-controlled collection automatically records consumption data and transmits it to our receivers (whether hand held devices of our meter reading staff or a GPRS-based data collector). As humans are not needed to manually record and process the consumption data, retransmission errors and the need for costly follow-up visits are virtually eliminated.
- *Value added services:* Radio frequency meter reading also is the first step towards value added services which enable more economical energy consumption. Such solutions range from consumption measurement and billing via device and energy monitoring to energy-saving heating controls. The solutions are brought together onto one platform (our *Techem Smart System*) which enables customers to combine prompt billing, regular device monitoring, on-line control of meter read-outs and monitoring of heating and water consumption and costs. Using the platform, landlords can track and optimize energy consumption. Another example of our value-added services is the energy-saving system *adapterm* which was launched in 2006. It regulates heat generation with the effect that heat generation is reduced in times when less heat is required by the occupants of a building.

In addition, radio-controlled meter reading is more cost efficient for us compared to manual meter reading and results in higher margins. At the same time radio-controlled meter-reading increases and ensures a high level of quality in our services.

Rentals, sales and replacement

When supplying our customers with sub-metering devices, we advise our customers on which devices are best for them based on their individual circumstances, taking into consideration factors such as data collection efficiency, future value added services and implementation and maintenance costs. Most of our customers in Germany rent our devices, as the costs for such rentals can generally be passed on to tenants. For details, see "*Regulation—Energy Services—Allocatability of costs related to sub-metering*." 74.9% of our sub-metering devices installed in the 2012 financial year were rented and 25.1% were sold.

We generate relatively stable cash flows from our hardware business, as the device rented or sold to our customers in several countries in which we operate, including Germany, must be replaced at regular intervals due to calibration regulations and/or battery life. In addition, most of our rental contracts are renewed and most of our sales contracts are followed by new sales or rental contracts. The intervals at which replacements must be made vary between jurisdictions. For instance, in Germany, heat meters and hot water meters must be replaced every five years, and cold water meters every six years, whereas in Belgium, customers must replace hot water meters every eight years and cold water meters every sixteen years. In the case of sub-metering devices with a modular design, the mandatory replacement requirement only applies to the components that are subject to calibration regulations.

We encourage our customers to rent rather than buy our devices in order to enable them to benefit from the fact that costs for such rentals can be passed on to tenants. Additionally, we view long-term rental contracts as advantageous in terms of customer retention.

Installation, commissioning, maintenance and replacement

Typically together with our rental and sales contracts, we provide installation, commissioning, maintenance and replacement services. The price for the installation of the devices is often included in the sales or rental price. The vast majority of our installation services are provided in conjunction with the conclusion of a rental or maintenance contract or, in the case of a sales contract, in conjunction with at least a service contract.

With a trend towards rental contracts, the number of devices under maintenance pursuant to separate maintenance agreements has decreased from 5.3 million in 2011 to 5.2 million in 2012 due to an increase in rented sub-metering devices. Maintenance for rented devices is provided pursuant to the rental agreement.

SERVICES

Sub-meter reading and data collection

Sub-meter reading is the basis for our collection of heating, water or cooling consumption data. In most markets in which we operate, consumption data is read once a year, usually at the end of a calendar year or after the heating period. Depending on the type and the level of integration of the respective sub-metering devices into our data collection system, meter-reading can be conducted in two ways:

- *Manual sub-meter reading*: Consumption data is read out directly and visually from the meter. All our manual sub-meter reading is done by subcontractors via digital handheld devices with mobile connectivity to transfer data while on the road. We provide our subcontractors with instructions of when and where to read. The subcontractor distributes an announcement to the respective tenants of the sub-metering units regarding the upcoming reading appointment and then physically enters the individual unit in order to read the sub-meters.
- *Radio-controlled meter reading*: Consumption data is read out by subcontractors from the data collectors through wireless radio-based technology or directly via GPRS. For details, see "*—Sub-metering services—Product sales and care—Radio-controlled measuring of consumption data*."

Data aggregation and analysis

Consumption data collected is transmitted to our data centers where it is stored, aggregated and analyzed. The collected data can be compared to other data that has been regularly collected from the particular site in previous years, to other sites of the respective customer or to comparable sites in our data base to benchmark the energy consumption and operating condition of the building.

Cost allocation and billing

Based on the consumption data collected, we offer three advanced ways to prepare individual bills for heating, water or cooling consumption:

- *Data input online*: Customers transfer overall consumption, cost and end-user data directly and securely to our billing tool in our online portal (the "**Techem Portal**"). Based on the read-out values from our sub-metering devices and the billing and end-user data provided to us, we prepare the respective heating bills and send them to our customers for distribution to the respective end-users. The data of approximately 18% of our sub-metered units in Germany is transferred via our direct online billing.
- *Data exchange online via our Techem Portal*: Customers can exchange their overall consumption, cost and end-user data with us via our Techem Portal using their enterprise resource planning ("**ERP**") software. Once this data is combined with the individual consumption data collected by us, and we either (i) prepare only the respective heating bills or (ii) combine the heat costs with the other ancillary charges (such as cold water consumption, waste charge and annual heating system maintenance charges) for each tenant. We then print out the bills and send them to our customers. The data of approximately 29% of our sub-metered units in Germany is transferred via our direct exchange online.
- *Integrated billing*: Using our proprietary software and certain systems from external providers which enable integrated billing, customers receive one final bill combining the heating bill and a bill of ancillary rental expenses. The final bills are ready for printing and dispatch from the customers' respective ERP system. The data of approximately 12% of our sub-metered units in Germany is transferred via our integrated billing service.

The data of the remaining 41% of our sub-metered units in Germany is transferred traditionally via mail. We then prepare the respective water, heating and, in commercial buildings, cooling bills and send them to our customers for distribution to the respective end-users.

Customer care

Besides the high quality in all our reading and billing processes, customer care is the primary way we ensure our service quality. Through our call centers, we answer customer calls concerning any questions they have relating to our services. In the billing period we pro-actively engage with customers to discuss how to best proceed with the reading and billing processes.

Value added services

In addition, we offer our customers several additional services:

ENERGY MONITORING

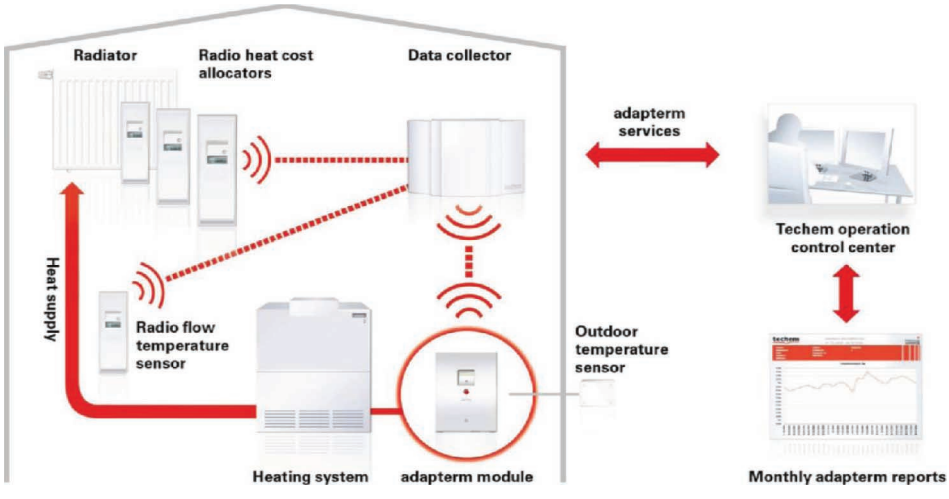
In times of increasing energy prices, scarcity of resources and pressure to reduce carbon dioxide emissions, energy efficiency and the awareness of energy costs are becoming increasingly important aspects for both the residential and the commercial real estate sectors. Using the consumption data collected for our sub-metering services, we offer energy monitoring services that allow our customers to review, reduce and optimize the energy consumption (heat, cold and warm water) of their buildings and related energy costs which helps to increase the attractiveness of our customers buildings, especially in areas with high vacancy rates as it reduces the overall rent for the tenants.

Based on the consumption data we collect and save as a result of our sub-metering services (for details, see "*—Sub-metering services—Data* aggregation *and analysis*"), we provide the following analytical services via our *Online Portal*:

- *Benchmark Analysis* is a comparison of the energy and water consumption and costs of our customers' buildings with similar properties in our portfolio.
- *Portfolio Analysis* gives our customers insight into the energy and water consumption of their individual buildings and the related costs incurred.
- *Unit Analysis* provides a concise overview of the energy and water consumption and costs in individual units. The optional *Unit Analysis Plus* service provides a detailed monthly unit analysis of individual units for both energy and water consumption and costs. Furthermore, customers who wish to review the current energy and water consumption on an ongoing basis and monitor developments in heating and water usage for individual units, can opt for the *Intra-Year Unit Analysis*.
- *Time Series Analysis* enables our customers to track the development of energy and water consumption and costs of their properties and units over the past six years.

ENERGY SAVING SYSTEM ADAPTERM

Based on the analysis of heating consumption, we have developed an additional device designed to optimize the energy efficiency of our customers' properties. Our energy saving system *adapterm* relies on our radio equipped heat cost allocators and is designed to optimize the production of heat. The *adapterm* system collects temperature data from our radio-equipped heat cost allocators and the heating system determines the total heating demand in the building and calculates whether there is an oversupply of heat in the building, taking into account all available data such as inside heating demand, outside temperature and other factors. If an oversupply of heat is detected, the *adapterm* system reduces the flow temperature of the heating system to its optimal level. Via radio-based remote access we ensure that the *adapterm* system operates efficiently. Monthly *adapterm* statements inform our customers of the energy savings achieved in their buildings.

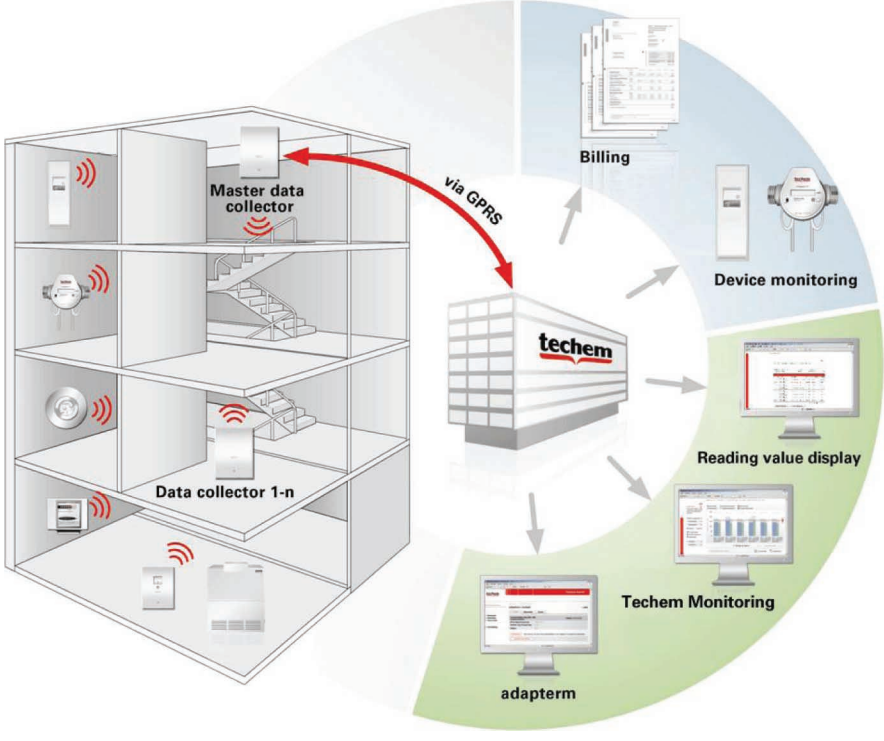


adapterm gradually adapts to the heating consumption in a building. *adapterm* guarantees that the heating system only produces the heat which is actually needed. *adapterm* reduces the heating system's consumption by up to about 10% (source: ifeu), without affecting the comfort of the residents, all with little to no additional investment besides the relatively low investment in the *adapterm* system itself.

Integrated value added platform Techem Smart System

Techem Smart System integrates and utilizes the capabilities of our radio-based technology and provides our customers with access to a wide range of monitoring services and allows remote updates, such as for new protocols, or new features like manipulation information via bidirectional radio based communication. We typically offer *Techem Smart System* to our customers in package with our services, providing them with continuous access to their energy consumption data.

Radio-controlled meters in each unit send their measured consumption to master data collectors (in larger buildings or in case of several buildings via additional data collectors) which record the consumption data and the device status information from various devices under the control of the master data collector and transmit the data to our computer center at our Eschborn company headquarters via GPRS for processing. The continuous access to energy consumption data from units equipped with radio-controlled sub-meters enables continuous monitoring of the installed devices. The digital archiving of collected consumption data provides our customers and the respective end-users with online access to current and previous sub-meter read-outs at any time. Based on the collected energy consumption data, we provide energy monitoring services which offer our customers the analysis of energy and water consumption and costs in respect of their properties. Based on the analysis of a building's energy efficiency, our energy saving system *adapterm* uses the consumption data from individual radiators to control the heating system according to the actual heating requirements.



Supplementary Services

In addition to the range of services directly connected to sub-metering, we offer supplementary products and services based on our sub-metering expertise, our knowledge of regulatory requirements related to multi-unit buildings in Germany and the process know-how in managing access to our customers' buildings that we have due to our sub-metering business.

Smoke detectors

Some federal states in Germany have made the installation and maintenance of smoke detectors compulsory. For details, see "*Regulation—Energy Services—Smoke detectors*." Based on our know-how

regarding radio-controlled devices, we have developed radio-controlled smoke detectors, one of which allows for remote testing of its functionality. All of our radio-controlled smoke detectors can be integrated into our platform *Techem Smart System*. Along with the purchase or rent of the detectors, we offer our customers a full service, including installation, maintenance and regular testing of the smoke detector as well as a ten year guarantee on the smoke detectors, the radio module and the battery.

In the 2012 financial year we installed 193,455 new smoke detectors, of which 40% were sold and 60% were rented.

Legionella analysis

In collaboration with SGS Institut Fresenius GmbH, we recently commenced offering legionella analysis of hot water systems. As at November 2011, such analysis is mandatory for certain buildings in Germany. For details, see "*Regulation—Legionella analysis*". We offer to install the appliances required to take hot-water samples, take the samples, submit the samples to a laboratory of SGS Institut Fresenius GmbH and keep all concerned parties, e.g., the landlord, the public health department (*Gesundheitsamt*) and the tenants, informed throughout the process. In case the samples contain legionella, we also offer to decontaminate the hot water system. The analysis of the samples is conducted by SGS Institut Fresenius GmbH.

Energy Contracting

Our Energy Contracting segment offers products and services that build on our expertise in sub-metering and our access to customers and their energy consumption data. As a leading global product and service provider in the sub-metering market, we first entered energy contracting in 1992. Since then we have gradually expanded our energy contracting services building on our strengths in the residential buildings segment. With continuously rising energy costs, we believe that the highly competitive energy contracting market offers growth potential.

System contracting

With our system contracting service, we as an energy service provider are engaged to procure, convert and supply useable energy to our customers, to a large part residential real estate owners, by planning, financing, constructing and operating heat stations, boilers, cooling equipment and small CHP-units for our customers, usually on a 10 to 15 year contract basis. Our system contracting customers transfer to us the tasks of procuring, converting and supplying energy. Our customers benefit from our process and technical expertise. The pricing approach of system contracting is flexible enough to adjust to changing market conditions. At least two price components are applicable: a fixed price component covers financing of implementation or renovation costs, interest, maintenance and a service fee, and a variable price component covers cost for energy consumption. In addition, in certain cases a fixed metering price as compensation for measurement service is agreed. The contracts typically also provide for price adjustments based on changes in the market price for energy procured for the customer, which allows us to avoid the risk of energy price increases.

Of our revenues generated with system contracting, 90% were generated with customers owning residential real estate.

Pursuant to a collaboration agreement dated August 24, 2012 with Vattenfall Europe Wärme AG ("**Vattenfall**"), a German subsidiary of the energy producer Vattenfall AB, a number of combined heat and power cogeneration units installed and operated by our energy contracting business shall be connected by Vattenfall's software to form a combined virtual power plant. Vattenfall will centrally manage the operating hours of the Techem CHP-units in order to provide load balancing services to the grid operators. We are the first provider to provide energy from CHP-units to such steering technology and, thereby, we contribute to the *Energiewende* by making system contracting in the form of decentralized power and heat generation via CHP-units attractive for our customers in the residential market.

Energy consulting

We assist our customers with their energy procurement by offering energy consulting services via our *Contracting Online Portal* which provides owners of commercial properties easy access to reports generated every 15 minutes by the electricity, heating, cooling, water and temperature sensors on their commercial facility.

Our energy consulting services include administering our customer's energy contract data, combining and tendering energy quantities needed by our customers, observing energy market prices and efficient tendering periods, assisting throughout the entire procurement process from the determination of the energy needed, including the tendering process, to concluding the energy contract, examining new energy supply contracts concluded, and annually updating contract and energy consumption data.

Using our energy consulting services, our customers are able to outsource the organization and administration of energy procurement while maintaining full control over the procurement process, in particularly the necessary tendering processes and the energy contracts into which they enter. We act as an independent and unbiased energy consultant with an overview of some 250 energy suppliers, all of which are accessible via our *Contracting Online Portal*. We believe that our energy services offer our customers considerable advantages such as cost savings on electricity and gas, which increase the attractiveness of rental properties and reduce vacancy costs and create the opportunity to quickly react to changes in the energy markets.

GWE Group

Our subsidiary GWE and its subsidiaries, established in 1994, originally developed, realized and operated combined heat and power plants of various sizes and had built a portfolio of larger CHP plants for industrial customers and smaller to mid-size CHP-units for hospitals. Since the addition of GWE Group to the Techem Group, the hospital-based CHP plants have been integrated into Techem's energy contracting business. Today, the GWE Group's business primarily consists of he two large power plants in Andernach and Heidenheim as well as two minority participations in power plants in Weißbach and Ludwigsburg.

The Andernach plant is designed to generate steam and electricity by burning residual waste. Steam and electricity produced by the Andernach plant is solely sold to ThyssenKrupp Rasselstein GmbH, a subsidiary of ThyssenKrupp Steel Europe AG. The plant in Heidenheim operates a gas boiler to generate steam and electricity. The output is primarily sold to Voith, but also to three further companies close to the plant. The plant was originally purchased from Voith and Voith has the option to repurchase the plant in 2013, which it has exercised, with effective date of September 30, 2013.

GWE Group will be designated as an Unrestricted Subsidiary for purposes of the Indentures. See "*Description of Senior Subordinated Notes*" and "*Description of Senior Secured Notes*."

CUSTOMERS AND SUPPLIERS

Customer Structure

With approximately 400,000 customers and a total of approximately 9.1 million sub-metering units, we have a well-diversified customer base. The average duration of our new rental contracts in the energy services business is approximately nine years. None of our customers generates more than 1% of revenues.

In the 2012 financial year, services and sales to our largest ten customers made up 7% of our revenues. In Germany, we currently provide our services to approximately 330,000 customers with approximately five million sub-metered units in multi-tenant buildings.

Energy Services

We provide energy services through Energy Services Germany and Energy Services International. With €397.8 million revenue in the 2012 financial year, Energy Services Germany remains the largest business sub-segment. Customers of our sub-metering services can be split into the following groups:

- A1—very large customers with more than 10,000 apartments per customer (e.g., very large property managers, building associations). We have approximately 150 to 200 customers in this group.
- A2—large customers with more than 5,000 apartments per customer (e.g., large property managers, building associations). We have approximately 290 to 340 customers in this group, which accounts together with the customer group A1 for 20% of the revenues (in the financial year 2012).
- B—medium customers with more than 500 apartments per customer (e.g., property managers, building associations). We have approximately 6,100 customers in this group, which account for 28% of the revenues (in the financial year 2012).

- C—local customers with more than 50 apartments per customer (e.g., small property managers). We have approximately 31,000 customers in this group, which account for 15% of the revenues (in the financial year 2012).
- D—small customers with fewer than 50 apartments per customer under management (e.g., private property owners). We have approximately 224,000 customers in this group, which account for 33.7% of the revenues (in the financial year 2012).

The pricing of customers varies among the groups, with the larger customers in the groups A and B being generally charged less per apartment compared to the customer groups C and D. Customers in group D seem to be the least price sensitive, but show together with the customer group C the highest growth rates.

Energy Contracting

In the 2012 financial year, we invoiced a net amount of €34.6 million to our top ten Energy Contracting customers. Our Energy Contracting customers can be allocated to the following sectors:

- residential, which includes private real estate owners and property management companies (approximately 47% of revenues in the 2012 financial year);
- commercial, which includes industry, building companies and hotels (approximately 48% of revenues in the 2012 financial year); and
- public, which includes schools, local authorities, public buildings and hospitals (approximately 5% of revenues in the 2012 financial year).

Suppliers

We have business relationships with many suppliers who manufacture or provide us with proprietary devices and other equipment. The top ten suppliers in our non-technical purchasing department make up a third of our purchases and our two largest contracts with suppliers combine to account for €33 million of our revenues in the 2012 financial year.

About 95% of our equipment procurement activities are managed centrally in Germany. Procurement of equipment of exclusively local relevance is handled in the respective markets.

In the 2012 financial year we had business relationships with 150 different suppliers. Our 30 main manufacturers are responsible for supplying around 88% of our sub-metering devices.

High volume heat cost allocators are manufactured according to our specifications. The sub-meters procured by us are standard mechanical meters and our radio devices are developed by us and produced by our suppliers in accordance with our specifications. They are protected by means of our intellectual property rights (for details, see "*—Intellectual Property Rights*"). In order to avoid dependence on certain suppliers, we normally procure the meters, radio technology and other critical parts of our value chain above a certain trading volume that we sell or rent from at least two different suppliers.

We generally arrange provisions regarding special warranty rights and ownership rights in relation to machines and tools. See "*Risk Factors*." We require our suppliers to disclose their cost structures, which are used as a starting point for price negotiations.

Sales and Marketing

In the 22 countries (incl. Germany) in which we operate, we have established dedicated sales channels.

We sell our products and services across Germany via our sales organization that is based at the 7 regional centers. Our sales organization is tailored to the breakdown of customer groups. For details, see "*—Customers and suppliers—Customer structure*".

Our sales activities outside of Germany are broken down into regions, including Region West and Region CEE. In some markets outside of Germany we operate a country-wide sales structure like we do in Germany, whereas we focus our sales activities in other geographical markets more narrowly on particular regions or metropolitan areas.

In order to promote organic growth, we have further streamlined our sales strategy, sales organization, and sale process in Germany.

Our customers are landlords and property managers of multi-unit buildings (and to a lesser degree architects, project developers, and contractors). Our business activities do not involve direct contractual relationships with end-users of residential and commercial units. Therefore, we do not market our products and services to end-users. Our customer account representatives conduct most of our marketing activities as part of our regular sales activities. For this purpose we use advertising materials such as image brochures and other publications that highlight the advantages of our technical innovations (such as *adapterm*). In addition, we use trade shows, events and our presence in associations to maintain customer contacts. Sales to small customers are primarily based on direct marketing activities. Recommendations from our existing customers are a key factor in attracting new customers. We also place advertisements in industry publications, use our websites (primarily www.techem.de and www.techem.com) and public relations activities in daily newspapers for marketing our products and services. For example, public relation activities with reference projects supported by the awareness of the need for increasing energy efficiency of the public, e.g. via newspaper articles about energy savings achieved through our services in hospitals or other public buildings, play an increasing role in our marketing efforts.

Research and Development

We view research and development ("**R&D**") as an essential factor in market leadership and paramount to our position as a comprehensive energy service provider. Our R&D is the basis of our Group's technical innovations and thus forms the cornerstone of the devices we produce and use to perform our energy services. One of the main tasks of our R&D department is the testing and improvement of our existing products through innovation and patent management as well as the adjustment of our product range to adapt to market development, in particular with respect to trends in the field of energy saving and resource protection. Our R&D draws from our extensive and expanding knowledge of energy saving methodology, low power electronics, consumption registration, and remote monitoring of devices via radio.

In the 2012 financial year, we had 32 employees working in our R&D department.

Intellectual Property Rights

Intellectual property and its application is important to our business.

Throughout our history we have patented a number of market innovations, including both products and processes. We currently hold approximately 100 patents, including, for example patents for battery powered radio modules for measuring water consumption and patents for leakage detection devices. As at March 31, 2012, approximately 25% of our global patents were less than 6 years old. As at March 31, 2012, we had 45 pending patent applications worldwide.

We hold several trademarks in Germany, the European Union, and some non-EU countries, which include, among others our company name "Techem," "adapterm", "bautec" and "Techem Smart System." The trademarks themselves are owned by Techem GmbH or its relevant affiliates. We also entered into an agreement with Professor Dr. Ziegler and his Partners GbR represented by Friedrich W. Ziegler in 2009 (amended in 2010) for the release of all ownership and protection rights of certain parts of their work. Specifically, we targeted two patents held by Professor Ziegler that are advantageous to us, particularly for our pursuit of radio technology.

In addition, our Group owns a number of internet domains. The most important of these domains are www.techem.com and www.techem.de.

Although our patents, utility models, and trademarks as a whole are materially significant for our business, we believe that no single intellectual property right and no individual group of intellectual property rights is materially important to our business as a whole. In order to maintain our competitiveness, we also rely on trade secrets, non-patented knowledge, innovative product updates, and ongoing technological advances. We attempt to protect our position by entering into non-disclosure and similar agreements.

Under certain circumstances, we must take legal recourse to assert our intellectual property rights or to determine the validity and scope of the ownership rights of third parties. Currently, we are not aware of any legal disputes that would result in us being prohibited from exercising our rights to intellectual property in such a way that would materially impair our business. We are also not aware of any legal disputes raised against us due to infringement of patents or trademarks.

Some companies in our Group are partners in collaborations that could result in restrictions with regard to the use of inventions or knowledge developed within the framework of these partnerships.

Employees and Pension Liabilities

Employees

For the financial year ended March 31, 2012, we had an average number of 3,168 employees. The number of employees has not changed materially since March 31, 2012.

The following table shows our average number of employees by region for the financial years ended March 31, 2010, 2011 and 2012 and the period ended June 30, 2012:

Average number of employees	Financial year ended March 31,			Three-month period ended June 30,
	2010	2011	2012	2012
Germany	2,014	2,069	2,079	2,084
Other countries	946	1,012	1,058	1,082
Employees	**2,960**	**3,081**	**3,137**	**3,166**
Employees at associated companies	17	30	31	31
Total employees	**2,977**	**3,111**	**3,168**	**3,197**

In addition to our own workforce, we have independent service relationships with approximately 1,200 individuals and entities providing meter reading and assembly services in Germany. As far as such services are provided by individuals we have established internal guidelines and procedures which aim to ensure the status of these individuals as independent contractors and to avoid mock-self employment (*Scheinselbständigkeit*) at our companies in Germany. Save for one isolated case at a newly acquired subsidiary, the qualification of service relationships as independent contractors has not been rejected by German social security authorities in the past, and we have no indications that this will change in the future.

We have collective bargaining agreements that set forth key terms of employment in several countries. In Germany, we are currently not bound to collective bargaining agreements with trade unions.

We have collective bargaining agreements that set forth key terms of employment in several countries. In Germany, we are currently not bound to collective bargaining agreements with trade unions.

A number of works councils exist at the Company and its subsidiaries and we are bound by various agreements with works councils, which cover topics such as additional benefits and agreements providing for severance and other compensation in connection with restructurings and redundancies. Works councils in particular in Germany enjoy a broad range of information, consultation and co-determination rights, especially relating to matters affecting the staff or the operations.

A supervisory board has been established at Techem Energy Services GmbH pursuant to the provisions of. the German One-Third Employee Representation Act (*Drittelbeteiligungsgesetz*). Accordingly, one member of this supervisory board is an employee representative, whereas the other two members of this body are appointed by the shareholders.

Pension liabilities

We have defined benefit pension plans for certain employees. In addition, employees in Germany and certain other countries can participate in defined contribution pension plans in the form of a pension insurance fund or a direct insurance scheme. Many employees of our Group also receive benefits from statutory social insurance funds, into which contributions are paid as part of their salary.

As at March 31, 2012, the present value of our defined benefit obligations from unfunded plans was €14.6 million. As at March 31, 2012, the present value of defined benefit obligations from funded or partly funded pension plans was €12.2 million and the fair value of the assets to fund these obligations was €10.2 million. As at March 31, 2012, this resulted in unfunded pension obligations of €16.6 million. The amount of the unfunded pension obligation is dependent upon the development of the present value of the pension obligations and the fair value of the assets available to fund those obligations, if any. The value of the pension obligations is also based on various assumptions, such as the actuarial parameters to measure the obligations. Any change in the underlying assumptions or a change in the legal requirements for the pension plans respectively for the calculation of the pensions owed or an insufficient development of the funding assets may have a significant impact on the value of our pension obligations.

As we generally have no further obligations after payment of the retirement pension contributions to state social insurance funds and private insurance companies (including pension insurance funds), these plans are treated as defined contribution plans. However, by law an employer ultimately remains liable for defined contribution schemes other than the state social insurance scheme to the extent the pension claim is not satisfied by the insurance company or other funding vehicle such as pension insurance funds.

For additional historical information regarding our pension liabilities, see "*IFRS financial statements for the financial year ended March 31, 2012—Note 15*" and "*IFRS financial statements for the financial year ended March 31, 2011—Note 15*."

In addition, we grant our employees other long-term benefits, including early-retirement schemes and jubilee bonus payments, for which provisions have been made on the balance sheet. As at March 31, 2012, these provisions amounted to €3.3 million.

Property, Plants and Equipment

Our headquarters is located in Eschborn, Germany, where we lease an office building with approximately 18,575 square meters of office space. We have branch offices in all countries in which we operate. We operate seven billing centers, which also function as regional centers, in Germany.

Legal and Administrative Proceedings

We are involved in a number of governmental, legal and arbitration proceedings that have arisen in the ordinary course of our business. We do not expect the governmental, legal and arbitration proceedings in which we are involved or with which we have been threatened to have a material adverse effect on our business or consolidated financial position. The outcome of legal proceedings, however, can be extremely difficult to predict with certainty, and we can offer no assurances in this regard.

With regard to the Senior Subordinated Notes Issuer, appraisal proceedings are pending between the former minority shareholders of former Techem AG and its majority shareholder. The former minority shareholders claim to have received inadequate compensation from the majority shareholder relating to 421,400 shares following a squeeze-out resolution. The claim has been dismissed at the lower judiciary level. Appeals proceedings are pending at the Higher Regional Court of Frankfurt am Main.

Insurance Coverage

We hold a number of international insurance policies centrally managed by our risk management department and adjusted on an ongoing basis according to current circumstances. We obtain our insurance based on internal risk management analyses in the form of a master policy and underlying local insurance policies to cover particular risks in most countries we operate. Deductibles and limits are agreed upon as appropriate. Our insurance coverage includes general liability and product liability insurance, environmental impairment liability insurance, commercial legal aid insurance, as well as property damage insurance covering buildings, facilities and machinery, business interruption insurance covering loss of profits, standing charges and claims-surveyor-fees, fidelity insurance, directors' and officers' insurance and travel insurance.

We believe, that our insurance coverage, including the maximum coverage amounts and terms and conditions of the insurance policies, are both standard for our industry and appropriate. We cannot, however, guarantee that we will not incur any losses or be the subject of claims that exceed the scope of the relevant insurance coverage.

REGULATION

Overview

Our two business segments, Energy Services and Energy Contracting, are influenced by a wide range of regulatory requirements under European Union and national law dealing with energy and water supply to buildings, in particular metering and billing. While, at least with regard to the business segment Energy Services, most of these requirements apply to our customers, our products and services need to comply with applicable rules in order to be suitable for our customers' needs. The following contains an overview of the key EU and German legislation that impacts our business.

The regulatory frameworks in the 22 countries in which we operate vary substantially and may differ from the key EU and German legislation described below.

Energy Services

Our Energy Services business segment provides to our customers, mainly landlords and property managers of multi-unit buildings, sub-metering services, i.e., the measurement, allocation and billing of the actual heating and water consumption for each end-user. In order to be able to provide such services, we rent or sell sub-metering devices to our customers, offer the maintenance services required for such devices, read the sub-meters, aggregate the consumption data and allocate the costs based on the collected consumption data to each individual end-user (see "*Business—Our Business Activities—Energy Services—Sub-metering services*"). In Germany, we also offer radio-controlled smoke detectors, and related services, including installation, maintenance and testing. We recently commenced offering legionella analysis of drinking water in Germany.

The primary purpose of the legislation influencing sub-metering is to create an incentive for energy and water conservation through consumption-based measuring and billing. For Techem, the laws and provisions mainly of interest are those that impose obligations on owners of buildings and residential units that favor growth in the market for sub-metering and billing services. This is the case especially with regard to the obligation to provide for consumption-based measuring and billing of heating and water, the obligation to install and maintain sub-metering and data collection equipment that meets statutory requirements, and the rules allowing our customers to allocate the costs of sub-metering to their tenants.

Consumption-based measuring and billing of heating and water consumption

Heating and hot water consumption

EU Directive 2006/32/EC on energy end-use efficiency and energy services, which took effect on May 17, 2006, requires Member States to set and aim to achieve an indicative energy savings target of 9% by 2016 by means of energy services and other energy efficiency improvement measures. The achievement of this target can and should be promoted by a range of measures, including consumption-based measuring and informative billing of energy consumption. The Directive establishes that Member States must ensure—to the extent technically possible, financially reasonable and proportionate in relation to the potential energy savings—that all final customers for electricity, natural gas, district heating or cooling and domestic hot water are provided with individual meters at competitive prices that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

The requirements of Directive 2006/32/EC were implemented in Germany by the Heating Cost Ordinance (*Verordnung über Heizkostenabrechnung*), which has been in force since 1981. Pursuant to this ordinance, the owner of a multi-unit commercial or residential building with a central heating or hot water system or commercially supplied with heat and/or hot water is required to measure the individual consumption of heating and hot water of the individual end-users, and to bill the costs at least in part based on the individual consumption of the end-users. The Heating Cost Ordinance overrides all contractual agreements, meaning that the parties to a commercial or residential lease agreement cannot stipulate that the heating and hot water costs will be paid for by, for instance, a lump-sum payment by the individual user. The Heating Cost Ordinance also applies to condominium units (*Wohnungseigentum*), requiring the consumption of heating and hot water of each condominium unit to be accounted on the basis of individual consumption.

The Heating Cost Ordinance provides for various exceptions from the obligation to provide consumption-based measuring of heating and hot water. In particular, premises in which consumption-based measuring of heating and hot water could only be achieved through an unreasonably large expenditure are exempted.

An exception is also made in the case of buildings that are mainly supplied with heating or hot water from heating recovery systems or heating pumps or solar heating systems. Exceptions also apply for buildings supplied with heat or hot water from cogeneration systems or facilities that utilize waste heat, if data on the heating consumption of the building is not collected.

Even though we do not expect that the Heating Cost Ordinance will change to our detriment, there is no guarantee that this ordinance, or any other future legislation, will maintain the current requirements with respect to sub-metering of heating and hot water consumption or that the number of exceptions to these requirements will not increase. Any changes to the Heating Cost Ordinance, or any other future legislation that would eliminate or reduce sub-metering requirements or increase the number of exceptions to these requirements, could have a negative impact on our business (see "*Risk Factors—Risks relating to our business—Our sub-metering business is influenced by regulation aimed at promoting the efficient use of energy and water. Amendments to these regulations could have a negative impact on our business activities and significantly impair the future prospects of Techem*").

The Directive 2006/32/EC is currently undergoing revision. The EU Parliament adopted a directive on energy efficiency on September 11, 2012. The directive will provide for a time limit for implementation into national law until 2014. The text explicitly provides that, in multi-apartment and multi-purpose buildings with a central heating/cooling source or supplied from a district heating network or from a central source serving multiple buildings, individual consumption meters shall be installed by January 1, 2017 to measure the consumption of heat or cooling or hot water for each unit where technically feasible and cost efficient. Where the use of individual meters is not technically feasible or not cost-efficient, individual heat cost allocators shall be used for measuring heat consumption at each radiator, unless the installation of such heat cost allocators would not be cost-efficient. Where technically possible and economically justified, billing should take place on the basis of actual consumption at least once a year, and billing information should be made available at least quarterly, on request or where the consumers have opted to receive electronic billing, or else twice yearly. In addition, the text provides that costs for third parties tasked with the measuring, allocation and accounting for actual individual consumption in such buildings, may be passed onto the final customers to the extent that such costs are reasonable.

Cold water consumption

Most building codes (*Landesbauordnungen)* of the German federal states (*Länder*) also provide for an obligation to install cold water sub-metering devices in residential units, at least with respect to new buildings.

Calibration rules

As set out above, pursuant to the Heating Cost Ordinance and most German federal state building codes, individual units must be furnished with equipment that allows for consumption-based measuring and billing of heating and water consumption. In practical terms, this requires the installation of heat and water meters or heat cost allocators. In Germany, if used for commercial purposes, heat and water meters are generally subject to the Measures and Weights Act (*Eichgesetz*) as well as the Measures and Weight Ordinance (*Eichordnung*) and have to be calibrated (*geeicht*) by the competent authority or to undergo a conformity assessment procedure.

The validity of a heat and water meter's calibration is limited to a certain period of time. Upon expiry of such calibration period, the relevant measuring instrument has to be replaced, if the period has not been extended after a recalibration. The calibration period for heat and warm water meters is currently five years, for cold water meters six years. Generally for practical and cost reasons, the devices are replaced at the expiration of the calibration period instead of being recalibrated.

The EU Directive on measuring instruments 2004/22/EC (the "**MID**") establishes requirements that certain measuring devices and systems, in particular water and and heat meters as specified in the annexes to the MID, have to meet in order to be placed on the market or put into use, if the use is prescribed by a Member State for reasons of public interest, public health, public safety, public order, protection of the environment, protection of consumers, levying of taxes and duties and fair trading. The MID requires Member States to ensure that measuring instruments are only placed on the market or put into use if they satisfy the MID requirements, in particular after their conformity with the requirements of the MID has been assessed in accordance with the procedural requirements stipulated in the MID. The MID provides for certain limited exceptions for devices satisfying the rules applicable before the applicability of the MID. These devices may be placed on the market and put to use until the expiration date of their type approval,

or, in the case of a type approval of indefinite validity, until October 30, 2016. Germany has implemented the MID into national law in 2007 and has made use of the possibility to introduce a transitional period until October 30, 2016.

The heat and water meters rented or sold by us need to comply with the specifications under the applicable law of weights and measures. Moreover, we offer to ensure for our customers a timely replacement of the relevant measuring instruments, thereby assisting our customers in maintaining compliance with applicable statutory provisions. For details, see "*Business—Our Business Activities—Energy Services—Sub-metering services—Devices—Rentals, sales and replacement*."

Rules on the allocation of costs related to sub-metering

The rules on the allocation of costs govern whether and to what extent our customers are entitled to pass on the costs for energy and water consumption as well as for sub-metering devices and services to end-users. This ability of our customers to allocate costs to a third party is a key aspect for our business because it means that our direct customers do not have to bear the economic burden of charges related to our sub-metering products and services. See also "*Business—Competitive Strengths—We operate in an industry with favorable market dynamics and supporting regulations*."

A landlord's ability to allocate the costs of our sub-metering devices and services to tenants is largely determined by German tenancy law, which, in general, distinguishes between residential and commercial rental agreements, the former being under stricter regulation.

Under applicable German law, most of the costs related to sub-metering can be passed on to end-users. This particularly applies to the costs of purchasing or renting devices required for the collection of consumption data, including maintenance costs as described below (see "*Purchase of sub-metering and data collection devices*," "*Lease of sub-metering and data collection devices*" and "*Maintenance costs for sub-metering and data collection devices*"). Generally, the landlord is free to choose between purchasing or leasing sub-metering devices and is not required to select the cheaper of the two options, as long as the option chosen is not exorbitantly more expensive than the other one.

Purchase of sub-metering and data collection devices

If the landlord of a residential unit purchases sub-metering and data collection devices for heating or water and initially installs them in this residential unit, the landlord, under the German Civil Code (*Bürgerliches Gesetzbuch*), can usually increase the annual rent payable by tenants of this residential unit by up to 11% of the costs incurred for the purchase of the sub-metering and data collection devices. In commercial units, the landlord will have to reach an individual agreement with the tenants, unless the rental agreement already provides for sub-meters to be installed.

Pursuant to a draft reform of the lease contract law in Germany which was proposed by the federal government of Germany (but has not yet been adopted by the German parliament (*Bundestag*)) on May 23, 2012, the rent for a residential unit may generally not be increased after a modernization, if that increase, taking into account the future operating costs, resulted in an unreasonable hardship for the tenant.

Lease of sub-metering and data collection devices

Pursuant to the Heating Cost Ordinance, if the landlord of a multi-unit commercial or residential building, wishes to lease sub-metering and data collection devices for heating and hot water, the landlord needs to inform the users of the costs. If the majority of users does not object within the statutory time limit of one month, the landlord can generally allocate the charges payable under the lease to the tenants as operating costs, if the rental agreement provides that such costs are to be borne by the tenant. With respect to cold water sub-metering and data collection devices, such costs are normally contractually allocatable pursuant to the Ordinance on Operating Costs (*Betriebskostenverordnung*). In choosing a provider for sub-metering devices, the landlord generally has to adhere to the principle of cost-effectiveness (*Gebot der Wirtschaftlichkeit*), i.e., to an adequate cost-benefit-ratio.

Maintenance costs for sub-metering and data collection devices

Irrespective of whether a landlord purchases or leases sub-metering and data collection devices for heating and water, maintenance costs for such devices are generally contractually allocatable as operating costs,

e.g. with respect to heating and hot water pursuant to the Heating Cost Ordinance, and with respect to cold water pursuant to the Ordinance on Operating Costs.

Even though we do not expect that the ability to allocate costs will change to the landlord's—and thus our—detriment, there is no guarantee that the current or future statutory provisions enabling such allocation of costs will remain in place. Any changes to the statutory provisions or court decisions affecting the allocation of costs could have a negative impact on our business (see "*Risk Factors—Risk relating to our business—Our sub-metering business is influenced by regulation aimed at promoting the efficient use of energy and water. Amendments to these regulations could have a negative impact on our business activities and significantly impair the future prospects of Techem*").

Billing of operating costs

With respect to our billing services relating to operating costs (see "*Business—Our Business Activities—Energy Services—Services—Cost allocation and billing*"), our customers—and hence we—must comply with the applicable tenancy law provisions governing billing of operating costs to tenants. These operating costs include costs of heating and hot water. If not agreed otherwise between the parties and to the extent it is legally admissible, operating costs for residential premises are to be allocated usually in proportion to the floor space. Operating costs depending on individually recorded or measured consumption or causation by the tenants are to be allocated according to criteria that take into account the differing consumption or causation. The Heating Cost Ordinance requires landlords and owners of buildings to generally distribute and bill at least part of the costs of heating and hot water based on the individual consumption of the end-user (see "*Consumption-based measuring and billing of heating and water consumption—Heating and hot water consumption*"). Under German law, the landlord is regularly required to provide consumption-based billing of cold water if cold water sub-meters have been installed for all tenants of a building.

If a contract for the lease of a residential unit stipulates advance payments for operating costs, these advance payments are to be invoiced once a year and offset against the operating costs incurred. The overall operating costs account must be presented to the tenant of a residential unit within twelve months after the end of the accounting period. After twelve months, any claims by the landlord against the tenant of a residential unit regarding operating costs are excluded unless the landlord is not responsible for the delay. The costs account must indicate the accounting period, the total expenditure for operating costs, information about the distribution key, the calculation of the costs referring to the individual tenant, the deduction of the advance payments made by the tenant and the (debit or credit) result. The tenant has to raise any objections within twelve months after receipt of the operating costs account.

Data protection

By providing sub-meter reading and billing services, as well as our energy monitoring services, in relation to heating and water consumption to our customers, we act as data processors within the meaning of Sec. 11 of the German Data Protection Act (*Bundesdatenschutzgesetz*) and the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, meaning that we process personal data on behalf of the data controller, our customer. As such, we need to comply with legal data protection requirements, the instructions of the data controller and in particular implement relevant technical and organizational security measures.

Smoke detectors

With respect to our business in the smoke detector sector (for details, see "*Business—Our Business Activities—Energy Services—Supplementary Services—Smoke Detectors*"), there is no uniform regulatory environment: Building law in Germany is partly regulated by the German federal states (*Länder*). This applies particularly to security related issues. Recently, most federal states in Germany have made the installation and maintenance of smoke detectors mandatory in residential buildings. Whereas in some federal states the obligation to install smoke detectors is restricted to new buildings and reconstructions, in other federal states the obligation also applies to existing buildings. Usually, a transition period of several years for the installation will apply.

Under German law, a landlord may regularly pass on the costs incurred for the purchase of smoke detectors in a residential building to the tenant as modernization costs by increasing the annual rent payable by tenants of this residential unit by up to 11% of the costs incurred for the purchase. Costs for the rent and maintenance of smoke detectors may be contractually allocatable to the tenant of a residential unit as operating costs.

Legionella analysis

The aim of the Drinking Water Ordinance (*Trinkwasserverordnung*) is to protect human health from the possibility of drinking water contamination. Since legionella particularly constitute a health risk in case of misting and aerosols, the Drinking Water Ordinance, revised in November 2011, provides for an obligatory legionella analysis of drinking water to be conducted by owners and operators of hot water facilities of a certain size that are connected with showers or other installations which result in a nebulization of drinking water, in case drinking water is provided in the course of a public or commercial practice. The regulations therefore regularly apply to owners/landlords and administrators of multi-family houses.

In the course of use, the drinking water generally has to be tested and analyzed once a year according to DIN EN ISO 19458 by a laboratory that is both accredited by and listed with the competent federal state authority. For the analysis of the water samples, we cooperate with SGS Institut Fresenius GmbH (see "*Business—Our Business Activities—Energy Services—Supplementary Services—Legionella Analysis*"). The time period until the next required analysis may be prolonged by the responsible authority under certain circumstances. The results of the analysis have to be communicated both to the health authority as well as to the consumers of drinking water. Costs for the legionella analysis may be contractually allocated by the landlord to the tenants as operating costs.

ENERGY CONTRACTING

System Contracting

Our Energy Contracting business segment procures, converts and supplies useable energy to our customers, mostly residential real estate owner by planning, financing, constructing and operating boilers, heat stations and small CHP-units (see "*Business—Our Business Activities—Energy Contracting*"). These services are subject to a variety of regulatory requirements.

The Ordinance on the Supply Conditions for District Heating (*Fernwärme-Versorgungsbedingungen-Verordnung,* "**AVBFernwärmeV**") mainly stipulates rules for the contractual agreement between the heating provider and his customer, in particular regarding price adjustment provisions and contract periods. According to the case law of the German Federal Supreme Court (*Bundesgerichtshof*), the ordinance applies to district heating, small heating networks, and all heating installations not owned by the owner of the building if the person operating the heating installation independently and commercially produces and supplies heat to third persons, irrespective of the proximity of the heating installation to the building to which the energy is supplied and of the existence of a larger heating network. However, according to a recent judgment of the German Federal Supreme Court, district heating in the sense of the AVBFernwärmeV requires that the supplier faces high investment costs in order to fulfil his duty to supply heating. Insofar as we act as a heating provider in the sense of the AVBFernwärmeV, our agreements with our customers have to comply with the regulation.

The Act on Combined Heating and Power Generation (*Kraft-Wärme-Kopplungs-Gesetz,* "**KWKG**") aims to promote the generation of electricity produced in CHP-units. The KWKG obliges network operators to connect immediately and as a priority highly efficient (within the meaning of Directive 2004/8/EC) CHP-units to their networks and to purchase, transmit and distribute the generated electricity. The network operator is further obliged to pay an agreed price, usually the average price of base load energy at the European Energy Exchange (EEX) in the previous quarter, plus a bonus payment for the purchased electricity. This bonus payment requires a prior admission by the competent authority and is limited in time. The amount depends on the electrical power capacity of the respective plant. The maximum amount of all bonus payments under the KWKG may not exceed €750 million. In addition, the portion of the network fee which is avoided by the decentralized electricity feed-in of this CHP-unit as currently calculated according to the Ordinance on the Fee for Access to Electricity Power Networks (*Stromnetzentgeltverordnung*) is part of the remuneration. Insofar as we feed the electricity generated by CHP-units into the grid systems, we are entitled to the payments under the KWKG if we fulfill the necessary requirements.

Under the Act on Renewable Energy Sources (*Erneuerbare-Energien-Gesetz,* "**EEG**"), the operator of an installation generating electricity exclusively utilizing certain renewable energy sources can claim remuneration under the EEG for such electricity from the network operator. If as we produce electricity with our CHP-units exclusively from renewable energy sources, we are entitled to such remuneration. The remunerations paid under the EEG are allocated under a compensation mechanism to all electricity

suppliers delivering electricity to final consumers by way of a surcharge (*Umlage*). If we as provider of contracting services act as electrity supplier, we are obliged to pay this surcharge.

Depending on the rated thermal input and the fuel used (e.g. coal, gas or oil), CHP-units may require a license under the German Immission Control Act (*Bundes-Immissionsschutzgesetz*, "**BImSchG**"). The licenses are tied to the obligation to avoid harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances to the general public and the neighborhood and to take precautions to prevent any harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances, in particular by such measures as are appropriate according to the best available techniques. Depending on their size, CHP-units may also be subject to environmental impact assessment requirements under the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung*) during the licensing process. Even if CHP-units do not require a license, they must still comply with the substantive requirements of the German Immission Control Act.

As part of our energy contracting services, we need to observe the requirements of the Act on Energy Savings in Buildings (*Energieeinsparungsgesetz in Gebäuden*, "**ENEG**"), and the Energy Savings Ordinance (*Energieeinsparverordnung*, "**ENEV**") which implemented Directive 2002/91/EC on the energy performance of buildings, in force until January 31, 2012. These requirements include standards that energy installations need to comply with.

Under the German Electricity Tax Act (*Stromsteuergesetz*), tax reliefs for the electricity used to produce light, heat, and other forms of secondary energy are granted to manufacturing companies (*Unternehmen des Produzierenden Gewerbes*) in case the secondary energy is used by a manufacturing company. Furthermore, manufacturing companies can apply for tax reliefs under the German Energy Tax Act (*Energiesteuergesetz*), especially if natural gas or heating oil is used in CHP plants. Manufacturing companies may also be granted partial tax reliefs in other cases, provided the secondary energy produced by the energy product is used by a manufacturing company.

Our energy contracting business is also influenced by the Renewable Energies Heating Act (*Erneuerbare-Energien-Wärmegesetz*, "**EEWärmeG**") and the Act on Energy Services and other Energy Efficiency Measures (*Gesetz über Energiedienstleistungen und andere Energieeffizienzmaßnahmen*, "**EDL-G**"). The EEWärmeG aims to promote the sustainable development of energy supply and further the development of technologies to produce heating and cooling from renewable energies. The EEWärmeG seeks to increase the share of renewable energies in the overall final consumption of energy for heating and cooling to 14% by 2020. Owners of newly constructed buildings are generally obliged to cover part of their energy demand for heating and cooling with renewable energies. This obligation can also be fulfilled by covering at least 50% of this demand with energy produced by highly efficient CHP-units (within the meaning of EU Directive 2004/8/EC). The EDL-G aims to increase the efficiency of the use of energy by final customers with energy services and other energy efficiency measures in a cost-effective way. For this purpose, the federal government sets national indicative energy savings targets as specified in EU Directive 2006/32/EC, which are to be achieved, amongst others, by creating the preconditions for the development and promotion of a market for energy services and other energy efficiency measures for final customers. The EDL-G further obliges energy suppliers to provide regular information and advice to their final customers, for example on the effectiveness of energy efficiency measures and available offers of providers of energy services, energy audits and energy efficiency measures.

Ability to allocate costs of system contracting

Generally, the costs of system contracting may be allocated by the landlord to end-users if the lease agreement explicitly provides for this option or can be construed as to implicitly do so. Pursuant to judgments of the German Federal Court of Justice (*Bundesgerichtshof*), not every contractual reference to bearing the "cost of heating" in a residential rental agreement automatically includes the cost of energy contracting, at least if these costs are higher than the former heating costs. Rather, this is only the case if the lease contract refers to annex 3 to sec. 27 of the Second Computation Ordinance (*Verordnung über wohnungswirtschaftliche Berechnungen nach dem Zweiten Wohnungsbaugesetz—Zweite Berechnungsverordnung*) and if the version of the Second Computation Ordinance applicable at the time of the conclusion of the lease contract included the allocation of costs for close-range heating (*Nahwärme*) and hot water to the tenant, or if the lease contract contains any other provision which provides for the allocatability of costs of close-range heating or energy contracting. Absent such contractual arrangement, costs for energy contracting cannot be allocated to the tenant specifically. If a landlord decides to switch to energy contracting under an existing rental contract providing for such allocation, end-users cannot object

to the use of energy contracting per se on the grounds of the principle of cost-effectiveness (*Gebot der Wirtschaftlichkeit*). However, they may have the right to show that the costs for energy contracting in the specific case are unproportionate, resulting in a restriction of the costs allocatable.

The rules on allocation of costs of system contracting are currently under revision. Pursuant to a draft legislation regarding the reform of tenancy law in Germany which was proposed by the federal government of Germany in May 2012 but has not yet been passed by the German parliament (*Bundestag*), a landlord of residential and commercial units is expressly entitled to allocate the costs of energy contracting to the tenants if the tenants are contractually obliged to bear the costs of heating or hot water and if certain conditions, especially cost-neutrality for the tenants are met, thus making an explicit or implicit agreement regarding energy contracting unnecessary. This draft law would also apply to already existing contracts and provides that deviating agreements to the disadvantage of a residential tenant are ineffective. The draft law also foresees a new ordinance to determine the requirements and details under which energy contracting will be deemed "cost neutral" for tenants. Currently, a first draft of this ordinance provides for a comparison of an average of the current cost of heating and hot water during the last three billing periods with the expected contracting costs for the same amount of heat, which may not be higher than the current costs. The changes envisaged by the draft legislation, especially the requirement of cost-neutrality, may negatively affect the possibility of our customers to pass on costs for system contracting ("*Risk Factors—Risks relating to our business—Our energy contracting business is influenced by the possibility of our customers to pass through the costs of our services to end-users as their contractual partners*"). In addition, there is a risk that price adjustment provisions used in the contracts with our customers may be held invalid by courts.

Activities of the GWE Group

Our unrestricted subsidiary GWE, through subsidiaries, operates two larger industrial CHP-plants in Heidenheim and Andernach (see "*Business—Our Business Activities—GWE Group*"), which are subject to licensing and other requirements under the German Immission Control Act (*BImSchG*) and the Ordinance on Large Combustion and Gas Turbine Plants (*13. BImSchV*). In the case of Andernach, the Ordinance on the Incineration and Co-Incineration of Waste (*17. BImschV*) is also applicable. Both plants are subject to the requirements of emission trading under the German Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*) and have to comply in particular with the requirements of water law, the rules on the storage and handling of hazardous substances and, specifically in the case of the plant in Andernach, waste-law requirements.

MANAGEMENT

Senior Subordinated Notes Issuer

The Senior Subordinated Notes Issuer is a limited partnership (*Kommanditgesellschaft*) with a limited liability company (*Gesellschaft mit beschränkter Haftung*) as general partner. The General Partner, Techem Energie GmbH, is a company established and existing under the laws of the Federal Republic of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under HRB 57974. The General Partner is solely entitled and obliged to manage and represent the Senior Subordinated Notes Issuer. In accordance with German corporate law, the General Partner is managed by its management board (*Geschäftsführung*) (the "**Management Board of the General Partner**"). The powers of this body are governed by the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the General Partner's articles of association, any relevant shareholders resolutions and, as the case may be, by-laws for the Management Board of the General Partner. The General Partner must also comply with the articles of association of the Senior Subordinated Notes Issuer and any partners resolutions, managing and representing the Senior Subordinated Notes Issuer.

The Management Board of the General Partner is therefore responsible for the day-to-day management of the Senior Subordinated Notes Issuer and representing it in its dealings with third parties in accordance with the laws and the relevant articles of association. The members of the Management Board of the General Partner must exercise the standard of care of a prudent and diligent business person and they may be liable to the Senior Subordinated Notes Issuer if they fail to do so. They must take a broad spectrum of interests into account, particularly those of the Senior Subordinated Notes Issuer, its shareholders, its employees, and its lenders.

Management Board

The Management Board of the General Partner consists of four members. The members of the Management Board of the General Partner and their position are listed in the following summary.

Name	Age	Year first appointed	Position
Hans-Lothar Schäfer	53	2009	Managing Director
Steffen Bätjer	42	2009	Managing Director
Hilko Cornelius Schomerus	46	2008	Managing Director
Cord von Lewinski	36	2010	Managing Director

Senior Secured Notes Issuer

In accordance with German corporate law, the Senior Secured Notes Issuer is managed by its management board (*Geschäftsführung*) (the "**Management Board of the Senior Secured Notes Issuer**"). The powers of this body are governed by the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the Senior Secured Notes Issuer's articles of association, any relevant shareholders resolutions and, as the case may be, by-laws for the Management Board of the Senior Secured Notes Issuer.

The Management Board of the Senior Secured Notes Issuer is responsible for the day-to-day management of the Senior Secured Notes Issuer and representing it in its dealings with third parties in accordance with the laws and the articles of association. The members of the Management Board of the Senior Secured Notes Issuer must exercise the standard of care of a prudent and diligent business person and they may be liable to the Senior Secured Notes Issuer if they fail to do so. They must take a broad spectrum of interests into account, particularly those of the Senior Secured Notes Issuer, its shareholders, its employees, and its lenders.

Management Board

The Management Board of the Senior Secured Notes Issuer consists of at least two individuals pursuant to Article 5(1) of articles of association of the Senior Secured Notes Issuer. Currently, the Management

Board consists of two members. The members of the Management Board of the Senior Secured Notes Issuer and their position are listed in the following summary.

Name	Age	Year first appointed	Position
Hans-Lothar Schäfer	53	2009	Chief Executive Officer
Steffen Bätjer	42	2009	Chief Financial Officer

OTHER DISCLOSURE RELATING TO OUR MANAGEMENT

Biographies of Our Management

The following section presents a brief summary of the biographies of the current members of the Management Board of the Senior Secured Notes Issuer and the Senior Subordinated Notes Issuer:

Hans-Lothar Schäfer. After completing his studies in physics in Giessen, Germany, Hans-Lothar Schäfer (born 1959) began his career in 1985 in software engineering at Techem. Having held a number of managerial positions and having headed engineering, organizational, service and information technology divisions, he was appointed to the management board of what was then Techem AG in 2005. He initially oversaw the company's international business, but was made Chief Executive Officer (*General Manager*) in May 2009, after Techem AG was converted to a company with limited liability (*Gesellschaft mit beschränkter Haftung*). Since then Hans-Lothar Schäfer has chaired the management board.

Steffen Bätjer. Having studied economics, Steffen Bätjer (born 1969) has been part of the management team at Techem since November 1, 2009, when he was appointed Chief Financial Officer. In this capacity, he is responsible for the company's finance, controlling and administration departments (IT, Business Processes, Supply Chain Management and Legal). Mr. Bätjer joined Techem from WestLB, a European commercial bank, where he spent nearly four years exercising managerial responsibility in the finance department of their Luxemburg subsidiary (and as a business manager for their European Regional COO/CFO structure). Before that, he served as Finance Director of Universal Music Germany and as a management consultant for McKinsey.

Hilko Cornelius Schomerus. Mr. Schomerus was born in 1966 and is a managing director and head of Macquarie Infrastructure and Real Assets (Europe) Limited ("**MIRA**") in Germany and central and eastern Europe ("**CEE**"), a leading global alternative asset manager specializing in infrastructure funds, other real asset funds and customized accounts. Mr. Schomerus is responsible for all assets, business development and investor communications for MIRA's closed-end investment funds in Germany and CEE. He is also responsible for identifying and leading acquisitions in Germany and CEE for all MIRA funds. Prior to joining Macquarie, Mr. Schomerus held a senior role in MVV Energie AG, a major listed utility in Germany. There he was a director responsible for strategy and M&A. Before that, he was with an international energy policy consulting company where he was in charge of the Eastern Europe business in the energy sector.

Cord von Lewinski. Cord von Lewinski was born in 1976 and is a Senior Vice President at MIRA. Mr. von Lewinski joined MIRA in December 2007 and since then has been responsible for MIRA's managed investments Techem, Farnier, TanQuid and DCT Gdansk. In addition, Mr. von Lewinski is involved in MIRA's management of Open Grid Europe, ThyssenGas, Warnowquerung and Ceske Radiokomunikace. Prior to joining MIRA, Mr. von Lewinski worked for five years for Macquarie Capital Advisors, primarily focusing on Mergers & Acquisitions, Infrastructure Financing, Acquisition Financing as well as Structured Finance and Project Finance Advisory in Infrastructure and related sectors. Before joining Macquarie, Mr. von Lewinski worked as a strategy consultant with CSMG in London and Boston.

Employment Contracts

Both Hans-Lother Schäfer and Steffen Bätjer have permanent services contracts that provide for a termination notice period of 12 months and for an automatic expiration when the manager reaches the retirement age of 65. Remuneration includes base salary, short and long term cash incentives, a company car and, for Mr. Schäfer, a fixed annual contribution for a pension plan. In addition, the contracts include a standard commitment not to compete during their employment. Neither the Senior Subordinated Notes Issuer nor the Senior Secured Notes Issuer have a direct employment contract with Cord von Lewinski or Hilko Cornelius Schomerus.

Committees

Neither of the Issuer's management boards have formal committees.

Board Practices

The Techem Group is committed to fulfilling corporate governance requirements. We maintain internal guidelines (e.g., purchasing directives) and a code of conduct which is to be countersigned and adhered to by our employees. In addition, an internal audit department regularly carries out examinations on different topics.

Compensation

The members of the Management Board of the Senior Secured Notes Issuer receive a remuneration that consists of the following main components:

- A fixed annual base salary, which is paid in monthly installments.
- A variable bonus that incentivizes the fulfillment of EBITDA and cash flow targets as well certain individual qualitative targets over one financial year (short-term incentive plan).
- A variable bonus that incentivizes the fulfillment of EBITDA and cash flow targets as well certain individual qualitative targets over three financial years (long-term incentive plans).

The compensation of Hans-Lothar Schäfer and Steffen Bätjer is paid by the Senior Secured Notes Issuer. Mr. Schomerus and Mr. von Lewinski did not receive any remuneration from the Senior Subordinated Notes Issuer or Senior Secured Notes Issuer. The aggregate compensation expensed for the financial year ended March 31, 2012 relating to the members of the Management Board of the Senior Secured Notes Issuer amounted to €1.9 million, consisting of a €450 thousand base salary, €1.4 million variable bonus (including amounts relating to the several long-term incentive plans of €607 thousand) and €57 thousand in certain other expenses. The Group also maintains a directors' and officers' insurance policy with respect to the members of the Management Board of the Senior Secured Notes Issuer and senior officers.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In the course of our ordinary business activities, we regularly enter into agreements with companies within the Techem Group. These agreements mainly relate to the supply of metering devices, to the granting of licenses and the rendering of intra-group services, such as the provision of software and IT, treasury, controlling and other services as well as marketing services. In addition, entities within our Group enter into financing and cash pooling agreements.

We believe that all transactions with subsidiaries are negotiated and executed on an arm's-length basis and that the terms of these transactions are comparable to those currently contracted with unrelated third-party suppliers and service providers.

The parent company of the Senior Subordinated Notes Issuer is MEIF II Germany Holdings S.à r.l. The ultimate parent company is Macquarie European Infrastructure Fund II Limited Partnership, an English limited partnership with its registered office in St. Peter Port, Guernsey.

As at March 31, 2012, current receivables due from MEIF II Germany Holdings S.à r.l. to the amount of €1.6 million (March 31, 2011: €1.5 million) have been recognized.

As at March 31, 2012, the current receivables from associates amounted to €316 thousand. Receivables from Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany, amounted to €158 thousand, primarily originating from an electricity and gas supply contract and an operational management contract (both of which ended in 2011); the remainder of the current receivables were from Thermie Serres and resulted from a service contract and amounted to €158 thousand as at March 31, 2012.

As at March 31, 2011, the current receivables from associates amounted to €431 thousand, the main part being receivables from Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany, in the amount to €275 thousand, resulting from an electricity and gas supply contract (the electricity part of which ended in 2011) and an operational management contract (which ended in 2011) and receivables from Thermie Serres in the amount of €153 thousand mainly resulting from a service contract.

As at March 31, 2012, non-current receivables from associates amounted to €159 thousand and primarily relate to a loan to Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany amounting to €153 thousand.

As at March 31, 2011, non-current receivables from associates amounted to €1,931 thousand. These included a loan to Thermie Serres in the amount of €1,760 thousand (which was converted into equity in the 2012 financial year) and a loan to Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany amounting to €171 thousand.

The main part of the current liabilities to associates relates to a heat supply contract with Thermie Serres and amounted to €2.7 million as at March 31, 2012 (March 31, 2011: €2.4 million).

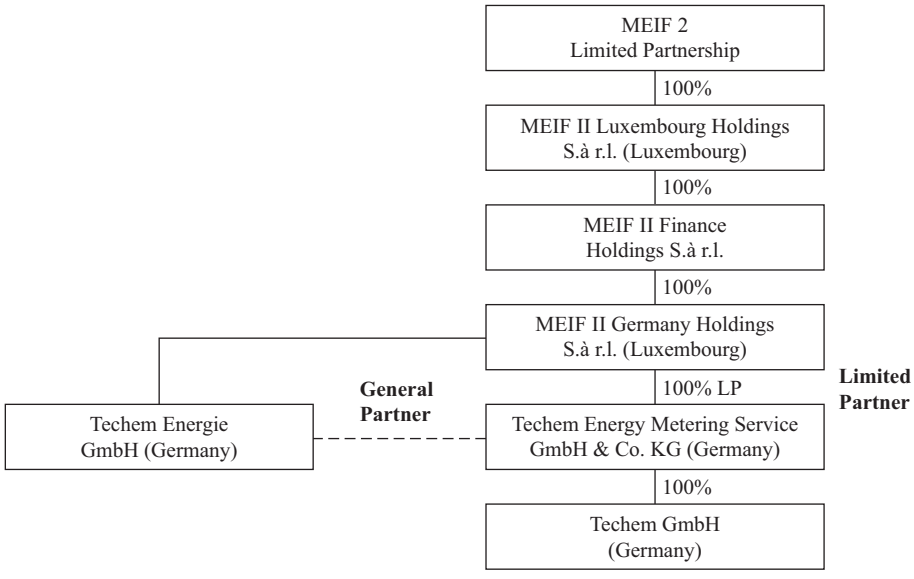
SHAREHOLDERS

GROUP STRUCTURE

The shareholders of the Senior Subordinated Notes Issuer are (i) its limited partner MEIF II Germany Holdings Sàrl, a limited liability partnership (*Société à responsabilité limitée*) established under the laws of the Grand Duchy of Luxembourg with its business address at 46, Place Guillaume II, L-1648 Luxemburg and is registered with the local court of Luxembourg under B 120961; and (ii) the general partner, Techem Energie GmbH, a limited liability partnership (*Gesellschaft mit beschränkter Haftung*) established under the laws of the Federal Republic of Germany with its business address at Hauptstraße 89, 65760 Eschborn, Germany. Techem Energie GmbH is registered with the local court (*Amtsgericht*) of Frankfurt am Main under HRB 57974.

The sole shareholder of the Senior Secured Notes Issuer is the Senior Subordinated Notes Issuer. The Senior Subordinated Notes Issuer is a limited partnership (*Kommanditgesellschaft*) established under the laws of the Federal Republic of Germany with its business address at Hauptstraße 89, 65760 Eschborn, Germany. The Senior Subordinated Notes Issuer is registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under HRA 43010.

The following graph shows the shareholdings in the Senior Subordinated Notes Issuer and the Senior Secured Notes Issuer as at the date of this offering memorandum:



PRINCIPAL SHAREHOLDER

The Senior Secured Notes Issuer, Techem GmbH, is wholly owned by the Senior Subordinated Notes Issuer, Techem Energy Metering Service GmbH & Co. KG. The Senior Subordinated Notes Issuer is owned by MEIF II Germany Holdings S.à r.l., which is wholly-owned by the MEIF II Luxembourg Holdings S.à r.l. which is in turn wholly-owned by MEIF 2 Limited Partnership. MEIF 2 Limited Partnership is managed by the Macquarie Group, a global provider of banking, financial, advisory, investment and funds management services. Macquarie's main business focus is making returns by providing a diversified range of services to clients. Macquarie acts on behalf of institutional, corporate and retail clients and counterparties around the world. They have expertise in specific industries, including resources and commodities, energy, financial institutions, infrastructure and real estate. Macquarie Group Limited is listed in Australia, owns Macquarie Bank International Limited in the United Kingdom, and its activities are subject to scrutiny by regulatory agencies around the world. Macquarie's management approach fosters an entrepreneurial culture among staff. Strong prudential management is fundamental to this approach. Robust risk management practices are embedded in business unit management with central oversight of credit, market, funding, compliance and operational risk. These, together with a strong and committed team, are seen by Macquarie as the key drivers of its success. Founded in 1969, Macquarie now employs more than 14,200 people in 28 countries. At March 31, 2012, Macquarie had assets under management of €254 billion.

DESCRIPTION OF CERTAIN FINANCING ARRANGEMENTS

The following summary of certain provisions of our indebtedness does not purport to be complete and is subject to, and qualified in its entirety by reference to, the underlying documents.

Senior Secured Facilities Agreement

Overview and Structure

The Senior Secured Notes Issuer and certain of its subsidiaries will enter into a senior secured facilities agreement to be dated the Issue Date (the "**Senior Secured Facilities Agreement**") with, among others, UniCredit Bank AG, London Branch as agent and security trustee (the "**Agent**" and the "**Security Trustee**") and Commerzbank Aktiengesellschaft, Crédit Agricole Corporate and Investment Bank Deutschland, Niederlassung einer französischen Société Anonyme, Deutsche Bank AG, London Branch, J.P. Morgan Limited, The Royal Bank of Scotland Plc and UniCredit Bank AG as mandated lead arrangers (the "**Mandated Lead Arrangers**"). The facilities under the Senior Secured Facilities Agreement consist of the following:

- a €450 million senior secured term loan A facility (the "**Term Loan Facility**");
- a €50 million senior secured capital expenditure and acquisition loan facility (the "**Capex/Acquisition Facility**" and, together with the Term Loan Facility and any Additional Facility (as defined below) the "**Term Facilities**" and each a "**Term Facility**"); and
- a €50 million senior secured multi-currency revolving credit facility (the "**Revolving Credit Facility**" and, together with the Term Facilities, the "**Senior Secured Facilities**" and each a "**Senior Secured Facility**").

The Term Loan Facility will be utilized by the Senior Secured Notes Issuer, together with the proceeds from the offering of the Notes and cash on hand, to repay the loans under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement at par (together with accrued fees, costs and expenses) and terminate the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, to terminate certain of our interest rate swaps and to finance the payment of fees and expenses in connection with the Refinancing.

The Capex/Acquisition Facility may be utilized by the Senior Secured Notes Issuer, in Euro, (i) to finance or refinance any expenditure which, in accordance with IFRS, is treated as a capital expenditure (other than any capital expenditure incurred to repair or maintain any asset owned by a member of the Group) and (ii) for certain permitted acquisitions.

The Revolving Credit Facility may be utilized by certain members of the Group, including the Senior Secured Notes Issuer, in any currency readily available and freely convertible into Euro in the relevant interbank market (subject to obtaining the consent of all the lenders under the Revolving Credit Facility if not in Euro, sterling or U.S. dollars) by the drawing of cash advances and ancillary facilities. The Revolving Credit Facility may be used for the Group's general corporate and working capital purposes (but not for acquisitions of companies, businesses or undertakings or for the prepayment of any Term Facility or any financial indebtedness arising under the Senior Secured Notes or the Senior Subordinated Notes).

In addition, if the Group's senior secured net leverage ratio is below 3.5 to 1.0 and the total debt ratio is below 5.5 to 1.0, and subject to certain other restrictions, the Senior Secured Notes Issuer may elect to solicit additional facility commitments ("each an **Additional Facility**"). The Senior Secured Notes Issuer and the lenders under any Additional Facility may agree to certain terms in relation to the Additional Facilities, including the margin, fees, termination date and availability period, in each case subject to certain parameters. The total undrawn commitments under all Additional Facilities may not exceed €60 million.

Availability

The Term Loan Facility may be utilized from and including the date of the Senior Secured Facilities Agreement until the date which is 6 months from and including the date of the commitment letter between the Mandated Lead Arrangers and the Senior Subordinated Notes Issuer.

The Capex/Acquisition Facility may be utilized from and including the date of the Senior Secured Facilities Agreement until the date which is 12 months prior to the termination date of the Capex/Acquisition

Facility. The Term Loan Facility and the Capex/Acquisition Facility will terminate on the date that is 60 months after the date of the Senior Secured Facilities Agreement.

The Revolving Credit Facility may be utilized until the date which is one month prior to the termination date of the Revolving Credit Facility. The Revolving Credit Facility will terminate on the date that is 60 months after the date of the Senior Secured Facilities Agreement.

Any Additional Facility may be utilized during the period agreed by the Senior Secured Notes Issuer and the lenders under such Additional Facility, provided that such period must end no earlier than the date which is six months prior to the termination date of the Term Loan Facilities.

Interest and Fees

All loans under the Senior Secured Facilities Agreement will (other than loans under the Additional Facility) initially bear interest at rates *per annum* equal to EURIBOR, or, for loans not in euro, LIBOR, plus certain mandatory costs, if any, and an initial margin of 425 basis points per annum.

The initial margin under the Senior Secured Facilities may be adjusted downwards and, if the margin is decreased below the initial margin, upwards (subject to a maximum equal to the initial margin) depending on our leverage ratio after an initial 12-month period, provided that no event of default has occurred and is continuing (in respect of downward adjustments).

A commitment fee is payable on the aggregate undrawn and un-cancelled amount of the Capex/Acquisition Facility and the Revolving Credit Facility until the end of the availability period applicable to each such facility at a rate of 35% of the applicable margin for each such facility.

Default interest will be calculated as an additional 1% on the defaulted amount.

Repayments

The Term Loan Facility and the Capex/Acquisition Facility will be repaid in full on their respective termination dates, each being the date that is 60 months after the date of the Senior Secured Facilities Agreement.

Each advance under the Revolving Credit Facility will be repaid on the last day of the interest period relating thereto. All outstanding amounts under the Revolving Credit Facility will be repaid on the termination date of the Senior Secured Facilities Agreement, being the date that is 60 months after the date of the Senior Secured Facilities Agreement. Amounts repaid by the borrowers on loans made under the Revolving Credit Facility may be re-borrowed, subject to certain conditions.

Any Additional Facility will be repaid in full on the termination date of such Additional Facility, which date shall be a date falling no earlier than the date that is six months after the termination date of the Term Loan Facilities. Amounts repaid by the borrowers on loans made under any Additional Facility may not be re-borrowed.

Mandatory Prepayment and Lock Up

The Senior Secured Facilities Agreement allows for voluntary prepayments and requires mandatory prepayment in full or in part in certain circumstances, including:

- on a change of control or disposal of substantially all of the business or assets of the Group;
- from net cash proceeds received by the Group from certain disposals of assets and insurance claims, in each case to the extent that such net cash proceeds exceed certain agreed thresholds; and
- for each financial year, a percentage of excess cash flow in the event that excess cash flow exceeds a minimum threshold amount, which percentage decreases as the Group's leverage ratio decreases.

Upon the occurrence of certain customary lock-up events, the Senior Secured Facilities Agreement requires the Senior Secured Notes Issuer to pay excess cash flow not otherwise required to be prepaid into a lock up account. A "**Lock Up Event**" occurs if either (a) certain financial tests consisting of a forward and backward looking total debt service coverage ratio and a forward and backward looking senior secured leverage ratio are not complied with (the "**Lock Up Tests**") or (b) a default or event of default under the Senior Secured Facilities Agreement has occurred and is continuing. The lock up account will be pledged on a first priority basis for the benefit of the Senior Secured Facilities and the Senior Secured Notes.

If such lock-up events continue for two consecutive semi-annual test periods the Senior Secured Notes Issuer must apply amounts of excess cashflow in such account to prepay the Senior Secured Facilities.

Ability to incur debt

If the Group's senior secured net leverage ratio is below 3.50:1 and the total debt ratio is below 5.50:1, and subject to certain other restrictions, the Senior Secured Notes Issuer may elect to solicit Additional Facilities as term debt under the Senior Secured Facilities Agreement.

An Additional Facility may be used for the refinancing of (i) the Senior Secured Facilities; (ii) (subject to the provisions of the Intercreditor Agreement) the Senior Secured Notes provided that if the Group's senior secured net leverage ratio is greater than 3.50:1 any payment must be accompanied by a *pro rata* prepayment of the Senior Secured Facilities; and (iii) (subject to the provisions of the Intercreditor Agreement) the Senior Subordinated Notes if and to the extent that such an amount could be used to make a Permitted Investor Payment (as defined below).

Dividends

In this section:

"**Investor Payment**" means:

(a) a payment or repayment of principal, interest or fees or other amounts payable under any Holdco-Parent loan agreement;

(b) the advance of any indebtedness by any member of the Group to Holdco or any of its direct or indirect shareholders or affiliates (other than a member of the Group); and

(c) a dividend (in cash or in kind) or redemption of capital paid to Holdco.

No Investor Payments may be made under the Senior Secured Facilities Agreement, unless:

- the payment is a Permitted Dividend; or
- the payment is a Permitted Investor Payment.

A payment is a "**Permitted Investor Payment**" if (and subject to certain other restrictions):

- the Lock Up Tests (as defined above) are complied with, and no other Lock Up Event has occurred in respect of the period in which the payment is to be made;
- the payment does not exceed the aggregate of:
  1. any retained excess cashflow; and
  2. the principal amount of any Additional Facility, provided that both the Group's senior secured net leverage ratio is 3.50:1 or below and the total debt ratio is 5.50:1 or below and provided that at the same time that the respective Investor Payment is made the Senior Secured Facilities are prepaid in an amount at least equal to an amount constituting a third of the amount of the Investor Payment which would be permitted to be made (and the actual Investor Payment shall be reduced accordingly); and
- no default under the Senior Secured Facilities Agreement is continuing on the date of payment and no default under the Senior Secured Facilities Agreement would result from that payment.

"**Permitted Dividend**" means the payment by the Senior Secured Notes Issuer to Germany Holdco of a dividend:

(a) in an amount of up to €20 million (the "**First Dividend**") prior to or within a month of the date of the first Senior Secured Facility utilization; and

(b) in a further amount which together with the First Dividend does not exceed an aggregate amount of €40.0 million with such second payment to be made prior to 31 March 2013 (and subject to certain conditions),

provided that no such payment may be made if a default under the Senior Secured Facilities Agreement is continuing on the respective payment date or would result from such payment.

Guarantees

Each of the Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer, the Holdcos and certain of the Senior Secured Notes Issuer's subsidiaries will guarantee (to the extent they are not the primary obligors thereunder) all amounts payable to the finance parties under the Senior Secured Facilities.

Each subsidiary of the Senior Secured Notes Issuer that is or becomes a material subsidiary (as defined in the Senior Secured Facilities Agreement) is required to guarantee on a senior basis all amounts payable to the finance parties under the Senior Secured Facilities and the hedging banks under certain hedging agreements relating to the Senior Secured Facilities. The Senior Secured Facilities Agreement requires that the guarantors provide guarantees in respect of at least 85% of the EBITDA of the Group (defined as the Senior Subordinated Notes Issuer and each of its subsidiaries from time to time (including, for the avoidance of doubt, the Senior Secured Notes Issuer) but excluding all unrestricted subsidiaries) and 85% of the consolidated gross assets of the Group (as applicable). The GWE Group and Thermie Serres will be designated as unrestricted subsidiaries under the Senior Secured Facilities Agreement.

Security

The Senior Facilities Agreement is secured by the Senior Secured Collateral, the same collateral that secures the Senior Secured Notes. See "*Description of Senior Secured Notes*".

Representations and Warranties

The Senior Secured Facilities Agreement contains customary representations and warranties (subject to certain agreed qualifications and with certain representations and warranties being repeated), including:

- corporate representations including status and incorporation, binding obligations, non-conflict with constitutional documents, laws or other obligations, power and authority, due authorization, governing law and enforcement, validity and admissibility in evidence and pari passu ranking;
- no insolvency, no litigation, no breach of laws, no filing or stamp taxes, no deductions on amounts payable on account of taxes and no overdue tax returns;
- no default and no misleading information in the information memorandum;
- no security, guarantees or financial indebtedness, except as permitted;
- customary holdco representations in respect of Techem Energie GmbH, MEIF II Germany Holdings S.à r.l. and the Senior Subordinated Notes Issuer;
- ownership of shares acquired and ownership of or right to use all material assets;
- ownership and maintenance of intellectual property rights and compliance with pension obligations;
- ranking; and
- accuracy of the group structure chart and financial statements.

Covenants

The Senior Secured Facilities Agreement contains customary operating and financial covenants, subject to certain agreed exceptions, including covenants restricting the ability of certain members of the Group to:

- in respect of Techem Energie GmbH, MEIF II Germany Holdings S.à r.l. and the Senior Subordinated Notes Issuer, trade, carry on any business, own any assets or incur any material liabilities (subject to certain exceptions);
- make acquisitions or investments;
- make loans or grant guarantees to others;
- incur indebtedness;
- create security;
- repay, prepay or purchase any of the Notes;
- dispose of assets;
- merge with other companies;

- issue shares, pay dividends, redeem share capital or make payments to shareholders;
- change an entity's centre of main interest;
- enter into transactions other than arm's length; and
- make a substantial change to the general nature of the business of the Group taken as a whole.

The Senior Secured Facilities Agreement also requires certain members of the Group to observe certain affirmative covenants, including covenants relating to:

- maintenance of relevant authorizations;
- maintenance of insurance;
- compliance with laws, including environmental laws and regulations;
- payment of taxes;
- provision of financial and other information to the lenders;
- pari passu ranking;
- maintenance of intellectual property; and
- compliance with obligations relating to pension schemes.

The Senior Secured Facilities Agreement requires the Group to comply with certain financial covenants consisting of (i) a maximum adjusted leverage ratio of senior secured net debt to adjusted EBITDA as set forth below, (ii) a minimum total debt service coverage ratio as set forth below and (iii) a maximum level of capital expenditure in each financial year of 140% of the originally modeled levels (subject to an up to 30% carry forward/carry back entitlement in respect of any unused amount in any financial year). The ratios are based on the definitions in the Senior Secured Facilities Agreement, which may differ from similar definitions in the Indentures and the equivalent definitions described in this offering memorandum.

The maximum adjusted senior secured net leverage ratio as at the relevant calculation date and backwards looking 12 months is sized with a 25% headroom to EBITDA to the base case model with a minimum applicable ratio of 4.0:1.

The minimum total debt service coverage ratio backward looking 12 months has a minimum applicable ratio of 1.1:1.

Events of Default

The Senior Secured Facilities Agreement contains certain events of default, the occurrence of which would allow the "**Majority Lenders**" (consisting of lenders under the Senior Secured Facilities Agreement whose commitments aggregate more than 66⅔% of the total commitments thereunder) to accelerate all outstanding loans, terminate their commitments and enforce their collateral, including, among other events (subject in certain cases to agreed grace periods, financial thresholds and other qualifications):

- non-payment of amounts due under the Senior Secured Facilities finance documents;
- breach of any financial covenant or non-compliance with other obligations under the Senior Secured Facilities finance documents;
- inaccuracy of representation or statement when made;
- cross defaults;
- unlawfulness, repudiation, invalidity or unenforceability of the Senior Secured Facilities financing documents;
- insolvency, insolvency proceedings and commencement of certain creditors' processes, such as expropriation, attachment, sequestration, distress or execution;
- cessation of business;
- commencement or threat of material litigation;
- material adverse change;
- material audit qualification; and
- breach of the Intercreditor Agreement.

Governing Law

The Senior Secured Facilities and the rights and duties of the parties thereunder shall be governed by and construed in accordance with the laws of England and Wales.

Intercreditor Agreement

To establish the relative rights of certain of our creditors under our financing arrangements, the agent under the Senior Secured Facilities Agreement (the "**Senior Agent**"), the lenders under the Senior Secured Facilities Agreement (the "**Senior Lenders**"), the obligors under the Senior Secured Facilities Agreement (the "**Obligors**"), the initial Senior Secured Notes Issuer (the "**Company**") and Senior Subordinated Notes Issuer (the "**Parent**", and together with the Company, the "**Issuers**"), MEIF II Germany Holdings S.à r.l. (the "**HoldCo**"), MEIF II Luxembourg Holdings S.à r.l. (the "**Top HoldCo**"), the Security Trustee, the Senior Secured Notes Trustee, the Senior Subordinated Notes Trustee, the Guarantors (the Guarantors, the Obligors and the Issuers, the "**Debtors**") and certain others will on the Issue Date enter into an intercreditor agreement (the "**Intercreditor Agreement**"). The Intercreditor Agreement sets out, among other things, the relative ranking of certain debt of the Debtors and the collateral securing such debt (the "**Transaction Security**", and the documents creating such security being the "**Transaction Security Documents**"), when payments can be made in respect of debt of the Debtors, when enforcement action can be taken by creditors in respect of that debt, when and how the Transaction Security can be enforced, the terms pursuant to which certain of that debt will be subordinated upon the occurrence of certain insolvency events, customary turnover provisions and customary equalization provisions.

By accepting a Senior Secured Note or a Senior Subordinated Note, the relevant holder thereof shall be deemed to have agreed to be bound by, and accepted the terms and conditions of, the Intercreditor Agreement. The following description is a summary of certain provisions contained in the Intercreditor Agreement and which relate to the rights and obligations of the holders of the Senior Secured Notes and Senior Subordinated Notes and is qualified by reference to the Intercreditor Agreement. This description does not restate the Intercreditor Agreement in its entirety. You should read the Intercreditor Agreement because it, and not this description, defines certain rights and obligations of the holders of the Senior Secured Notes and the Senior Subordinated Notes.

Ranking and Priority

Ranking

The Intercreditor Agreement provides that the liabilities owed by the Debtors (i) to the creditors under the Senior Secured Notes, the Senior Secured Facilities Agreement, the Senior Subordinated Notes and certain hedging obligations (together, the "**Primary Creditors**"), (ii) (other than HoldCo) to HoldCo and (iii) to members of the Group (the "**Group**" consisting of the Parent and each of its subsidiaries (other than unrestricted subsidiaries)) that have provided loans or other credit support to other members of the Group (the "**Intra Group Lenders**", and together with the Primary Creditors, the Senior Agent, the Senior Secured Notes Representative, the Senior Subordinated Notes Representative, the Security Trustee and HoldCo, the "**Creditors**") shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking liabilities as follows:

- first, the liabilities owed to the Senior Lenders under the Senior Secured Facilities Agreement (the "**Senior Lender Liabilities**"), the liabilities owed under the Senior Secured Notes (the "**Senior Secured Notes Liabilities**"), the liabilities owed in relation to certain permitted hedging obligations (the "**Hedging Liabilities**" and holders of such liabilities, the "**Hedge Counterparties**"), and Trustee Amounts (as defined below) to any entity acting as trustee or representative under any issue of the Senior Secured Notes and the Senior Subordinated Notes (each a "**Senior Secured Notes Representative**" and a "**Senior Subordinated Notes Representative**", respectively) due for their own account (the "**Senior Secured Notes Trustee Amounts**" and the "**Senior Subordinated Notes Trustee Amounts**"), pari passu between themselves and without any preference between them;
- second, the liabilities owed under the Senior Subordinated Notes (the "**Senior Subordinated Notes Liabilities**") pari passu between themselves and without any preference between them;
- third, the liabilities owed to the Intra Group Lenders (the "**Intra Group Liabilities**"); and
- fourth, the liabilities owed to HoldCo by the Parent (the "**HoldCo Liabilities**") pari passu between themselves and without any preference between them.

Transaction Security

The Transaction Security shall rank and secure the following liabilities (only to the extent that such Transaction Security is expressed to secure those liabilities) in the following order:

- first, the Senior Lender Liabilities, the Senior Secured Notes Liabilities and the Hedging Liabilities pari passu and without any preference between them; and
- second, the Senior Subordinated Notes Liabilities.

Senior Subordinated Debt and Transaction Security

The Senior Subordinated Notes Liabilities owed by the Debtors are senior subordinated obligations of such Debtors. Until the date the Senior Lender Liabilities, the Hedging Liabilities and the Senior Secured Notes Liabilities have been fully and finally discharged (the "**Senior Secured Discharge Date**"), the holders of the Senior Subordinated Notes (together, the "**Senior Subordinated Notes Creditors**") may not take any steps to appropriate the assets of any member of the Group subject to Transaction Security in connection with any Enforcement Action (as defined below), other than as expressly permitted by the Intercreditor Agreement.

Intra Group Liabilities

The Intra Group Liabilities are postponed and subordinated to the liabilities owed by the Debtors to the Primary Creditors. The Intercreditor Agreement does not purport to rank any of the Intra Group Liabilities as between themselves.

HoldCo Liabilities

The HoldCo Liabilities are postponed and subordinated to the liabilities owed by the Debtors to the Primary Creditors and the Intra Group Lenders. The Intercreditor Agreement does not purport to rank any of the HoldCo Liabilities as between themselves.

Senior Secured Creditor Liabilities

Payments

The Debtors may make payments in respect of the Senior Lender Liabilities and the Senior Secured Notes Liabilities (together, the "**Senior Secured Creditor Liabilities**") at any time except, prior to the date that all the Senior Lender Liabilities have been fully and finally discharged (the "**Senior Lender Discharge Date**"), for payments of principal in respect of the Senior Secured Notes Liabilities to the extent such payments are prohibited under the Senior Secured Facilities Agreement. Under the Senior Secured Facilities Agreement, for so long as the senior secured net debt leverage ratio is greater than 3.50 to 1, a corresponding proportional voluntary prepayment of loans is required to be made under the Senior Secured Facilities Agreement and such payments must be funded from retained excess cashflow. Notwithstanding the foregoing, following the occurrence of acceleration under the Senior Secured Facilities Agreement (a "**Senior Acceleration Event**"), acceleration in respect of the Senior Secured Notes under the Indenture (the "**Senior Secured Notes Indenture**") (a "**Senior Secured Notes Acceleration Event**") or certain insolvency events, no Debtor may make (and no Senior Lender or Hedge Counterparty (together, the "**Senior Creditors**") or holder of the Senior Secured Notes or the Senior Secured Notes Representative (together, the "**Senior Secured Notes Creditors**" and, together with the Senior Creditors, the "**Senior Secured Creditors**") may receive) payments of the Senior Lender Liabilities or Senior Secured Notes Liabilities except amounts properly distributed in accordance with provisions described under "*—Application of Proceeds*."

Amendments and Waivers

The terms of the Senior Secured Notes, the Senior Secured Notes Indenture, the guarantees in respect of the Senior Secured Notes, the Transaction Security Documents securing the Senior Secured Notes and other related documents (each, a "**Senior Secured Notes Finance Document**") may not be amended or waived without the consent of 66⅔ of the Senior Lenders (the "**Majority Senior Lenders**") if such amendment or waiver (i) would result in the Senior Secured Notes Finance Documents ceasing to comply with the "Senior Secured Notes Major Terms" which are set out in the Intercreditor Agreement and cover matters including the identity of the issuer, maturity date, use of proceeds, interest periods, ability to

refinance Senior Secured Facilities Agreement and ability to secure the Senior Lender Liabilities and Hedging Liabilities in accordance with the Intercreditor Agreement; (ii) could reasonably be considered as materially negating the position otherwise existing under the Senior Secured Facilities Agreement where, on any given circumstances, an event of default under the Senior Secured Facilities Agreement would arise ahead of an event of default under the Senior Secured Notes Indenture; (iii) could reasonably be considered as resulting in terms that no longer materially differ from the Senior Secured Facilities Agreement; or (iv) is otherwise in breach of the Senior Secured Facilities Agreement.

Security and Guarantees

The Senior Lenders and the Senior Secured Notes Creditors may take, accept or receive the benefit of:

- any security from any member of the Group in respect of the Senior Lender Liabilities or the Senior Secured Notes Liabilities in addition to the shared Transaction Security if and to the extent legally possible and subject to any agreed security principles, at the same time it is also offered either:
  - to the Security Trustee as agent or trustee for the other Primary Creditors and certain others but excluding the Senior Subordinated Notes Representative (on behalf of itself and the registered holders, from time to time, of the Senior Subordinated Notes (the "**Senior Subordinated Noteholders**") it represents) and the Senior Subordinated Noteholders (together, the "**Senior Secured Parties**") in respect of their liabilities; or
  - in the case of any jurisdiction in which effective security cannot be granted in favor of the Security Trustee as agent or trustee for the Senior Secured Parties, to the other Senior Secured Parties in respect of their liabilities or to the Security Trustee under a parallel debt structure for the benefit of the Senior Secured Parties,

  and that ranks in the same order of priority as set out above under "*Ranking and priority*," provided that all amounts received or recovered by any Senior Secured Creditor with respect to such Security are immediately paid to the Security Trustee and held and applied in accordance with the provisions described under "*—Application of Proceeds*;" and
- any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Secured Creditor Liabilities in addition to those in:
  - the Senior Secured Facilities Agreement or the Senior Secured Notes Indenture in each case in the forms of such documents as at the date of the Intercreditor Agreement;
  - the Intercreditor Agreement; or
  - any guarantee, indemnity or other assurance against loss in respect of any of the Senior Secured Creditor Liabilities and Hedging Liabilities (together, the "**Senior Secured Liabilities**"), the benefit of which (however conferred) is, to the extent legally possible and subject to any agreed security principles, given to all the Senior Secured Parties in respect of their Senior Secured Liabilities,

  if, subject to certain guarantees, indemnities or other assurances against loss relating to the ancillary facilities under the Senior Secured Facilities Agreement and hedging arrangements related thereto, and to the extent legally possible and subject to any agreed security principles, at the same time it is also offered to the other Senior Secured Parties in respect of their Liabilities and ranks in the same order of priority as that set out above under "*—Ranking and priority*" and all amounts received or recovered by any Senior Secured Creditor with respect to such guarantee, indemnity or insurance (as applicable) are immediately paid to the Security Trustee and held and applied as set out below under "*Application of Proceeds*."

These rights and obligations do not require any security or guarantee to be granted in respect of any Senior Subordinated Notes Liabilities.

Restriction on Enforcement

No Senior Lender or Senior Subordinated Notes Creditor may take any steps to enforce or require the enforcement of any Transaction Security without the prior consent of an Instructing Group (as defined below)

An "**Instructing Group**" means, at any time:

(a) prior to the Senior Secured Discharge Date:

  (i) if a Senior Event of Default is then continuing but no Senior Secured Notes Event of Default is then continuing (ignoring for such purposes any Senior Secured Notes Event of Default that has arisen solely as a result of an acceleration under the Senior Secured Facilities Agreement) and the decision is solely a decision as to whether or not, in principle, to enforce Transaction Security, the Majority Senior Lenders; and

  (ii) in (A) circumstances where an Instructing Group under paragraph (i) votes in principle not to enforce Transaction Security and there is a Senior Secured Notes Event of Default that is continuing (including, without limitation, in circumstances where arising solely as a result of any acceleration under any Senior Secured Facilities Agreement) and (B) all other circumstances, the Majority Senior Secured Creditors; and

(b) on or after the Senior Secured Discharge Date, but before the Senior Subordinated Notes Discharge Date, the Majority Senior Subordinated Notes Creditors (acting through the relevant Senior Subordinated Notes Representative(s)).

The "**Majority Senior Secured Creditors**" are, at any time, those Senior Secured Creditors whose Senior Secured Credit Participations at that time represent in aggregate more than 50% of the total Senior Secured Credit Participations at that time, as adjusted to take account of certain disenfranchisement provisions relating to defaulting lenders and hedge counterparties and the snooze or lose provisions of the Intercreditor Agreement.

Option to Purchase

Any Senior Secured Noteholder(s) representing more than fifty per cent. of the Senior Secured Notes Liabilities may, if an event of default under the Senior Secured Facilities Agreement is continuing, by giving not less than ten days' notice to the Security Trustee, require the transfer to them (or their nominees) of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities if certain conditions are met including that the Senior Subordinated Creditors have not successfully exercised their rights described under "*—Senior Subordinated Creditors and Senior Subordinated Liabilities—Option to Purchase*" and the provision of indemnities by each Senior Secured Notes Creditor to the Senior Lenders. The purchase price for such Senior Lender Liabilities shall be the aggregate of the amount advised by the Senior Agent that represents:

- all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Secured Facilities Agreement if the Senior Secured Facilities were being prepaid by the relevant Debtors on the date of that payment; and
- all costs and expenses (including legal fees) incurred by the Senior Agent and/or the Senior Lenders and/or the Security Trustee as a consequence of giving effect to that transfer.

The Senior Secured Notes Creditors may only require the transfer to them of the Senior Lender Liabilities if, at the same time, they require a transfer of hedging obligations as described under "*—Hedge Transfer*" below and such transfer of hedging obligations can be made.

Hedge Transfer

Any Senior Secured Noteholder(s) representing more than fifty per cent. of the Senior Secured Notes Liabilities may, by giving not less than ten days' notice to the Security Trustee, require a transfer to them of each hedging agreement (and all related rights, benefits and obligations) at the same time as a transfer of the Senior Lender Liabilities as described above under "*—Option to purchase*" if certain conditions are met including the requirement that the Senior Subordinated Creditors have not successfully exercised their rights described under "*—Senior Subordinated Creditors and Senior Subordinated Liabilities—Hedge Transfer*" and the provision of indemnities by each Senior Secured Notes Creditor to the relevant Hedge Counterparties. In connection with the transfer, each Hedge Counterparty shall be paid or shall pay, as applicable, an amount equal to the aggregate required to close-out the hedging obligation at that time and all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to such transfer. The Senior Secured Notes Representative (on behalf of the Senior Secured Note Creditors) and any Hedging Counterparty may agree that such a hedge transfer is not required in respect of any hedging agreement of that Hedging Counterparty.

Senior Subordinated Creditors and Senior Subordinated Liabilities

Restriction on Payments and Dealings

Until the Senior Secured Discharge Date, except with the prior consent of the Senior Agent and (to the extent otherwise prohibited under the relevant Senior Secured Notes Indenture) the Senior Secured Notes Representative, none of the Parent, any Debtor or any member of Group will:

- pay, repay, prepay, redeem, acquire or defease any principal, interest or other amount on or in respect of, or make any distribution in respect of, any Senior Subordinated Notes Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Senior Subordinated Notes Liabilities except as permitted as described under "*—Permitted Senior Subordinated Notes Payments*," "*—Permitted Senior Subordinated Notes Enforcement*," the fourth paragraph under "*—Effect of Insolvency Event*" or in connection with a refinancing of the Senior Subordinated Notes permitted under the Intercreditor Agreement;
- exercise any set-off against any Senior Subordinated Notes Liabilities, except as permitted as described under "*—Permitted Senior Subordinated Notes Payments*," "*—Permitted Senior Subordinated Notes Enforcement*" or the fourth paragraph under "*—Effect of Insolvency Event*;" or
- create or allow any security over any assets of any member of the Group or give any guarantee (and the Senior Subordinated Notes Representative may not and no Senior Subordinated Notes Creditor may, accept the benefit of any such security or guarantee) from any member of the Group for, or in respect of, any Senior Subordinated Notes Liabilities other than (i) the guarantees granted in favour of the holders of the Senior Subordinated Notes pursuant to the Senior Subordinated Notes Indenture (the "**Senior Subordinated Notes Guarantees**"), or (ii) the Transaction Security that is granted in favor of the Security Trustee over the collateral expressed to be granted in favor of the Senior Subordinated Noteholders as set forth in this offering memorandum or as permitted under the terms of the Intercreditor Agreement, the Senior Secured Notes Finance Documents, the Senior Secured Facilities Agreement and the Security Documents.

Permitted Senior Subordinated Notes Payments

Prior to the Senior Secured Discharge Date, subject to the restrictions described under "*—Issue and effect of Senior Subordinated Notes Payment Stop Notice or Senior Secured Payment Default*," the Debtors may make payments to the creditors under the Senior Subordinated Notes (the "**Senior Subordinated Notes Creditors**") in respect of the Senior Subordinated Notes Liabilities then due in accordance with the Senior Subordinated Notes Finance Documents (each such payment, a "**Permitted Senior Subordinated Notes Payment**"):

(i) if:

(A) the payment is:

(I) of any principal amount which is either (1) not prohibited from being paid by the Senior Secured Facilities Agreement or the Senior Secured Notes Indenture or (2) paid on or after the final maturity date of the Senior Subordinated Notes Liabilities;

(II) of any other amount which is not an amount of principal or capitalized interest;

(III) for refinancing the Senior Subordinated Notes Liabilities with the proceeds of:

(aa) Senior Subordinated Notes; or

(bb) Senior Secured Notes or an Additional Facility (as defined in the Senior Secured Facilities Agreement) or any Facility under any further permitted Senior Secured Facilities Agreement,

in each case under clause (III) where not prohibited or otherwise consented to under and in accordance with the Senior Secured Facilities Agreement;

(B) no Senior Subordinated Notes Payment Stop Notice (as defined below) is outstanding; and

(C) no payment default under the Senior Secured Facilities Agreement or the Senior Secured Notes Indenture has occurred and is continuing (a "**Senior Secured Payment Default**");

(ii) if Senior Lenders and Hedge Counterparties whose senior credit participations at that time aggregate more than 50% of the total senior credit participations at that time (the "**Majority Senior Creditors**") and Senior Secured Notes Creditors to whom more than 50% of the total Senior Secured Notes Liabilities at that time are owed (the "**Majority Senior Secured Notes Creditors**") give prior consent to that payment being made;

(iii) if the payment is of any Senior Subordinated Notes Trustee Amounts;

(iv) if the payment is of any necessary costs and expenses of any holder of security in relation to the protection, preservation or enforcement of such security;

(v) if the payment is of costs, commissions, taxes, consent fees and expenses incurred in respect of (or reasonably incidental to) the Senior Subordinated Notes Documents (including in relation to any reporting or listing requirements under such indenture); or

(vi) if the payment is of costs, commissions, taxes, premiums and any expenses incurred in respect of (or reasonably incidental to) any refinancing of the Senior Subordinated Notes in compliance with the Intercreditor Agreement and the Senior Secured Facilities Agreement.

On or after the Senior Secured Discharge Date, the Debtors may make payments to the Senior Subordinated Notes Creditors in respect of the Senior Subordinated Notes Liabilities in accordance with the Senior Subordinated Notes Finance Documents.

The term "Trustee Amounts" means the fees, costs and expenses of the trustee for any notes (including additional notes and any amount payable to that trustee for such notes personally by way of indemnity, remuneration or to reimburse it for expenses incurred) payable for its own account pursuant to the notes documents in respect of the ongoing day-to-day administration of the notes documents and the costs of any enforcement action (including legal and other professional advisory fees) which are recoverable pursuant to the terms of the indenture for such notes or any other document entered into in connection with the issuance of those notes.

Issue and Effect of Senior Subordinated Notes Payment Stop Notice or Senior Secured Payment Default

Until the Senior Secured Discharge Date, except with the prior consent of the Senior Agent and (to the extent otherwise prohibited under the Senior Secured Notes Indenture) the consent of the Senior Secured Notes Representative and subject to the provisions described below under "*—Effect of Insolvency Event*," the Parent and its subsidiaries shall not make, and neither the Senior Subordinated Notes Representative (on behalf of itself and the Senior Subordinated Noteholders), the Senior Subordinated Noteholders nor the Security Trustee (the "**Senior Subordinated Notes Finance Parties**") may receive from the Parent or any of its subsidiaries, any Permitted Senior Subordinated Notes Payment (other than any payment made pursuant to paragraphs (iii) or (iv) under "*—Permitted Senior Subordinated Notes Payment*") above if:

- a default arising by reason of any non-payment under the senior Secured Facilities Agreement or any Senior Secured Notes Finance Document (other than in respect of an amount (a) not constituting principal, interest or fees or (b) not exceeding EUR 50,000 (or its equivalent in other currencies)) (a "**Senior Secured Payment Default**") is continuing; or
- an event of default under the Senior Secured Facilities Agreement or the Senior Secured Notes Indenture (a "**Senior Secured Event of Default**") (other than a Senior Secured Payment Default) is continuing, from the date which is one business day after the date on which the Senior Agent or the Senior Secured Notes Representative (as the case may be) delivers a notice (a "**Senior Subordinated Notes Payment Stop Notice**") specifying the event or circumstance in relation to that Senior Secured Event of Default to the Parent, the Security Trustee and the Senior Subordinated Notes Representative until the earliest of:
  - the date falling 179 days after delivery of that Senior Subordinated Notes Payment Stop Notice;
  - in relation to payments of Senior Subordinated Notes Liabilities, if a Senior Subordinated Notes Standstill Period (as defined below) is in effect at any time after delivery of that Senior Subordinated Notes Payment Stop Notice, the date on which that Senior Subordinated Notes Standstill Period expires;
  - the date on which the relevant Senior Secured Event of Default has been remedied or waived in accordance with the terms of the Senior Secured Finance Documents provided that at such time no event of default is continuing under the Senior Secured Facilities Agreement or hedge

agreements (where the Senior Subordinated Notes Payment Stop Notice was issued by the Senior Agent) or the Senior Secured Notes Indenture (where the Senior Subordinated Notes Payment Stop Notice was issued by a Senior Secured Notes Representative);

- the date on which the Senior Agent or the Senior Secured Notes Representative, as applicable, delivers a notice to the Parent, the Security Trustee and the Senior Subordinated Notes Representative cancelling the Senior Subordinated Notes Payment Stop Notice;
- the Senior Secured Discharge Date; and
- the date on which the Security Trustee takes Enforcement Action (under paragraph (c) of the definition) permitted under the Intercreditor Agreement against a member of the Group.

Unless the relevant Senior Subordinated Notes Representative waives this requirement, a new Senior Subordinated Notes Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately prior Senior Subordinated Notes Payment Stop Notice and no Senior Subordinated Notes Payment Stop Notice may be delivered in reliance on a Senior Secured Event of Default more than 45 days after the date the Senior Agent and the Senior Secured Notes Representative (as applicable) received notice of that Senior Secured Event of Default.

The Senior Agent and the Senior Secured Notes Representative may only serve one Senior Subordinated Notes Payment Stop Notice each with respect to the same event or set of circumstances. Subject to the requirements of the immediately preceding paragraph, this shall not affect the right of the Senior Agent or the Senior Secured Notes Representative to issue a Senior Subordinated Notes Payment Stop Notice in respect of any other event or set of circumstances. No Senior Subordinated Notes Payment Stop Notice may be served by the Senior Agent or a Senior Secured Notes Representative in respect of a Senior Secured Event of Default which had been notified to the Senior Agent and the Senior Secured Notes Representative at the time at which an earlier Senior Subordinated Notes Payment Stop Notice was issued.

Any failure to make a payment due under the Senior Subordinated Notes Finance Documents as a result of the issue of a Senior Subordinated Notes Payment Stop Notice or the occurrence of a Senior Secured Payment Default shall not prevent (i) the occurrence of an event of default as a consequence of that failure to make a payment under the Senior Subordinated Notes Finance Documents or (ii) the issuance of a Senior Subordinated Notes Enforcement Notice (as defined below) on behalf of the Senior Subordinated Notes Creditors.

No Debtor shall be released from the liability to make any payment (including of default interest, which shall continue to accrue) under any Senior Subordinated Notes Finance Document by the operation of provisions described above even if its obligation to make that payment is restricted at any time by the terms of any of those restrictions. The accrual and capitalization of interest (if any) in accordance with the Senior Subordinated Notes Finance Documents shall continue notwithstanding the issue of a Senior Subordinated Notes Payment Stop Notice.

If:

- at any time following the issue of a Senior Subordinated Notes Payment Stop Notice or the occurrence of a Senior Secured Payment Default, that Senior Subordinated Notes Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Senior Secured Payment Default ceases to be continuing; and
- the relevant Debtor then promptly pays to the Senior Subordinated Notes Creditors an amount equal to any payments which had accrued under the Senior Subordinated Notes Finance Documents and which would have been Permitted Senior Subordinated Notes Payments but for that Senior Subordinated Notes Payment Stop Notice or Senior Secured Payment Default,

then any event of default which may have occurred as a result of that suspension of payments shall be automatically and immediately waived and any Senior Subordinated Notes Enforcement Notice (as defined below) which may have been issued as a result of that event of default shall be waived, in each case without any further action being required on the part of the Senior Subordinated Notes Creditors.

Amendments and Waivers

Subject to the paragraph below, the Senior Subordinated Notes Creditors may amend or waive the terms of the Senior Subordinated Notes Finance Documents (other than the Intercreditor Agreement or any security document) in accordance with their terms at any time.

Prior to the Senior Secured Discharge Date, the Senior Subordinated Notes Finance Parties may not, without the consent of the Majority Senior Creditors and (to the extent otherwise prohibited under any Senior Secured Notes Indenture(s)) the relevant Senior Secured Notes Representative, amend or waive the terms of the Senior Subordinated Notes Finance Documents if the amendment or waiver (i) would result in the Senior Subordinated Notes Finance Documents being inconsistent with the "Senior Subordinated Notes Major Terms" which are set out in the Intercreditor Agreement and cover matters including the identity of the issuer, maturity date, use of proceeds, interest periods, ability to refinance Senior Secured Facilities Agreement and ability to secure the Senior Lender Liabilities and Hedging Liabilities in accordance with the Intercreditor Agreement; (ii) could reasonably be considered as materially negating the position otherwise existing under the Senior Secured Facilities Agreement where, on any given circumstances, an event of default under the Senior Secured Facilities Agreement would arise ahead of an event of default under the Senior Secured Notes; (iii) could reasonably be considered as resulting in terms that no longer materially differ from the Senior Secured Facilities Agreement; or (iv) is otherwise in breach of the terms of the Senior Secured Facilities Agreement.

Restrictions on Enforcement

Until the Senior Secured Discharge Date, except with the prior consent of or as required by an Instructing Group (as defined above):

- no Senior Subordinated Notes Finance Party shall direct the Security Trustee to enforce or otherwise (to the extent applicable), require the enforcement of, any security documents; and
- no Senior Subordinated Notes Finance Party shall take or require the taking of any Enforcement Action (as defined below) in relation to the Senior Subordinated Notes Guarantors,

except as permitted below, provided that no such action required by the Senior Agent need be taken except to the extent the Senior Agent otherwise is entitled under the Intercreditor Agreement to direct such action.

"**Enforcement Action**" means:

(a) in relation to any liabilities under the debt documents:

(i) the acceleration of any such liabilities or the making of any declaration that any such liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Lender, a Senior Secured Noteholder or a Senior Subordinated Noteholder to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the debt documents);

(ii) the making of any declaration that any such liabilities are payable on demand;

(iii) the making of a demand in relation to such a liability that is payable on demand;

(iv) the making of any demand against any member of the Group in relation to any guarantee liabilities under the debt documents of that member of the Group;

(v) the exercise of any right to require any member of the Group to acquire any such liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any such liability but excluding any such right which arises as a result of permitted debt purchase transactions of the Senior Secured Facilities Agreement, the Senior Secured Notes Finance Documents or the Senior Subordinated Notes Finance Documents and excluding any mandatory offer arising as a result of a change of control or asset sale (howsoever described) as set out in the Senior Secured Notes Finance Documents);

(vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any such liabilities other than the exercise of any such right:

(A) as close-out netting by a hedge counterparty or by a hedging ancillary lender;

(B) as payment netting by a hedge counterparty or by a hedging ancillary lender;

(C) as inter-hedging agreement netting by a hedge counterparty;

(D) as inter-hedging ancillary document netting by a hedging ancillary lender; and

(E) which is otherwise expressly permitted under the Senior Secured Facilities Agreement, the Senior Secured Notes Finance Documents or the Senior Subordinated Notes Finance Documents to the extent that the exercise of that right gives effect to a permitted payment under the Intercreditor Agreement; and

(vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any such liabilities;

(b) the premature termination or close-out of any hedging transaction under any hedging agreement save to the extent permitted by the Intercreditor Agreement;

(c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallization of any floating charge forming part of the Transaction Security);

(d) the entering into of any composition, compromise, assignment or similar arrangement with any member of the Group which owes any liabilities under the debt documents, or has given any security, guarantee or indemnity or other assurance against loss in respect of the liabilities under the debt documents as part of a general composition, compromise, assignment of arrangement with respect to such member of the Group's debt generally or for the reason of financial difficulty of the Group (other than any action permitted in respect of changes to the parties under the Intercreditor Agreement or any debt buy-backs pursuant to open market debt repurchases, tender offers or exchange offers not undertaken as part of an announced restructuring or turnaround plan or while a default was outstanding under the relevant debt documents); or

(e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganization of any member of the Group which owes any liabilities under the debt documents, or has given any security, guarantee, indemnity or other assurance against loss in respect of any of the liabilities under the debt documents, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- the taking of any action falling within paragraphs (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of liabilities under the debt documents, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; or
- a Primary Creditor or the Senior Agent, Senior Secured Notes Representative, Senior Subordinated Notes Representative or Security Trustee bringing legal proceedings against any person solely for the purpose of:
  - obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any debt document to which it is party;
  - obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - requesting judicial interpretation of any provision of any debt document to which it is party with no claim for damages.

Permitted Senior Subordinated Notes Enforcement

The restrictions described above under "*—Restrictions on enforcement*" will not apply in respect of the Senior Subordinated Notes Guarantee liabilities or the security documents which secure Senior Subordinated Notes Liabilities as permitted by the third bullet under "*—Restriction on payments and dealings*" above if:

- an event of default under the Senior Subordinated Notes Finance Documents (a "**Senior Subordinated Notes Event of Default**" and such Senior Subordinated Event of Default, the "**Relevant Senior Subordinated Notes Event of Default**") is continuing;
- the Senior Agent and the Senior Secured Notes Representative have received a notice of the Relevant Senior Subordinated Notes Event of Default specifying the event or circumstance in relation to the

Relevant Senior Subordinated Notes Event of Default from the Senior Subordinated Notes Representative;

- a Senior Subordinated Notes Standstill Period (as defined below) has elapsed; and
- the Relevant Senior Subordinated Notes Event of Default is continuing at the end of the relevant Senior Subordinated Notes Standstill Period (as defined below),

(and such that no intervening or subsequent additional Senior Subordinated Notes Event of Default resulting in the commencement of a corresponding additional Senior Subordinated Notes Standstill Period (as defined below) shall prevent rights that would otherwise have arisen at the end of the Senior Subordinated Notes Standstill Period (as defined below) with respect to the Relevant Senior Subordinated Notes Event of Default occurs) provided that, in addition, Enforcement Action (other than under items (a)(vi) and (c) of such definition) may be taken in relation to any Senior Subordinated Notes Guarantor where this is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of any applicable limitation periods.

Promptly upon becoming aware of a Senior Subordinated Notes Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Senior Subordinated Notes Finance Documents or any combination of the foregoing, provided that any such event or circumstance which, under the terms of the relevant Senior Subordinated Notes Finance Document, requires any determination as to materiality before it becomes a Senior Subordinated Notes Event of Default shall not be a Senior Subordinated Notes Event of Default until such determination is made in accordance with the terms of the relevant Senior Subordinated Notes Finance Document) be a Senior Subordinated Notes Event of Default (a "**Senior Subordinated Notes Default**"), the relevant Senior Subordinated Notes Representative shall notify the Senior Agent and the Senior Secured Notes Representative in writing (a "**Senior Subordinated Notes Enforcement Notice**") of the existence of such Senior Subordinated Notes Event of Default.

In relation to a Relevant Senior Subordinated Notes Event of Default, a "**Senior Subordinated Notes Standstill Period**" shall mean the period beginning on the date (the "**Senior Subordinated Notes Standstill Start Date**") the Senior Subordinated Notes Representative serves a Senior Subordinated Notes Enforcement Notice on the Senior Agent and the Senior Subordinated Notes Representative in respect of such Relevant Senior Subordinated Notes Event of Default and ending on the earlier to occur of:

- the date falling 179 days after the Senior Subordinated Notes Standstill Start Date;
- the expiry of any other Senior Subordinated Notes Standstill Period outstanding at the date such first mentioned Senior Subordinated Notes Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other remedy in each case in accordance with the terms of the Senior Facility Agreement and related documents, the Senior Secured Notes Finance Documents and/or the Senior Subordinated Notes Finance Documents (as applicable));
- the date on which the Majority Senior Creditors and the Majority Senior Secured Notes Creditors give their consent; and
- a failure to pay the principal amount outstanding on the Senior Subordinated Notes at the final stated maturity of the Senior Subordinated Notes.

If the Security Trustee has notified the Senior Subordinated Notes Representative that it is taking steps to enforce security created pursuant to any security document over shares of a Senior Subordinated Notes Guarantor, no Senior Subordinated Notes Finance Party may not take any otherwise permitted Enforcement Action against that Senior Subordinated Notes Guarantor while the Security Trustee:

- has requested instructions of an Instructing Group in relation to the enforcement of the Transaction Security and the relevant instructions have not been given; or
- is taking steps to enforce that security in accordance with the instructions of the Instructing Group,

where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.

If the Senior Subordinated Notes Creditors are permitted to give instructions to the Security Trustee to require the enforcement of the security constituted pursuant to any security document such

Enforcement Action must require the realization of the relevant security by way of a sale or disposal conducted in compliance with the requirements described under "*—Proceeds of Disposals*."

Option to Purchase

Any Senior Subordinated Notes Creditors representing more than fifty per cent. of the Senior Subordinated Notes Liabilities may after (i) a Senior Acceleration Event, (ii) a Senior Secured Notes Acceleration Event, (iii) acceleration in respect of the Senior Subordinated Notes under the Senior Subordinated Notes Indenture ("a **Senior Subordinated Notes Acceleration Event**") or (iv) the enforcement of any Transaction Security as permitted by and in accordance with the terms of the Intercreditor Agreement (each a "**Distress Event**"), by giving not less than ten days' notice to the Security Trustee, require the transfer to the Senior Subordinated Notes Creditors (or to a nominee or nominees) of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities and the Senior Secured Notes Liabilities and if certain conditions are met, including the provision of indemnities by each Senior Subordinated Notes Creditor to the Senior Lenders and the Senior Secured Notes Creditors. The purchase price shall be the aggregate of:

- all of the Senior Lender Liabilities (other than the Hedging Liabilities) at that time (whether or not due), including all amounts that would have been payable under the Senior Secured Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment;
- all of the Senior Secured Note Liabilities at that time (whether due or not due), including all amounts that would have been payable under the Senior Secured Notes Indenture if the Senior Secured Notes were being redeemed (as applicable) by the relevant Debtors on the date of that payment; and
- all costs and expenses (including legal fees) incurred by the Senior Agent, Senior Lenders, Senior Secured Notes Representative and/or the Senior Secured Notes Creditors as a consequence of giving effect to that transfer.

The Senior Subordinated Notes Representative (on behalf of all the Senior Subordinated Notes Creditors) may only require a transfer to them of the Senior Secured Creditor Liabilities if, at the same time, they require a transfer of hedging obligations as described under "*—Hedge transfer*" and such transfer of hedging obligations can be made.

Hedge Transfer

Any Senior Subordinated Noteholder(s) representing more than fifty per cent. of the Senior Subordinated Notes Liabilities may, by giving not less than ten days' notice to the Security Trustee, require a transfer to the Senior Subordinated Notes Creditors of the hedging agreements (a "**Hedge Transfer**") if they require, at the same time, a transfer of Senior Secured Creditor Liabilities as described above under "*—Senior Subordinated Creditors and Senior Subordinated Liabilities—Option to purchase*" and if certain conditions are met, including the provision of indemnities by each Senior Subordinated Notes Creditor to the relevant Hedge Counterparties. In connection with the transfer, each Hedge Counterparty shall be paid or shall pay, as applicable, an amount equal to the aggregate required to close-out the hedging obligation at that time and all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to such transfer. The Senior Subordinated Notes Representative (on behalf of the Senior Subordinated Notes Creditors) and any Hedging Counterparty may agree that such a hedge transfer is not required in respect of any hedging agreement of that Hedging Counterparty.

HoldCo Liabilities / Top Holdco

HoldCo Restrictions

Unless payment is permitted as described below,

- no Debtor, nor any of its subsidiaries, will make, and HoldCo will not receive, any payment or distribution of any kind whatsoever in respect or on account of the HoldCo Liabilities (including in relation to the direct or indirect purchase or other acquisition of the HoldCo Liabilities); and
- no Debtor, nor any of its subsidiaries, will create or permit to subsist, and HoldCo will not receive from any member of the Group, any security over any asset of any member of the Group or give or permit to subsist any guarantee in respect of any part of the HoldCo Liabilities,

- no member of the Group will incur liabilities to any direct or indirect shareholder of the parent or any Affiliate of such direct or indirect shareholder other than "Holdco Liabilities" incurred by the Parent and owed to Holdco, unless permitted to do so under the Senior Secured Finance Documents and the Senior Secured Notes Finance Documents.

in each case, without the prior consent of (i) the Majority Senior Creditors (if on or before the Senior Discharge Date), (ii) (to the extent otherwise prohibited under the Senior Secured Notes Indenture(s) pursuant to which any Senior Secured Notes remain outstanding) the relevant Senior Secured Notes Representative(s) (if on or before the Senior Secured Notes Discharge Date) and (iii) (to the extent otherwise prohibited under the Indenture(s) pursuant to which any Senior Subordinated Notes remain outstanding) the relevant Senior Subordinated Notes Representative (if on or before the date on which the Senior Subordinated Notes Liabilities are fully and finally discharged (the "**Senior Subordinated Notes Discharge Date**")).

A member of the Group may pay interest, principal or other amounts in respect of the HoldCo Liabilities if such payment is:

- (if prior to the Senior Discharge Date), not prohibited by the Senior Secured Facilities Agreement;
- (if prior to the Senior Secured Notes Discharge Date), not prohibited by the Senior Secured Notes Indenture(s) pursuant to which any Senior Secured Notes remain outstanding (as applicable); and
- (if prior to the Senior Subordinated Notes Discharge Date), not prohibited by the Senior Subordinated Indenture(s) pursuant to which any Senior Subordinated Notes remain outstanding (as applicable).

Nothing in the above paragraph will restrict the roll-up or capitalisation of interest on the HoldCo Liabilities or the payment of interest on HoldCo Liabilities by the issue of payment-in-kind instruments provided that, in any such case, there is no payment in cash or cash equivalent investments.

Restrictions on Enforcement

Until after the Final Discharge Date, HoldCo may not take Enforcement Action in relation to the HoldCo Liabilities without the prior Consent of the Majority Senior Creditors (if on or before the Senior Discharge Date), the Majority Senior Secured Notes Creditors (if on or before the Senior Secured Notes Discharge Date) and the Majority Senior Subordinated Notes Creditors (if on or before the Senior Subordinated Notes Discharge Date).

Top HoldCo undertaking

Top HoldCo undertakes that in the event of any step, action or process by operation of which HoldCo becomes the successor of the business of the Parent, it shall deemed to give undertakings and bound by obligations analogous to those given by HoldCo in the Intercreditor Agreement such that references in such undertakings and obligations to "HoldCo" and "Parent" (including by cross-references to defined terms used therein) shall be construed, respectively, as references to "Top HoldCo" and "HoldCo".

Effect of Insolvency Event

After the occurrence of an insolvency event in relation to any member of the Group, any party to the Intercreditor Agreement entitled to receive a distribution out of the assets of that member of the Group in respect of liabilities owed to that party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Security Trustee until the liabilities owing to the Primary Creditors and other secured parties have been paid in full. The Security Trustee shall apply such distributions paid to it in accordance with the provisions described in this paragraph as set out below under "*—Application of Proceeds*."

Subject to certain exceptions relating to overdraft liabilities and netting under hedging arrangements, generally, to the extent that any member of the Group's liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an insolvency event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the liabilities owed to it which are discharged by that set-off to the Security Trustee for application as set out below under "*—Application of Proceeds*."

If the Security Trustee or any other Secured Party receives a distribution in a form other than in cash in respect of any of the liabilities, the liabilities will not be reduced by that distribution until and except to the extent that the realization proceeds are actually applied towards the liabilities.

After the occurrence of an insolvency event in relation to any member of the Group, each Creditor irrevocably authorizes the Security Trustee, on its behalf, to:

- take any Enforcement Action (in accordance with the terms of the Intercreditor Agreement) against that member of the Group;
- demand, sue, prove and give receipt for any or all of that member of the Group's liabilities;
- collect and receive all distributions on, or on account of, any or all of that member of the Group's liabilities; and
- file claims, take proceedings and do all other things the Security Trustee considers reasonably necessary to recover that member of the Group's liabilities.

Each Creditor agrees to do all things that the Security Trustee reasonably requests in order to give effect to the matters described in this section and, if the Security Trustee is not entitled to take any of the actions contemplated or if the Security Trustee requests that a creditor take that action, undertake that action itself in accordance with the instructions of the Security Trustee or grant a power of attorney to the Security Trustee to enable the Security Trustee to take such action (although the Senior Secured Notes Representative or other trustee in respect of debt securities shall not be under any obligation to grant a power of attorney).

Turnover

Subject to certain exceptions, if any creditor receives or recovers from any member of the Group:

(a) any payment or distribution of, or on account of or in relation to, any of the liabilities which is not either:

  (i) a permitted payment under the Intercreditor Agreement; or

  (ii) made in accordance with the provisions described below under "*—Application of Proceeds*;"

(b) any amount by way of set-off in respect of any of the liabilities owed to it which does not give effect to a permitted payment under the Intercreditor Agreement;

(c) any amount:

  (i) on account of, or in relation to, any of the liabilities:

    (A) after the occurrence of a Distress Event; or

    (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an insolvency event in respect of that member of the Group); or

  (ii) by way of set-off in respect of any of the liabilities owed to it after the occurrence of a Distress Event,

  other than, in each case, any amount received or recovered in accordance with the provisions described below under "*—Application of Proceeds*;"

(d) the proceeds of any enforcement of any Transaction Security except as described under "*—Application of Proceeds*;" or

(e) any distribution in cash or in kind or payment of, or on account of or in relation to, any of the liabilities owed by any member of the Group which is not in accordance with the provisions described under "*—Application of Proceeds*" and which is made as a result of, or after, the occurrence of an insolvency event in respect of that member of the Group,

  that creditor will:

  (i) in relation to receipts and recoveries not received or recovered by way of set-off:

    (A) hold an amount of that receipt or recovery equal to the relevant liabilities (or if less, the amount received or recovered) on trust for the Security Trustee and promptly pay that

amount to the Security Trustee for application in accordance with the terms of the Intercreditor Agreement; and

(B) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the relevant liabilities to the Security Trustee for application in accordance with the terms of the Intercreditor Agreement; and

(ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Trustee for application in accordance with the terms of the Intercreditor Agreement.

Redistribution

Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Trustee as described under "*—Effect of Insolvency Event*" or "*—Turnover*" shall be treated as having been paid by the relevant Debtor and distributed to the Security Trustee, the Senior Agent, the Senior Secured Notes Representative, the Senior Subordinated Notes Representative, the arrangers under the Senior Secured Facilities Agreement and the Primary Creditors (each a "**Sharing Creditor**") in accordance with the terms of the Intercreditor Agreement.

On a distribution by the Security Trustee as described under the preceding paragraph of a payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Trustee (as the case may be) (the "**Shared Amount"**) will be treated as not having been paid by that Debtor.

If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:

- each Sharing Creditor shall upon request of the Security Trustee, pay to the Security Trustee for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
- as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.

Enforcement of Transaction Security

Enforcement Instructions

The Security Trustee may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group or, if required as described below in the third paragraph of this section, the Senior Subordinated Notes Representative (acting on the instructions of the Majority Senior Subordinated Notes Creditors), and the Senior Agent shall promptly inform the Security Trustee, who shall promptly inform the Senior Secured Noteholder Representative(s), of any decision taken by the Majority Senior Lenders constituting an Instructing Group (as defined above).

Subject to the Transaction Security having become enforceable in accordance with its terms, subject to the matters set out in the below last paragraph of this section, the Instructing Group or, to the extent permitted to enforce or to require the enforcement of the Transaction Security prior to the Senior Discharge Date as described under "*—Senior Subordinated Notes Creditors and Senior Subordinated Notes Liabilities—Permitted Senior Subordinated Notes Enforcement*," the Senior Subordinated Notes Representative (acting on the instructions of the Majority Senior Subordinated Notes Creditors), may give or refrain from giving instructions to the Security Trustee to enforce or refrain from enforcing the Transaction Security as they see fit.

Prior to the Senior Secured Discharge Date, (i) if the Instructing Group has instructed the Security Trustee not to enforce or to cease enforcing the Transaction Security, or (ii) in the absence of instructions from the Instructing Group, and, in each case, the Instructing Group has not required any Debtor to make a Distressed Disposal, the Security Trustee shall give effect to any instructions to enforce the Transaction Security which the Senior Subordinated Notes Representative (acting on the instructions of the Majority Senior Subordinated Notes Creditors) are then entitled to give to the Security Trustee as described under

"*—Senior Subordinated Notes Creditors and Senior Subordinated Notes Liabilities—Permitted Senior Subordinated Notes Enforcement*."

Notwithstanding the preceding paragraph, if at any time the Senior Subordinated Notes Representative is then entitled to give the Security Trustee instructions to enforce the Transaction Security pursuant to the provisions of the Intercreditor Agreement described in the preceding paragraph and the Senior Subordinated Notes Representative either gives such instruction or indicates any intention to give such instruction, then either the Senior Agent or the Senior Secured Notes Representative may give instructions to the Security Trustee to enforce the Transaction Security as the Senior Agent or the Senior Secured Notes Representative sees fit in lieu of any instructions to enforce given by the Senior Subordinated Notes Representative as described under "*—Senior Subordinated Notes Creditors and Senior Subordinated Notes Liabilities—Permitted Senior Subordinated Notes Enforcement*" and the Security Trustee shall act on the first such instructions received.

In relation to any Enforcement Action to be taken in respect of any Transaction Security by the Instructing Group within the circumstances described within paragraph (a)(i) of the definition thereof and where an affirmative decision to enforce Transaction Security is taken by such Instructing Group, the following shall apply:

- on any decision taken or to be taken by the Majority Senior Secured Creditors constituting an Instructing Group, the relevant Senior Secured Creditors shall be free to exercise their discretion in making such decision as they see fit;
- subject to certain conditions, such action to be taken by the Instructing Group shall be with a view to maximising, so far as is consistent with prompt and expeditious realisation of value from realising the Transaction Security held for the benefit of the Senior Secured Creditors, recovery by the Senior Secured Creditors;

In relation to any enforcement of Transaction Security instigated by an Instructing Group under the first bullet above, such enforcement process, subject to certain exceptions, may be stopped in certain circumstances, including:

- on a date which is not earlier than 270 days after such Instructing Group commences such enforcement action if there is no reasonable likelihood of a realisation of the Transaction Security within a further 90 days; and
- any Senior Secured Parties holding more than 15% of the Senior Secured Credit Participations forming a reasonable view that the Instructing Group has not been taking reasonable and diligent steps to maximize, as far as possible, recovery by the Senior Secured Creditors.

Manner of Enforcement

If the Transaction Security is being enforced pursuant to the provisions described above under "*—Enforcement Instructions*," the Security Trustee shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Trustee) as:

- the Instructing Group; or
- prior to the Senior Secured Discharge Date, if:
  - the Security Trustee has, pursuant to the third paragraph above under "*—Enforcement Instructions*," received instructions given by the Majority Senior Subordinated Notes Creditors to enforce the Transaction Security; and
  - the Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,

  the Majority Senior Subordinated Notes Creditors,

shall instruct or, in the absence of any such instructions, as the Security Trustee sees fit. *Exercise of Voting Rights*

Each Creditor agrees (to with the Security Trustee that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security

Trustee. The Security Trustee shall give such instructions as directed by an Instructing Group. This exercise of voting power does not entitle any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to (i) waive, reduce, discharge, extend the due date for payment of or reschedule any of the liabilities owed to that Primary Creditor or (ii) in the case of any Senior Secured Creditor, modify the terms of any of the finance documents to which such Senior Secured Creditor is a party in any other way that will treat that Senior Secured Creditor in a materially less beneficial manner than any other Senior Secured Creditor.

Waiver of Rights

To the extent permitted under applicable law and subject to certain provisions of the Intercreditor Agreement, each of the secured parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the secured obligations is so applied.

Duties Owed

Each of the secured parties and the Debtors acknowledges that, in the event that the Security Trustee enforces or is instructed to enforce the Transaction Security prior to the Senior Secured Discharge Date, the duties of the Security Trustee and of any receiver or delegate of the Security Trustee owed to any Senior Subordinated Notes Finance Party in respect of the method, type and timing of that enforcement or of the exploitation, management or realization of any of that Transaction Security shall, subject to the provisions described in the fourth paragraph under "*—Proceeds of disposals—Distressed Disposals*," be no different to or greater than the duty that is owed by the Security Trustee, receiver or delegate of the Security Trustee to the Debtors under general law.

Security Held by Other Creditors

If any Transaction Security is held by a creditor other than the Security Trustee, then creditors may only enforce that Transaction Security in accordance with instructions given by an Instructing Group in accordance with this paragraph (and for this purpose references to the Security Trustee shall be construed as references to that creditor).

Proceeds of Disposals

Non-Distressed Disposals

In this section, "**Disposal Proceeds**" means the proceeds of a Non-Distressed Disposal (as defined below).

If, in respect of a disposal (a "**Non-Distressed Disposal**") of an asset by a Debtor or an asset which is subject to the Transaction Security, in each case, to a person outside the Group:

- (prior to the Senior Lender Discharge Date) the Senior Agent notifies the Security Trustee that that disposal is permitted under the Senior Facility Agreement and related finance documents (which it shall do as soon as practicable on request by the Parent);
- (prior to the Senior Secured Notes Discharge Date) the Parent certifies for the benefit of the Security Trustee that that disposal is not prohibited by the Senior Secured Notes Finance Documents or the Senior Secured Notes Representative authorizes the release in accordance with the terms of the Senior Secured Notes Finance Documents;
- the Parent certifies for the benefit of the Security Trustee that that disposal is permitted under or is not prohibited by the Senior Subordinated Notes Finance Documents or the Senior Subordinated Notes Representative authorizes the release in accordance with the terms of the Senior Subordinated Notes Finance Documents; and
- that disposal is not a Distressed Disposal (as defined below),

the Security Trustee is irrevocably authorized and shall be required (at the reasonable cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any creditor or Debtor) but subject to the immediately following paragraph:

- to release the Transaction Security and any other claim (relating to a debt document) over that asset;

- where that asset consists of shares in the capital of a Debtor, to release the Transaction Security and any other claim, including without limitation any guarantee liabilities or other liabilities (relating to a Debt Document) over that Debtor or its assets and (if any) the subsidiaries of that Debtor and their respective assets; and
- to execute and deliver or enter into any release of the Transaction Security or any claim described in the previous two bullet points and issue any certificates of non-crystallization of any floating charge or like required letters (if any) or any consent to dealing that may be reasonably requested by the Parent.

If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in the paragraph above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.

If any Disposal Proceeds are required by the terms of any Debt Document to be applied in mandatory prepayment of the Senior Lender Liabilities, the Senior Secured Notes Liabilities or the Senior Subordinated Notes Liabilities (as applicable) then, subject to the terms of the Intercreditor Agreement, the Disposal Proceeds shall be applied in or towards payment of:

- first, the Senior Lender Liabilities in accordance with the terms of the Senior Secured Facilities Agreement and the Senior Secured Notes Liabilities in accordance with the terms of the Senior Secured Notes Indenture pro rata (without any obligation to apply those amounts towards the Senior Subordinated Notes Liabilities); and
- second, after the discharge in full of the Senior Lender Liabilities and the Senior Secured Notes Liabilities, the Senior Subordinated Notes Liabilities in accordance with the terms of the Senior Subordinated Notes Finance Documents,

and the consent of any other party shall not be required for that application.

Distressed Disposals

A "**Distressed Disposal**" means a disposal of an asset (including shares) owned by a member of the Group or (to the extent subject to Transaction Security) HoldCo which is:

- being effected at the request of an Instructing Group in circumstances where the Transaction Security has become enforceable;
- being effected by enforcement of the Transaction Security; or
- being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of Group.

Subject to the requirements set out in this section, if a Distressed Disposal of any asset is being effected, the Security Trustee is irrevocably authorized (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

- to release the Transaction Security or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallization of any floating charge or any consent to dealing that may, in the discretion of the Security Trustee, be considered necessary or desirable;
- if the asset which is disposed of consists of shares in the capital of a Debtor to release:
  - that Debtor and any of its subsidiaries from all or any part of its principal liabilities, its guarantee liabilities and its other liabilities;
  - any Transaction Security granted by that Debtor or any of its subsidiaries over any of its assets; and
  - any other claim of an Intra Group Lender, HoldCo, or another Debtor over that Debtor's assets or over the assets of any of its subsidiaries,

  on behalf of the relevant creditors, Senior Agent, Debtors, Senior Secured Notes Representative(s) and the Senior Subordinated Notes Representative(s);

- if the asset which is disposed of consists of shares in the capital of any holding company of a Debtor to release:
  - that holding company and any of its subsidiaries from all or any part of its principal liabilities, its guarantee liabilities and its other liabilities;
  - any Transaction Security granted by any of the holding company's subsidiaries over any of its assets; and
  - any other claim of an Intra Group Lender, HoldCo or another Debtor over the assets of that holding company and any of its subsidiaries,

  on behalf of the relevant Creditors, Senior Agent, Debtors, the Senior Secured Notes Representative(s) and the Senior Subordinated Notes Representative(s);
- if the asset which is disposed of consists of shares in the capital of a Debtor or the holding company of a Debtor and the Security Trustee (acting in accordance with the Intercreditor Agreement) decides to dispose of all or any part of the liabilities under the debt documents or the liabilities owed by that Debtor or holding company to a Debtor or any subsidiary of that Debtor or holding company:
  - (if the Security Trustee (acting in accordance with the Intercreditor Agreement) does not intend that any transferee of those liabilities under the debt documents or Debtor liabilities (the "**Transferee"**) will be treated as a Primary Creditor or a secured party for the purposes of the Intercreditor Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those liabilities under the debt documents or Debtor liabilities, provided that notwithstanding any other provision of any debt document the Transferee shall not be treated as a Primary Creditor or a secured party for the purposes of the Intercreditor Agreement; and
  - (if the Security Trustee (acting in accordance with the Intercreditor Agreement) does intend that any Transferee will be treated as a Primary Creditor or a secured party for the purposes of the Intercreditor Agreement), to execute and deliver or enter into any agreement to dispose of (x) all (and not part only) of the liabilities under the debt documents owed to the Primary Creditors and (y) all or part of any other liabilities under the debt documents and the Debtor liabilities, on behalf of, in each case, the relevant creditors and Debtors;
- if the asset which is disposed of consists of shares in the capital of a Debtor or the holding company of a Debtor (the "**Disposed Entity**") and the Security Trustee (acting in accordance with the Intercreditor Agreement) decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of the Intra-Group Liabilities or the liabilities owed by a member of the Group to a Debtor ("**Debtor Liabilities**"), to execute and deliver or enter into any agreement to:
  - agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities, or Debtor Liabilities on behalf of the relevant Intra Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
  - (provided the Receiving Entity is a holding company of the Disposed Entity which is also a guarantor of Senior Secured Liabilities) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor liabilities are to be transferred.

The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of liabilities under the debt documents or Debtor Liabilities) shall be paid to the Security Trustee for application in accordance with the provisions described under "*—Application of Proceeds*" as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of liabilities under the debt documents or Debtor Liabilities has occurred, as if that disposal of liabilities under the debt documents or Debtor liabilities had not occurred.

In the case of a Distressed Disposal (or a disposal of liabilities under the debt documents) effected by or at the request of the Security Trustee (acting in accordance with the Intercreditor Agreement), the Security Trustee shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Trustee shall not have any obligation to postpone any such Distressed Disposal or disposal of liabilities under the debt documents in order to achieve a higher price).

If a Distressed Disposal is being effected at a time when the Majority Senior Subordinated Notes Creditors are entitled to give, and have given, enforcement instructions under the terms of the Intercreditor Agreement, the Security Trustee is not authorized to release any Debtor, subsidiary or holding company from any principal liabilities or guarantor liabilities or other liabilities owed to any Senior Secured Creditor unless those principal liabilities or guarantor liabilities or other liabilities and any other Senior Secured Liabilities will be paid (or repaid) in full, following that release.

Where principal liabilities in respect of any Senior Secured Liabilities would otherwise be released pursuant to the Intercreditor Agreement, the creditor concerned may elect to have those principal liabilities transferred to the Parent or the Company (provided in the case of a transfer to the Company it will remain a subsidiary of the Parent after the relevant Distressed Disposal), in which case the Security Trustee is irrevocably authorized (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any creditor or Debtor) to execute such documents as are required to so transfer those principal liabilities.

If prior to the Senior Subordinated Notes Discharge Date, a Distressed Disposal is being effected such that the Senior Subordinated Notes Liabilities and Transaction Security over the assets of the Senior Subordinated Notes Issuer or a Senior Subordinated Notes Guarantor will be released as described above, it is a further condition to the release that either:

(i) the Majority Senior Subordinated Notes Creditors through the Senior Subordinated Notes Representative has approved the release; or

(ii) where shares in or assets (including shares) of the Senior Subordinated Notes Issuer or a Senior Subordinated Notes Guarantor are sold:

  (A) the proceeds of such sale or disposal are in cash (or substantially in cash) and/or other marketable securities or, if the proceeds of such sale or disposal are not in cash (or substantially in cash) and/or other marketable securities, the requirements of sub-paragraph (C)(II) or sub-paragraph (C)(III) below are satisfied;

  (B) all claims of the Senior Secured Creditors against a member of the Group (if any) all of whose shares are pledged in favor of (among others) the Senior Finance Parties and the Senior Secured Notes Finance Parties and which are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and are not assumed by the purchaser or one of its affiliates), and all security under the security documents in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, provided that in the event of a sale or disposal of any such claim (instead of a release or discharge):

    (I) the Senior Agent and Senior Secured Notes Representative determine acting reasonably and in good faith that the Senior Lenders and other finance parties under the Senior Secured Facilities Agreement and the Senior Secured Notes Finance Parties (respectively) will recover more than if such claim was released or discharged; and

    (II) the Senior Agent and Senior Secured Notes Representative serve a notice on the Security Trustee notifying the Security Trustee of the same, in which case the Security Trustee shall be entitled immediately to sell and transfer such claim to such purchaser (or an affiliate of such purchaser); and

  (C) such sale or disposal (including any sale or disposal of any claim) is made:

    (I) pursuant to a "**Competitive Process**," meaning a public or private auction or other competitive sale process in which more than one bidder participates or is invited to participate (including any person invited that is a Senior Bridge Creditor at the time of such invitation), which may or may not be conducted through a court or other legal proceeding, and which is conducted with the advice of an independent investment bank or internationally recognized firm of accountants or a reputable independent third party professional firm which is regularly engaged in such sale processes;

    (II) pursuant to any process or proceedings approved or supervised by or on behalf of any court of law where there is a determination of value by or on behalf of the court; or

    (III) where an independent investment bank or an internationally recognized firm of accountants or a reputable independent third party professional firm which is regularly engaged in

providing valuations in respect of the relevant type and size of the assets, in each case selected by the Security Trustee, has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement and such opinion shall be conclusive evidence of the fairness of the amount received provided that the liability of such investment bank or internationally recognized firm of accountants in giving such opinion may be limited to the amount of its fees in respect of such engagement.

For the purposes of the second paragraph (other than the first bullet in such paragraph) and the fourth paragraph in this section above, the Security Trustee shall act:

- if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, as described above under "*—Enforcement of Transaction Security—Manner of enforcement*;" and
- in any other case on the instructions of the Instructing Group or, in the absence of any such instructions, as the Security Trustee sees fit.

Application of Proceeds

All amounts from time to time received or recovered by the Security Trustee pursuant to the terms of any debt document or in connection with the realization or enforcement of all or any part of the Transaction Security (for the purposes of this section, the "**Group Recoveries**") shall be held by the Security Trustee on trust, to apply them at any time as the Security Trustee (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

(i) in discharging any sums owing to the Senior Agent (in respect of amounts due to the Senior Agent ("**Senior Agent Liabilities**")), the Security Trustee, any receiver or any delegate of the Security Trustee and any Senior Secured Notes Trustee Amounts or any Senior Subordinated Notes Trustee Amounts and any other liabilities to agents on a pari passu basis;

(ii) in payment of all costs and expenses incurred by any agent or Primary Creditor in connection with any realization or enforcement of the Transaction Security;

(iii) in payment to:

- the Senior Agent on its own behalf and on behalf of the Senior Lenders; and
- each Senior Secured Notes Representative on its own behalf and on behalf of the Senior Secured Notes Creditors; and
- the Hedge Counterparties,

for application towards the discharge of:

- the Senior Lender Liabilities (in accordance with the terms of the Senior Secured Facilities Agreement and related agreements);
- the Senior Secured Notes Liabilities (in accordance with the terms of the Senior Secured Notes Finance Documents); and
- the Hedging Liabilities (on a pro rata basis between the Hedging Liabilities of each Hedge Counterparty),

on a pro rata basis and ranking pari passu between each of the liabilities described above;

(iv) in payment to each Senior Subordinated Notes Representative on its own behalf and on behalf of the Senior Subordinated Notes Finance Parties for application (in accordance with the terms of the Senior Subordinated Notes Finance Documents) towards the discharge of the Senior Subordinated Notes Liabilities;

(v) if none of the Debtors is under any further actual or contingent liability under any Senior Secured Finance Document or Senior Subordinated Notes Finance Document, in payment to any person to whom the Security Trustee considers it is legally obliged to pay in priority to any Debtor; and

(vi) the balance, if any, in payment to the relevant Debtor.

Equalization

The Intercreditor Agreement includes provisions such that if, for any reason, any Senior Secured Liabilities remain unpaid after the date enforcement action is taken and the resulting losses are not borne by the Senior Secured Creditors in the proportions which their respective exposures at such enforcement date bore to the aggregate exposures of all the Senior Secured Creditors at such enforcement date, the Senior Secured Creditors will make such payments among themselves as the Security Trustee shall require to put the Senior Secured Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions. The Senior Secured Notes Representative(s) are not required to make payments if it has distributed amounts received to holders of the Senior Secured Notes and did not have actual notice on such date of obligations to make equalization payments.

Refinancing of Primary Creditor Liabilities and Additional Notes

The Intercreditor Agreement includes provisions permitting the refinancing of the Senior Secured Creditor Liabilities and Senior Subordinated Notes Liabilities, including in circumstances where all Senior Lender Liabilities are discharged in full, by way of additional senior facilities.

Release of Security

Where the implementation of a permitted refinancing, restructuring, replacement, or increase of Senior Secured Liabilities require the release of any Transaction Security by the Security Trustee, due to operation of law that cannot reasonably be avoided and any consent required under the Senior Secured Facilities Agreement and related agreements or the Senior Secured Notes Finance Documents or the Senior Subordinated Notes Finance Documents, as applicable, in respect of such release of security interest has been obtained, the Security Trustee shall release such security interest which has been granted to it provided that such release occurs on the date of such refinancing, restructuring, replacement or increase and is within the terms of such consent (if any), **provided that** nothing in the foregoing shall be construed as permitting:

(a) without the consent of the relevant Senior Secured Creditors, an arrangement that involves releasing and re-taking any Security Interest in relation to any Senior Secured Liabilities or foregoing any priority otherwise then existing; or

(b) without the consent of the relevant Senior Subordinated Notes Creditors, an arrangement that involves releasing and re-taking any Security Interest in relation to any Senior Subordinated Notes Liabilities or foregoing any priority otherwise then existing,

in each case that exists immediately prior to any refinancing, restructuring, replacement, or increase and would continue to exist immediately thereafter.

New Security

To the extent under any permitted refinancing:

- any Senior Secured Liabilities coming into existence after the date of this Agreement cannot be secured *pari passu* with the Senior Secured Liabilities existing immediately prior thereto (and to the extent not being replaced thereby); or
- any Senior Subordinated Notes Liabilities coming into existence after the date of this Agreement cannot be secured *pari passu* with the Senior Subordinated Notes Liabilities existing immediately prior thereto (and to the extent not being replaced thereby),

in each case under the Security Documents existing immediately prior thereto and granted for the benefit of the Senior Secured Liabilities or, as applicable, the Senior Subordinated Notes Liabilities, (the "**Initial Security Documents**") without the security interests under such Initial Security Documents first being released or any priority thereunder being foregone, the Parties agree that such new Senior Secured Notes or such new Senior Subordinated Notes will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents (the "**Additional Security Documents**") on a second or lesser ranking basis.

Notwithstanding the immediately foregoing paragraph above, to the extent permitted by applicable law, any Senior Secured Liabilities or Senior Subordinated Notes Liabilities which do not benefit from the Initial Security Documents in respect of which other Senior Secured Liabilities or, as applicable, Senior

Subordinated Notes Liabilities do benefit, on the respective *pari passu* basis, will nonetheless be deemed and treated for the purpose of the Intercreditor Agreement and the provisions described under *Application of proceeds* above as secured by the Initial Security Documents and the Additional Senior Security Documents *pari passu* with other Liabilities which would otherwise have the same ranking as contemplated by the Intercreditor Agreement **provided that** nothing in the foregoing shall be construed as permitting:

- without the consent of the relevant Senior Secured Creditors, an arrangement that involves releasing and re-taking any Security Interest in relation to any Senior Secured Liabilities or foregoing any priority otherwise then existing; or
- without the consent of the relevant Senior Subordinated Notes Creditors, an arrangement that involves releasing and re-taking any Security Interest in relation to any Senior Subordinated Notes Liabilities or foregoing any priority otherwise then existing,

in each case that exists immediately prior to any refinancing, restructuring, replacement, or increase and would continue to exist immediately thereafter.

Super Senior Revolving Facility

The Intercreditor Agreement permits a super senior revolving credit facility to be established at the option of the Parent provided that certain conditions are complied with (the "Super Senior Revolving Facility").

At the option of the Parent, any Super Senior Revolving Facility:

- may only benefit from the provisions of the Intercreditor Agreement if at that time the Senior Lender Liabilities have been fully and finally discharged and the Senior Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the debt documents;
- may be made available on a basis which is senior to any of the other Liabilities;
- shall be entitled to benefit from all or any of the Transaction Security; and
- may be effected in whole or in part by way of a debt exchange, non-cash rollover or other similar or equivalent transaction.

At the request of the Parent, each party to the Intercreditor Agreement shall be required to enter into any amendment or restatement to the then current form of the Intercreditor Agreement or replacement intercreditor agreement in each case to reflect the terms and structure of any Super Senior Revolving Facility in, or to make such other changes in connection with any Super Senior Revolving Facility which are not materially adverse to the interests of the parties to, the Intercreditor Agreement or such other intercreditor agreement (as the case may be) as determined by the Parent (with any such determination to be conclusive) and/or take such other action as is required by the Parent in order to facilitate any Super Senior Revolving Facility. Each Agent and the Security Trustee is irrevocably authorised and instructed by all relevant parties to execute any such amendment or restatement agreement or such other intercreditor agreement and/or take such action on behalf of all relevant parties. The Security Trustee will only be required to enter into any amendment or restatement if it and the Senior Secured Notes Representative and the Senior Subordinated Notes Representative are each delivered a certificate of the Parent confirming compliance with the "Super Senior Revolving Facility Major Terms", which are set out below.

The Super Senior Revolving Facility Major Terms are as follows:

Ranking

No liabilities or obligations in respect of any Super Senior Revolving Facility may rank in right and

priority of payment ahead of the amounts set out in paragraph (i) of the section "*—Application of Proceeds*" (including the Notes Trustee Amounts).

Subject to the paragraph above and to the extent not otherwise prohibited by the debt documents, any Super Senior Revolving Facility shall rank in right and priority of payment as determined by the Parent.

Enforcement

The right of the lenders or other creditors in respect of a Super Senior Revolving Facility to:

(a) instruct the Security Trustee to enforce the security;

(b) give or refrain from giving instructions to the Security Trustee to enforce or refrain from enforcing the security as they see fit; and/or

(c) otherwise provide instructions as, or as part of, an Instructing Group,

shall be generally consistent with, or otherwise not materially less favorable to the other Secured Parties than, those customary for facilities of a similar nature to that Super Senior Revolving Facility (if any), in each case as at the date such Super Senior Revolving Facility is contractually committed by the relevant member(s) of the Group and as determined by the Parent (with any such determination to be conclusive).

Option to Purchase

(a) The Senior Secured Notes Creditors shall be provided with an 'option to purchase' right in relation to any liabilities in respect of a Super Senior Revolving Facility consistent in all material respects with the 'option to purchase' right provided in relation to the Senior Lender Liabilities as set out in the paragraph captioned "*—Option to Purchase: Senior Secured Creditor Liabilities*".

(b) The Senior Subordinated Notes Creditors shall be provided with an 'option to purchase' right in relation to any liabilities in respect of a Super Senior Revolving Facility consistent in all material respects with the 'option to purchase' right provided in relation to the Senior Secured Liabilities as set out in the paragraph captioned "*—Option to Purchase: Senior Subordinated Creditors and Senior Subordinated Liabilities*".

Hedging

Any Super Senior Revolving Facility documentation may (at the option of the Parent) permit any interest rate, foreign exchange or commodities derivative transaction (not for investment or speculative purposes) which such derivatives transactions may benefit from Transaction Security which shall rank and secure the liabilities in respect of such derivatives transactions in such order as the Parent may determine.

Consents, Amendments and Override

Required Consents

Subject to certain exceptions including those described under "*—Exceptions*" below, the Intercreditor Agreement may be amended or waived only with the consent of the Senior Agent, each Senior Secured Notes Representative, each Senior Subordinated Notes Representative, the Security Trustee and the Parent. Subject to certain exceptions, an amendment or waiver of the Intercreditor Agreement that has the effect directly of changing or which directly relates to the provisions described under "*—Application of Proceeds*" and "*—Redistribution,*" the provisions relating to the exercise of discretion by the Security Trustee, the provisions to amend the Intercreditor Agreement and the order of priority or subordination under the Intercreditor Agreement shall not be made without the consent of the Parent and:

- the Senior Agent, each Senior Secured Notes Representative and each Senior Subordinated Notes Representative;
- the Senior Lenders;
- the Senior Secured Notes Creditors (to the extent that the amendment or waiver would materially and adversely affect such creditors);
- the Senior Subordinated Notes Creditors (to the extent that the amendment or waiver would materially and adversely affect such creditors);
- each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
- the Security Trustee.

Structural adjustment

The exceptions listed above shall not apply to the Senior Lenders in the case of structural adjustments permitted under the Senior Facilities Agreement.

Amendments and Waivers: Transaction Security Documents

Subject to the next paragraph below and as described under "*—Exceptions*" and unless the provisions of any debt document expressly provide otherwise, the Security Trustee may, if authorized by an Instructing Group and, in the case of any security that also secures the Senior Subordinated Notes Liabilities, the Senior Subordinated Notes Representative, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the security documents which shall be binding on each party.

Subject to the second and third paragraphs under "*—Exceptions*," the prior consent of the Primary Creditors is required to authorize any amendment or waiver of, or consent under, any security document which would adversely affect the nature or scope of the charged property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

Exceptions

Subject to the third paragraph below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any party other than:

- in the case of a Primary Creditor, in a way which affects or would affect Primary Creditors of that party's class generally; or
- in the case of a Debtor, to the extent consented to by the Parent under the first paragraph under "*Transaction Security Documents*,"

the consent of that Party is required.

Subject to the paragraph below, an amendment, waiver or consent which relates to the rights or obligations of the Senior Agent, each Senior Secured Notes Representative, each Senior Subordinated Notes Representative, an arranger under the Senior Secured Facilities Agreement, the Security Trustee (including, without limitation, any ability of the Security Trustee to act in its discretion under the Intercreditor Agreement) or a Hedge Counterparty may not be effected without the consent of that person.

The preceding paragraphs and the second paragraph under "*—Transaction Security Documents*" shall not apply:

- to any release of Transaction Security, claim or liabilities under the debt documents; or
- to any consent,

which, in each case, the Security Trustee gives in accordance with the provisions described under "*—Proceeds of Disposals*."

Snooze/Lose

Without prejudice to certain exceptions in the Intercreditor Agreement relating to disenfranchisement of sponsor affiliates and of defaulting lenders, if in relation to any request for a vote, action or decision to be taken by any of:

a) the Majority Senior Lenders;

b) Majority Senior Creditors;

c) Majority Senior Secured Notes Creditors;

d) the Majority Senior Subordinated Notes Creditors; or

e) the Majority Senior Secured Creditors,

(including, without limitation, for the purpose of, in the case of (a) and (c), constituting any Instructing Group as defined above), any Creditor within the respective class fails to vote in favour of or to vote against such request, or fails to provide details of its senior secured credit participation and/or, as applicable, the Senior Secured Notes Liabilities and/or Senior Subordinated Notes Liabilities owed to it, the Security Trustee within 20 Business Days (or, in the case of any Senior Lender or Hedge Counterparty decision that is not a Majority Senior Secured Creditor or Senior Secured Creditor decision, 15 Business Days) from the date on which notice of such request, action or decision was given to all the Creditors then eligible to vote thereon (which notice, in the case of a request, action or decision relating to an

enforcement of transaction security, shall be given no earlier than the first Event of Default giving rise to such right of enforcement), then that Creditor's senior secured credit participation and/or, as applicable, the Senior Secured Notes Liabilities and/or Senior Subordinated Notes Liabilities owed to it, shall be deemed to be zero for the purpose of calculating the relevant total senior secured credit participations and/or, as applicable, total Senior Secured Notes Liabilities and/or total Senior Subordinated Notes Liabilities when ascertaining whether any relevant percentage has been obtained to carry that vote or approve that action or decision.

Agreement to Override

Unless expressly stated otherwise in the Intercreditor Agreement, the Intercreditor Agreement overrides anything in the debt documents to the contrary.

Governing law

The Intercreditor Agreement and any non-contractual obligations arising out of it are governed by English law.

Hedging Agreements

Overview and Structure

Our hedging strategy requires, that in respect of the interest rate exposure of the Senior Subordinated Notes Issuer and certain of its subsidiaries in respect of the Term Loan Facility, any Additional Facility, the Senior Secured Notes and the Senior Subordinated Notes, a minimum of 66.67% (but not more than 110%) must be fixed rate obligations or hedged. Hedges will be made by the Senior Secured Notes Issuer through the restructuring of existing interest rate hedging agreements or by entering into new interest rate hedging agreements. The term "hedging agreement" comprises the ISDA Master Agreement including the schedule and the respective interest rate hedging confirmation.

Accordingly, the existing interest rate hedges will be partially restructured to be in line with the new capital structure. This restructuring and the resulting decrease of the notional amounts of our existing interest rate hedges results in respective payment obligations to the hedge counterparties due to the negative market value of our existing interest rate hedges. The overall payment obligation in course of this restructuring amounts to approximately €123 million.

New interest rate hedges may be entered into to replace existing interest rate hedges, or based on the terms of existing interest rate hedges, and therefore might also have a negative market value. The restructured interest rate hedges will further be restructured to match the maturity date of the Term Loan Facility. Hedge counterparties of our restructured and/or new interest rate hedging agreements are JPMorgan Chase Bank, N.A., Commerzbank AG, the Royal Bank of Scotland Plc and Crédit Agricole Corporate and Investment Bank. The Hedges swap floating-to-fix on a six-month Euribor level. Further, in connection with the Existing Senior Secured Facilities Agreement and Junior Facilities Agreement, two basis swaps for EUR 1,000 million each are in place that mature on September 28, 2012 (having started on July 31, 2012) and on October 31, 2012 (having started on September 28, 2012). These basis swaps swap six-months to three-month Euribor, the current interest period under the Existing Senior Secured Facilities Agreement and Junior Facilities Agreement. Basis swaps may be used also after the Refinancing to swap six-months to three-month Euribor to match the length of the respective interest periods under the Term Loan Facility as necessary.

The total notional amount of the restructured interest rate hedges is €400 million. The negative market value of the restructured interest rate hedging agreements as of September 10, 2012 is approximately €81.1 million.

Our hedging strategy may further include to enter into spot or forward foreign exchange hedging contracts which will be unsecured. Once the liabilities owing to the senior lenders under the Senior Secured Facilities Agreement have been fully and finally discharged, spot or forward foreign exchange hedging contracts may be secured *pari passu* with the Senior Secured Notes.

Termination of the Hedging Agreements

The transactions which form part of our hedging agreements generally may not be terminated prior to their maturity other than in certain circumstances including, but not limited to, the failure of either party

to make payments when due, the insolvency of either party, the occurrence of any other applicable event of default under the hedging agreements, illegality, the imposition of any tax on payments under such agreement, the acceleration of the total commitments under the Senior Secured Facilities Agreement, the repayment of the claims of a hedge counterparty or any of its affiliates in their capacity of being a senior lender, the enforcement of certain securities, a force majeur event, or any other applicable termination event or additional termination event under the hedging agreements.

Upon an early termination of a transaction which forms part of our hedging agreements, a termination payment may be due to the Senior Secured Notes Issuer or due to the hedge counterparty. Any such termination payment will be based on the market value of the transaction and could be substantial. To the extent that a termination payment owing by the Senior Secured Notes Issuer to the hedge counterparty is not funded by the receipt of a premium paid by a replacement hedge counterparty, any termination payment will be paid by the Senior Secured Notes Issuer from funds available for such purpose.

Transfer of the swaps

The hedge counterparties under our hedging agreements may, subject to certain conditions specified in the hedging agreements, transfer their obligations under the hedges to the senior secured note creditors or the senior subordinated note creditors. There can be no assurance that the credit quality of the replacement hedge counterparties will prove as strong as that of the original hedge counterparty.

Governing law

The hedging agreements will be governed by, and construed in accordance with, English law.

DESCRIPTION OF SENIOR SECURED NOTES

The following is a description of the € aggregate principal amount of % Senior Secured Notes due 2019 (the "Notes"). The Notes will be issued by Techem GmbH, a company with limited liability (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of Germany (the "Issuer"), and unconditionally guaranteed on a senior basis by its direct parent, Techem Energy Metering Service GmbH & Co. KG (the "Company"), the limited partner of the Company, MEIF II Germany Holdings S.à r.l. ("Germany Holdco"), the general partner of the Company, Techem Energie GmbH ("Energie Holdco" and together with Germany Holdco, the "Holdcos") and the Subsidiary Guarantors specified below.

In this Description of the Senior Secured Notes, the "Issuer" refers only to Techem GmbH, and any successor obligor to Techem GmbH on the Notes, and not to any of its subsidiaries or to its parent, the Company. The Company is a limited partnership (*Kommanditgesellschaft*) with a company with limited liability as general partner (*GmbH & Co. KG*) organized under the laws of Germany and will issue Senior Subordinated Notes due 2020 (the "Senior Subordinated Notes") concurrently with the issuance of the Notes.

We expect to use the net proceeds of the offering of the Notes and the Senior Subordinated Notes, together with the proceeds from the Senior Secured Facilities and cash on hand, to repay our outstanding indebtedness under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, to terminate existing swap agreements, the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, as well as for the payment of related fees and expenses. See "*Use of Proceeds*." The closing of the offering of the Notes and the Senior Subordinated Notes is conditional upon the concurrent repayment of the lenders under the Existing Senior Secured Facilities Agreement and the execution of the Senior Secured Facilities Agreement.

The Indenture will be unlimited in aggregate principal amount, of which € million aggregate principal amount of Notes will be issued in this offering. The Issuer may issue an unlimited principal amount of additional Notes having identical terms and conditions as the Notes (the "Additional Notes") so long as such issuance is in compliance with the covenants contained in the Indenture, including the covenant restricting the Incurrence of Indebtedness (as described below under "*—Certain Covenants—Limitation on Indebtedness*"). The Notes issued in this offering and, if issued, any Additional Notes will be treated as a single class for all purposes under the Indenture, including, without limitation, with respect to waivers, amendments, redemptions and offers to purchase, except as otherwise provided for in the Indenture. Unless the context otherwise requires, in this "*Description of Senior Secured Notes*," references to the "Notes" include the Notes and any Additional Notes that are actually issued. For a discussion of U.S. federal income tax implications of such an issuance of Additional Notes, see "*Certain Tax Consequences—U.S. Taxation—Additional Notes.*"

The Indenture and the Guarantees thereunder will be subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreements. The terms of the Intercreditor Agreement are important to understanding the terms and ranking of the Liens on the Collateral securing the Notes and the Guarantees. Please see "*Description of Certain Financing Arrangements—Intercreditor Agreement*" for a description of the material terms of the Intercreditor Agreement.

The Notes will be obligations of the Issuer and will be guaranteed on a senior basis by the Company (the "Parent Guarantee"), Germany Holdco (the "Germany Holdco Guarantee"), Energie Holdco (the "Energie Holdco Guarantee" and together with the Germany Holdco Guarantee, the "Holdco Guarantees") and the Subsidiary Guarantors specified below.

The Issuer will issue the Notes under an Indenture to be dated as of the Issue Date among, *inter alios*, the Issuer, the Company and Deutsche Trustee Company Limited, as Trustee (the "*Indenture*"). The Guarantors that are Restricted Subsidiaries of the Issuer are referred to herein as the "Subsidiary Guarantors," and each guarantee provided by such a Subsidiary Guarantor, a "Subsidiary Guarantee." The Notes will be issued in private transactions that are not subject to the registration requirements of the Securities Act. See "*Notice to Investors*." The terms of the Notes include those stated in the Indenture and will not incorporate provisions by reference to, and will not be subject to the provisions of, the Trust Indenture Act. The Notes are subject to all such terms pursuant to the provisions of the Indenture, and Holders of the Notes are referred to the Indenture for a statement thereof.

The following is a summary of the material provisions of the Indenture and the Security Documents and refers to the Intercreditor Agreement. It does not purport to be complete and is subject to, and is qualified

in its entirety by reference to, all provisions of the Indenture and the Security Documents, respectively. Because this is a summary, it may not contain all the information that is important to you. You should read the Indenture, the Intercreditor Agreement and the Security Documents in their entirety. Copies of the Indenture, the Intercreditor Agreement and the Security Documents are available as described under "*Available Information*." You can find the definitions of certain terms used in this description under "*—Certain Definitions.*" See "*Description of Certain Financing Arrangements—Intercreditor Agreement*" for a description of the material terms of the Intercreditor Agreement.

The registered holder of a Note will be treated as the owner of it for all purposes. Only registered holders will have rights under the Indenture.

Brief Description of the Notes and the Guarantees

The Notes

The Notes:

- are senior obligations of the Issuer, secured by the Collateral described below on a first priority basis along with obligations under the Senior Secured Facilities Agreement and any Hedging Agreements;
- are *pari passu* in right of payment with any existing or future obligations of the Issuer that are not subordinated to the Notes (including obligations under the Senior Secured Facilities Agreement);
- are senior in right of payment to any Subordinated Indebtedness of the Issuer, including the senior subordinated guarantee of the Senior Subordinated Notes given by the Issuer;
- are effectively senior in right of payment to any existing or future unsecured obligations of the Issuer and obligation of the Issuer that are secured on a basis junior to the Notes, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes; and
- are unconditionally guaranteed on a senior basis by the Guarantors, subject to the guarantee limitations described herein and in "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability.*"

The Holdco Guarantees

The Holdco Guarantees:

- are the senior obligations of the Holdcos, secured by the Collateral described below on a first priority basis along with obligations under the Senior Secured Facilities Agreement and any Hedging Agreements;
- are *pari passu* in right of payment with any existing or future obligations of the Holdcos that are not subordinated to the Holdco Guarantees (including obligations under the Senior Secured Facilities Agreement);
- are senior in right of payment to any existing or future obligations of the Holdcos that are expressly subordinated to the Holdco Guarantees, including the Holdcos' guarantees of the Senior Subordinated Notes;
- are effectively senior in right of payment to any existing or future unsecured obligations of the Holdcos, to the extent of the value of the Collateral that is available to satisfy the obligations under the Holdco Guarantees; and
- are effectively senior in right of payment to any existing or future obligations of the Holdcos secured on a basis junior to the Holdco Guarantees, including the Senior Subordinated Notes with respect to the Senior Subordinated Notes Liens, to the extent of the value of the Collateral that is available to satisfy the obligations under the Holdco Guarantees.

The Parent Guarantee

The Parent Guarantee:

- is the senior obligation of the Company, secured by the Collateral described below on a first priority basis along with obligations under the Senior Secured Facilities Agreement and any Hedging Agreements;

- is *pari passu* in right of payment with any existing or future obligations of the Company that are not subordinated to the Parent Guarantee (including obligations under the Senior Secured Facilities Agreement);
- is senior in right of payment to any Subordinated Indebtedness of the Company including the Senior Subordinated Notes;
- is effectively senior in right of payment to any existing or future unsecured obligations of the Company, to the extent of the value of the Collateral that is available to satisfy the obligations under the Parent Guarantee; and
- is effectively senior in right of payment to any existing or future obligations of the Company secured on a basis junior to the Notes, including the Senior Subordinated Notes with respect to the Senior Subordinated Notes Liens, to the extent of the value of the Collateral that is available to satisfy the obligations under the Parent Guarantee.

The Subsidiary Guarantees

The Subsidiary Guarantees:

- are the senior obligations of the relevant Subsidiary Guarantor, which will be secured by the Collateral described below on a first priority basis along with obligations under the Senior Secured Facilities Agreement and any Hedging Agreements;
- are *pari passu* in right of payment with any existing or future obligations of the relevant Subsidiary Guarantor that are not subordinated to the Notes (including obligations under the Senior Secured Facilities Agreement);
- are senior in right of payment to any Subordinated Indebtedness of the relevant Subsidiary Guarantor, including the guarantees of the Senior Subordinated Notes;
- are effectively senior in right of payment to any existing or future unsecured obligations of the relevant Subsidiary Guarantor, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes;
- are effectively senior in right of payment to any existing or future obligations of the relevant Subsidiary Guarantor secured on a basis junior to the Notes, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes; and
- are subject to limitations described herein and in "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*."

Principal, Maturity and Interest

The Issuer will issue € million in aggregate principal amount of Notes on the Issue Date. The Notes will mature on , 2019. The Notes will be issued in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof.

The rights of holders of beneficial interests in the Notes to receive the payments on such Notes are subject to applicable procedures of Euroclear and Clearstream. If the due date for any payment in respect of any Notes is not a Business Day at the place at which such payment is due to be paid, the Holder thereof will not be entitled to payment of the amount due until the next succeeding Business Day at such place, and will not be entitled to any further interest or other payment as a result of any such delay.

Interest on the Notes will accrue at the rate of % per annum and will be payable, in cash, semi-annually in arrears on and of each year, commencing on , 2013, to holders of record on the immediately preceding and , respectively. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each interest period shall end on (but not include) the relevant interest payment date.

Methods of Receiving Payments on the Notes

Principal, premium, if any, interest and Additional Amounts (defined below), if any, on the Global Notes (as defined below) will be payable at the specified office or agency of one or more Paying Agents; *provided* that all such payments with respect to Notes represented by one or more Global Notes registered in the

name of or held by a nominee of Euroclear or Clearstream, as applicable, will be made by wire transfer of immediately available funds to the account specified by the Holder or Holders thereof.

Principal, premium, if any, interest and Additional Amounts, if any, on any certificated securities ("Definitive Registered Notes") will be payable at the specified office or agency of our Paying Agent in the City of London maintained for such purposes. In addition, interest on the Definitive Registered Notes may be paid by check mailed to the person entitled thereto as shown on the register for the Definitive Registered Notes. See "*—Paying Agent and Registrar for the Notes.*"

Paying Agent and Registrar for the Notes

The Issuer will maintain one or more paying agents (each a "Paying Agent") for the Notes in the City of London (the "Principal Paying Agent"). The Issuer will also undertake, to the extent possible, to use reasonable efforts to maintain a paying agent in a member state of the European Union that will not be obliged to withhold or deduct tax pursuant to the European Council Directive 2003/48/EC regarding the taxation of savings income (the "Directive") or any law implementing or complying with or introduced in order to conform to such Directive. The initial Paying Agent for the Notes will be Deutsche Bank AG, London Branch in London.

The Issuer will also maintain one or more registrars (each, a "Registrar") with offices in Luxembourg, for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and its rule so require. The Issuer will also maintain a transfer agent in Luxembourg. The initial Registrar and transfer agent will be Deutsche Bank Luxembourg S.A. in Luxembourg. The Registrar and the transfer agent in Luxembourg will maintain a register reflecting ownership of Definitive Registered Notes outstanding from time to time, if any, and will make payments on and facilitate transfers of Definitive Registered Notes on behalf of the Issuer. Each transfer agent shall perform the functions of a transfer agent.

The Issuer may change any Paying Agent, Registrar or transfer agent for the Notes without prior notice to the Holders of the Notes. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar in respect of the Notes. For so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, the Issuer will publish a notice of any change of Paying Agent, Registrar or transfer agent in a newspaper having a general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, post such notice on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Transfer and Exchange

The Notes will initially be issued in the form of registered notes in global form without interest coupons, as follows:

- The Notes sold within the United States to qualified institutional buyers pursuant to Rule 144A under the Securities Act will initially be represented by one or more global notes in registered form without interest coupons attached (the "144A Global Notes").
- The 144A Global Notes will, upon issuance, be deposited with and registered in the name of the nominee of the common depositary for the accounts of Euroclear and Clearstream.
- The Notes sold outside the United States pursuant to Regulation S under the Securities Act will initially be represented by one or more global notes in registered form without interest coupons attached (the "Regulation S Global Notes" and, together with the 144A Global Notes, the "Global Notes").
- The Regulation S Global Notes will, upon issuance, be deposited with and registered in the name of the nominee of the common depositary for the accounts of Euroclear and Clearstream.

Ownership of interests in the Global Notes ("Book-Entry Interests") will be limited to persons that have accounts with Euroclear or Clearstream or persons that may hold interests through such participants. Ownership of interests in the Book-Entry Interests and transfers thereof will be subject to the restrictions on transfer and certification requirements summarized below and described more fully under "Notice to Investors." In addition, transfers of Book-Entry Interests between participants in Euroclear or participants in Clearstream will be effected by Euroclear or Clearstream, as applicable, pursuant to customary procedures and subject to the applicable rules and procedures established by Euroclear or Clearstream, as applicable, and their respective participants.

Book-Entry Interests in the 144A Global Notes may be transferred to a person who takes delivery in the form of Book-Entry Interests in the Regulation S Global Notes only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made in accordance with Regulation S under the Securities Act.

Prior to the date that is 40 days after the date of initial issuance of the Notes, ownership of Book Entry Interests in Regulation S Global Notes will be limited to persons that have accounts with Euroclear or Clearstream or persons who hold interests through Euroclear or Clearstream, and any sale or transfer of such interest to U.S. persons shall not be permitted during such period unless such resale or transfer is made pursuant to Rule 144A under the Securities Act. Subject to the foregoing, Regulation S Book Entry Interests may be transferred to a person who takes delivery in the form of 144A Book Entry Interests only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A or otherwise in accordance with the transfer restrictions described under "Notice to Investors" and in accordance with any applicable securities law of any other jurisdiction.

Any Book Entry Interest that is transferred as described in the immediately preceding paragraphs will, upon transfer, cease to be a Book Entry Interest in the Global Note from which it was transferred and will become a Book Entry Interest in the Global Note to which it was transferred. Accordingly, from and after such transfer, it will become subject to all transfer restrictions, if any, and other procedures applicable to Book Entry Interests in the Global Note to which it was transferred.

If Definitive Registered Notes are issued, they will be issued only in minimum denominations of €100,000 aggregate principal amount and integral multiples of €1,000 in excess thereof, upon receipt by the Registrar of instructions relating thereto and any certificates, opinions and other documentation required by the Indenture. It is expected that such instructions will be based upon directions received by Euroclear or Clearstream, as applicable, from the participant that owns the relevant Book-Entry Interests. Definitive Registered Notes issued in exchange for a Book-Entry Interest will, except as set forth in the Indenture or as otherwise determined by the Issuer to be in compliance with applicable law, be subject to, and will have a legend with respect to, the restrictions on transfer summarized below and described more fully under "*Transfer Restrictions*."

Subject to the restrictions on transfer referred to above, Notes issued as Definitive Registered Notes may be transferred or exchanged, in whole or in part, in minimum denominations of €100,000 in aggregate principal amount and integral multiples of €1,000 in excess thereof. In connection with any such transfer or exchange, the Indenture will require the transferring or exchanging holder to, among other things, furnish appropriate endorsements and transfer documents, to furnish information regarding the account of the transferee at Euroclear or Clearstream, as applicable, to furnish certain certificates and opinions, and to pay any taxes, duties and governmental charges in connection with such transfer or exchange. Any such transfer or exchange will be made without charge to the Holder, other than any taxes, duties and governmental charges payable in connection with such transfer.

Notwithstanding the foregoing, the Issuer is not required to register the transfer or exchange of any Notes:

(1) for a period of 15 days prior to any date fixed for the redemption of such Notes;

(2) for a period of 15 days immediately prior to the date fixed for selection of such Notes to be redeemed in part;

(3) for a period of 15 days prior to the record date with respect to any interest payment date applicable to such Notes; or

(4) which the Holder has tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Disposition Offer.

The Issuer, the Trustee, the Registrar and the Paying Agents will be entitled to treat the Holder of a Note as the owner of it for all purposes.

Restricted Subsidiaries and Unrestricted Subsidiaries

Immediately after the issuance of the Notes, all of the Company's Subsidiaries will be Restricted Subsidiaries other than GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and its subsidiaries (the "GWE Group") and Thermie Serres S.A. and its subsidiaries from time to time. In the circumstances described below under "*—Certain Definitions—Unrestricted Subsidiary*," the Company will be permitted to

designate Restricted Subsidiaries (other than the Issuer) as Unrestricted Subsidiaries. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants in the Indenture.

As at and for the twelve months ended June 30, 2012, the Unrestricted Subsidiaries accounted for 6.6% of the revenue, 8.3% of the EBITDA and 5.4% of the assets of the Company and its Subsidiaries, on a consolidated basis, and, after giving effect to the Refinancing, would have accounted for % of the total indebtedness of the Company and its Subsidiaries. Thermie Serres S.A. is a partially owned subsidiary of the Company's subsidiary Techem Energy Contracting Hellas EPE, and is accounted for under the equity method. Therefore, Thermie Serres is not included in the figures contained in this paragraph.

Guarantees

The obligations of the Issuer pursuant to the Notes, including any payment obligation resulting from a Change of Control, will (subject to the Agreed Security Principles) be guaranteed, jointly and severally on a senior basis, by the Holdcos, the Company and each subsidiary of the Company that is a guarantor under the Senior Secured Facilities Agreement (each a "Guarantor" and such guarantee, a "Guarantee").

The initial Guarantors, the type of Guarantee and their respective jurisdictions of incorporation will be as follows:

MEIF II Germany Holdings S.à r.l.	Holdco Guarantee	Luxembourg
Techem Energie GmbH	Holdco Guarantee	Germany
Techem Energy Metering Service GmbH & Co. KG	Parent Guarantee	Germany
Techem Energy Services GmbH	Subsidiary Guarantee	Germany
Techem Energy Contracting GmbH	Subsidiary Guarantee	Germany
bautec Energiemanagement GmbH	Subsidiary Guarantee	Germany
Techem Verwaltungs GmbH	Subsidiary Guarantee	Germany
Techem Vermögensverwaltung GmbH & Co. KG	Subsidiary Guarantee	Germany
Techem Messtechnik GmbH	Subsidiary Guarantee	Austria
Caloribel S.A.	Subsidiary Guarantee	Belgium
Techem Danmark A/S	Subsidiary Guarantee	Denmark
Techem SAS	Subsidiary Guarantee	France
Techem Energie France SAS	Subsidiary Guarantee	France
Techem S.r.l.	Subsidiary Guarantee	Italy
Techem Energy Services B.V.	Subsidiary Guarantee	Netherlands
"Techem"—Techniki Pomiarowe Sp. z o.o.	Subsidiary Guarantee	Poland

As of and for the twelve months ended June 30, 2012, the Company, the Issuer and the Subsidiary Guarantors accounted for 85.9% of the revenue, 90.0% of the EBITDA and 91.2% of the assets of the Company and its Subsidiaries, on a consolidated basis and, after giving effect to the Refinancing, would have accounted for % of the total indebtedness of the Company and its Subsidiaries. The Holdcos, which will guarantee the Notes, are not included in these figures. For information on the calculation of the figures contained in this paragraph, see "*Important Information About This Offering Memorandum—Presentation of Financial Information*."

In addition, as described below under "*—Certain Covenants—Additional Guarantees*" and subject to the Intercreditor Agreement and the Agreed Security Principles, each Restricted Subsidiary of the Issuer that guarantees the Senior Secured Facilities Agreement, Public Debt or certain other indebtedness permitted under the Indenture shall also enter into a supplemental indenture as a Guarantor of the Notes and accede to the Intercreditor Agreement.

The Agreed Security Principles apply to the granting of guarantees and security in favor of obligations under the Senior Secured Facilities Agreement, the Notes and the Senior Subordinated Notes. The Agreed Security Principles include restrictions on the granting of guarantees where, among other things, such grant would be restricted by general statutory or other legal limitations or requirements, financial assistance rules, corporate benefit rules, fraudulent preference rules, "thin capitalization" rules, retention of title claims and similar matters.

Each Guarantee will be limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the United States Bankruptcy Code or any comparable provision of foreign or state law, or as otherwise required under the Agreed Security Principles to comply with corporate benefit, financial assistance and other laws. By virtue of this limitation, a Guarantor's obligation under its Guarantee could be significantly less than amounts payable

with respect to the Notes, or a Guarantor may have effectively no obligation under its Guarantee. See "*Risk Factors—Risks Related to Our Structure—Each Note Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*" and "*—The insolvency laws of Germany and the respective jurisdictions of the Guarantors may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes from recovering payments due on the Notes.*"

The Guarantee of a Guarantor will terminate and release upon:

- except in the case of the Holdco Guarantees and the Parent Guarantee, a sale or other disposition (including by way of consolidation or merger) of ownership interests in the Guarantor (directly or through a parent company) such that the Guarantor does not remain a Restricted Subsidiary, or the sale or disposition of all or substantially all the assets of the Guarantor (other than to the Company or a Restricted Subsidiary), in each case, otherwise permitted by the Indenture;
- except in the case of the Holdco Guarantees and the Parent Guarantee, the designation in accordance with the Indenture of the Guarantor as an Unrestricted Subsidiary;
- defeasance or discharge of the Notes, as provided in "*—Defeasance*" and "*—Satisfaction and Discharge*;"
- so long as no Event of Default has occurred and is continuing, upon the release of the Guarantor's Guarantee under any Indebtedness that triggered such Guarantor's obligation to guarantee the Notes under the covenant described in "*—Certain Covenants—Additional Guarantees*" to the extent that such Guarantor does not guarantee any Credit Facility (including the Senior Secured Facilities) or Public Debt;
- in accordance with the provisions of the Intercreditor Agreement or any Additional Intercreditor Agreement; or
- as described under "*—Amendments and Waivers*."

A substantial portion of the operations of the Company and the Issuer are conducted through its Restricted Subsidiaries. Claims of creditors of non-guarantor Restricted Subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those Restricted Subsidiaries, and claims of preferred and minority stockholders (if any) of those Restricted Subsidiaries generally will have priority with respect to the assets and earnings of those Restricted Subsidiaries over the claims of creditors of the Issuer and the Guarantors, including Holders of the Notes. The Notes and each Guarantee therefore will be effectively subordinated to creditors (including trade creditors) and preferred and minority stockholders (if any) of Restricted Subsidiaries of the Company (other than the Guarantors). As of June 30, 2012, after giving effect to the Refinancing, the total liabilities of the Company's Restricted Subsidiaries that will not guarantee the Notes (other than the Issuer) would have been €19.9 million. Although the Indenture will limit the incurrence of Indebtedness, Disqualified Stock and Preferred Stock of Restricted Subsidiaries, the limitation is subject to a number of significant exceptions. Moreover, the Indenture does not impose any limitation on the incurrence by Restricted Subsidiaries of liabilities that are not considered Indebtedness, Disqualified Stock or Preferred Stock under the Indenture. See "*—Certain Covenants—Limitation on Indebtedness.*" Certain of the operations of the Company (and the Issuer) are conducted through the Unrestricted Subsidiaries, which will not guarantee the Notes or be subject to the provisions of the Indenture.

Security

The Collateral

Pursuant to the Security Documents to be entered into on or prior to the Issue Date, each of MEIF II Finance, Germany Holdco, the Company, the Issuer and the Subsidiary Guarantors will grant on the Issue Date or, with respect to the pledges of the shares of certain Subsidiary Guarantors, will grant within 30 days of the Issue Date, in favor of Unicredit Bank AG, London Branch as security trustee (the "Security Trustee"), the following liens and security interests on an equal and ratable basis, subject to the operation of the Agreed Security Principles, certain perfection requirements and any Permitted Collateral Liens:

(a) a first-priority pledge over the shares of Germany Holdco held by MEIF II Finance;

(b) a first-priority pledge over the limited partnership interests of the Company and the shares of capital stock of Energie Holdco, the general partner of the Company, held by Germany Holdco and the general partnership interests in the Company held by Energie Holdco;

(c) a first-priority pledge over the shares of capital stock (or equivalent interests) of each of the Issuer and the Subsidiary Guarantors (in the case of the shares of the Subsidiary Guarantors that are incorporated or organized outside Germany, within 30 days of the Issue Date);

(d) a global assignment of all receivables of the Company, the Issuer, Techem Energy Services GmbH, Techem Energy Contracting GmbH, bautec Energiemanagement GmbH, Techem Verwaltungs, Techem Vermögensverwaltung GmbH & Co. KG and Energie Holdco;

(e) an assignment of receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an assignment of receivables under an intercompany loan from Germany Holdco to the Company; and

(f) first-priority pledges of all the bank accounts held by the Company, the Issuer, Techem Energy Services GmbH, Techem Energy Contracting GmbH, bautec Energiemanagement GmbH, Techem Verwaltungs GmbH, Techem Vermögensverwaltung GmbH & Co. KG and Energie Holdco,

(together, the "Initial Collateral").

In addition, subject to the Intercreditor Agreement and subject to the Agreed Security Principles, each subsidiary of the Company that accedes to the Senior Secured Facilities Agreement as a guarantor after the Issue Date and grants security in connection with such accession shall also enter into a supplemental indenture as a Guarantor with respect to the Notes and accede to the Intercreditor Agreement, and security will be granted over the ownership interests in such Subsidiary Guarantor, if applicable, subject to the Agreed Security Principles (together with the Initial Collateral, the "Collateral"). All Collateral shall be subject to the operation of the Agreed Security Principles and any Permitted Collateral Liens. The Company shall, and shall cause its Restricted Subsidiaries to, grant the security interest set forth above with respect to the Subsidiary Guarantors incorporated or organized outside Germany within 30 days of the Issue Date. The grant and enforcement of the security interests above are subject to certain limitations under local law. See "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests*".

Notwithstanding the foregoing, subject to certain exceptions, certain assets will not be pledged (or the Liens not perfected) in accordance with the Agreed Security Principles, including to the extent that it would:

- result in any breach of corporate benefit, financial assistance, capital maintenance, fraudulent preference (or its equivalent) or thin capitalization laws or regulations (or analogous restrictions) or any other laws or regulations of any applicable jurisdiction;
- result in a material risk to the officers of the relevant grantor of security of contravention of their fiduciary duties and/or of civil or criminal liability;
- result in costs that are disproportionate to the benefit obtained by the beneficiaries of that security whether in relation to an asset or a class of assets; or
- would materially restrict the running of the relevant obligor's business in the ordinary course as otherwise permitted by the Finance Documents.

Any assets (other than shares) subject to third party arrangements which prevent those assets from being charged will be excluded from any relevant Security Document *provided* that all reasonable endeavours to obtain consent to charging any such assets shall be used by the Company if the Security Trustee determines the relevant asset is material.

The Collateral will also secure, on an equal and ratable basis, the liabilities under the Senior Secured Facilities Agreement and certain hedging arrangements and any Additional Notes. The Senior Subordinated Notes will also be secured by second-priority security interests over the limited partnership interests and the general partnership interests in the Company, the shares of capital stock of the Holdcos and the Issuer, receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an intercompany loan from Germany Holdco to the Company, receivables of the Company and the Issuer and accounts of the Company and the Issuer. Subject to certain conditions, including compliance with the covenant described under "*—Certain Covenants—Impairment of Security Interest*," the Company is permitted to grant security over the Collateral in connection with future issuances of its Indebtedness or Indebtedness of its Restricted Subsidiaries, including any Additional Notes, in each case, as permitted under the Indenture.

Subject to the Agreed Security Principles, if material property is acquired by the Company or any Guarantor that is not automatically subject to a perfected security interest under the Security Documents and which will be subject to a security interest in favor of the lenders under the Senior Secured Facilities Agreement, then (to the extent the security interest is not already granted in favor of the Security Trustee for the Holders of the Notes) the Company or such Guarantor will within 60 days provide security over this property in favor of the Security Trustee pursuant to the covenant entitled "Additional Guarantees."

Administration of Security and Enforcement of Liens

The Security Documents and the Collateral will be administered by the Security Trustee, in each case pursuant to the Intercreditor Agreement, for the benefit of all holders of secured obligations. The enforcement of the Security Documents will be subject to the procedures set forth in the Intercreditor Agreement. For a description of the Intercreditor Agreement, see "*Description of Certain Financing Arrangements—Intercreditor Agreement*".

The ability of Holders of the Notes to realize upon the Collateral will be subject to various bankruptcy law limitations in the event of the Issuer's or a Guarantor's bankruptcy. If any potential challenge to the validity of the interests created under the Security Documents or the terms of the Intercreditor Agreement is successful, the Holders might not be able to recover any amounts under the Security Documents. See "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*" and "*—The insolvency laws of Germany and the respective jurisdictions of the Guarantors may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes from recovering payments due on the Notes*". In addition, the enforcement of the Collateral will be limited to the maximum amount required under the Agreed Security Principles to comply with corporate benefit, financial assistance and other laws. As a result of these limitations, the enforceable amounts of the Issuer's obligation under the Notes and a Guarantor's obligation under its Guarantee could be significantly less than the total amounts payable with respect to the Notes, or a Guarantor may have effectively no obligation under its Guarantee. See "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*."

Subject to the terms of the Security Documents, the Issuer and the Guarantors will have the right to remain in possession and retain exclusive control of the Collateral securing the Notes (other than as set forth in the Security Documents), to freely operate the Collateral and to collect, invest and dispose of any income therefrom.

No appraisals of any of the Collateral have been prepared by or on behalf of the Issuer in connection with the issuance of the Notes. There can be no assurance that the proceeds from the sale of the Collateral would be sufficient to satisfy the obligations owed to the Holders of the Notes, the payment of obligations under the Senior Secured Facilities Agreement and any hedging obligations. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral can be sold in a short period of time or at all.

In addition, the Intercreditor Agreement places limitations on the ability of the Security Trustee to cause the sale of some of the Collateral. These limitations may include requirements that some or all of the Collateral be disposed of only pursuant to public auctions or only at a price confirmed by a valuation. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*."

The Trustee for the Notes has, and by accepting a Note, each Holder will be deemed to have:

- irrevocably appointed Unicredit Bank AG, London Branch as Security Trustee to act as its agent under the Intercreditor Agreement and the other relevant documents to which it is a party (including, without limitation, the Security Documents);
- irrevocably authorized the Security Trustee to (i) perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Intercreditor Agreement or other documents to which it is a party (including, without limitation, the Security Documents), together with any other incidental rights, power and discretions; and (ii) execute each document, waiver, modification, amendment, renewal or replacement expressed to be executed by the Security Trustee on its behalf; and

- accepted the terms and conditions of the Intercreditor Agreement and any Additional Intercreditor Agreement (as defined below) and each Holder will also be deemed to have authorized the Trustee to enter into any such Additional Intercreditor Agreement.

Priority

The relative priority with regard to the Collateral as between (a) the lenders under the Senior Secured Facilities Agreement, (b) the counterparties under certain hedging contracts, (c) the Trustee and the Holders under the Indenture and (d) the trustee and the holders under and with respect to the Senior Subordinated Notes, is established by the terms of the Intercreditor Agreement and the Security Documents, which provide that the obligations under the Notes, the Senior Secured Facilities Agreement and such hedging contracts will receive proceeds or enforcement of security over the Collateral equally and ratably on a first priority basis, and the Senior Subordinated Notes will receive proceeds from enforcement of the Collateral pledged for the benefit of the Senior Subordinated Notes after the claims of the Notes, the Senior Secured Facilities Agreement and the hedging contracts are satisfied. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*." In addition, pursuant to the Intercreditor Agreement or Additional Intercreditor Agreements entered into after the Issue Date, the Collateral may be pledged to secure other Indebtedness. Under certain circumstances, the creditors under such Indebtedness will receive proceeds from an enforcement of the Collateral in priority to the Trustee and the Holders under the Indenture. See "*—Release of Liens*," "*—Certain Covenants—Impairment of Security Interest*" and "*—Certain Definitions—Permitted Collateral Liens*."

Release of Liens

The Security Trustee will take any action required to effectuate any release of Collateral required by a Security Document:

(1) upon payment in full of principal, interest and all other obligations in respect of the Notes issued under the Indenture or discharge or defeasance thereof in accordance with the Indenture;

(2) upon release of a Guarantee (with respect to the Liens securing such Guarantee granted by such Guarantor) in accordance with the Indenture;

(3) if the Company designates any of the Restricted Subsidiaries to be an Unrestricted Subsidiary in accordance with the applicable provisions of the Indenture, the release of the property and assets of such Restricted Subsidiary;

(4) in connection with any disposition of Collateral, directly or indirectly, to (a) any Person other than the Company or any of its Restricted Subsidiaries (but excluding any transaction subject to "*—Certain Covenants—Merger and Consolidation—The Company*" or "*—Merger and Consolidation—The Issuer*") that is permitted by the Indenture (with respect to the Lien on such Collateral) or (b) the Company or any Restricted Subsidiary consistent with the Intercreditor Agreement;

(5) as described under "*—Amendments and Waivers*;"

(6) automatically without any action by the Trustee, if the Lien granted in favor of the Senior Secured Facilities Agreement, Public Debt or such other Indebtedness that gave rise to the obligation to grant the Lien over such Collateral is released (other than pursuant to the repayment and discharge thereof), to the extent that such Lien is not granted in favor of any Credit Facility (including the Senior Secured Facilities) or Public Debt; *provided* that such release would otherwise be permitted by another clause above; and

(7) as otherwise provided in the Intercreditor Agreement and the Indenture.

Each of these releases shall be effected by the Security Trustee and, to the extent necessary or required, the Trustee without the consent of the Holders. The Security Trustee and the Trustee will take all necessary action required to effectuate any release of Collateral securing the Notes and the Guarantees, in accordance with the provisions of the Indenture, the Intercreditor Agreement or any Additional Intercreditor Agreement and the relevant Security Document.

The Company, the Issuer and its Restricted Subsidiaries may also, among other things, without any release or consent by the Trustee or the Security Trustee, conduct ordinary course activities with respect to Collateral, including, without limitation, (i) selling or otherwise disposing of, in any transaction or series of related transactions, any property subject to the Lien under the Security Documents which has become worn out, defective or obsolete or not used or useful in the business; (ii) selling, transferring or otherwise

disposing of current assets in the ordinary course of business; and (iii) any other action permitted by the Security Documents and the Intercreditor Agreement.

Amendments to the Intercreditor Agreement and Additional Intercreditor Agreements

In connection with the Incurrence of any Indebtedness by the Company or any of its Restricted Subsidiaries that is permitted to share the Collateral, the Holdcos, the Company, the Issuer, the relevant Restricted Subsidiaries, the Trustee and the Security Trustee shall enter into with the holders of such Indebtedness (or their duly authorized representatives) one or more intercreditor agreements or deeds (including a restatement, replacement, amendment or other modification of the Intercreditor Agreement) (an "Additional Intercreditor Agreement"), on substantially the same terms as those contained in the Intercreditor Agreement (or terms that are not materially less favorable to the Holders) and substantially similar as applies to sharing of the proceeds of security and enforcement of security, priority and release of security or as expressly permitted in the Intercreditor Agreement; *provided* that such Additional Intercreditor Agreement will not impose any personal obligations on the Trustee or Security Trustee or adversely affect the personal rights, duties, liabilities, indemnification or immunities of the Trustee or the Security Trustee under the Indenture or the Intercreditor Agreement. In connection with the foregoing, the Company shall furnish to the Trustee such documentation in relation thereto as the Trustee may reasonably require. As used herein, a reference to the Intercreditor Agreement will also include any Additional Intercreditor Agreement.

In relation to the Intercreditor Agreement, the Trustee shall consent on behalf of the Holders to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Notes thereby; *provided, however*, that such transaction would comply with the covenant described herein under "*—Certain Covenants—Limitation on Restricted Payments*."

The Indenture will also provide that, at the written direction of the Issuer and without the consent of the Holders, the Trustee and the Security Trustee shall from time to time enter into one or more amendments to any Intercreditor Agreement to: (1) cure any ambiguity, omission, defect or inconsistency of any such agreement, (2) increase the amount or types of Indebtedness covered by any such Intercreditor Agreement that may be Incurred by the Company or its Restricted Subsidiaries that is subject to any such Intercreditor Agreement (*provided* that such Indebtedness is Incurred in compliance with the Indenture), (3) add Guarantors or other Restricted Subsidiaries to the Intercreditor Agreement, (4) further secure the Notes (including Additional Notes), (5) make provision for equal and ratable pledges of the Collateral to secure Additional Notes or to implement any Permitted Collateral Liens or (6) make any other change to any such agreement that does not adversely affect the Holders of Notes in any material respect. The Issuer shall not otherwise direct the Trustee or Security Trustee to enter into any amendment to any Intercreditor Agreement without the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, except as otherwise permitted below under "*—Amendments and Waivers*" or as permitted by the terms of such Intercreditor Agreement, and the Issuer may only direct the Trustee or Security Trustee to enter into any amendment to the extent such amendment does not impose any personal obligations on the Trustee or Security Trustee or, in the opinion of the Trustee or Security Trustee, adversely affect their respective rights, duties, liabilities or immunities under the Indenture or any Intercreditor Agreement.

The Indenture will also provide that each Holder, by accepting a Note, shall be deemed to have agreed to and accepted the terms and conditions of the Intercreditor Agreement (whether then entered into or entered into in the future pursuant to the provisions described herein) and to have authorized the Trustee and the Security Trustee to enter into the Intercreditor Agreement and any Additional Intercreditor Agreement or any amendments thereof to give effect to the foregoing matters described in (1) to (6) above on each Holder's behalf.

A copy of the Intercreditor Agreement or an Additional Intercreditor Agreement shall be made available to the Holders upon request and will be made available for inspection during normal business hours on any Business Day upon prior written request at the office of the Issuer.

Optional Redemption

Except as set forth herein and under "*—Redemption for Taxation Reasons*", the Notes are not redeemable at the option of the Issuer.

At any time prior to , 2015, the Issuer may redeem the Notes in whole or in part, at its option, at a redemption price equal to 100% of the principal amount of such Notes plus the relevant Applicable Premium as of, and accrued and unpaid interest and Additional Amounts, if any, to, the redemption date.

At any time and from time to time on or after , 2015, the Issuer may redeem the Notes in whole or in part, at a redemption price equal to the percentage of principal amount set forth below plus accrued and unpaid interest to the redemption date:

Twelve month period commencing	Percentage
2015	%
2016	%
2017	%
2018 and thereafter	100.000%

At any time and from time to time prior to , 2015, the Issuer may redeem Notes with the net cash proceeds received by the Issuer from any Equity Offering at a redemption price equal to % plus accrued and unpaid interest to the redemption date, in an aggregate principal amount for all such redemptions not to exceed 35% of the original aggregate principal amount of the Notes (including Additional Notes), *provided* that:

(1) in each case the redemption takes place not later than 120 days after the closing of the related Equity Offering; and

(2) not less than 65% of the original principal amount of the Notes being redeemed (including the principal amount of any Additional Notes) remain outstanding immediately thereafter.

Notice of any redemption upon any Equity Offering may be given prior to the completion thereof.

Any redemption and notice of redemption may, at the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent (including, in the case of a redemption related to an Equity Offering, the consummation of such Equity Offering). Any notice of redemption shall be given as set forth under "*Selection and Notice*".

If the Issuer effects an optional redemption of the Notes, it will, for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, inform the Luxembourg Stock Exchange of such optional redemption and confirm the aggregate principal amount of the Notes that will remain outstanding immediately after such redemption.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Holders whose Notes will be subject to redemption by the Issuer.

Sinking Fund

The Issuer will not be required to make mandatory redemption payments or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuer may be required to offer to purchase the Notes as described under "*—Change of Control*" or "*—Limitations on Sales of Assets or Subsidiary Stock*". The Issuer, the Company and any Restricted Subsidiary may at any time and from time to time purchase Notes on the open market or otherwise.

Selection and Notice

If less than all of the Notes are to be redeemed at any time, the Trustee or the Registrar, as applicable, will select the Notes for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Notes are listed, as certified to the Trustee or the Registrar, as applicable, by the Issuer, and in compliance with the requirements of Euroclear or Clearstream, or if the Notes are not so listed or such exchange prescribes no method of selection and the Notes are not held through Euroclear or

Clearstream or Euroclear or Clearstream prescribe no method of selection, on a *pro rata* basis or by use of a pool factor; *provided, however*, that no Note of €100,000 in aggregate principal amount or less shall be redeemed in part and only Notes in integral multiples €1,000 will be redeemed. Neither the Trustee nor the Registrar will be liable for any selections made by it in accordance with this paragraph.

So long as any Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, any such notice to the Holders of the relevant Notes shall to the extent and in the manner permitted by such rules be posted on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*). In addition to such release, not less than 10 days nor more than 60 days prior to the redemption date, the Issuer will mail, or, at the expense of the Issuer, cause to be mailed, such notice to Holders by first-class mail, postage prepaid, at their respective addresses as they appear on the registration books of the Registrar. Such notice of redemption may also be posted on the website of the Luxembourg Stock Exchange (*www.bourse.lu*), to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed, in which case a portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice (including any conditions contained therein), Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions of them called for redemption.

Redemption for Taxation Reasons

The Issuer or Successor Issuer, as defined below, may redeem the Notes in whole, but not in part, at any time upon giving not less than 10 nor more than 60 days notice to the Holders of the Notes (which notice will be irrevocable) at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date fixed for redemption (a "Tax Redemption Date") (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) and all Additional Amounts (see "*—Withholding Taxes*"), if any, then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise, if any, if the Issuer, Successor Issuer or any Guarantor determine in good faith that, as a result of:

(1) any change in, or amendment to, the law or treaties (or any regulations or rulings promulgated thereunder) of a Relevant Taxing Jurisdiction (as defined below) affecting taxation; or

(2) any change in, or amendment to, or the introduction of, an official position regarding the application, administration or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction) of a Relevant Taxing Jurisdiction (each of the foregoing in clauses (1) and (2), a "Change in Tax Law"),

the Issuer, Successor Issuer or Guarantor are, or on the next interest payment date in respect of the Notes would be, required to pay any Additional Amounts, and such obligation cannot be avoided by taking reasonable measures available to the Issuer, Successor Issuer or Guarantor (including, for the avoidance of doubt, the appointment of a new Paying Agent where this would be reasonable but not including assignment of the obligation to make payment with respect to the Notes). In the case of redemption due to withholding as a result of a Change in Tax Law in a jurisdiction that is a Relevant Taxing Jurisdiction at the date of this offering memorandum, such Change in Tax Law must become effective on or after the date of this offering memorandum. In the case of redemption due to withholding as a result of a Change in Tax Law in a jurisdiction that becomes a Relevant Taxing Jurisdiction after the date of this offering memorandum, such Change in Tax Law must become effective on or after the date the jurisdiction becomes a Relevant Taxing Jurisdiction, unless the Change in Tax Law would have applied to the predecessor of the Successor Issuer. Notice of redemption for taxation reasons will be published in accordance with the procedures described under "*—Selection and Notice*." Notwithstanding the foregoing, no such notice of redemption will be given (a) earlier than 90 days prior to the earliest date on which the Payor (as defined below) would be obliged to make such payment of Additional Amounts if a payment in respect of the Notes were then due and (b) unless at the time such notice is given, such obligation to pay such Additional Amounts remains in effect. Prior to the publication or mailing of any notice of redemption of the Notes pursuant to the foregoing, the Issuer or Successor Issuer will deliver to the Trustee (a) an Officer's Certificate stating that it is entitled to effect such redemption and setting forth a statement of

facts showing that the conditions precedent to its right so to redeem have been satisfied and that it would not be able to avoid the obligation to pay Additional Amounts by taking reasonable measures available to it and (b) a written opinion of an independent tax counsel of recognized standing to the effect that the Issuer, Successor Issuer or Guarantor has or have been or will become obligated to pay Additional Amounts as a result of a Change in Tax Law. The Trustee will accept such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, without further inquiry, in which event it will be conclusive and binding on the Holders.

The foregoing will apply *mutatis mutandis* to any jurisdiction in which any successor to the Issuer is incorporated or organized or any political subdivision or taxing authority or agency thereof or therein.

Withholding Taxes

All payments made by the Issuer, a Successor Issuer or a Guarantor (a "Payor") on the Notes or the Guarantees, as defined below, will be made free and clear of and without withholding or deduction for, or on account of, any Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of:

(1) Germany or any political subdivision or Governmental Authority thereof or therein having power to tax;

(2) any jurisdiction from or through which payment on any such Note or Guarantee is made by the Issuer, Successor Issuer, Guarantor or their agents, or any political subdivision or Governmental Authority thereof or therein having the power to tax; or

(3) any other jurisdiction in which the Payor is incorporated or organized, resident for tax purposes, or any political subdivision or Governmental Authority thereof or therein having the power to tax (each of clause (1), (2) and (3), a "Relevant Taxing Jurisdiction"),

will at any time be required from any payments made by a Payor with respect to any Note or Guarantee, including payments of principal, redemption price, premium, if any, or interest, the Payor will pay (together with such payments) such additional amounts (the "Additional Amounts") as may be necessary in order that the net amounts received in respect of such payments by the Holders or the Trustee, as the case may be, after such withholding or deduction (including any such deduction or withholding from such Additional Amounts), will equal the amounts which would have been received in respect of such payments on any such Note or Guarantee in the absence of such withholding or deduction; *provided, however*, that no such Additional Amounts will be payable for or on account of:

(1) any Taxes that would not have been so imposed but for the existence of any present or former actual or deemed connection between the relevant Holder or the beneficial owner of a Note (or between a fiduciary, settlor, beneficiary, member or shareholder of, or possessor of power over the relevant Holder or beneficial owner, if the relevant Holder or beneficial owner is an estate, nominee, trust, partnership, limited liability company or corporation) and the Relevant Taxing Jurisdiction (including being a citizen or resident or national of, or carrying on a business or maintaining a permanent establishment in, or being physically present in, the Relevant Taxing Jurisdiction) but excluding, in each case, any connection arising solely from the acquisition, ownership or holding of such Note or the receipt of any payment in respect thereof;

(2) any Taxes that are imposed or withheld by reason of the failure by the Holder or the beneficial owner of the Note to comply with a written request of the Payor addressed to the Holder, after reasonable notice, to provide certification, information, documents or other evidence concerning the nationality, residence or identity of the Holder or such beneficial owner or to make any declaration or similar claim or satisfy any other reporting requirement relating to such matters, which is required by a statute, treaty, regulation or administrative practice of the Relevant Taxing Jurisdiction as a precondition to exemption from all or part of such Taxes;

(3) any Taxes that are payable otherwise than by deduction or withholding from a payment of the principal of, premium, if any, or interest, if any, on the Notes;

(4) any estate, inheritance, gift, sales, excise, transfer, personal property or similar tax, assessment or other governmental charge;

(5) any Taxes that are required to be deducted or withheld on a payment to an individual and that are required to be made pursuant to Council Directive 2003/48/EC or any other Directive implementing

the conclusions of the ECOFIN Council meeting of November 26-27, 2000 on taxation of savings income or any law implementing or complying with, or introduced in order to conform to such Directives or pursuant to the Luxembourg law of December 23, 2005 introducing a withholding tax on certain savings income paid to Luxembourg;

(6) any Taxes imposed in connection with a Note presented for payment (where presentation is permitted or required for payment) by or on behalf of a Holder or beneficial owner who would have been able to avoid such Tax by presenting the relevant Note to, or otherwise accepting payment from, another paying agent; or

(7) any combination of the above.

Such Additional Amounts will also not be payable (x) if the payment could have been made without such deduction or withholding if the beneficiary of the payment had presented the Note for payment (where presentation is permitted or required for payment) within 15 days after the relevant payment was first made available for payment to the Holder or (y) where, had the beneficial owner of the Note been the Holder, such beneficial owner would not have been entitled to payment of Additional Amounts by reason of any of clauses (1) to (7) inclusive above.

In addition, no Additional Amounts shall be paid with respect to any payment to any Holder who is a fiduciary or a partnership or other than the sole beneficial owner of such Notes to the extent that the beneficiary or settlor with respect to such fiduciary, the member of such partnership or the beneficial owner of such Notes would not have been entitled to Additional Amounts had such beneficiary, settlor, member or beneficial owner held such Notes directly.

The Payor will (i) make any required withholding or deduction and (ii) remit the full amount deducted or withheld to the Relevant Taxing Jurisdiction in accordance with applicable law. The Payor will use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Relevant Taxing Jurisdiction imposing such Taxes, in such form as provided in the ordinary course by the Relevant Taxing Jurisdiction and as is reasonably available to the Issuer and will provide such certified copies to the Trustee. Such copies shall be made available to the Holders upon request.

If any Payor will be obligated to pay Additional Amounts under or with respect to any payment made on any Note or Guarantee, at least 30 days prior to the date of such payment, the Payor will deliver to the Trustee an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount so payable and such other information necessary to enable the Paying Agent to pay Additional Amounts to Holders on the relevant payment date (unless such obligation to pay Additional Amounts arises less than 45 days prior to the relevant payment date, in which case the Payor may deliver such Officer's Certificate as promptly as practicable after the date that is 30 days prior to the payment date). The Trustee will be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary.

Wherever in either the Indenture, the Guarantees or this "Description of Senior Secured Notes" there are mentioned, in any context:

(1) the payment of principal;

(2) purchase prices in connection with a purchase of Notes or premium, if any;

(3) interest; or

(4) any other amount payable on or with respect to any of the Notes, including payments thereof made pursuant to a Guarantee,

such reference shall be deemed to include payment of Additional Amounts as described under this heading to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Payor will pay any present or future stamp, issue, registration, court or documentary Taxes, or any other property or similar Taxes, charges or levies that arise in any jurisdiction from the execution, delivery, registration or enforcement of any Notes, the Indenture, the Security Documents or any other document or instrument in relation thereto (other than a transfer of the Notes) excluding any such Taxes, charges or levies imposed by any jurisdiction that is not a Relevant Taxing Jurisdiction, and the Payor agrees to indemnify the Holders for any such Taxes paid by such Holders. The foregoing obligations of this paragraph will survive any termination, defeasance or discharge of the Indenture and will apply *mutatis*

mutandis to any jurisdiction in which any successor to the Issuer is organized or any political subdivision or taxing authority or agency thereof or therein.

Change of Control

If a Change of Control occurs, subject to the terms hereof, each Holder will have the right to require the Issuer to repurchase all or any part (equal to €100,000 aggregate principal amount and integral multiples of €1,000 in excess thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes, plus accrued and unpaid interest to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however*, that the Issuer shall not be obliged to repurchase Notes as described under this "*—Change of Control*" section in the event and to the extent that it has unconditionally exercised its right to redeem all of the Notes as described under "*—Optional Redemption*" or all conditions to such redemption have been satisfied or waived.

Unless the Issuer has unconditionally exercised its right to redeem all the Notes as described under "*—Optional Redemption*" or all conditions to such redemption have been satisfied or waived, no later than the date that is 60 days after any Change of Control, the Issuer will mail a notice (the "Change of Control Offer") to each Holder of any such Notes, with a copy to the Trustee:

(1) stating that a Change of Control has occurred or may occur and that such Holder has the right to require the Issuer to purchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest to, but not including, the date of purchase (subject to the right of Holders of record on a record date to receive interest on the relevant interest payment date) (the "Change of Control Payment");

(2) stating the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "Change of Control Payment Date") and the record date;

(3) describing the circumstances and relevant facts regarding the transaction or transactions that constitute the Change of Control;

(4) describing the procedures determined by the Issuer, consistent with the Indenture, that a Holder must follow in order to have its Notes repurchased; and

(5) if such notice is mailed prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control.

On the Change of Control Payment Date, if the Change of Control shall have occurred, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or any portion thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Principal Paying Agent an amount equal to the Change of Control Payment in respect of all Notes so tendered;

(3) deliver or cause to be delivered to the Trustee an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer in the Change of Control Offer;

(4) in the case of Global Notes, deliver, or cause to be delivered, to the principal Paying Agent the Global Notes in order to reflect thereon the portion of such Notes or portions thereof that have been tendered to and purchased by the Issuer; and

(5) in the case of Definitive Registered Notes, deliver, or cause to be delivered, to the relevant Registrar for cancellation all Definitive Registered Notes accepted for purchase by the Issuer.

If any Definitive Registered Notes have been issued, the relevant Paying Agent will promptly mail to each Holder of Definitive Registered Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate (or cause to be authenticated) and mail (or cause to be transferred by book entry) to each Holder of Definitive Registered Notes a new Note equal in aggregate principal amount to the unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in an aggregate principal amount that is at least €100,000 and integral multiples of €1,000 in excess thereof.

If and for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, the Issuer will publish notices relating to the Change of Control Offer as soon as reasonably practicable after the Change of Control Payment Date in a leading newspaper of general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, post such notices on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Except as described above with respect to a Change of Control, the Indenture will not contain provisions that permit the Holders to require that the Issuer repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction. The existence of a Holder's right to require the Issuer to repurchase such Holder's Notes upon the occurrence of a Change of Control may deter a third party from seeking to acquire the Company or its Subsidiaries in a transaction that would constitute a Change of Control.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations (or rules of any exchange on which the Notes are then listed) in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations (or exchange rules) conflict with provisions of the Indenture, the Issuer will comply with the applicable securities laws and regulations (or exchange rules) and will not be deemed to have breached its obligations, or require a repurchase of the Notes, under the Change of Control provisions of the Indenture by virtue of the conflict.

Under the Senior Secured Facilities Agreement and the indenture governing the Senior Subordinated Notes, the occurrence of a change of control (as defined therein) would require the repayment of such debt. Future debt of the Company or its Subsidiaries may prohibit the Issuer from purchasing Notes in the event of a Change of Control or provide that a Change of Control is a default or requires repurchase upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Issuer to purchase the Notes could cause a default under, or require a repurchase of, other debt, even if the Change of Control itself does not, due to the financial effect of the purchase on the Issuer.

Finally, the Issuer's ability to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Issuer's then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make the required purchase of the Notes. See "*Risk Factors—Risks Related to Our Structure—We may not have the ability to raise the funds necessary to finance an offer to repurchase the Senior Secured Notes and the Senior Subordinated Notes upon the occurrence of certain events constituting a change of control as required by each indenture and the change of control provision contained in the Indentures may not necessarily afford you protection in the event of certain important corporate events.*"

Holders of the Notes may not be entitled to require the Issuer to purchase their Notes in certain circumstances involving a significant change in the composition of the Company's Board of Directors, including in connection with a proxy contest, where the Company's Board of Directors initially publicly opposes the election of a dissident slate of directors, but subsequently approves such directors for the purposes of the Indenture governing the Notes. This may result in a change in the composition of the Board of Directors that, but for such subsequent approval, would have otherwise constituted a Change of Control requiring a repurchase offer under the terms of the Indenture governing the Notes. The Change of Control feature of the Notes may in certain circumstances make it more difficult or discourage a sale or takeover of the Company.

The definition of "Change of Control" includes a disposition of all or substantially all of the property and assets of the Company and its Restricted Subsidiaries taken as a whole to specified other Persons. Although there is limited case law interpreting the phrase "substantially all", there is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder may require the Issuer to make an offer to repurchase the Notes as described above. In addition, you should note that case law suggests that, in the event that incumbent directors are replaced as a result of a contested election, the Company may

nevertheless avoid triggering a change of control under a clause similar to clause (2) of the definition of "Change of Control", if the outgoing directors were to approve the new directors for the purpose of such change of control clause.

The provisions of the Indenture relating to the Issuer's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of Holders of a majority in outstanding aggregate principal amount of the Notes under the Indenture.

Certain Covenants

Limitation on Indebtedness

The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Company and any of the Restricted Subsidiaries may Incur Indebtedness if on the date of such Incurrence and after giving pro forma effect thereto (including pro forma application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would have been at least 2.0 to 1.0.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness:

(1) Indebtedness Incurred pursuant to any Credit Facility (including in respect of letters of credit or bankers' acceptances issued or created under any Credit Facility), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not exceeding (i) €575 million, plus (ii) in the case of any refinancing of any Indebtedness permitted under this clause (1) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing, less (iii) the aggregate amount of all Net Available Cash from Asset Dispositions since the Issue Date applied by the Company or any Restricted Subsidiary pursuant to the covenant described under "*—Limitation on Sales of Assets and Subsidiary Stock*" to repay any Indebtedness under any Credit Facility incurred pursuant to this clause (1) (and in respect of any revolving credit facility, to permanently reduce commitments thereunder); *provided, however*, that in no event shall such reduction reduce the availability under this clause (1) to less than €75 million at any time outstanding;

(2) (a) Guarantees by the Company or any Restricted Subsidiary of Indebtedness of the Company or any Restricted Subsidiary; or

(b) without limiting the covenant described under "*—Limitation on Liens*," Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Company or any Restricted Subsidiary so long as the Incurrence of such Indebtedness is permitted under the terms of the Indenture;

(3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any Restricted Subsidiary; *provided, however*, that:

(a) in the case of Indebtedness owing to and held by any Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes and the Guarantees; and

(b) (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary of the Company, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, not permitted by this clause (3);

(4) Indebtedness represented by (a) the Notes (other than any Additional Notes), (b) any Indebtedness (other than Indebtedness Incurred under clauses (1) and (3) of this paragraph) outstanding on the Issue Date, including the Senior Subordinated Notes, (c) any loans of the proceeds of, or other instruments contributing the proceeds of, the Notes and the Senior Subordinated Notes, (d) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this clause (4) or clause (5) of this paragraph or Incurred pursuant to the first paragraph of this covenant, and (e) Management Advances;

(5) Indebtedness of any Person (i) Incurred and outstanding on the date on which such Person becomes a Restricted Subsidiary of the Company or another Restricted Subsidiary of the Company or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Company or any Restricted Subsidiary or (ii) Incurred to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Company or a Restricted Subsidiary; *provided, however*, with respect to each of clause (5)(i) and (5)(ii), that at the time of such acquisition or other transaction (x) the Company would have been able to Incur €1.00 of additional Indebtedness pursuant to the first paragraph of this covenant after giving pro forma effect to the relevant acquisition and the Incurrence of such Indebtedness pursuant to this clause (5) or (y) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such acquisition or other transaction;

(6) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements entered into for *bona fide* hedging purposes of the Company or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Company);

(7) Indebtedness represented by Capitalized Lease Obligations, mortgage financings, Purchase Money Obligations or other financings, incurred for the purpose of financing all or any part of the purchase price or lease, rental payments or cost of closing or cost of construction, installation or improvement of property, plant or equipment used in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, and any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause (7) and then outstanding, will not exceed at any time outstanding the greater of (x) €30 million and (y) 1.3% of Total Assets;

(8) Indebtedness in respect of (a) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, VAT or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Company or a Restricted Subsidiary and relating to liabilities, obligations or guarantees Incurred in the ordinary course of business or in respect of any governmental requirement, (b) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued and relating to liabilities or obligations Incurred in the ordinary course of business or in respect of any governmental requirement; *provided, however*, that upon the drawing of such letters of credit or similar instruments, the obligations are reimbursed within 30 days following such drawing, (c) the financing of insurance premiums in the ordinary course of business and (d) any customary cash management, cash pooling or netting or setting off arrangements in the ordinary course of business;

(9) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); *provided* that the maximum liability of the Company and its Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the fair market value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(10) (a) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within 20 Business Days of Incurrence;

(b) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(c) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business of the Company and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary

banking arrangements to manage cash balances of the Company and its Restricted Subsidiaries; and

(d) Indebtedness incurred by a Restricted Subsidiary in connection with bankers acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management of bad debt purposes, in each case incurred or undertaken in the ordinary course of business on arm's length commercial terms on a recourse basis;

(11) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the aggregate principal amount of all other Indebtedness Incurred pursuant to this clause (11) and then outstanding, will not exceed the greater of €75 million and 3.2% of Total Assets *provided* that the aggregate outstanding principal amount of Indebtedness Incurred by Restricted Subsidiaries that are not Guarantors pursuant to this clause (11) does not exceed at any time €35 million;

(12) Indebtedness of the Issuer or the Guarantors in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this clause (12) and then outstanding, will not exceed 100% of the Net Cash Proceeds received by the Company from the issuance or sale (other than to a Restricted Subsidiary) of its Subordinated Shareholder Funding or its Capital Stock (other than Disqualified Stock, Designated Preference Shares or an Excluded Contribution) or otherwise contributed to the equity (other than through the issuance of Disqualified Stock, Designated Preference Shares or an Excluded Contribution) of the Company, in each case, subsequent to the Issue Date; *provided, however*, that (i) any such Net Cash Proceeds that are so received or contributed shall be excluded for purposes of making Restricted Payments under the first paragraph and clauses (1), (6) and (10) of the third paragraph of the covenant described below under "*—Limitation on Restricted Payments*" to the extent the Company and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any Net Cash Proceeds that are so received or contributed shall be excluded for purposes of Incurring Indebtedness pursuant to this clause (12) to the extent the Company or any of its Restricted Subsidiaries makes a Restricted Payment under the first paragraph and clauses (1), (6) and (10) of the third paragraph of the covenant described below under "—Limitation on Restricted Payments" in reliance thereon;

(13) Indebtedness Incurred by a Receivables Subsidiary in a Qualified Receivables Financing;

(14) Indebtedness consisting of local lines of credit or working capital facilities not exceeding €25 million outstanding at one time; and

(15) Indebtedness in respect of Guarantees of, or letters of credit, suretyship letters, bankers' acceptances or other similar instruments or obligations relating to, the Indebtedness of any Unrestricted Subsidiary or any partnership, joint venture, limited liability company or similar entity in which the Company or any of its Restricted Subsidiaries have an equity or other interest in, not exceeding the greater of €20 million and 0.8% of Total Assets outstanding at one time.

For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this covenant:

(1) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in the first and second paragraphs of this covenant, the Company, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the clauses of the second paragraph or the first paragraph of this covenant;

(2) all Indebtedness outstanding on the Issue Date under the Senior Secured Facilities Agreement shall be deemed initially Incurred on the Issue Date under clause (1) of the second paragraph of the description of this covenant and not the first paragraph or clause (4)(b) of the second paragraph of the description of this covenant, and any Indebtedness Incurred under clause (1) of the second paragraph of the description of this covenant may not be reclassified pursuant to clause (1) of this paragraph;

(3) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(4) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to clause (1), (7), (11) or (12) of the second paragraph above or the first paragraph above and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

(5) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(6) Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness; and

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of IFRS.

Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in IFRS, including a change of IFRS to U.S. GAAP, will not be deemed to be an Incurrence of Indebtedness for purposes of the covenant described under this "*—Limitation on Indebtedness*." The amount of any Indebtedness outstanding as of any date shall be calculated as specified under the definition of "Indebtedness."

If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary of the Company as of such date.

For purposes of determining compliance with any Euro-denominated restriction on the Incurrence of Indebtedness, the Euro Equivalent of the aggregate principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or, at the option of the Company, first committed, in the case of Indebtedness Incurred under a revolving credit facility; *provided* that (a) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than the Euro, and such refinancing would cause the applicable Euro-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Euro-denominated restriction shall be deemed not to have been exceeded so long as the aggregate principal amount of such Refinancing Indebtedness does not exceed the aggregate principal amount of such Indebtedness being refinanced; (b) the Euro Equivalent of the aggregate principal amount of any such Indebtedness outstanding on the Issue Date shall be calculated based on the relevant currency exchange rate in effect on the Issue Date; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in Euro, will be the amount of the principal payment required to be made under such Currency Agreement and, otherwise, the Euro Equivalent of such amount plus the Euro Equivalent of any premium which is at such time due and payable but is not covered by such Currency Agreement.

Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company or a Restricted Subsidiary may Incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

No Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

Limitation on Restricted Payments

The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution on or in respect of the Company's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:

  (a) dividends or distributions payable in Capital Stock of the Company (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Company or in Subordinated Shareholder Funding; and

  (b) dividends or distributions payable to the Company or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Company or another Restricted Subsidiary on no more than a pro rata basis, measured by value);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect Parent of the Company held by Persons other than the Company or a Restricted Subsidiary of the Company (other than in exchange for Capital Stock of the Company (other than Disqualified Stock));

(3) make any payment on or in respect of, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (a) any such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement, (b) a payment of interest or Additional Amounts at the applicable payment date and (c) any Indebtedness Incurred pursuant to clause (3) of the second paragraph of the covenant described under "—Limitation on Indebtedness") or Subordinated Shareholder Funding (other than any payment of interest thereon in the form of additional Subordinated Shareholder Funding); or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) are referred to herein as a "Restricted Payment"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(a) a Default shall have occurred and be continuing (or would result immediately thereafter therefrom);

(b) the Company is not able to Incur an additional €1.00 of Indebtedness pursuant to the first paragraph under the "*—Limitation on Indebtedness*" covenant after giving effect, on a pro forma basis, to such Restricted Payment; or

(c) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Issue Date (and not returned or rescinded) (including Permitted Payments permitted below by clauses (6), (10), (11), (12), (17) and (18) of the second succeeding paragraph, but excluding all other Restricted Payments permitted by the second succeeding paragraph) would exceed the sum of (without duplication):

  (i) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the first fiscal quarter commencing prior to the Issue Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal consolidated financial statements of the Company are available (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);

  (ii) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Company from the issue or sale of its Capital Stock (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding subsequent to the Issue Date or otherwise contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company subsequent to the Issue Date (other than (x) Net Cash Proceeds or property or assets or marketable securities received

from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary, (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of the second succeeding paragraph and (z) Excluded Contributions);

(iii) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Company or any Restricted Subsidiary from the issuance or sale (other than to the Company or a Restricted Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary) by the Company or any Restricted Subsidiary subsequent to the Issue Date of any Indebtedness that has been converted into or exchanged for Capital Stock of the Company (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding (plus the amount of any cash, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Company or any Restricted Subsidiary upon such conversion or exchange) but excluding (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of the second succeeding paragraph and (z) Excluded Contributions;

(iv) the amount equal to the net reduction in Restricted Investments made by the Company or any of its Restricted Subsidiaries resulting from:

(A) repurchases, redemptions or other acquisitions or retirements of any such Restricted Investment, proceeds realized upon the sale or other disposition to a Person other than the Company or a Restricted Subsidiary of any such Restricted Investment, repayments of loans or advances or other transfers of assets (including by way of dividend, distribution, interest payments or returns of capital) to the Company or any Restricted Subsidiary; or

(B) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued, in each case, as provided in the definition of "Investment") not to exceed, in the case of any such Unrestricted Subsidiary, the amount of Investments previously made by the Company or any Restricted Subsidiary in such Unrestricted Subsidiary,

which amount, in each case under this clause (iv), was included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c); *provided, however,* that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Company's option) included under this clause (iv); and

(v) the amount of the cash and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or of marketable securities received by the Company or any of its Restricted Subsidiaries in connection with:

(A) the sale or other disposition (other than to the Company or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary) of Capital Stock of an Unrestricted Subsidiary of the Company; and

(B) any dividend or distribution made by an Unrestricted Subsidiary or Affiliate to the Company or a Restricted Subsidiary,

provided, however, that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Company's option) included under this clause (v); *provided further, however*, that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c); and

(vi) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary or all of the assets of such Unrestricted Subsidiary are transferred to the Company or a Restricted Subsidiary, or the Unrestricted Subsidiary is merged or consolidated into the Company or a Restricted Subsidiary, 100% of such amount received in cash and the fair market value of any property or

marketable securities received by the Company or any Restricted Subsidiary in respect of such redesignation, merger, consolidation or transfer of assets, excluding the amount of any Investment in such Unrestricted Subsidiary pursuant to clause (11) or (17) of the definition of "Permitted Investment"; *provided*, *however*, that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Company's option) included under this clause (vi); *provided further*, *however* that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c).

The fair market value of property or assets other than cash covered by the preceding sentence shall be the fair market value thereof as determined in good faith by an officer of the Company, or if such fair market value exceeds €10 million, by the Board of Directors of the Company.

The foregoing provisions will not prohibit any of the following (collectively, "Permitted Payments"):

(1) any Restricted Payment made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock or Designated Preference Shares), Subordinated Shareholder Funding or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Company; *provided, however*, that to the extent so applied, the Net Cash Proceeds, or fair market value (as determined in accordance with the preceding paragraph) of property or assets or of marketable securities, from such sale of Capital Stock, Subordinated Shareholder Funding or such contribution will be excluded from clause (c)(ii) of the first paragraph describing this covenant;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to the covenant described under "*—Limitation on Indebtedness*" above;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Company or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to the covenant described under "*—Limitation on Indebtedness*" above, and that in each case, constitutes Refinancing Indebtedness;

(4) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:

   (a) (i) from Net Available Cash to the extent permitted under "—Limitation on Sales of Assets and Subsidiary Stock" below, but only if the Company shall have first complied with the terms described under "*—Limitation on Sales of Assets and Subsidiary Stock*" and purchased all Notes tendered pursuant to any offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest;

   (b) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only (i) if the Company shall have first complied with the terms described under "*—Change of Control*" and purchased all Notes tendered pursuant to the offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or

   (c) (i) consisting of Acquired Indebtedness (other than Indebtedness Incurred (A) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Company or a Restricted Subsidiary or (B) otherwise in connection with or contemplation of such acquisition) and (ii) at a purchase price not greater than 100% of the principal amount of such

Subordinated Indebtedness plus accrued and unpaid interest and any premium required by the terms of any Acquired Indebtedness;

(5) the payment of any dividend or the consummation of any redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of the Indenture;

(6) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Company, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof) and loans, advances, dividends or distributions by the Company to any Parent to permit any Parent to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of the Company, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof), or payments to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of the Company, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof), in each case from Management Investors; *provided* that such payments, loans, advances, dividends or distributions do not exceed an amount (net of repayments of any such loans or advances) equal to (a) €5 million plus (b) €1 million multiplied by the number of calendar years that have commenced since the Issue Date plus (c) the Net Cash Proceeds received by the Company or its Restricted Subsidiaries since the Issue Date (including through receipt of proceeds from the issuance or sale of its Capital Stock or Subordinated Shareholder Funding to a Parent) from, or as a contribution to the equity (in each case under this clause (c), other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company from, the issuance or sale to Management Investors of Capital Stock (including any options, warrants or other rights in respect thereof), to the extent such Net Cash Proceeds are not included in any calculation under clause (c)(ii) or (c)(iii) of the first paragraph describing this covenant;

(7) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of the covenant described under "*—Limitation on Indebtedness*" above;

(8) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;

(9) dividends, loans, advances or distributions to any Parent or other payments by the Company or any Restricted Subsidiary in amounts equal to (without duplication):

  (a) the amounts required for any Parent to pay any Parent Expenses or any Related Taxes; or

  (b) amounts constituting or to be used for purposes of making payments (i) of fees and expenses incurred, or payments made, in connection with the Transaction or disclosed in this offering memorandum or (ii) to the extent specified in clauses (2), (3), (5), (7), (11) and (12) of the second paragraph under "*—Limitation on Affiliate Transactions*;"

(10) so long as no Default or Event of Default has occurred and is continuing (or would result from), the declaration and payment by the Company of, or loans, advances, dividends or distributions to any Parent to pay, dividends on the common stock or common equity interests of the Company or any Parent following a Public Offering of such common stock or common equity interests, in an amount not to exceed in any fiscal year 6% of the Net Cash Proceeds received by the Company from such Public Offering or contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Company or loaned as Subordinated Shareholder Funding to the Company;

(11) so long as no Default or Event of Default has occurred and is continuing (or would result from), Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed €75 million;

(12) payments by the Company, or loans, advances, dividends or distributions to any Parent to make payments, to holders of Capital Stock of the Company or any Parent in lieu of the issuance of fractional shares of such Capital Stock, *provided, however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this covenant or

otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors of the Company);

(13) Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Excluded Contributions, or consisting of non-cash Excluded Contributions, or Investments to the extent made in exchange for or using as consideration Investments previously made under this clause (13);

(14) (i) the declaration and payment of dividends to holders of any class or series of Designated Preference Shares of the Company issued after the Issue Date; and (ii) the declaration and payment of dividends to any Parent or any Affiliate thereof, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preference Shares of such Parent issued after the Issue Date; *provided, however*, that, in the case of clauses (i) and (ii), the amount of all dividends declared or paid pursuant to this clause (14) shall not exceed the Net Cash Proceeds received by the Company or the aggregate amount contributed in cash to the equity (other than through the issuance of Disqualified Stock or an Excluded Contribution or, in the case of Designated Preference Shares by Parent or an Affiliate, the issuance of Designated Preference Shares) of the Company or loaned as Subordinated Shareholder Funding to the Company, from the issuance or sale of such Designated Preference Shares;

(15) dividends or other distributions of Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries;

(16) payment of any Receivables Fees and purchases of Receivables Assets pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing;

(17) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), any Restricted Payment; *provided* that the Consolidated Leverage Ratio on a pro forma basis after giving effect to any such dividend, distribution, loan or other payment does not exceed 5.0 to 1.0;

(18) dividends or other distributions in amounts required for a Parent to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Company or any of its Restricted Subsidiaries and that has been guaranteed by, or is otherwise considered Indebtedness of, the Company or any of its Restricted Subsidiaries Incurred in accordance with the covenant described under "—Limitation on Indebtedness" above;

(19) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness out of the proceeds of the substantially concurrent Incurrence of Indebtedness pursuant to the first paragraph of the covenant described under "*—Limitation on Indebtedness*" above which Indebtedness is secured pursuant to clause (5) of the definition of "Permitted Collateral Liens".

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Company acting in good faith.

Limitation on Liens

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of a Restricted Subsidiary of the Company), whether owned on the Issue Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness (such Lien, the "Initial Lien"), except (a) in the case of any property or asset that does not constitute Collateral, (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if the Notes and the Indenture (or a Guarantee in the case of Liens of a Guarantor) are directly secured equally and ratably with, or prior to, in the case of Liens with respect to Subordinated Indebtedness, the Indebtedness secured by such Initial Lien for so long as such Indebtedness is so secured, and (b) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

Any such Lien created in favor of the Notes pursuant to clause (a)(2) of the preceding paragraph will be automatically and unconditionally released and discharged as set forth under "*—Security—Release of Liens*."

Limitation on Restrictions on Distributions from Restricted Subsidiaries

The Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(A) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary;

(B) make any loans or advances to the Company or any Restricted Subsidiary; or

(C) sell, lease or transfer any of its property or assets to the Company or any Restricted Subsidiary,

provided that (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

The provisions of the preceding paragraph will not prohibit:

(1) any encumbrance or restriction pursuant to (a) any Credit Facility (including the Finance Documents) or (b) any other agreement or instrument, in each case, in effect at or entered into on the Issue Date, including the indenture governing the Senior Subordinated Notes;

(2) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary, or was designated as a Restricted Subsidiary or on which such agreement or instrument is assumed by the Company or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Company or was merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary entered into or in connection with such transaction) and outstanding on such date; *provided* that, for the purposes of this clause (2), if another Person is the Successor Company, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Company or any Restricted Subsidiary when such Person becomes the Successor Company;

(3) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in clause (1) or (2) of this paragraph or this clause (3) (an "Initial Agreement") or contained in any amendment, supplement or other modification to an agreement referred to in clause (1) or (2) of this paragraph or this clause (3); *provided, however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable in any material respect to the Holders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Company);

(4) any encumbrance or restriction:

  (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any lease, license or other contract;

  (b) contained in mortgages, pledges, charges or other security agreements permitted under the Indenture or securing Indebtedness of the Company or a Restricted Subsidiary permitted under the Indenture to the extent such encumbrances or restrictions restrict the transfer of the property or assets subject to such mortgages, pledges, charges or other security agreements; or

  (c) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(5) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalized Lease Obligations permitted under the Indenture, in each case, that impose encumbrances or restrictions on

the property so acquired or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the transfer of the assets of the joint venture;

(6) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(7) customary provisions in leases, licenses, joint venture agreements and other similar agreements and instruments entered into in the ordinary course of business;

(8) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;

(9) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(10) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements or Commodity Hedging Agreements entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Company);

(11) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under "—Limitation on Indebtedness" if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Holders of the Notes than (a) the encumbrances and restrictions contained in the Senior Secured Facilities Agreement and the Intercreditor Agreement, together with the security documents associated therewith, in each case, as in effect on the Issue Date or (b) as is customary in comparable financings (as determined in good faith by the Board of Directors or Senior Management of the Company) and where, in the case of this clause (b), the Company determines when such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Issuer's ability to make principal or interest payments on the Notes;

(12) any encumbrance or restriction existing by reason of any lien permitted under "*—Limitation on Liens*"; or

(13) restrictions effected in connection with a Qualified Receivables Financing that, in the good faith determination of the Board of Directors of the Company, are necessary or advisable to effect such Qualified Receivables Financing.

Limitation on Sales of Assets and Subsidiary Stock

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors of the Company, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);

(2) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (excluding any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, other than Indebtedness) received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash, Cash Equivalents or Temporary Cash Investments; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company or such Restricted Subsidiary, as the case may be:

   (a) to the extent the Company or any Restricted Subsidiary, as the case may be, elects (or is required by the terms of any Indebtedness of a Restricted Subsidiary), (i) to prepay, repay or purchase any

Indebtedness of a non-Guarantor Restricted Subsidiary (in each case, other than Indebtedness owed to the Company or any Restricted Subsidiary) or Indebtedness under the Senior Secured Facilities Agreement (or any Refinancing Indebtedness in respect thereof) within 365 days from the later of (A) the date of such Asset Disposition and (B) the receipt of such Net Available Cash; *provided, however*, that, in connection with any prepayment, repayment or purchase of Indebtedness pursuant to this clause (a), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (if any) (except in the case of any revolving Indebtedness) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased; or (ii) to prepay, repay or purchase Pari Passu Indebtedness at a price of no more than 100% of the principal amount of such Pari Passu Indebtedness plus accrued and unpaid interest to the date of such prepayment, repayment or purchase; *provided* that the Company shall redeem, repay or repurchase Pari Passu Indebtedness pursuant to this clause (ii) only if the Company makes (at such time or subsequently in compliance with this covenant) an offer to the Holders of the Notes to purchase their Notes in accordance with the provisions set forth below for an Asset Disposition Offer for an aggregate principal amount of Notes at least equal to the proportion that (x) the total aggregate principal amount of Notes outstanding bears to (y) the sum of the total aggregate principal amount of Notes outstanding plus the total aggregate principal amount outstanding of such Pari Passu Indebtedness; or

(b) to the extent the Company or such Restricted Subsidiary elects, to invest in or commit to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary with Net Available Cash received by the Company or another Restricted Subsidiary) within 365 days from the later of (i) the date of such Asset Disposition and (ii) the receipt of such Net Available Cash; *provided, however*, that any such reinvestment in Additional Assets made pursuant to a definitive binding agreement or a commitment approved by the Board of Directors of the Company that is executed or approved within such time will satisfy this requirement, so long as such investment is consummated within 180 days of such 365th day,

provided, however, that if the assets disposed of constitute Collateral or constitute all or substantially all of the assets of a Restricted Subsidiary whose Capital Stock has been pledged as Collateral, subject to the Agreed Security Principles, the Company shall pledge or shall cause the applicable Restricted Subsidiary to pledge any acquired Capital Stock or assets (to the extent such assets were of a category of assets included in the Collateral as of the Issue Date) referred to in this covenant in favor of the Notes on a first-ranking basis; and *provided, further,* that, pending the final application of any such Net Available Cash in accordance with clause (a) or clause (b) above, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by the Indenture.

Any Net Available Cash from Asset Dispositions that is not applied or invested or committed to be applied or invested as provided in the preceding paragraph will be deemed to constitute "Excess Proceeds" under the Indenture. On the 366th day after an Asset Disposition, or at such earlier date that the Company elects, if the aggregate amount of Excess Proceeds under the Indenture exceeds €25 million, the Company will be required within 10 Business Days thereof, to make an offer ("Asset Disposition Offer") to all Holders of Notes issued under the Indenture and, to the extent the Company elects, to all holders of other outstanding Pari Passu Indebtedness, to purchase the maximum aggregate principal amount of Notes and any such Pari Passu Indebtedness to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in respect of the Notes in an amount equal to (and, in the case of any Pari Passu Indebtedness, an offer price of no more than) 100% of the principal amount of the Notes and 100% of the principal amount of such Pari Passu Indebtedness, in each case, plus accrued and unpaid interest, if any, to, but not including, the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing such Pari Passu Indebtedness, as applicable, in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof.

To the extent that the aggregate amount of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to the other covenants contained in the Indenture. If the aggregate principal amount of the Notes surrendered in any Asset Disposition Offer by Holders and other Pari Passu Indebtedness surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Excess Proceeds shall be allocated among the Notes and Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Indebtedness. For the purposes of calculating the

aggregate principal amount of any such Indebtedness not denominated in Euro, such Indebtedness shall be calculated by converting any such aggregate principal amounts into their Euro Equivalent determined as of a date selected by the Company that is within the Asset Disposition Offer Period (as defined below). Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

To the extent that any portion of Net Available Cash payable in respect of the Notes is denominated in a currency other than the currency in which the relevant Notes are denominated, the amount thereof payable in respect of such Notes shall not exceed the net amount of funds in the currency in which such Notes are denominated that is actually received by the Company upon converting such portion into such currency.

The Asset Disposition Offer, in so far as it relates to the Notes, will remain open for a period of not less than 20 Business Days following its commencement (the "Asset Disposition Offer Period"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "Asset Disposition Purchase Date"), the Company will purchase the aggregate principal amount of Notes and, to the extent they elect, Pari Passu Indebtedness required to be purchased pursuant to this covenant (the "Asset Disposition Offer Amount") or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Indebtedness validly tendered in response to the Asset Disposition Offer.

On or before the Asset Disposition Purchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Indebtedness or portions of Notes and such Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn and in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof. The Company will deliver to the Trustee an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this covenant. The Company or the Paying Agent, as the case may be, will promptly (but in any case not later than five Business Days after termination of the Asset Disposition Offer Period) mail or deliver to each tendering Holder of Notes an amount equal to the purchase price of the Notes so validly tendered and not properly withdrawn by such Holder, and accepted by the Company for purchase, and the Company will promptly issue a new Note (or amend the Global Note), and the Trustee, upon delivery of an Officer's Certificate from the Company, will authenticate (or cause to be authenticated) and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in an aggregate principal amount equal to any unpurchased portion of the Note surrendered; *provided* that each such new Note will be in an aggregate principal amount with a minimum denomination of €100,000. Any Note not so accepted will be promptly mailed or delivered (or transferred by book entry) by the Company to the Holder thereof.

For the purposes of clause (2) of the first paragraph of this covenant, the following will be deemed to be cash:

(1) the assumption by the transferee of Indebtedness of the Company or Indebtedness of a Restricted Subsidiary (other than Subordinated Indebtedness of the Company or a Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;

(2) securities, notes or other obligations received by the Company or any Restricted Subsidiary of the Company from the transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;

(3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Company and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;

(4) consideration consisting of Indebtedness of the Company (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Company or any Restricted Subsidiary; and

(5) any Designated Non-Cash Consideration received by the Company or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this covenant that is at that time outstanding, not to exceed the greater of €25 million and 1.0% of Total Assets (with the fair market

value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).

The Company will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations (or rules of any exchange on which the Notes are then listed) in connection with the repurchase of Notes pursuant to the Indenture. To the extent that the provisions of any securities laws or regulations (or exchange rules) conflict with provisions of this covenant, the Company will comply with the applicable securities laws and regulations (or exchange rules) and will not be deemed to have breached its obligations under the Indenture by virtue of any conflict.

Limitation on Affiliate Transactions

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (any such transaction or series of related transactions being an "Affiliate Transaction") involving aggregate value in excess of €5 million unless:

(1) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate;

(2) in the event such Affiliate Transaction involves an aggregate value in excess of €15 million, the terms of such transaction or series of related transactions have been approved by a majority of the members of the Board of Directors of the Company resolving that such transaction complies with clause (1) above; and

(3) in the event such Affiliate Transaction involves an aggregate consideration in excess of €30 million, the Company has received a written opinion (a "Fairness Opinion") from an Independent Financial Advisor stating that such Affiliate Transaction is fair, from a financial standpoint, to the Company and its Restricted Subsidiaries or stating that the terms are not materially less favorable to the Company and its Restricted Subsidiaries than those that could reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person who is not an Affiliate.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this covenant if the Company complies with clause (3) of this paragraph.

The provisions of the preceding paragraph will not apply to:

(1) any Restricted Payment permitted to be made pursuant to the covenant described under "*—Limitation on Restricted Payments*," any Permitted Payments (other than pursuant to clause (9)(b)(ii) of the third paragraph of the covenant described under "*—Limitation on Restricted Payments*") or any Permitted Investment (other than Permitted Investments as defined in paragraphs (l)(b), (2) and (11) of the definition thereof);

(2) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Company, any Restricted Subsidiary or any Parent, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Company, in each case in the ordinary course of business;

(3) any Management Advances and any waiver or transaction with respect thereto;

(4) any transaction between or among the Company and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;

(5) the payment of reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Company, any Restricted Subsidiary of the Company or any Parent (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);

(6) the Transaction and the entry into and performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this covenant or to the extent not more disadvantageous to the Holders in any material respect and the entry into and performance of any registration rights or other listing agreement in connection with any Public Offering;

(7) execution, delivery and performance (including payments) of any Tax Sharing Agreement or arrangement with which the Company or any of its Restricted Subsidiaries is required or permitted to file a consolidated tax return or the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(8) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business, which are fair to the Company or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the Senior Management of the Company, or are on terms no less favorable than those that could reasonably have been obtained at such time from an unaffiliated party;

(9) any transaction in the ordinary course of business between or among the Company or any Restricted Subsidiary and any Affiliate of the Company or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary or any Affiliate of the Company or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;

(10) (a) issuances or sales of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Company or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Funding; *provided* that the interest rate and other financial terms of such Subordinated Shareholder Funding are approved by a majority of the members of the Board of Directors of the Company in their reasonable determination and (b) any amendment, waiver or other transaction with respect to any Subordinated Shareholder Funding in compliance with the other provisions of the Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreement, as applicable;

(11) without duplication in respect of payments made pursuant to clause (12) hereof, (a) payments by the Company or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent) of annual customary management, consulting, monitoring or advisory fees and related expenses in an aggregate amount not to exceed €3 million per year and (b) customary payments by the Company or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent) for financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with loans, capital markets transactions, acquisitions or divestitures, which payments (and the entry into agreements providing for such payments) in respect of this clause (b) are approved by a majority of the Board of Directors of the Company in good faith;

(12) payment to any Permitted Holder of all reasonable out-of-pocket expenses Incurred by such Permitted Holder in connection with its direct or indirect investment in the Company and its Subsidiaries; and

(13) any transaction effected as part of a Qualified Receivables Financing.

Maintenance of Listing

The Company will use commercially reasonable efforts to have the Notes admitted to listing and trading on the Luxembourg Stock Exchange after the Issue Date and will use commercially reasonable efforts to maintain the admission to listing of the Notes on the Official List of the Luxembourg Stock Exchange and their admission to trading on the Euro MTF Market of the Luxembourg Stock Exchange for so long as such Notes are outstanding; *provided* that if at any time the Company determines that it will not maintain

such admission to listing and trading, it will obtain prior to the delisting of the Notes from the Euro MTF Market of the Luxembourg Stock Exchange, and thereafter use its best efforts to maintain, a listing of such Notes on another recognized stock exchange.

Reports

For so long as any Notes are outstanding, the Company will provide to the Trustee the following reports:

(1) within 120 days after the end of the Company's fiscal year beginning with the first fiscal year ending after the Issue Date, annual reports containing, to the extent applicable, the following information:

   (a) the audited consolidated balance sheets of the Company or its predecessor as of the end of the two most recent fiscal years and audited consolidated income statements and statements of cash flow of the Company or its predecessor for the two most recent fiscal years, including complete footnotes to such financial statements and the report of the independent auditors on the financial statements;

   (b) unaudited pro forma income statement information and balance sheet information of the Company (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the most recently completed fiscal year, *provided* that such pro forma financial information will be provided only to the extent available without unreasonable expense, otherwise the Company will provide, in the case of a material acquisition, acquired company financial statements;

   (c) an operating and financial review of the audited financial statements, including a discussion of the results of operations, financial condition, and liquidity and capital resources of the Company, and a discussion of material commitments and contingencies and critical accounting policies, with a similar scope to that included in this offering memorandum;

   (d) description of the business, management and shareholders of the Company, all material affiliate transactions and a description of all material contractual arrangements, including material debt instruments, with a similar scope to that included in this offering memorandum; and

   (e) a description of material risk factors and material recent developments;

(2) within 60 days following the end of the first three fiscal quarters in each fiscal year of the Company beginning with the quarter ending September 30, 2012 (but within 90 days in the case of the quarter ending September 30, 2012), all quarterly reports of the Company containing the following information: (a) an unaudited condensed consolidated balance sheet as of the end of such quarter and unaudited condensed statements of income and cash flow for the most recent quarter year-to-date period ending on the unaudited condensed balance sheet date, and the comparable prior year periods, together with condensed footnote disclosure; (b) unaudited pro forma income statement information and balance sheet information of the Company (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the relevant quarter, *provided* that such pro forma financial information will be provided only to the extent available without unreasonable expense, otherwise the Company will provide, in the case of a material acquisition, acquired company financial statements; (c) an operating and financial review of the unaudited financial statements, including a discussion of the results of operations, financial condition, EBITDA and material changes in liquidity and capital resources of the Company, and a discussion of material changes not in the ordinary course of business in commitments and contingencies since the most recent report; and (d) material recent developments; and

(3) promptly after the occurrence of any material acquisition, disposition or restructuring or either the chief executive officer or chief financial officer changes at the Company or change in auditors of the Company or any other material event that the Company or any of its Restricted Subsidiaries announces publicly, a report containing a description of such event.

All financial statements shall be prepared in accordance with IFRS as in effect on the date of such report or financial statement (or otherwise on the basis of IFRS as then in effect) and on a consistent basis for the

periods presented; *provided, however*, that the reports set forth in clauses (1), (2) and (3) above may, in the event of a change in applicable IFRS, present earlier periods on a basis that applied to such periods.

In the event that the Company has Restricted Subsidiaries that are not Guarantors, the annual and quarterly financial information required by clauses (1) and (2) of the first paragraph of this covenant shall include financial information in respect of the Guarantors and the non-Guarantors similar to the financial information contained in this offering memorandum in respect of the Guarantors and the non-Guarantors. At any time that any of the Company's Subsidiaries are Unrestricted Subsidiaries and any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, constitutes a Significant Subsidiary of the Company, then the annual and quarterly financial information required by clauses (1) and (2) of the first paragraph of this covenant shall include either (i) a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company or (ii) stand-alone audited or unaudited financial statements, as the case may be, of such Unrestricted Subsidiary or Unrestricted Subsidiaries (as a group or otherwise) together with an unaudited reconciliation to the financial information of the Company and its Subsidiaries, which reconciliation shall include the following items: revenues, EBITDA, net income, cash, total assets, total debt, shareholders equity, capital expenditures and interest expense.

Substantially concurrently with the issuance to the Trustee of the reports specified in clauses (1), (2) and (3) of the first paragraph of this covenant, the Company shall also (a) use its commercially reasonable efforts (i) to post copies of such reports on such website as may be then maintained by the Company and its Subsidiaries or (ii) otherwise to provide substantially comparable availability of such reports (as determined by the Company in good faith) or (b) to the extent the Company determines in good faith that it cannot make such reports available in the manner described in the preceding clause (a) owing to applicable law or after the use of its commercially reasonable efforts, furnish such reports to the Holders and, upon request, prospective purchasers of the Notes. The Company will also post the reports required by clauses (1) through (3) of the first paragraph of this covenant on the official website of the Luxembourg Stock Exchange, if and so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

In addition, so long as the Notes remain outstanding and during any period during which the Company is not subject to Section 13 or 15(d) of the Exchange Act nor exempt therefrom pursuant to Rule 12g3-2(b), the Company shall furnish to the Holders and, upon their request, prospective purchasers of the Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Merger and Consolidation

The Issuer

The Issuer will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor Issuer") will be a Person organized and existing under the laws of any member state of the European Union or the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Issuer (if not the Issuer) will expressly assume (a) by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Issuer under the Notes and the Indenture and (b) all obligations of the Issuer under the Security Documents (and, to the extent required by the Intercreditor Agreement, the Intercreditor Agreement);

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Issuer or any Subsidiary of the Successor Issuer as a result of such transaction as having been Incurred by the Successor Issuer or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing; and

(3) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture and an Opinion of Counsel to the effect that such supplemental indenture (if any) has been duly authorized, executed and delivered and is a legal, valid and binding agreement

enforceable against the Successor Issuer (in each case, in form and substance reasonably satisfactory to the Trustee), *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, and may exercise every right and power of, the Issuer under the Indenture but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under such Indenture or the Notes.

Notwithstanding the preceding clause (2) (which does not apply to the transactions referred to in this sentence), the Issuer may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Issuer, reincorporating the Issuer in another jurisdiction or changing the legal form of the Issuer.

There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

The foregoing provisions (other than the requirements of clause (2) of the first paragraph of this covenant) will not apply to the creation of a new subsidiary of the Issuer that is a Restricted Subsidiary of the Company and becomes a parent of one or more of the Issuer's Subsidiaries.

The Issuer shall remain a Wholly-Owned Subsidiary of the Company.

The Company

The Company will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor Company") will be a Person organized and existing under the laws of any member state of the European Union or the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Company (if not the Company) will expressly assume (a) by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Company under the Parent Guarantee and (b) all obligations of the Company under the Security Documents (and, to the extent required by the Intercreditor Agreement, the Intercreditor Agreement);

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, either (a) the Successor Company would be able to Incur at least an additional €1.00 of Indebtedness pursuant to the first paragraph of the covenant described under "*—Limitation on Indebtedness*" or (b) the Fixed Charge Coverage Ratio for the Company would not be lower than it was immediately prior to giving effect to such transaction; and

(4) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture and an Opinion of Counsel to the effect that such supplemental indenture (if any) has been duly authorized, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company (in each case, in form and substance reasonably satisfactory to the Trustee), *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

Any Indebtedness that becomes an obligation of the Company or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this covenant, and any Refinancing Indebtedness with

respect thereto, shall be deemed to have been Incurred in compliance with the covenant described under "*—Limitation on Indebtedness*."

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under such Indenture or the Notes.

Notwithstanding the preceding clauses (2) and (3) (which do not apply to the transactions referred to in this sentence), the Company may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Company, reincorporating the Company in another jurisdiction or changing the legal form of the Company.

There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

The foregoing provisions (other than the requirements of clause (2) of the first paragraph of this covenant) will not apply to the creation of a new subsidiary as a Restricted Subsidiary of the Company.

Subsidiary Guarantors

No Subsidiary Guarantor may:

(1) consolidate with or merge with or into any Person;

(2) sell, convey, transfer or dispose of, all or substantially all its assets as an entirety or substantially as an entirety, in one transaction or a series of related transactions, to any Person; or

(3) permit any Person to merge with or into such Guarantor,

unless

(A) the other Person is the Company or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or

(B) (1) either (x) a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all of the obligations of the Guarantor under its Guarantee and the Security Documents (and, to the extent required by the Intercreditor Agreement, the Intercreditor Agreement); and

(2) immediately after giving effect to the transaction, no Default has occurred and is continuing; or

(C) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to the Company or a Restricted Subsidiary) otherwise permitted by the Indenture.

Notwithstanding the preceding clause (B)(2) (which does not apply to the transactions referred to in this sentence), a Subsidiary Guarantor may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Subsidiary Guarantor, reincorporating the Subsidiary Guarantor in another jurisdiction or changing the legal form of the Subsidiary Guarantor.

There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

Notwithstanding clause (2) above under "*—The Issuer*", clauses (2) and (3) above under "*—The Company*" and clause (B)(2) above under "*—Subsidiary Guarantors*" (which do not apply to transactions referred to in this sentence) (a) any Restricted Subsidiary of the Company may consolidate or otherwise combine with,

merge into or transfer all or part of its properties and assets to the Company, the Issuer or a Subsidiary Guarantor and (b) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary.

Suspension of Covenants on Achievement of Investment Grade Status

If on any date following the Issue Date, the Notes have achieved Investment Grade Status and no Default or Event of Default has occurred and is continuing (a "Suspension Event"), then, beginning on that day and continuing until the Reversion Date, the provisions of the Indenture summarized under the following captions will not apply to such Notes: "*—Limitation on Restricted Payments*," "*—Limitation on Indebtedness*," "*—Limitation on Restrictions on Distributions from Restricted Subsidiaries*," "*—Limitation on Affiliate Transactions*," "*—Limitation on Sales of Assets and Subsidiary Stock*," "*—Additional Guarantees*," "*—Lines of Business*," the provisions of clause (3) of the first paragraph of the covenant described under "*—Merger and Consolidation—The Company*" and "*—Impairment of Security Interest*", and, in each case, any related default provision of such Indenture will cease to be effective and will not be applicable to the Company and its Restricted Subsidiaries. The Company will notify the Trustee of the fact that there is a Suspension Event. Such covenants and any related default provisions will again apply according to their terms from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company properly taken during the continuance of the Suspension Event and no action taken in breach of such covenants prior to the Reversion Date will constitute a Default or Event of Default. The "*—Limitation on Restricted Payments*" covenant will be interpreted as if it has been in effect since the date of such Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be classified, at the Company's option, as having been Incurred pursuant to the first paragraph of the covenant described under "*—Limitation on Indebtedness*" or one of the clauses set forth in the second paragraph of such covenant (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Event and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred under the first two paragraphs of the covenant described under "*—Limitation on Indebtedness*," such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (4)(b) of the second paragraph of the covenant described under "*—Limitation on Indebtedness*." In addition, the Indenture will also permit, without causing a Default or Event of Default, the Issuer or any of the Restricted Subsidiaries to honor any contractual commitments or take actions in the future after the Reversion Date as long as the contractual commitments were entered into during the Suspension Event and not in anticipation of the Notes no longer having an Investment Grade Status.

Additional Guarantees

The Company will not cause or permit any of its Restricted Subsidiaries that are not Guarantors, directly or indirectly, to Guarantee any Indebtedness Incurred under the first paragraph (to the extent such Indebtedness constitutes a Credit Facility) or clause (1) (including with respect to the Senior Secured Facilities) or (5)(ii) of the second paragraph of the covenant described under "*—Limitation on Indebtedness*" or any Public Debt, and any refinancing thereof in whole or in part, unless such Restricted Subsidiary becomes a Guarantor on the date on which such other Guarantee is Incurred and, if applicable, executes and delivers to the Trustee a supplemental indenture in the form attached to the Indenture pursuant to which such Restricted Subsidiary will provide a Guarantee, which Guarantee will be senior to or *pari passu* with such Restricted Subsidiary's Guarantee of such other Indebtedness.

A Restricted Subsidiary that is not a Guarantor may become a Guarantor if it executes and delivers to the Trustee a supplemental indenture in the form attached to the Indenture pursuant to which such Restricted Subsidiary will provide a Guarantee.

Concurrently with the provision of any additional Guarantees as described above, subject to the Intercreditor Agreement and any Additional Intercreditor Agreement (if such security is being granted in respect of the other Indebtedness), and subject to the Agreed Security Principles, any such Guarantor will provide security over certain of its material assets (excluding any assets of such Guarantor which are subject to a Permitted Lien at the time of the execution of such supplemental indenture if providing such security interest would not be permitted by the terms of such Permitted Lien or by the terms of any

obligations secured by such Permitted Lien) to secure its Guarantee on a first priority basis consistent with the Collateral.

Each additional Guarantee will be limited as necessary to recognize certain defenses generally available to guarantors (including those that relate to fraudulent conveyance or transfer, voidable preference, financial assistance, corporate purpose, thin capitalization, distributable reserves, capital maintenance or similar laws, regulations or defenses affecting the rights of creditors generally) or other considerations under applicable law.

Notwithstanding the foregoing, the Company shall not be obligated to cause such Restricted Subsidiary to Guarantee the Notes to the extent and for so long as the Incurrence of such Guarantee could reasonably be expected to give rise to or result in: (1) any violation of applicable law, rules or regulation (or analogous restriction); (2) any liability for the officers, directors or (except in the case of a Restricted Subsidiary that is a partnership) shareholders of such Restricted Subsidiary (or, in the case of a Restricted Subsidiary that is a partnership, directors or shareholders of the partners of such partnership); (3) any cost, expense, liability or obligation (including with respect to any Taxes) other than reasonable out-of-pocket expenses and other than reasonable expenses incurred in connection with any governmental or regulatory filings required as a result of, or any measures pursuant to clause (1) of this paragraph undertaken in connection with, such Guarantee, which in any case under any of clauses (1), (2) and (3) of this paragraph cannot be avoided through measures reasonably available to the Company or a Restricted Subsidiary; or (4) an inconsistency with the Intercreditor Agreement or the Agreed Securities Principles.

Impairment of Security Interest

The Company shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take any action that would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Trustee and the Holders, and the Company shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Trustee, for the benefit of the Trustee and the Holders and the other beneficiaries described in the Security Documents, any Lien over any of the Collateral that is prohibited by the covenant entitled "Limitation on Liens;" *provided*, that the Company and its Restricted Subsidiaries may Incur Permitted Collateral Liens and the Collateral may be discharged, transferred or released in accordance with the Indenture, the Intercreditor Agreement or the applicable Security Documents.

Notwithstanding the above, nothing in this covenant shall restrict the discharge and release of any Security Interest in accordance with the Indenture and the Intercreditor Agreement. Subject to the foregoing, the Security Documents may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) to (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Permitted Collateral Liens; (iii) add to the Collateral; or (iv) make any other change thereto that does not adversely affect the Holders in any material respect; *provided, however*, that, except where permitted by the Indenture or the Intercreditor Agreement, no Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Company delivers to the Security Trustee and the Trustee, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Trustee and the Trustee, from an independent financial advisor or appraiser or investment bank of international standing which confirms the solvency of the Company and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person which confirms the solvency of the person granting Security Interest after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), or (3) an opinion of counsel (subject to any qualifications customary for this type of opinion of counsel), in form and substance reasonably satisfactory to the Security Trustee and the Trustee, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of

at least equivalent ranking over the same assets), the Lien or Liens created under the Security Document, so amended, extended, renewed, restated, supplemented, modified or released and retaken are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject.

In the event that the Company and its Restricted Subsidiaries comply with the requirements of this covenant, the Trustee and the Security Trustee shall (subject to customary protections and indemnifications) consent to such amendments without the need for instructions from the Holders.

Lines of Business

The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Similar Business, except to such extent as would not be material to the Company and its Restricted Subsidiaries, taken as a whole.

Limitation on Holdco and Company Activities

Each of the Holdcos and the Company shall not trade, carry on any business, own any assets or incur any material liabilities except for:

(1) the conduct of its business as a holding company, including any employment contracts for its employees required for such conduct of its business as a holding company;

(2) in the case of the Company, the provision of treasury, accounting and IT services, and any ancillary services and activities customarily related thereto, to its Affiliates;

(3) the provision of management and administrative services (excluding treasury services but including the on-lending of monies to the Company and its Restricted Subsidiaries) to any of its direct or indirect Subsidiaries of a type customarily provided by a holding company to its Subsidiaries and the ownership of assets necessary to provide such services;

(4) the entry into and performance of its obligations (and incurrence of liabilities) under the Notes, the Indenture, the Senior Secured Facilities Agreement, the Senior Subordinated Notes, the indenture for the Senior Subordinated Notes, any proceeds loan documents relating to the foregoing, Hedging Obligations, other Indebtedness or any other obligations not otherwise prohibited by the Indenture, any Security Document to which it is a party or the Intercreditor Agreement (or any Additional Intercreditor Agreement entered into pursuant to the Notes, the Intercreditor Agreement or the Indenture);

(5) the granting of security interests in accordance with the terms of the Notes, the Indenture, the Senior Secured Facilities Agreement, the Senior Subordinated Notes, the indenture for the Senior Subordinated Notes, any proceeds loan documents relating to the foregoing, Hedging Obligations, other Indebtedness or any other obligations not otherwise prohibited by the Indenture, any Security Document to which it is a party or the Intercreditor Agreement (or any Additional Intercreditor Agreement entered into pursuant to the Notes, the Intercreditor Agreement or the Indenture);

(6) professional fees and administration costs in the ordinary course of business as a holding company;

(7) related or reasonably incidental to the establishment and/or maintenance of its or its Subsidiaries' corporate existence;

(8) issuing directors' qualifying shares and shares to its shareholders, and pay dividends and make other distributions on such shares;

(9) any liabilities under any purchase agreement and/or other document entered into in connection with the issuance of the Notes or the Senior Subordinated Notes or any other Indebtedness permitted to be Incurred by the Company or its Restricted Subsidiaries under the Indenture;

(10) effect or participate in a Permitted Reorganization;

(11) the payment of wages and the incurrence of obligations and liabilities arising by operation of law or that are typical of or incidental to the activities of a holding company;

(12) ownership of shares or, as applicable, limited partnership interests in its Subsidiaries, intra-group debit balances, intra-group credit balances and other credit balances in bank accounts, cash and Investments in Cash Equivalents;

(13) any rights and liabilities under the documents and agreements relating to the Transaction to which it is a party and any Taxes, professional fees and administration costs in the ordinary course of business as a holding company;

(14) in relation to the Germany Holdco, undertaking such activities as are reasonably required in order to attain and maintain holding company status under applicable tax rules in Luxembourg to ensure it achieves and maintains "good standing" under applicable tax rules; and

(15) any other activities which are not specifically listed above (i) which are ancillary to or related to those listed above or (ii) which are de minimis in nature.

Events of Default

Each of the following is an Event of Default under the Indenture:

(1) default in any payment of interest or Additional Amounts, if any, on any Note when due and payable, continued for 30 days;

(2) default in the payment of the principal amount of or premium, if any, on any Note issued under the Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any of its Restricted Subsidiaries to comply for 30 days with the provisions described under the captions "*Change of Control"; "—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock"* or *"—Certain Covenants—Merger and Consolidation"*;

(4) failure by the Company or any of its Restricted Subsidiaries for 60 days after written notice to the Issuer by the Trustee on behalf of the Holders or by the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the agreements contained in the Indenture (other than any such failure which is specifically addressed in clause (1), (2) or (3) above);

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries) other than Indebtedness owed to the Company or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the date hereof, which default:

   (a) is caused by a failure to pay principal at stated maturity on such Indebtedness, immediately upon the expiration of the grace period provided in such Indebtedness ("payment default"); or

   (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision");

   and, in each case, the aggregate principal amount of any such Indebtedness, together with the aggregate principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates €25 million or more;

(6) certain events of bankruptcy, insolvency or court protection of the Company, the Issuer or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the "bankruptcy provisions");

(7) failure by the Company, the Issuer or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of €25 million (exclusive of any amounts that a solvent insurance company has acknowledged liability for), which judgments are not paid, discharged or stayed for a period of 60 days after the judgment becomes final (the "judgment default provision");

(8) any security interest under the Security Documents shall, at any time, cease to be in full force and effect (other than in accordance with the terms of the relevant Security Document, the Intercreditor Agreement and the Indenture) with respect to Collateral having a fair market value in excess of

€20 million for any reason other than the satisfaction in full of all obligations under the Indenture or the release or amendment of any such security interest in accordance with the terms of the Indenture, the Intercreditor Agreement or such Security Document or any such security interest created thereunder shall be declared invalid or unenforceable or the Company or any Restricted Subsidiary shall assert in writing that any such security interest is invalid or unenforceable and any such Default continues for 10 days (the "security default provisions"); and

(9) any Guarantee of the Holdcos, the Company or a Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee or the Indenture) or is declared invalid or unenforceable in a judicial proceeding or any Guarantor denies or disaffirms in writing its obligations under its Guarantee and any such Default continues for 10 days (the "guarantee provisions").

However, a default under clause (3), (4), (5) or (7) of this paragraph will not constitute an Event of Default until the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes notify the Company of the default and, with respect to clause (3), (4), (5) and (7), the Company does not cure such default within the time specified in clause (3), (4), (5) and (7), as applicable, of this paragraph after receipt of such notice.

If an Event of Default (other than an Event of Default described in clause (6) above with respect to the Company or the Issuer) occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in aggregate principal amount of the outstanding Notes by written notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, including Additional Amounts, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest, including Additional Amounts, if any, will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (5) under "Events of Default" has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (5) shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest, including Additional Amounts, if any, on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

If an Event of Default described in clause (6) above with respect to the Company or the Issuer occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest, including Additional Amounts, if any, on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

The Holders of a majority in aggregate principal amount of the outstanding Notes under the Indenture may waive all past or existing Defaults or Events of Default (except with respect to nonpayment of principal, premium or interest, or Additional Amounts, if any) and rescind any such acceleration with respect to such Notes and its consequences if rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

Subject to the provisions of the Indenture relating to the duties of the Trustee, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;

(3) such Holders have offered in writing the Trustee indemnity and/or security against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of such indemnity and/or security; and

(5) the Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the Holders of a majority in aggregate principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Indenture will provide that, in the event an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification and/or security satisfactory to it against all losses and expenses caused by taking or not taking such action.

The Indenture will provide that if a Default occurs and is continuing and the Trustee is informed of such occurrence by the Company, the Trustee must give notice of the Default to the Holders within 60 days after being notified by the Company. Except in the case of a Default in the payment of principal of, or premium, if any, or interest on any Note, the Trustee may withhold notice if and so long as a committee of trust officers of the Trustee in good faith determines that withholding notice is in the interests of the Holders. The Company is required to deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate indicating whether the signers thereof know of any Default that occurred during the previous year. The Company is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events of which it is aware which would constitute certain Defaults, their status and what action the Company is taking or proposes to take in respect thereof.

The Indenture will provide that (i) if a Default occurs for a failure to deliver a required certificate in connection with another default (an "Initial Default") then at the time such Initial Default is cured, such Default for a failure to report or deliver a required certificate in connection with the Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in the covenant entitled "*—Reports*" or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Indenture.

The Notes will provide for the Trustee to take action on behalf of the Holders in certain circumstances, but only if the Trustee is indemnified and/or secured to its satisfaction. It may not be possible for the Trustee to take certain actions in relation to the Notes and, accordingly, in such circumstances the Trustee will be unable to take action, notwithstanding the provision of an indemnity to it, and it will be for Holders to take action directly.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture and may not enforce the Security Documents except as provided in such Security Documents and the Intercreditor Agreement or any Additional Intercreditor Agreement.

Amendments and Waivers

Subject to certain exceptions, the Note Documents may be amended, supplemented or otherwise modified with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes) and, subject to certain exceptions, any default or compliance with any provisions thereof may be waived with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes). However, without the consent of Holders holding not less than 90% (or, in the case of clause (8), 75%) of the then outstanding aggregate principal amount of Notes affected, an amendment or waiver may not, with respect to any such Notes held by a non-consenting Holder:

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment;

(2) reduce the stated rate of or extend the stated time for payment of interest on any such Note;

(3) reduce the principal of or extend the Stated Maturity of any such Note;

(4) reduce the premium payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as described above under "*—Optional Redemption*";

(5) make any such Note payable in money other than that stated in such Note;

(6) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder's Notes;

(7) make any change in the provision of the Indenture described under "*—Withholding Taxes*" that adversely affects the right of any Holder of such Notes in any material respect or amends the terms of such Notes in a way that would result in a loss of an exemption from any of the Taxes described thereunder or an exemption from any obligation to withhold or deduct Taxes so described thereunder unless the Payor agrees to pay Additional Amounts, if any, in respect thereof;

(8) release (i) any security interest granted for the benefit of the Holders in the Collateral or (ii) any Guarantee, in each case, other than pursuant to the terms of the Security Document or the Indenture, as applicable, except as permitted by the Intercreditor Agreement;

(9) waive a Default or Event of Default with respect to the nonpayment of principal, premium or interest (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration); or

(10) make any change in the amendment or waiver provisions which require the Holders' consent described in this sentence.

Notwithstanding the foregoing, without the consent of any Holder, the Company, the Trustee and the other parties thereto, as applicable, may amend or supplement any Note Documents to:

(1) cure any ambiguity, omission, defect, error or inconsistency, conform any provision to this "Description of Senior Secured Notes," or reduce the minimum denomination of the Notes;

(2) provide for the assumption by a successor Person of the obligations of the Company, the Issuer or any Guarantor under any Note Document;

(3) provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(4) add to the covenants or provide for a Guarantee for the benefit of the Holders or surrender any right or power conferred upon the Company or any Restricted Subsidiary;

(5) make any change that does not adversely affect the rights of any Holder in any material respect;

(6) at the Company's election, comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act, if such qualification is required;

(7) make such provisions as necessary (as determined in good faith by the Company) for the issuance of Additional Notes;

(8) to provide for any Restricted Subsidiary to provide a Guarantee in accordance with the Covenant described under "*—Certain Covenants—Limitation on Indebtedness*" and "*—Certain Covenants—Additional Guarantees*," to add Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Guarantee or Lien (including the Collateral and the Security Documents) with respect to or securing the Notes when such release, termination, discharge or retaking is provided for under the Indenture, the Intercreditor Agreement or the Security Documents;

(9) to evidence and provide for the acceptance and appointment under the Indenture of a successor Trustee pursuant to the requirements thereof or to provide for the accession by the Trustee to any Note Document; or

(10) in the case of the Security Documents, to mortgage, pledge, hypothecate or grant a security interest in favor of the Security Trustee for the benefit of parties to the Senior Secured Facilities Agreement, in any property which is required by the Senior Secured Facilities Agreement (as in effect on the Issue Date) to be mortgaged, pledged or hypothecated, or in which a security interest is required to be

granted to the Security Trustee, or to the extent necessary to grant a security interest for the benefit of any Person; *provided* that the granting of such security interest is not prohibited by the Indenture and the covenant described under "*—Certain Covenants—Impairment of Security Interest*" is complied with.

In formulating its decisions on such matters, the Trustee shall be entitled to rely on such evidence as it deems appropriate including Officer's Certificates and Opinions of Counsel.

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment of any Note Document. It is sufficient if such consent approves the substance of the proposed amendment. A consent to any amendment or waiver under the Indenture by any Holder of Notes given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender.

For so long as the Notes are listed on the Luxembourg Stock Exchange and the rules of such exchange so require, the Issuer will publish notice of any amendment, supplement or waiver in Luxembourg in a daily newspaper with general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*). Such notice of any amendment, supplement and waiver may also be published on the website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Acts by Holders

In determining whether the Holders of the required aggregate principal amount of the Notes have concurred in any direction, waiver or consent, any Notes owned by the Company or by any Person directly or indirectly controlled, or controlled by, or under direct or indirect common control with, the Company will be disregarded and deemed not to be outstanding.

Defeasance

The Issuer at any time may terminate all its and each Guarantor's obligations under the Notes and the Indenture ("legal defeasance") and cure all then existing Defaults and Events of Default, except for certain obligations, including those respecting the defeasance trust, the rights, powers, trusts, duties, immunities and indemnities of the Trustee and the obligations of the Issuer in connection therewith and obligations concerning issuing temporary Notes, registrations of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust. Subject to the foregoing, if the Issuer exercises its legal defeasance option, the Security Documents in effect at such time will terminate (other than with respect to the defeasance trust).

The Issuer at any time may terminate its and the Guarantor's obligations under the covenants described under "*—Certain Covenants*" (other than with respect to clauses (1) and (2) of each of the covenants described under "*—Certain Covenants—Merger and Consolidation—The Issuer*," "*—Certain Covenants—Merger and Consolidation—The Company*" and "*—Certain Covenants—Merger and Consolidation—Subsidiary Guarantors*") and "*—Change of Control*" and the default provisions relating to such covenants described under "*—Events of Default*" above, the operation of the cross-default upon a payment default, the cross acceleration provisions, the bankruptcy provisions with respect to the Company, the Issuer and its Significant Subsidiaries, the judgment default provision, the guarantee provision and the security default provision described under "*—Events of Default*" above ("covenant defeasance").

The Issuer at its option at any time may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Issuer exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes. If the Issuer exercises its covenant defeasance option with respect to the Notes, payment of the Notes may not be accelerated because of an Event of Default specified in clause (3) (other than with respect to clauses (1) and (2) of each of the covenants described under "*—Certain Covenants—Merger and Consolidation—The Issuer*," and "*—Certain Covenants—Merger and Consolidation—The Company*" and clause (3)(B) of the covenant described under "*—Certain Covenants—Merger and Consolidation—Subsidiary Guarantors*"), (4), (5), (6) (with respect only to Significant Subsidiaries), (7), (8) or (9) under "*—Events of Default*" above.

In order to exercise either defeasance option, the Issuer must irrevocably deposit in trust (the "defeasance trust") with the Trustee (or such entity designated by the Trustee for this purpose) cash in Euro or Euro-denominated European Government Obligations or a combination thereof for the payment of

principal, premium, if any, and interest on the Notes to redemption or maturity and must comply with certain other conditions, including delivery to the Trustee of:

(1) an Opinion of Counsel in the United States to the effect that Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and in the case of legal defeasance only, such Opinion of Counsel in the United States must be based on a ruling of the U.S. Internal Revenue Service or other change in applicable U.S. federal income tax law since the issuance of the Notes);

(2) an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer;

(3) an Officer's Certificate and an Opinion of Counsel (which opinion of counsel may be subject to customary assumptions and exclusions), each stating that that all conditions precedent provided for or relating to legal defeasance or covenant defeasance, as the case may be, have been complied with;

(4) an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the U.S. Investment Company Act of 1940; and

(5) the Issuer delivers to the Trustee all other documents or other information that the Trustee may reasonably require in connection with either defeasance option.

Satisfaction and Discharge

The Indenture, and the rights of the Trustee and the Holders under the Security Document will be discharged and cease to be of further effect (except as to surviving rights of conversion or transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when (1) either (a) all the Notes previously authenticated and delivered (other than certain lost, stolen or destroyed Notes and certain Notes for which provision for payment was previously made and thereafter the funds have been released to the Company) have been delivered to the Trustee for cancellation; or (b) all Notes not previously delivered to the Trustee for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer; (2) the Issuer has deposited or caused to be deposited with the Trustee (or such entity designated by the Trustee for this purpose), Euro or Euro-denominated European Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire indebtedness on the Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; (3) the Issuer has paid or caused to be paid all other sums payable under the Indenture; (4) the Issuer has delivered irrevocable instructions under the Indenture to apply the deposited money towards payment of the Notes at maturity or on the redemption date, as the case may be; and (5) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each to the effect that all conditions precedent under the "*—Satisfaction and Discharge*" section of the Indenture relating to the satisfaction and discharge of the Indenture have been complied with, *provided* that any such counsel may rely on any Officer's Certificate as to matters of fact (including as to compliance with the foregoing clauses (1), (2) and (3)).

No Personal Liability of Directors, Officers, Employees and Shareholders

No director, officer, employee, incorporator or shareholder of the Company or any of its Subsidiaries or Affiliates, as such, shall have any liability for any obligations of the Company under the Note Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the U.S. federal securities laws and it is the view of the SEC that such a waiver is against public policy.

Concerning the Trustee and Certain Agents

Deutsche Trustee Company Limited is to be appointed as Trustee under the Indenture. The Indenture will provide that, except during the continuance of an Event of Default, the Trustee will perform only such duties as are set forth specifically in such Indenture. During the existence of an Event of Default, the

Trustee will exercise such of the rights and powers vested in it under the Indenture and use the same degree of care that a prudent Person would use in conducting its own affairs. The permissive rights of the Trustee to take or refrain from taking any action enumerated in the Indenture will not be construed as an obligation or duty. The Trustee will be permitted to engage in other transactions with the Company and its Affiliates and Subsidiaries.

The Indenture will set out the terms under which the Trustee may retire or be removed, and replaced. Such terms will include, among others, (1) that the Trustee may be removed at any time by the Holders of a majority in principal amount of the then outstanding Notes, or may resign at any time by giving written notice to the Company and (2) that if the Trustee at any time (a) has or acquires a conflict of interest that is not eliminated, or (b) becomes incapable of acting as Trustee or becomes insolvent or bankrupt, then the Company may remove the Trustee, or any Holder who has been a *bona fide* Holder for not less than six months may petition any court for removal of the Trustee and appointment of a successor Trustee.

Any removal or resignation of the Trustee shall not become effective until the acceptance of appointment by the successor Trustee.

The Indenture will contain provisions for the indemnification of the Trustee for any loss, liability, taxes and expenses incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the Indenture.

Notices

All notices to Holders of Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of the Notes, if any, maintained by the Registrar. In addition, for so long as any of the Notes are listed on the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange shall so require, notices with respect to the Notes will be published in a newspaper having general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, posted on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*). In addition, for so long as any Notes are represented by Global Notes, all notices to Holders of the Notes will be delivered to Euroclear and Clearstream, each of which will give such notices to the holders of Book-Entry Interests. Such notices may also be published on the website of the Luxembourg Stock Exchange (*www.bourse.lu*), to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

Each such notice shall be deemed to have been given on the date of such publication or, if published more than once on different dates, on the first date on which publication is made; *provided* that, if notices are mailed, such notice shall be deemed to have been given on the later of such publication and the seventh day after being so mailed. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to such Holder if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Prescription

Claims against the Issuer or any Guarantor for the payment of principal, or premium, if any, on the Notes will be prescribed five years after the applicable due date for payment thereof. Claims against the Issuer for the payment of interest on the Notes will be prescribed three years after the applicable due date for payment of interest.

Currency Indemnity and Calculation of Euro-Denominated Restrictions

The Euro is the sole currency of account and payment for all sums payable by the Company and the Guarantors under or in connection with the Notes and the relevant Guarantees, as the case may be, including damages. Any amount received or recovered in a currency other than the Euro, whether as a result of, or the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, any Guarantor or otherwise by any Holder or by the Trustee, in respect of any sum expressed to be due to it from the Issuer or a Guarantor will only constitute a discharge to the Issuer or such Guarantor, as applicable, to the extent of the Euro amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or,

if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

If that Euro amount is less than the Euro amount expressed to be due to the recipient or the Trustee under any Note, the Issuer and the Guarantors will indemnify them against any loss sustained by such recipient or the Trustee as a result. In any event, the Issuer and the Guarantors will indemnify the recipient or the Trustee on a joint or several basis against the cost of making any such purchase. For the purposes of this currency indemnity provision, it will be prima facie evidence of the matter stated therein for the Holder of a Note or the Trustee to certify in a manner reasonably satisfactory to the Issuer (indicating the sources of information used) the loss it Incurred in making any such purchase. These indemnities constitute a separate and independent obligation from the Issuer's and the Guarantors' other obligations, will give rise to a separate and independent cause of action, will apply irrespective of any waiver granted by any Holder of a Note or the Trustee (other than a waiver of the indemnities set out herein) and will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note, any Guarantee or to the Trustee.

Except as otherwise specifically set forth herein, for purposes of determining compliance with any Euro-denominated restriction herein, the Euro Equivalent amount for purposes hereof that is denominated in a non-Euro currency shall be calculated based on the relevant currency exchange rate in effect on the date such non-Euro amount is Incurred or made, as the case may be.

Enforceability of Judgments

Since substantially all the assets of the Company are held by Subsidiaries located outside the United States, any judgment obtained in the United States against the Issuer or any Guarantor, including judgments with respect to the payment of principal, premium, if any, interest, Additional Amounts, if any, and any redemption price and any purchase price with respect to the Notes or the Guarantees, may not be collectable within the United States.

Consent to Jurisdiction and Service

In relation to any legal action or proceedings arising out of or in connection with the Indenture and the Notes and the Guarantees, the Issuer and each Guarantor will in the Indenture irrevocably submit to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City of New York, County and State of New York, United States.

Governing Law

The Indenture and the Notes, including any Guarantees, and the rights and duties of the parties thereunder will be governed by and construed in accordance with the laws of the State of New York. The Intercreditor Agreement and the rights and duties of the parties thereunder shall be governed by and construed in accordance with English law.

Certain Definitions

"*Acquired Indebtedness*" means Indebtedness (1) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary, or (2) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with such Person becoming a Restricted Subsidiary of the Company or such acquisition or (3) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Company or any Restricted Subsidiary. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of assets and, with respect to clause (3) of the preceding sentence, on the date of the relevant merger, consolidation or other combination.

"*Additional Assets*" means:

(1) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Company, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);

(2) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary of the Company; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary of the Company.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agreed Security Principles*" means the Agreed Security Principles as set out in an annex to the Senior Secured Facilities Agreement as in effect on the Issue Date, as applied *mutatis mutandis* with respect to the Notes in good faith by the Company.

"*Applicable Premium*" means, with respect to any Note, the greater of:

(A) 1% of the principal amount of such Note; and

(B) on any redemption date, the excess (to the extent positive) of:

(a) the present value at such redemption date of (i) the redemption price of such Note at , 2015 (such redemption price (expressed in percentage of principal amount) being set forth in the table under "*—Optional Redemption*" (excluding accrued but unpaid interest)), plus (ii) all required interest payments due on such Note to and including such date set forth in clause (i) (excluding accrued but unpaid interest), computed upon the redemption date using a discount rate equal to the Bund Rate at such redemption date plus 50 basis points; over

(b) the outstanding principal amount of such Note,

as calculated by the Company or on behalf of the Company by such Person as the Company shall designate.

"*Asset Disposition*" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business), transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Company or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction. Notwithstanding the preceding provisions of this definition, the following items shall not be deemed to be Asset Dispositions:

(1) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(2) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(3) a disposition of inventory, metering equipment or other equipment, products or assets in the ordinary course of business;

(4) a disposition of obsolete, damaged, retired, surplus or worn out equipment or other assets or equipment, facilities or other assets that are no longer useful in the conduct of the business of the Company and its Restricted Subsidiaries and any transfer, termination, unwinding or other disposition of hedging instruments or arrangements entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Company);

(5) transactions permitted under "*—Certain Covenants—Merger and Consolidation—The Company*" or a transaction that constitutes a Change of Control;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Company or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Company or the issuance of directors' qualifying shares and shares issued to individuals as required by applicable law;

(7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Company) of less than €10 million or, if greater, 0.4% of Total Assets;

(8) any Restricted Payment that is permitted to be made, and is made, under the covenant described above under "*—Certain Covenants—Limitation on Restricted Payments*" and the making of any Permitted Payment or Permitted Investment or, solely for purposes of clause (3) of the first paragraph under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*," asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;

(9) the granting of Liens not prohibited by the covenant described above under "*—Certain Covenants—Limitation on Liens*";

(10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements or any sale of assets received by the Company or any Restricted Subsidiary upon the foreclosure of a Lien granted in favor of the Company or any Restricted Subsidiary;

(11) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;

(12) foreclosure, taking eminent domain, condemnation, taking by eminent domain or any similar action with respect to any property or other assets;

(13) the sale or discount (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable;

(14) any issuance, sale or other disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;

(15) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(16) any disposition of assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Company or any Restricted Subsidiary to such Person; *provided*, *however*, that the Board of Directors of the Company shall certify that in the opinion of the Board of Directors, the outsourcing transaction will be economically beneficial to the Company and its Restricted Subsidiaries (considered as a whole); *provided*, *further*, that the fair market value of the assets disposed of, when taken together with all other dispositions made pursuant to this clause (16), does not exceed €25 million or, if greater, 1.1% of Total Assets;

(17) any disposition with respect to property built, owned or otherwise acquired by the Company or any Restricted Subsidiary pursuant to customary sale and lease-back transactions, asset securitizations and other similar financings permitted by the Indenture;

(18) any issuance or sale of Preferred Stock that is permitted by the covenant described under "*Certain Covenants—Limitation on Indebtedness*";

(19) sales, transfers or other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding agreements; provided that any cash or Cash Equivalents received in such sale, transfer or disposition is applied in accordance with the covenant described under "*Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*";

(20) sales or dispositions of receivables in connection with any Qualified Receivables Financing or any factoring transaction or in the ordinary course of business;

"*Associate*" means (i) any Person engaged in a Similar Business of which the Company or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Company or any Restricted Subsidiary of the Company.

"*Board of Directors*" means (1) with respect to the Company, the management board of its general partner, Energie Holdco; (2) with respect to the Issuer or any corporation or company, the management board, the board of directors or managers, as applicable, of the corporation or any duly authorized committee thereof; (3) with respect to any partnership, the board of directors or other governing body of the general

partner of the partnership or any duly authorized committee thereof; and (4) with respect to any other Person, the management board, board of directors or any duly authorized committee of such Person serving a similar function. Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of its members or directors, as applicable, (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval).

"*Bund Rate*" means the yield to maturity at the time of computation of direct obligations of the Federal Republic of Germany (Bunds or Bundesanleihen) with a constant maturity (as officially compiled and published in the most recent financial statistics that have become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such financial statistics are not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the redemption date to , 2015; *provided, however*, that if the period from the redemption date to , 2015 is not equal to the constant maturity of a direct obligation of the Federal Republic of Germany for which a weekly average yield is given, the Bund Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of direct obligations of the Federal Republic of Germany for which such yields are given, except that if the period from such redemption date to , 2015 is less than one year, the weekly average yield on actually traded direct obligations of the Federal Republic of Germany adjusted to a constant maturity of one year shall be used.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in Frankfurt, Germany, Luxembourg, London, United Kingdom, or New York, New York, United States are authorized or required by law to close; *provided*, *however*, that for any payments to be made under the Indenture, such day shall also be a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer ("TARGET") payment system is open for the settlement of payments.

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

"*Capitalized Lease Obligations*" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes on the basis of IFRS as in effect on the Issue Date. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined on the basis of IFRS, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"*Cash Equivalents*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian governments, a Permissible Jurisdiction, Switzerland or Norway or, in each case, any agency or instrumentality of thereof (*provided* that the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;

(2) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any lender party to the Senior Secured Facilities Agreement or by any bank or trust company (a) whose commercial paper is rated at least "A-1" or the equivalent thereof by S&P or at least "P-1" or the equivalent thereof by Moody's (or if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (b) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of €500 million;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (1) and (2) entered into with any bank meeting the qualifications specified in clause (2) above;

(4) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing

ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;

(5) readily marketable direct obligations issued by any state of the United States of America, any province of Canada, any Permissible Jurisdiction, Switzerland or Norway or any political subdivision thereof, in each case, having one of the two highest rating categories obtainable from either Moody's or S&P (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;

(6) Indebtedness or preferred stock issued by Persons with a rating of "BBB-" or higher from S&P or "Baa3" or higher from Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;

(7) bills of exchange issued in the United States, Canada, a Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(8) interests in any investment company, money market or enhanced high yield fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (7) above; and

(9) for purposes of clause (2) of the definition of "Asset Disposition," the marketable securities portfolio owned by the Company and its Subsidiaries on the Issue Date.

"*Change of Control*" means:

(1) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), other than one or more Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Issue Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company, provided that for the purposes of this clause, (x) no Change of Control shall be deemed to occur by reason of the Company becoming a Subsidiary of a Successor Parent and (y) any Voting Stock of which any Permitted Holder is the "beneficial owner" (as so defined) shall not be included in any Voting Stock of which any such person or group is the "beneficial owner" (as so defined), unless that person or group is not an affiliate of a Permitted Holder and has greater voting power with respect to that Voting Stock;

(2) following the Initial Public Offering of the Company or any Parent, during any period of two consecutive years, individuals who at the beginning of such period constituted the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Company or any Parent (together with any new directors whose election by the majority of such directors on such Board of Directors of the Company or any Parent or whose nomination for election by shareholders of the Company or any Parent, as applicable, was approved by a vote of the majority of such directors on the Board of Directors of the Company or any Parent then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) ceased for any reason to constitute the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Company or any Parent, then in office; or

(3) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary or one or more Permitted Holders (other than any such sale, lease, transfer, conveyance or other disposition of all or substantially all of the assets of the Company to an Affiliate of the Company for the purpose of reincorporating the Company in another jurisdiction, changing domicile or changing corporate form; provided that such transaction complies with the covenant described under the caption "*—Certain Covenants—Merger and Consolidation*").

"*Clearstream*" means Clearstream Banking, a *société anonyme* as currently in effect or any successor securities clearing agency.

"*Code*" means the United States Internal Revenue Code of 1986, as amended.

"*Commodity Hedging Agreements*" means, in respect of a Person, any commodity purchase contract, commodity futures or forward contract, commodities option contract or other similar contract (including commodities derivative agreements or arrangements), to which such Person is a party or a beneficiary.

"*Consolidated EBITDA*" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) Fixed Charges and Receivables Fees;

(2) Consolidated Income Taxes;

(3) consolidated depreciation expense;

(4) consolidated amortization or impairment expense;

(5) any expenses, charges or other costs related to any Equity Offering, Investment, acquisition (including one-time amounts paid in connection with the acquisition or retention of one or more individuals comprising part of a management team retained to manage the acquired business; *provided* that such payments are made in connection with such acquisition and are consistent with the customary practice in the industry at the time of such acquisition), disposition, recapitalization or the Incurrence of any Indebtedness permitted by the Indenture (in each case whether or not successful) in each case, as determined in good faith by an Officer of the Company;

(6) any minority interest expense (whether paid or not) consisting of income attributable to minority equity interests of third parties in such period;

(7) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Permitted Holders to the extent permitted by the covenant described under "*—Certain Covenants—Limitation of Affiliate Transactions*";

(8) other non-cash charges, write-downs or items reducing Consolidated Net Income (excluding any such non-cash charge, write-down or item to the extent it represents an accrual of or reserve for cash charges in any future period) or other items classified by the Company as extraordinary, exceptional, unusual or nonrecurring items less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period);

(9) the proceeds of any business interruption insurance received or that become receivable during such period to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; and

(10) payments received, or that become receivable, with respect to expenses that are covered by the indemnification provisions in any agreement entered into by such Person in connection with an acquisition to the extent such expenses were included in computing Consolidated Net Income.

Notwithstanding the foregoing, the provision for taxes and the depreciation, amortization, non-cash items, charges and write-downs of a Restricted Subsidiary shall be added to Consolidated Net Income to compute Consolidated EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income (loss) of such Restricted Subsidiary was included in calculating Consolidated Net Income for the purposes of this definition.

"*Consolidated Income Taxes*" means Taxes or other payments, including deferred Taxes, based on income, profits or capital (including without limitation withholding Taxes) and franchise Taxes of any of the Company and its Restricted Subsidiaries whether or not paid, estimated, accrued or required to be remitted to any Governmental Authority.

"*Consolidated Interest Expense*" means, for any period (in each case, determined on the basis of IFRS), the consolidated net interest income/expense of the Company and its Restricted Subsidiaries as defined on a consolidated basis in accordance with IFRS, whether paid or accrued, including any pension liability interest cost, plus or including (without duplication) any interest, costs and charges consisting of:

(1) interest expense attributable to Capitalized Lease Obligations;

(2) amortization of debt discount (but not including deferred financing fees, debt issuance costs, commissions, fees and expenses);

(3) non-cash interest expense;

(4) commissions, discounts and other fees and charges owed with respect to financings not included in clause (2) above;

(5) costs associated with Hedging Obligations (but excluding any amortization of fees or any other non-cash interest expense attributable to the movement in mark-to-market valuation of such obligations or other derivative instruments);

(6) the consolidated interest expense that was capitalized during such period;

(7) interest actually paid by the Company or any Restricted Subsidiary under any Guarantee of Indebtedness or other obligation of any other Person; and

(8) any Receivables Fees and discounts on the sale of accounts receivable in connection with any Qualified Receivables Financing representing, in the Issuer's reasonable determination, the implied interest component of such discount for such period,

less, to the extent otherwise included in Consolidated Interest Expense, (i) any accretion or accrual of discounted liabilities other than Indebtedness, (ii) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisitions, and (iii) any voluntary cash payment of interest prior to the scheduled payment of such interest with respect to Subordinated Shareholder Funding.

"*Consolidated Leverage*" means the sum of the aggregate outstanding Indebtedness of the Company and its Restricted Subsidiaries (excluding Hedging Obligations entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Company); except to the extent provided in clause (c) of the sixth paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*").

"*Consolidated Leverage Ratio*" means, on any determination date, the ratio of (x) Consolidated Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements of the Company are available.

In addition, for purposes of calculating Consolidated EBITDA:

(1) in the event that the Company or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases, retires, extinguishes or otherwise discharges any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which Consolidated EBITDA is being calculated and on or prior to the date on which the event for which the calculation of the Consolidated Leverage Ratio is made (the "Calculation Date"), then Consolidated EBITDA will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Company), including in respect of anticipated expense and cost reductions and synergies, to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance, retirement, extinguishment or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period;

(2) acquisitions or Investments that have been made by the Company or any of its Restricted Subsidiaries, including through mergers or consolidations, or by any Person or any of its Restricted Subsidiaries acquired by the Company or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Company), including in respect of anticipated expense and cost reductions and synergies, as if they had occurred on the first day of the four-quarter reference period;

(3) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness); and

(7) Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with IFRS.

For the purposes of this definition and the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense, Consolidated Net Income, Fixed Charges and Fixed Charge Coverage Ratio, (a) calculations will be as determined in good faith by a responsible financial or chief accounting officer of the Company (including in respect of cost savings and synergies) and (b) in determining the amount of Indebtedness or Equity Interests outstanding on any date of determination, pro forma effect shall be given to any Incurrence, repayment, repurchase, defeasance or other acquisition, retirement or discharge of Indebtedness or Equity Interests as if such transaction had occurred on the first day of the relevant period.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Company and its Restricted Subsidiaries determined on a consolidated basis on the basis of IFRS; *provided*, *however*, that there will not be included in such Consolidated Net Income:

(1) subject to the limitations contained in clause (3) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Company's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution or return on investment (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in clause (2) below);

(2) solely for the purpose of determining the amount available for Restricted Payments under clause (c)(i) of the first paragraph of the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," any net income (loss) of any Restricted Subsidiary (other than Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company or a Guarantor by operation of the terms of such Restricted Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its shareholders (other than (a) restrictions that have been waived or otherwise released, (b) restrictions pursuant to the Notes or the Indenture, (c) restrictions specified in clause (11) (i) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Restrictions on Distributions from Restricted Subsidiaries*," and (d) contractual restrictions in effect on the Issue Date with respect to a Restricted Subsidiary (including pursuant to the Senior Secured Facilities Agreement and the Intercreditor Agreement), and other restrictions with respect to such Restricted Subsidiary that, taken as a whole, are not materially less favorable to the Holders than such restrictions in effect on the Issue Date) except that the Company's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause);

(3) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Company or any Restricted Subsidiaries (including pursuant to any sale/leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Company);

(4) any extraordinary, one-off, exceptional, unusual or nonrecurring gain, loss, expense or charge including for the avoidance of doubt, (i) any separation of any business in connection with its sale or other disposition from the seller and/or its Affiliates and (ii) any charges or reserves in respect of any restructuring, redundancy, relocation, refinancing, integration, severance, post-employment arrangements, signing, retention or completion bonuses, transaction costs, acquisition costs, business optimization, system establishment, governmental investigations, curtailments or modifications to pension or post-retirement benefit schemes, asset impairment charges or the financial impacts of natural disasters (including fire, flood and storm and related events);

(5) the cumulative effect of a change in accounting principles;

(6) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards or relating to compensation plans, employee share options or the recognition of any pension plan deficits;

(7) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or Hedging Obligations and any net gain (loss) from any write-off or forgiveness of Indebtedness;

(8) any unrealized gains or losses in respect of Hedging Obligations or other financial instruments or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;

(9) any unrealized foreign currency transaction gains or losses in respect of Indebtedness or other obligations of the Company or any Restricted Subsidiary denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;

(10) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary;

(11) any purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenues in component amounts required or permitted by IFRS and related authoritative pronouncements (including the effects of such adjustments pushed down to the Company and the Restricted Subsidiaries), as a result of any consummated acquisition or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);

(12) any goodwill or other intangible asset impairment charge, amortization, write-down or write-off;

(13) Consolidated Income Taxes to the extent in excess of cash payments made in respect of such Consolidated Income Taxes; and

(14) the impact of capitalized, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding.

"*Consolidated Secured Leverage Ratio*" means the Consolidated Leverage Ratio, but calculated by excluding all Indebtedness other than Secured Indebtedness.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that does not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor"), including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

  (a) for the purchase or payment of any such primary obligation; or

  (b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Credit Facility*" means, with respect to the Company or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements or instruments (including the Senior Secured Facilities or commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under the original Senior Secured Facilities Agreement or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "Credit Facility" shall include any agreement or instrument (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

"*Currency Agreement*" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Designated Non-Cash Consideration*" means the fair market value (as determined in good faith by the Company) of non-cash consideration received by the Company or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with the covenant described under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*."

"*Designated Preference Shares*" means, with respect to the Company or any Parent, Preferred Stock (other than Disqualified Stock) (a) that is issued for cash (other than to the Company or a Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any such Subsidiary for the benefit of their employees to the extent funded by the Company or such Subsidiary) and (b) that is designated as "Designated Preference Shares" pursuant to an Officer's Certificate of the Company at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in clause (c)(ii) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*."

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary); or

(3) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part, in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; *provided*, *however*, that (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*."

"*Equity Offering*" means (x) a sale of Capital Stock of the Company (other than Disqualified Stock) other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions, or (y) the sale of Capital Stock or other securities, the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of, or as Subordinated Shareholder Funding to, the Company or any of its Restricted Subsidiaries.

"*Escrowed Proceeds*" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

"*Euroclear*" means Euroclear Bank SA/NV, or any successor securities clearing agency.

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

"*European Government Obligations*" means any security that is (1) a direct obligation of Ireland, Belgium, the Netherlands, France, Germany or any country that is a member of the European Monetary Union on the date of the Indenture, for the payment of which the full faith and credit of such country is pledged or (2) an obligation of a person controlled or supervised by and acting as an agency or instrumentality of any such country the payment of which is unconditionally Guaranteed as a full faith and credit obligation by such country, which, in either case under the preceding clause (1) or (2), is not callable or redeemable at the option of the issuer thereof.

"*European Union*" means all members of the European Union as of January 1, 2004.

"*Exchange Act*" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Excluded Contribution*" means Net Cash Proceeds or property or assets received by the Company as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company after the Issue Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Company on the date such contribution to equity is made or such Capital Stock is issued or sold.

"*Existing Senior Secured Facilities Agreement*" means the Issuer's €1,000,000,000 senior facilities agreement dated November 3, 2007, as amended and restated through the Issue Date.

"*fair market value*" may be conclusively established by means of an Officer's Certificate or a resolution of the Board of Directors of the Company setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"*Finance Documents*" means the Senior Secured Facilities Agreement and such other documents identified as "Finance Documents" pursuant to the Senior Secured Facilities Agreement.

"*Fixed Charge Coverage Ratio*" means, with respect to any specified Person on any determination date, the ratio of (x) the aggregate amount of Consolidated EBITDA of such Person for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to (y) the Fixed Charges of such Person for such four consecutive fiscal quarters.

In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases, retires, extinguishes or otherwise discharges any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of such Person), including in respect of anticipated expense and cost reductions and synergies, to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance, retirement, extinguishment or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period; *provided, however*, that the pro forma calculation of Fixed Charges shall not give effect to (i) any Indebtedness incurred on the Calculation Date pursuant to the provisions described in the second paragraph of the covenant described above under "*—Certain Covenants—Limitation on Indebtedness*" or (ii) the discharge on the Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions described in the second paragraph of the covenant described above under "*—Certain Covenants—Limitation on Indebtedness*."

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions or Investments that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or by any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of such Person), including in respect of anticipated expense and cost reductions and synergies, as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable

to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness); and

(7) Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with IFRS.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the Consolidated Interest Expense of such Person for such period; plus

(2) all dividends, whether paid or accrued and whether or not in cash, on or in respect of all Disqualified Stock of the Company or any series of Preferred Stock of any Restricted Subsidiary, other than dividends on Equity Interests payable to the Company or a Restricted Subsidiary.

"*Governmental Authority*" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

provided, *however*, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantor*" means Germany Holdco, Energie Holdco, the Company and any Restricted Subsidiary that Guarantees the Notes.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement (each, a "Hedging Agreement").

"*Holder*" means each Person in whose name the Notes are registered on the Registrar's books, which shall initially be the respective nominee of Clearstream and Euroclear.

"*IFRS*" means International Financial Reporting Standards (formerly International Accounting Standards) ("IFRS") endorsed from time to time by the European Union or any variation thereof with which the Company or its Restricted Subsidiaries are, or may be, required to comply; *provided* that at any date after the Issue Date the Company may make an irrevocable election to establish that "IFRS" shall mean IFRS as in effect on a date that is on or prior to the date of such election.

"*Incur*" means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be "Incurred" at the time any funds are borrowed thereunder.

"*Indebtedness*" means, with respect to any Person on any date of determination (without duplication):

(1) the principal of indebtedness of such Person for borrowed money;

(2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate

then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of Incurrence), in each case only to the extent that the underlying obligation in respect of which the instrument was issued would be treated as Indebtedness;

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), where the deferred payment is arranged primarily as a means of raising finance, which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;

(5) Capitalized Lease Obligations of such Person;

(6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Company) and (b) the amount of such Indebtedness of such other Persons;

(8) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The term "Indebtedness" shall not include Subordinated Shareholder Funding or any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, any asset retirement obligations, any prepayments of deposits received from clients or customers in the ordinary course of business, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Issue Date or in the ordinary course of business.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amounts of funds borrowed and then outstanding. The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in the Indenture, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in clause (7) or (8) above) shall equal the amount thereof that would appear on a balance sheet of such Person (excluding any notes thereto) prepared on the basis of IFRS.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations Incurred in the ordinary course of business and obligations under or in respect of Qualified Receivables Financings;

(ii) in connection with the purchase by the Company or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter; or

(iii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes.

"*Independent Financial Advisor*" means an investment banking or accounting firm of international standing or any third party appraiser of international standing; *provided*, *however*, that such firm or appraiser is not an Affiliate of the Company.

"*Initial Investors*" means Macquarie Group Limited and Macquarie European Infrastructure Fund II and any funds or partnerships managed or advised, directly or indirectly, by Macquarie Group Limited or Macquarie European Infrastructure Fund II or an Affiliate thereof, and, solely in their capacity as such, any limited partner of any such partnership or fund.

"*Initial Public Offering*" means an Equity Offering of common stock or other common equity interests of the Company or any Parent or any successor of the Company or any Parent (the "IPO Entity") following which there is a Public Market and, as a result of which, the shares of common stock or other common equity interests of the IPO Entity in such offering are listed on an internationally recognized exchange or traded on an internationally recognized market.

"*Intercreditor Agreement*" means the Intercreditor Agreement dated on or about the Issue Date, among the lenders and agent under the Senior Secured Facilities Agreement as well as certain hedging counterparties and as further amended from time to time and to which the Trustee will accede on the Issue Date.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement to which such Person is party or a beneficiary.

"*Investment*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of IFRS; *provided*, *however*, that endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment. If the Company or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Company or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time.

For purposes of "*—Certain Covenants—Limitation on Restricted Payments*:"

(1) "Investment" will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary of the Company at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Company's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Company in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Company's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

"*Investment Grade*" means (i) BBB− or higher by S&P, (ii) Baa3 or higher by Moody's, or (iii) the equivalent of such ratings by S&P or Moody's, or of another Nationally Recognized Statistical Ratings Organization.

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities issued or directly and fully guaranteed or insured by a Permissible Jurisdiction or Switzerland, Norway or any agency or instrumentality thereof (other than Cash Equivalents);

(3) debt securities or debt instruments with a rating of "A−" or higher from S&P or "A3" or higher by Moody's or the equivalent of such rating by such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries; and

(4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution.

"*Investment Grade Status*" shall occur when the Notes receive both of the following:

(1) a rating of "BBB−" or higher from S&P; and

(2) a rating of "Baa3" or higher from Moody's;

or the equivalent of such rating by either such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization.

"*IPO Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of common stock or common equity interests of the IPO Entity at the time of closing of the Initial Public Offering multiplied by (ii) the price per share at which such shares of common stock or common equity interests are sold in such Initial Public Offering.

"*Issue Date*" means , 2012.

"*Junior Facilities Agreement*" means the Issuer's €150,000,000 junior term loan facility agreement dated November 3, 2007, as amended through the Issue Date.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"*Management Advances*" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of any Parent, the Company or any Restricted Subsidiary:

(1) (a) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business or (b) for purposes of funding any such person's purchase of Capital Stock or Subordinated Shareholder Funding (or similar obligations) of the Company, its Subsidiaries or any Parent with (in the case of this sub-clause (b)) the approval of the Board of Directors of the Company;

(2) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office; or

(3) not exceeding €2.5 million in the aggregate outstanding at any time.

"*Management Investors*" means the officers, directors, employees and other members of the management of or consultants to any Parent, the Company or any of their respective Subsidiaries, or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Company, any Restricted Subsidiary or any Parent.

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

"*MEIF II Finance*" means MEIF II Finance Holdings S.à r.l.

"*Moody's*" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*Nationally Recognized Statistical Rating Organization*" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

"*Net Available Cash*" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or required to be paid or accrued as a liability under IFRS (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which by its terms or by applicable law are required to be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders (other than any Parent, the Company or any of their respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition; and

(4) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of IFRS, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition.

"*Net Cash Proceeds*" means, with respect to any issuance or sale of Capital Stock or Subordinated Shareholder Funding, the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

"*Note Documents*" means the Notes (including Additional Notes), the Indenture and the Security Documents.

"*Officer*" means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Managing Director, any other Executive Officer or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of the Indenture by the Board of Directors of such Person.

"*Officer's Certificate*" means, with respect to any Person, a certificate signed by one Officer of such Person.

"*Opinion of Counsel*" means a written opinion from legal counsel reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Company or its Subsidiaries.

"*Parent*" means any Person of which the Company at any time is or becomes a Subsidiary after the Issue Date and any holding companies established by any Permitted Holder for purposes of holding its investment in any Parent.

"*Parent Expenses*" means:

(1) costs (including all professional fees and expenses) Incurred by any Parent in connection with reporting obligations under or otherwise Incurred in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, the Indenture or any other agreement or instrument relating to Indebtedness of the Company or any Restricted Subsidiary, including in respect of any reports filed with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;

(2) customary indemnification obligations of any Parent owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with any such Person to the extent relating to the Company and its Subsidiaries;

(3) obligations of any Parent in respect of director and officer insurance (including premiums therefor) to the extent relating to the Company and its Subsidiaries;

(4) fees and expenses payable by any Parent in connection with the Transactions;

(5) general corporate overhead expenses, including (a) professional fees and expenses and other operational expenses of any Parent related to the ownership or operation of the business of the Company or any of its Restricted Subsidiaries, (b) costs and expenses with respect to any litigation or other dispute relating to the Transactions or the ownership, directly or indirectly, by any Parent, (c) any taxes and other fees and expenses required to maintain such Parent's corporate existence and to provide for other ordinary course operating costs, including customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of such Parent and (d) to reimburse reasonable out of pocket expenses of the Board of Directors of such Parent;

(6) other fees, expenses and costs relating directly or indirectly to activities of the Company and its Subsidiaries or any Parent or any other Person which holds directly or indirectly any Capital Stock or Subordinated Shareholder Funding of the Company, in an amount not to exceed €2 million in any fiscal year;

(7) expenses Incurred by any Parent in connection with any Public Offering or other sale of Capital Stock or Indebtedness:

  (x) where the net proceeds of such offering or sale are intended to be received by or contributed to the Company or a Restricted Subsidiary;

  (y) in a pro-rated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed; or

  (z) otherwise on an interim basis prior to completion of such offering so long as any Parent shall cause the amount of such expenses to be repaid to the Company or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed; and

(8) any income taxes, to the extent such income taxes are attributable to the income of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received in cash from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries.

"*Pari Passu Indebtedness*" means Indebtedness of the Company or any Guarantor if such Indebtedness or Guarantee ranks equally in right of payment to the Notes or the Notes Guarantees, as the case may be, and, in each case, is secured by Collateral.

"*Paying Agent*" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Note on behalf of the Company.

"*Permissible Jurisdiction*" means any member state of the European Union other than Greece, Ireland, Portugal and Italy.

"*Permitted Asset Swap*" means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents or Temporary Cash Investments between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with the covenant described under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*."

"*Permitted Collateral Liens*" means:

(1) the Senior Subordinated Notes Liens;

(2) Liens on the Collateral (i) arising by operation of law that are described in one or more of clauses (3), (4), (5), (6), (7), (8), (10), (11), (13), (17), (18), (19), (22) and (23) of the definition of "Permitted Liens" and that, in each case, would not materially interfere with the ability of the Security Trustee to enforce the Security Interest in the Collateral or (ii) that are Liens in secured accounts equally and ratably granted to cash management banks securing cash management obligations;

(3) Liens on the Collateral to secure Indebtedness of the Company or a Restricted Subsidiary that is permitted to be Incurred under clauses (1), (2) (in the case of (2), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of Permitted Collateral Liens), (4)(a), (5)(i) (covering only the shares and assets (to the extent constituting Collateral) of the acquired Person the Indebtedness of which is so secured), (6), (11) or (12) (in the case of (12), provided that the amount of Secured Indebtedness shall not exceed 80% of the aggregate Indebtedness Incurred under such clause), of the second paragraph of the covenant described under "—Certain Covenants—Limitation on Indebtedness" and any Refinancing Indebtedness in respect of such Indebtedness; *provided, however*, that (a) such Lien will not give an entitlement to be repaid with proceeds of enforcement of the Collateral in a manner which is inconsistent with the Intercreditor Agreement and any Additional Intercreditor Agreement and (b) notwithstanding the terms of any Intercreditor Agreement or Additional Intercreditor Agreement, no Indebtedness shall be given super priority status, except that in the context of a full refinancing of the Senior Secured Facilities, super priority status may be incurred with respect to a super priority credit facility (limited to an aggregate amount of commitments not to exceed the greater of €100 million and 0.5 multiplied by Consolidated EBITDA (measured at the time of commitment of such facility)) and to Hedging Obligations;

(4) Liens on the Collateral to secure any Additional Notes;

(5) Liens on the Collateral securing Indebtedness incurred under (i) the first paragraph of "*—Certain Covenants—Limitation on Indebtedness*;" (including any Additional Notes incurred thereunder) or (ii) clause (5)(ii) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*" and any Refinancing Indebtedness in respect of such Indebtedness, *provided* that, in the case of this clause (5), after giving effect to such incurrence on that date, the Consolidated Secured Leverage Ratio is not more than 4.0 to 1.0; and

(6) Liens on the Collateral that secure Indebtedness on a basis junior to the Notes; *provided that*, in the case of this clause (6) the holders of such Indebtedness (or their representative) accede to the Intercreditor Agreement or an Additional Intercreditor Agreement.

"*Permitted Holders*" means, collectively, (1) the Initial Investors and any Affiliate thereof and (2) any Person who is acting as an underwriter in connection with a public or private offering of Capital Stock of any Parent or the Company, acting in such capacity. Any person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investment*" means (in each case, by the Company or any of its Restricted Subsidiaries):

(1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Company or (b) a Person (including the Capital Stock of any such Person) that is engaged in any Similar Business and such Person will, upon the making of such Investment, become a Restricted Subsidiary;

(2) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary;

(3) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(4) Investments in receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business, including Investments in connection with any Qualified Receivables Financing;

(5) Investments in payroll, travel, relocation, entertainment and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) Management Advances;

(7) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments or pursuant to any

plan of reorganization or similar arrangement, including upon the bankruptcy or insolvency of a debtor;

(8) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition (but excluding a Permitted Asset Swap), in each case, that was made in compliance with "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*;"

(9) Investments in existence on, or made pursuant to legally binding commitments in existence on, the Issue Date, and any extension, modification or renewal of any such Investment; *provided* that the amount of the Investment may be increased (a) as required by the terms of the Investment as in existence on the Issue Date or (b) as otherwise permitted under the Indenture;

(10) Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with "*—Certain Covenants—Limitation on Indebtedness*;"

(11) Investments, taken together with all other Investments made pursuant to this clause (11) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of €50 million or 2.1% of Total Assets (net of any distributions, dividends, payments or other returns in respect of such Investments); *provided* that, if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) of the definition of "Permitted Investments" and not this clause;

(12) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under the covenant described under "*—Certain Covenants—Limitation on Liens*;"

(13) any Investment to the extent made using Capital Stock of the Company (other than Disqualified Stock), Subordinated Shareholder Funding or Capital Stock of any Parent as consideration;

(14) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Affiliate Transactions*" (except those described in clauses (1), (3), (6), (8), (9), (11) and (12) of that paragraph);

(15) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property, in any case, in the ordinary course of business and in accordance with the Indenture;

(16) guarantees, keepwells and similar arrangements not prohibited by the covenant described under "*—Certain Covenants—Limitation on Indebtedness*;"

(17) Investments in joint ventures, Unrestricted Subsidiaries or a Similar Business, taken together with all other Investments made pursuant to this clause (17) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of €30 million or 1.3% of Total Assets (net of any distributions, dividends, payments or other returns in respect of such Investments); *provided* that, if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) of the definition of "Permitted Investments" and not this clause; and

(18) Investments in the Notes, any Additional Notes, the Senior Subordinated Notes and any loans under the Senior Secured Facilities Agreement.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens on assets or property of a Restricted Subsidiary that is not the Issuer or a Guarantor securing Indebtedness of any Restricted Subsidiary that is not the Issuer or a Guarantor;

(2) pledges, deposits or Liens under workmen's compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, including carriers', warehousemen's, mechanics', landlords', materialmen's and repairmen's or other like Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;

(4) Liens for taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves required pursuant to IFRS have been made in respect thereof;

(5) Liens in favor of the Company for surety, performance or other bonds, guarantees or letters of credit or bankers' acceptances (not issued to support Indebtedness for borrowed money) issued pursuant to the request of and for the account of the Company or any Restricted Subsidiary in the ordinary course of its business;

(6) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Company and its Restricted Subsidiaries or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company and its Restricted Subsidiaries;

(7) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;

(8) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(9) Liens on assets or property of the Company or any Restricted Subsidiary for the purpose of securing Capitalized Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided* that (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under the Indenture and (b) any such Lien may not extend to any assets or property of the Company or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property;

(10) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary or financial institution;

(11) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(12) Liens existing on the Issue Date, or provided for or required to be granted under written agreements existing on the Issue Date;

(13) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary (or at the time the Company or a Restricted Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, consolidation or other

business combination transaction with or into the Company or any Restricted Subsidiary); *provided*, *however*, that such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Restricted Subsidiary (or such acquisition of such property, other assets or stock); *provided*, *further*, that such Liens are limited to all or part of the same property, other assets or stock (plus improvements, accession, proceeds or dividends or distributions in connection with the original property, other assets or stock) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations to which such Liens relate;

(14) Liens on assets or property of the Company or any Restricted Subsidiary securing Indebtedness or other obligations of the Company or such Restricted Subsidiary owing to the Company or another Restricted Subsidiary, or Liens in favor of the Company or any Restricted Subsidiary;

(15) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under the Indenture; *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(16) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;

(17) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Company or any Restricted Subsidiary of the Company has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(18) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(19) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(20) Liens on cash accounts securing Indebtedness incurred under clause (11) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*" with local financial institutions;

(21) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;

(22) Liens securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities, or liens over cash accounts securing cash pooling arrangements;

(23) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(24) Liens securing Indebtedness which does not exceed €10 million in the aggregate at any one time outstanding;

(25) Permitted Collateral Liens;

(26) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;

(27) any security granted over the marketable securities portfolio described in clause (9) of the definition of "Cash Equivalents" in connection with the disposal thereof to a third party;

(28) Liens on Receivables Assets Incurred in connection with a Qualified Receivables Financing;

(29) Liens on Indebtedness permitted to be Incurred pursuant to clause (14) or (15) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*";

(30) limited recourse Liens in respect of the ownership interests in, or assets owned by, any joint ventures which are not Restricted Subsidiaries securing obligations of such joint ventures; and

(31) Liens on cash securing Indebtedness Incurred under clause (15) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*".

"*Permitted Reorganization*" means a reorganization on a solvent basis involving the business or assets of, or shares of (or other interests in), Energie Holdco, the Company or any of its Restricted Subsidiaries *provided* that:

(1) the Holders of the Notes (or the Security Trustee on their behalf) will continue to have the same or substantially equivalent guarantees and security interests in the same, substantially equivalent or greater value assets and over the shares of (or other interests in) the transferee or other relevant entity (as applicable), and such reorganization (or any consequential change in tax residency or centre of main interest of such entity) will not materially and adversely affect the guarantees, security interests or enforcement remedies of the Holders of the Notes (but excluding for this purpose only any resetting of hardening periods arising from any release and retaking of any security interest) either as a result of that reorganization or (compared to the position 60 days after the Issue Date) cumulatively as a result of that reorganization and all reorganizations effected prior to such date;

(2) to the extent such reorganization requires any release and/or retaking of security interests, the Board of Directors of the relevant Person will provide a certificate to the Trustee and the Security Trustee confirming the solvency of the person granting the guarantee and security interest after giving effect to any transactions relating to such reorganization; and

(3) the Company will (prior to such reorganization) provide to the Trustee and the Security Trustee a certificate from its Board of Directors confirming that no Default or Event of Default is continuing or would arise as a result of such reorganization.

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

"*Preferred Stock*," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"*Public Debt*" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (1) a public offering registered under the Securities Act or (2) a private placement to institutional investors that is underwritten for resale in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC for public resale.

"*Public Market*" means any time after:

(1) an Equity Offering has been consummated; and

(2) shares of common stock or other common equity interests of the IPO Entity having a market value in excess of €75 million on the date of such Equity Offering have been distributed pursuant to such Equity Offering.

"*Public Offering*" means any offering, including an Initial Public Offering, of shares of common stock or other common equity interests that are listed on an exchange or publicly offered (which shall include an offering pursuant to Rule 144A and/or Regulation S under the Securities Act to professional market investors or similar persons).

"*Purchase Money Obligations*" means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"*Qualified Receivables Financing*" means any Receivables Financing of a Receivables Subsidiary that meets the following conditions: (1) the Board of Directors of the Company shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and the Receivables

Subsidiary, (2) all sales of accounts receivable and related assets to the Receivables Subsidiary are made at fair market value (as determined in good faith by the Company), and (3) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Company or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) to secure Indebtedness under a Credit Facility or Indebtedness in respect of the Notes shall not be deemed a Qualified Receivables Financing.

"*Receivables Assets*" means any assets that are or will be the subject of a Qualified Receivables Financing.

"*Receivables Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Financing.

"*Receivables Financing*" means any transaction or series of transactions that may be entered into by any of the Company's Subsidiaries incorporated outside Germany pursuant to which such Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by any of the Company's Subsidiaries incorporated outside Germany), or (b) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of any of the Company's Subsidiaries incorporated outside Germany, and any assets related thereto, including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interest are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedging Obligations entered into by any such Subsidiary in connection with such accounts receivable.

"*Receivables Repurchase Obligation*" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Receivables Subsidiary*" means a Wholly Owned Subsidiary of the Company (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Company in which the Company or any Subsidiary of the Company makes an Investment and to which any Subsidiary of the Company incorporated outside Germany transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Company's Subsidiaries incorporated outside Germany, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Company (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any other Restricted Subsidiary of the Company (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is subject to terms that are substantially equivalent in effect to a guarantee of any losses on securitized or sold receivables by the Company or any other Restricted Subsidiary of the Company, (iii) is recourse to or obligates the Company or any other Restricted Subsidiary of the Company in any way other than pursuant to Standard Securitization Undertakings, or (iv) subjects any property or asset of the Company or any other Restricted Subsidiary of the Company, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Company nor any other Restricted Subsidiary of the Company has any contract, agreement, arrangement or understanding other than on terms which the Company reasonably believes to be no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company; and

(3) to which neither the Company nor any other Restricted Subsidiary of the Company has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*Refinance*" means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in the Indenture shall have a correlative meaning.

"*Refinancing Indebtedness*" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of the Indenture or Incurred in compliance with the Indenture (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Company or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; *provided*, *however*, that:

(1) if the Indebtedness being refinanced constitutes Subordinated Indebtedness, the Refinancing Indebtedness has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is the same as or later than the final Stated Maturity of the Indebtedness being refinanced or, if shorter, the Stated Maturity of the Notes;

(2) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and costs, expenses and fees Incurred in connection therewith); and

(3) if the Indebtedness being refinanced is expressly subordinated to the Notes or the Guarantees, such Refinancing Indebtedness is subordinated to the Notes or the Guarantees on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced,

provided, *however*, that Refinancing Indebtedness shall not include Indebtedness of the Company or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be Incurred from time to time after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

"*Related Person*" means, with respect to any Permitted Holder:

(1) any controlling equityholder or Subsidiary or partner or member of such Person; or

(2) in the case of an individual, any spouse, family member or relative of such individual, any trust or partnership for the benefit of one or more of such individual and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof; or

(3) any trust, corporation, partnership or other Person for which one or more of the Permitted Holders and other Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof, or Persons beneficially holding in the aggregate a majority (or more) controlling interest therein; or

(4) in the case of the Initial Investors any investment fund or vehicle managed, sponsored or advised by such Person or any successor thereto, or by any Affiliate of such Person or any such successor.

"*Related Taxes*" means:

(1) any Taxes, including sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes (other than (x) Taxes measured by income and

(y) withholding imposed on payments made by any Parent), required to be paid (provided such Taxes are in fact paid) by any Parent by virtue of its:

(a) being organized or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Company or any of the Company's Subsidiaries);

(b) issuing or holding Subordinated Shareholder Funding;

(c) being a holding company parent, directly or indirectly, of the Company or any of the Company's Subsidiaries;

(d) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Company or any of the Company's Subsidiaries; or

(e) having made any payment in respect to any of the items for which the Company is permitted to make payments to any Parent pursuant to "*—Certain Covenants—Limitation on Restricted Payments*;" or

(2) if and for so long as the Company is a member of a group filing a consolidated or combined tax return with any Parent, any Taxes measured by income for which such Parent is liable up to an amount not to exceed with respect to such Taxes the amount of any such Taxes that the Company and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis if the Company and its Subsidiaries had paid tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of the Company and its Subsidiaries.

"*Restricted Investment*" means any Investment other than a Permitted Investment.

"*Restricted Subsidiary*" means any Subsidiary of the Company, including the Issuer, other than an Unrestricted Subsidiary.

"*Reversion Date*" means, after the Notes have achieved Investment Grade Status, the date, if any, that such Notes shall cease to have such Investment Grade Status.

"*S&P*" means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*SEC*" means the U.S. Securities and Exchange Commission or any successor thereto.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien on a basis *pari passu* with or senior to the security in favor of the Notes.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Security Documents*" means each collateral pledge agreement, security assignment agreement or other document under which collateral is pledged to secure the Notes.

"*Senior Management*" means the chief executive officer, chief financial officer or any other executive officer of the Company or any of its Subsidiaries.

"*Senior Secured Facilities*" means the facilities made available under the Senior Secured Facilities Agreement.

"*Senior Secured Facilities Agreement*" means the senior secured credit facility agreement dated on or about the Issue Date, among the Company, certain of the Company's Subsidiaries, as borrowers and guarantors, the senior lenders (as named therein), and Unicredit Bank AG, London Branch, as facility agent and security trustee, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time.

"*Senior Subordinated Notes*" means the € million % Senior Subordinated Notes due 2020 issued by the Company on the Issue Date.

"*Senior Subordinated Notes Liens*" means the second-priority security interests over the limited partnership interests and the general partnership interests in the Company, the shares of capital stock of the Holdcos and the Issuer, receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an intercompany loan from Germany Holdco to the Company, receivables of the Company and Energie Holdco, accounts of the Company and Energie Holdco and any other Collateral, each securing the Senior

Subordinated Notes and any Refinancing Indebtedness in respect of the Senior Subordinated Notes; *provided*, *however*, that such Liens will not give an entitlement to be repaid with proceeds of enforcement of such Collateral in a manner which is inconsistent with the Intercreditor Agreement and any Additional Intercreditor Agreement.

"*Significant Subsidiary*" means any Restricted Subsidiary that meets any of the following conditions:

(1) the Company's and its Restricted Subsidiaries' investments in and advances to the Restricted Subsidiary exceed 10% of the total assets of the Company and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year;

(2) the Company's and its Restricted Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the Restricted Subsidiary exceeds 10% of the total assets of the Company and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year; or

(3) the Company's and its Restricted Subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the Restricted Subsidiary exceeds 10% of such income of the Company and its Restricted Subsidiaries on a consolidated basis for the most recently completed fiscal year.

"*Similar Business*" means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Issue Date, (b) (i) the energy management, energy services and energy contracting businesses including, but not limited to, sub-metering, rental, sales or other provision of meters and sub-metering devices or any other devices that are installed or provisioned due to applicable regulatory requirements or voluntarily for energy or water efficiency purposes or for any other purpose that is required to fulfil regulatory requirements and other purposes (including but not limited to smoke detectors, adapterm, CHP units, heat stations, boilers and cooling equipment); and (ii) metering and sub-metering services such as meter reading, billing, and associated services such as energy certification, legionella analysis, data analysis, provision of consumption-related data (including portal solutions and other electronic services) and energy consulting including with respect to energy efficiency and energy consumption; and (c) any businesses, services and activities engaged in by the Company or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Company or any Subsidiary of the Company incorporated outside Germany which the Company has determined in good faith to be customary in a Receivables Financing, including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means, with respect to any person, any Indebtedness (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the Notes or its Guarantees pursuant to a written agreement, including any Subordinated Shareholder Funding and the Senior Subordinated Notes.

"*Subordinated Shareholder Funding*" means, collectively, any funds provided to the Company by any Parent, any Affiliate of any Parent or any Permitted Holder or any Affiliate thereof in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, in each case issued to and held by any of the foregoing Persons, together with any such security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Funding; *provided*, *however*, that such Subordinated Shareholder Funding:

(1) does not mature or require any amortization, redemption or other repayment of principal or any sinking fund payment prior to the first anniversary of the Stated Maturity of the Notes (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Company or any funding meeting the requirements of this definition);

(2) does not require, prior to the first anniversary of the Stated Maturity of the Notes, payment of cash interest, cash withholding amounts or other cash gross-ups, or any similar cash amounts;

(3) contains no change of control or similar provisions and does not accelerate and has no right to declare a default or event of default or take any enforcement action or otherwise require any cash payment, in each case, prior to the first anniversary of the Stated Maturity of the Notes;

(4) does not provide for or require any security interest or encumbrance over any asset of the Company or any of its Subsidiaries; and

(5) pursuant to its terms is fully subordinated and junior in right of payment to the Notes pursuant to subordination, payment blockage and enforcement limitation terms which are customary in all material respects for similar funding.

"*Subsidiary*" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or

(2) any partnership, joint venture, limited liability company or similar entity of which:

  (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and

  (b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"*Successor Parent*" means, with respect to any Person, any other Person with more than 50% of the total voting power of the Voting Stock of which is, at the time the first Person becomes a Subsidiary of such other Person, "beneficially owned" (as defined below) by one or more Persons that "beneficially owned" (as defined below) more than 50% of the total voting power of the Voting Stock of the first Person immediately prior to the first Person becoming a Subsidiary of such other Person. For purposes hereof, "beneficially own" has the meaning correlative to the term "beneficial owner," as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the Issue Date).

"*Taxes*" means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including, without limitation, interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

"*Tax Sharing Agreement*" means any tax sharing or profit and loss pooling or similar agreement with customary or arm's-length terms entered into with any Parent or Unrestricted Subsidiary, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and of the Indenture.

"*Temporary Cash Investments*" means any of the following:

(1) any investment in

  (a) direct obligations of, or obligations Guaranteed by, (i) the United States of America or Canada, (ii) any Permissible Jurisdiction, (iii) Switzerland or Norway, (iv) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Company or a Restricted Subsidiary in that country with such funds or (v) any agency or instrumentality of any such country or member state; or

  (b) direct obligations of any country recognized by the United States of America rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(2) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by:

(a) any lender under the Senior Secured Facilities Agreement;

(b) any institution authorized to operate as a bank in any of the countries or member states referred to in subclause (1)(a) above; or

(c) any bank or trust company organized under the laws of any such country or member state or any political subdivision thereof,

in each case, having capital and surplus aggregating in excess of €250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least "A" by S&P or "A-2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) or (2) above entered into with a Person meeting the qualifications described in clause (2) above;

(4) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Company or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(5) Investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, any Permissible Jurisdiction or Switzerland, Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least "BBB" by S&P or "Baa3" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(6) bills of exchange issued in the United States, Canada, any Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(7) any money market deposit accounts issued or offered by a commercial bank organized under the laws of a country that is a member of the Organization for Economic Co-operation and Development, in each case, having capital and surplus in excess of €250 million (or the foreign currency equivalent thereof) or whose long term debt is rated at least "A" by S&P or "A2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(8) investment funds investing 95% of their assets in securities of the type described in clauses (1) through (7) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution); and

(9) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

"*Total Assets*" means the consolidated total assets of the Company and its Restricted Subsidiaries in accordance with IFRS as shown on the most recent balance sheet of such Person.

"*Transaction*" means the offering and sale of the Notes and the Senior Subordinated Notes, the entering into of the Senior Secured Facilities Agreement and the refinancing of the Existing Senior Secured Facilities Agreement with the proceeds from the offering of the Notes and the Senior Subordinated Notes and the Senior Secured Facilities, together with cash on hand.

"*Transaction Documents*" has the meaning set forth in the Senior Secured Facilities Agreement as in effect on the Issue Date.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended.

"*U.S. GAAP*" means generally accepted accounting principles in the United States of America as in effect from time to time.

"*Uniform Commercial Code*" means the New York Uniform Commercial Code.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company in the manner provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

As of the Issue Date, GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and its subsidiaries (the GWE Group) and Thermie Serres S.A. will be Unrestricted Subsidiaries.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein but not including the Issuer) to be an Unrestricted Subsidiary only if:

(1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Company or any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and

(2) such designation and the Investment of the Company in such Subsidiary complies with "*—Certain Covenants—Limitation on Restricted Payments*."

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, that immediately after giving effect to such designation (1) no Default or Event of Default would result therefrom and (2)(x) the Company could Incur at least €1.00 of additional Indebtedness pursuant to the first paragraph of the "*Limitation on Indebtedness*" covenant or (y) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such designation, in each case, on a pro forma basis taking into account such designation. Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of such Board of Directors giving effect to such designation or an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Voting Stock*" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

"*Wholly Owned Subsidiary*" means a Restricted Subsidiary of the Company, all of the Voting Stock of which (other than directors' qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Company or another Wholly Owned Subsidiary) is owned by the Company or another Wholly Owned Subsidiary.

DESCRIPTION OF SENIOR SUBORDINATED NOTES

The following is a description of the € aggregate principal amount of % Senior Subordinated Notes due 2020 (the "Notes"). The Notes will be issued by Techem Energy Metering Service GmbH & Co. KG, a limited partnership (*Kommanditgesellschaft*) with a company with limited liability as general partner (*GmbH & Co. KG*) organized under the laws of Germany (the "Issuer"), and unconditionally guaranteed on a senior subordinated basis by Techem GmbH (the "Senior Secured Notes Issuer"), the limited partner of the Issuer, MEIF II Germany Holdings S.à r.l. ("Germany Holdco"), the general partner of the Issuer, Techem Energie GmbH ("Energie Holdco" and, together with Germany Holdco, the "Holdcos"), and the Subsidiary Guarantors specified below.

In this Description of the Senior Subordinated Notes, the "Issuer" refers only to Techem Energy Metering Service GmbH & Co. KG, and any successor obligor to Techem Energy Metering Service GmbH & Co. KG on the Notes, and not to any of its subsidiaries or to its limited partner, Holdco. The Senior Secured Notes Issuer is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of Germany and will issue the Senior Secured Notes due 2019 (the "Senior Secured Notes") concurrently with the issuance of the Notes.

We expect to use the net proceeds of the offering of the Notes and the Senior Secured Notes, together with the proceeds from the Senior Secured Facilities and cash on hand, to repay our outstanding indebtedness under the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, to terminate existing swap agreements, the Existing Senior Secured Facilities Agreement and the Junior Facilities Agreement, as well as for the payment of related fees and expenses. See "*Use of Proceeds*." The closing of the offering of the Notes and the Senior Secured Notes is conditional upon the concurrent repayment of the lenders under the Existing Senior Secured Facilities Agreement and the execution of the Senior Secured Facilities Agreement.

The Indenture will be unlimited in aggregate principal amount, of which € million aggregate principal amount of Notes will be issued in this offering. The Issuer may issue an unlimited principal amount of additional Notes having identical terms and conditions as the Notes (the "Additional Notes") so long as such issuance is in compliance with the covenants contained in the Indenture, including the covenant restricting the Incurrence of Indebtedness (as described below under "*—Certain Covenants—Limitation on Indebtedness*"). The Notes issued in this offering and, if issued, any Additional Notes will be treated as a single class for all purposes under the Indenture, including, without limitation, with respect to waivers, amendments, redemptions and offers to purchase, except as otherwise provided for in the Indenture. Unless the context otherwise requires, in this "*Description of Senior Subordinated Notes*," references to the "Notes" include the Notes and any Additional Notes that are actually issued. For a discussion of U.S. federal income tax implications of such an issuance of Additional Notes, see "*Certain Tax Consequences—U.S. Taxation—Additional Notes.*"

The Indenture and the Guarantees thereunder will be subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreements. The terms of the Intercreditor Agreement are important to understanding the terms and ranking of the Liens on the Collateral securing the Notes and the Guarantees. Please see "*Description of Certain Financing Arrangements—Intercreditor Agreement*" for a description of the material terms of the Intercreditor Agreement.

The Notes will be obligations of the Issuer and will be guaranteed on a senior subordinated basis by Germany Holdco (the "Germany Holdco Guarantee"), Energie Holdco (the "Energie Holdco Guarantee" and, together with the Germany Holdco Guarantee, the "Holdco Guarantees") and the Subsidiary Guarantors, including the Senior Secured Notes Issuer, specified below.

The Issuer will issue the Notes under an Indenture to be dated as of the Issue Date among, *inter alios*, the Issuer, the Senior Secured Notes Issuer and Deutsche Trustee Company Limited, as Trustee (the "*Indenture*"). The Guarantors that are Restricted Subsidiaries of the Issuer, including the Senior Secured Notes Issuer, are referred to herein as the "Subsidiary Guarantors," and each guarantee provided by such a Subsidiary Guarantor, a "Subsidiary Guarantee." The Notes will be issued in private transactions that are not subject to the registration requirements of the Securities Act. See "*Notice to Investors*." The terms of the Notes include those stated in the Indenture and will not incorporate provisions by reference to, and will not be subject to the provisions of, the Trust Indenture Act. The Notes are subject to all such terms pursuant to the provisions of the Indenture, and Holders of the Notes are referred to the Indenture for a statement thereof.

The following is a summary of the material provisions of the Indenture and the Security Documents and refers to the Intercreditor Agreement. It does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all provisions of the Indenture and the Security Documents, respectively. Because this is a summary, it may not contain all the information that is important to you. You should read the Indenture, the Intercreditor Agreement and the Security Documents in their entirety. Copies of the Indenture, the Intercreditor Agreement and the Security Documents are available as described under "*Available Information*." You can find the definitions of certain terms used in this description under "*—Certain Definitions.*" See "*Description of Certain Financing Arrangements—Intercreditor Agreement*" for a description of the material terms of the Intercreditor Agreement.

The registered holder of a Note will be treated as the owner of it for all purposes. Only registered holders will have rights under the Indenture.

Brief Description of the Notes and the Guarantees

The Notes

The Notes:

- are senior subordinated obligations of the Issuer, secured by the Collateral described below on a second priority basis;
- are subordinated in right of payment to any existing or future Senior Indebtedness of the Issuer, including the Issuer's obligations under the Senior Secured Facilities Agreement, the Senior Secured Notes and any Hedging Agreements;
- are *pari passu* in right of payment with any existing or future senior subordinated obligations of the Issuer;
- are senior in right of payment to any existing or future obligations of the Issuer that are expressly subordinated to the Notes;
- are effectively subordinated in right of payment to any existing and future Indebtedness of the Issuer and its Subsidiaries that is secured by liens senior to the liens securing the Notes or secured with property that does not secure the Notes, to the extent of the value of the property and assets securing such Indebtedness;
- are effectively senior in right of payment to any existing or future unsecured obligations of the Issuer and obligations of the Issuer that are secured on a basis junior to the Notes, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes; and
- are unconditionally guaranteed on a senior subordinated basis by the Guarantors, subject to the guarantee limitations described herein and in "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability.*"

The Holdco Guarantees

The Holdco Guarantees:

- are the senior subordinated obligations of the Holdcos, secured by the Collateral described below on a second priority basis;
- are subordinated in right of payment to any existing or future Senior Indebtedness of the Holdcos, including the Holdcos' obligations under the Senior Secured Facilities Agreement and the Senior Secured Notes;
- are *pari passu* in right of payment with any existing or future senior subordinated obligations of the Holdcos;
- are senior in right of payment to any existing or future obligations of the Holdcos that are expressly subordinated to the Holdco Guarantees;
- are effectively subordinated in right of payment to any existing and future Indebtedness of the Holdcos that is secured by liens ranking senior to the liens securing the Holdco Guarantees or secured with property that does not secure the Holdco Guarantees, to the extent of the value of the property and assets securing such Indebtedness;

- are effectively senior in right of payment to any existing or future unsecured obligations of the Holdcos and obligations of the Holdcos that are secured on a basis junior to the Notes, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes; and
- are subject to limitations described herein and in "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*."

The Subsidiary Guarantees

The Subsidiary Guarantees:

- are the senior subordinated obligations of the relevant Subsidiary Guarantor;
- are subordinated in right of payment to any existing or future Senior Indebtedness of the relevant Subsidiary Guarantor, including the Subsidiary Guarantor's obligations under the Senior Secured Facilities Agreement, the Senior Secured Notes and any Hedging Agreements;
- are *pari passu* in right of payment with any existing or future senior subordinated obligations of the relevant Subsidiary Guarantor;
- are senior in right of payment to any existing or future obligations of the relevant Subsidiary Guarantor that are expressly subordinated to its Guarantee of the Senior Subordinated Notes;
- are effectively subordinated in right of payment to any existing and future Indebtedness of the relevant Subsidiary Guarantor that is secured by liens ranking senior to the liens securing such Subsidiary Guarantor's Guarantee or secured with property that does not secure such Guarantee, to the extent of the value of the property and assets securing such Indebtedness;
- are effectively senior in right of payment to any existing or future unsecured obligations of the relevant Subsidiary Guarantor and obligations of the relevant Subsidiary Guarantor that are secured on a basis junior to the Notes, to the extent of the value of the Collateral that is available to satisfy the obligations under the Notes; and
- are subject to limitations described herein and in "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*."

Subordination on the Basis of the Intercreditor Agreement

Each of the Issuer's obligations under the Notes and each Guarantors' obligation under the Guarantees is a senior subordinated obligation of the Issuer or the relevant Guarantor, as applicable, which means that, pursuant to the terms of the Intercreditor Agreement, each such obligation ranks behind, and is expressly subordinated to, all the existing and future Senior Indebtedness of the Issuer or the relevant Guarantor, including any obligations owed by the Issuer or the relevant Guarantor under the Senior Facilities Agreement and the Senior Secured Notes. The ability to take enforcement action against the Issuer or the Guarantors is subject to significant restrictions imposed by the Intercreditor Agreement and the terms of the Guarantees, and potentially any Additional Intercreditor Agreements entered into after the Issue Date. For a description of the restrictions imposed by the Intercreditor Agreement, see "*Certain Financing Arrangements—Intercreditor Agreement*." Because of the foregoing subordination provisions, it is likely that holders of Senior Indebtedness and other creditors (including trade creditors) of the Issuer or a Guarantor would recover disproportionately more than the Holders of the Notes recover in any insolvency or similar proceeding relating to the Issuer or such Guarantor. In any such case, there may be insufficient assets, or no assets, remaining to pay the principal of or interest on the Notes. As of June 30, 2012, after giving effect to the Refinancing, the Issuer and its Subsidiaries would have had € million in Senior Indebtedness.

Principal, Maturity and Interest

The Issuer will issue € million in aggregate principal amount of Notes on the Issue Date. The Notes will mature on , 2020. The Notes will be issued in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof.

The rights of holders of beneficial interests in the Notes to receive the payments on such Notes are subject to applicable procedures of Euroclear and Clearstream. If the due date for any payment in respect of any Notes is not a Business Day at the place at which such payment is due to be paid, the Holder thereof will

not be entitled to payment of the amount due until the next succeeding Business Day at such place, and will not be entitled to any further interest or other payment as a result of any such delay.

Interest on the Notes will accrue at the rate of % per annum and will be payable, in cash, semi-annually in arrears on and of each year, commencing on , 2013, to holders of record on the immediately preceding and , respectively. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each interest period shall end on (but not include) the relevant interest payment date.

Methods of Receiving Payments on the Notes

Principal, premium, if any, interest and Additional Amounts (defined below), if any, on the Global Notes (as defined below) will be payable at the specified office or agency of one or more Paying Agents; provided that all such payments with respect to Notes represented by one or more Global Notes registered in the name of or held by a nominee of Euroclear or Clearstream, as applicable, will be made by wire transfer of immediately available funds to the account specified by the Holder or Holders thereof.

Principal, premium, if any, interest and Additional Amounts, if any, on any certificated securities ("Definitive Registered Notes") will be payable at the specified office or agency of our Paying Agent in the City of London maintained for such purposes. In addition, interest on the Definitive Registered Notes may be paid by check mailed to the person entitled thereto as shown on the register for the Definitive Registered Notes. See "*—Paying Agent and Registrar for the Notes.*"

Paying Agent and Registrar for the Notes

The Issuer will maintain one or more paying agents (each a "Paying Agent") for the Notes in the City of London (the "Principal Paying Agent"). The Issuer will also undertake, to the extent possible, to use reasonable efforts to maintain a paying agent in a member state of the European Union that will not be obliged to withhold or deduct tax pursuant to the European Council Directive 2003/48/EC regarding the taxation of savings income (the "Directive") or any law implementing or complying with or introduced in order to conform to such Directive. The initial Paying Agent for the Notes will be Deutsche Bank AG, London Branch in London.

The Issuer will also maintain one or more registrars (each, a "Registrar") with offices in Luxembourg, for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and its rule so require. The Issuer will also maintain a transfer agent in Luxembourg. The initial Registrar and transfer agent will be Deutsche Bank Luxembourg S.A. in Luxembourg. The Registrar and the transfer agent in Luxembourg will maintain a register reflecting ownership of Definitive Registered Notes outstanding from time to time, if any, and will make payments on and facilitate transfers of Definitive Registered Notes on behalf of the Issuer. Each transfer agent shall perform the functions of a transfer agent.

The Issuer may change any Paying Agent, Registrar or transfer agent for the Notes without prior notice to the Holders of the Notes. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar in respect of the Notes. For so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, the Issuer will publish a notice of any change of Paying Agent, Registrar or transfer agent in a newspaper having a general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, post such notice on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Transfer and Exchange

The Notes will initially be issued in the form of registered notes in global form without interest coupons, as follows:

- The Notes sold within the United States to qualified institutional buyers pursuant to Rule 144A under the Securities Act will initially be represented by one or more global notes in registered form without interest coupons attached (the "144A Global Notes").
- The 144A Global Notes will, upon issuance, be deposited with and registered in the name of the nominee of the common depositary for the accounts of Euroclear and Clearstream.

- The Notes sold outside the United States pursuant to Regulation S under the Securities Act will initially be represented by one or more global notes in registered form without interest coupons attached (the "Regulation S Global Notes" and, together with the 144A Global Notes, the "Global Notes").
- The Regulation S Global Notes will, upon issuance, be deposited with and registered in the name of the nominee of the common depositary for the accounts of Euroclear and Clearstream.

Ownership of interests in the Global Notes ("Book-Entry Interests") will be limited to persons that have accounts with Euroclear or Clearstream or persons that may hold interests through such participants. Ownership of interests in the Book-Entry Interests and transfers thereof will be subject to the restrictions on transfer and certification requirements summarized below and described more fully under "Notice to Investors." In addition, transfers of Book-Entry Interests between participants in Euroclear or participants in Clearstream will be effected by Euroclear or Clearstream, as applicable, pursuant to customary procedures and subject to the applicable rules and procedures established by Euroclear or Clearstream, as applicable, and their respective participants.

Book-Entry Interests in the 144A Global Notes may be transferred to a person who takes delivery in the form of Book-Entry Interests in the Regulation S Global Notes only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made in accordance with Regulation S under the Securities Act.

Prior to the date that is 40 days after the date of initial issuance of the Notes, ownership of Book Entry Interests in Regulation S Global Notes will be limited to persons that have accounts with Euroclear or Clearstream or persons who hold interests through Euroclear or Clearstream, and any sale or transfer of such interest to U.S. persons shall not be permitted during such period unless such resale or transfer is made pursuant to Rule 144A under the Securities Act. Subject to the foregoing, Regulation S Book Entry Interests may be transferred to a person who takes delivery in the form of 144A Book Entry Interests only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A or otherwise in accordance with the transfer restrictions described under "Notice to Investors" and in accordance with any applicable securities law of any other jurisdiction.

Any Book Entry Interest that is transferred as described in the immediately preceding paragraphs will, upon transfer, cease to be a Book Entry Interest in the Global Note from which it was transferred and will become a Book Entry Interest in the Global Note to which it was transferred. Accordingly, from and after such transfer, it will become subject to all transfer restrictions, if any, and other procedures applicable to Book Entry Interests in the Global Note to which it was transferred.

If Definitive Registered Notes are issued, they will be issued only in minimum denominations of €100,000 aggregate principal amount and integral multiples of €1,000 in excess thereof, upon receipt by the Registrar of instructions relating thereto and any certificates, opinions and other documentation required by the Indenture. It is expected that such instructions will be based upon directions received by Euroclear or Clearstream, as applicable, from the participant that owns the relevant Book-Entry Interests. Definitive Registered Notes issued in exchange for a Book-Entry Interest will, except as set forth in the Indenture or as otherwise determined by the Issuer to be in compliance with applicable law, be subject to, and will have a legend with respect to, the restrictions on transfer summarized below and described more fully under "*Transfer Restrictions*."

Subject to the restrictions on transfer referred to above, Notes issued as Definitive Registered Notes may be transferred or exchanged, in whole or in part, in minimum denominations of €100,000 in aggregate principal amount and integral multiples of €1,000 in excess thereof. In connection with any such transfer or exchange, the Indenture will require the transferring or exchanging holder to, among other things, furnish appropriate endorsements and transfer documents, to furnish information regarding the account of the transferee at Euroclear or Clearstream, as applicable, to furnish certain certificates and opinions, and to pay any taxes, duties and governmental charges in connection with such transfer or exchange. Any such transfer or exchange will be made without charge to the Holder, other than any taxes, duties and governmental charges payable in connection with such transfer.

Notwithstanding the foregoing, the Issuer is not required to register the transfer or exchange of any Notes:

(1) for a period of 15 days prior to any date fixed for the redemption of such Notes;

(2) for a period of 15 days immediately prior to the date fixed for selection of such Notes to be redeemed in part;

(3) for a period of 15 days prior to the record date with respect to any interest payment date applicable to such Notes; or

(4) which the Holder has tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Disposition Offer.

The Issuer, the Trustee, the Registrar and the Paying Agents will be entitled to treat the Holder of a Note as the owner of it for all purposes.

Restricted Subsidiaries and Unrestricted Subsidiaries

Immediately after the issuance of the Notes, all of the Issuer's Subsidiaries will be Restricted Subsidiaries other than GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and its subsidiaries (the "GWE Group") and Thermie Serres S.A. and its subsidiaries from time to time. In the circumstances described below under "*—Certain Definitions—Unrestricted Subsidiary*," the Issuer will be permitted to designate Restricted Subsidiaries (other than the Issuer) as Unrestricted Subsidiaries. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants in the Indenture.

As at and for the twelve months ended June 30, 2012, the Unrestricted Subsidiaries accounted for 6.6% of the revenue, 8.3% of the EBITDA and 5.4% of the assets of the Issuer and its Subsidiaries, on a consolidated basis, and, after giving effect to the Refinancing, would have accounted for % of the total indebtedness of the Issuer and its Subsidiaries. Thermie Serres S.A. is a partially owned subsidiary of the Issuer's subsidiary Techem Energy Contracting Hellas EPE, and is accounted for under the equity method. Therefore, Thermie Serres is not included in the figures contained in this paragraph.

Guarantees

The obligations of the Issuer pursuant to the Notes, including any payment obligation resulting from a Change of Control, will (subject to the Agreed Security Principles) be guaranteed, jointly and severally on a senior basis, by the Holdcos, the Senior Secured Notes Issuer and each subsidiary of the Issuer that is a guarantor under the Senior Secured Facilities Agreement other than Techem Danmark A/S (each a "Guarantor" and such guarantee, a "Guarantee").

The initial Guarantors, the type of Guarantee and their respective jurisdictions of incorporation will be as follows:

MEIF II Germany Holdings S.à r.l.	Holdco Guarantee	Luxembourg
Techem Energie GmbH	Holdco Guarantee	Germany
Techem GmbH	Subsidiary Guarantee	Germany
Techem Energy Services GmbH	Subsidiary Guarantee	Germany
Techem Energy Contracting GmbH	Subsidiary Guarantee	Germany
bautec Energiemanagement GmbH	Subsidiary Guarantee	Germany
Techem Verwaltungs GmbH	Subsidiary Guarantee	Germany
Techem Vermögensverwaltung GmbH & Co. KG	Subsidiary Guarantee	Germany
Techem Messtechnik GmbH	Subsidiary Guarantee	Austria
Caloribel S.A.	Subsidiary Guarantee	Belgium
Techem SAS	Subsidiary Guarantee	France
Techem Energie France SAS	Subsidiary Guarantee	France
Techem S.r.l.	Subsidiary Guarantee	Italy
Techem Energy Services B.V.	Subsidiary Guarantee	Netherlands
"Techem"—Techniki Pomiarowe Sp. z o.o.	Subsidiary Guarantee	Poland

Techem Danmark A/S, a guarantor under the Senior Secured Facilities and the Senior Secured Notes, will not guarantee the Notes due to restrictions under Danish law. See "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests—Denmark*".

As of and for the twelve months ended June 30, 2012, the Issuer, the Senior Secured Notes Issuer and the Subsidiary Guarantors accounted for 84.1% of the revenue, 88.4% of the EBITDA and 90.7% of the assets of the Issuer and its Subsidiaries, on a consolidated basis and, after giving effect to the Refinancing, would have accounted for % of the total indebtedness of the Issuer and its Subsidiaries. The Holdcos, which

will guarantee the Notes, are not included in these figures. For information on the calculation of the figures contained in this paragraph, see "*Important Information About This Offering Memorandum—Presentation of Financial Information*."

In addition, as described below under "*—Certain Covenants—Additional Guarantees*" and subject to the Intercreditor Agreement and the Agreed Security Principles, each Restricted Subsidiary of the Issuer that guarantees the Senior Secured Facilities Agreement, Public Debt or certain other indebtedness permitted under the Indenture shall also enter into a supplemental indenture as a Guarantor of the Notes and accede to the Intercreditor Agreement.

The Agreed Security Principles apply to the granting of guarantees and security in favor of obligations under the Senior Secured Facilities Agreement, the Notes and the Senior Secured Notes. The Agreed Security Principles include restrictions on the granting of guarantees where, among other things, such grant would be restricted by general statutory or other legal limitations or requirements, financial assistance rules, corporate benefit rules, fraudulent preference rules, "thin capitalization" rules, retention of title claims and similar matters.

Each Guarantee will be limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the United States Bankruptcy Code or any comparable provision of foreign or state law, or as otherwise required under the Agreed Security Principles to comply with corporate benefit, financial assistance and other laws. By virtue of this limitation, a Guarantor's obligation under its Guarantee could be significantly less than amounts payable with respect to the Notes, or a Guarantor may have effectively no obligation under its Guarantee. See "*Risk Factors—Risks Related to Our Structure—Each Note Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability"* and *"—The insolvency laws of Germany and the respective jurisdictions of the Guarantors may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes from recovering payments due on the Notes.*"

The Guarantee of a Guarantor will terminate and release upon:

- except in the case of the Holdco Guarantees, a sale or other disposition (including by way of consolidation or merger) of ownership interests in the Guarantor (directly or through a parent company) such that the Guarantor does not remain a Restricted Subsidiary, or the sale or disposition of all or substantially all the assets of the Guarantor (other than to the Issuer or a Restricted Subsidiary), in each case, otherwise permitted by the Indenture;
- except in the case of the Holdco Guarantees, the designation in accordance with the Indenture of the Guarantor as an Unrestricted Subsidiary;
- defeasance or discharge of the Notes, as provided in "*—Defeasance*" and "*—Satisfaction and Discharge*;"
- so long as no Event of Default has occurred and is continuing, upon the release of the Guarantor's Guarantee under any Indebtedness that triggered such Guarantor's obligation to guarantee the Notes under the covenant described in "*—Certain Covenants—Additional Guarantees"* to the extent that such Guarantor does not guarantee any Credit Facility (including the Senior Secured Facilities) or Public Debt;
- in accordance with the provisions of the Intercreditor Agreement or any Additional Intercreditor Agreement; or
- as described under "*—Amendments and Waivers*."

A substantial portion of the operations of the Issuer are conducted through its Restricted Subsidiaries. Claims of creditors of non-guarantor Restricted Subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those Restricted Subsidiaries, and claims of preferred and minority stockholders (if any) of those Restricted Subsidiaries generally will have priority with respect to the assets and earnings of those Restricted Subsidiaries over the claims of creditors of the Issuer and the Guarantors, including Holders of the Notes. The Notes and each Guarantee therefore will be effectively subordinated to creditors (including trade creditors) and preferred and minority stockholders (if any) of Restricted Subsidiaries of the Issuer (other than the Guarantors). As of June 30, 2012, after giving effect to the Refinancing, the total liabilities of the Issuer's Restricted Subsidiaries that will not guarantee the Notes (other than the Issuer and Techem Danmark A/S) would have been €19.9 million. Techem Danmark A/S

guarantees the Senior Secured Notes and the Senior Secured Facilities. Although the Indenture will limit the incurrence of Indebtedness, Disqualified Stock and Preferred Stock of Restricted Subsidiaries, the limitation is subject to a number of significant exceptions. Moreover, the Indenture does not impose any limitation on the incurrence by Restricted Subsidiaries of liabilities that are not considered Indebtedness, Disqualified Stock or Preferred Stock under the Indenture. See "*—Certain Covenants—Limitation on Indebtedness.*" Certain of the operations of the Issuer are conducted through the Unrestricted Subsidiaries, which will not guarantee the Notes or be subject to the provisions of the Indenture.

Security

The Collateral

Pursuant to the Security Documents to be entered into on or prior to the Issue Date, each of MEIF II Finance, Germany Holdco, Energie Holdco and the Issuer will grant on the Issue Date, in favor of Unicredit Bank AG, London Branch as security trustee (the "Security Trustee"), the following liens and security interests on an equal and ratable basis, subject to the operation of the Agreed Security Principles, certain perfection requirements and any Permitted Collateral Liens:

(a) a second-priority pledge over the shares of Germany Holdco held by MEIF II Finance;

(b) a second-priority pledge over the limited partnership interests of the Issuer and the shares of capital stock of Energie Holdco, the general partner of the Issuer, held by Germany Holdco and the general partnership interests of the Issuer held by Energie Holdco;

(c) a second-priority pledge over the shares of capital stock of the Senior Secured Notes Issuer held by the Issuer; and

(d) a global assignment of all receivables of the Issuer and Energie Holdco (subject to subordination on enforcement in accordance with the Intercreditor Agreement);

(e) an assignment of receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an assignment of receivables under an intercompany loan from Germany Holdco to the Issuer (in each case subject to subordination on enforcement in accordance with the Intercreditor Agreement); and

(f) second-priority pledges of all the bank accounts held by the Issuer and Energie Holdco.

(together, the "Collateral").

All Collateral shall be subject to the operation of the Agreed Security Principles and any Permitted Collateral Liens. The grant and enforcement of the security interests above are subject to certain limitations under local law. See "*Certain Insolvency Law Considerations and Limitations on the Validity and Enforceability of the Guarantees and Security Interests*".

Notwithstanding the foregoing, subject to certain exceptions, certain assets will not be pledged (or the Liens not perfected) in accordance with the Agreed Security Principles, including to the extent that it would:

- result in any breach of corporate benefit, financial assistance, capital maintenance, fraudulent preference (or its equivalent) or thin capitalization laws or regulations (or analogous restrictions) or any other laws or regulations of any applicable jurisdiction;
- result in a material risk to the officers of the relevant grantor of security of contravention of their fiduciary duties and/or of civil or criminal liability;
- result in costs that are disproportionate to the benefit obtained by the beneficiaries of that security whether in relation to an asset or a class of assets; or
- would materially restrict the running of the relevant obligor's business in the ordinary course as otherwise permitted by the Finance Documents.

Any assets (other than shares) subject to third party arrangements which prevent those assets from being charged will be excluded from any relevant Security Document *provided* that all reasonable endeavours to obtain consent to charging any such assets shall be used by the Issuer if the Security Trustee determines the relevant asset is material.

The Collateral, which will secure the Notes on a second priority basis, will also secure, on a first priority basis, the liabilities under the Senior Secured Facilities Agreement, the Senior Secured Notes and certain hedging arrangements. Subject to certain conditions, including compliance with the covenant described under "*—Certain Covenants—Impairment of Security Interest*," the Issuer is permitted to grant security over the Collateral in connection with future issuances of its Indebtedness or Indebtedness of its Restricted Subsidiaries, including any Additional Notes, in each case, as permitted under the Indenture.

Administration of Security and Enforcement of Liens

The Security Documents and the Collateral will be administered by the Security Trustee, in each case pursuant to the Intercreditor Agreement, for the benefit of all holders of secured obligations. The enforcement of the Security Documents will be subject to the procedures set forth in the Intercreditor Agreement. In general, the rights of the Security Trustee (acting on its own behalf or on behalf of the Holders) to take enforcement action under the Security Documents with respect to the Collateral are subject to certain standstill provisions and payment blockage and other limitations on enforcement. For a description of the Intercreditor Agreement, see "*Description of Certain Financing Arrangements—Intercreditor Agreement*".

The ability of Holders of the Notes to realize upon the Collateral will be subject to various bankruptcy law limitations in the event of the Issuer's or a Guarantor's bankruptcy. If any potential challenge to the validity of the interests created under the Security Documents or the terms of the Intercreditor Agreement is successful, the Holders might not be able to recover any amounts under the Security Documents. See "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*" and "*—The insolvency laws of Germany and the respective jurisdictions of the Guarantors may not be as favorable to you as the U.S. bankruptcy laws and may preclude holders of the Notes from recovering payments due on the Notes"*. In addition, the enforcement of the Collateral will be limited to the maximum amount required under the Agreed Security Principles to comply with corporate benefit, financial assistance and other laws. As a result of these limitations, the enforceable amounts of the Issuer's obligation under the Notes and a Guarantor's obligation under its Guarantee could be significantly less than the total amounts payable with respect to the Notes, or a Guarantor may have effectively no obligation under its Guarantee. See "*Risk Factors—Risks Related to Our Structure—Each Notes Guarantee and security interest will be subject to certain limitations on enforcement and may be limited by applicable law or subject to certain defenses that may limit its validity and enforceability*."

Subject to the terms of the Security Documents, the Issuer, the Holdcos and MEIF II Finance will have the right to remain in possession and retain exclusive control of the Collateral securing the Notes (other than as set forth in the Security Documents), to freely operate the Collateral and to collect, invest and dispose of any income therefrom.

No appraisals of any of the Collateral have been prepared by or on behalf of the Issuer in connection with the issuance of the Notes. There can be no assurance that the proceeds from the sale of the Collateral would be sufficient to satisfy the obligations owed to the Holders of the Notes after satisfying the senior obligations owed to the holders of the Senior Secured Notes and paying obligations under the Senior Secured Facilities Agreement and any hedging obligations. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral can be sold in a short period of time or at all.

In addition, the Intercreditor Agreement places limitations on the ability of the Security Trustee to cause the sale of some of the Collateral. These limitations may include requirements that some or all of the Collateral be disposed of only pursuant to public auctions or only at a price confirmed by a valuation. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*."

The Trustee for the Notes has, and by accepting a Note, each Holder will be deemed to have:

- irrevocably appointed Unicredit Bank AG, London Branch as Security Trustee to act as its agent under the Intercreditor Agreement and the other relevant documents to which it is a party (including, without limitation, the Security Documents);
- irrevocably authorized the Security Trustee to (i) perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Intercreditor Agreement or other documents to which it is a party (including, without limitation, the Security Documents), together with any other incidental rights, power and discretions; and (ii) execute each document, waiver, modification,

amendment, renewal or replacement expressed to be executed by the Security Trustee on its behalf; and

- accepted the terms and conditions of the Intercreditor Agreement and any Additional Intercreditor Agreement (as defined below) and each Holder will also be deemed to have authorized the Trustee to enter into any such Additional Intercreditor Agreement.

Priority

The relative priority with regard to the Collateral as between (a) the lenders under the Senior Secured Facilities Agreement, (b) the counterparties under certain hedging contracts, (c) the trustee and the holders under and with respect to the Senior Secured Notes and (d) the Trustee and the Holders under the Indenture, is established by the terms of the Intercreditor Agreement and the Security Documents, which provide that the obligations under the Senior Secured Notes, the Senior Secured Facilities Agreement and such hedging contracts will receive proceeds of enforcement of security over the Collateral equally and ratably on a first priority basis, and the Notes will receive proceeds from enforcement of the Collateral pledged for the benefit of the Notes after the claims of the Senior Secured Notes, the Senior Secured Facilities Agreement and the hedging contracts are satisfied. See "*Description of Certain Financing Arrangements—Intercreditor Agreement*." In addition, pursuant to the Intercreditor Agreement or Additional Intercreditor Agreements entered into after the Issue Date, the Collateral may be pledged to secure other Indebtedness. The creditors under any Senior Indebtedness will receive proceeds from an enforcement of the Collateral in priority to the Trustee and the Holders under the Indenture. See "*—Release of Liens*," "*—Certain Covenants—Impairment of Security Interest*" and "*—Certain Definitions—Permitted Collateral Liens*."

Release of Liens

The Security Trustee will take any action required to effectuate any release of Collateral required by a Security Document:

(1) upon payment in full of principal, interest and all other obligations in respect of the Notes issued under the Indenture or discharge or defeasance thereof in accordance with the Indenture;

(2) upon release of a Guarantee (with respect to the Liens securing such Guarantee granted by such Guarantor) in accordance with the Indenture;

(3) if the Issuer designates any of the Restricted Subsidiaries to be an Unrestricted Subsidiary in accordance with the applicable provisions of the Indenture, the release of the property and assets of such Restricted Subsidiary;

(4) in connection with any disposition of Collateral, directly or indirectly, to (a) any Person other than the Issuer or any of its Restricted Subsidiaries (but excluding any transaction subject to "*—Certain Covenants—Merger and Consolidation—The Issuer*") that is permitted by the Indenture (with respect to the Lien on such Collateral) or (b) the Issuer or any Restricted Subsidiary consistent with the Intercreditor Agreement;

(5) as described under "*—Amendments and Waivers*;" and

(6) as otherwise provided in the Intercreditor Agreement and the Indenture.

Each of these releases shall be effected by the Security Trustee and, to the extend necessary or required, the Trustee without the consent of the Holders. The Security Trustee and the Trustee will take all necessary action required to effectuate any release of Collateral securing the Notes and the Guarantees, in accordance with the provisions of the Indenture, the Intercreditor Agreement or any Additional Intercreditor Agreement and the relevant Security Document.

The Issuer and its Restricted Subsidiaries may also, among other things, without any release or consent by the Trustee or the Security Trustee, conduct ordinary course activities with respect to Collateral, including, without limitation, (i) selling or otherwise disposing of, in any transaction or series of related transactions, any property subject to the Lien under the Security Documents which has become worn out, defective or obsolete or not used or useful in the business; (ii) selling, transferring or otherwise disposing of current assets in the ordinary course of business; and (iii) any other action permitted by the Security Documents and the Intercreditor Agreement.

Amendments to the Intercreditor Agreement and Additional Intercreditor Agreements

In connection with the Incurrence of any Indebtedness by the Issuer or any of its Restricted Subsidiaries that is permitted to share the Collateral, MEIF II Finance, the Holdcos, the Issuer, the Senior Secured Note Issuer, the relevant Restricted Subsidiaries, the Trustee and the Security Trustee shall enter into with the holders of such Indebtedness (or their duly authorized representatives) one or more intercreditor agreements or deeds (including a restatement, replacement, amendment or other modification of the Intercreditor Agreement) (an "Additional Intercreditor Agreement"), on substantially the same terms as those contained in the Intercreditor Agreement (or terms that are not materially less favorable to the Holders) and substantially similar as applies to sharing of the proceeds of security and enforcement of security, priority and release of security or as expressly permitted in the Intercreditor Agreement; provided that such Additional Intercreditor Agreement will not impose any personal obligations on the Trustee or Security Trustee or adversely affect the personal rights, duties, liabilities, indemnification or immunities of the Trustee or the Security Trustee under the Indenture or the Intercreditor Agreement. In connection with the foregoing, the Issuer shall furnish to the Trustee such documentation in relation thereto as the Trustee may reasonably require. As used herein, a reference to the Intercreditor Agreement will also include any Additional Intercreditor Agreement.

In relation to the Intercreditor Agreement, the Trustee shall consent on behalf of the Holders to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Notes thereby; *provided, however*, that such transaction would comply with the covenant described herein under "*—Certain Covenants—Limitation on Restricted Payments*."

The Indenture will also provide that, at the written direction of the Issuer and without the consent of the Holders, the Trustee and the Security Trustee shall from time to time enter into one or more amendments to any Intercreditor Agreement to: (1) cure any ambiguity, omission, defect or inconsistency of any such agreement, (2) increase the amount or types of Indebtedness covered by any such Intercreditor Agreement that may be Incurred by the Issuer or its Restricted Subsidiaries that is subject to any such Intercreditor Agreement (provided that such Indebtedness is Incurred in compliance with the Indenture), (3) add Guarantors or other Restricted Subsidiaries to the Intercreditor Agreement, (4) further secure the Notes (including Additional Notes), (5) make provision for equal and ratable pledges of the Collateral to secure Additional Notes or to implement any Permitted Collateral Liens or (6) make any other change to any such agreement that does not adversely affect the Holders of Notes in any material respect. The Issuer shall not otherwise direct the Trustee or Security Trustee to enter into any amendment to any Intercreditor Agreement without the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, except as otherwise permitted below under "*—Amendments and Waivers*" or as permitted by the terms of such Intercreditor Agreement, and the Issuer may only direct the Trustee or Security Trustee to enter into any amendment to the extent such amendment does not impose any personal obligations on the Trustee or Security Trustee or, in the opinion of the Trustee or Security Trustee, adversely affect their respective rights, duties, liabilities or immunities under the Indenture or any Intercreditor Agreement.

The Indenture will also provide that each Holder, by accepting a Note, shall be deemed to have agreed to and accepted the terms and conditions of the Intercreditor Agreement (whether then entered into or entered into in the future pursuant to the provisions described herein) and to have authorized the Trustee and the Security Trustee to enter into the Intercreditor Agreement and any Additional Intercreditor Agreement or any amendments thereof to give effect to the foregoing matters described in (1) to (6) above on each Holder's behalf.

A copy of the Intercreditor Agreement or an Additional Intercreditor Agreement shall be made available to the Holders upon request and will be made available for inspection during normal business hours on any Business Day upon prior written request at the office of the Issuer.

Optional Redemption

Except as set forth herein and under "*—Redemption for Taxation Reasons*", the Notes are not redeemable at the option of the Issuer.

At any time prior to , 2016, the Issuer may redeem the Notes in whole or in part, at its option, at a redemption price equal to 100% of the principal amount of such Notes plus the relevant Applicable Premium as of, and accrued and unpaid interest and Additional Amounts, if any, to, the redemption date.

At any time and from time to time on or after , 2016, the Issuer may redeem the Notes in whole or in part, at a redemption price equal to the percentage of principal amount set forth below plus accrued and unpaid interest to the redemption date:

Twelve month period commencing in	Percentage
2016	%
2017	%
2018 and thereafter	100.000%

At any time and from time to time prior to , 2015, the Issuer may redeem Notes with the net cash proceeds received by the Issuer from any Equity Offering at a redemption price equal to % plus accrued and unpaid interest to the redemption date, in an aggregate principal amount for all such redemptions not to exceed 35% of the original aggregate principal amount of the Notes (including Additional Notes), provided that:

(1) in each case the redemption takes place not later than 120 days after the closing of the related Equity Offering; and

(2) not less than 65% of the original principal amount of the Notes being redeemed (including the principal amount of any Additional Notes) remain outstanding immediately thereafter.

Notice of any redemption upon any Equity Offering may be given prior to the completion thereof.

Any redemption and notice of redemption may, at the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent (including, in the case of a redemption related to an Equity Offering, the consummation of such Equity Offering). Any notice of redemption shall be given as set forth under "*Selection and Notice*".

If the Issuer effects an optional redemption of the Notes, it will, for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, inform the Luxembourg Stock Exchange of such optional redemption and confirm the aggregate principal amount of the Notes that will remain outstanding immediately after such redemption.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Holders whose Notes will be subject to redemption by the Issuer.

Sinking Fund

The Issuer will not be required to make mandatory redemption payments or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuer may be required to offer to purchase the Notes as described under "*—Change of Control*" or "*—Limitations on Sales of Assets or Subsidiary Stock*". The Issuer and any Restricted Subsidiary may at any time and from time to time purchase Notes on the open market or otherwise.

Selection and Notice

If less than all of the Notes are to be redeemed at any time, the Trustee or the Registrar, as applicable, will select the Notes for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Notes are listed, as certified to the Trustee or the Registrar, as applicable, by the Issuer, and in compliance with the requirements of Euroclear or Clearstream, or if the Notes are not so listed or such exchange prescribes no method of selection and the Notes are not held through Euroclear or Clearstream or Euroclear or Clearstream prescribe no method of selection, on a *pro rata* basis or by use of a pool factor; *provided, however*, that no Note of €100,000 in aggregate principal amount or less shall be redeemed in part and only Notes in integral multiples €1,000 will be redeemed. Neither the Trustee nor the Registrar will be liable for any selections made by it in accordance with this paragraph.

So long as any Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, any such notice to the Holders of the relevant Notes shall to the extent and in the manner permitted by such rules be posted on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*). In addition to such

release, not less than 10 days nor more than 60 days prior to the redemption date, the Issuer will mail, or, at the expense of the Issuer, cause to be mailed, such notice to Holders by first-class mail, postage prepaid, at their respective addresses as they appear on the registration books of the Registrar. Such notice of redemption may also be posted on the website of the Luxembourg Stock Exchange (*www.bourse.lu*), to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed, in which case a portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice (including any conditions contained therein), Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions of them called for redemption.

Redemption for Taxation Reasons

The Issuer or Successor Issuer, as defined below, may redeem the Notes in whole, but not in part, at any time upon giving not less than 10 nor more than 60 days notice to the Holders of the Notes (which notice will be irrevocable) at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date fixed for redemption (a "Tax Redemption Date") (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) and all Additional Amounts (see "—*Withholding Taxes*"), if any, then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise, if any, if the Issuer, Successor Issuer or any Guarantor determine in good faith that, as a result of:

(1) any change in, or amendment to, the law or treaties (or any regulations or rulings promulgated thereunder) of a Relevant Taxing Jurisdiction (as defined below) affecting taxation; or

(2) any change in, or amendment to, or the introduction of, an official position regarding the application, administration or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction) of a Relevant Taxing Jurisdiction (each of the foregoing in clauses (1) and (2), a "Change in Tax Law"),

the Issuer, Successor Issuer or Guarantor are, or on the next interest payment date in respect of the Notes would be, required to pay any Additional Amounts, and such obligation cannot be avoided by taking reasonable measures available to the Issuer, Successor Issuer or Guarantor (including, for the avoidance of doubt, the appointment of a new Paying Agent where this would be reasonable but not including assignment of the obligation to make payment with respect to the Notes). In the case of redemption due to withholding as a result of a Change in Tax Law in a jurisdiction that is a Relevant Taxing Jurisdiction at the date of this offering memorandum, such Change in Tax Law must become effective on or after the date of this offering memorandum. In the case of redemption due to withholding as a result of a Change in Tax Law in a jurisdiction that becomes a Relevant Taxing Jurisdiction after the date of this offering memorandum, such Change in Tax Law must become effective on or after the date the jurisdiction becomes a Relevant Taxing Jurisdiction, unless the Change in Tax Law would have applied to the predecessor of the Successor Issuer. Notice of redemption for taxation reasons will be published in accordance with the procedures described under "—Selection and Notice." Notwithstanding the foregoing, no such notice of redemption will be given (a) earlier than 90 days prior to the earliest date on which the Payor (as defined below) would be obliged to make such payment of Additional Amounts if a payment in respect of the Notes were then due and (b) unless at the time such notice is given, such obligation to pay such Additional Amounts remains in effect. Prior to the publication or mailing of any notice of redemption of the Notes pursuant to the foregoing, the Issuer or Successor Issuer will deliver to the Trustee (a) an Officer's Certificate stating that it is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to its right so to redeem have been satisfied and that it would not be able to avoid the obligation to pay Additional Amounts by taking reasonable measures available to it and (b) a written opinion of an independent tax counsel of recognized standing to the effect that the Issuer, Successor Issuer or Guarantor has or have been or will become obligated to pay Additional Amounts as a result of a Change in Tax Law. The Trustee will accept such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, without further inquiry, in which event it will be conclusive and binding on the Holders.

The foregoing will apply *mutatis mutandis* to any jurisdiction in which any successor to the Issuer is incorporated or organized or any political subdivision or taxing authority or agency thereof or therein.

Withholding Taxes

All payments made by the Issuer, a Successor Issuer or a Guarantor (a "Payor") on the Notes or the Guarantees, as defined below, will be made free and clear of and without withholding or deduction for, or on account of, any Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of:

(1) Germany or any political subdivision or Governmental Authority thereof or therein having power to tax;

(2) any jurisdiction from or through which payment on any such Note or Guarantee is made by the Issuer, Successor Issuer, Guarantor or their agents, or any political subdivision or Governmental Authority thereof or therein having the power to tax; or

(3) any other jurisdiction in which the Payor is incorporated or organized, resident for tax purposes, or any political subdivision or Governmental Authority thereof or therein having the power to tax (each of clause (1), (2) and (3), a "Relevant Taxing Jurisdiction"),

will at any time be required from any payments made by a Payor with respect to any Note or Guarantee, including payments of principal, redemption price, premium, if any, or interest, the Payor will pay (together with such payments) such additional amounts (the "Additional Amounts") as may be necessary in order that the net amounts received in respect of such payments by the Holders or the Trustee, as the case may be, after such withholding or deduction (including any such deduction or withholding from such Additional Amounts), will equal the amounts which would have been received in respect of such payments on any such Note or Guarantee in the absence of such withholding or deduction; *provided, however*, that no such Additional Amounts will be payable for or on account of:

(1) any Taxes that would not have been so imposed but for the existence of any present or former actual or deemed connection between the relevant Holder or the beneficial owner of a Note (or between a fiduciary, settlor, beneficiary, member or shareholder of, or possessor of power over the relevant Holder or beneficial owner, if the relevant Holder or beneficial owner is an estate, nominee, trust, partnership, limited liability company or corporation) and the Relevant Taxing Jurisdiction (including being a citizen or resident or national of, or carrying on a business or maintaining a permanent establishment in, or being physically present in, the Relevant Taxing Jurisdiction) but excluding, in each case, any connection arising solely from the acquisition, ownership or holding of such Note or the receipt of any payment in respect thereof;

(2) any Taxes that are imposed or withheld by reason of the failure by the Holder or the beneficial owner of the Note to comply with a written request of the Payor addressed to the Holder, after reasonable notice, to provide certification, information, documents or other evidence concerning the nationality, residence or identity of the Holder or such beneficial owner or to make any declaration or similar claim or satisfy any other reporting requirement relating to such matters, which is required by a statute, treaty, regulation or administrative practice of the Relevant Taxing Jurisdiction as a precondition to exemption from all or part of such Taxes;

(3) any Taxes that are payable otherwise than by deduction or withholding from a payment of the principal of, premium, if any, or interest, if any, on the Notes;

(4) any estate, inheritance, gift, sales, excise, transfer, personal property or similar tax, assessment or other governmental charge;

(5) any Taxes that are required to be deducted or withheld on a payment to an individual and that are required to be made pursuant to Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 on taxation of savings income or any law implementing or complying with, or introduced in order to conform to such Directives or pursuant to the Luxembourg law of December 23, 2005 introducing a withholding tax on certain savings income paid to Luxembourg;

(6) any Taxes imposed in connection with a Note presented for payment (where presentation is permitted or required for payment) by or on behalf of a Holder or beneficial owner who would have been able to

avoid such Tax by presenting the relevant Note to, or otherwise accepting payment from, another paying agent; or

(7) any combination of the above.

Such Additional Amounts will also not be payable (x) if the payment could have been made without such deduction or withholding if the beneficiary of the payment had presented the Note for payment (where presentation is permitted or required for payment) within 15 days after the relevant payment was first made available for payment to the Holder or (y) where, had the beneficial owner of the Note been the Holder, such beneficial owner would not have been entitled to payment of Additional Amounts by reason of any of clauses (1) to (7) inclusive above.

In addition, no Additional Amounts shall be paid with respect to any payment to any Holder who is a fiduciary or a partnership or other than the sole beneficial owner of such Notes to the extent that the beneficiary or settlor with respect to such fiduciary, the member of such partnership or the beneficial owner of such Notes would not have been entitled to Additional Amounts had such beneficiary, settlor, member or beneficial owner held such Notes directly.

The Payor will (i) make any required withholding or deduction and (ii) remit the full amount deducted or withheld to the Relevant Taxing Jurisdiction in accordance with applicable law. The Payor will use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Relevant Taxing Jurisdiction imposing such Taxes, in such form as provided in the ordinary course by the Relevant Taxing Jurisdiction and as is reasonably available to the Issuer and will provide such certified copies to the Trustee. Such copies shall be made available to the Holders upon request.

If any Payor will be obligated to pay Additional Amounts under or with respect to any payment made on any Note or Guarantee, at least 30 days prior to the date of such payment, the Payor will deliver to the Trustee an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount so payable and such other information necessary to enable the Paying Agent to pay Additional Amounts to Holders on the relevant payment date (unless such obligation to pay Additional Amounts arises less than 45 days prior to the relevant payment date, in which case the Payor may deliver such Officer's Certificate as promptly as practicable after the date that is 30 days prior to the payment date). The Trustee will be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary.

Wherever in either the Indenture, the Guarantees or this "Description of Senior Subordinated Notes" there are mentioned, in any context:

(1) the payment of principal;

(2) purchase prices in connection with a purchase of Notes or premium, if any;

(3) interest; or

(4) any other amount payable on or with respect to any of the Notes, including payments thereof made pursuant to a Guarantee,

such reference shall be deemed to include payment of Additional Amounts as described under this heading to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Payor will pay any present or future stamp, issue, registration, court or documentary Taxes, or any other property or similar Taxes, charges or levies that arise in any jurisdiction from the execution, delivery, registration or enforcement of any Notes, the Indenture, the Security Documents or any other document or instrument in relation thereto (other than a transfer of the Notes) excluding any such Taxes, charges or levies imposed by any jurisdiction that is not a Relevant Taxing Jurisdiction, and the Payor agrees to indemnify the Holders for any such Taxes paid by such Holders. The foregoing obligations of this paragraph will survive any termination, defeasance or discharge of the Indenture and will apply *mutatis mutandis* to any jurisdiction in which any successor to the Issuer is organized or any political subdivision or taxing authority or agency thereof or therein.

Change of Control

If a Change of Control occurs, subject to the terms hereof, each Holder will have the right to require the Issuer to repurchase all or any part (equal to €100,000 aggregate principal amount and integral multiples of €1,000 in excess thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the principal

amount of the Notes, plus accrued and unpaid interest to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however*, that the Issuer shall not be obliged to repurchase Notes as described under this "*—Change of Control*" section in the event and to the extent that it has unconditionally exercised its right to redeem all of the Notes as described under "*—Optional Redemption*" or all conditions to such redemption have been satisfied or waived.

Unless the Issuer has unconditionally exercised its right to redeem all the Notes as described under "*—Optional Redemption*" or all conditions to such redemption have been satisfied or waived, no later than the date that is 60 days after any Change of Control, the Issuer will mail a notice (the "Change of Control Offer") to each Holder of any such Notes, with a copy to the Trustee:

(1) stating that a Change of Control has occurred or may occur and that such Holder has the right to require the Issuer to purchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest to, but not including, the date of purchase (subject to the right of Holders of record on a record date to receive interest on the relevant interest payment date) (the "Change of Control Payment");

(2) stating the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "Change of Control Payment Date") and the record date;

(3) describing the circumstances and relevant facts regarding the transaction or transactions that constitute the Change of Control;

(4) describing the procedures determined by the Issuer, consistent with the Indenture, that a Holder must follow in order to have its Notes repurchased; and

(5) if such notice is mailed prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control.

On the Change of Control Payment Date, if the Change of Control shall have occurred, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or any portion thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Principal Paying Agent an amount equal to the Change of Control Payment in respect of all Notes so tendered;

(3) deliver or cause to be delivered to the Trustee an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer in the Change of Control Offer;

(4) in the case of Global Notes, deliver, or cause to be delivered, to the principal Paying Agent the Global Notes in order to reflect thereon the portion of such Notes or portions thereof that have been tendered to and purchased by the Issuer; and

(5) in the case of Definitive Registered Notes, deliver, or cause to be delivered, to the relevant Registrar for cancellation all Definitive Registered Notes accepted for purchase by the Issuer.

If any Definitive Registered Notes have been issued, the relevant Paying Agent will promptly mail to each Holder of Definitive Registered Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate (or cause to be authenticated) and mail (or cause to be transferred by book entry) to each Holder of Definitive Registered Notes a new Note equal in aggregate principal amount to the unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in an aggregate principal amount that is at least €100,000 and integral multiples of €1,000 in excess thereof.

If and for so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market and the rules of the Luxembourg Stock Exchange so require, the Issuer will publish notices relating to the Change of Control Offer as soon as reasonably practicable after the Change of Control Payment Date in a leading newspaper of general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, post such notices on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Except as described above with respect to a Change of Control, the Indenture will not contain provisions that permit the Holders to require that the Issuer repurchase or redeem the Notes in the event of a

takeover, recapitalization or similar transaction. The existence of a Holder's right to require the Issuer to repurchase such Holder's Notes upon the occurrence of a Change of Control may deter a third party from seeking to acquire the Issuer or its Subsidiaries in a transaction that would constitute a Change of Control.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations (or rules of any exchange on which the Notes are then listed) in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations (or exchange rules) conflict with provisions of the Indenture, the Issuer will comply with the applicable securities laws and regulations (or exchange rules) and will not be deemed to have breached its obligations, or require a repurchase of the Notes, under the Change of Control provisions of the Indenture by virtue of the conflict.

Under the Senior Secured Facilities Agreement and the indenture governing the Senior Secured Notes, the occurrence of a change of control (as defined therein) would require the repayment of such debt. Future debt of the Issuer or its Subsidiaries may prohibit the Issuer from purchasing Notes in the event of a Change of Control or provide that a Change of Control is a default or requires repurchase upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Issuer to purchase the Notes could cause a default under, or require a repurchase of, other debt, even if the Change of Control itself does not, due to the financial effect of the purchase on the Issuer.

Finally, the Issuer's ability to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Issuer's then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make the required purchase of the Notes. See "*Risk Factors—Risks Related to Our Structure—We may not have the ability to raise the funds necessary to finance an offer to repurchase the Senior Secured Notes and the Senior Subordinated Notes upon the occurrence of certain events constituting a change of control as required by each indenture and the change of control provision contained in the Indentures may not necessarily afford you protection in the event of certain important corporate events.*"

Holders of the Notes may not be entitled to require the Issuer to purchase their Notes in certain circumstances involving a significant change in the composition of the Issuer's Board of Directors, including in connection with a proxy contest, where the Issuer's Board of Directors initially publicly opposes the election of a dissident slate of directors, but subsequently approves such directors for the purposes of the Indenture governing the Notes. This may result in a change in the composition of the Board of Directors that, but for such subsequent approval, would have otherwise constituted a Change of Control requiring a repurchase offer under the terms of the Indenture governing the Notes. The Change of Control feature of the Notes may in certain circumstances make it more difficult or discourage a sale or takeover of the Issuer.

The definition of "Change of Control" includes a disposition of all or substantially all of the property and assets of the Issuer and its Restricted Subsidiaries taken as a whole to specified other Persons. Although there is limited case law interpreting the phrase "substantially all", there is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder may require the Issuer to make an offer to repurchase the Notes as described above. In addition, you should note that case law suggests that, in the event that incumbent directors are replaced as a result of a contested election, the Issuer may nevertheless avoid triggering a change of control under a clause similar to clause (2) of the definition of "Change of Control", if the outgoing directors were to approve the new directors for the purpose of such change of control clause.

The provisions of the Indenture relating to the Issuer's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of Holders of a majority in outstanding aggregate principal amount of the Notes under the Indenture.

Certain Covenants

Limitation on Indebtedness

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Issuer and any of the Restricted Subsidiaries may Incur Indebtedness if on the date of such Incurrence and after giving pro forma effect thereto (including pro forma application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries would have been at least 2.0 to 1.0.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness:

(1) Indebtedness Incurred pursuant to any Credit Facility (including in respect of letters of credit or bankers' acceptances issued or created under any Credit Facility), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not exceeding (i) €575 million, plus (ii) in the case of any refinancing of any Indebtedness permitted under this clause (1) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing, less (iii) the aggregate amount of all Net Available Cash from Asset Dispositions since the Issue Date applied by the Issuer or any Restricted Subsidiary pursuant to the covenant described under "*—Limitation on Sales of Assets and Subsidiary Stock*" to repay any Indebtedness under any Credit Facility incurred pursuant to this clause (1) (and in respect of any revolving credit facility, to permanently reduce commitments thereunder); provided, however, that in no event shall such reduction reduce the availability under this clause (1) to less than €75 million at any time outstanding;

(2) (a) Guarantees by the Issuer or any Restricted Subsidiary of Indebtedness of the Issuer or any Restricted Subsidiary; or

(b) without limiting the covenant described under "*—Limitation on Liens*," Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Issuer or any Restricted Subsidiary so long as the Incurrence of such Indebtedness is permitted under the terms of the Indenture;

(3) Indebtedness of the Issuer owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Issuer or any Restricted Subsidiary; *provided, however*, that:

(a) in the case of Indebtedness owing to and held by any Restricted Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes and the Guarantees; and

(b) (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer and (ii) any sale or other transfer of any such Indebtedness to a Person other than the Issuer or a Restricted Subsidiary of the Issuer, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Issuer or such Restricted Subsidiary, as the case may be, not permitted by this clause (3);

(4) Indebtedness represented by (a) the Notes (other than any Additional Notes), (b) any Indebtedness (other than Indebtedness Incurred under clauses (1) and (3) of this paragraph) outstanding on the Issue Date, including the Senior Secured Notes, (c) any loans of the proceeds of, or other instruments contributing the proceeds of, the Notes and the Senior Secured Notes, (d) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this clause (4) or clause (5) of this paragraph or Incurred pursuant to the first paragraph of this covenant, and (e) Management Advances;

(5) Indebtedness of any Person (i) Incurred and outstanding on the date on which such Person becomes a Restricted Subsidiary of the Issuer or another Restricted Subsidiary of the Issuer or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Issuer or any Restricted Subsidiary or (ii) Incurred to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Issuer or a Restricted Subsidiary; *provided, however*, with respect to each of clause (5)(i) and (5)(ii), that at the time of such acquisition or other transaction (x) the Issuer would have been able to Incur €1.00 of additional Indebtedness pursuant to the first paragraph of this covenant after giving

pro forma effect to the relevant acquisition and the Incurrence of such Indebtedness pursuant to this clause (5) or (y) the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such acquisition or other transaction;

(6) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements entered into for *bona fide* hedging purposes of the Issuer or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Issuer);

(7) Indebtedness represented by Capitalized Lease Obligations, mortgage financings, Purchase Money Obligations or other financings, incurred for the purpose of financing all or any part of the purchase price or lease, rental payments or cost of closing or cost of construction, installation or improvement of property, plant or equipment used in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, and any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause (7) and then outstanding, will not exceed at any time outstanding the greater of (x) €30 million and (y) 1.3% of Total Assets;

(8) Indebtedness in respect of (a) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, VAT or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Issuer or a Restricted Subsidiary and relating to liabilities, obligations or guarantees Incurred in the ordinary course of business or in respect of any governmental requirement, (b) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued and relating to liabilities or obligations Incurred in the ordinary course of business or in respect of any governmental requirement; *provided, however*, that upon the drawing of such letters of credit or similar instruments, the obligations are reimbursed within 30 days following such drawing, (c) the financing of insurance premiums in the ordinary course of business and (d) any customary cash management, cash pooling or netting or setting off arrangements in the ordinary course of business;

(9) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); *provided* that the maximum liability of the Issuer and its Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the fair market value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(10) (a) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within 20 Business Days of Incurrence;

(b) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(c) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Issuer and its Restricted Subsidiaries; and

(d) Indebtedness incurred by a Restricted Subsidiary in connection with bankers acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management of bad debt purposes, in each case incurred or undertaken in the ordinary course of business on arm's length commercial terms on a recourse basis;

(11) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the aggregate principal amount of all other Indebtedness Incurred pursuant to this clause (11) and then outstanding, will not exceed the greater of €75 million and 3.2% of Total Assets *provided* that the aggregate outstanding principal amount of

Indebtedness Incurred by Restricted Subsidiaries that are not Guarantors pursuant to this clause (11) does not exceed at any time €35 million;

(12) Indebtedness of the Issuer or the Guarantors in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this clause (12) and then outstanding, will not exceed 100% of the Net Cash Proceeds received by the Issuer from the issuance or sale (other than to a Restricted Subsidiary) of its Subordinated Shareholder Funding or its Capital Stock (other than Disqualified Stock, Designated Preference Shares or an Excluded Contribution) or otherwise contributed to the equity (other than through the issuance of Disqualified Stock, Designated Preference Shares or an Excluded Contribution) of the Issuer, in each case, subsequent to the Issue Date; *provided, however*, that (i) any such Net Cash Proceeds that are so received or contributed shall be excluded for purposes of making Restricted Payments under the first paragraph and clauses (1), (6) and (10) of the third paragraph of the covenant described below under "*—Limitation on Restricted Payments*" to the extent the Issuer and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any Net Cash Proceeds that are so received or contributed shall be excluded for purposes of Incurring Indebtedness pursuant to this clause (12) to the extent the Issuer or any of its Restricted Subsidiaries makes a Restricted Payment under the first paragraph and clauses (1), (6) and (10) of the third paragraph of the covenant described below under "—Limitation on Restricted Payments" in reliance thereon;

(13) Indebtedness Incurred by a Receivables Subsidiary in a Qualified Receivables Financing;

(14) Indebtedness consisting of local lines of credit or working capital facilities not exceeding €25 million outstanding at one time; and

(15) Indebtedness in respect of Guarantees of, or letters of credit, suretyship letters, bankers' acceptances or other similar instruments or obligations relating to, the Indebtedness of any Unrestricted Subsidiary or any partnership, joint venture, limited liability company or similar entity in which the Issuer or any of its Restricted Subsidiaries have an equity or other interest in, not exceeding the greater of €20 million and 0.8% of Total Assets outstanding at one time.

For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this covenant:

(1) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in the first and second paragraphs of this covenant, the Issuer, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the clauses of the second paragraph or the first paragraph of this covenant;

(2) all Indebtedness outstanding on the Issue Date under the Senior Secured Facilities Agreement shall be deemed initially Incurred on the Issue Date under clause (1) of the second paragraph of the description of this covenant and not the first paragraph or clause (4)(b) of the second paragraph of the description of this covenant, and any Indebtedness Incurred under clause (1) of the second paragraph of the description of this covenant may not be reclassified pursuant to clause (1) of this paragraph;

(3) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(4) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to clause (1), (7), (11) or (12) of the second paragraph above or the first paragraph above and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

(5) the principal amount of any Disqualified Stock of the Issuer or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(6) Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness; and

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of IFRS.

Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in IFRS, including a change of IFRS to U.S. GAAP, will not be deemed to be an Incurrence of Indebtedness for purposes of the covenant described under this "*—Limitation on Indebtedness*." The amount of any Indebtedness outstanding as of any date shall be calculated as specified under the definition of "Indebtedness."

If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary of the Issuer as of such date.

For purposes of determining compliance with any Euro-denominated restriction on the Incurrence of Indebtedness, the Euro Equivalent of the aggregate principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or, at the option of the Issuer, first committed, in the case of Indebtedness Incurred under a revolving credit facility; *provided* that (a) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than the Euro, and such refinancing would cause the applicable Euro-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Euro-denominated restriction shall be deemed not to have been exceeded so long as the aggregate principal amount of such Refinancing Indebtedness does not exceed the aggregate principal amount of such Indebtedness being refinanced; (b) the Euro Equivalent of the aggregate principal amount of any such Indebtedness outstanding on the Issue Date shall be calculated based on the relevant currency exchange rate in effect on the Issue Date; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in Euro, will be the amount of the principal payment required to be made under such Currency Agreement and, otherwise, the Euro Equivalent of such amount plus the Euro Equivalent of any premium which is at such time due and payable but is not covered by such Currency Agreement.

Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Issuer or a Restricted Subsidiary may Incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

No Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

Limitation on Restricted Payments

The Issuer will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution on or in respect of the Issuer's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Issuer or any of its Restricted Subsidiaries) except:

   (a) dividends or distributions payable in Capital Stock of the Issuer (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Issuer or in Subordinated Shareholder Funding; and

   (b) dividends or distributions payable to the Issuer or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock

other than the Issuer or another Restricted Subsidiary on no more than a pro rata basis, measured by value);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Issuer or any direct or indirect Parent of the Issuer held by Persons other than the Issuer or a Restricted Subsidiary of the Issuer (other than in exchange for Capital Stock of the Issuer (other than Disqualified Stock));

(3) make any payment on or in respect of, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (a) any such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement, (b) a payment of interest or Additional Amounts at the applicable payment date and (c) any Indebtedness Incurred pursuant to clause (3) of the second paragraph of the covenant described under "—Limitation on Indebtedness") or Subordinated Shareholder Funding (other than any payment of interest thereon in the form of additional Subordinated Shareholder Funding); or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) are referred to herein as a "Restricted Payment"), if at the time the Issuer or such Restricted Subsidiary makes such Restricted Payment:

(a) a Default shall have occurred and be continuing (or would result immediately thereafter therefrom);

(b) the Issuer is not able to Incur an additional €1.00 of Indebtedness pursuant to the first paragraph under the "*—Limitation on Indebtedness*" covenant after giving effect, on a pro forma basis, to such Restricted Payment; or

(c) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Issue Date (and not returned or rescinded) (including Permitted Payments permitted below by clauses (6), (10), (11), (12), (17) and (18) of the second succeeding paragraph, but excluding all other Restricted Payments permitted by the second succeeding paragraph) would exceed the sum of (without duplication):

  (i) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the first fiscal quarter commencing prior to the Issue Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal consolidated financial statements of the Issuer are available (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);

  (ii) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Issuer from the issue or sale of its Capital Stock (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding subsequent to the Issue Date or otherwise contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Issuer subsequent to the Issue Date (other than (x) Net Cash Proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any Subsidiary of the Issuer for the benefit of its employees to the extent funded by the Issuer or any Restricted Subsidiary, (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of the second succeeding paragraph and (z) Excluded Contributions);

  (iii) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Issuer or any Restricted Subsidiary from the issuance or sale (other than to the Issuer or a Restricted Subsidiary of the Issuer or an employee stock ownership plan or trust established by the Issuer or any Subsidiary of the Issuer for the benefit of its employees to the extent funded by the Issuer or any Restricted Subsidiary) by the Issuer or any Restricted Subsidiary subsequent to the Issue Date of any Indebtedness that has been converted into or

exchanged for Capital Stock of the Issuer (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding (plus the amount of any cash, and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or marketable securities, received by the Issuer or any Restricted Subsidiary upon such conversion or exchange) but excluding (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of the second succeeding paragraph and (z) Excluded Contributions;

(iv) the amount equal to the net reduction in Restricted Investments made by the Issuer or any of its Restricted Subsidiaries resulting from:

(A) repurchases, redemptions or other acquisitions or retirements of any such Restricted Investment, proceeds realized upon the sale or other disposition to a Person other than the Issuer or a Restricted Subsidiary of any such Restricted Investment, repayments of loans or advances or other transfers of assets (including by way of dividend, distribution, interest payments or returns of capital) to the Issuer or any Restricted Subsidiary; or

(B) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued, in each case, as provided in the definition of "Investment") not to exceed, in the case of any such Unrestricted Subsidiary, the amount of Investments previously made by the Issuer or any Restricted Subsidiary in such Unrestricted Subsidiary,

which amount, in each case under this clause (iv), was included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c); *provided, however,* that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Issuer's option) included under this clause (iv); and

(v) the amount of the cash and the fair market value (as determined in accordance with the next succeeding paragraph) of property or assets or of marketable securities received by the Issuer or any of its Restricted Subsidiaries in connection with:

(A) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any Subsidiary of the Issuer for the benefit of its employees to the extent funded by the Issuer or any Restricted Subsidiary) of Capital Stock of an Unrestricted Subsidiary of the Issuer; and

(B) any dividend or distribution made by an Unrestricted Subsidiary or Affiliate to the Issuer or a Restricted Subsidiary,

provided, however, that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Issuer's option) included under this clause (v); *provided further, however*, that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c).

(vi) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary or all of the assets of such Unrestricted Subsidiary are transferred to the Issuer or a Restricted Subsidiary, or the Unrestricted Subsidiary is merged or consolidated into the Issuer or a Restricted Subsidiary, 100% of such amount received in cash and the fair market value of any property or marketable securities received by the Issuer or any Restricted Subsidiary in respect of such redesignation, merger, consolidation or transfer of assets, excluding the amount of any Investment in such Unrestricted Subsidiary pursuant to clause (11) or (17) of the definition of "Permitted Investment"; *provided*, *however*, that no amount will be included in Consolidated Net Income for purposes of the preceding clause (i) to the extent that it is (at the Issuer's option) included under this clause (vi); *provided further*, *however* that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this clause (c).

The fair market value of property or assets other than cash covered by the preceding sentence shall be the fair market value thereof as determined in good faith by an officer of the Issuer, or if such fair market value exceeds €10 million, by the Board of Directors of the Issuer.

The foregoing provisions will not prohibit any of the following (collectively, "Permitted Payments"):

(1) any Restricted Payment made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Disqualified Stock or Designated Preference Shares), Subordinated Shareholder Funding or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Issuer; *provided, however*, that to the extent so applied, the Net Cash Proceeds, or fair market value (as determined in accordance with the preceding paragraph) of property or assets or of marketable securities, from such sale of Capital Stock, Subordinated Shareholder Funding or such contribution will be excluded from clause (c)(ii) of the first paragraph describing this covenant;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to the covenant described under "—*Limitation on Indebtedness*" above;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Issuer or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Issuer or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to the covenant described under "—*Limitation on Indebtedness*" above, and that in each case, constitutes Refinancing Indebtedness;

(4) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:

   (a) (i) from Net Available Cash to the extent permitted under "—Limitation on Sales of Assets and Subsidiary Stock" below, but only if the Issuer shall have first complied with the terms described under "—*Limitation on Sales of Assets and Subsidiary Stock*" and purchased all Notes tendered pursuant to any offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest;

   (b) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only (i) if the Issuer shall have first complied with the terms described under "—*Change of Control*" and purchased all Notes tendered pursuant to the offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or

   (c) (i) consisting of Acquired Indebtedness (other than Indebtedness Incurred (A) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Issuer or a Restricted Subsidiary or (B) otherwise in connection with or contemplation of such acquisition) and (ii) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest and any premium required by the terms of any Acquired Indebtedness;

(5) the payment of any dividend or the consummation of any redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of the Indenture;

(6) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Issuer, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof) and loans, advances, dividends or distributions by the Issuer to any Parent to permit any Parent to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of the Issuer, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof), or payments to purchase,

repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of the Issuer, any Restricted Subsidiary or any Parent (including any options, warrants or other rights in respect thereof), in each case from Management Investors; provided that such payments, loans, advances, dividends or distributions do not exceed an amount (net of repayments of any such loans or advances) equal to (a) €5 million plus (b) €1 million multiplied by the number of calendar years that have commenced since the Issue Date plus (c) the Net Cash Proceeds received by the Issuer or its Restricted Subsidiaries since the Issue Date (including through receipt of proceeds from the issuance or sale of its Capital Stock or Subordinated Shareholder Funding to a Parent) from, or as a contribution to the equity (in each case under this clause (c), other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Issuer from, the issuance or sale to Management Investors of Capital Stock (including any options, warrants or other rights in respect thereof), to the extent such Net Cash Proceeds are not included in any calculation under clause (c)(ii) or (c)(iii) of the first paragraph describing this covenant;

(7) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of the covenant described under "*—Limitation on Indebtedness*" above;

(8) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;

(9) dividends, loans, advances or distributions to any Parent or other payments by the Issuer or any Restricted Subsidiary in amounts equal to (without duplication):

  (a) the amounts required for any Parent to pay any Parent Expenses or any Related Taxes; or

  (b) amounts constituting or to be used for purposes of making payments (i) of fees and expenses incurred, or payments made, in connection with the Transaction or disclosed in this offering memorandum or (ii) to the extent specified in clauses (2), (3), (5), (7), (11) and (12) of the second paragraph under "*—Limitation on Affiliate Transactions*;"

(10) so long as no Default or Event of Default has occurred and is continuing (or would result from), the declaration and payment by the Issuer of, or loans, advances, dividends or distributions to any Parent to pay, dividends on the common stock or common equity interests of the Issuer or any Parent following a Public Offering of such common stock or common equity interests, in an amount not to exceed in any fiscal year 6% of the Net Cash Proceeds received by the Issuer from such Public Offering or contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Issuer or loaned as Subordinated Shareholder Funding to the Issuer;

(11) so long as no Default or Event of Default has occurred and is continuing (or would result from), Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed €75 million;

(12) payments by the Issuer, or loans, advances, dividends or distributions to any Parent to make payments, to holders of Capital Stock of the Issuer or any Parent in lieu of the issuance of fractional shares of such Capital Stock, *provided, however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this covenant or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors of the Issuer);

(13) Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Excluded Contributions, or consisting of non-cash Excluded Contributions, or Investments to the extent made in exchange for or using as consideration Investments previously made under this clause (13);

(14) (i) the declaration and payment of dividends to holders of any class or series of Designated Preference Shares of the Issuer issued after the Issue Date; and (ii) the declaration and payment of dividends to any Parent or any Affiliate thereof, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preference Shares of such Parent issued after the Issue Date; *provided, however*, that, in the case of clauses (i) and (ii), the amount of all dividends declared or paid pursuant to this clause (14) shall not exceed the Net Cash Proceeds received by the Issuer or the aggregate amount contributed in cash to the equity (other than through the issuance of

Disqualified Stock or an Excluded Contribution or, in the case of Designated Preference Shares by Parent or an Affiliate, the issuance of Designated Preference Shares) of the Issuer or loaned as Subordinated Shareholder Funding to the Issuer, from the issuance or sale of such Designated Preference Shares;

(15) dividends or other distributions of Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries;

(16) payment of any Receivables Fees and purchases of Receivables Assets pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing;

(17) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), any Restricted Payment; provided that the Consolidated Leverage Ratio on a pro forma basis after giving effect to any such dividend, distribution, loan or other payment does not exceed 5.0 to 1.0; and

(18) dividends or other distributions in amounts required for a Parent to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Issuer or any of its Restricted Subsidiaries and that has been guaranteed by, or is otherwise considered Indebtedness of, the Issuer or any of its Restricted Subsidiaries Incurred in accordance with the covenant described under "—Limitation on Indebtedness" above.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Issuer acting in good faith.

Limitation on Liens

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of a Restricted Subsidiary of the Issuer), whether owned on the Issue Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness (such Lien, the "Initial Lien"), except (a) in the case of any property or asset that does not constitute Collateral, (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if the Notes and the Indenture (or a Guarantee in the case of Liens of a Guarantor) are directly secured equally and ratably with, or prior to, in the case of Liens with respect to Subordinated Indebtedness, or on a junior basis, in the case of Liens with respect to Senior Indebtedness permitted to be Incurred under the Indenture, the Indebtedness secured by such Initial Lien, in each case, for so long as such Indebtedness is so secured, and (b) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

Any such Lien created in favor of the Notes pursuant to clause (a)(2) of the preceding paragraph will be automatically and unconditionally released and discharged as set forth under "*—Security—Release of Liens*."

Limitation on Restrictions on Distributions from Restricted Subsidiaries

The Issuer will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(A) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Issuer or any Restricted Subsidiary;

(B) make any loans or advances to the Issuer or any Restricted Subsidiary; or

(C) sell, lease or transfer any of its property or assets to the Issuer or any Restricted Subsidiary,

provided that (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Issuer or any Restricted Subsidiary to other Indebtedness Incurred by the Issuer or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

The provisions of the preceding paragraph will not prohibit:

(1) any encumbrance or restriction pursuant to (a) any Credit Facility (including the Finance Documents) or (b) any other agreement or instrument, in each case, in effect at or entered into on the Issue Date, including the indenture governing the Senior Secured Notes;

(2) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Issuer or any Restricted Subsidiary, or was designated as a Restricted Subsidiary or on which such agreement or instrument is assumed by the Issuer or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Issuer or was merged, consolidated or otherwise combined with or into the Issuer or any Restricted Subsidiary entered into or in connection with such transaction) and outstanding on such date; provided that, for the purposes of this clause (2), if another Person is the Successor Issuer, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Issuer or any Restricted Subsidiary when such Person becomes the Successor Issuer;

(3) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in clause (1) or (2) of this paragraph or this clause (3) (an "Initial Agreement") or contained in any amendment, supplement or other modification to an agreement referred to in clause (1) or (2) of this paragraph or this clause (3); *provided, however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable in any material respect to the Holders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Issuer);

(4) any encumbrance or restriction:

  (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any lease, license or other contract;

  (b) contained in mortgages, pledges, charges or other security agreements permitted under the Indenture or securing Indebtedness of the Issuer or a Restricted Subsidiary permitted under the Indenture to the extent such encumbrances or restrictions restrict the transfer of the property or assets subject to such mortgages, pledges, charges or other security agreements; or

  (c) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Issuer or any Restricted Subsidiary;

(5) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalized Lease Obligations permitted under the Indenture, in each case, that impose encumbrances or restrictions on the property so acquired or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the transfer of the assets of the joint venture;

(6) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(7) customary provisions in leases, licenses, joint venture agreements and other similar agreements and instruments entered into in the ordinary course of business;

(8) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;

(9) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(10) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements or Commodity Hedging Agreements entered into for bona fide hedging purposes of the Issuer or its

Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Issuer);

(11) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under "—Limitation on Indebtedness" if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Holders of the Notes than (a) the encumbrances and restrictions contained in the Senior Secured Facilities Agreement and the Intercreditor Agreement, together with the security documents associated therewith, in each case, as in effect on the Issue Date or (b) as is customary in comparable financings (as determined in good faith by the Board of Directors or Senior Management of the Issuer) and where, in the case of this clause (b), the Issuer determines when such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Issuer's ability to make principal or interest payments on the Notes;

(12) any encumbrance or restriction existing by reason of any lien permitted under "*—Limitation on Liens*"; or

(13) restrictions effected in connection with a Qualified Receivables Financing that, in the good faith determination of the Board of Directors of the Issuer, are necessary or advisable to effect such Qualified Receivables Financing.

Limitation on Sales of Assets and Subsidiary Stock

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

(1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors of the Issuer, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);

(2) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (excluding any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, other than Indebtedness) received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash, Cash Equivalents or Temporary Cash Investments; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Issuer or such Restricted Subsidiary, as the case may be:

   (a) to the extent the Issuer or any Restricted Subsidiary, as the case may be, elects (or is required by the terms of any Indebtedness of a Restricted Subsidiary), (i) to prepay, repay or purchase any Senior Indebtedness or any Indebtedness of a non-Guarantor Restricted Subsidiary (in each case, other than Indebtedness owed to the Issuer or any Restricted Subsidiary) (or any Refinancing Indebtedness in respect thereof) within 395 days from the later of (A) the date of such Asset Disposition and (B) the receipt of such Net Available Cash; *provided, however*, that, in connection with any prepayment, repayment or purchase of Indebtedness pursuant to this clause (a), the Issuer or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (if any) (except in the case of any revolving Indebtedness) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased; or (ii) to prepay, repay or purchase Pari Passu Indebtedness at a price of no more than 100% of the principal amount of such Pari Passu Indebtedness plus accrued and unpaid interest to the date of such prepayment, repayment or purchase; *provided* that the Issuer shall redeem, repay or repurchase Pari Passu Indebtedness pursuant to this clause (ii) only if the Issuer makes (at such time or subsequently in compliance with this covenant) an offer to the Holders of the Notes to purchase their Notes in accordance with the provisions set forth below for an Asset Disposition Offer for an aggregate principal amount of Notes at least equal to the proportion that (x) the total aggregate principal amount of Notes outstanding bears to (y) the sum of the total aggregate

principal amount of Notes outstanding plus the total aggregate principal amount outstanding of such Pari Passu Indebtedness; or

(b) to the extent the Issuer or such Restricted Subsidiary elects, to invest in or commit to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary with Net Available Cash received by the Issuer or another Restricted Subsidiary) within 395 days from the later of (i) the date of such Asset Disposition and (ii) the receipt of such Net Available Cash; *provided, however*, that any such reinvestment in Additional Assets made pursuant to a definitive binding agreement or a commitment approved by the Board of Directors of the Issuer that is executed or approved within such time will satisfy this requirement, so long as such investment is consummated within 180 days of such 395th day,

provided, however, that if the assets disposed of constitute Collateral or constitute all or substantially all of the assets of a Restricted Subsidiary whose Capital Stock has been pledged as Collateral, subject to the Agreed Security Principles, the Issuer shall pledge or shall cause the applicable Restricted Subsidiary to pledge any acquired Capital Stock or assets (to the extent such assets were of a category of assets included in the Collateral as of the Issue Date) referred to in this covenant in favor of the Notes on a first-ranking basis; and provided, further, that, pending the final application of any such Net Available Cash in accordance with clause (a) or clause (b) above, the Issuer and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by the Indenture.

Any Net Available Cash from Asset Dispositions that is not applied or invested or committed to be applied or invested as provided in the preceding paragraph will be deemed to constitute "Excess Proceeds" under the Indenture. On the 396th day after an Asset Disposition, or at such earlier date that the Issuer elects, if the aggregate amount of Excess Proceeds under the Indenture exceeds €25 million, the Issuer will be required within 10 Business Days thereof, to make an offer ("Asset Disposition Offer") to all Holders of Notes issued under the Indenture and, to the extent the Issuer elects, to all holders of other outstanding Pari Passu Indebtedness, to purchase the maximum aggregate principal amount of Notes and any such Pari Passu Indebtedness to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in respect of the Notes in an amount equal to (and, in the case of any Pari Passu Indebtedness, an offer price of no more than) 100% of the principal amount of the Notes and 100% of the principal amount of such Pari Passu Indebtedness, in each case, plus accrued and unpaid interest, if any, to, but not including, the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing such Pari Passu Indebtedness, as applicable, in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof.

To the extent that the aggregate amount of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to the other covenants contained in the Indenture. If the aggregate principal amount of the Notes surrendered in any Asset Disposition Offer by Holders and other Pari Passu Indebtedness surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Excess Proceeds shall be allocated among the Notes and Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Indebtedness. For the purposes of calculating the aggregate principal amount of any such Indebtedness not denominated in Euro, such Indebtedness shall be calculated by converting any such aggregate principal amounts into their Euro Equivalent determined as of a date selected by the Issuer that is within the Asset Disposition Offer Period (as defined below). Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

To the extent that any portion of Net Available Cash payable in respect of the Notes is denominated in a currency other than the currency in which the relevant Notes are denominated, the amount thereof payable in respect of such Notes shall not exceed the net amount of funds in the currency in which such Notes are denominated that is actually received by the Issuer upon converting such portion into such currency.

The Asset Disposition Offer, in so far as it relates to the Notes, will remain open for a period of not less than 20 Business Days following its commencement (the "Asset Disposition Offer Period"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "Asset Disposition Purchase Date"), the Issuer will purchase the aggregate principal amount of Notes and, to the extent they elect, Pari Passu Indebtedness required to be purchased pursuant to this covenant (the "Asset Disposition

Offer Amount'') or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Indebtedness validly tendered in response to the Asset Disposition Offer.

On or before the Asset Disposition Purchase Date, the Issuer will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Indebtedness or portions of Notes and such Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn and in minimum denominations of €100,000 and in integral multiples of €1,000 in excess thereof. The Issuer will deliver to the Trustee an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this covenant. The Issuer or the Paying Agent, as the case may be, will promptly (but in any case not later than five Business Days after termination of the Asset Disposition Offer Period) mail or deliver to each tendering Holder of Notes an amount equal to the purchase price of the Notes so validly tendered and not properly withdrawn by such Holder, and accepted by the Issuer for purchase, and the Issuer will promptly issue a new Note (or amend the Global Note), and the Trustee, upon delivery of an Officer's Certificate from the Issuer, will authenticate (or cause to be authenticated) and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in an aggregate principal amount equal to any unpurchased portion of the Note surrendered; *provided* that each such new Note will be in an aggregate principal amount with a minimum denomination of €100,000. Any Note not so accepted will be promptly mailed or delivered (or transferred by book entry) by the Issuer to the Holder thereof.

For the purposes of clause (2) of the first paragraph of this covenant, the following will be deemed to be cash:

(1) the assumption by the transferee of Indebtedness of the Issuer or Indebtedness of a Restricted Subsidiary (other than Subordinated Indebtedness of the Issuer or a Guarantor) and the release of the Issuer or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;

(2) securities, notes or other obligations received by the Issuer or any Restricted Subsidiary of the Issuer from the transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;

(3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Issuer and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;

(4) consideration consisting of Indebtedness of the Issuer (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Issuer or any Restricted Subsidiary; and

(5) any Designated Non-Cash Consideration received by the Issuer or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this covenant that is at that time outstanding, not to exceed the greater of €25 million and 1.0% of Total Assets (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).

The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations (or rules of any exchange on which the Notes are then listed) in connection with the repurchase of Notes pursuant to the Indenture. To the extent that the provisions of any securities laws or regulations (or exchange rules) conflict with provisions of this covenant, the Issuer will comply with the applicable securities laws and regulations (or exchange rules) and will not be deemed to have breached its obligations under the Indenture by virtue of any conflict.

Limitation on Affiliate Transactions

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Issuer (any such transaction or

series of related transactions being an "Affiliate Transaction") involving aggregate value in excess of €5 million unless:

(1) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Issuer or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate;

(2) in the event such Affiliate Transaction involves an aggregate value in excess of €15 million, the terms of such transaction or series of related transactions have been approved by a majority of the members of the Board of Directors of the Issuer resolving that such transaction complies with clause (1) above; and

(3) in the event such Affiliate Transaction involves an aggregate consideration in excess of €30 million, the Issuer has received a written opinion (a "Fairness Opinion") from an Independent Financial Advisor stating that such Affiliate Transaction is fair, from a financial standpoint, to the Issuer and its Restricted Subsidiaries or stating that the terms are not materially less favorable to the Issuer and its Restricted Subsidiaries than those that could reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person who is not an Affiliate.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this covenant if the Issuer complies with clause (3) of this paragraph.

The provisions of the preceding paragraph will not apply to:

(1) any Restricted Payment permitted to be made pursuant to the covenant described under "—*Limitation on Restricted Payments*," any Permitted Payments (other than pursuant to clause (9)(b)(ii) of the third paragraph of the covenant described under "—*Limitation on Restricted Payments*") or any Permitted Investment (other than Permitted Investments as defined in paragraphs (l)(b), (2) and (11) of the definition thereof);

(2) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Issuer, any Restricted Subsidiary or any Parent, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Issuer, in each case in the ordinary course of business;

(3) any Management Advances and any waiver or transaction with respect thereto;

(4) any transaction between or among the Issuer and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;

(5) the payment of reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Issuer, any Restricted Subsidiary of the Issuer or any Parent (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);

(6) the Transaction and the entry into and performance of obligations of the Issuer or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this covenant or to the extent not more disadvantageous to the Holders in any material respect and the entry into and performance of any registration rights or other listing agreement in connection with any Public Offering;

(7) execution, delivery and performance (including payments) of any Tax Sharing Agreement or arrangement with which the Issuer or any of its Restricted Subsidiaries is required or permitted to file a consolidated tax return or the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(8) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business, which are fair to the Issuer or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the Senior Management of the Issuer, or are on terms no less favorable than those that could reasonably have been obtained at such time from an unaffiliated party;

(9) any transaction in the ordinary course of business between or among the Issuer or any Restricted Subsidiary and any Affiliate of the Issuer or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Issuer or a Restricted Subsidiary or any Affiliate of the Issuer or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;

(10) (a) issuances or sales of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Issuer or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Funding; *provided* that the interest rate and other financial terms of such Subordinated Shareholder Funding are approved by a majority of the members of the Board of Directors of the Issuer in their reasonable determination and (b) any amendment, waiver or other transaction with respect to any Subordinated Shareholder Funding in compliance with the other provisions of the Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreement, as applicable;

(11) without duplication in respect of payments made pursuant to clause (12) hereof, (a) payments by the Issuer or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent) of annual customary management, consulting, monitoring or advisory fees and related expenses in an aggregate amount not to exceed €3 million per year and (b) customary payments by the Issuer or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent) for financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with loans, capital markets transactions, acquisitions or divestitures, which payments (and the entry into agreements providing for such payments) in respect of this clause (b) are approved by a majority of the Board of Directors of the Issuer in good faith;

(12) payment to any Permitted Holder of all reasonable out-of-pocket expenses Incurred by such Permitted Holder in connection with its direct or indirect investment in the Issuer and its Subsidiaries; and

(13) any transaction effected as part of a Qualified Receivables Financing.

Limitation on Layering

The Issuer will not, and will not permit any Guarantor to, and no Guarantor shall, Incur any Indebtedness that is or purports to be by its terms (or by the terms of any agreement governing such Indebtedness) to be subordinated in right of payment to any Senior Indebtedness of the Issuer or such Guarantor unless such Indebtedness is *pari passu* in right of payment with the Notes and the Guarantees of the Notes, as the case may be, or is also by its terms (or by the terms of any agreement governing such Indebtedness) made subordinated in right of payment to the Notes or Guarantees of the Notes, as the case may be; *provided* that the foregoing limitation shall not apply to distinctions between categories of Senior Indebtedness that exist by reason of any Liens or guarantees arising or created in respect of some but not all such Senior Indebtedness or any distinction between categories of Senior Indebtedness that exist by reason of being secured by first priority or junior Liens; *provided*, *further*, that Indebtedness under a Credit Facility that is Senior Indebtedness of a Guarantor may provide for an ordering of payments among the tranches of such Credit Facility.

Maintenance of Listing

The Issuer will use commercially reasonable efforts to have the Notes admitted to listing and trading on the Luxembourg Stock Exchange after the Issue Date and will use commercially reasonable efforts to maintain the admission to listing of the Notes on the Official List of the Luxembourg Stock Exchange and their admission to trading on the Euro MTF Market of the Luxembourg Stock Exchange for so long as such Notes are outstanding; *provided* that if at any time the Issuer determines that it will not maintain such admission to listing and trading, it will obtain prior to the delisting of the Notes from the Euro MTF Market of the Luxembourg Stock Exchange, and thereafter use its best efforts to maintain, a listing of such Notes on another recognized stock exchange.

Reports

For so long as any Notes are outstanding, the Issuer will provide to the Trustee the following reports:

(1) within 120 days after the end of the Issuer's fiscal year beginning with the first fiscal year ending after the Issue Date, annual reports containing, to the extent applicable, the following information:

   (a) the audited consolidated balance sheets of the Issuer or its predecessor as of the end of the two most recent fiscal years and audited consolidated income statements and statements of cash flow of the Issuer or its predecessor for the two most recent fiscal years, including complete footnotes to such financial statements and the report of the independent auditors on the financial statements;

   (b) unaudited pro forma income statement information and balance sheet information of the Issuer (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the most recently completed fiscal year, *provided* that such pro forma financial information will be provided only to the extent available without unreasonable expense, otherwise the Issuer will provide, in the case of a material acquisition, acquired company financial statements;

   (c) an operating and financial review of the audited financial statements, including a discussion of the results of operations, financial condition, and liquidity and capital resources of the Issuer, and a discussion of material commitments and contingencies and critical accounting policies, with a similar scope to that included in this offering memorandum;

   (d) description of the business, management and shareholders of the Issuer, all material affiliate transactions and a description of all material contractual arrangements, including material debt instruments, with a similar scope to that included in this offering memorandum; and

   (e) a description of material risk factors and material recent developments;

(2) within 60 days following the end of the first three fiscal quarters in each fiscal year of the Issuer beginning with the quarter ending September 30, 2012 (but within 90 days in the case of the quarter ending September 30, 2012), all quarterly reports of the Issuer containing the following information: (a) an unaudited condensed consolidated balance sheet as of the end of such quarter and unaudited condensed statements of income and cash flow for the most recent quarter year-to-date period ending on the unaudited condensed balance sheet date, and the comparable prior year periods, together with condensed footnote disclosure; (b) unaudited pro forma income statement information and balance sheet information of the Issuer (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the relevant quarter, *provided* that such pro forma financial information will be provided only to the extent available without unreasonable expense, otherwise the Issuer will provide, in the case of a material acquisition, acquired company financial statements; (c) an operating and financial review of the unaudited financial statements, including a discussion of the results of operations, financial condition, EBITDA and material changes in liquidity and capital resources of the Issuer, and a discussion of material changes not in the ordinary course of business in commitments and contingencies since the most recent report; and (d) material recent developments; and

(3) promptly after the occurrence of any material acquisition, disposition or restructuring or either the chief executive officer or chief financial officer changes at the Issuer or change in auditors of the Issuer or any other material event that the Issuer or any of its Restricted Subsidiaries announces publicly, a report containing a description of such event.

All financial statements shall be prepared in accordance with IFRS as in effect on the date of such report or financial statement (or otherwise on the basis of IFRS as then in effect) and on a consistent basis for the periods presented; *provided, however*, that the reports set forth in clauses (1), (2) and (3) above may, in the event of a change in applicable IFRS, present earlier periods on a basis that applied to such periods.

In the event that the Issuer has Restricted Subsidiaries that are not Guarantors, the annual and quarterly financial information required by clauses (1) and (2) of the first paragraph of this covenant shall include financial information in respect of the Guarantors and the non-Guarantors similar to the financial

information contained in this offering memorandum in respect of the Guarantors and the non-Guarantors. At any time that any of the Issuer's Subsidiaries are Unrestricted Subsidiaries and any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, constitutes a Significant Subsidiary of the Issuer, then the annual and quarterly financial information required by clauses (1) and (2) of the first paragraph of this covenant shall include either (i) a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Issuer and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer or (ii) stand-alone audited or unaudited financial statements, as the case may be, of such Unrestricted Subsidiary or Unrestricted Subsidiaries (as a group or otherwise) together with an unaudited reconciliation to the financial information of the Issuer and its Subsidiaries, which reconciliation shall include the following items: revenues, EBITDA, net income, cash, total assets, total debt, shareholders equity, capital expenditures and interest expense.

Substantially concurrently with the issuance to the Trustee of the reports specified in clauses (1), (2) and (3) of the first paragraph of this covenant, the Issuer shall also (a) use its commercially reasonable efforts (i) to post copies of such reports on such website as may be then maintained by the Issuer and its Subsidiaries or (ii) otherwise to provide substantially comparable availability of such reports (as determined by the Issuer in good faith) or (b) to the extent the Issuer determines in good faith that it cannot make such reports available in the manner described in the preceding clause (a) owing to applicable law or after the use of its commercially reasonable efforts, furnish such reports to the Holders and, upon request, prospective purchasers of the Notes. The Issuer will also post the reports required by clauses (1) through (3) of the first paragraph of this covenant on the official website of the Luxembourg Stock Exchange, if and so long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and admitted for trading on the Euro MTF market to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

In addition, so long as the Notes remain outstanding and during any period during which the Issuer is not subject to Section 13 or 15(d) of the Exchange Act nor exempt therefrom pursuant to Rule 12g3-2(b), the Issuer shall furnish to the Holders and, upon their request, prospective purchasers of the Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Merger and Consolidation

The Issuer

The Issuer will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor Issuer") will be a Person organized and existing under the laws of any member state of the European Union or the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Issuer (if not the Issuer) will expressly assume (a) by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Issuer under the Notes and the Indenture and (b) all obligations of the Issuer under the Security Documents (and, to the extent required by the Intercreditor Agreement, the Intercreditor Agreement);

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Issuer or any Subsidiary of the Successor Issuer as a result of such transaction as having been Incurred by the Successor Issuer or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, either (a) the Successor Issuer would be able to Incur at least an additional €1.00 of Indebtedness pursuant to the first paragraph of the covenant described under "*—Limitation on Indebtedness*" or (b) the Fixed Charge Coverage Ratio for the Issuer would not be lower than it was immediately prior to giving effect to such transaction; and

(4) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture and an Opinion of Counsel to the effect that such supplemental indenture (if any) has been duly authorized, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Issuer (in each case, in form and substance reasonably satisfactory

to the Trustee), *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

Any Indebtedness that becomes an obligation of the Issuer or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this covenant, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with the covenant described under "— *Limitation on Indebtedness*."

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, and may exercise every right and power of, the Issuer under the Indenture but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under such Indenture or the Notes.

Notwithstanding the preceding clauses (2) and (3) (which do not apply to the transactions referred to in this sentence), the Issuer may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Issuer, reincorporating the Issuer in another jurisdiction or changing the legal form of the Issuer.

There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

The foregoing provisions (other than the requirements of clause (2) of the first paragraph of this covenant) will not apply to the creation of a new subsidiary as a Restricted Subsidiary of the Issuer.

Subsidiary Guarantors

No Subsidiary Guarantor may:

(1) consolidate with or merge with or into any Person;

(2) sell, convey, transfer or dispose of, all or substantially all its assets as an entirety or substantially as an entirety, in one transaction or a series of related transactions, to any Person; or

(3) permit any Person to merge with or into such Guarantor,

unless

(A) the other Person is the Issuer or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or

(B) (1) either (x) a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all of the obligations of the Guarantor under its Guarantee and the Security Documents (and, to the extent required by the Intercreditor Agreement, the Intercreditor Agreement); and

(2) immediately after giving effect to the transaction, no Default has occurred and is continuing; or

(C) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to the Issuer or a Restricted Subsidiary) otherwise permitted by the Indenture.

Notwithstanding the preceding clause (B)(2) (which does not apply to the transactions referred to in this sentence), a Subsidiary Guarantor may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Subsidiary Guarantor, reincorporating the Subsidiary Guarantor in another jurisdiction or changing the legal form of the Subsidiary Guarantor.

There is no precise established definition of the phrase "substantially all" under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

Notwithstanding clauses (2) and (3) above under "*—The Issuer*" and clause (B)(2) above under "*—Guarantors*" (which do not apply to transactions referred to in this sentence) (a) any Restricted Subsidiary of the Issuer may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Issuer or a Guarantor and (b) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary.

Suspension of Covenants on Achievement of Investment Grade Status

If on any date following the Issue Date, the Notes have achieved Investment Grade Status and no Default or Event of Default has occurred and is continuing (a "Suspension Event"), then, beginning on that day and continuing until the Reversion Date, the provisions of the Indenture summarized under the following captions will not apply to such Notes: "*—Limitation on Restricted Payments*," "*—Limitation on Indebtedness*," "*—Limitation on Restrictions on Distributions from Restricted Subsidiaries*," "*—Limitation on Affiliate Transactions*," "*—Limitation on Sales of Assets and Subsidiary Stock*," "*—Additional Guarantees*," "*—Lines of Business*," the provisions of clause (3) of the first paragraph of the covenant described under "*—Merger and Consolidation—The Issuer*" and "*—Impairment of Security Interest*", and, in each case, any related default provision of such Indenture will cease to be effective and will not be applicable to the Issuer and its Restricted Subsidiaries. The Issuer will notify the Trustee of the fact that there is a Suspension Event. Such covenants and any related default provisions will again apply according to their terms from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Issuer properly taken during the continuance of the Suspension Event and no action taken in breach of such covenants prior to the Reversion Date will constitute a Default or Event of Default. The "*—Limitation on Restricted Payments*" covenant will be interpreted as if it has been in effect since the date of such Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be classified, at the Issuer's option, as having been Incurred pursuant to the first paragraph of the covenant described under "*—Limitation on Indebtedness*" or one of the clauses set forth in the second paragraph of such covenant (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Event and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred under the first two paragraphs of the covenant described under "*—Limitation on Indebtedness*," such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (4)(b) of the second paragraph of the covenant described under "*—Limitation on Indebtedness*." In addition, the Indenture will also permit, without causing a Default or Event of Default, the Issuer or any of the Restricted Subsidiaries to honor any contractual commitments or take actions in the future after the Reversion Date as long as the contractual commitments were entered into during the Suspension Event and not in anticipation of the Notes no longer having an Investment Grade Status.

Additional Guarantees

The Issuer will not cause or permit any of its Restricted Subsidiaries that are not Guarantors, directly or indirectly, to Guarantee any Indebtedness Incurred under the first paragraph (to the extent such Indebtedness constitutes a Credit Facility) or clause (1) (including with respect to the Senior Secured Facilities) or (5)(ii) of the second paragraph of the covenant described under "*—Limitation on Indebtedness*" or any Public Debt, and any refinancing thereof in whole or in part, unless such Restricted Subsidiary becomes a Guarantor on the date on which such other Guarantee is Incurred and, if applicable, executes and delivers to the Trustee a supplemental indenture in the form attached to the Indenture pursuant to which such Restricted Subsidiary will provide a Guarantee, which Guarantee will be senior to or *pari passu* with such Restricted Subsidiary's Guarantee of such other Indebtedness.

A Restricted Subsidiary that is not a Guarantor may become a Guarantor if it executes and delivers to the Trustee a supplemental indenture in the form attached to the Indenture pursuant to which such Restricted Subsidiary will provide a Guarantee.

Each additional Guarantee will be limited as necessary to recognize certain defenses generally available to guarantors (including those that relate to fraudulent conveyance or transfer, voidable preference, financial assistance, corporate purpose, thin capitalization, distributable reserves, capital maintenance or similar laws, regulations or defenses affecting the rights of creditors generally) or other considerations under applicable law.

Notwithstanding the foregoing, the Issuer shall not be obligated to cause such Restricted Subsidiary to Guarantee the Notes to the extent and for so long as the Incurrence of such Guarantee could reasonably be expected to give rise to or result in: (1) any violation of applicable law, rules or regulation (or analogous restriction); (2) any liability for the officers, directors or (except in the case of a Restricted Subsidiary that is a partnership) shareholders of such Restricted Subsidiary (or, in the case of a Restricted Subsidiary that is a partnership, directors or shareholders of the partners of such partnership); (3) any cost, expense, liability or obligation (including with respect to any Taxes) other than reasonable out-of-pocket expenses and other than reasonable expenses incurred in connection with any governmental or regulatory filings required as a result of, or any measures pursuant to clause (1) of this paragraph undertaken in connection with, such Guarantee, which in any case under any of clauses (1), (2) and (3) of this paragraph cannot be avoided through measures reasonably available to the Issuer or a Restricted Subsidiary; or (4) an inconsistency with the Intercreditor Agreement or the Agreed Securities Principles.

Impairment of Security Interest

The Issuer shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take any action that would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Trustee and the Holders, and the Issuer shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Trustee, for the benefit of the Trustee and the Holders and the other beneficiaries described in the Security Documents, any Lien over any of the Collateral that is prohibited by the covenant entitled "Limitation on Liens;" *provided*, that the Issuer and its Restricted Subsidiaries may Incur Permitted Collateral Liens and the Collateral may be discharged, transferred or released in accordance with the Indenture, the Intercreditor Agreement or the applicable Security Documents.

Notwithstanding the above, nothing in this covenant shall restrict the discharge and release of any Security Interest in accordance with the Indenture and the Intercreditor Agreement. Subject to the foregoing, the Security Documents may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) to (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Permitted Collateral Liens; (iii) add to the Collateral; or (iv) make any other change thereto that does not adversely affect the Holders in any material respect; *provided, however*, that, except where permitted by the Indenture or the Intercreditor Agreement, no Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Issuer delivers to the Security Trustee and the Trustee, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Trustee and the Trustee, from an independent financial advisor or appraiser or investment bank of international standing which confirms the solvency of the Issuer and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person which confirms the solvency of the person granting Security Interest after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), or (3) an opinion of counsel (subject to any qualifications customary for this type of opinion of counsel), in form and substance reasonably satisfactory to the Security Trustee and the Trustee, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), the Lien or Liens created under the Security Document, so amended, extended, renewed, restated, supplemented, modified or released and retaken are valid and perfected

Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject.

In the event that the Issuer and its Restricted Subsidiaries comply with the requirements of this covenant, the Trustee and the Security Trustee shall (subject to customary protections and indemnifications) consent to such amendments without the need for instructions from the Holders.

Lines of Business

The Issuer will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Similar Business, except to such extent as would not be material to the Issuer and its Restricted Subsidiaries, taken as a whole.

Limitation on Holdco and Issuer Activities

Each of the Holdcos and the Issuer shall not trade, carry on any business, own any assets or incur any material liabilities except for:

(1) the conduct of its business as a holding company, including any employment contracts for its employees required for such conduct of its business as a holding company;

(2) in the case of the Issuer, the provision of treasury, accounting and IT services, and any ancillary services or activities customarily related thereto, to its Affiliates;

(3) the provision of management and administrative services (excluding treasury services but including the on-lending of monies to the Company and its Restricted Subsidiaries) to any of its direct or indirect Subsidiaries of a type customarily provided by a holding company to its Subsidiaries and the ownership of assets necessary to provide such services;

(4) the entry into and performance of its obligations (and incurrence of liabilities) under the Notes, the Indenture, the Senior Secured Facilities Agreement, the Senior Secured Notes, the indenture for the Senior Secured Notes, any proceeds loan documents relating to the foregoing, Hedging Obligations, other Indebtedness or any other obligations not otherwise prohibited by the Indenture, any Security Document to which it is a party or the Intercreditor Agreement (or any Additional Intercreditor Agreement entered into pursuant to the Notes, the Intercreditor Agreement or the Indenture);

(5) the granting of security interests in accordance with the terms of the Notes, the Indenture, the Senior Secured Facilities Agreement, the Senior Secured Notes, the indenture for the Senior Secured Notes, any proceeds loan documents relating to the foregoing, Hedging Obligations, other Indebtedness or any other obligations not otherwise prohibited by the Indenture, any Security Document to which it is a party or the Intercreditor Agreement (or any Additional Intercreditor Agreement entered into pursuant to the Notes, the Intercreditor Agreement or the Indenture);

(6) professional fees and administration costs in the ordinary course of business as a holding company;

(7) related or reasonably incidental to the establishment and/or maintenance of its or its Subsidiaries' corporate existence;

(8) issuing directors' qualifying shares and shares to its shareholders, and pay dividends and make other distributions on such shares;

(9) any liabilities under any purchase agreement and/or other document entered into in connection with the issuance of the Notes or the Senior Secured Notes or any other Indebtedness permitted to be Incurred by the Issuer or its Restricted Subsidiaries under the Indenture;

(10) effect or participate in a Permitted Reorganization;

(11) the payment of wages and the incurrence of obligations and liabilities arising by operation of law or that are typical of or incidental to the activities of a holding company;

(12) ownership of shares or, as applicable, limited partnership interests in its Subsidiaries, intra-group debit balances, intra-group credit balances and other credit balances in bank accounts, cash and Investments in Cash Equivalents;

(13) any rights and liabilities under the documents and agreements relating to the Transaction to which it is a party and any Taxes, professional fees and administration costs in the ordinary course of business as a holding company;

(14) in relation to the Germany Holdco, undertaking such activities as are reasonably required in order to attain and maintain holding company status under applicable tax rules in Luxembourg to ensure it achieves and maintains "good standing" under applicable tax rules; and

(15) any other activities which are not specifically listed above (i) which are ancillary or related to those listed above or (ii) which are de minimis in nature.

Events of Default

Each of the following is an Event of Default under the Indenture:

(1) default in any payment of interest or Additional Amounts, if any, on any Note when due and payable, continued for 30 days;

(2) default in the payment of the principal amount of or premium, if any, on any Note issued under the Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Issuer or any of its Restricted Subsidiaries to comply for 30 days with the provisions described under the captions *"Change of Control"; "—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock"* or *"—Certain Covenants—Merger and Consolidation"*;

(4) failure by the Issuer or any of its Restricted Subsidiaries for 60 days after written notice to the Issuer by the Trustee on behalf of the Holders or by the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the agreements contained in the Indenture (other than any such failure which is specifically addressed in clause (1), (2) or (3) above);

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuer or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Issuer or any of its Restricted Subsidiaries) other than Indebtedness owed to the Issuer or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the date hereof, which default:

   (a) is caused by a failure to pay principal at stated maturity on such Indebtedness, immediately upon the expiration of the grace period provided in such Indebtedness ("payment default"); or

   (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision");

   and, in each case, the aggregate principal amount of any such Indebtedness, together with the aggregate principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates €25 million or more;

(6) certain events of bankruptcy, insolvency or court protection of the Issuer, the Senior Secured Notes Issuer or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the "bankruptcy provisions");

(7) failure by the Issuer, the Senior Secured Notes Issuer or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of €25 million (exclusive of any amounts that a solvent insurance company has acknowledged liability for), which judgments are not paid, discharged or stayed for a period of 60 days after the judgment becomes final (the "judgment default provision");

(8) any security interest under the Security Documents shall, at any time, cease to be in full force and effect (other than in accordance with the terms of the relevant Security Document, the Intercreditor Agreement and the Indenture) with respect to Collateral having a fair market value in excess of €20 million for any reason other than the satisfaction in full of all obligations under the Indenture or the release or amendment of any such security interest in accordance with the terms of the Indenture, the Intercreditor Agreement or such Security Document or any such security interest created thereunder shall be declared invalid or unenforceable or the Issuer or any Restricted Subsidiary shall

assert in writing that any such security interest is invalid or unenforceable and any such Default continues for 10 days (the "security default provisions"); and

(9) any Guarantee of the Holdcos or a Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee or the Indenture) or is declared invalid or unenforceable in a judicial proceeding or any Guarantor denies or disaffirms in writing its obligations under its Guarantee and any such Default continues for 10 days (the "guarantee provisions").

However, a default under clause (3), (4), (5) or (7) of this paragraph will not constitute an Event of Default until the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes notify the Issuer of the default and, with respect to clause (3), (4), (5) and (7), the Issuer does not cure such default within the time specified in clause (3), (4), (5) and (7), as applicable, of this paragraph after receipt of such notice.

If an Event of Default (other than an Event of Default described in clause (6) above with respect to the Issuer or the Senior Secured Notes Issuer) occurs and is continuing, the Trustee by notice to the Issuer or the Holders of at least 25% in aggregate principal amount of the outstanding Notes by written notice to the Issuer and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, including Additional Amounts, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest, including Additional Amounts, if any, will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (5) under "Events of Default" has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (5) shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest, including Additional Amounts, if any, on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

If an Event of Default described in clause (6) above with respect to the Issuer or the Senior Secured Notes Issuer occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest, including Additional Amounts, if any, on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

The Holders of a majority in aggregate principal amount of the outstanding Notes under the Indenture may waive all past or existing Defaults or Events of Default (except with respect to nonpayment of principal, premium or interest, or Additional Amounts, if any) and rescind any such acceleration with respect to such Notes and its consequences if rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

Subject to the provisions of the Indenture relating to the duties of the Trustee, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;

(3) such Holders have offered in writing the Trustee indemnity and/or security against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of such indemnity and/or security; and

(5) the Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the Holders of a majority in aggregate principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Indenture will provide that, in the event an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification and/or security satisfactory to it against all losses and expenses caused by taking or not taking such action.

The Indenture will provide that if a Default occurs and is continuing and the Trustee is informed of such occurrence by the Issuer, the Trustee must give notice of the Default to the Holders within 60 days after being notified by the Issuer. Except in the case of a Default in the payment of principal of, or premium, if any, or interest on any Note, the Trustee may withhold notice if and so long as a committee of trust officers of the Trustee in good faith determines that withholding notice is in the interests of the Holders. The Issuer is required to deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate indicating whether the signers thereof know of any Default that occurred during the previous year. The Issuer is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events of which it is aware which would constitute certain Defaults, their status and what action the Issuer is taking or proposes to take in respect thereof.

The Indenture will provide that (i) if a Default occurs for a failure to deliver a required certificate in connection with another default (an "Initial Default") then at the time such Initial Default is cured, such Default for a failure to report or deliver a required certificate in connection with the Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in the covenant entitled "*—Reports*" or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Indenture.

The Notes will provide for the Trustee to take action on behalf of the Holders in certain circumstances, but only if the Trustee is indemnified and/or secured to its satisfaction. It may not be possible for the Trustee to take certain actions in relation to the Notes and, accordingly, in such circumstances the Trustee will be unable to take action, notwithstanding the provision of an indemnity to it, and it will be for Holders to take action directly.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture and may not enforce the Security Documents except as provided in such Security Documents and the Intercreditor Agreement or any Additional Intercreditor Agreement.

Amendments and Waivers

Subject to certain exceptions, the Note Documents may be amended, supplemented or otherwise modified with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes) and, subject to certain exceptions, any default or compliance with any provisions thereof may be waived with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes). However, without the consent of Holders holding not less than 90% (or, in the case of clause (8), 75%) of the then outstanding aggregate principal amount of Notes affected, an amendment or waiver may not, with respect to any such Notes held by a non-consenting Holder:

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment;

(2) reduce the stated rate of or extend the stated time for payment of interest on any such Note;

(3) reduce the principal of or extend the Stated Maturity of any such Note;

(4) reduce the premium payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as described above under "*—Optional Redemption*";

(5) make any such Note payable in money other than that stated in such Note;

(6) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder's Notes;

(7) make any change in the provision of the Indenture described under "*—Withholding Taxes*" that adversely affects the right of any Holder of such Notes in any material respect or amends the terms of such Notes in a way that would result in a loss of an exemption from any of the Taxes described thereunder or an exemption from any obligation to withhold or deduct Taxes so described thereunder unless the Payor agrees to pay Additional Amounts, if any, in respect thereof;

(8) release (i) any security interest granted for the benefit of the Holders in the Collateral or (ii) any Guarantee, in each case, other than pursuant to the terms of the Security Document or the Indenture, as applicable, except as permitted by the Intercreditor Agreement;

(9) waive a Default or Event of Default with respect to the nonpayment of principal, premium or interest (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration); or

(10) make any change in the amendment or waiver provisions which require the Holders' consent described in this sentence.

Notwithstanding the foregoing, without the consent of any Holder, the Issuer, the Trustee and the other parties thereto, as applicable, may amend or supplement any Note Documents to:

(1) cure any ambiguity, omission, defect, error or inconsistency, conform any provision to this "Description of Senior Subordinated Notes," or reduce the minimum denomination of the Notes;

(2) provide for the assumption by a successor Person of the obligations of the Issuer or any Guarantor under any Note Document;

(3) provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(4) add to the covenants or provide for a Guarantee for the benefit of the Holders or surrender any right or power conferred upon the Issuer or any Restricted Subsidiary;

(5) make any change that does not adversely affect the rights of any Holder in any material respect;

(6) at the Issuer's election, comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act, if such qualification is required;

(7) make such provisions as necessary (as determined in good faith by the Issuer) for the issuance of Additional Notes;

(8) to provide for any Restricted Subsidiary to provide a Guarantee in accordance with the Covenant described under "*—Certain Covenants—Limitation on Indebtedness*" and "*—Certain Covenants—Additional Guarantees*," to add Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Guarantee or Lien (including the Collateral and the Security Documents) with respect to or securing the Notes when such release, termination, discharge or retaking is provided for under the Indenture, the Intercreditor Agreement or the Security Documents;

(9) to evidence and provide for the acceptance and appointment under the Indenture of a successor Trustee pursuant to the requirements thereof or to provide for the accession by the Trustee to any Note Document; or

(10) in the case of the Security Documents, to mortgage, pledge, hypothecate or grant a security interest in favor of the Security Trustee for the benefit of parties to the Senior Secured Facilities Agreement or the Senior Secured Notes, in any property which is required by the Senior Secured Facilities Agreement or the Senior Secured Notes (as in effect on the Issue Date) to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Security Trustee, or to the extent necessary to grant a security interest for the benefit of any Person; *provided* that the granting of such security interest is not prohibited by the Indenture and the covenant described under "*—Certain Covenants—Impairment of Security Interest*" is complied with.

In formulating its decisions on such matters, the Trustee shall be entitled to rely on such evidence as it deems appropriate including Officer's Certificates and Opinions of Counsel.

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment of any Note Document. It is sufficient if such consent approves the substance of the proposed amendment. A consent to any amendment or waiver under the Indenture by any Holder of Notes given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender.

For so long as the Notes are listed on the Luxembourg Stock Exchange and the rules of such exchange so require, the Issuer will publish notice of any amendment, supplement or waiver in Luxembourg in a daily newspaper with general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*). Such notice of any amendment, supplement and waiver may also be published on the website of the Luxembourg Stock Exchange (*www.bourse.lu*).

Acts by Holders

In determining whether the Holders of the required aggregate principal amount of the Notes have concurred in any direction, waiver or consent, any Notes owned by the Issuer or by any Person directly or indirectly controlled, or controlled by, or under direct or indirect common control with, the Issuer will be disregarded and deemed not to be outstanding.

Defeasance

The Issuer at any time may terminate all its and each Guarantor's obligations under the Notes and the Indenture ("legal defeasance") and cure all then existing Defaults and Events of Default, except for certain obligations, including those respecting the defeasance trust, the rights, powers, trusts, duties, immunities and indemnities of the Trustee and the obligations of the Issuer in connection therewith and obligations concerning issuing temporary Notes, registrations of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust. Subject to the foregoing, if the Issuer exercises its legal defeasance option, the Security Documents in effect at such time will terminate (other than with respect to the defeasance trust).

The Issuer at any time may terminate its and the Guarantor's obligations under the covenants described under "*—Certain Covenants*" (other than with respect to clauses (1) and (2) of each of the covenants described under "*—Certain Covenants—Merger and Consolidation—The Issuer*" and "*—Certain Covenants—Merger and Consolidation—Subsidiary Guarantors*") and "*—Change of Control*" and the default provisions relating to such covenants described under "*—Events of Default*" above, the operation of the cross-default upon a payment default, the cross acceleration provisions, the bankruptcy provisions with respect to the Issuer, the Senior Secured Notes Issuer and its Significant Subsidiaries, the judgment default provision, the guarantee provision and the security default provision described under "*—Events of Default*" above ("covenant defeasance").

The Issuer at its option at any time may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Issuer exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes. If the Issuer exercises its covenant defeasance option with respect to the Notes, payment of the Notes may not be accelerated because of an Event of Default specified in clause (3) (other than with respect to clauses (1) and (2) of the covenant described under "*—Certain Covenants—Merger and Consolidation—The Issuer*," and clause (3)(B) of the covenant described under "*—Certain Covenants—Merger and Consolidation—Subsidiary Guarantors*"), (4), (5), (6) (with respect only to Significant Subsidiaries), (7), (8) or (9) under "*—Events of Default*" above.

In order to exercise either defeasance option, the Issuer must irrevocably deposit in trust (the "defeasance trust") with the Trustee (or such entity designated by the Trustee for this purpose) cash in Euro or Euro-denominated European Government Obligations or a combination thereof for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity and must comply with certain other conditions, including delivery to the Trustee of:

(1) an Opinion of Counsel in the United States to the effect that Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and in the case of legal defeasance only, such Opinion of Counsel in the United States must be based on a ruling

of the U.S. Internal Revenue Service or other change in applicable U.S. federal income tax law since the issuance of the Notes);

(2) an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer;

(3) an Officer's Certificate and an Opinion of Counsel (which opinion of counsel may be subject to customary assumptions and exclusions), each stating that that all conditions precedent provided for or relating to legal defeasance or covenant defeasance, as the case may be, have been complied with;

(4) an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the U.S. Investment Company Act of 1940; and

(5) the Issuer delivers to the Trustee all other documents or other information that the Trustee may reasonably require in connection with either defeasance option.

Satisfaction and Discharge

The Indenture, and the rights of the Trustee and the Holders under the Security Document will be discharged and cease to be of further effect (except as to surviving rights of conversion or transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when (1) either (a) all the Notes previously authenticated and delivered (other than certain lost, stolen or destroyed Notes and certain Notes for which provision for payment was previously made and thereafter the funds have been released to the Issuer) have been delivered to the Trustee for cancellation; or (b) all Notes not previously delivered to the Trustee for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer; (2) the Issuer has deposited or caused to be deposited with the Trustee (or such entity designated by the Trustee for this purpose), Euro or Euro-denominated European Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire indebtedness on the Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; (3) the Issuer has paid or caused to be paid all other sums payable under the Indenture; (4) the Issuer has delivered irrevocable instructions under the Indenture to apply the deposited money towards payment of the Notes at maturity or on the redemption date, as the case may be; and (5) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each to the effect that all conditions precedent under the "*—Satisfaction and Discharge*" section of the Indenture relating to the satisfaction and discharge of the Indenture have been complied with, *provided* that any such counsel may rely on any Officer's Certificate as to matters of fact (including as to compliance with the foregoing clauses (1), (2) and (3)).

No Personal Liability of Directors, Officers, Employees and Shareholders

No director, officer, employee, incorporator or shareholder of the Issuer or any of its Subsidiaries or Affiliates, as such, shall have any liability for any obligations of the Issuer under the Note Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the U.S. federal securities laws and it is the view of the SEC that such a waiver is against public policy.

Concerning the Trustee and Certain Agents

Deutsche Trustee Company Limited is to be appointed as Trustee under the Indenture. The Indenture will provide that, except during the continuance of an Event of Default, the Trustee will perform only such duties as are set forth specifically in such Indenture. During the existence of an Event of Default, the Trustee will exercise such of the rights and powers vested in it under the Indenture and use the same degree of care that a prudent Person would use in conducting its own affairs. The permissive rights of the Trustee to take or refrain from taking any action enumerated in the Indenture will not be construed as an obligation or duty. The Trustee will be permitted to engage in other transactions with the Issuer and its Affiliates and Subsidiaries.

The Indenture will set out the terms under which the Trustee may retire or be removed, and replaced. Such terms will include, among others, (1) that the Trustee may be removed at any time by the Holders of a

majority in principal amount of the then outstanding Notes, or may resign at any time by giving written notice to the Issuer and (2) that if the Trustee at any time (a) has or acquires a conflict of interest that is not eliminated, or (b) becomes incapable of acting as Trustee or becomes insolvent or bankrupt, then the Issuer may remove the Trustee, or any Holder who has been a *bona fide* Holder for not less than six months may petition any court for removal of the Trustee and appointment of a successor Trustee.

Any removal or resignation of the Trustee shall not become effective until the acceptance of appointment by the successor Trustee.

The Indenture will contain provisions for the indemnification of the Trustee for any loss, liability, taxes and expenses incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the Indenture.

Notices

All notices to Holders of Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of the Notes, if any, maintained by the Registrar. In addition, for so long as any of the Notes are listed on the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange shall so require, notices with respect to the Notes will be published in a newspaper having general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, to the extent and in the manner permitted by such rules, posted on the official website of the Luxembourg Stock Exchange (*www.bourse.lu*). In addition, for so long as any Notes are represented by Global Notes, all notices to Holders of the Notes will be delivered to Euroclear and Clearstream, each of which will give such notices to the holders of Book-Entry Interests. Such notices may also be published on the website of the Luxembourg Stock Exchange (*www.bourse.lu*), to the extent and in the manner permitted by the rules of the Luxembourg Stock Exchange.

Each such notice shall be deemed to have been given on the date of such publication or, if published more than once on different dates, on the first date on which publication is made; *provided* that, if notices are mailed, such notice shall be deemed to have been given on the later of such publication and the seventh day after being so mailed. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to such Holder if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Prescription

Claims against the Issuer or any Guarantor for the payment of principal, or premium, if any, on the Notes will be prescribed five years after the applicable due date for payment thereof. Claims against the Issuer for the payment of interest on the Notes will be prescribed three years after the applicable due date for payment of interest.

Currency Indemnity and Calculation of Euro-Denominated Restrictions

The Euro is the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with the Notes and the relevant Guarantees, as the case may be, including damages. Any amount received or recovered in a currency other than the Euro, whether as a result of, or the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, any Guarantor or otherwise by any Holder or by the Trustee, in respect of any sum expressed to be due to it from the Issuer or a Guarantor will only constitute a discharge to the Issuer or such Guarantor, as applicable, to the extent of the Euro amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

If that Euro amount is less than the Euro amount expressed to be due to the recipient or the Trustee under any Note, the Issuer and the Guarantors will indemnify them against any loss sustained by such recipient or the Trustee as a result. In any event, the Issuer and the Guarantors will indemnify the recipient or the Trustee on a joint or several basis against the cost of making any such purchase. For the purposes of this currency indemnity provision, it will be prima facie evidence of the matter stated therein for the Holder of a Note or the Trustee to certify in a manner reasonably satisfactory to the Issuer (indicating the sources of

information used) the loss it Incurred in making any such purchase. These indemnities constitute a separate and independent obligation from the Issuer's and the Guarantors' other obligations, will give rise to a separate and independent cause of action, will apply irrespective of any waiver granted by any Holder of a Note or the Trustee (other than a waiver of the indemnities set out herein) and will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note, any Guarantee or to the Trustee.

Except as otherwise specifically set forth herein, for purposes of determining compliance with any Euro-denominated restriction herein, the Euro Equivalent amount for purposes hereof that is denominated in a non-Euro currency shall be calculated based on the relevant currency exchange rate in effect on the date such non-Euro amount is Incurred or made, as the case may be.

Enforceability of Judgments

Since substantially all the assets of the Issuer are held by Subsidiaries located outside the United States, any judgment obtained in the United States against the Issuer or any Guarantor, including judgments with respect to the payment of principal, premium, if any, interest, Additional Amounts, if any, and any redemption price and any purchase price with respect to the Notes or the Guarantees, may not be collectable within the United States.

Consent to Jurisdiction and Service

In relation to any legal action or proceedings arising out of or in connection with the Indenture and the Notes and the Guarantees, the Issuer and each Guarantor will in the Indenture irrevocably submit to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City of New York, County and State of New York, United States.

Governing Law

The Indenture and the Notes, including any Guarantees, and the rights and duties of the parties thereunder will be governed by and construed in accordance with the laws of the State of New York. The Intercreditor Agreement and the rights and duties of the parties thereunder shall be governed by and construed in accordance with English law.

Certain Definitions

"*Acquired Indebtedness*" means Indebtedness (1) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary, or (2) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with such Person becoming a Restricted Subsidiary of the Issuer or such acquisition or (3) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Issuer or any Restricted Subsidiary. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of assets and, with respect to clause (3) of the preceding sentence, on the date of the relevant merger, consolidation or other combination.

"*Additional Assets*" means:

(1) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Issuer, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);

(2) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Issuer or a Restricted Subsidiary of the Issuer; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary of the Issuer.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this

definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agreed Security Principles*" means the Agreed Security Principles as set out in an annex to the Senior Secured Facilities Agreement as in effect on the Issue Date, as applied *mutatis mutandis* with respect to the Notes in good faith by the Issuer.

"*Applicable Premium*" means, with respect to any Note, the greater of:

(A) 1% of the principal amount of such Note; and

(B) on any redemption date, the excess (to the extent positive) of:

(a) the present value at such redemption date of (i) the redemption price of such Note at , 2016 (such redemption price (expressed in percentage of principal amount) being set forth in the table under "*—Optional Redemption*" (excluding accrued but unpaid interest)), plus (ii) all required interest payments due on such Note to and including such date set forth in clause (i) (excluding accrued but unpaid interest), computed upon the redemption date using a discount rate equal to the Bund Rate at such redemption date plus 50 basis points; over

(b) the outstanding principal amount of such Note,

as calculated by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate.

"*Asset Disposition*" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business), transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Issuer or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction. Notwithstanding the preceding provisions of this definition, the following items shall not be deemed to be Asset Dispositions:

(1) a disposition by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to a Restricted Subsidiary;

(2) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(3) a disposition of inventory, metering equipment or other equipment, products or assets in the ordinary course of business;

(4) a disposition of obsolete, damaged, retired, surplus or worn out equipment or other assets or equipment, facilities or other assets that are no longer useful in the conduct of the business of the Issuer and its Restricted Subsidiaries and any transfer, termination, unwinding or other disposition of hedging instruments or arrangements entered into for bona fide hedging purposes of the Issuer or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Issuer);

(5) transactions permitted under "*—Certain Covenants—Merger and Consolidation—The Issuer*" or a transaction that constitutes a Change of Control;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Issuer or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Issuer or the issuance of directors' qualifying shares and shares issued to individuals as required by applicable law;

(7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Issuer) of less than €10 million or, if greater, 0.4% of Total Assets;

(8) any Restricted Payment that is permitted to be made, and is made, under the covenant described above under "*—Certain Covenants—Limitation on Restricted Payments*" and the making of any Permitted Payment or Permitted Investment or, solely for purposes of clause (3) of the first paragraph under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*," asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;

(9) the granting of Liens not prohibited by the covenant described above under "*—Certain Covenants—Limitation on Liens"*;

(10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements or any sale of assets received by the Issuer or any Restricted Subsidiary upon the foreclosure of a Lien granted in favor of the Issuer or any Restricted Subsidiary;

(11) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;

(12) foreclosure, taking eminent domain, condemnation, taking by eminent domain or any similar action with respect to any property or other assets;

(13) the sale or discount (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable;

(14) any issuance, sale or other disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;

(15) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(16) any disposition of assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Issuer or any Restricted Subsidiary to such Person; *provided*, *however*, that the Board of Directors of the Issuer shall certify that in the opinion of the Board of Directors, the outsourcing transaction will be economically beneficial to the Issuer and its Restricted Subsidiaries (considered as a whole); *provided*, *further*, that the fair market value of the assets disposed of, when taken together with all other dispositions made pursuant to this clause (16), does not exceed €25 million or, if greater, 1.1% of Total Assets;

(17) any disposition with respect to property built, owned or otherwise acquired by the Issuer or any Restricted Subsidiary pursuant to customary sale and lease-back transactions, asset securitizations and other similar financings permitted by the Indenture;

(18) any issuance or sale of Preferred Stock that is permitted by the covenant described under "*Certain Covenants—Limitation on Indebtedness*";

(19) sales, transfers or other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding agreements; provided that any cash or Cash Equivalents received in such sale, transfer or disposition is applied in accordance with the covenant described under "*Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock";*

(20) sales or dispositions of receivables in connection with any Qualified Receivables Financing or any factoring transaction or in the ordinary course of business;

"*Associate*" means (i) any Person engaged in a Similar Business of which the Issuer or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Issuer or any Restricted Subsidiary of the Issuer.

"*Board of Directors*" means (1) with respect to the Issuer, the management board of its general partner, Energie Holdco; (2) with respect to any corporation or company, the management board, the board of directors or managers, as applicable, of the corporation or any duly authorized committee thereof; (3) with respect to any partnership, the board of directors or other governing body of the general partner of the partnership or any duly authorized committee thereof; and (4) with respect to any other Person, the management board, board of directors or any duly authorized committee of such Person serving a similar function. Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of its members or directors, as applicable, (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval).

"*Bund Rate*" means the yield to maturity at the time of computation of direct obligations of the Federal Republic of Germany (Bunds or Bundesanleihen) with a constant maturity (as officially compiled and

published in the most recent financial statistics that have become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such financial statistics are not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the redemption date to , 2016; *provided, however*, that if the period from the redemption date to , 2016 is not equal to the constant maturity of a direct obligation of the Federal Republic of Germany for which a weekly average yield is given, the Bund Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of direct obligations of the Federal Republic of Germany for which such yields are given, except that if the period from such redemption date to , 2016 is less than one year, the weekly average yield on actually traded direct obligations of the Federal Republic of Germany adjusted to a constant maturity of one year shall be used.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in Frankfurt, Germany, Luxembourg, London, United Kingdom, or New York, New York, United States are authorized or required by law to close; *provided*, *however*, that for any payments to be made under the Indenture, such day shall also be a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer ("TARGET") payment system is open for the settlement of payments.

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

"*Capitalized Lease Obligations*" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes on the basis of IFRS as in effect on the Issue Date. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined on the basis of IFRS, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"*Cash Equivalents*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian governments, a Permissible Jurisdiction, Switzerland or Norway or, in each case, any agency or instrumentality of thereof (*provided* that the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;

(2) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any lender party to the Senior Secured Facilities Agreement or by any bank or trust company (a) whose commercial paper is rated at least "A-1" or the equivalent thereof by S&P or at least "P-1" or the equivalent thereof by Moody's (or if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (b) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of €500 million;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (1) and (2) entered into with any bank meeting the qualifications specified in clause (2) above;

(4) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;

(5) readily marketable direct obligations issued by any state of the United States of America, any province of Canada, any Permissible Jurisdiction, Switzerland or Norway or any political subdivision thereof, in each case, having one of the two highest rating categories obtainable from either Moody's or S&P (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;

(6) Indebtedness or preferred stock issued by Persons with a rating of "BBB−" or higher from S&P or "Baa3" or higher from Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;

(7) bills of exchange issued in the United States, Canada, a Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(8) interests in any investment company, money market or enhanced high yield fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (7) above; and

(9) for purposes of clause (2) of the definition of "Asset Disposition," the marketable securities portfolio owned by the Issuer and its Subsidiaries on the Issue Date.

"*Change of Control*" means:

(1) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), other than one or more Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Issue Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Issuer, provided that for the purposes of this clause, (x) no Change of Control shall be deemed to occur by reason of the Issuer becoming a Subsidiary of a Successor Parent and (y) any Voting Stock of which any Permitted Holder is the "beneficial owner" (as so defined) shall not be included in any Voting Stock of which any such person or group is the "beneficial owner" (as so defined), unless that person or group is not an affiliate of a Permitted Holder and has greater voting power with respect to that Voting Stock;

(2) following the Initial Public Offering of the Issuer or any Parent, during any period of two consecutive years, individuals who at the beginning of such period constituted the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Issuer or any Parent (together with any new directors whose election by the majority of such directors on such Board of Directors of the Issuer or any Parent or whose nomination for election by shareholders of the Issuer or any Parent, as applicable, was approved by a vote of the majority of such directors on the Board of Directors of the Issuer or any Parent then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) ceased for any reason to constitute the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Issuer or any Parent, then in office; or

(3) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary or one or more Permitted Holders (other than any such sale, lease, transfer, conveyance or other disposition of all or substantially all of the assets of the Issuer to an Affiliate of the Issuer for the purpose of reincorporating the Issuer in another jurisdiction, changing domicile or changing corporate form; provided that such transaction complies with the covenant described under the caption "*—Certain Covenants—Merger and Consolidation*").

"*Clearstream*" means Clearstream Banking, a société anonyme as currently in effect or any successor securities clearing agency.

"*Code*" means the United States Internal Revenue Code of 1986, as amended.

"*Commodity Hedging Agreements*" means, in respect of a Person, any commodity purchase contract, commodity futures or forward contract, commodities option contract or other similar contract (including commodities derivative agreements or arrangements), to which such Person is a party or a beneficiary.

"*Consolidated EBITDA*" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) Fixed Charges and Receivables Fees;

(2) Consolidated Income Taxes;

(3) consolidated depreciation expense;

(4) consolidated amortization or impairment expense;

(5) any expenses, charges or other costs related to any Equity Offering, Investment, acquisition (including one-time amounts paid in connection with the acquisition or retention of one or more individuals comprising part of a management team retained to manage the acquired business; *provided* that such payments are made in connection with such acquisition and are consistent with the customary practice in the industry at the time of such acquisition), disposition, recapitalization or the Incurrence of any Indebtedness permitted by the Indenture (in each case whether or not successful) in each case, as determined in good faith by an Officer of the Issuer;

(6) any minority interest expense (whether paid or not) consisting of income attributable to minority equity interests of third parties in such period;

(7) the amount of management, monitoring, consulting and advisory fees and related expenses paid in such period to the Permitted Holders to the extent permitted by the covenant described under "— *Certain Covenants—Limitation of Affiliate Transactions*";

(8) other non-cash charges, write-downs or items reducing Consolidated Net Income (excluding any such non-cash charge, write-down or item to the extent it represents an accrual of or reserve for cash charges in any future period) or other items classified by the Issuer as extraordinary, exceptional, unusual or nonrecurring items less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period);

(9) the proceeds of any business interruption insurance received or that become receivable during such period to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; and

(10) payments received, or that become receivable, with respect to expenses that are covered by the indemnification provisions in any agreement entered into by such Person in connection with an acquisition to the extent such expenses were included in computing Consolidated Net Income.

Notwithstanding the foregoing, the provision for taxes and the depreciation, amortization, non-cash items, charges and write-downs of a Restricted Subsidiary shall be added to Consolidated Net Income to compute Consolidated EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income (loss) of such Restricted Subsidiary was included in calculating Consolidated Net Income for the purposes of this definition.

"*Consolidated Income Taxes*" means Taxes or other payments, including deferred Taxes, based on income, profits or capital (including without limitation withholding Taxes) and franchise Taxes of any of the Issuer and its Restricted Subsidiaries whether or not paid, estimated, accrued or required to be remitted to any Governmental Authority.

"*Consolidated Interest Expense*" means, for any period (in each case, determined on the basis of IFRS), the consolidated net interest income/expense of the Issuer and its Restricted Subsidiaries as defined on a consolidated basis in accordance with IFRS, whether paid or accrued, including any pension liability interest cost, plus or including (without duplication) any interest, costs and charges consisting of:

(1) interest expense attributable to Capitalized Lease Obligations;

(2) amortization of debt discount (but not including deferred financing fees, debt issuance costs, commissions, fees and expenses);

(3) non-cash interest expense;

(4) commissions, discounts and other fees and charges owed with respect to financings not included in clause (2) above;

(5) costs associated with Hedging Obligations (but excluding any amortization of fees or any other non-cash interest expense attributable to the movement in mark-to-market valuation of such obligations or other derivative instruments);

(6) the consolidated interest expense that was capitalized during such period;

(7) interest actually paid by the Issuer or any Restricted Subsidiary under any Guarantee of Indebtedness or other obligation of any other Person; and

(8) any Receivables Fees and discounts on the sale of accounts receivable in connection with any Qualified Receivables Financing representing, in the Issuer's reasonable determination, the implied interest component of such discount for such period,

less, to the extent otherwise included in Consolidated Interest Expense, (i) any accretion or accrual of discounted liabilities other than Indebtedness, (ii) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisitions, and (iii) any voluntary cash payment of interest prior to the scheduled payment of such interest with respect to Subordinated Shareholder Funding.

"*Consolidated Leverage*" means the sum of the aggregate outstanding Indebtedness of the Issuer and its Restricted Subsidiaries (excluding Hedging Obligations entered into for bona fide hedging purposes of the Issuer or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Issuer); except to the extent provided in clause (c) of the sixth paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*").

"*Consolidated Leverage Ratio*" means, on any determination date, the ratio of (x) Consolidated Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements of the Issuer are available.

In addition, for purposes of calculating Consolidated EBITDA:

(1) in the event that the Issuer or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases, retires, extinguishes or otherwise discharges any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which Consolidated EBITDA is being calculated and on or prior to the date on which the event for which the calculation of the Consolidated Leverage Ratio is made (the "Calculation Date"), then Consolidated EBITDA will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Issuer), including in respect of anticipated expense and cost reductions and synergies, to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance, retirement, extinguishment or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period;

(2) acquisitions or Investments that have been made by the Issuer or any of its Restricted Subsidiaries, including through mergers or consolidations, or by any Person or any of its Restricted Subsidiaries acquired by the Issuer or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Issuer), including in respect of anticipated expense and cost reductions and synergies, as if they had occurred on the first day of the four-quarter reference period;

(3) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness); and

(7) Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with IFRS.

For the purposes of this definition and the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense, Consolidated Net Income, Fixed Charges and Fixed Charge Coverage Ratio, (a) calculations will be as determined in good faith by a responsible financial or chief accounting officer of the Issuer (including in respect of cost savings and synergies) and (b) in determining the amount of Indebtedness or Equity Interests outstanding on any date of determination, pro forma effect shall be given to any Incurrence, repayment, repurchase, defeasance or other acquisition, retirement or discharge of Indebtedness or Equity Interests as if such transaction had occurred on the first day of the relevant period.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Issuer and its Restricted Subsidiaries determined on a consolidated basis on the basis of IFRS; *provided*, *however*, that there will not be included in such Consolidated Net Income:

(1) subject to the limitations contained in clause (3) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Issuer's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution or return on investment (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in clause (2) below);

(2) solely for the purpose of determining the amount available for Restricted Payments under clause (c)(i) of the first paragraph of the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," any net income (loss) of any Restricted Subsidiary (other than Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Issuer or a Guarantor by operation of the terms of such Restricted Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its shareholders (other than (a) restrictions that have been waived or otherwise released, (b) restrictions pursuant to the Notes or the Indenture, (c) restrictions specified in clause (11) (i) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Restrictions on Distributions from Restricted Subsidiaries*," and (d) contractual restrictions in effect on the Issue Date with respect to a Restricted Subsidiary (including pursuant to the Senior Secured Facilities Agreement and the Intercreditor Agreement), and other restrictions with respect to such Restricted Subsidiary that, taken as a whole, are not materially less favorable to the Holders than such restrictions in effect on the Issue Date) except that the Issuer's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Restricted Subsidiary during such period to the Issuer or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause);

(3) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Issuer or any Restricted Subsidiaries (including pursuant to any sale/leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Issuer);

(4) any extraordinary, one-off, exceptional, unusual or nonrecurring gain, loss, expense or charge including for the avoidance of doubt, (i) any separation of any business in connection with its sale or other disposition from the seller and/or its Affiliates and (ii) any charges or reserves in respect of any restructuring, redundancy, relocation, refinancing, integration, severance, post-employment arrangements, signing, retention or completion bonuses, transaction costs, acquisition costs, business optimization, system establishment, governmental investigations, curtailments or modifications to pension or post-retirement benefit schemes, asset impairment charges or the financial impacts of natural disasters (including fire, flood and storm and related events);

(5) the cumulative effect of a change in accounting principles;

(6) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards or relating to compensation plans, employee share options or the recognition of any pension plan deficits;

(7) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or Hedging Obligations and any net gain (loss) from any write-off or forgiveness of Indebtedness;

(8) any unrealized gains or losses in respect of Hedging Obligations or other financial instruments or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;

(9) any unrealized foreign currency transaction gains or losses in respect of Indebtedness or other obligations of the Issuer or any Restricted Subsidiary denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;

(10) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Issuer or any Restricted Subsidiary owing to the Issuer or any Restricted Subsidiary;

(11) any purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenues in component amounts required or permitted by IFRS and related authoritative pronouncements (including the effects of such adjustments pushed down to the Issuer and the Restricted Subsidiaries), as a result of any consummated acquisition or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);

(12) any goodwill or other intangible asset impairment charge, amortization, write-down or write-off;

(13) Consolidated Income Taxes to the extent in excess of cash payments made in respect of such Consolidated Income Taxes; and

(14) the impact of capitalized, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding.

"*Consolidated Secured Leverage Ratio*" means the Consolidated Leverage Ratio, but calculated by excluding all Indebtedness other than Secured Indebtedness.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that does not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor"), including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

  (a) for the purchase or payment of any such primary obligation; or

  (b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Credit Facility*" means, with respect to the Issuer or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements or instruments (including the Senior Secured Facilities or commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and

lenders or another administrative agent or agents or other banks or institutions and whether provided under the original Senior Secured Facilities Agreement or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "Credit Facility" shall include any agreement or instrument (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Issuer as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

"*Currency Agreement*" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Designated Non-Cash Consideration*" means the fair market value (as determined in good faith by the Issuer) of non-cash consideration received by the Issuer or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with the covenant described under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*."

"*Designated Preference Shares*" means, with respect to the Issuer or any Parent, Preferred Stock (other than Disqualified Stock) (a) that is issued for cash (other than to the Issuer or a Subsidiary of the Issuer or an employee stock ownership plan or trust established by the Issuer or any such Subsidiary for the benefit of their employees to the extent funded by the Issuer or such Subsidiary) and (b) that is designated as "Designated Preference Shares" pursuant to an Officer's Certificate of the Issuer at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in clause (c)(ii) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*."

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Issuer or a Restricted Subsidiary); or

(3) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part, in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; *provided*, *however*, that (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*."

"*Equity Offering*" means (x) a sale of Capital Stock of the Issuer (other than Disqualified Stock) other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions, or (y) the sale of Capital Stock or other securities, the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of, or as Subordinated Shareholder Funding to, the Issuer or any of its Restricted Subsidiaries.

"*Escrowed Proceeds*" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

"*Euroclear*" means Euroclear Bank SA/NV, or any successor securities clearing agency.

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

"*European Government Obligations*" means any security that is (1) a direct obligation of Ireland, Belgium, the Netherlands, France, Germany or any country that is a member of the European Monetary Union on the date of the Indenture, for the payment of which the full faith and credit of such country is pledged or (2) an obligation of a person controlled or supervised by and acting as an agency or instrumentality of any such country the payment of which is unconditionally Guaranteed as a full faith and credit obligation by such country, which, in either case under the preceding clause (1) or (2), is not callable or redeemable at the option of the issuer thereof.

"*European Union*" means all members of the European Union as of January 1, 2004.

"*Exchange Act*" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Excluded Contribution*" means Net Cash Proceeds or property or assets received by the Issuer as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Issuer after the Issue Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any Subsidiary of the Issuer for the benefit of its employees to the extent funded by the Issuer or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Issuer, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Issuer on the date such contribution to equity is made or such Capital Stock is issued or sold.

"Existing Senior Secured Facilities Agreement" means the Issuer's €1,000,000,000 senior facilities agreement dated November 3, 2007, as amended and restated through the Issue Date.

"*fair market value*" may be conclusively established by means of an Officer's Certificate or a resolution of the Board of Directors of the Issuer setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"*Finance Documents*" means the Senior Secured Facilities Agreement and such other documents identified as "Finance Documents" pursuant to the Senior Secured Facilities Agreement.

"*Fixed Charge Coverage Ratio*" means, with respect to any specified Person on any determination date, the ratio of (x) the aggregate amount of Consolidated EBITDA of such Person for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to (y) the Fixed Charges of such Person for such four consecutive fiscal quarters.

In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases, retires, extinguishes or otherwise discharges any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or

Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of such Person), including in respect of anticipated expense and cost reductions and synergies, to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance, retirement, extinguishment or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period; provided, however, that the pro forma calculation of Fixed Charges shall not give effect to (i) any Indebtedness incurred on the Calculation Date pursuant to the provisions described in the second paragraph of the covenant described above under "*—Certain Covenants—Limitation on Indebtedness*" or (ii) the discharge on the Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions described in the second paragraph of the covenant described above under "*—Certain Covenants—Limitation on Indebtedness*."

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions or Investments that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or by any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of such Person), including in respect of anticipated expense and cost reductions and synergies, as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness); and

(7) Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with IFRS.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the Consolidated Interest Expense of such Person for such period; plus

(2) all dividends, whether paid or accrued and whether or not in cash, on or in respect of all Disqualified Stock of the Issuer or any series of Preferred Stock of any Restricted Subsidiary, other than dividends on Equity Interests payable to the Issuer or a Restricted Subsidiary.

"*Governmental Authority*" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial,

regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, *however*, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantor*" means Germany Holdco, Energie Holdco and any Restricted Subsidiary that Guarantees the Notes.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement (each, a "Hedging Agreement").

"*Holder*" means each Person in whose name the Notes are registered on the Registrar's books, which shall initially be the respective nominee of Clearstream and Euroclear.

"*IFRS*" means International Financial Reporting Standards (formerly International Accounting Standards) ("IFRS") endorsed from time to time by the European Union or any variation thereof with which the Issuer or its Restricted Subsidiaries are, or may be, required to comply; *provided* that at any date after the Issue Date the Issuer may make an irrevocable election to establish that "IFRS" shall mean IFRS as in effect on a date that is on or prior to the date of such election.

"*Incur*" means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be "Incurred" at the time any funds are borrowed thereunder.

"*Indebtedness*" means, with respect to any Person on any date of determination (without duplication):

(1) the principal of indebtedness of such Person for borrowed money;

(2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of Incurrence), in each case only to the extent that the underlying obligation in respect of which the instrument was issued would be treated as Indebtedness;

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), where the deferred payment is arranged primarily as a means of raising finance, which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;

(5) Capitalized Lease Obligations of such Person;

(6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Issuer) and (b) the amount of such Indebtedness of such other Persons;

(8) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The term "Indebtedness" shall not include Subordinated Shareholder Funding or any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, any asset retirement obligations, any prepayments of deposits received from clients or customers in the ordinary course of business, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Issue Date or in the ordinary course of business.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amounts of funds borrowed and then outstanding. The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in the Indenture, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in clause (7) or (8) above) shall equal the amount thereof that would appear on a balance sheet of such Person (excluding any notes thereto) prepared on the basis of IFRS.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations Incurred in the ordinary course of business and obligations under or in respect of Qualified Receivables Financings;

(ii) in connection with the purchase by the Issuer or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter; or

(iii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes.

"*Independent Financial Advisor*" means an investment banking or accounting firm of international standing or any third party appraiser of international standing; *provided*, *however*, that such firm or appraiser is not an Affiliate of the Issuer.

"*Initial Investors*" means Macquarie Group Limited and Macquarie European Infrastructure Fund II and any funds or partnerships managed or advised, directly or indirectly, by Macquarie Group Limited or Macquarie European Infrastructure Fund II or an Affiliate thereof, and, solely in their capacity as such, any limited partner of any such partnership or fund.

"*Initial Public Offering*" means an Equity Offering of common stock or other common equity interests of the Issuer or any Parent or any successor of the Issuer or any Parent (the "IPO Entity") following which there is a Public Market and, as a result of which, the shares of common stock or other common equity interests of the IPO Entity in such offering are listed on an internationally recognized exchange or traded on an internationally recognized market.

"*Intercreditor Agreement*" means the Intercreditor Agreement dated on or about the Issue Date, among the lenders and agent under the Senior Secured Facilities Agreement as well as certain hedging counterparties and as further amended from time to time and to which the Trustee will accede on the Issue Date.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate

cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement to which such Person is party or a beneficiary.

"*Investment*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of IFRS; *provided*, *however*, that endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment. If the Issuer or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Issuer or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time.

For purposes of "*—Certain Covenants—Limitation on Restricted Payments*:"

(1) "Investment" will include the portion (proportionate to the Issuer's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary of the Issuer at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Issuer's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Issuer in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Issuer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Issuer's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

"*Investment Grade*" means (i) BBB− or higher by S&P, (ii) Baa3 or higher by Moody's, or (iii) the equivalent of such ratings by S&P or Moody's, or of another Nationally Recognized Statistical Ratings Organization.

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities issued or directly and fully guaranteed or insured by a Permissible Jurisdiction or Switzerland, Norway or any agency or instrumentality thereof (other than Cash Equivalents);

(3) debt securities or debt instruments with a rating of "A−" or higher from S&P or "A3" or higher by Moody's or the equivalent of such rating by such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries; and

(4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution.

"*Investment Grade Status*" shall occur when the Notes receive both of the following:

(1) a rating of "BBB−" or higher from S&P; and

(2) a rating of "Baa3" or higher from Moody's;

or the equivalent of such rating by either such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization.

"*IPO Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of common stock or common equity interests of the IPO Entity at the time of closing of the Initial Public Offering multiplied by (ii) the price per share at which such shares of common stock or common equity interests are sold in such Initial Public Offering.

"*Issue Date*" means , 2012.

"*Junior Facilities Agreement*" means the Senior Secured Notes Issuer's €150,000,000 junior term loan facility agreement dated November 3, 2007, as amended through the Issue Date.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"*Management Advances*" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of any Parent, the Issuer or any Restricted Subsidiary:

(1) (a) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business or (b) for purposes of funding any such person's purchase of Capital Stock or Subordinated Shareholder Funding (or similar obligations) of the Issuer, its Subsidiaries or any Parent with (in the case of this sub-clause (b)) the approval of the Board of Directors of the Issuer;

(2) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office; or

(3) not exceeding €2.5 million in the aggregate outstanding at any time.

"*Management Investors*" means the officers, directors, employees and other members of the management of or consultants to any Parent, the Issuer or any of their respective Subsidiaries, or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Issuer, any Restricted Subsidiary or any Parent.

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

"*MEIF II Finance*" means MEIF II Finance Holdings S.à r.l.

"*Moody's*" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*Nationally Recognized Statistical Rating Organization*" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

"*Net Available Cash*" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or required to be paid or accrued as a liability under IFRS (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which by its terms or by applicable law are required to be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders (other than any Parent, the Issuer or any of their respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition; and

(4) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of IFRS, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Issuer or any Restricted Subsidiary after such Asset Disposition.

"*Net Cash Proceeds*" means, with respect to any issuance or sale of Capital Stock or Subordinated Shareholder Funding, the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

"*Note Documents*" means the Notes (including Additional Notes), the Indenture and the Security Documents.

"*Officer*" means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Managing Director, any other Executive Officer or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of the Indenture by the Board of Directors of such Person.

"*Officer's Certificate*" means, with respect to any Person, a certificate signed by one Officer of such Person.

"*Opinion of Counsel*" means a written opinion from legal counsel reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Issuer or its Subsidiaries.

"*Parent*" means any Person of which the Issuer at any time is or becomes a Subsidiary after the Issue Date and any holding companies established by any Permitted Holder for purposes of holding its investment in any Parent.

"*Parent Expenses*" means:

(1) costs (including all professional fees and expenses) Incurred by any Parent in connection with reporting obligations under or otherwise Incurred in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, the Indenture or any other agreement or instrument relating to Indebtedness of the Issuer or any Restricted Subsidiary, including in respect of any reports filed with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;

(2) customary indemnification obligations of any Parent owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with any such Person to the extent relating to the Issuer and its Subsidiaries;

(3) obligations of any Parent in respect of director and officer insurance (including premiums therefor) to the extent relating to the Issuer and its Subsidiaries;

(4) fees and expenses payable by any Parent in connection with the Transactions;

(5) general corporate overhead expenses, including (a) professional fees and expenses and other operational expenses of any Parent related to the ownership or operation of the business of the Issuer or any of its Restricted Subsidiaries, (b) costs and expenses with respect to any litigation or other dispute relating to the Transactions or the ownership, directly or indirectly, by any Parent, (c) any taxes and other fees and expenses required to maintain such Parent's corporate existence and to provide for other ordinary course operating costs, including customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of such Parent and (d) to reimburse reasonable out of pocket expenses of the Board of Directors of such Parent;

(6) other fees, expenses and costs relating directly or indirectly to activities of the Issuer and its Subsidiaries or any Parent or any other Person which holds directly or indirectly any Capital Stock or Subordinated Shareholder Funding of the Issuer, in an amount not to exceed €2 million in any fiscal year;

(7) expenses Incurred by any Parent in connection with any Public Offering or other sale of Capital Stock or Indebtedness:

(x) where the net proceeds of such offering or sale are intended to be received by or contributed to the Issuer or a Restricted Subsidiary;

(y) in a pro-rated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed; or

(z) otherwise on an interim basis prior to completion of such offering so long as any Parent shall cause the amount of such expenses to be repaid to the Issuer or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed; and

(8) any income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received in cash from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries.

"*Pari Passu Indebtedness*" means Indebtedness of the Issuer or any Guarantor if such Indebtedness or Guarantee ranks equally in right of payment to the Notes or the Notes Guarantees.

"*Paying Agent*" means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Note on behalf of the Issuer.

"*Permissible Jurisdiction*" means any member state of the European Union other than Greece, Ireland, Portugal and Italy.

"*Permitted Asset Swap*" means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents or Temporary Cash Investments between the Issuer or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with the covenant described under "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*."

"*Permitted Collateral Liens*" means:

(1) the Senior Secured Notes Liens;

(2) Liens on the Collateral (i) arising by operation of law that are described in one or more of clauses (3), (4), (5), (6), (7), (8), (10), (11), (13), (17), (18), (19), (22) and (23) of the definition of "Permitted Liens" and that, in each case, would not materially interfere with the ability of the Security Trustee to enforce the Security Interest in the Collateral or (ii) that are Liens in secured accounts equally and ratably granted to cash management banks securing cash management obligations;

(3) Liens on the Collateral to secure Indebtedness of the Issuer or a Restricted Subsidiary that is permitted to be Incurred under clauses (1), (2) (in the case of (2), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of Permitted Collateral Liens), (4)(a), (5)(i) (covering only the shares and assets (to the extent constituting Collateral) of the acquired Person the Indebtedness of which is so secured), (6), (11) or (12) (in the case of (12), provided that the amount of Secured Indebtedness shall not exceed 80% of the aggregate Indebtedness Incurred under such clause), of the second paragraph of the covenant described under "—Certain Covenants—Limitation on Indebtedness" and any Refinancing Indebtedness in respect of such Indebtedness; *provided*, *however*, that such Lien will not give an entitlement to be repaid with proceeds of enforcement of the Collateral in a manner which is inconsistent with the Intercreditor Agreement and any Additional Intercreditor Agreement; and *provided*, *further*, *however*, that such Lien (or the right to receive proceeds pursuant to the Intercreditor Agreement) ranks (a) equal to all other Liens on such Collateral securing Senior Indebtedness of the Issuer or such Guarantor, as applicable, if such Indebtedness is Senior Indebtedness of the Issuer or such Guarantor, as applicable (except that Indebtedness under a Super Senior Revolving Facility and any Hedging Obligations may rank in priority to other Senior Indebtedness with respect to the distribution of any proceeds received upon enforcement of such Lien), or (b) equal to or junior to the Liens securing the Notes;

(4) Liens on the Collateral to secure any Additional Notes;

(5) Liens on the Collateral securing Indebtedness incurred under (i) the first paragraph of *"—Certain Covenants—Limitation on Indebtedness*;" (including any Additional Notes incurred thereunder) or (ii) clause (5)(ii) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*" and any Refinancing Indebtedness in respect of such Indebtedness, provided that, in the case of this clause (5), after giving effect to such incurrence on that date, the Consolidated Secured Leverage Ratio is not more than 4.0 to 1.0; *provided*, *however*, that such Lien (or the right to receive proceeds pursuant to the Intercreditor Agreement) ranks (a) equal to all other Liens on such Collateral securing Senior Indebtedness of the Issuer or such Guarantor, as applicable, if such Indebtedness is Senior Indebtedness of the Issuer or such Guarantor, as applicable (except that Indebtedness under a Super Senior Revolving Facility and any Hedging Obligations may rank in priority to other Senior Indebtedness with respect to the distribution of any proceeds received upon enforcement of such Lien) or (b) equal to or junior to the Liens securing the Notes; and

(6) Liens on the Collateral that secure Indebtedness on a basis junior to the Notes; *provided that*, in the case of this clause (6) the holders of such Indebtedness (or their representative) accede to the Intercreditor Agreement or an Additional Intercreditor Agreement.

"*Permitted Holders*" means, collectively, (1) the Initial Investors and any Affiliate thereof and (2) any Person who is acting as an underwriter in connection with a public or private offering of Capital Stock of any Parent or the Issuer, acting in such capacity. Any person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investment*" means (in each case, by the Issuer or any of its Restricted Subsidiaries):

(1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Issuer or (b) a Person (including the Capital Stock of any such Person) that is engaged in any Similar Business and such Person will, upon the making of such Investment, become a Restricted Subsidiary;

(2) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Issuer or a Restricted Subsidiary;

(3) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(4) Investments in receivables owing to the Issuer or any Restricted Subsidiary created or acquired in the ordinary course of business, including Investments in connection with any Qualified Receivables Financing;

(5) Investments in payroll, travel, relocation, entertainment and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) Management Advances;

(7) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement, including upon the bankruptcy or insolvency of a debtor;

(8) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition (but excluding a Permitted Asset Swap), in each case, that was made in compliance with "*—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock*;"

(9) Investments in existence on, or made pursuant to legally binding commitments in existence on, the Issue Date, and any extension, modification or renewal of any such Investment; provided that the amount of the Investment may be increased (a) as required by the terms of the Investment as in existence on the Issue Date or (b) as otherwise permitted under the Indenture;

(10) Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with "*—Certain Covenants—Limitation on Indebtedness*;"

(11) Investments, taken together with all other Investments made pursuant to this clause (11) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of €50 million or 2.1% of Total Assets (net of any distributions, dividends, payments or other returns in respect of such Investments); *provided* that, if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) of the definition of "Permitted Investments" and not this clause;

(12) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under the covenant described under "*—Certain Covenants—Limitation on Liens*;"

(13) any Investment to the extent made using Capital Stock of the Issuer (other than Disqualified Stock), Subordinated Shareholder Funding or Capital Stock of any Parent as consideration;

(14) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Affiliate Transactions*" (except those described in clauses (1), (3), (6), (8), (9), (11) and (12) of that paragraph);

(15) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property, in any case, in the ordinary course of business and in accordance with the Indenture;

(16) guarantees, keepwells and similar arrangements not prohibited by the covenant described under "*—Certain Covenants—Limitation on Indebtedness*;"

(17) Investments in joint ventures, Unrestricted Subsidiaries or a Similar Business, taken together with all other Investments made pursuant to this clause (17) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of €30 million or 1.3% of Total Assets (net of any distributions, dividends, payments or other returns in respect of such Investments); provided that, if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to the covenant described under "*—Certain Covenants—Limitation on Restricted Payments*," such Investment shall thereafter be deemed to have been made pursuant to clause (1) or (2) of the definition of "Permitted Investments" and not this clause; and

(18) Investments in the Notes, any Additional Notes, the Senior Secured Notes and any loans under the Senior Secured Facilities Agreement.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens on assets or property of a Restricted Subsidiary securing any Senior Indebtedness of the Senior Secured Notes Issuer or a Restricted Subsidiary or a Guarantee of such Indebtedness by the Issuer;

(2) pledges, deposits or Liens under workmen's compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, including carriers', warehousemen's, mechanics', landlords', materialmen's and repairmen's or other like Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;

(4) Liens for taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves required pursuant to IFRS have been made in respect thereof;

(5) Liens in favor of the Issuer for surety, performance or other bonds, guarantees or letters of credit or bankers' acceptances (not issued to support Indebtedness for borrowed money) issued pursuant to the request of and for the account of the Issuer or any Restricted Subsidiary in the ordinary course of its business;

(6) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Issuer and its Restricted Subsidiaries or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Issuer and its Restricted Subsidiaries;

(7) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;

(8) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(9) Liens on assets or property of the Issuer or any Restricted Subsidiary for the purpose of securing Capitalized Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided* that (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under the Indenture and (b) any such Lien may not extend to any assets or property of the Issuer or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property;

(10) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary or financial institution;

(11) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(12) Liens existing on the Issue Date, or provided for or required to be granted under written agreements existing on the Issue Date;

(13) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary (or at the time the Issuer or a Restricted Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, consolidation or other business combination transaction with or into the Issuer or any Restricted Subsidiary); *provided*, *however*, that such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Restricted Subsidiary (or such acquisition of such property, other assets or stock); *provided*, *further*, that such Liens are limited to all or part of the same property, other assets or stock (plus improvements, accession, proceeds or dividends or distributions in connection with the original property, other assets or stock) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations to which such Liens relate;

(14) Liens on assets or property of the Issuer or any Restricted Subsidiary securing Indebtedness or other obligations of the Issuer or such Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary, or Liens in favor of the Issuer or any Restricted Subsidiary;

(15) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under the Indenture; *provided* that any such Lien is limited to all

or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(16) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;

(17) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Issuer or any Restricted Subsidiary of the Issuer has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(18) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(19) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(20) Liens on cash accounts securing Indebtedness incurred under clause (11) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*" with local financial institutions;

(21) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;

(22) Liens securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities, or liens over cash accounts securing cash pooling arrangements;

(23) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(24) Liens securing Indebtedness which does not exceed €10 million in the aggregate at any one time outstanding;

(25) Permitted Collateral Liens;

(26) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;

(27) any security granted over the marketable securities portfolio described in clause (9) of the definition of "Cash Equivalents" in connection with the disposal thereof to a third party;

(28) Liens on Receivables Assets Incurred in connection with a Qualified Receivables Financing;

(29) Liens on Indebtedness permitted to be Incurred pursuant to clause (14) or (15) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*";

(30) limited recourse Liens in respect of the ownership interests in, or assets owned by, any joint ventures which are not Restricted Subsidiaries securing obligations of such joint ventures; and

(31) Liens on cash securing Indebtedness Incurred under clause (15) of the second paragraph of the covenant described under "*—Certain Covenants—Limitation on Indebtedness*".

"*Permitted Reorganization*" means a reorganization on a solvent basis involving the business or assets of, or shares of (or other interests in), Energie Holdco, the Issuer or any of its Restricted Subsidiaries *provided* that:

(1) the Holders of the Notes (or the Security Trustee on their behalf) will continue to have the same or substantially equivalent guarantees and security interests in the same, substantially equivalent or greater value assets and over the shares of (or other interests in) the transferee or other relevant entity (as applicable), and such reorganization (or any consequential change in tax residency or centre of main interest of such entity) will not materially and adversely affect the guarantees, security

interests or enforcement remedies of the Holders of the Notes (but excluding for this purpose only any resetting of hardening periods arising from any release and retaking of any security interest) either as a result of that reorganization or (compared to the position 60 days after the Issue Date) cumulatively as a result of that reorganization and all reorganizations effected prior to such date;

(2) to the extent such reorganization requires any release and/or retaking of security interests, the Board of Directors of the relevant Person will provide a certificate to the Trustee and the Security Trustee confirming the solvency of the person granting the guarantee and security interest after giving effect to any transactions relating to such reorganization; and

(3) the Issuer will (prior to such reorganization) provide to the Trustee and the Security Trustee a certificate from its Board of Directors confirming that no Default or Event of Default is continuing or would arise as a result of such reorganization.

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

"*Preferred Stock*," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"*Public Debt*" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (1) a public offering registered under the Securities Act or (2) a private placement to institutional investors that is underwritten for resale in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC for public resale.

"*Public Market*" means any time after:

(1) an Equity Offering has been consummated; and

(2) shares of common stock or other common equity interests of the IPO Entity having a market value in excess of €75 million on the date of such Equity Offering have been distributed pursuant to such Equity Offering.

"*Public Offering*" means any offering, including an Initial Public Offering, of shares of common stock or other common equity interests that are listed on an exchange or publicly offered (which shall include an offering pursuant to Rule 144A and/or Regulation S under the Securities Act to professional market investors or similar persons).

"*Purchase Money Obligations*" means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"*Qualified Receivables Financing*" means any Receivables Financing of a Receivables Subsidiary that meets the following conditions: (1) the Board of Directors of the Issuer shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Issuer and the Receivables Subsidiary, (2) all sales of accounts receivable and related assets to the Receivables Subsidiary are made at fair market value (as determined in good faith by the Issuer), and (3) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Issuer or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) to secure Indebtedness under a Credit Facility or Indebtedness in respect of the Notes shall not be deemed a Qualified Receivables Financing.

"*Receivables Assets*" means any assets that are or will be the subject of a Qualified Receivables Financing.

"*Receivables Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Financing.

"*Receivables Financing*" means any transaction or series of transactions that may be entered into by any of the Issuer's Subsidiaries incorporated outside Germany pursuant to which such Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by any of the Issuer's Subsidiaries incorporated outside Germany), or (b) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of any of the Issuer's Subsidiaries incorporated outside Germany, and any assets related thereto, including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interest are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedging Obligations entered into by any such Subsidiary in connection with such accounts receivable.

"*Receivables Repurchase Obligation*" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Receivables Subsidiary*" means a Wholly Owned Subsidiary of the Issuer (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Issuer in which the Issuer or any Subsidiary of the Issuer makes an Investment and to which any Subsidiary of the Issuer incorporated outside Germany transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Issuer's Subsidiaries incorporated outside Germany, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Issuer (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Issuer or any other Restricted Subsidiary of the Issuer (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is subject to terms that are substantially equivalent in effect to a guarantee of any losses on securitized or sold receivables by the Issuer or any other Restricted Subsidiary of the Issuer, (iii) is recourse to or obligates the Issuer or any other Restricted Subsidiary of the Issuer in any way other than pursuant to Standard Securitization Undertakings, or (iv) subjects any property or asset of the Issuer or any other Restricted Subsidiary of the Issuer, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Issuer nor any other Restricted Subsidiary of the Issuer has any contract, agreement, arrangement or understanding other than on terms which the Issuer reasonably believes to be no less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Issuer; and

(3) to which neither the Issuer nor any other Restricted Subsidiary of the Issuer has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Issuer shall be evidenced to the Trustee by filing with the Trustee a copy of the resolution of the Board of Directors of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*Refinance*" means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in the Indenture shall have a correlative meaning.

"*Refinancing Indebtedness*" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of the Indenture or Incurred in compliance with the Indenture (including Indebtedness of the Issuer that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of

any Restricted Subsidiary that refinances Indebtedness of the Issuer or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; *provided*, *however*, that:

(1) if the Indebtedness being refinanced constitutes Subordinated Indebtedness, the Refinancing Indebtedness has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is the same as or later than the final Stated Maturity of the Indebtedness being refinanced or, if shorter, the Stated Maturity of the Notes;

(2) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and costs, expenses and fees Incurred in connection therewith); and

(3) if the Indebtedness being refinanced is expressly subordinated to the Notes or the Guarantees, such Refinancing Indebtedness is subordinated to the Notes or the Guarantees on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced,

provided, *however*, that Refinancing Indebtedness shall not include Indebtedness of the Issuer or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be Incurred from time to time after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

"*Related Person*" means, with respect to any Permitted Holder:

(1) any controlling equityholder or Subsidiary or partner or member of such Person; or

(2) in the case of an individual, any spouse, family member or relative of such individual, any trust or partnership for the benefit of one or more of such individual and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof; or

(3) any trust, corporation, partnership or other Person for which one or more of the Permitted Holders and other Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof, or Persons beneficially holding in the aggregate a majority (or more) controlling interest therein; or

(4) in the case of the Initial Investors any investment fund or vehicle managed, sponsored or advised by such Person or any successor thereto, or by any Affiliate of such Person or any such successor.

"*Related Taxes*" means:

(1) any Taxes, including sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes (other than (x) Taxes measured by income and (y) withholding imposed on payments made by any Parent), required to be paid (provided such Taxes are in fact paid) by any Parent by virtue of its:

   (a) being organized or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Issuer or any of the Issuer's Subsidiaries);

   (b) issuing or holding Subordinated Shareholder Funding;

   (c) being a holding company parent, directly or indirectly, of the Issuer or any of the Issuer's Subsidiaries;

   (d) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Issuer or any of the Issuer's Subsidiaries; or

   (e) having made any payment in respect to any of the items for which the Issuer is permitted to make payments to any Parent pursuant to "*—Certain Covenants—Limitation on Restricted Payments*;" or

(2) if and for so long as the Issuer is a member of a group filing a consolidated or combined tax return with any Parent, any Taxes measured by income for which such Parent is liable up to an amount not to

exceed with respect to such Taxes the amount of any such Taxes that the Issuer and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis if the Issuer and its Subsidiaries had paid tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of the Issuer and its Subsidiaries.

"*Restricted Investment*" means any Investment other than a Permitted Investment.

"*Restricted Subsidiary*" means any Subsidiary of the Issuer, including the Senior Secured Notes Issuer, other than an Unrestricted Subsidiary.

"*Reversion Date*" means, after the Notes have achieved Investment Grade Status, the date, if any, that such Notes shall cease to have such Investment Grade Status.

"*S&P*" means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*SEC*" means the U.S. Securities and Exchange Commission or any successor thereto.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien on a basis *pari passu* with or senior to the security in favor of the Senior Secured Notes.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Security Documents*" means each collateral pledge agreement, security assignment agreement or other document under which collateral is pledged to secure the Notes.

"*Senior Indebtedness*" means, whether outstanding on the Issue Date or thereafter Incurred, all amounts payable by, under or in respect of all other Indebtedness of the Issuer or any Subsidiary Guarantor, including premiums and accrued and unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer or such Subsidiary Guarantor at the rate specified in the documentation with respect thereto whether or not a claim for post filing interest is allowed in such proceeding) and fees relating thereto unless, in the case of any Indebtedness, the instrument creating or evidencing such Indebtedness or pursuant to which such Indebtedness is outstanding expressly provides that such obligation shall be subordinated in right of payment to any other Indebtedness of the Issuer; *provided*, *however*, that Senior Indebtedness will not include:

(1) any Indebtedness Incurred in violation of the Indenture;

(2) any obligation of any Guarantor to the Issuer or any Restricted Subsidiary;

(3) any liability for taxes owed or owing by the Issuer or any Restricted Subsidiary;

(4) any Indebtedness, guarantee or obligation of any Guarantor that is expressly subordinated or junior in right of payment to any other Indebtedness, guarantee or obligation of such Guarantor;

(5) any Indebtedness under the Notes or obligations that are similarly ranked pursuant to the Intercreditor Agreement; or

(6) any Capital Stock.

"*Senior Management*" means the chief executive officer, chief financial officer or any other executive officer of the Issuer or any of its Subsidiaries.

"*Senior Secured Facilities*" means the facilities made available under the Senior Secured Facilities Agreement.

"*Senior Secured Facilities Agreement*" means the senior secured credit facility agreement dated on or about the Issue Date, among the Issuer, certain of the Issuer's Subsidiaries, as borrowers and guarantors, the senior lenders (as named therein), and Unicredit Bank AG, London Branch, as facility agent and security trustee, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time.

"*Senior Secured Notes*" means the € million % Senior Secured Notes due 2019 issued by the Senior Secured Notes Issuer on the Issue Date.

"*Senior Secured Notes Liens*" means the first-priority security interest in the limited partnership interests and the general partnership interests of the Issuer and the shares of the capital stock of Germany Holdco, Energie Holdco, the Senior Secured Notes Issuer and the other Subsidiary Guarantors, security interests

over receivables under an intercompany loan from MEIF II Finance to Germany Holdco and an intercompany loan from Germany Holdco to the Issuer and certain Subsidiaries, certain bank accounts of the Issuer and certain Subsidiaries and any other Collateral, each securing the Senior Secured Notes and any Refinancing Indebtedness in respect of the Senior Secured Notes; *provided*, *however*, that such Liens will not give an entitlement to be repaid with proceeds of enforcement of such Collateral in a manner which is inconsistent with the Intercreditor Agreement and any Additional Intercreditor Agreement.

"*Significant Subsidiary*" means any Restricted Subsidiary that meets any of the following conditions:

(1) the Issuer's and its Restricted Subsidiaries' investments in and advances to the Restricted Subsidiary exceed 10% of the total assets of the Issuer and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year;

(2) the Issuer's and its Restricted Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the Restricted Subsidiary exceeds 10% of the total assets of the Issuer and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year; or

(3) the Issuer's and its Restricted Subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the Restricted Subsidiary exceeds 10% of such income of the Issuer and its Restricted Subsidiaries on a consolidated basis for the most recently completed fiscal year.

"*Similar Business*" means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Issue Date, (b) (i) the energy management, energy services and energy contracting businesses, including, but not limited to, sub-metering, rental, sales or other provision of meters and sub-metering devices or any other devices that are installed or provisioned due to applicable regulatory requirements or voluntarily for energy or water efficiency purposes or for any other purpose that is required to fulfil regulatory requirements or other purposes (including, but not limited to, smoke detectors, adapterm, CHP units, heat stations, boilers and cooling equipment); and (ii) metering and sub-metering services such as meter reading, billing, and associated services such as energy certification, legionella analysis, data analysis, provision of consumption-related data (including portal solutions and other electronic services) and energy consulting including with respect to energy efficiency and energy consumption; and (c) any businesses, services and activities engaged in by the Company or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by any Subsidiary of the Issuer incorporated outside Germany which the Issuer has determined in good faith to be customary in a Receivables Financing, including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means, with respect to any person, any Indebtedness (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the Notes or its Guarantees pursuant to a written agreement, including any Subordinated Shareholder Funding.

"*Subordinated Shareholder Funding*" means, collectively, any funds provided to the Issuer by any Parent, any Affiliate of any Parent or any Permitted Holder or any Affiliate thereof in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, in each case issued to and held by any of the foregoing Persons, together with any such security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Funding; *provided*, *however*, that such Subordinated Shareholder Funding:

(1) does not mature or require any amortization, redemption or other repayment of principal or any sinking fund payment prior to the first anniversary of the Stated Maturity of the Notes (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Issuer or any funding meeting the requirements of this definition);

(2) does not require, prior to the first anniversary of the Stated Maturity of the Notes, payment of cash interest, cash withholding amounts or other cash gross-ups, or any similar cash amounts;

(3) contains no change of control or similar provisions and does not accelerate and has no right to declare a default or event of default or take any enforcement action or otherwise require any cash payment, in each case, prior to the first anniversary of the Stated Maturity of the Notes;

(4) does not provide for or require any security interest or encumbrance over any asset of the Issuer or any of its Subsidiaries; and

(5) pursuant to its terms is fully subordinated and junior in right of payment to the Notes pursuant to subordination, payment blockage and enforcement limitation terms which are customary in all material respects for similar funding.

"*Subsidiary*" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or

(2) any partnership, joint venture, limited liability company or similar entity of which:

  (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and

  (b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"*Successor Parent*" means, with respect to any Person, any other Person with more than 50% of the total voting power of the Voting Stock of which is, at the time the first Person becomes a Subsidiary of such other Person, "beneficially owned" (as defined below) by one or more Persons that "beneficially owned" (as defined below) more than 50% of the total voting power of the Voting Stock of the first Person immediately prior to the first Person becoming a Subsidiary of such other Person. For purposes hereof, "beneficially own" has the meaning correlative to the term "beneficial owner," as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the Issue Date).

"*Super Senior Revolving Facility*" means any credit facility which is designated as a Super Senior Revolving Facility pursuant to the Intercreditor Agreement.

"*Taxes*" means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including, without limitation, interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

"*Tax Sharing Agreement*" means any tax sharing or profit and loss pooling or similar agreement with customary or arm's-length terms entered into with any Parent or Unrestricted Subsidiary, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and of the Indenture.

"*Temporary Cash Investments*" means any of the following:

(1) any investment in

  (a) direct obligations of, or obligations Guaranteed by, (i) the United States of America or Canada, (ii) any Permissible Jurisdiction, (iii) Switzerland or Norway, (iv) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Issuer or a Restricted Subsidiary in that country with such funds or (v) any agency or instrumentality of any such country or member state; or

  (b) direct obligations of any country recognized by the United States of America rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization

or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(2) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by:

(a) any lender under the Senior Secured Facilities Agreement;

(b) any institution authorized to operate as a bank in any of the countries or member states referred to in subclause (1)(a) above; or

(c) any bank or trust company organized under the laws of any such country or member state or any political subdivision thereof,

in each case, having capital and surplus aggregating in excess of €250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least "A" by S&P or "A-2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) or (2) above entered into with a Person meeting the qualifications described in clause (2) above;

(4) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Issuer or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(5) Investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, any Permissible Jurisdiction or Switzerland, Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least "BBB" by S&P or "Baa3" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(6) bills of exchange issued in the United States, Canada, any Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(7) any money market deposit accounts issued or offered by a commercial bank organized under the laws of a country that is a member of the Organization for Economic Co-operation and Development, in each case, having capital and surplus in excess of €250 million (or the foreign currency equivalent thereof) or whose long term debt is rated at least "A" by S&P or "A2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(8) investment funds investing 95% of their assets in securities of the type described in clauses (1) through (7) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution); and

(9) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

"*Total Assets*" means the consolidated total assets of the Issuer and its Restricted Subsidiaries in accordance with IFRS as shown on the most recent balance sheet of such Person.

"*Transaction*" means the offering and sale of the Notes and the Senior Secured Notes, the entering into of the Senior Secured Facilities Agreement and the refinancing of the Existing Senior Secured Facilities Agreement with the proceeds from the offering of the Notes and the Senior Secured Notes and the Senior Secured Facilities, together with cash on hand.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended.

"*U.S. GAAP*" means generally accepted accounting principles in the United States of America as in effect from time to time.

"*Uniform Commercial Code*" means the New York Uniform Commercial Code.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Issuer that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Issuer in the manner provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

As of the Issue Date, GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and its subsidiaries (the GWE Group) and Thermie Serres S.A. will be Unrestricted Subsidiaries.

The Board of Directors of the Issuer may designate any Subsidiary of the Issuer (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein but not including the Issuer) to be an Unrestricted Subsidiary only if:

(1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Issuer or any other Subsidiary of the Issuer which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and

(2) such designation and the Investment of the Issuer in such Subsidiary complies with "*—Certain Covenants—Limitation on Restricted Payments*."

Any such designation by the Board of Directors of the Issuer shall be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions.

The Board of Directors of the Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, that immediately after giving effect to such designation (1) no Default or Event of Default would result therefrom and (2)(x) the Issuer could Incur at least €1.00 of additional Indebtedness pursuant to the first paragraph of the "*Limitation on Indebtedness*" covenant or (y) the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such designation, in each case, on a pro forma basis taking into account such designation. Any such designation by the Board of Directors of the Issuer shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of such Board of Directors giving effect to such designation or an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Voting Stock*" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

"*Wholly Owned Subsidiary*" means a Restricted Subsidiary of the Issuer, all of the Voting Stock of which (other than directors' qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Issuer or another Wholly Owned Subsidiary) is owned by the Issuer or another Wholly Owned Subsidiary.

BOOK-ENTRY, DELIVERY AND FORM

General

Notes sold within the United States to qualified institutional buyers pursuant to Rule 144A will initially be represented by one or more global notes in registered form without interest coupons attached (the "**144A Global Notes**"). Notes sold outside the United States pursuant to Regulation S under the Securities Act will initially be represented by one or more global notes in registered form without interest coupons attached (the "**Regulation S Global Notes**" and, together with the "**144A Global Notes**", the "**Global Notes**"). The Global Notes will be deposited, on the closing date, with a common depository and registered in the name of the nominee of the common depository for the accounts of Euroclear and Clearstream.

Ownership of interests in the 144A Global Notes ("**144A Book-Entry Interests**") and ownership of interests in the Regulation S Global Notes (the "**Regulation S Book-Entry Interest**" and, together with the 144A Book-Entry Interests, the "**Book-Entry Interests**") will be limited to persons that have accounts with Euroclear and/or Clearstream or persons that may hold interests through such participants. Book-Entry Interests will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by, Euroclear and Clearstream and their participants. The Book-Entry Interests in Global Notes will be issued only in denominations of €100,000 and in integral multiples of €1,000 in excess thereof.

The Book-Entry Interests will not be held in definitive form. Instead, Euroclear and/or Clearstream will credit on their respective book-entry registration and transfer systems a participant's account with the interest beneficially owned by such participant. The laws of some jurisdictions, including certain states of the United States, may require that certain purchasers of securities take physical delivery of such securities in definitive form. The foregoing limitations may impair the ability to own, transfer or pledge Book-Entry Interests. In addition, while the Notes are in global form, owners of interest in the Global Notes will not have the Notes registered in their names, will not receive physical delivery of the Notes in certificated form and will not be considered the registered owners or "holder" of Notes under the Indentures for any purpose.

So long as the Notes are held in global form, Euroclear and/or Clearstream, as applicable (or their respective nominees), will be considered the holders of Global Notes for all purposes under the Indentures. As such, participants must rely on the procedures of Euroclear and/or Clearstream and indirect participants must rely on the procedures of Euroclear and/or Clearstream and the participants through which they own Book-Entry Interests in order to exercise any rights of holders under the Indentures.

Neither the Issuers, nor the Trustees under the Indentures nor any of the Issuers' respective agents will have any responsibility or be liable for any aspect of the records relating to the Book-Entry Interests.

Issuance of Definitive Registered Notes

Under the terms of the Indentures, owners of Book-Entry Interests will receive definitive Notes in registered form (the "**Definitive Registered Notes**"):

- if Euroclear or Clearstream notifies an Issuer that it is unwilling or unable to continue to act as depository and a successor depository is not appointed by the Issuer within 120 days; or
- if an Issuer, at its option, notifies the Trustee in writing that it elects to exchange in whole, but not in part, a Global Note for Definitive Registered Notes; or
- if the owner of a Book-Entry interest requests such exchange in writing delivered through Euroclear or Clearstrem following an event of default under an Indenture and enforcement action is being taken in respect thereof under the relevan Indenture.

In such an event, the registrar will issue Definitive Registered Notes, registered in the name or names and issued in any approved denominations, requested by or on behalf of Euroclear and/or Clearstream or the Issuers, as applicable (in accordance with their respective customary procedures and based upon directions received from participants reflecting the beneficial ownership of Book-Entry Interests), and such Definitive Registered Notes will bear the restrictive legend referred to in "Notice to Investors," unless that legend is not required by the Indentures or applicable law.

Redemption of Global Notes

In the event any Global Note, or any portion thereof, is redeemed, Euroclear and/or Clearstream, as applicable, will distribute the amount received by it in respect of the Global Note so redeemed to the holders of the Book-Entry Interests in such Global Note from the amount received by it in respect of the redemption of such Global Note. The redemption price payable in connection with the redemption of such Book-Entry Interests will be equal to the amount received by Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Issuers understand that under existing practices of Euroclear and Clearstream, if fewer than all of the Notes are to be redeemed at any time, Euroclear and Clearstream will credit their respective participants' accounts on a proportionate basis (with adjustments to prevent fractions) or by lot or on such other basis as they deem fair and appropriate; provided, however, that no Book-Entry Interest of less than €100,000 principal amount at maturity may be redeemed in part.

Payments on Global Notes

Payments of amounts owing in respect of the Global Notes (including principal, premium, interest, additional interest and additional amounts) will be made by the Issuers to the respective Principal Paying Agent. In turn, each Principal Paying Agent will make such payments to the common depository for Euroclear and Clearstream, which will distribute such payments to participants in accordance with their respective procedures.

Under the terms of the Indentures governing the Notes, the Issuers and the Trustees will treat the registered holder of the Global Notes (*i.e.,* Euroclear or Clearstream (or their respective nominees)) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, none of the Issuers or the Trustees or any of their respective agents has or will have any responsibility or liability for:

- any aspects of the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a Book-Entry Interest, for any such for any such payments made by Euroclear, Clearstream or any participant or indirect participant, or for maintaining, supervising or reviewing the records of Euroclear, Clearstream or any participant or indirect participant relating to, or payments made on account of, a Book-Entry Interest; or
- payments made by Euroclear, Clearstream or any participant or indirect participant, or for maintaining, supervising or reviewing the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a Book-Entry Interest; or
- Euroclear, Clearstream or any participant or indirect participant.

Payments by participants to owners of Book-Entry Interests held through participants are the responsibility of such participants, as is now the case with securities held for the accounts of subscribers registered in "street name."

Currency and payment for the Global Notes

The principal of, premium, if any, and interest on, and all other amounts payable in respect of, the Global Notes, will be paid to holders of interest in such Notes through Euroclear and/or Clearstream in Euro.

Action by owners of Book-Entry Interests

Euroclear and Clearstream have advised each Issuer that they will take any action permitted to be taken by a holder of Notes only at the direction of one or more participants to whose account the Book-Entry Interests in the Global Notes are credited and only in respect of such portion of the aggregate principal amount of Notes as to which such participant or participants has or have given such direction. Euroclear and Clearstream will not exercise any discretion in the granting of consents, waivers or the taking of any other action in respect of the Global Notes. However, if there is an event of default under the Notes, each of Euroclear and Clearstream reserves the right to exchange the Global Notes for Definitive Registered Notes in certificated form, and to distribute such Definitive Registered Notes to their respective participants.

Transfers

The Global Notes will bear a legend to the effect set forth in "*Notice to Investors*." Book-Entry Interests in the Global Notes will be subject to the restrictions on transfer discussed in "*Notice to Investors*."

Through and including the 40th day after the later of the commencement of the offering of the Notes and the closing of the offering (the "**40-day Period**"), beneficial interests in a Regulation S Global Note may be transferred to a person who takes delivery in the form of an interest in the Rule 144A Global Note denominated in the same currency only if such transfer is made pursuant to Rule 144A and the transferor first delivers to the Trustee a certificate (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A or otherwise in accordance with the transfer restrictions described under "*Notice to Investors*" and in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

After the expiration of the 40-day Period, beneficial interests in a Regulation S Global Note may be transferred to a person who takes delivery in the form of a beneficial interest in the Rule 144A Global Note without compliance with these certification requirements.

Beneficial interests in a Rule 144A Global Note may be transferred to a person who takes delivery in the form of a beneficial interest in the Regulation S Global Note denominated in the same currency only upon receipt by the Trustee of a written certification (in the form provided in the Indenture) from the transferor to the effect that such transfer is being made in accordance with Regulation S or Rule 144 under the Securities Act (if available).

Subject to the foregoing, and as set forth in "*Notice to Investors*" Book-Entry Interests may be transferred and exchanged as described under "*Description of Senior Secured Notes—Transfer and Exchange*" and "*Description of Senior Subordinated Notes—Transfer and Exchange*". Any Book-Entry Interest in one of the Global Notes that is transferred to a person who takes delivery in the form of a Book-Entry Interest in the other Global Note will, upon transfer, cease to be a Book-Entry Interest in the first mentioned Global Note and become a Book-Entry Interest in the other Global Note, and accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to Book-Entry Interests in such other Global Note for as long as it retains such a Book-Entry Interest.

Definitive Registered Notes may be transferred and exchanged for Book-Entry Interests in a Global Note only as described under "*Description of Senior Secured Notes—Transfer and Exchange*" and "*Description of Senior Subordinated Notes—Transfer and Exchange*" and, if required, only if the transferor first delivers to the Trustee a written certificate (in the form provided in the Indenture) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Notes. See "*Notice to Investors*."

Information concerning Euroclear and Clearstream

All Book-Entry Interests will be subject to the operations and procedures of Euroclear and Clearstream, as applicable. The Issuer provides the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are controlled by that settlement system and may be changed at any time. None of the Issuers or the initial purchasers is responsible for those operations or procedures.

Euroclear and Clearstream hold securities for participating organizations. They also facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in the accounts of such participants. Euroclear and Clearstream provide various services to their participants, including the safekeeping, administration, clearance, settlement, lending and borrowing of internationally traded securities. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial institutions such as underwriters, securities brokers and dealers, banks, trust companies and certain other organizations. Indirect access to Euroclear and Clearstream is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Euroclear and Clearstream participant, either directly or indirectly.

Because Euroclear and Clearstream can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of an owner of a beneficial interest to pledge such interest to persons or entities that do not participate in the Euroclear or Clearstream systems, or otherwise take actions in respect of such interest, may be limited by the lack of a definite certificate for that interest. The laws of some jurisdictions require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests to such person may be limited. In addition,

owners of beneficial interests through the Euroclear or Clearstream systems will receive distributions attributable to the 144A Global Notes only through Euroclear or Clearstream participants.

Global clearance and settlement under the book-entry system

The Notes represented by the Global Notes are expected to be admitted to trading on the Euro MTF Market and listed on the official list of the Luxembourg Stock Exchange. The Issuers expect that secondary trading in any certificated Notes will also be settled in immediately available funds.

Initial settlement

Initial settlement for the Notes will be made in Euro. Book-Entry Interests owned through Euroclear or Clearstream accounts will follow the settlement procedures applicable to conventional Eurobonds in registered form. Book-Entry Interests will be credited to the securities custody accounts of Euroclear and Clearstream holders on the business day following the settlement date against payment for value on the settlement date.

Secondary market trading

The Book-Entry Interests will trade through participants of Euroclear or Clearstream and will settle in same-day funds. Since the purchase determines the place of delivery, it is important to establish at the time of trading of any Book-Entry Interests where both the purchaser's and the seller's accounts are located to ensure that settlement can be made on the desired value date.

CERTAIN TAX CONSEQUENCES

GERMAN TAXATION

The following is a general discussion of certain German tax consequences of the acquisition, ownership and disposition of the Notes. This discussion does not purport to be a comprehensive description of all tax considerations which may be relevant to a decision to purchase Notes. In particular, this discussion does not consider any specific facts or circumstances that may apply to a particular purchaser. This summary is based on the laws (including tax treaties) currently in force and as applied on the date of this offering memorandum in the Federal Republic of Germany which are subject to change, possibly with retroactive effect.

PROSPECTIVE PURCHASERS OF THE NOTES ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES, INCLUDING THE EFFECT OF ANY STATE OR LOCAL TAXES UNDER THE TAX LAWS APPLICABLE IN THE FEDERAL REPUBLIC OF GERMANY AND EACH COUNTRY OF WHICH THEY ARE RESIDENTS.

Withholding Tax

For German tax residents (e.g. persons whose residence, habitual abode, statutory seat or place of management is located in Germany), coupon payments on the Notes are subject to withholding tax, provided that the Notes are held in custody with a German custodian, who is required to deduct the withholding tax from such coupon payments (the "**Disbursing Agent**"). Disbursing Agents are German resident credit institutions, financial services institutions (including German permanent establishments of foreign institutions), securities trading companies or securities trading banks. The applicable withholding tax rate is 25% (plus 5.5% solidarity surcharge thereon and, if applicable, church tax).

The withholding tax regime should also apply to any gains from the sale or redemption of Notes realized by private investors holding the Notes as private (and not as business) assets in custody with a Disbursing Agent. Subject to exceptions, the amount of capital gains on which the withholding tax charge is applied is generally levied on the difference between the proceeds received upon the disposition or redemption of the Notes and (after the deduction of actual expenses directly related thereto) the acquisition costs. If custody has changed since the acquisition and the acquisition data is not proved to the Disbursing Agent, the tax at a rate of 25% (plus 5.5% solidarity surcharge and, if applicable, church tax) will be imposed on an amount equal to 30% of the proceeds from the sale or redemption of the Notes.

The withholding tax is not applied if the total investment income of a private investor is not exceeding the lump sum deduction (*Sparer-Pauschbetrag*) of EUR 801 (EUR 1,602 for married couples filing jointly). Expenses actually incurred are not deductible. No withholding tax will be levied if a private individual investor files a withholding tax exemption certificate (*Freistellungsauftrag*) with the Disbursing Agent, but only to the extent the investment income does not exceed the maximum exemption amount shown on the withholding tax exemption certificate. Similarly, no withholding tax will be levied if a private individual investor has submitted to the Disbursing Agent a certificate of non-assessment (*Nichtveranlagungs-Bescheinigung*) issued by the competent German tax office.

German resident corporate and other German resident business investors should in essence not be subject to the withholding tax on gains from the disposition, sale or redemption of the Notes (i.e. for these investors only coupon payments, but not gains from the sale or redemption of the Notes are subject to the withholding tax regime).

Private Investors

For private investors the withholding tax is—without prejudice to certain exceptions—definitive. Private investors can apply to have their income from the investment into the Notes assessed in accordance with the general rules on determining an individual's tax bracket if this would result in a lower tax burden. An assessment is mandatory for income from the investment into the Notes where the Notes are held in custody outside of Germany. Losses resulting from the sale or redemption of the Notes can only be off-set against other investment income. In the event that a set-off is not possible in the assessment period in which the losses have been realized, such losses can be carried forward into future assessment periods only and can be offset against investment income generated in future assessment periods.

Business Investors

Coupon payments and capital gains from the disposition or redemption of the Notes held as business assets by German tax resident business investors are generally subject to German income tax or corporate income tax (plus 5.5% solidarity surcharge thereon). Any withholding tax deducted from coupon payments is—subject to certain requirements—creditable. To the extent the amount withheld exceeds the (corporate) income tax liability, the withholding tax is—as a rule—refundable. The coupon payments and capital gains are also subject to trade tax, if the Notes are attributable to a trade or business.

Foreign Tax Residents

Investors not resident in Germany should, in essence, not be taxable in Germany with the proceeds from the investment in the Notes, and no German withholding tax should be withheld from such income, even if the Notes are held in custody with a German credit (or comparable) institution. Exceptions apply, e.g., where the Notes are held as business assets in a German permanent establishment of the investor.

Inheritance and Gift Tax

Inheritance or gift taxes with respect to the Notes will, in principle, arise under German law if, in the case of inheritance tax, either the decedent or the beneficiary or, in the case of gift tax, either the donor or the donee is a resident of Germany at the relevant point in time, or if the Notes are attributable to a German trade or business for which a permanent establishment is maintained or a permanent representative has been appointed in Germany. In addition, certain German expatriates will be subject to inheritance and gift tax. However, applicable double taxation treaties may provide for exceptions to the German domestic inheritance and gift tax regulations.

Responsibility of the Issuer for the withholding of tax at the source

The Issuer does not assume any responsibility for the deduction of withholding tax (including solidarity surcharge thereon) at the source.

EU Savings Directive

On June 3, 2003 the Economic and Financial Affairs Council of the European Union (ECOFIN Council) adopted directive 2003/48/EC on taxation of savings income in the form of interest payments ("**Savings Directive**"). Under the Savings Directive and from July 1, 2005, each EU Member State is required to provide the tax authorities of another Member State with details of payments of interest and other similar income paid by a person in one Member State to an individual resident in another Member State. However, during a transitional period, Luxembourg and Austria may instead (unless during that period they elect otherwise) operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries). A number of non-EU countries and territories including Switzerland and certain British and Dutch dependent or associated territories have adopted or have agreed to adopt similar measures (a withholding system in the case of Switzerland).

On September 15, 2008 the European Commission issued a report to the Council of the European Union on the operation of the Savings Directive, which included the Commission's advice on the need for changes to the Savings Directive. On November 13, 2008 the European Commission published a more detailed proposal for amendments to the Savings Directive, which included a number of suggested changes. The European Parliament approved an amended version of this proposal on April 24, 2009. If any of those proposed changes are made in relation to the Savings Directive, they will broaden the scope of the requirements described above. Investors who are in any doubt as to their position should consult their professional advisors.

LUXEMBOURG TAXATION

The following is a summary of certain material Luxembourg withholding tax consequences of purchasing, owning and disposing of the Notes. It does not purport to be a complete analysis of all possible tax situations that may be relevant to a decision to purchase, own or deposit the Notes. It is included herein solely for preliminary information purposes and is not intended to be, nor should it construed to be, legal or tax advice. Prospective purchasers of the Notes should consult their own tax advisers as to the applicable tax consequences of the ownership of the Notes, based on their particular circumstances. The following

description of Luxembourg tax law is based upon the Luxembourg law and regulations as in effect and as interpreted by the Luxembourg tax authorities on the date of this offering memorandum and is subject to any amendments in law (or in interpretation) later introduced, whether or not on a retroactive basis.

Non-resident Noteholders

Under current Luxembourg tax laws and subject to the application of the Luxembourg laws dated June 21, 2005 (the "**June 2005 Laws**") implementing the Savings Directive (as defined above) and related agreements (the "**Agreements**") concluded between Luxembourg and certain dependent and associated territories of the European Union (*i.e.* Aruba, British Virgin Islands, Guernsey, Isle of Man, Jersey, Montserrat, as well as the former Netherlands Antilles, *i.e*. Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten—collectively the "**Associated Territories**"), there is no withholding tax on interest (paid or accrued) and other payments (*e.g.* repayment of principal) to non-resident Noteholders.

Under the June 2005 Laws, a Luxembourg-based paying agent (within the meaning of the Savings Directive) is required since July 1, 2005 to withhold tax on interest and similar income paid by it to (or under certain circumstances, to the benefit of) an individual or a residual entity in the sense of article 4.2. of the EU Savings Directive (*i.e.* an entity (i) without legal personality, except for a Finnish *avoin yhtiö and kommandiittiyhtiö* / *öppet bolag* and *kommanditbolag* and a Swedish *handelsbolag* and *kommanditbolag*, (ii) whose profits are not taxed under the general arrangements for the business taxation and (iii) that is not, or has not opted to be considered as, an undertaking for collective investment in transferable securities ("**UCITS**") recognised in accordance with Council Directive 2009/65/EC, resident or established in another EU Member State as Luxembourg or in any of the Associated Territories, unless the beneficiary of the interest payments elects for the exchange of information procedure or for the tax certificate procedure.

The withholding tax is currently levied at the rate of 35%. The withholding tax system should be applicable for a transitional period only.

The Savings Directive is currently under review and the impact of possible amendments should be closely monitored. Noteholders should inform themselves of, and where appropriate take advice on, the impact of the Savings Directive on their investment.

Resident Noteholders

The terms "interest", "paying agent" and "residual entity" used hereafter have the same meaning as in the June 2005 Laws.

Under current Luxembourg tax laws and subject to the application of the Luxembourg law dated December 23, 2005 (the "**December 2005 Law**") there is no withholding tax on interest (paid or accrued) and other payments (*e.g.* repayment of principal) made by the Issuer (or its paying agent, if any) to Luxembourg resident Noteholders.

According to the December 2005 Law, a 10% withholding tax is levied on payments of interest or similar income made by Luxembourg paying agents to (or for the benefit of) Luxembourg resident individuals Noteholders or to certain foreign residual entities securing the interest for such Luxembourg resident individuals Noteholders. This withholding tax also applies on accrued interest received upon sale, disposal, redemption or repurchase of the Notes. Such withholding tax is in full discharge of income tax if the beneficial owner is an individual acting in the course of the management of his/her private wealth who does not and is not deemed to hold the Notes as business assets.

Luxembourg resident individuals acting in the course of the management of their private wealth and who do not and are not deemed to hold the Notes as business assets, and who are the beneficial owners of payments of interest or similar income made by a paying agent established outside Luxembourg in a Member State of the European Union or the European Economic Area or in a jurisdiction having concluded an agreement with Luxembourg in connection with the EU Savings Directive may opt for a final 10% levy. In such case, the 10% levy is calculated on the same amounts as for the payments made by Luxembourg paying agents. The option for the 10% final levy must cover all interest payments made by paying agents to the beneficial owner during the entire civil year.

PROSPECTIVE INVESTORS ARE RECOMMENDED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE INDIVIDUAL TAX CONSEQUENCES ARISING FROM THE INVESTMENT IN THE NOTES.

U.S. TAXATION

The following discussion is a summary based on present law of certain U.S. federal income tax considerations relevant to the purchase, ownership and disposition of the Notes. This discussion addresses only U.S. Holders (as defined below) who purchase Notes in the original offering at the original offering price, hold the Notes as capital assets and use the U.S. Dollar as their functional currency. This discussion is not a complete description of all U.S. tax considerations relating to the Notes. It does not address the tax treatment of prospective purchasers subject to special rules, such as banks, dealers, traders that elect to mark-to-market, insurance companies, investors liable for the alternative minimum tax, U.S. expatriates, tax-exempt entities or persons holding the Notes as part of a hedge, straddle, conversion or other integrated financial transaction. It also does not address the tax treatment of U.S. Holders that will hold the Notes in connection with a permanent establishment outside of the United States. It does not consider U.S. state or local tax matters or the Medicare contribution tax imposed on certain net investment income in taxable years beginning after December 31, 2012. It assumes that the Notes will be treated as debt for U.S. federal income tax purposes.

THE FOLLOWING STATEMENTS ABOUT U.S. FEDERAL TAX ISSUES ARE MADE TO SUPPORT MARKETING OF THE NOTES. NO TAXPAYER CAN RELY ON THEM TO AVOID TAX PENALTIES. EACH PROSPECTIVE PURCHASER SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR ABOUT THE TAX CONSEQUENCES UNDER ITS OWN PARTICULAR CIRCUMSTANCES OF INVESTING IN THE NOTES UNDER THE LAWS OF GERMANY, THE UNITED STATES, THEIR CONSTITUENT JURISDICTIONS AND ANY OTHER JURISDICTION WHERE THE PURCHASER MAY BE SUBJECT TO TAXATION.

For purposes of this discussion, a "**U.S. Holder**" is a beneficial owner that is for U.S. federal income tax purposes (i) a citizen or individual resident of the United States, (ii) a corporation, partnership or other business entity created or organized under the laws of the United States or its political subdivisions, (iii) a trust subject to the control of a U.S. person and the primary supervision of a U.S. court or (iv) an estate the income of which is subject to U.S. federal income taxation regardless of its source.

The tax treatment of a partner in a partnership that holds the Notes generally will depend upon the status of the partner and the activities of the partnership. A partnership that acquires the Notes and partners in such partnerships should consult its own tax advisors about the tax consequences for its partners.

Interest

A U.S. Holder must include stated interest on the Notes in gross income in accordance with its regular method of tax accounting. Interest on the Notes, including any Additional Amounts paid on account of withholding tax, if any, will be ordinary income from sources outside the United States. Subject to applicable limitations, a U.S. Holder may claim a deduction or a foreign tax credit only for tax withheld at the appropriate rate.

A U.S. Holder must accrue OID into income on a constant yield to maturity basis whether or not it receives cash payments. If the Notes' stated redemption price at maturity exceeds their issue price by as much as 0.25% multiplied by the number of complete years to maturity, the Notes will have OID equal to the amount by which their stated redemption price at maturity exceeds their issue price. The issue price of the Notes is the initial offering price at which a substantial amount of the Notes are sold to the public (excluding sales to brokers or similar persons). The stated redemption price at maturity is the sum of all payments due on a Note other than payments of stated interest. The redemption premium that the Issuers must pay on a change of control is not part of the stated redemption price for this purpose because the Issuers do not believe that any change in control is significantly more likely than not to occur. A U.S. Holder may elect to recognize all yield on a Note (including de minimis OID) using a constant yield method. The constant yield election generally will apply only to the Note with respect to which it is made, and it may not be revoked without the consent of the U.S. Internal Revenue Service ("**IRS**"). OID will be ordinary income from sources outside of the United States.

A cash basis U.S. Holder receiving interest in Euro must include in income a U.S. dollar amount based on the spot exchange rate on the date of receipt whether or not the payment is converted to U.S. dollars. An accrual basis U.S. Holder (and a cash basis U.S. Holder accruing OID) generally must include in income a U.S. dollar amount based on the average exchange rate during the accrual period (or, for an accrual period that spans two taxable years, the partial period within each taxable year). Upon receipt of a payment in Euro, U.S. Holders that have accrued interest or OID will recognize exchange gain or loss equal to any

difference between the U.S. dollar amount accrued and the U.S. dollar value of the payment received at the spot exchange rate on the date of receipt. Exchange gain or loss generally will be U.S. source ordinary income or loss.

An accrual basis U.S. Holder (and a cash basis U.S. Holder with respect to OID) may elect to translate accrued interest into U.S. dollars at the spot exchange rate on the last day of the accrual period (or, for an accrual period that spans two taxable years, the last day of the partial period within each taxable year) or, with respect to interest received within five business days of accrual, the spot exchange rate on the date of receipt. Currency translation elections apply to all debt instruments that the electing U.S. Holder holds or acquires, and they cannot be revoked without the consent of the IRS.

Disposition

A U.S. Holder generally will recognize gain or loss on a sale, redemption or other disposition of a Note in an amount equal to the difference between the U.S. Dollar value of the amount realized (less any accrued but unpaid interest, which will be taxable as interest income to the extent not previously included in income) and the U.S. Holder's adjusted tax basis in the Note. A U.S. Holder's adjusted tax basis in a Note generally will be the amount paid for the Note increased by any OID included in the U.S. Holder's income with respect to that Note and reduced by any payments other than stated interest.

Gain or loss on disposition of a Note will generally be U.S. source capital gain or loss except to the extent of any foreign currency exchange gain or loss. Any capital gain or loss will be long-term capital gain or loss if the U.S. Holder has held the Note for more than one year at the time of disposition. A non-corporate U.S. Holder's long-term capital gain may be taxed at lower rates. Deductions for capital losses are subject to limitations.

A U.S. Holder that receives currency other than U.S. dollars upon sale or other disposition of the Notes will realize an amount equal to the U.S. dollar value of the currency on the date of sale. If the Notes are traded on an established securities market, a cash basis U.S. Holder or electing accrual basis taxpayer will determine the amount realized on the settlement date. A U.S. Holder will have a tax basis in the currency equal to the U.S. dollar amount realized. Any gain or loss realized by a U.S. Holder on a subsequent conversion of currency for U.S. dollars will generally be U.S. source ordinary income or loss. Any exchange gain or loss realized by a U.S. Holder generally will be U.S. source ordinary income or loss. A U.S. Holder generally will recognize foreign currency exchange gain or loss on disposition of a Note equal to the difference between the U.S. dollar value of the principal amount of the Note on the date of acquisition and the date of disposition (or, if the Notes are traded on an established securities exchange and the U.S. Holder is a cash basis or an electing accrual basis holder, the settlement date). Foreign currency exchange gain or loss cannot exceed overall gain or loss realized on disposition of the Note.

Alternate Characterization

Although the Issuers believe that the Senior Subordinated Notes are debt for U.S. federal income tax purposes, there can be no assurances that the IRS will not contend, and that a court will not ultimately conclude, that the Senior Subordinated Notes are equity for U.S. federal income tax purposes. If the Senior Subordinated Notes were treated as equity interests in the Senior Subordinated Notes Issuer for such purposes, payments on the Senior Subordinated Notes will generally be treated as foreign source ordinary dividend income, and gain or loss on disposition of a Subordinated Note will generally be U.S. source capital gain or loss. Investors should consult their tax advisors regarding the U.S. federal income tax characterization of the Senior Subordinated Notes, and the tax considerations relevant to them if the Subordinated Notes are treated as equity for U.S. federal income tax purposes.

Additional Notes

Additional Notes issued in further offerings by the Issuer may not be fungible for U.S. federal income tax purposes with Notes of the same series that were issued in the original offering for that series. Additional Notes are not fungible with an earlier issue unless they are issued in a qualified reopening of the original offering. Whether the issuance of Additional Notes is a qualified reopening depends on the interval after the original offering, the yield of the original Notes at that time (based on their fair market value), whether the original Notes were issued with OID and whether any original Notes are publicly traded or quoted at the time of the new issuance. If issuance of the Additional Notes is not a qualified reopening, the Additional Notes may be issued with OID that exceeds the remaining OID, if any, on the originally issued Notes of the series. The market value of the previously outstanding Notes of a series may be adversely

affected if Additional Notes are issued with a greater amount of OID than the OID with which the originally issued Notes were issued, if any, unless the Additional Notes can be distinguished from the originally issued Notes (for example by use of a different Common Code and International Securities Identification Number ("**ISIN**") and, where applicable, CUSIP number).

Reportable Transactions

Under the Treasury Regulations, certain transactions are required to be reported to the IRS including, in certain circumstances, a sale, exchange, retirement or other taxable disposition of a Note or foreign currency received in respect of a Note to the extent that such sale, exchange, retirement or other taxable disposition results in a tax loss in excess of a threshold amount. If investors fail to timely file a required disclosure under these rules, substantial penalties can apply. Potential investors should consult with their own tax advisors to determine the tax return obligations, if any, with respect to an investment in the Notes.

Information reporting and backup withholding

Payments of interest and proceeds from the sale, redemption or other disposition of a Note may be reported to the IRS unless the holder is a corporation or otherwise establishes a basis for exemption. Backup withholding tax may apply to amounts subject to reporting if the holder fails to provide an accurate taxpayer identification number or fails to report all interest and dividends required to be shown on its U.S. federal income tax returns. A holder can claim a credit against its U.S. federal income tax liability for the amount of any backup withholding tax and a refund of any excess.

Recently enacted legislation may require individual U.S. Holders to report to the IRS information with respect to Notes not held through an account with certain financial institutions. Investors who fail to report required information could become subject to substantial penalties. Potential investors should consult their own tax advisors regarding the possible implications of this new legislation for their investment in Notes.

THE DISCUSSION ABOVE IS A GENERAL SUMMARY. IT DOES NOT COVER ALL TAX MATTERS THAT MAY BE OF IMPORTANCE TO A PARTICULAR INVESTOR. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS OWN TAX ADVISOR ABOUT THE TAX CONSEQUENCES TO IT OF AN INVESTMENT IN THE NOTES IN LIGHT OF THE INVESTOR'S OWN CIRCUMSTANCES.

CERTAIN INSOLVENCY LAW CONSIDERATIONS AND LIMITATIONS ON THE VALIDITY AND ENFORCEABILITY OF THE GUARANTEES AND SECURITY INTERESTS

EUROPEAN UNION

Pursuant to Council Regulation (EC) No. 1346/2000 on insolvency proceedings (the "**EU Insolvency Regulation**"), the court which shall have jurisdiction to open insolvency proceedings in relation to a company is the court of the member state (other than Denmark) where the company concerned has its "center of main interests" (as that term is used in Article 3(1) of the EU Insolvency Regulation). The determination of where such company has its "center of main interests" is generally a question of fact on which the courts of different Member States may have differing and even conflicting views.

The term "center of main interests" is not a static, but rather a fact and circumstances based concept and may hence change from time to time. Although there is a rebuttable presumption under Article 3(1) of the EU Insolvency Regulation that a company has its "center of main interests" in the Member State in which it has its registered office, Preamble 13 of the EU Insolvency Regulation states that the "center of main interests" of a debtor should correspond to the place where the debtor conducts the administration of its interests on a regular basis and "is therefore ascertainable by third parties." In that respect, factors such as the location where board meetings are held and the location where the company conducts the majority of its business including the perception of the company's creditors of the local center of the company's business operations may all be relevant in determining where the company has its "center of main interests", with the company's "center of main interests" at the time of initiation of the relevant insolvency proceedings being not only decisive for the international jurisdiction of the courts of a certain Member State, but also for the insolvency laws applicable to these insolvency proceedings as each court would, subject to certain exemptions, apply its local insolvency laws (*lex fori concursus*).

If the center of main interests of such company is and will remain located in the state in which it has its registered office, the main insolvency proceedings in respect of such company under the EU Insolvency Regulation would be commenced in such jurisdiction and accordingly a court in such jurisdiction would be entitled to commence the types of insolvency proceedings referred to in Annex A to the EU Insolvency Regulation. Insolvency proceedings opened in one Member State under the EU Insolvency Regulation are to be recognized in the other Member States (other than Denmark), although secondary proceedings may be opened in another Member State. If the "center of main interests" of a debtor is in one Member State (other than Denmark) under Article 3(2) of the EU Insolvency Regulation, the courts of another Member State (other than Denmark) have jurisdiction to open "territorial proceedings" only in the event that such debtor has an "establishment" in the territory of such other Member State. The effects of those territorial proceedings are restricted to the assets of the debtor located in the territory of such other Member State. If the company does not have an establishment in any other Member State, no court of any other Member State has jurisdiction to open territorial proceedings in respect of such issuer or guarantor under the EU Insolvency Regulation. Irrespective of whether the insolvency proceedings are main or territorial proceedings, such proceedings will always, subject to certain exemptions, be governed by the lex fori concursus, i.e. the local insolvency law of the court which has assumed jurisdiction for the insolvency proceedings of the debtor.

In the event that the Issuers or any provider of collateral experiences financial difficulty, it is not possible to predict with certainty in which jurisdiction or jurisdictions insolvency or similar proceedings will be commenced, or the outcome of such proceedings. Applicable insolvency laws may affect the enforceability of the obligations of the Issuers and the collateral provided by the Issuers or any other company. The insolvency, administration and other laws of the jurisdictions in which the respective companies are organized or operate may be materially different from, or conflict with, each other and there is no assurance as to how the insolvency laws of the potentially involved jurisdictions will be applied in relation to one another.

GERMANY

Insolvency

The Issuers and certain Guarantors, are organized under the laws of Germany, have their registered offices in Germany and substantially all of their assets are located in Germany. Consequently, any insolvency proceedings with regard to the Issuers and these certain Guarantors are likely to be initiated in Germany and, if the Issuers and Guarantors, respectively, were held to have their center of main interests within the territory of Germany at the time the application for the opening of insolvency proceedings

(*Insolvenzeröffnungsantrag*) is filed, German insolvency law would most likely govern such proceedings. The insolvency laws of Germany and, in particular, the provisions of the German Insolvency Code (*Insolvenzordnung*) may not be as favorable to your interests as creditors as the insolvency laws of other jurisdictions, including in respect of priority of creditors' claims, the ability to obtain post-petition interest and the duration of the insolvency proceedings, and hence may limit your ability to recover payments due on the notes to an extent exceeding the limitations arising under other insolvency laws.

The following is a brief description of certain aspects of the insolvency laws of Germany.

Under German insolvency law, there is no group insolvency concept, which generally means that, despite the economic ties between various entities within one group of companies, there will be one separate insolvency proceeding for each of the entities if and to the extent there exists an insolvency reason on the part of the relevant entity. Each of these insolvency proceedings will be legally independent from all other insolvency proceedings (if any) within the group. In particular, there is no consolidation of assets and liabilities of a group of companies in the event of insolvency and also no pooling of claims amongst the respective entities of a group.

Under German insolvency law, insolvency proceedings are not initiated by the competent insolvency court *ex officio*, but require that the debtor or a creditor files a petition for the opening of insolvency proceedings. Insolvency proceedings can be initiated either by the debtor or by a creditor in the event of over-indebtedness (*Überschuldung*) of the debtor or in the event that the debtor is unable to pay its debts as and when they fall due (*Zahlungsunfähigkeit*). According to the relevant provision of the German Insolvency Code (Insolvenzordnung) which will apply until December 31, 2013, a debtor is over-indebted when its liabilities exceed the value of its assets (based on their liquidation values), unless a continuation of the debtor's business is predominantly likely (*positive Fortführungsprognose*). According to the relevant provision applying as from January 1, 2014, over-indebtedness exists when the debtor's liabilities exceed the value of its assets which must be assessed on the basis of an over-indebtedness balance sheet to be drawn up either (i) on the basis of the liquidation value of the debtor's assets or (ii) based upon the going concern value of these assets if a continuation of the business is predominantly likely. If a limited liability company (*Gesellschaft mit beschränkter Haftung—GmbH*) or any company not having an individual as personally liable shareholder—such as the Issuers—gets into a situation of illiquidity and/or over-indebtedness, the management of such company and, under certain circumstances, its shareholders are obliged to file for the opening of insolvency proceedings without undue delay, however, at the latest within 3 weeks after the mandatory insolvency reason, i.e. illiquidity and/or over-indebtedness, occurred. Non-compliance with these obligations exposes management to both severe damage claims as well as sanctions under criminal law. In addition, imminent illiquidity (*drohende Zahlungsunfähigkeit*) is a valid insolvency reason under German law which exists if the company currently is able to service its payments obligations, but will presumably not be able to continue to do so at some point in time within a certain prognosis period. However, only the debtor, but not the creditors, is entitled (but not obliged) to file for the opening of insolvency proceedings if the debtor is likely to not be able to pay its debts as and when they fall due.

The insolvency proceedings are administered by the competent insolvency court which monitors the due performance of the proceedings. Upon receipt of the insolvency petition, the insolvency court may take preliminary measures to secure the property of the debtor during the preliminary proceedings (*Insolvenzeröffnungsverfahren*). The insolvency court may prohibit or suspend any measures taken to enforce individual claims against the debtor's assets during these preliminary proceedings. In addition, the court will also appoint a preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*), unless the debtor has petitioned for debtor-in possession status (*Eigenverwaltung*)—an insolvency process in which the debtor's management generally remains in charge of administering the debtor's business affairs under the supervision of a custodian (*Sachwalter*)—with this petition not being obviously futile. Depending on the size of the debtor's business operations, the insolvency court must or may appoint a preliminary creditors' committee (*vorläufiger Gläubigerausschuss*) to form a view on the profile of the officeholder to be appointed or even to make a suggestion for a particular individual to be appointed by the court. In case the members of the preliminary creditors' committee unanimously agree on an individual, such suggestion is binding on the court (unless the suggested individual is not eligible; i.e. incompetent and/or not disinterested). To ensure that the preliminary creditors' committee reflects the interests of all creditor constituencies, it shall comprise a representative of the secured creditors, one for the large and one for the small creditors as well as one for the employees. The duty of the preliminary insolvency administrator is, in particular, to safeguard and to preserve the debtor's assets (which includes the continuation of the business carried out by the debtor), to verify the existence of an insolvency reason and to assess whether the

debtor's net assets will be sufficient to cover the costs of the insolvency proceedings. The court orders the opening (*Eröffnungsbeschluss*) of formal insolvency proceedings (*eröffnetes Insolvenzverfahren*) if certain requirements are met, in particular if there are sufficient assets to cover at least the cost of the insolvency proceedings. If the assets of the debtor are not expected to be sufficient, the insolvency court will only open formal insolvency proceedings if third parties, for instance creditors, advance the costs themselves. In the absence of such advancement, the petition for the opening of insolvency proceedings will be dismissed for insufficiency of assets (*Abweisung mangels Masse*).

Upon the opening of formal insolvency proceedings, an insolvency administrator (usually the same person who acted as preliminary insolvency administrator) is appointed by the insolvency court unless a debtor in possession status (*Eigenverwaltung*) is ordered. In the absence of a debtor—in possession status, the right to administer the debtor's business affairs and to dispose of the assets of the debtor passes to the insolvency administrator with the insolvency creditors (*Insolvenzgläubiger*) only being entitled to change the individual appointed as insolvency administrator at the occasion of the first creditors' assembly (*erste Gläubigerversammlung*) with such change requiring that (i) a simple majority of votes cast (by heads and amount of insolvency claims) has voted in favor of the proposed individual to become insolvency administrator and (ii) the proposed individual being eligible as officeholder, i.e. sufficiently qualified, business-experienced and impartial. The insolvency administrator may raise new financial indebtedness and incur other liabilities to continue the debtor's business. These new liabilities incurred by the insolvency administrator qualify as preferential claims against the estate (*Masseverbindlichkeiten*) which are preferred to any insolvency claim of an unsecured creditor (with the residual claim of a secured insolvency creditor remaining after realization of the available collateral (if any) also qualifying as unsecured insolvency claim).

All creditors, whether secured or unsecured (unless they have a right to separate an asset from the insolvency estate (*Aussonderungsrecht*)), wishing to assert claims against the insolvent debtor need to participate in the insolvency proceedings. German insolvency proceedings are collective proceedings and creditors may generally no longer pursue their individual claims in the insolvency proceedings separately, but can instead only enforce them in compliance with the restrictions of the German Insolvency Code. Therefore, secured creditors are generally not entitled to enforce any security interest outside the insolvency proceedings. In the insolvency proceedings, however, secured creditors have certain preferential rights (*Absonderungsrechte*). Depending on the legal nature of the security interest entitlement to enforce such security is either vested with the secured creditor or the insolvency administrator. In this context, it should be noted that the insolvency administrator generally has the sole right to realize any moveable assets in his/the debtor's possession which are subject to preferential rights (e.g. liens over movable assets (*Mobiliarsicherungsrechte*), security transfer of title (*Sicherungsübereignung*)) as well as to collect any claims that are subject to security assignment agreements (*Sicherungsabtretungen*). In case the enforcement right is vested with the insolvency administrator, the enforcement proceeds, less certain contributory charges for (i) assessing the value of the secured assets (*Feststellungskosten*) and (ii) realizing the secured assets (*Verwertungskosten*) which, in the aggregate, usually add-up to 9 per cent. of the gross enforcement proceeds plus VAT (if any), are disbursed to the creditor holding a security interest in the relevant collateral up to an amount equal to its secured claims. With the remaining unencumbered assets of the debtor the insolvency administrator has to satisfy the creditors of the insolvency estate (*Massegläubiger*) first (including the costs of the insolvency proceedings as well as any preferred liabilities incurred by the insolvency estate after the opening of formal insolvency proceedings). Thereafter, all other claims (insolvency claims—*Insolvenzforderungen*), in particular claims of unsecured creditors, will be satisfied on a pro rata basis if and to the extent there is cash remaining in the insolvent estate (*Insolvenzmasse*) after the security interest and the preferential claims against the estate have been settled and paid in full. Hence, the proceeds resulting from the realization of the insolvency estate of the debtor may not be sufficient to satisfy unsecured creditors of the Issuers or under a guarantee granted by any German guarantor in full after the secured creditors have been satisfied. Claims of subordinated creditors in the insolvency proceedings (*nachrangige Insolvenzgläubiger*) are satisfied only after the claims of other non-subordinated creditors (including the unsecured insolvency claims) have been fully satisfied.

While in ordinary insolvency proceedings, the value of the debtor's assets is realized by a piecemeal sale or, as the case may be, by a bulk sale of the debtor's business as a going concern, a different approach aiming at the rehabilitation of the debtor can be taken based on an insolvency plan (*Insolvenzplan*).Such plan can be submitted by the debtor or the insolvency administrator and requires, among other things and subject to certain exceptions, the consent of the debtor and the consent of each class of creditors in accordance with specific majority rules. If the debtor is a corporate entity, also the shares or, as the case may be, the

membership rights in the debtor can be included in the insolvency plan, e.g. these can be transferred to third-parties, including a transfer to creditors based on a debt-to-equity swap. Moreover, if the debtor has filed a petition for the opening of insolvency proceedings based on an insolvency reason other than illiquidity (i.e. imminent illiquidity or over-indebtedness), combined with a petition to initiate such process based on a debtor-in possession status and can prove that a restructuring of its business is not obviously futile, the court may grant a period of up to three months to utilize up an insolvency plan for the debtor business. During this period, the creditors' rights to enforce security may—upon application of the filing debtor—be suspended. Under these circumstances, the insolvency court has to appoint a custodian (*Sachwalter*) to supervise the process. The debtor is entitled to suggest an individual to be appointed as custodian with such suggestion being binding on the insolvency court unless the suggested person is obviously not eligible to become a custodian (i.e. is obviously not competent or impartial).

- Under the German Insolvency Code, the insolvency administrator may avoid (*anfechten*) transactions, performances or other acts that are deemed detrimental to insolvency creditors and which were effected prior to the commencement of formal insolvency proceedings during applicable avoidance periods. Generally, if transactions, performances or other acts are successfully avoided by the insolvency administrator, any amounts or other benefits derived from such challenged transaction, performance or act will have to be returned to the insolvency estate. The administrator's right to avoid transactions can, depending on the circumstances, extend to transactions having occurred up to ten years prior to the filing for the commencement of insolvency proceedings.
- In the event of insolvency proceedings with respect to the Issuers based on and governed by the insolvency laws of Germany, the payment of any amounts to the noteholders as well as the granting of collateral for or providing credit support for the benefit of the Notes could be subject to potential challenges by an insolvency administrator under the rules of avoidance as set out in the German Insolvency Code. In case the validity or enforceability of the Notes or any collateral in favor of the Notes is avoided successfully, you may not be able to recover any amounts under the Notes or the collateral. If payments have already been made under the Notes or collateral, the insolvency administrator may require that the recipients return the payment to the insolvency estate and you would instead then only have a general unsecured claim under the Notes without preference in insolvency proceedings.
- In particular, an act (*Rechtshandlung*) or a legal transaction (which term includes the granting of a guarantee, the provision of security and the payment of debt) detrimental to the creditors of the debtor may be avoided according to the German Insolvency Code in the following cases:
- any act granting a creditor security or satisfaction for a debt (*Befriedigung*) can be avoided if the transaction was effected (i) in the last three months prior to the filing of a petition for the opening of insolvency proceedings, if at the time of the transaction the debtor was cash flow insolvent (*zahlungsunfähig*), which means such debtor was unable to pay its debt when due and the creditor had knowledge thereof, or (ii) after a petition for the opening of insolvency proceedings has been filed and the creditor had knowledge thereof or of the debtor being cash flow insolvent (or knowledge of circumstances which imperatively suggesting such cash flow insolvency or filing);
- any act granting a creditor security or satisfaction for a debt to which such creditor had no right, no right at the respective time or no right as to the respective manner, can be avoided if the transaction was effected in the month prior to the filing of a petition for the opening of insolvency proceedings; if the transaction was effected in the second and third month prior to the filing, it can be avoided if at the time of the transaction (i) the debtor was cash flow insolvent, or (ii) the creditor knew that the transaction would be detrimental to the creditors of the debtor;
- any legal transaction effected by the debtor which is directly detrimental to the creditors of the debtor can be avoided if the transaction was effected (i) in the last three months prior to the filing of a petition for the opening of insolvency proceedings against the debtor, if at the time of the legal transaction the debtor was insolvent and the other party to the legal transaction had knowledge thereof or (ii) after a petition for the opening of insolvency proceedings has been filed against the debtor and the other party to the legal transaction had knowledge thereof or of the debtor being insolvent;
- if an act whereby a debtor grants security for a third party debt is regarded as having been granted gratuitously (*unentgeltlich*); such gratuitous transaction can be avoided unless it was effected earlier

than four years prior to the filing of a petition for the opening of insolvency proceedings against the debtor;

- any act performed by the debtor during a period of ten years prior to the filing of the petition for the opening of insolvency proceedings or at any time after such filing can be avoided if the debtor acted with the intent to disadvantage its creditors and the beneficiary of the transaction had knowledge of such intent at the time of the transaction, with such knowledge being presumed if the beneficiary knew that the debtor is cash-flow insolvent and that the transaction disadvantaged the other creditors;
- any non-gratuitous contract concluded between the debtor and an affiliated party which directly operates to the detriment of the creditors can be avoided unless such contract was concluded earlier than two years prior to the filing of the petition for the opening of insolvency proceedings or the other party had no knowledge of the debtor's intention to disadvantage its creditors as of the time the contract was concluded; in relation to corporate entities, the term 'affiliated party' includes, subject to certain limitations, members of the management or supervisory board, general partners and shareholders owning more than 25 per cent. of the debtor's share capital, persons or companies holding comparable positions that give them access to information about the economic situation of the debtor, and other persons that are spouses, relatives or members of the household of any of the foregoing persons;
- any act that provides security or satisfaction for a claim of a shareholder for repayment of a shareholder loan (*Gesellschafterdarlehen*) or an economically equivalent claim can be avoided (i) in the event it provided security, if the transaction was effected within the last ten years prior to the filing of a petition for opening of insolvency proceedings or thereafter or (ii) in the event it provided satisfaction, if the transaction was effected in the last year prior to the filing of a petition for opening of insolvency proceedings or thereafter; or
- any act whereby the debtor grants satisfaction for a loan claim or an economically equivalent claim to a third party can be avoided if the transaction was effected in the last year prior to the filing of a petition for opening of insolvency proceedings or thereafter and if a shareholder of the debtor had granted security or was liable as a guarantor (*Bürge*) (in which case the shareholder has to compensate the debtor for the amounts paid (subject to further conditions)).

For purposes of the above, the knowledge of circumstances from which a compelling conclusion regarding the debtor's insolvency or regarding the filing of a petition for the opening of insolvency proceedings can be drawn, will be considered tantamount to the actual knowledge of the debtor's insolvency or of the filing of the petition for the opening of insolvency proceedings.

Apart from the examples of an insolvency administrator avoiding transactions according to the German Insolvency Code described above, a creditor who has obtained an enforcement order (*Vollstreckungstitel*) could possibly also avoid any security right or payment performed under the relevant security right according to the German Law of Avoidance (*Anfechtungsgesetz*) outside formal insolvency proceedings. The prerequisites vary to a certain extent from the rules described above and the avoidance periods are calculated from the date when a creditor exercises its rights of avoidance in the courts.

Finally, the insolvency estate shall serve to satisfy the liquidated claims held by the personal creditors against the debtor on the date when the insolvency proceedings were opened. The following claims shall be satisfied ranking below the other claims of insolvency creditors in the order given below, and according to the proportion of their amounts if ranking with equal status: (i) interest and penalty payments accrued on the claims of the insolvency creditors from the opening of the insolvency proceedings; (ii) costs incurred by individual insolvency creditors due to their participation in the proceedings; (iii) fines, regulatory fines, coercive fines and administrative fines, as well as such incidental legal consequences of a criminal or administrative offence binding the debtor to pay money; (iv) claims to the debtor's gratuitous performance of a consideration and (v) claims for restitution of a loan replacing equity capital or claims resulting from legal transactions corresponding in economic terms to such a loan.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

The granting of guarantees by German subsidiary guarantors is subject to certain capital maintenance rules under German law. Therefore, in order to enable German subsidiary guarantors to grant guarantees and security interests securing liabilities of the Issuer without the risk of violating German capital maintenance provisions and to protect management from personal liability, it is standard market practice for credit agreements, notes, guarantees and security documents to contain so-called—limitation language—in

relation to subsidiaries incorporated in Germany in the legal form of a German limited liability company (*GmbH*), a German stock corporation (*AG*) or a German limited partnership with a German limited liability company as general partner (*GmbH & Co. KG*). Pursuant to such limitation language, the enforcement of the subsidiary guarantee and security documents given by each of the German subsidiary guarantors will be limited reflecting, in case of any German subsidiary guarantors incorporated as a German limited liability company (*Gesellschaft mit beschränkter Haftung*) or as a German limited partnership with a German limited liability company as general partner, the requirement under the capital maintenance rules imposed by Sections 30 and 31 of the German Act regarding Companies with Limited Liability (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) if and to the extent payments under any such subsidiary guarantee or, as the case may be, the enforcement of security documents would cause a German subsidiary Guarantor's net assets to fall below the amount of its registered share capital (*Stammkapital*) or if and to the extent payments under any subsidiary guarantee or, as the case may be, the enforcement of security documents would deprive the German subsidiary guarantor of the liquidity necessary to fulfill its financial liabilities to its creditors and, in case of any German subsidiary guarantor incorporated as a German stock corporation (*Aktiengesellschaft*) which is subject to a domination and profit loss pooling agreement (*Beherrschungs- und Gewinnabführungsvertrag*) as the dominated entity (*beherrschtes Unternehmen*), the requirement that payments under the subsidiary guarantee or, as the case may be, the enforcement of security documents may not cause the German subsidiary Guarantor to incur a balance sheet loss for which it cannot reasonably expect the dominating entity (*herrschendes Unternehmen*) to make a compensation payment under the domination and profit and loss pooling agreement due to the dominating entity's solvency situation. These limitations would, to the extent applicable, restrict the right of payment and would limit the claim accordingly irrespective of the granting of the subsidiary guarantee. In addition, subsidiary guarantees in other jurisdictions may be subject to similar limitations.

German capital maintenance rules are subject to evolving case law. We cannot assure you that future court rulings may not further limit the access of shareholders to assets of the German subsidiary guarantors, which can negatively affect the ability of the Issuer to make payment on the Notes or of the German subsidiary guarantors to make payments on the subsidiary guarantees.

In addition, it cannot be ruled out that the case law of the German Federal Supreme Court (*Bundesgerichtshof*) regarding so-called—destructive interference (*existenzvernichtender Eingriff*) (i.e., a situation where a shareholder deprives a German limited liability company of the liquidity necessary for it to meet its own payment obligations) may be applied by courts with respect to the enforcement of a subsidiary guarantee granted by the German subsidiary guarantors. In such case, the amount of proceeds to be realized in an enforcement process may be reduced. According to a decision of the German Federal Supreme Court (*Bundesgerichtshof*), a security agreement may be void due to tortious inducement of breach of contract if a creditor knows about the distressed financial situation of the debtor and anticipates that the debtor will only be able to grant collateral by disregarding the vital interests of its other business partners. It cannot be ruled out that German courts may apply this case law with respect to the granting of subsidiary guarantees by the German subsidiary guarantors. Furthermore, the beneficiary of a transaction effecting a repayment of the stated share capital of the grantor of the subsidiary guarantee could moreover become personally liable under exceptional circumstances. The German Federal Supreme Court (*Bundesgerichtshof*) ruled that this could be the case if for example the creditor were to act with the intention of detrimentally influencing the position of the other creditors of the debtor in violation of the legal principle of *bonos mores* (*Sittenwidrigkeit*). Such intention could be present if the beneficiary of the transaction was aware of any circumstances indicating that the grantor of the guarantee is close to collapse (*Zusammenbruch*), or had reason to enquire further with respect thereto.

AUSTRIA

Insolvency

One of the Guarantors is incorporated under the laws of Austria (the "**Austrian Guarantor**"), thus a rebuttable presumption exists that this entity also has its respective "center of main interests" in Austria.

In the event of an insolvency of a company having its "center of main interests" in Austria, insolvency proceedings may be initiated in Austria. Such proceedings will be governed by Austrian law (for example, if the "center of main interests" of such company is within Austria or if such company has an "establishment" in the territory of the Republic of Austria or, where the EU Insolvency Regulation does not apply, if such company has assets in Austria). Under certain circumstances, insolvency proceedings may

also be opened in Austria in accordance with Austrian law with respect to the assets of companies that are not organized under Austrian law.

The following is a brief description of certain aspects of Austrian insolvency law. The law relating to insolvency is regulated by the Austrian Insolvency Act (*Insolvenzordnung*—IO) (the "**AIA**").

Insolvency proceedings (*Insolvenzverfahren*) are opened by a court in the event that the debtor is insolvent (*zahlungsunfähig*) (*i.e.*, unable to pay its debts as and when they fall due) or over-indebted within the meaning of the AIA (*überschuldet*) (*i.e.*, its liabilities exceed the liquidation value of its assets in combination with a negative prognosis on its ability to continue as a going concern (negative *Fortbestehensprognose*)). Under Austrian law, insolvency proceedings may be initiated either by the debtor or a creditor by filing an application to that effect with a court of competent jurisdiction. If insolvency proceedings are initiated upon a creditor's request, such creditor will have to show that the debtor is insolvent or over-indebted. In the event that the debtor is at imminent risk of being unable to pay its debts as and when they fall due (*drohende Zahlungsunfähigkeit*), insolvency proceedings may be initiated only upon the debtor's request.

If the debtor has submitted, together with its application requesting the opening of insolvency proceedings, an application for the commencement of restructuring proceedings (*Sanierungsverfahren*), the court may order the opening of either (i) insolvency proceedings or (ii) restructuring proceedings. Legal provisions regulating restructuring proceedings do not apply to insolvency proceedings.

Depending on whether the debtor submits a restructuring plan (*Sanierungsplan*) together with the application for the opening of insolvency proceedings the initiated proceedings may be in the form of restructuring proceedings (*Sanierungsverfahren*) or insolvency proceedings. If it is the debtor that has applied for the initiation of insolvency proceedings and has submitted to the court a restructuring plan (*Sanierungsplan*) that offers a recovery rate of at least 20% payable to the unsecured creditors over a maximum period of two years, any proceedings so initiated by the court will be in the form of restructuring proceedings. A debtor may also submit a restructuring plan in the course of insolvency proceedings that are already in progress whereupon such proceedings will continue as restructuring proceedings. For the debtor's restructuring plan to be approved by the court it should meet certain criteria specified by law.

The purpose of a restructuring plan is to enable a debtor to be released from a portion of its debts (not to exceed 80% of the aggregate amount thereof) and to continue its business operations. A restructuring plan has to be approved by a "qualified majority" of the debtor's unsecured creditors. A "qualified majority" refers to a majority of the debtor's unsecured creditors present at the respective court hearing, *provided that* such majority represents more than 50% of the aggregate amount of all claims of the unsecured creditors being present at such hearing. Once the debtor has complied with the terms of a restructuring plan that was duly approved by the creditors and confirmed by the court, it will be released from its remaining outstanding unsecured debts. Unsecured creditors whose claims under the restructuring plan have not been satisfied in accordance with the plan's terms may enforce their individual claims against the debtor, in which case the restructuring proceedings will be continued as insolvency proceedings.

If the restructuring proceedings have been initiated and the debtor has submitted a restructuring plan that offers a recovery rate of at least 30% to the unsecured creditors over a maximum two-year period after the approval of such restructuring plan, the debtor qualifies for self-administration (*Sanierungsverfahren mit Eigenverwaltung*).

Unless the debtor qualifies for self-administration, it is not allowed as of the date of the opening of the insolvency or the restructuring proceedings, as the case may be, to dispose of the assets belonging to the insolvency estate (*Insolvenzmasse*). The opening of insolvency proceedings takes effect on the day following the publication of the court's order opening such proceedings in the official online database of Austrian insolvencies (*www.edikte.justiz.gv.at*). After the opening of insolvency proceedings, transactions of the debtor with respect to assets belonging to the insolvency estate have no effect against the creditors of the insolvency estate.

With its decision to open the insolvency proceedings, the court will appoint an insolvency administrator (*Insolvenzverwalter*) and may, depending on the nature and the size of the debtor's business (either ex officio or upon the request of the creditors' meeting (*Gläubigerversammlung*)), appoint a creditors' committee (*Gläubigerausschuss*) charged with monitoring and assisting the insolvency administrator in the discharge of its duties. After the opening of insolvency proceedings (and unless the debtor qualifies for self-administration) only the insolvency administrator is entitled to act on behalf of the insolvency estate.

Under Austrian law, an insolvency administrator's role is to continue the debtor's business with a view to enabling a potential reorganization of the debtor's business either by implementing the debtor's restructuring plan or by a sale of the debtor's business. If neither a restructuring plan nor a sale of the debtor's business is possible, the insolvency administrator will discontinue the debtor's business operations. As a result of the ensuing insolvency proceedings, the debtor's assets will be liquidated and the proceeds realized thereby will be distributed to the debtor's creditors, with the debtor remaining liable for any portion of its debts not satisfied by such proceeds.

If the debtor qualifies for self-administration, the court will proceed with the appointment of a restructuring administrator (*Sanierungsverwalter*) to monitor the activities of the debtor. In such case, certain transactions are either subject to the restructuring administrator's approval or may be performed only by the restructuring administrator.

Unsecured creditors (*Insolvenzgläubiger*) wishing to assert their claims against the debtor need to participate in the insolvency proceedings and must file their claim with the competent court within the time period set out in the court order opening the insolvency proceedings. At the respective hearing (examination hearing (*Prüfungstagsatzung*)), the insolvency administrator has to declare whether it acknowledges or contests each of the claims filed with the court. If the insolvency administrator acknowledges a creditor's claim, such creditor will be entitled to participate in the insolvency proceedings and the *pro rata* distribution to unsecured creditors that will follow. If a creditor's claim is contested by the insolvency administrator, the creditor will have to seek enforcement of its claim in civil proceedings and only then participate in the insolvency proceedings.

Claims of unsecured creditors which were created before the opening of the insolvency proceedings rank *pari passu* among themselves. Certain claims which lawfully arose against the insolvency estate after the opening of the insolvency proceedings (privileged claims (*Masseforderungen*)) enjoy priority in insolvency proceedings. Claims which are secured by collateral, such as a mortgage, a pledge over bank accounts or shares, an assignment of receivables for security purposes or a security transfer of moveable assets (preferential claims (*Absonderungsrechte*)), are entitled to preferential payment in the distribution of the proceeds resulting from the realization of the charged asset. Creditors who have a right to preferential treatment may participate in the *pro rata* distribution to the unsecured creditors only to the extent that the proceeds from the realization of the assets charged to them did not cover their claims or if they have waived their right to preferential treatment. Secured creditors do not have a voting right with respect to the approval of the restructuring plan to the extent their claim is covered by security. Claims relating to the payment of taxes, social security contributions and employee compensation are not, as such, privileged or preferential claims under Austrian law.

The costs of the insolvency proceedings and certain liabilities accrued during such proceedings constitute privileged claims (*Masseforderungen*) and rank prior to all other unsecured claims (*Insolvenzforderungen*). Claims of creditors with a right of segregation of assets (Aussonderungsberechtigte), such as creditors with a retention of title or trustors, remain unaffected by the opening of insolvency proceedings though they may be barred from exercising their rights for a maximum period of six months following the opening of insolvency proceedings, if the exercise of such rights would endanger the carrying on of the debtor's business and the interdiction does not cause a severe personal or economic damage to the secured creditor. The same applies for secured creditors of preferential claims (*Absonderungsberechtigte*).

Once insolvency proceedings have been opened it is no longer possible to obtain an execution lien with respect to assets belonging to the insolvency estate. All execution proceedings against the debtor are subject to an automatic stay (*Vollstreckungssperre*). Execution liens obtained within the last 60 days prior to the opening of insolvency proceedings expire upon the opening of such insolvency proceedings, unless the insolvency proceedings are terminated due to lack of funds to cover the cost of such proceedings. Pursuant to section 25b para 2 of the AIA, a contractual stipulation providing for the right to withdraw from the agreement or for an automatic termination in the event of opening of insolvency proceedings against the other party is not enforceable.

The Austrian Business Reorganization Act (Unternehmensreorganisationsgesetz)

The Austrian Business Reorganization Act (*Unternehmensreorganisationsgesetz*) governs business reorganizations, which are designed to enable businesses in temporary financial distress to continue to do business after having undergone a reorganization procedure. Only the debtor may apply for the opening of a reorganization procedure, provided, however, that it is still solvent at the time of its application. The relevant criteria for the opening of a business reorganization procedure are the quota of own funds

(*Eigenmittelquote*) and the fictitious duration of debt redemption (*fiktive Schuldentil-gungsdauer*), as defined in the Business Reorganization Act. Upon the opening of reorganization proceedings, contractual provisions that stipulate the right to terminate the agreement in the event of reorganization proceedings are invalid.

Hardening Periods and Clawback

Under the voidance rules of the Austrian Insolvency Act (*Insolvenzordnung- IO*) ("**AIA**"), an insolvency administrator may, by action of voidance or by defense of voidance, under certain circumstances, challenge any transaction (which term for the purposes of this section "Hardening Periods and Clawback" includes, without limitation, the granting of security and the guaranteeing, assuming and/or paying of debt). In particular, the following transactions are voidable with respect to the insolvent's creditors:

- *Voidance due to intent of discrimination (section 28/1-3 AIA)*: All transactions performed or entered into by the insolvent within ten years prior to the commencement of insolvency proceedings with the intent known to the other party to discriminate against its creditors as well as all transactions through which the insolvent's creditors are discriminated against and which it performed or entered into during the last two years prior to commencement of insolvency proceedings, provided that the beneficiary of the transaction should have been aware of such intent.
- *Voidance due to squandering of assets (section 28/4 AIA)*: Delivery, purchase and barter transactions undertaken by the insolvent in the last year prior to the commencement of insolvency proceedings are voidable, if the other party perceived or should have perceived the intent to discriminate against the insolvent's creditors through transactions below market value.
- *Voidance of transactions with no consideration and analogous transactions (section 29 AIA)*: In particular, transactions of the insolvent without consideration (except customary occasional gifts and transactions for a reasonable and proportionate amount towards a charitable cause or for the fulfillment of a legal obligation, a moral duty or consideration of decency) and acquisitions of property from the insolvent by order of authority if paid out of the insolvent's funds are voidable, if performed or entered into in the last two years prior to the commencement of insolvency proceedings.
- *Voidance due to preferential treatment (section 30 AIA)*: Security or payment given to a creditor after the occurrence of the insolvent's inability to pay debts or after filing for the commencement of insolvency proceedings or in the last sixty days before such filing is voidable, if (i) the creditor obtained a security or payment it was not entitled to or (ii) the security or payment was given to persons who were aware or should have been aware of the intent of the insolvent to give them preferential treatment ahead of the debtor's other creditors. A grant of security or payment under such circumstances is not voidable if the preferential treatment was given more than one year prior to the commencement of insolvency proceedings.
- *Voidance due to knowledge of the debtor's insolvency (section 31 AIA)*: Any transaction performed or entered into after the occurrence of the insolvent's inability to pay debts (Zahlungsunfähigkeit) or over-indebtedness within the meaning of the Austrian Insolvency Act (Überschuldung) or after the filing of a petition for the opening of insolvency proceedings may be challenged if such transaction:
    - *constitutes payment or granting of security (Befriedigung oder Sicherstellung*) to a close relative, or any other transaction entered into by the debtor with such close relative which is considered to be prejudicial to the debtor's creditors (*nachteilige Rechtsgeschäfte*), unless (i) with respect to such payment or granting of security, or to a transaction directly prejudicial to the debtor's creditors, such close relative did not have nor should have had knowledge of the debtor's inability to pay debts, over-indebtedness or the filing of a petition for the opening of insolvency proceedings and (ii) with respect to a transaction indirectly prejudicial to the debtor's creditors, the negative effect of such transaction on the insolvency estate was not objectively foreseeable at the time of entering into the transaction;
    - *constitutes payment or granting of security (Befriedigung oder Sicherstellung*) to a creditor, or any other transaction entered into by the debtor with a third party which is directly prejudicial to the debtor's creditors, provided that the debtor's counterparty knew or should have known of the debtor's inability to pay debts, over-indebtedness or the filing of a petition for the opening of insolvency proceedings; and

- *any other transaction entered into by the debtor with a third party which is indirectly prejudicial to the debtor's creditors, provided that (i) the debtor's counterparty knew or should have known of the debtor's inability to pay debts, over-indebtedness or the filing of a petition for the opening of insolvency proceedings and (ii) such transaction's negative effect on the insolvency estate was objectively foreseeable at the time of entering into the transaction. Such transaction's negative effect is foreseeable, in particular, when a restructuring effort is obviously unsuitable (offensichtlich untaugliches Sanierungskonzept*).

A transaction is considered to be indirectly prejudicial (*mittelbar nachteilig*) if, even though it may be objectively balanced, i.e., not directly prejudicial to the debtor's creditors, it nonetheless has a negative effect on the recovery rate of creditors.

Transactions carried out more than six months prior to the opening of insolvency proceedings may not be voided pursuant to section 31 AIA.

The relevant hardening/suspect periods will commence upon granting the guarantees only.

In addition to an insolvency administrator voiding transactions according to the Austrian Insolvency Act, a creditor who has obtained an enforcement order (*Vollstreckungstitel*) could possibly also void any transactions pursuant to the provisions of the Austrian Voidance Act (*Anfechtungsordnung*) outside of formal insolvency proceedings. The conditions for such action vary to a certain extent from the rules described above, and the voidance periods are calculated from the date on which such other creditor exercises its voidance rights in court.

Equity Replacement Law

The Austrian Act on Equity Replacements (*Eigenkapitalersatzgesetz*) contains detailed provisions regarding equity replacing shareholder loans. It in particular stipulates that a loan granted by a shareholder in a financial crisis (i.e., the subsidiary is insolvent, over-indebted or the requirements of a business reorganization procedure are met) is deemed to be equity replacing. In a financial crisis equity replacing shareholder loans may not be repaid. This means in particular that in insolvency respective claims of the lender are subordinated (i.e., there is no right for separation (*Aussonderungsrecht*) or a right for separate satisfaction (*Absonderungsrecht*) for such claims). A shareholder is defined to be (i) a shareholder with controlling participation, (ii) a shareholder with a participation of at least 25%, and (iii) any person not holding a participation in the company but having a controlling influence (*beherrschender Einfluss*) with regard to the company. Furthermore, a person granting a loan/credit to a company is to be considered as shareholder if (i) it holds a participation or other rights in a person other than the company granted the loan/credit which has a dominant (*beherrschenden*) influence regarding the company granted the loan/credit (indirect controlling participation), or (ii) it indirectly holds a participation in the company granted the loan/credit of at least 33%, or (iii) it holds a controlling direct or indirect participation in a company which holds a participation of at least 25% in the company granted the loan/credit (section 8 of the Act on Equity Replacements).

Prior to the enactment of the Act on Equity Replacements the Austrian Supreme Court had developed even stricter rules on equity replacing shareholder loans compared to the rules stipulated in the Act on Equity Replacements. Following this, it is unclear whether, in addition to the provisions of the Act on Equity Replacements, such rules (or certain of its rules) developed by the Austrian Supreme Court are still applicable/relevant and applied by Austrian courts. In this context it must be noted that it is uncertain whether the rules on equity replacing shareholder loans also apply to atypical pledgees (*atypische Pfandgläubiger*) and/or under what circumstances a secured lender may qualify as atypical pledgee.

Limitations on Validity and Enforceability of the Guarantees

The grant of guarantees by the Austrian Guarantor is also subject to Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian corporate law, in particular Section 82 of the Austrian Act on Companies with Limited Liability (*Gesetz über Gesellschaften mit beschränkter Haftung*) ("**GmbHG**").

The GmbHG prohibits an Austrian limited liability company from disbursing its assets to its shareholders in circumstances other than as a distribution of profits (if, to the extent and as long as available for distribution under Austrian law), by a reduction of share capital or as liquidation surplus on liquidation of that corporation. Guarantees granted by an Austrian limited liability company or limited partnership (the unlimited partner of which is a corporation) in order to guarantee liabilities of a direct or indirect parent

or sister company are considered disbursements under the GmbHG and are thus invalid and unenforceable if the granting of the guarantees by the Austrian Guarantor were not at arm's length terms (*fremdüblich*) or for that Austrian Guarantor's corporate benefit (*betriebliche Rechtfertigung*). The Austrian Supreme Court has not yet specified what exactly is meant by corporate benefit. As a consequence, there always remains the risk that the assumption of an upstream/cross-stream guarantee by an Austrian subsidiary violates the Austrian capital maintenance rules (due to a lack of corporate benefit). Therefore, in order to enable Austrian subsidiaries to guarantee liabilities of a direct or indirect parent or sister company and in order to reduce the risk of violating the GmbHG and the resultant invalidity and unenforceability, it is standard market practice for indentures, credit agreements, guarantees and security documents to contain so-called "limitation language" in relation to subsidiaries incorporated or established in Austria. Pursuant to such limitation language, the beneficiaries of the guarantees agree to enforce the guarantees against the Austrian subsidiary only to the extent that such enforcement does not result in a breach of the GmbHG. Accordingly, the Indentures will contain such limitation language and the guarantees of the Austrian Guarantor will be so limited. The Indentures for the Notes will expressly provide substantially as follows:

(a) Nothing in the Indentures shall be construed to create any obligation or liability of the Austrian Guarantor to act in violation of mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*), including, without limitation, § 82 et seq. of the GmbHG and § 52 et seq. of the Austrian Act on Joint Stock Companies (*Aktiengesetz-AktG*) (the "Austrian Capital Maintenance Rules"), and all obligations and liabilities of any Austrian Guarantor under the Indentures shall at all times be limited in accordance with the Austrian Capital Maintenance Rules.

(b) If and to the extent the obligations of the Austrian Guarantor under the Indentures would not be permitted under the Austrian Capital Maintenance Rules or would render the directors of the Austrian Guarantor personally liable pursuant to Austrian law to any of the creditors of the Austrian Guarantor as a consequence of paying such amount, then such payment obligations shall be limited to the maximum amount permitted to be paid which would not trigger such directors' liability. Should any obligation and/or liability of the Austrian Guarantor under the Indentures violate or contradict Austrian Capital Maintenance Rules and therefore be held invalid or unenforceable in whole or in part or expose any managing director of the Austrian Guarantor to any personal liability or criminal responsibility, such obligation and/or liability shall be deemed to be replaced by an obligation and/or liability of a similar nature which is in compliance with Austrian Capital Maintenance Rules and which provides the best possible security interest admissible in accordance with the Austrian Capital Maintenance Rules in favour of the noteholders. By way of example, should it be held that the security interest created under the Indentures is contradicting Austrian Capital Maintenance Rules in relation to any amount of the obligations secured by it, the security interest created by the respective document shall be reduced to such an amount of the obligations secured by it which is permitted pursuant to Austrian Capital Maintenance Rules.

No case law is available to confirm and it is thus not certain whether the limitations set forth in the Indentures entered into by the Austrian Guarantor, in particular regarding the limitation of the amount guaranteed or secured to an amount permitted under Austrian Capital Maintenance Rules, would be valid and enforceable under Austrian law and achieve the desired effect of legally preserving the guarantees to the extent possible or whether the guarantees could be deemed void in their entirety. Moreover, Austrian Capital Maintenance Rules are subject to ongoing court decisions and it cannot be ruled out that future court rulings may further limit the access of creditors and/or shareholders to assets of subsidiaries constituted in the form of a corporation or of a limited partnership the general partner or general partners of which is or are corporations.

Shadow Director

A person granted the rights of information and control and that actually influences the management of the Austrian Guarantor could, depending on the extent of such rights granted and the actual use of such rights, qualify as shadow director (*faktischer Geschäftsführer*). A person qualifying as such could be liable for any acts made in connection with the management company (the shadow director in general has the same obligations and liability as a regular director appointed in accordance with applicable corporate law); in particular the shadow director could be liable towards the creditors of the company.

Stamp Duty

Under the Austrian Stamp Duty Act (*Gebührengesetz*), stamp duty is triggered upon the creation of a document (Urkunde; a term which has a technical meaning within the context of the Stamp Duty Act) on certain dutiable transactions enumerated in the Stamp Duty Act. Dutiable transactions include, e.g., lease agreements, sureties, assignments, mortgages. Stamp duty on loan and credit agreements has been abolished as of January 1, 2011.

According to the Austrian Stamp Duty Act, stamp duty on, e.g.,

(a) sureties (*Bürgschaft*) amounts to 1% of the secured amount (a guarantee may be treated as a surety for stamp duty purposes if the guarantor under the guarantee does not explicitly waive all claims, remedies or defenses with respect to the underlying guaranteed transaction);

(b) assignments amounts to 0.8% of the consideration for the assignment, or, in a case of an assignment for security (*Sicherungszession*), 0.8% of the secured amount however not more than the assigned receivables.

Dutiable transactions for security (in particular sureties, assignments, mortgages) may be exempt from stamp duty if such transaction (exclusively) secures claims under a loan or credit agreement (§ 20(5) of the Austrian Stamp Duty Act).

Basically, Austrian stamp duty is triggered if a document on a dutiable transaction is created in Austria.

Under certain circumstances, the creation of a document on a dutiable transaction outside of Austria may trigger stamp duty. In this case, stamp duty may generally be triggered if (i) the parties to the transaction are resident for stamp duty purposes in Austria (Austrian residence, place of habitual abode, seat, place of effective management or permanent establishment) and (ii) the transaction concerns an Austrian situated asset or a party to the transaction is entitled or obliged to performance under the transaction in Austria (§ 16(2)(1) of the Austrian Stamp Duty Act).

If the creation of a document outside of Austria did not trigger Austrian stamp duty, stamp duty may be triggered if the document (or a certified copy thereof) is imported into Austria and (i) the transaction concerns an Austrian situated asset or a party to the transaction is entitled or obliged to performance under the transaction in Austria, or (ii) a legally relevant action is taken in Austria based on the transaction or official use of the document (or a certified copy thereof) is made in Austria (§ 16(2)(2) of the Austrian Stamp Duty Act).

Austrian stamp duty may also be triggered by a document that refers to a dutiable transaction in a qualified manner (so called confirming document; *rechtsbezeugende Urkunde*). According to the Austrian Federal Ministry of Finance, a confirming document within the present context is constituted if the parties to and the nature of the transaction referred to may be derived from the document. Such document may (already) trigger Austrian stamp duty if signed by one of the parties and sent to the other party or its representative (or, in case of a transaction under which both parties are obliged to performance, a third party in order to furnish proof of the underlying transaction). Further, stamp duty may be triggered by a so called substitute document (*Ersatzurkunde*; e.g., a signed protocol on an orally agreed transaction) on a dutiable transaction or a document that incorporates by reference a document on a dutiable transaction.

If Austrian stamp duty is triggered, pursuant to the Stamp Duty Act generally the parties to the transaction are jointly and severally liable for the amount of Austrian stamp duty triggered. In case of a transaction under which only one party is obliged to performance, the party in whose interest the document was created is liable for the stamp duty (e.g., the creditor in case of a surety) (§ 28(1) of the Austrian Stamp Duty Act). In any case, the other party (as well as, if the competent tax office is not duly notified of the dutiable transaction, the persons who would be responsible for such notification) would be secondarily liable for the stamp duty triggered (§ 30 of the Austrian Stamp Duty Act). Agreements between the parties as to who shall bear stamp duty if triggered are not relevant for the tax authorities but may be honoured by the tax authorities within their discretion.

If stamp duty was triggered and not duly paid or the competent tax office was not duly notified of a dutiable transaction, the competent tax office may, within its discretion, increase the amount of stamp duty due by up to 100 per cent, depending on whether the taxpayer could have recognized that stamp duty was triggered, the notification was made with slight or substantial delay, or provisions of the Stamp Duty Act have been infringed for the first time or repeatedly (§ 9(2) of the Austrian Stamp Duty Act).

BELGIUM

Insolvency

One of the Guarantors is incorporated under the laws of Belgium (the "**Belgian Guarantor**"). Consequently, in the event of an insolvency of the Belgian Guarantor, insolvency proceedings may be initiated in Belgium. Such proceedings would then be governed by Belgian law. Under certain circumstances, Belgian law also allows bankruptcy proceedings to be opened in Belgium over the assets of companies that are not established under Belgian law.

The following is a brief description of certain aspects of Belgian insolvency law.

Belgian insolvency laws provide for two insolvency procedures: a judicial reorganization procedure (*gerechtelijke reorganisatie*/*réorganisation judiciaire*) and a bankruptcy procedure (*faillissement*/*faillite*).

Judicial Reorganization

A debtor may file a petition for judicial reorganization if the continuity of the enterprise is at risk, whether immediately or in the future. If the net assets of the debtor have fallen below 50% of the debtor's registered capital, the continuity of the enterprise is always presumed to be at risk.

A judicial reorganization starts with a petition by the Belgian company concerned. As long as the court overseeing a judicial reorganization has not issued a ruling on the reorganization petition, the debtor cannot be declared bankrupt or wound up by court order. In addition, during the period between the filing of the petition and the court's decision, none of the debtor's assets may be disposed of by any of its creditors as a result of the enforcement of any security interests that such creditors may hold with respect to such assets.

Within a period of 18 days from the filing of the petition and subject to the satisfaction of the filing conditions, the court will declare the judicial reorganization procedure open, allowing a temporary moratorium for a maximum period of six months. At the request of the debtor and pursuant to the report issued by the delegated judge, the moratorium period can be extended up to a total period of twelve months as from the initial decision of the court to open the procedure. In exceptional circumstances (such as due to the size of the business, the complexity of the case or the impact of the procedure on employment), and if the interest of the creditors so allows, the court may order an additional extension of the moratorium period up to six months.

The granting of the moratorium operates as a stay. No enforcement measures with respect to pre-existing claims in the moratorium can be continued or initiated against any of the debtor's assets from the time that the moratorium is granted until the end of the period. During the duration of the moratorium, no attachments can be made with regard to pre-existing claims.

Attachments that existed prior to the opening of the judicial reorganization retain their conservatory character, but the court may order their release, provided that such release does not have a material adverse effect on the situation of the creditor concerned.

Receivables pledged by the debtor in favor of a creditor prior to the opening of the judicial reorganization procedure are not covered by the moratorium, and the holder of such pledged receivables is permitted to take enforcement measures against the estate of the initial counterparty of the debtor (e.g., the debtor's customers) during the moratorium. A pledge on financial instruments or cash held on accounts in the meaning of the Financial Collateral Law of December 15, 2004 can be enforced notwithstanding the enforcement prohibition imposed by the moratorium (for the pledge on cash held on accounts, provided that the debtor is in default of payment). Personal guarantees granted by third parties in favor of the debtor's creditors are not covered by the enforcement prohibition imposed by the moratorium, nor are the debts payable by co-debtors. The moratorium also does not prevent the voluntary payment by the debtor of claims covered by the moratorium.

During the judicial reorganization procedure, the board of directors and management of the debtor continue to exercise their management functions. However, upon request of the debtor or any other interested party and to the extent it is deemed useful for reaching the aims of the reorganization, the court may appoint, in its decision to open the judicial reorganization procedure or at any other point in time during the course of the procedure, a judicial administrator (*gerechtsmandataris*/*mandataire de justice*) to assist the debtor during the reorganization.

The reorganization procedure aims to preserve the continuity of a company as a going concern. Consequently, the initiation of the procedure does not terminate any contracts, and contractual provisions which provide for the early termination or acceleration of the contract upon the initiation or approval of a reorganization procedure will be ineffective. Furthermore, certain contractual terms such as default interest may not be enforceable during the moratorium. The Belgian law on judicial reorganization provides that a creditor may not terminate a contract on the basis of a debtor's default that occurred prior to the reorganization procedure if the debtor remedies such default within a 15-day period following the notification of such default.

As an exception to the general rule of continuity of contracts, the debtor may cease performing a contract during the reorganization procedure, provided that the debtor notifies the creditor, and the decision is necessary for the debtor to be able to propose a reorganization plan to its creditors or to transfer all or part of the company or its assets.

Judicial Reorganization by Amicable Settlement by Collective Agreement, or by Court-ordered Transfer of Enterprise

A judicial reorganization procedure may result in an amicable settlement between the debtor and two or more of its creditors, or a collective agreement. In the case of a judicial reorganization by collective agreement, the creditors agree to a reorganization plan during the reorganization procedure. The plan must be filed with the registry of the Commercial Court at least 14 days in advance of the date on which the creditors will vote on the approval of the reorganization plan. The court needs to ratify the reorganization plan prior to its taking effect.

Within a period of 14 days following the ruling declaring the judicial reorganization procedure open, the debtor must inform each of its creditors individually of the amount of its claims against the debtor as recorded in the books of the debtor, as well as of details regarding security interests, if applicable. Creditors with pre-existing claims, as well as any other interested party that claims to be a creditor, can challenge the amounts and the ranking of the secured claims declared by the debtor. The court can determine the disputed amounts and the ranking of such claims, on a preliminary or definitive basis.

The debtor must use the moratorium period to complete and finalize a reorganization plan, with the assistance of the court-appointed administrator, as the case may be. The plan will include payment terms and reductions in principal and interest. The plan may further provide for the conversion of receivables into shares. The plan may be based on a differentiated treatment of the various creditors.

This reorganization plan is approved by the creditors and the court and a final suspension of payments and enforcement rights will apply for a maximum period of five years from the date of the court approval of the reorganization plan (the "**Definitive Moratorium**").

Granting by the court of the Definitive Moratorium requires:

(a) that the reorganization plan is approved by more than 50% of creditors who have filed a claim and have participated in the vote, provided that these creditors also represent more than 50% of the total value of the claims made against the debtor;

(b) that the formalities imposed by law have been complied with; and

(c) that there is no breach of the public order.

If the Definitive Moratorium is granted, all unsecured creditors (including those who had voted against the adoption of the reorganization plan)will be bound by the reorganization plan. In respect of creditors who benefit from a pledge or a mortgage, or creditors with a retention of title clause (and who have not voluntarily agreed to the recovery plan), the Definitive Moratorium may only provide for a suspension of payments along the following lines:

(a) the recovery plan provides for payments of interest to the secured creditors;

(b) the suspension of payments is limited to no more than 24 months (which period may be extended with an additional period of 12 months) as from the date on which the debtor had initially petitioned the court for a judicial reorganization; and

(c) the Recovery Plan does not otherwise impact their rights.

The court-ordered transfer of all or part of the debtor's enterprise can be requested by the debtor in his petition or at a later stage in the procedure. It can be requested by the public prosecutor as well, by a

creditor or by any party who has an interest in acquiring, in whole or in part, the debtor's enterprise, and the court can order such transfer in specific circumstances.

The court-ordered transfer will be organized by a judicial administrator (*gerechtsmandataris* / *mandataire de justice*) appointed by the court. Following the transfer, the recourse of the creditors will be limited to the transfer price.

Bankruptcy

A bankruptcy procedure may be initiated by the debtor, by unpaid creditors or upon the initiative of the Public Prosecutor's office, or the provisional administrator of the merchant's assets or the liquidator of "main insolvency proceedings" opened in another E.U. member state (except Denmark) according to the E.U. Insolvency Regulation.

Conditions for a bankruptcy order (*déclaration de faillite/aangifte van faillissement*) are that the debtor must be in a situation of cessation of payments (*cessation de paiements/staking van betaling*) and be unable to obtain further credit (*ébranlement de crédit/wiens krediet geschokt is*). Cessation of payments is generally accepted to mean that the debtor is not able to pay its debts as they fall due. Such situation must be persistent and not merely temporary. In bankruptcy, the debtor loses all authority and decision rights concerning the management of the bankrupt business. The court-appointed bankruptcy trustee (curateur/curator) becomes responsible for the operation of the business and implements the sale of the debtor's assets, the distribution of the sale proceeds to creditors and the liquidation of the debtor. The rights of creditors in the process are limited to being informed of the course of the bankruptcy proceedings on a regular basis by the bankruptcy trustee. Creditors may oppose the sale of assets by bringing an action before the court, or may request the temporary continued operation of the business.

The bankruptcy trustee may elect to continue the business of the debtor, provided the bankruptcy trustee obtains the authorization of the court and such continuation does not cause any prejudice to the creditors. The bankruptcy trustee must decide whether or not to continue performance under ongoing contracts (i.e., contracts existing before the bankruptcy order). However, two exceptions apply:

- the parties to an agreement may contractually agree that the occurrence of a bankruptcy constitutes an automatic early termination or acceleration event; and
- *intuitu personae* contracts (*i.e.*, contracts whereby the identity of the other party constitutes an essential element upon the signing of the contract) are automatically terminated as of the bankruptcy judgment, since the debtor is no longer responsible for the management of the company. Parties can agree to continue to perform under such contracts.

In any other circumstances, the bankruptcy trustee may elect not to perform the obligations of the bankrupt party which are still to be performed after the bankruptcy under any agreement validly entered into by the bankrupt party prior to the bankruptcy if such decision is necessary for the management and liquidation of the bankrupt estate. If the bankruptcy trustee does not formally elect to either continue or terminate the performance of obligations under the agreement, the counterparty to that agreement may ask the bankruptcy trustee to take this decision no more than 15 days after the date on which such counterparty has made the request. If the agreement is terminated, the counterparty to that agreement may make a claim for damages in the bankruptcy (and such claim will rank *pari passu* with claims of all other unsecured creditors) and/or seek a court order to have the relevant contract dissolved. The counterparty may not seek injunctive relief or require specific performance of the contract.

In the case of bankruptcy, any power of attorney or mandate expressed to be irrevocable will lapse upon the bankruptcy of the principal.

The enforcement rights of individual creditors are suspended upon the rendering of the court order opening bankruptcy proceedings, and after such order is made, only the bankruptcy trustee may proceed against the debtor and liquidate its assets. However, such suspension does not apply to a pledge of financial instruments or cash held on account.

For creditors with claims secured by movable assets, such suspension would normally be limited to the period required for the first report of verification of the claims. At the request of the bankruptcy trustee, the suspension period may be extended for up to one year from the bankruptcy judgment. Such extension requires a specific order of the court, which can only be made if the further suspension will allow for a realization of the assets in the interest of all creditors but without prejudicing the secured creditors, and

provided that those secured creditors have been given the opportunity to be heard by the court. However, a pledge on financial instruments or cash held on accounts can be enforced during the suspension period.

For creditors with claims secured by immovable assets, the intervention of the bankruptcy trustee is necessary to pursue the sale of the assets. The bankruptcy trustee will do so upon an order of the court, given either at its request or at the request of a mortgagee. A first-ranking mortgagee will generally be entitled to pursue the enforcement of its mortgage as soon as the first report of claims has been finalized; the court may suspend such enforcement for a period of not more than one year from the date of the bankruptcy if the suspension will allow for a realization of the assets without prejudicing the mortgagee, provided that the mortgagee has been given the opportunity to be heard by the court.

As from the date of the bankruptcy judgment, no further interest accrues against the bankrupt debtor on its unsecured debt, or debts secured by a general privilege, like tax administration or social security.

The debts of the bankrupt estate generally will be ranked as to priority on the basis of complex rules. The following is a general overview of such rules:

- Estate debt: Costs and indebtedness incurred by the bankruptcy trustee during the bankruptcy proceedings, the so-called "estate debts", have a senior priority. In addition, if the bankruptcy trustee has contributed to the realization and enforcement of secured assets, such costs will be paid to the bankruptcy trustee in priority out of the proceeds of the realized assets before distributing the remainder to the secured creditors; debts made during the judicial reorganization will nevertheless be considered to be estate debts if the company in the judicial reorganization is declared bankrupt during this procedure or following the procedure if such debts are closely linked with the procedure.
- Security interests: Creditors that hold a security interest have a priority right over the secured asset (whether by means of appropriation of the asset or on the proceeds upon realization);
- Privileges: Creditors may have a particular privilege on certain or all assets (e.g., tax claims, claims for social security premiums, etc.). Privileges on specific assets rank before privileges on all assets of the debtor; and
- *Pari passu*: Once all estate debts and creditors having the benefit of security interests and privileges have been satisfied, the proceeds of the remaining assets will be distributed by the bankruptcy trustee among the unsecured creditors who rank *pari passu* (unless a creditor agreed to be subordinated).

Hardening Periods and Fraudulent Transfer

In the event that bankruptcy proceedings are governed by Belgian law, certain transactions may be declared ineffective against third parties if concluded or performed during a so-called "hardening period."

In principle, the cessation of payments (which constitutes a condition for filing for bankruptcy) is deemed to have occurred as of the date of the bankruptcy order. The court issuing the bankruptcy order may determine, based on serious and objective indications, that the cessation of payments occurred on an earlier date. Such earlier date may not be earlier than six months before the date of the bankruptcy order, except in cases where the bankruptcy order relates to a company that was subject to legal or factual dissolution or arguably judicial reorganization proceedings more than six months before the date of the bankruptcy order. The period from the date of cessation of payments up to the declaration of bankruptcy is referred to as the "hardening period."

The business transactions entered into during the hardening period which may be declared ineffective against third parties include, among others, (i) gratuitous transactions or transactions where the value given by the company significantly exceeds the value it has received as consideration (ii) payments other than in money for debts due or for debts that have not yet fallen due and (iii) security provided for existing debt.

The Belgian bankruptcy trustee may request the court to declare acts of a Belgian guarantor during the hardening period ineffective against third parties, provided that it can be proven that the creditor concerned was aware of the cessation of payment of the company. Finally, regardless of any declaration by the commercial court of a hardening period, transactions of which it can be demonstrated that they have been entered into with fraudulent prejudice to third creditors may be declared ineffective against third parties.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

The grant of a guarantee or collateral by a Belgian company for the obligations of another group company must be for the corporate benefit of the granting company. The question of corporate benefit is determined on a case-by-case basis and consideration has to be given to any direct and/or indirect benefit that the company would derive from the transaction. Two principles apply to such evaluation: (i) the risk taken by the company in issuing the guarantee must be proportional to the direct and/or indirect benefit derived from the transaction and (ii) the financial support granted by the company should not exceed its financial capabilities. If the corporate benefit requirement is not met, the directors of the company may be held liable (i) by the company for negligence in the management of the company and (ii) by third parties in tort. Moreover, the guarantee or collateral could be declared null and void and, under certain circumstances, the creditor that benefits from the guarantee or collateral could be held liable for up to the amount of the guarantee. Alternatively, the guarantee or collateral could be reduced to an amount corresponding to the corporate benefit, or the creditor may be held liable for any guarantee amount in excess of such amount. These rules have been seldom tested under Belgian law, and there is only limited case law on this issue.

In order to limit the risk of guarantees and collateral granted by Belgian subsidiaries to secure liabilities of a direct or indirect parent or sister company violating Belgian rules on corporate benefit, it is standard market practice for indentures, credit agreements, guarantees and security documents to contain so-called "limitation language" in relation to subsidiaries incorporated or established in Belgium. Accordingly, the Indenture will contain such limitation language and the guarantees of the Belgian Guarantor will be so limited.

The Indenture will expressly provide, substantially to the effect that, the obligations of the Belgian Guarantor to guarantee the Senior Secured Notes, the Senior Subordinated Notes, the Senior Secured Facilities and any related hedging or other finance documents are limited as follows:

(a) In general, the liability of a Belgian Guarantor shall not include any liability which would constitute unlawful financial assistance (as determined in Article 629, 657, 329 and 430 of the Belgian Company Code or any other law or regulations having the same effect, as interpreted by Belgian courts).

(b) The aggregate amount payable by any Belgian Guarantor shall be limited to an amount equal to the greater of:

  (i) in relation to Caloribel SA, €2,009,565.90 and, in relation to any other Belgian Guarantor that may from time to time accede to the Senior Facilities Agreement as Guarantor, the amount set out in the Accession Letter;

  (ii) the highest level of On-Lending to the relevant Belgian Guarantor and its Subsidiaries out of the proceeds made available under the Secured Debt Documents (as defined in the Intercreditor Agreement) and which has not yet been repaid by that Belgian Guarantor at the time of the enforcement of the guarantee;

  (iii) an amount equal to 90 per cent. of the Net Assets of the relevant Belgian Guarantor calculated and certified by the statutory auditor of that Belgian Guarantor on the basis of the latest available audited annual financial statements of that Belgian Guarantor at the date of the Senior Facilities Agreement; and

  (iv) an amount equal to 90 per cent. of the Net Assets of the relevant Belgian Guarantor calculated and certified by the statutory auditor of that Belgian Guarantor on the basis of the latest available audited annual financial statements of that Belgian Guarantor at the date on which a demand is made on it under this paragraph.

(c) For the purpose of paragraph (a) above, "On-Lending" means, without double counting, the aggregate amount of all loans (including principal plus any accrued interest thereon, commission costs and fees) and any other proceeds made available to any member of the Group pursuant to the Secured Debt Documents (as defined in the Intercreditor Agreement) and made available by such member of the Group, directly or indirectly, to a Belgian Guarantor or any of its Subsidiaries (in each case, irrespective of whether retained or on-lent by that Belgian Guarantor or its Subsidiary) and "Net Assets" means the net assets (*nettoactief*) of the relevant Belgian Guarantor as defined in Article 617 of the Belgian Company Code.

The burden of proof of the guarantee limitation shall rest with the relevant Belgian Guarantor. In order to avail itself of any such limitation, such Belgian Guarantor must provide a certificate of its statutory auditor confirming the highest level of On-Lending as referred to under paragraph (b)(iv) above.

Trust

As there is no established concept of "trust" or "trustee" under the present Belgian legal system, the precise nature, effect and enforceability of the duties, rights and powers of a security trustee as agent or trustee for noteholders in respect of security interests such as pledges are debated under Belgian law.

Beneficial ownership

As there is no concept of "beneficial ownership" or "beneficial owner" under Belgian law, the rights, claims and effects resulting from such concept may not be enforceable in Belgium.

DENMARK

Insolvency

One of the Guarantors is incorporated under the laws of Denmark (the "**Danish Guarantor**"). Accordingly, Danish law and insolvency proceedings will apply with respect to the Danish Guarantor. Danish law may adversely affect the enforcement of your rights under the Notes and may not be as favorable to your interests as a creditor as under U.S. bankruptcy laws.

The following is a brief description of certain aspects of the insolvency laws of Denmark.

Bankruptcy is the principal form of proceeding in the Danish insolvency system. In bankruptcy, the debtor's assets are liquidated and the proceeds deriving from assets free from charges and encumbrances are distributed to the creditors based on a priority of claims. As a general rule, the insolvent company or any creditor may present a petition for bankruptcy. A bankruptcy order requires the bankruptcy court to be satisfied that the debtor is insolvent based on an assessment of the debtor's liquidity status. A bankruptcy petition by a creditor is barred if the creditor is adequately protected in the event of the debtor's insolvency by means of good and valid security.

The bankruptcy trustee has full authority to act on behalf of the bankrupt debtor, and will replace the ordinary management.

Danish insolvency law also includes a scheme for restructuring of insolvent debtors. In broad terms, this scheme provides for restructuring of an insolvent debtor by transfer of the business in full or in part, by a compulsory composition/moratorium or by a combination of both. During the restructuring procedure, lasting a maximum of 11 months, creditors are restricted in their ability to enforce the claims, however valid security may be enforced under certain conditions. In general, the provisions on avoidance and set off applicable in a bankruptcy also applies when restructuring proceedings are commenced. If a restructuring procedure fails the debtor will be declared bankrupt.

The Danish bankruptcy scheme is based on the fundamental principle of pari passu satisfaction of the debtor's creditors. However, claims against the debtor are subject to priority ranking, giving first priority to costs incurred during the bankruptcy proceedings, including the fee for the trustee. Second rank is given to claims incurred during preceding restructuring proceedings. Third rank, "privileged claims", are mainly salary claims, including salary income taxes (relating to salary claims being filed) but excluding salary claims from the top management. After fulfillment, if any, of these priority ranking claims, in the above order, any excess proceeds will be distributed among all ordinary, unsecured creditors. Interest accrued on ordinary claims will rank as ordinary claims up to the date of the bankruptcy order, after which date the accrued interest will rank as a deferred claim. Deferred claims include, among others, subordinated loans and penalties. In the event of bankruptcy, claims in foreign currencies will be converted into Danish kroner using the relevant currency rate as of the date of the bankruptcy order. The status of a claim is dependent upon express statutory authority (except for subordinated loans).

Security interests (except for those interests entitled to a separate asset ("*håndpant eller anden tilsvarende sikkerhedsret*") may only be enforced by the trustee, and the creditors cannot demand enforcement of such security interests until six months after the bankruptcy order.

Danish bankruptcy law contains several provisions enabling the trustee to initiate proceedings to have certain transactions prior to the bankruptcy avoided. Some avoidance provisions require the payment or security to be granted within three months before the date of the bankruptcy petition being filed. In some

cases, however, avoidance can be claimed for payments or security granted within two years before the date of the bankruptcy petition being filed.

Under Danish bankruptcy law, payments made by the Danish Guarantor could be void if, among other things (i) payments are made before they are due or with an amount that has a distinctly impairing effect on the Danish Guarantor's ability to pay its debts, provided the payment does not seem ordinary; (ii) payments are made after the date when a petition for bankruptcy was filed, or (iii) payments are made in an improper way that favors a creditor to the detriment of the other creditors, provided that the Danish Guarantor was or became insolvent by the payment and the beneficiary knew or ought to have known about the insolvency and the circumstances that made the payment improper.

Granting of security could be void under Danish bankruptcy law if, among other things (i) security granted by a debtor for its own debts was not granted to the creditor before or at the time the debt was incurred; or (ii) security was not perfected without undue delay before or at the time the debt was incurred.

Under Danish bankruptcy law the issuance of guarantees may be subject to avoidance if, among other things (i) the issuance was made at a time when the issuer was insolvent, (ii) the issuance is without due consideration, and/or (iii) between closely related parties.

A claim for avoidance can be made against the main debtor or against the beneficiary. Avoidance can be made for guarantees issued up to two years before the date when the bankruptcy petition was filed.

Any proceeds relating to a voidable claim are considered an asset of the bankruptcy estate and are to be distributed to the creditors in accordance with the rules governing priority of debts in bankruptcy.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

It is a requirement under Danish law that a guarantor or security provider obtains an adequate corporate benefit from the issuance of a guarantee or granting of security. If such benefit is not obtained, the directors of the Danish Guarantor or security provider may be subject to civil liability. It has not been tested by Danish courts to what extent such corporate benefit is established when a subsidiary guarantees and secures debt of a direct or indirect parent company.

The Danish Companies Act contains restrictions on financial assistance by Danish limited companies. Generally, Danish companies and their Danish and foreign subsidiaries may not grant loans to, or issue guarantees or provide security for loans to, their shareholders or the shareholders of their parent companies. However, Danish companies may grant loans to, or issue guarantees or provide security for loans to, parent companies covered by Danish Executive Order No. 275/2010 (on loans etc. to foreign parent companies) which includes any entity in the corporate form of (a) a public limited company (*aktieselskab*), (b) a limited partnership company (*partnerselskab*), (c) a private limited company (*anpartsselskab*) or (d) a company with an equivalent corporate form, having its registered office in inter alia Denmark or Germany. If loans, guarantees or security is granted in violation of the prohibition, such loans, guarantees or security will be invalid and unenforceable.

Danish companies are generally prohibited from granting loans, guarantees or security in connection with the financing or refinancing of the acquisition of their own shares or shares in their parent companies and any such loan, guarantee or security will be invalid and unenforceable. To the extent that any such acquisition debt cannot be separated from other debt, such other debt may be deemed acquisition debt and any loans, guarantees or security granted by Danish companies for such other debt may then also be invalid or unenforceable.

In order to cater for issues on corporate benefit and financial assistance, the Danish Guarantor's obligations are subject to limitations.

Choice of Law

According to Danish rules on private international law, a Danish court will in civil and commercial matters generally uphold a choice of the laws of another country subject to Danish public policy and the mandatory rules of the laws of any country with which a transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding a choice of law. However, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable. In such case a Danish court may apply Danish rules of private international law to determine the applicable law to such non-contractual obligations.

LUXEMBOURG

Insolvency

The following is a brief description of certain aspects of insolvency law in Luxembourg. In the event that a company incorporated under the laws of Luxembourg (a "**Luxembourg Guarantor**") becomes one of the Guarantors and experiences financial difficulty, it is not possible to predict with certainty in which jurisdiction or jurisdictions insolvency or similar proceedings would be commenced, or the outcome of such proceedings. One of the Guarantors is incorporated under the laws of Luxembourg.

Pursuant to Luxembourg insolvency laws, your ability to receive payment under the Notes may be more limited than would be the case under U.S. bankruptcy laws. In the event that a Luxembourg Guarantor becomes insolvent, the following types of insolvency proceedings may be opened in Luxembourg to the extent that the Luxembourg Guarantor has its center of main interests within the meaning of EU Council Regulation No. 1346/2000 of May 29, 2000 on insolvency proceedings ("**EU Insolvency Regulation**") located in Luxembourg or has an establishment in Luxembourg within the meaning of EU Insolvency regulation (in relation to secondary proceedings assuming in this case that the center of main interests is located in a jurisdiction where the EU Insolvency Regulation is applicable)):

- bankruptcy proceedings (*faillite*) as set forth in articles 437 and seq. of the Luxembourg Code of Commerce (*code de commerce*), the opening of which may be requested by the representative of the company (*aveu de faillite*), by any of its creditors or by competent Luxembourg courts ex officio (*faillite déclarée d'office*—absent a request made by the company or a creditor). Following such a request, the courts having jurisdiction may open bankruptcy proceedings if the company: (i) is in a state of cessation of payments (*cessation des paiements*) and (ii) has lost its commercial creditworthiness (*ébranlement de crédit*). The main effect of such proceedings is (i) the suspension of all measures of enforcement against the company, except, subject to certain limited exceptions, for enforcement by secured creditors, (ii) the payment of the secured creditors in accordance with their rank upon realization of the assets and (iii) that the company can no longer manage and dispose of its assets, however in principle existing agreements remain in force;
- controlled management proceedings (*gestion contrôlée*), as defined by the Luxembourg law of April 14th, 1886, the opening of which may only be requested by the company and not by its creditors and under which a court may order provisional suspension of payments, including a stay of enforcement of claims by secured creditors; and
- composition proceedings (*concordat préventif de faillite*), which may be requested only by the company (subject to obtaining the consent of the majority of its creditors) and not by its creditors themselves. The court's decision to admit a company to the composition proceedings triggers a provisional stay on enforcement of claims by creditors.

In addition, your ability to receive payment on the Notes may be affected by a decision of a Luxembourg court to grant a stay on payments (*sursis de paiement*) as provided by articles 593 et seq of the Luxembourg Code of Commerce or to put any of the Luxembourg Guarantors into judicial liquidation (*liquidation judiciaire*) pursuant to article 203 of the law of August 10, 1915 on commercial companies as amended (the "**Companies Act 1915**"). Judicial liquidation proceedings may be opened at the request of the public prosecutor against companies pursuing an activity violating criminal laws or that are in serious breach or violation of the commercial code or of the laws governing commercial companies, including the Companies Act 1915. The management of such liquidation proceedings will generally follow the rules of bankruptcy proceedings.

Liability of any Luxembourg Guarantor in respect of the Notes will, in the event of a liquidation of the entity following bankruptcy or judicial liquidation proceedings, only rank after the cost of liquidation (including any debt incurred for the purpose of such liquidation) and those debts of the relevant entity that are entitled to priority under Luxembourg law. Preferential debts under Luxembourg law include, among others:

- certain amounts owed to the Luxembourg Revenue (*Administration des Contributions Directes*);
- value added tax and other taxes and duties owed to the Luxembourg Customs and Excise (*Administration de l'Enregistrement et des Domaines*);
- social security contributions; and
- remuneration owed to employees.

Assets over which a security interest has been granted will in principle not be available for distribution to unsecured and unpreferred creditors (except after enforcement and to the extent a surplus is realized).

Pursuant to article 20 of the Luxembourg Act dated August 5, 2005 concerning financial collateral arrangements as amended (the "**Financial Collateral Act 2005**"), all collateral arrangements in respect of assets over which the Luxembourg security interests have been granted, as well as all enforcement events and valuation and enforcement measures agreed upon by the parties in accordance with such law, are valid and enforceable against third parties, commissioners, receivers, liquidators and other similar persons notwithstanding any insolvency proceedings.

Article 21 (1) of the Financial Collateral Act 2005, provides that where a financial collateral arrangement has been entered into on the day of commencement of a reorganization measure or winding-up proceeding, but before the Court decision ruling the opening of such proceedings or before such measure becomes effective, such arrangement is valid and enforceable against third parties, commissioners, liquidators, receivers or other similar persons.

Article 21(2) of the Financial Collateral Act 2005, provides that where a financial collateral arrangement has been entered into after the opening of liquidation proceedings or the coming into force of reorganization measures or the entry into force of such measures, such arrangement is enforceable against third parties, administrators, insolvency receivers, liquidators and other similar persons if the collateral taker proves that it was unaware of the fact that such proceedings had been opened or that such measures had been taken or that it could not reasonably have been aware of such proceedings, measures or arrangement.

Article 24 of the Financial Collateral Act 2005, provides that Luxembourg insolvency proceedings will not apply to foreign law security interests over claims or financial instruments granted by a Luxembourg pledgor if such foreign law security interests are similar in nature to a Luxembourg security interest falling within the scope of the Financial Collateral Act 2005. If article 24 applies, Luxembourg preference period rules are disapplied (save for the case of fraud).

During such insolvency proceedings, all enforcement measures by unsecured creditors are suspended. The ability of certain secured creditors to enforce their security interest may also be limited, in particular in the event of controlled management proceedings providing expressly that the rights of secured creditors are frozen until a final decision has been taken by the Luxembourg court as to the petition for controlled management, and may be affected thereafter by a reorganization order given by the court. A reorganization order requires the prior approval by more than 50% of the creditors representing more than 50% of the relevant Luxembourg company's liabilities in order to take effect.

Furthermore, you should note that declarations of default and subsequent acceleration (such as acceleration upon the occurrence of an event of default) may not be enforceable during controlled management proceedings.

Luxembourg insolvency laws may also affect transactions entered into or payments made by the relevant Luxembourg company during the period before bankruptcy, the so-called "suspect period" (*période suspecte*) which is a maximum of six months (and ten days, depending on the transaction in question) preceding the judgment declaring bankruptcy, except that in certain specific situations the court may set the start of the suspect period at an earlier date; if the bankruptcy judgment was preceded by another insolvency bankruptcy judgment under Luxembourg law, the court may set the maximum up to six months prior to the filing for such controlled management. In particular:

- pursuant to article 445 of the Luxembourg Code of Commerce (*code de commerce*), specified transactions (such as, in particular, the granting of a security interest for antecedent debts; the payment of debts which have not fallen due, whether payment is made in cash or by way of assignment, sale, set-off or by any other means; the payment of debts which have fallen due by any means other than in cash or by bill of exchange; the sale of assets without consideration or with substantially inadequate consideration) entered into during the suspect period (or the ten days preceding it) must be set aside or declared null and void, if so requested by the insolvency receiver;
- pursuant to article 446 of the Luxembourg Code of Commerce, payments made for matured debts as well as other transactions concluded for consideration during the suspect period are subject to cancellation by the court upon proceedings instituted by the insolvency receiver if they were concluded with the knowledge of the bankrupt party's cessation of payments; and

- pursuant to article 21 (2) of the Luxembourg Act dated August 5, 2005 concerning financial collateral arrangements, notwithstanding the suspect period as referred to in articles 445 and 446 of the Luxembourg Code of Commerce, where a financial collateral arrangement has been entered into after the opening of liquidation proceedings or the coming into force of reorganization measures or the entry into force of such measures, such arrangement is valid and binding against third parties, administrators, insolvency receivers, liquidators and other similar organs if the collateral taker proves that it was unaware of the fact that such proceedings had been opened or that such measures had been taken or that it could not reasonably be aware of it; and
- in the case of bankruptcy, article 448 of the Luxembourg Code of Commerce and article 1167 of the Civil Code (*action paulienne*) gives the insolvency receiver (acting on behalf of the creditors) the right to challenge any fraudulent payments and transactions, including the granting of security with an intent to defraud, made prior to the bankruptcy, without any time limit.

The transactions potentially subject to avoidance also include those contemplated by the guarantees issued by the Luxembourg Guarantor or the granting of security interests under the Security Documents by a Luxembourg entity. If they are challenged successfully, the guarantees issued by the Luxembourg Guarantor may become unenforceable and any amounts received must be refunded to the insolvent estate.

In principle, a bankruptcy order rendered by a Luxembourg court does not result in automatic termination of contracts except for *intuitu personae* contracts, that is, contracts for which the identity of the company or its solvency were crucial. The contracts, therefore, subsist after the bankruptcy order. However, the insolvency receiver may choose to terminate certain contracts. As of the date of adjudication of bankruptcy, no interest on any unsecured claim will accrue vis-à-vis the bankruptcy estate.

Insolvency proceedings may hence have a material adverse effect on the relevant Luxembourg company's business and assets and the Luxembourg company's respective obligations under the Notes (as Luxembourg Guarantor).

Finally, international aspects of Luxembourg bankruptcy, controlled management or composition proceedings may be subject to EU Council Regulation No. 1346/2000 of May 29, 2000 on insolvency proceedings.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

Under Luxembourg law, contracts are formed by the mere agreement (*consentement*) between the parties thereto. However, additional steps are required to enforce security interests against third parties.

Securities such as pledges, and transfer of ownership as a security, granted on financial instruments and claims are governed by the Luxembourg Act dated August 5, 2005 concerning financial collateral arrangements. Pursuant to this law, a pledge is effected, not by transfer of title, but by a transfer of possession of the pledged assets to the pledgee or to a third party acting as depository for the pledgee and the pledgee's preference rights over the pledged assets only remain in existence as long as the pledgee or the depository remains in possession of such assets.

A physical transfer of possession not being possible for intangibles such as monetary claims, the Luxembourg Act dated August 5, 2005 concerning financial collateral arrangements provides for a fictitious transfer of possession which is effected by mechanisms which depend on the nature of the intangibles involved. In case of registered shares, the dispossession is achieved by the entry of the security interest in the register of the issuer. Dispossession of cash collateral or rights under contracts is achieved by the security interest thereon being notified by the debtor/co-contractor or by the acceptance thereof by the debtor of such claims or the co-contractor.

THE NETHERLANDS

Insolvency

One of the Guarantors is incorporated under the laws of the Netherlands. In the event of insolvency of a Dutch company or a provider of security interests and/or having its centre of main interests in the Netherlands (each a "**Dutch Provider**"), any insolvency proceedings relating to the Dutch Provider would likely be based on Dutch insolvency law. Under certain circumstances, bankruptcy proceedings may also be opened in the Netherlands in accordance with Dutch law against companies that are not established under Dutch law provided that such company has an office in the Netherlands.

The following is a brief description of certain aspects of Dutch insolvency law.

There are two primary insolvency regimes under Dutch law: the first, moratorium of payments (*surseance van betaling*), is intended to facilitate the reorganization of a debtor's indebtedness and enable the debtor to continue as a going concern. The second, bankruptcy (*faillissement*), is primarily designed to liquidate and distribute the proceeds of the assets of a debtor to its creditors. Both insolvency regimes are set forth in the Dutch Bankruptcy Act. A general description of the principles of both insolvency regimes is set out below.

An application for a moratorium of payments can only be made by the debtor itself. Once the request for a moratorium of payments is filed, the Court will immediately (*dadelijk*) grant a provisional moratorium and appoint an administrator (*bewindvoerder*) and often also a supervisor judge (*rechter-commissaris*). A meeting of creditors is required to decide on the definitive moratorium. If a draft composition (*ontwerp akkoord*) is filed simultaneously with the application for moratorium of payments, the Court can order that the composition will be processed before a decision about a definitive moratorium. If the composition is accepted and subsequently confirmed by the Court (*gehomologeerd*), the provisional moratorium ends as soon as the Court's decision becomes final. The definitive moratorium will generally be granted unless a qualified minority (more than one-quarter in amount of claims held by creditors represented at the creditors' meeting or more than one-third in number of creditors represented at such creditors' meeting) of the unsecured non-preferential creditors withholds its consent. The moratorium of payments is only effective with regard to unsecured non-preferential creditors. Under Dutch law, secured and preferential creditors (including tax and social security authorities) may enforce their rights against assets of the company a in moratorium of payments to satisfy their claims as if there were no moratorium of payments. A recovery under Dutch law could, therefore, involve a sale of assets that does not reflect the going concern value of the debtor. However, the Court may order a "cooling down period" for a maximum period of four months during which enforcement actions by secured or preferential creditors are barred. Also in a definitive moratorium of payments, a composition (*akkoord*) may be offered to creditors. A composition will generally be binding on all unsecured and non-preferential creditors if it is (i) approved by a simple majority of the meeting of the recognized and of the admitted creditors representing at least 50% of the amount of the recognized and of the admitted claims, and (ii) subsequently ratified (*gehomologeerd*) by the Court. Under certain conditions, the Court or the judge commissioner (*rechter-commissaris*) (as the case may be) may derogate from this procedure. Consequently, Dutch insolvency laws could preclude or inhibit the ability of the Holders to effect a restructuring. Interest payments that fall due after the date on which a moratorium of payments is granted cannot be claimed in a composition.

Under Dutch bankruptcy proceedings, the assets of a debtor are generally liquidated and the proceeds distributed to the debtor's creditors in accordance with the respective rank and priority of their claims. The general principle of Dutch bankruptcy law is the so-called *paritas creditorum* (principle of equal treatment) which means that all creditors have an equal right to payment and that the proceeds of bankruptcy proceedings shall be distributed in proportion to the size of their claims. However, certain preferred creditors (such as the tax and social security authorities) will have special rights that take priority over the rights of other creditors. The claim of a creditor may be limited depending on the date the claim becomes due and payable in accordance with its terms. Generally, claims of the noteholders that are due and payable by their terms within one year of the date of the bankruptcy of the relevant guarantor or security grantor will be accelerated and become due and payable as of that date. Each of these claims will have to be submitted to the receiver to be verified. "Verification" under Dutch law means that the receiver determines the value of the claim and whether and to what extent it will be admitted in the bankruptcy proceedings to the purpose of the distribution of the proceeds. The valuation of claims that would not have been payable within one year from the date of the bankruptcy may be based on a net present value analysis. Interest payments that fall due after the date of the bankruptcy cannot be verified. The existence, value and ranking of any claims submitted by the Holders may be challenged in the Dutch bankruptcy proceedings. Generally, in a creditors' meeting (*verificatie vergadering*), the receiver, the insolvent debtor and all provisionally verified creditors may dispute the verification of claims of other creditors. Creditors whose claims or value thereof are disputed in the creditors meeting may be referred to separate Court proceedings (*renvooi procedure*). Such renvooi procedures could also cause payments to the Holders to be delayed compared with holders of undisputed claims. As a moratorium of payments proceedings, in a bankruptcy a composition may be offered to creditors, which shall in general be binding on unsecured non-preferential creditors if (i) it is approved by a simple majority of the meeting of unsecured non-preferential creditors, with admitted and provisionally admitted claims representing at least 50% of the total amount of the admitted and provisionally admitted unsecured non preferential claims, and (ii) subsequently ratified (*gehomologeerd*) by the Court. Under certain conditions, the supervisory judge (*rechter-commissaris*) may derogate from this procedure. The Dutch Bankruptcy Act does not in itself

recognize the concept of classes of creditors. Remaining amounts, if any, after satisfaction of the secured and the preferential creditors are distributed among the unsecured non-preferential creditors, who will be satisfied on a pro rata basis. Contractual subordination may to a certain extent be given effect in Dutch insolvency proceedings. The actual effect depends largely on the way such subordination is construed.

Secured creditors which have a right in rem (*goederenrechtelijke rechten*) may enforce their rights against assets of the debtor to satisfy their claims under a Dutch bankruptcy as if there is no bankruptcy. As in moratorium of payments proceedings, the Court may order a "cooling down period" for a maximum of four months during which enforcement actions by secured creditors are barred unless such creditors have obtained leave for enforcement from the supervisory judge. The bankruptcy trustee may force a secured creditor to realize its security right by giving the creditor notice to do so within a reasonable time. A failure to take recourse by the creditor will result in the creditor forfeiting its rights to enforce its security rights, albeit that its claim shall continue to be preferred. However, in such an event the creditor must contribute to costs of the bankruptcy which may be considerable. Any excess proceeds of enforcement and for which there is no valid security right must be returned to the bankruptcy estate and may not be off set to any unsecured claims against the debtor.

Moreover, to the extent that Dutch law applies, a legal act performed by a debtor (including, without limitation, an agreement pursuant to which it guarantees the performance of the obligations of a third party and any other legal act having a similar effect) can be challenged in an insolvency proceeding or otherwise and may be nullified by any of its creditors or its trustee in bankruptcy, if (i) it performed such acts without an obligation to do so (*onverplicht*), (ii) generally the creditor concerned or, in the case of its bankruptcy, any creditor was prejudiced as a consequence of the act, and (iii) at the time the act was performed both it and (unless the act was for no consideration (*om niet*)) the party with or towards which it acted, knew or should have known that one or more of its creditors (existing or future) would be prejudiced. In addition, in the case of such a bankruptcy, the trustee may nullify the debtor's performance of any due and payable obligation (including (without limitation) an obligation to provide security for any of its or a third party's obligations) if (i) the payee (*hij die betaling ontving*) knew that a request for bankruptcy had been filed at the moment of payment, or (ii) the performance of the obligation was the result of a consultation between the debtor and the payee with a view to give preference to the latter over the debtor's other creditors.

Under Dutch law, as soon as a debtor is declared bankrupt, all pending executions of judgments against such debtor, as well as all attachments on the debtor's assets, will be terminated by operation of law. Simultaneously with the opening of the bankruptcy, a Dutch receiver will be appointed. The proceeds resulting from the liquidation of the bankrupt estate may not be sufficient to satisfy unsecured creditors under the guarantees granted by a bankrupt guarantor after the secured and the preferential creditors have been satisfied. Litigation pending on the date of the bankruptcy order is automatically stayed. Foreign creditors are, in general, not treated different from creditors that are incorporated or residing in the Netherlands.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

If a Dutch company grants a guarantee or a security interest and that guarantee or security interest is not in the Company's corporate interest, the guarantee or security interest may be nullified by the Dutch company, its receiver in bankruptcy and its administrator (*bewindvoerder*) in conjunction with the board of the Dutch company and, as a consequence, not be valid, binding and enforceable against it. In determining whether the granting of such guarantee or security interest is in the interest of the relevant company, the Dutch Courts would not only consider the text of the objects clause in the articles of association of the company but all relevant circumstances including whether the company derives certain commercial benefits from the transaction in respect of which the guarantee or security interest was granted. In addition, if it is determined that there are no, or insufficient, commercial benefits from the transactions for the company that grants the guarantee or security interest, then such company (and its bankruptcy receiver) may contest the enforcement of the guarantee or security interest, and it is possible that such challenge would be successful. Such benefit may, according to Dutch case law, consist of an indirect benefit derived by the company as a consequence of the interdependence of such company with the group of companies to which it belongs. In addition, it is relevant whether, as a consequence of the granting of the guarantee or security interest, the continuity of such company would foreseeable be endangered by the granting of such guarantee or security interest. It remains possible that even if such strong financial and commercial interdependence exists, the transaction may be declared void if it appears that the granting of the guarantee or security interest cannot serve the realization of the relevant company's objects.

In addition, a guarantee issued by a Dutch company and a security provided by a Dutch company may be suspended or voided by the Enterprise Chamber of the Court of Appeal in Amsterdam (*Ondernemingskamer van het Gerechtshof Amsterdam*) on the motion of one or more holders of shares or depositary receipts issued for shares in such company who, solely or jointly, represent at least one-tenth of the issued capital or who are entitled to an amount in shares or depositary receipts issued therefore with a nominal value of €225,000 or such lesser amount as is provided by the articles of association (*statuten*) of the relevant company, and the persons who are authorized to do so by the articles of association or under an agreement with such company. The right to file such motion is further vested in an association of employees which has amongst its members persons working for the enterprise and which has at least two years full legal capacity, and, for reasons of public interest, the advocate general at the Court of Appeal in Amsterdam. Likewise, the guarantee or security itself may be upheld by the Enterprise Chamber, yet actual payment under it may be suspended or voided.

Pursuant to Dutch law, payment under a guarantee or a security document may be withheld under the doctrines of reasonableness and fairness (*redelijkheid en billijkheid*), force majeure and unforeseen circumstances (onvoorziene omstandigheden) and other defences afforded by Netherlands law to obligors generally; furthermore, under Netherlands law, a party to an agreement may under certain circumstances suspend performance of its obligations under such agreement pursuant to the exceptio non-adimpleti contractus or otherwise.

Under Dutch rules on financial assistance, a company may not grant guarantees or collateral with a view to the acquisition of its shares by a third party. This prohibition also applies to any subsidiaries of the relevant company (including foreign subsidiaries). It is generally assumed that a guarantee or collateral which violates Dutch financial assistance rules prohibitions is null and void. More specifically, if a guarantee or collateral partly violates financial assistance prohibitions, the guarantee or collateral will be void for that part. In addition, there is a risk that the void part will contaminate the remainder of the guarantee or collateral so that, from a Dutch law perspective, the guarantee or collateral is void in its entirety. In order to enable Dutch subsidiaries to grant guarantees or other collateral to secure liabilities of a direct or indirect parent or sister company without the risk of violating Dutch rules on financial assistance, it is standard market practice for indentures, credit agreements, guarantees and security documents to contain so called "limitation language" in relation to subsidiaries incorporated or established in the Netherlands. Pursuant to such limitation language, it is agreed between the relevant parties that such guarantee or collateral is deemed not to be given to the extent the same would constitute a violation of the Dutch rules on financial assistance. Such limitation language will also be included in the guarantee and security documents granted by any Dutch Provider. Legislation which will abolish the financial assistance prohibition has already been adopted and shall enter into force on October 1, 2012. There is no transitional law included in the new legislation and therefore the financial assistance prohibition for private companies with limited liability (*besloten vennootschappen met beperkte aansprakelijkheid*) will cease to exist as per October 1, 2012. To the extent any agreement, articles of association, security documents or any other document refer to "*Section 2:207c Dutch Civil Code"* only or do not contain any reference to financial assistance, the prohibition will cease as per October 1, 2012. However, to the extent any agreement, articles of association, security documents or any other document has reflected in it the literal text of Section 2:207c Dutch Civil Code or similar provision, such provision will continue to apply as a contractual matter between parties regardless the abolishment of the financial assistance itself. The current articles of association of the Dutch subsidiary guarantor do not reflect in it the literal text of Section 2:207c Dutch Civil Code and the transaction documentation contemplated by this note issuance solely refers to "*Section 2:207c Dutch Civil Code"* and therefore no longer contain a limitation after October 1, 2012.

POLAND

Insolvency

One of the Guarantors is incorporated in Poland (the "**Polish Guarantor**"). If the Polish Guarantor's center of main interests is in Poland, then pursuant to Polish Bankruptcy Law and the EU Insolvency Regulation, bankruptcy proceedings of the Polish Guarantor should be conducted before a Polish court. Consequently, in the event of the insolvency of the Polish Guarantor, insolvency proceedings would be governed by Polish law.

According to the Polish Bankruptcy Law, the Polish Guarantor as a debtor will be declared bankrupt: (i) if it does not fulfill its due pecuniary obligations when they fall due, or (ii) if its liabilities exceed the total value of its assets (even if all pecuniary obligations are fulfilled when they fall due). Each individual who has the right to represent the Polish Guarantor (whether alone or with others) is obliged to file a motion to

declare the Polish Guarantor bankrupt within two weeks from when the grounds for declaration of bankruptcy above are met. In practice, it is difficult to determine the day from which the two-week time-limit for filing the motion should be counted. Additionally, each of the Polish Guarantor's creditors may file for bankruptcy.

There are two types of bankruptcy proceedings under Polish law: (i) "liquidation" bankruptcy proceedings, the principal aim of which is the satisfaction of the creditors from the proceeds obtained after sale of the debtor's assets (such bankruptcy proceedings would result in dissolution of the debtor's company unless otherwise permitted by law), and (ii) "arrangement" bankruptcy proceedings essentially aimed at satisfaction of the creditors through a settlement with the debtor (such bankruptcy proceedings could allow the debtor to continue its business activity also following the completion of these proceedings).

Liquidation bankruptcy proceedings

In the event of liquidation bankruptcy proceedings, the court appoints a bankruptcy receiver (*syndyk*) who takes over the management of the bankrupt's assets. From this moment on, the debtor—bankrupt entity is replaced by the receiver who administers the bankrupt entity's assets and represents the bankrupt entity. The bankrupt entity's assets become bankruptcy assets which will be liquidated to pay off creditors. The receiver determines the composition of bankruptcy assets. Upon the bankruptcy declaration all of the debtor's debts become due and payable. Interest is charged only from the day of the bankruptcy declaration.

Arrangement bankruptcy proceedings

In the event of arrangement bankruptcy proceedings, the court appoints a court supervisor (*nadzorca sądowy*) or an administrator (*zarządca*) instead of the bankruptcy receiver. A court supervisor is appointed in a situation where the debtor will continue to manage its assets, whereas an administrator is appointed where the debtor is deprived of the right to manage its assets.

If the creditors vote in favor of an arrangement, the arrangement is accepted and then approved by the court. The court's decision approving the arrangement may be appealed. The accepted arrangement is binding on all creditors, whose receivables are covered by the arrangement. Rules on which the bankrupt entity's debts will be repaid are stipulated in the arrangement. The most typical arrangement involves a situation where the creditors are paid a portion of the debts and the company continues its operations. It is also possible, however, to accept a so-called liquidation arrangement where a determination is made how the bankrupt entity's assets and the business will be liquidated.

Once bankruptcy is declared (irrespective of its type), the bankrupt entity's assets may not be subject of security, charged with a pledge, registry pledge or treasury pledge, and no entries in land and mortgage register or other registers may be made to establish any security interests, except for the entry of mortgage if the application of such entry had been filled at least 6 months prior to filling the motion for bankruptcy.

Contractual provisions which explicitly stipulate the contract amendment or termination in case bankruptcy by a contract party is declared are invalid.

If court proceedings against the bankrupt entity are pending on the day of the bankruptcy declaration in any common courts, then such proceedings are in some cases discontinued. If proceedings were pending in which the bankrupt entity was the plaintiff, the receiver or the administrator replaces the bankrupt entity. If a court supervisor is appointed, he acts together with the bankrupt entity in the proceedings. If enforcement proceedings regarding the receivables included in the arrangement, were pending against the bankrupt entity on the day of bankruptcy declaration, they are suspended and proceeds received are transferred into the bankruptcy asset pool. Finally, all the arbitration clauses expire and if arbitration proceedings were pending on the day of bankruptcy declaration, such proceedings are discontinued.

Creditors have a right to submit their claims within the time limit indicated in a decision declaring bankruptcy. Claims supported by evidence of claims are usually admitted, i.e. included in the list of liabilities. If a claim is not included in the list, then a creditor has a right to appeal. The procedural requirements for submitting a claim are very formalistic.

In case of liquidation bankruptcy proceedings, creditors under the Guarantee will be satisfied from the proceeds obtained from the sale of the Polish Guarantor's assets. When the repayment of receivables arising under the Guarantee become part of an arrangement in arrangement bankruptcy proceedings, there is a possibility that such receivables may be decreased on the basis of a decision of the creditors (such decisions would be subject to certain mandatory rules of the Polish Bankruptcy Law).

As a rule, the Polish Guarantor's receivables will be divided into five categories and creditors having their receivables in a lower ranking category may not obtain satisfaction before all receivables in the higher ranking category have been fully satisfied. The first three categories concern principally the costs of bankruptcy proceedings and payments to the state or concerning employees (official receiver's fees, costs of liquidating the business, remuneration, health benefit payments and social security obligations concerning the employees, taxes etc.), whereas the majority of unsecured commercial receivables are listed in the fourth category and interest from such receivables (older than one year) are listed in the fifth category. Within each category, each receivable is satisfied pro rata to the total value of receivables listed in such category.

If an asset owned by the bankrupt entity (i.e. the Polish Guarantor) is secured with a mortgage, pledge, registry pledge, treasury pledge or a maritime lien, then a creditor has a right to receive proceeds from that asset before other creditors (with few exceptions such as, for instance, a certain portion of employee salaries). Where a number of mortgages have been established on a real estate which considerably exceed its value, creditors are repaid from such real estate according to their priority.

Effectiveness of the Guarantee and security in case of the Polish Guarantor's bankruptcy

Under Polish Bankruptcy Law, the Note Guarantees may be declared ineffective or deemed to be ineffective in certain situations. In particular the enforceability of the receivables arising under the Note Guarantees in the insolvency proceedings depends on whether the Note Guarantees was granted at least two months before the filing of the motion for bankruptcy of the Polish Guarantor and, furthermore, whether the receivables are due and payable. Pursuant to Polish Bankruptcy Law, if: (i) the debt secured by the Note Guarantees is not due, and (ii) the Note Guarantees was granted within two months before the filing of the motion for bankruptcy, then the Note Guarantees will be deemed ineffective. However, in such case, the creditor may bring an action or charge in order to seek the recognition of the Note Guarantees as effective if at the time when the same were granted the creditor was unaware of the existence of grounds for declaration of bankruptcy.

Furthermore, if the Note Guarantees is granted within six months preceding the date of the filing of the motion for bankruptcy, it will be assessed whether the Note Guarantees in this state of facts is the act in law performed with a related company. If so, the Note Guarantees will be declared ineffective towards the bankruptcy estate.

The Note Guarantees granted within one year before the filing of the motion for bankruptcy will also be deemed ineffective towards the bankruptcy estate if the value of the Note Guarantees significantly exceeded consideration for the Polish Guarantor, or there was no consideration for the Polish Guarantor.

Also mortgages or pledges established in the year preceding the bankruptcy declaration may be challenged if the bankrupt entity was not a personal debtor of the creditor (e.g. a guarantor) and did not obtain any benefit in connection with such security interest.

Furthermore, if the Polish Guarantor is declared a subject of liquidation bankruptcy proceedings, its debts arising under the Guarantee will become immediately due and payable.

Limitations on Validity and Enforceability of the Guarantees

Polish law does not provide for specific limitations on financial assistance with respect to a limited liability company (sp. z o.o.). However, a Polish limited liability company should comply with both the general corporate laws and the insolvency laws which may provide for certain limitations on the enforcement of the Note Guarantees.

In accordance with Article 189 sec. 2 of the Polish Commercial Companies Code (*Kodeks Spółek Handlowych*) of September 15, 2000 (Journal of Laws no. 94, item 1037, as amended), shareholders may not receive, on whatever account, payments out of a company's assets which are necessary for the initial capital to be fully paid up. A breach of this rule results in the shareholders' obligation to return the payments up to the amount of the share capital. Therefore, any guarantee under the Note Guarantees by any of the Guarantors incorporated under Polish law will be affected, or could be set aside, to the extent it would result in a reduction of its assets necessary to cover in full its share capital in breach of Article 189 sec. 2 of the Polish Commercial Companies.

The obligations under the Note Guarantees by any of the Guarantors incorporated under Polish law are also subject to limitations resulting from the application of laws on bankruptcy and insolvency, and the laws on rehabilitation proceedings, as set out in the Polish Bankruptcy Law. Specifically, pursuant to Article 11

sec. 2 of the Polish Bankruptcy Law, a corporate entity will be declared bankrupt if its liabilities exceed the value of its assets (property). Given certain legal controversies regarding the application of this rule, and in order to mitigate the possibility that the Polish Guarantor could be declared bankrupt under this rule, the liability of any Guarantor incorporated under Polish law on account of payments under the Note Guarantees shall be limited to the amount equivalent to the Polish Guarantor's assets.

FRANCE

Insolvency

Two of the Guarantors are incorporated in France (each a "**French Guarantor**" and together the "**French Guarantors**"), and to the extent that their "centre of our main interests" is deemed to be in France, will be subject to French insolvency proceedings affecting creditors, including court-assisted informal proceedings (*mandat ad hoc or conciliation proceedings*) and court-administered insolvency proceedings (safeguard (*sauvegarde*), reorganization or liquidation proceedings (*redressement or liquidation judiciaire*)). In general, French insolvency legislation favors the continuation of a business and protection of employment over the payment of creditors and could limit your ability to enforce your rights under the Note Guarantees and/or the security interests granted by the French Guarantors.

The following is a general and brief description of insolvency proceedings governed by French law for information purposes only and does not address all the French legal considerations that may be relevant to noteholders.

Grace Periods

In addition to insolvency laws discussed below, you could, like any other creditors, be subject to Article 1244-1 of the French Civil Code (*Code civil*).

Pursuant to the provisions of this article, French courts may, in any civil proceeding involving the debtor, defer or otherwise reschedule over a maximum period of two (2) years the payment dates of payment obligations and decide that any amounts, the payment date of which is thus deferred or rescheduled, will bear interest at a rate that is lower than the contractual rate (but not lower than the legal rate as published annually by decree) or that payments made shall first be allocated to repayment of the principal rather than interest. A court order made under Article 1244-1 of the French Civil Code will automatically suspend any pending enforcement measures, and any contractual interest or penalty for late payment will not accrue or be due during the period ordered by the court.

Emergency Procedure

The statutory auditors of the company can request the management and the board of directors to provide an explanation as to elements which the auditors believe put the company's existence as a going concern in jeopardy. Failing satisfactory explanations or corrective measures, the auditors can request that a shareholders' meeting be convened. The auditors must inform the Commercial Court.

Shareholders representing at least 5% of the share capital and the workers' committee have similar rights. The Commercial Court can also itself summon the management to provide explanations on elements which the court believe put the company's existence as a going concern in jeopardy.

Court-assisted Pre-insolvency Proceedings

A French company facing difficulties may request the opening of court-assisted pre-insolvency proceedings (*mandat ad hoc or conciliation*) the aim of which is to reach an agreement with the debtor's main creditors. *Mandat ad hoc and conciliation* are informal proceedings carried out under the supervision of the president of the court, which do not involve any stay of the proceedings.

French law does not provide for any specific rule in respect of *mandat ad hoc*. In practice, *mandat ad hoc* proceedings are used by debtors that are facing difficulties of an economic or financial nature but are not in a state of cessation of payments (*cessation de paiements*) (i.e., the debtor is considered in a state of cessation of payments where it is unable to pay its debts when they fall due with its liquid assets (taking into account available credit lines and existing rescheduling agreements)). They are confidential and are not limited in time. The agreement reached by the parties (if any) with the help of the court appointed officer (*mandataire ad hoc*) is reported by the latter to the court but is not sanctioned by the court.

Conciliation proceedings are available to a debtor that faces actual or foreseeable difficulties of a legal, economic or financial nature but which has not been insolvent for more than 45 days. The debtor petitions the Commercial Court for the appointment of a conciliator in charge of assisting the debtor in negotiating with all or part of its creditors and/or trade partners an agreement providing for the restructuring of its indebtedness. Conciliation proceedings are confidential and may last up to five months. During the proceedings, creditors may continue to sue individually for payment of their claims but the debtor retains the right to petition for debt rescheduling pursuant to Article 1244-1 of the Civil Code. Upon its execution, the agreement reached by the parties becomes binding upon them and creditors may not take action against the company in respect of claims governed by the agreement. In addition, without such formalities being an obligation on the parties, the agreement can be either:

- upon all parties' request, acknowledged (*constaté*) by the President of the court, which makes it immediately enforceable; or
- upon the debtor's request, sanctioned (*homologué*) by the Commercial Court if (i) the debtor is not insolvent at the time or if the rescheduling agreement has the effect of putting an end to the debtor's insolvency, (ii) if the rescheduling agreement effectively ensures that the company will survive as a going concern, and (iii) the agreement is not violating the interest of the non signatory creditors; the judgment does not make public the terms of the agreement but discloses the guarantees and priorities (*privilèges*) granted to the creditors. The judgment sanctioning the agreement will be made publicly available and will entail additional consequences, including: (i) new money privilege, i.e., priority of payment over all pre-petition and post-petition claims (except as regards certain post-proceeding employment claims and procedural costs) granted in favor of creditors who provide new money or goods or services designed to ensure continuation of the business of the distressed company (other than shareholders providing new equity), (ii) in the event of subsequent judicial reorganization proceedings or judicial liquidation proceedings, the date on which such condition first exists (*date de cessation des paiements*) cannot be set by the courts at a date earlier than the date of the approval of the agreement, except in case of fraud.

While the agreement (whether acknowledged, sanctioned or not) is being implemented, any individual proceedings by creditors with respect to the claims included in the agreement are suspended. Subject to having been sanctioned, creditors having extended new credits to the debtor are privileged in future proceedings. In case of breach of the agreement, any party to the agreement can petition the Court for its termination.

Court-administered Proceedings—Safeguard, Reorganization and Liquidation Proceedings

Court-administered proceedings may be initiated:

- in the event of safeguard proceedings, upon petition by the debtor only; and
- in the event of judicial reorganization or liquidation, upon petition by the debtor, any creditor or the public prosecutor (provided that no other proceedings have already been opened), or on the court's own initiative.

The debtor may file for safeguard proceedings at any time it is facing difficulties that it cannot overcome, as long as it is not insolvent. It is required to petition for the opening of judicial reorganization proceedings (if recovery is possible) or judicial liquidation proceedings (if recovery is manifestly not possible) within 45 days of becoming insolvent. If it fails to do so, its directors and officers are subject to civil liability.

On and after the time of the judgment opening the insolvency proceeding (except for fast-track safeguard proceedings and judicial liquidation proceedings), the court will determine an observation period (*période d'observation*). The initial duration of this period is 6 months. It may be renewed for a further 6 month period if necessary, and for a last period of 6 months in exceptional circumstances. During the observation period, a court-appointed administrator (*administrateur judiciaire* in the safeguard and reorganization proceedings and *liquidateur judiciaire* in the liquidation proceedings), whose name can be suggested by the debtor in safeguard proceedings, investigates the business of the company. In safeguard proceedings, the administrator's mission is limited to either supervising or assisting the debtor's management and assisting it in preparing a safeguard plan for the company. In judicial reorganization proceedings, the administrator's mission is usually to assist the management and to make proposals for the reorganization of the company, which proposals may include the sale of all or part of the company's business to a third party.

At the end of the observation period, if it considers that the company can survive as a going concern, the court will adopt a safeguard or reorganization plan which will entail a restructuring and/or rescheduling of debts (partial or total) and may entail the divestiture of some or all of the debtor's assets and businesses (a sale of the entire business is not possible in a safeguard plan). Unlike in safeguard proceedings, at the end of the observation period of judicial reorganization proceedings and, alternatively to a reorganization plan, the court may determine that all or part of the business should be sold to purchasers who have submitted bids. If the court adopts a safeguard plan, a reorganization plan or a plan for the sale of the business, it can set a time period during which the assets that it deems to be essential to the continued business of the debtor may not be sold without its consent. At any time during safeguard proceedings, the court may convert such proceedings into reorganization proceedings (i) upon its own initiative, if the debtor becomes in a state of cessation of payments, or (ii) at the debtors' request, if the approval of a safeguard plan is manifestly impossible and if the company would become insolvent should safeguard proceedings be closed. At any time during safeguard or reorganization proceedings, the court may convert such proceedings into liquidation proceedings if recovery of the debtor is manifestly impossible.

Creditors' Committees and Adoption of the Safeguard or Reorganization Plan

During the observation period, in the case of large companies (with more than 150 employees or turnover greater than EUR 20 million), two creditors' committees (one for credit institutions having a claim against the debtor and the other for suppliers having a claim that represents more than 3% of the total amount of the claims of all the debtor's suppliers) have to be established. To be eligible to vote, suppliers must have their claims set forth in the list provided by the debtor to the administrator as certified by the debtor's statutory auditor.

If there are any outstanding debt securities in the form of *obligations* (such as bonds or notes), a general meeting gathering all holders of such debt securities will be established whether or not there are different issuances and no matter what the applicable law of those obligations are (the "bondholders' general assembly"). The Notes constitute obligations for the purposes of a safeguard or reorganization proceeding.

These two committees and the bondholders' general assembly will be consulted on the safeguard or reorganization plan drafted by the debtor's management during the observation period.

In the first instance, the plan must be approved by each of the two creditors' committees. Each committee must announce whether its members approve or reject such plan within 30 days of its proposal by the company. Such approval requires the affirmative vote of creditors holding at least two-thirds of the amounts of the claims held by the members of such committee that participated in such vote.

Following the approval of the plan by the two creditors' committees, the plan will be submitted for approval to the bondholders' general meeting. The approval of the plan at such meeting requires the affirmative vote of bondholders representing at least two-thirds of the principal amount of the obligations held by creditors who voted in the bondholders' general meeting.

Following approval by the creditors' committees and the bondholders' general meeting, the plan has to be approved (*arrêté*) by the court. In considering such approval, the court has to verify that the interests of all creditors are sufficiently protected. Once approved by the relevant court, the safeguard or reorganization plan accepted by the committees and the bondholders' general meeting will be binding on all the members of the committees and all bondholders (including those who voted against the adoption of the plan). A safeguard or reorganization plan may include debt rescheduling and debt write-offs as well as debt-to-equity swaps.

In the event any of the committees or the bondholders' general meeting has refused to give its consent to the plan, the plan will not be approved by the court and a consultation of the creditors on an individual basis will take place. In those circumstances, the court has the right to impose unilateral debt deferrals for a maximum period of 10 years, but the court may not impose debt write-offs. The same rule applies in respect to creditors who are not members of the committees and who have not consented to the plan as adopted by the two committees and the bondholders' general meeting.

Accelerated Financial Safeguard

Pursuant to the banking and financial regulation law no. 2010-1249 dated October 22, 2010 (which came into force on March 1, 2011), a debtor in the course of conciliation proceedings may request commencement of Accelerated Financial Safeguard proceedings. The Accelerated Financial Safeguard procedure has been designed to "fast-track" purely financial difficulties of large companies (with more

than 150 employees or turnover greater than EUR 20 million). The procedure relates only to debt owed to financial institutions and bondholders (i.e., debts towards credit institutions which are eligible to creditor's committees and debts towards bondholders, which are eligible to the bondholders' general assembly described above), which are subjected to an automatic stay and dealt with under the safeguard plan. The company continues to trade normally while the procedure is pending, thus reducing significantly the impact of a Safeguard on operational companies. Other classes of creditors, such as trade creditors, are not affected by the procedure.

The Accelerated Financial Safeguard procedure is only available to companies which have failed to agree on a restructuring plan on a unanimous basis in the context of *conciliation* proceedings.

To be eligible to the Accelerated Financial Safeguard, the debtor must fulfill three conditions:

- as is the case for regular safeguard proceedings, the debtor must (i) not be in cessation of payments (*cessation de paiements*) and (ii) face difficulties which it is not in a position to overcome;
- the debtor must be subject to ongoing *conciliation* proceedings when it applies for the opening of the Accelerated Financial Safeguard; and
- in the context of conciliation proceedings, the debtor must have prepared a draft safeguard plan to protect its operations in the long run likely to be supported by financial creditors (i.e., credit institutions which are eligible to creditor's committees and bondholders, which are eligible to the bondholders' general assembly described above), representing a two-thirds majority of its financial indebtedness.

Where Accelerated Financial Safeguard is opened, the credit institution committee and the bondholders' general assembly are convened and are required to vote on the proposed safeguard plan within a minimum period of eight days of delivery of the proposed plan (as compared to a minimum period of 15 days for the regular Safeguard).

For their claim to be taken into account in the safeguard plan, creditors that are members of the committee of credit institutions and bondholders must file a proof of claim within two months from the publication of the judgment opening the proceedings as this is the case for regular safeguard proceedings. However, if creditor members of the committee of credit institutions and the bondholders' general assembly do not file their claims within the above-mentioned two-month period, then (i) if they were party to the conciliation proceeding, their claims will be assumed to have been filed according to the list of claims established by the debtor and certified by its statutory auditors, which has to be provided to the court at the opening of the proceedings and (ii) if they were not party to the conciliation proceedings, their claim will not be enforceable during the Accelerated Safeguard Proceeding and will therefore not be included in the plan.

The total duration of the Accelerated Financial Safeguard (i.e., the period between the judgment opening the Accelerated Financial Safeguard and the judgment adopting the plan) is one month, unless the Court decides to extend it by one additional month.

Status of Creditors during Safeguard, Accelerated Financial Safeguard, Judicial Reorganization or Judicial Liquidation Proceedings

Contractual provisions pursuant to which the opening of the proceedings constitutes an event of default are not enforceable against the debtor, while the court-appointed officer can unilaterally decide to terminate ongoing contracts (*contrats en cours*) which it believes the debtor will not be able to continue to perform. The court-appointed officer can, on the contrary, require that other parties to a contract continue to perform their obligations even though the debtor may have been in default, but on the condition that it fully performs its post-petition contractual obligations.

In addition, during the observation period:

- accrual of interest is suspended (except in respect of loans providing for a term of at least one
- year, or contracts providing for a payment which is differed by at least one year);
- the debtor is prohibited from paying debts contracted prior to the date of the court decision commencing the proceedings, subject to specified exceptions which essentially cover the set-off of related (connexes) debts and payments authorized by the bankruptcy judge to recover assets for which recovery is justified by the continued operation of the business; and

- creditors may not initiate or pursue any individual legal action against the debtor (or a guarantor of the debtor provided such guarantor is an individual) with respect to any claim arising prior to the court decision commencing the proceedings if the objective of such legal action is:
    - to obtain an order for payment of a sum of money by the debtor to the creditor (however, the creditor may require that a court determine the amount due);
    - to terminate or cancel a contract for non payment of amounts owed by the creditor; or
    - to take any action against the debtor, including to enforce the creditor's rights against any assets of the debtor.

In Accelerated Financial Safeguard, the above rules only apply to the creditors which are subject to the Accelerated Financial Safeguard (i.e., credit institutions which are eligible to creditors' committees and bondholders, which are eligible to the bondholders' general assembly described above).

As a general rule, creditors domiciled in France whose debts arose prior to the commencement of proceedings must file a claim with the creditors' representative within two months of the publication of the court decision in the *Bulletin Officiel des annonces civiles et commerciales*; this period is extended to four months for Creditors domiciled outside France. Creditors who have not submitted their claims during the relevant period are, except with respect to very limited exceptions, barred from receiving distributions made in connection with the proceedings. Employees are not subject to limitations and are preferential creditors under French law.

If the court adopts a safeguard plan or reorganization plan, claims of creditors included in the plan will be paid according to the terms of the plan. The court can also set a time period during which the assets that it deems to be essential to the continued business of the debtor may not be sold without its consent.

If the court adopts a plan for the sale of the business (*plan de cession*), the proceeds of the sale will be allocated for the repayment of the creditors according to the ranking of the claims. If the court decides to order the judicial liquidation of the debtor, the court will appoint a liquidator in charge of selling the assets of the company and settling the relevant debts in accordance with their ranking.

French insolvency law assigns priority to the payment of certain preferred creditors, including employees, officials appointed by the insolvency court, creditors who, as part of the sanctioned conciliation agreement, have provided new money or goods or services, post-petition creditors, certain secured creditors essentially in the event of liquidation proceedings and the French State (taxes and social charges). Such preferential creditors rank ahead of secured creditors (including secured creditors holding a first priority security). This ranking will only apply if the debtor company's business is sold to a third party by way of a sale plan or when the company's assets are sold in the framework of liquidation proceedings.

The "Hardening Period" in Judicial Reorganization and Liquidation Proceedings

The Court determines the date on which the debtor is deemed to have become insolvent. It can be any date within the 18 months preceding the date of the opening of the proceedings. This marks the beginning of the "hardening period" (*période suspecte*). Certain transactions entered into by the debtor during the hardening period are automatically void or voidable by the court.

Automatically void transactions include transactions or payments entered into during the suspect period that may constitute voluntary preferences for the benefit of some creditors to the detriment of other creditors. These include transfers of assets for no, or nominal, consideration, contracts under which the reciprocal obligations of the debtor significantly exceed those of the other party, payments of debts not due at the time of payment, payments made in a manner which is not commonly used in the ordinary course of business and security granted for debts (including a security granted to secure a guarantee obligation such as the guarantees) previously incurred and provisional measures, unless the right of attachment or seizure predates the date of cessation of payments.

Transactions voidable by the court include agreements entered into, payments made on accrued debts, transfers of assets for consideration and notices of attachments made to third parties (*avis à tiers détenteur*), seizures (*saisie-attribution*) and oppositions made during the hardening period, if the court determines that the creditor knew of the insolvency of the debtor.

Creditors' Liability

Pursuant to article L. 650-1 of the French Commercial Code (*Code de commerce*), where insolvency proceedings or safeguard have been commenced, creditors may be held liable for the losses suffered as a result of facilities granted to the debtor on the following grounds (and may only be held liable on those grounds): (i) fraud; (ii) wrongful interference with the management of the debtor; and (iii) the security or guarantees taken to support the facilities are disproportionate to such facilities. The date at which the proportion should be analyzed is the date when the security interests were granted, not the date when they were enforced. With regard to the extent by which the security interests must exceed the amount of the facility to be considered "out of proportion," this is a question which will be reviewed by French courts on a case-by-case basis and as to which no case law is available. In addition, any security or guarantees taken to support facilities in respect of which a creditor is found liable on any of these grounds can be cancelled or reduced by the court.

Fraudulent Conveyance

French law contains specific provisions dealing with fraudulent conveyance both in and outside of bankruptcy, the so-called *action paulienne* provisions. The *action paulienne* offers creditors protection against a decrease in their means of recovery. A legal act performed by a person (including, without limitation, an agreement pursuant to which it guarantees the performance of the obligations of a third party or agrees to provide or provides security for any of its or a third-party's obligations, enters into additional agreements benefiting from existing security and any other legal act having similar effect) can be challenged in or outside bankruptcy of the relevant person by the bankruptcy trustee or receiver in a bankruptcy of the relevant person or by any of the creditors of the relevant person outside bankruptcy, and may be declared unenforceable against third parties if: (i) the person performed such acts without an obligation to do so; (ii) the creditor concerned or, in the case of the person's bankruptcy, any creditor, was prejudiced in its means of recovery as a consequence of the act; and (iii) at the time the act was performed both the person and the counterparty to the transaction knew or should have known that one or more of its creditors (existing or future) would be prejudiced in their means of recovery, unless the act was entered into for no consideration (*à titre gratuit*) in which case such knowledge of the counterparty is not necessary for a successful challenge on grounds of fraudulent conveyance. If a court found that the issuance of the Notes, the grant of security interests, or the granting of a guarantee under the Note Guarantees involved a fraudulent conveyance that did not qualify for any defense under applicable law, then the issuance of the Notes, the granting of the security interests, or the granting of such guarantee could be declared unenforceable against third parties or declared unenforceable against the creditor that lodged the claim in relation to the relevant act. As a result of such successful challenges, noteholders may not enjoy the benefit of the Notes, the Note Guarantees or the security interests in the collateral and the value of any consideration that noteholders received with respect to the Notes, the security interests in the collateral or the Note Guarantees could also be subject to recovery from the noteholders and, possibly, from subsequent transferees. In addition, under such circumstances, noteholders might be held liable for any damages incurred by prejudiced creditors of the Issuers or the French Guarantors as a result of the fraudulent conveyance.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

French regulations relating to financial assistance prevent a French company from financing or assisting the acquisition of its own shares or the shares of its direct or indirect holding company, in particular by granting guarantees or security. As a result, a French company can neither guarantee nor grant security for the payment of the sums used for its acquisition or the acquisition of its direct or indirect holding company. However a guarantee or security may be given for any part of the debt which is not used to acquire or refinance the acquisition of the shares in the French company or in its direct or indirect holding company.

It is a general principle of French law that a company must use its assets to fulfil its own corporate object and for its own benefit. The granting of a guarantee or security must comply with this requirement, otherwise, it is likely to expose the directors to both civil sanctions (on the ground of mismanagement) or criminal sanctions (on the ground of misuse of corporate assets). Moreover, there exists a risk of the guarantee being nullified.

The criminal offence of misuse of corporate assets is provided for under Articles L.242-6 (for *sociétés anonymes*) and L.244-1 (for *sociétés par actions simplifiées*) of the French *Code de commerce*, and is characterized when directors have made an abusive utilisation of the assets or credit of the company to

their benefit or to the benefit of other companies in which they are interested. Sanctions range up to five years of imprisonment and/or fines of a maximum of €1,875,000 and may also apply to accomplices.

Whether the granting of a guarantee is in the corporate interest of the company is a question of fact. This is an area where a commercial view has to be taken by the management on the basis of all the existing circumstances. Whereas it is fairly easy to demonstrate that the granting of a guarantee by a holding company in respect of the obligations of its subsidiaries is in its corporate interest, it is not always so in the case of a company giving a guarantee in respect of the obligations of its direct or indirect parent companies (up-stream guarantee) or sister companies (cross-stream guarantee).

However, in the context of a group of companies, French case law has somewhat relaxed the conditions under which the criminal offence of misuse of corporate assets may be characterised. Provided that the following cumulative tests are met, an up-stream or cross-stream guarantee granted by a group member to a third-party lender to facilitate a financing entered into by another group member should not be considered as misuse of corporate assets:

(i) the concerned companies belong to the same group and that group is a coherent economic entity with real commercial and economic ties, as opposed to a mere conglomerate resulting only from the existence of common shareholdings or directors;

(ii) the granting of the guarantee is in the common interest of all the companies in the group (from an economic, labor or financial point of view) in accordance with a policy defined for the group as a whole, is not in the sole interest of the dominant company or its majority shareholders, and results in overall benefits (financial, industrial or otherwise) for the group as a whole rather than an individual benefit which each company in the group could have realised in isolation;

(iii) there is some consideration (not necessarily monetary) for the financial burden imposed on the guarantor, it does not upset the balance between the respective financial undertakings and commitments of the companies concerned, and most importantly, it is not in excess of the financial capabilities of the guarantor.

In light of the above mentioned criteria, each of the guarantees granted by a French Guarantor under the Note Guarantees will be subject to the following limitations:

- the obligations and liabilities of each French Guarantor under its Note Guarantees will not include any obligation or liability which, if incurred, would constitute prohibited financial assistance within the meaning of article L. 225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of articles L.242-6 or L.244-1 of the French *Code de commerce* or any other law or regulations having the same effect, as interpreted by French courts; and
- The obligations and liabilities of each French Guarantor under the Note Guarantees for the obligations under the Notes of any issuer which is not a subsidiary of such French Guarantor shall be limited, at any time to an amount equal to the aggregate of all amounts directly or indirectly made available under the Notes to such issuer to the extent directly or indirectly on-lent to such French Guarantor under intercompany loan agreements and outstanding at the date a payment is to be made by such French Guarantor under the Note Guarantees; it being specified that any payment made by a French Guarantor under the Note Guarantees in respect of the obligations of such issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Guarantor under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Guarantor shall reduce *pro tanto* the amount payable under the Note Guarantees.

Accordingly, the guarantees provided by each French Guarantor are limited to amounts, that represent the amount of debt that such French Guarantor can be deemed to have had refinanced or continued to have financed with the proceeds of the Notes through the intercompany loans or otherwise. If no proceeds made available under the Notes to the Issuers is made available to a French Guarantors or its subsidiary, then its guarantee under the Note Guarantees would be equal to zero.

The French law collateral will consist of French securities account pledge agreements granted on the shares of each of the French Guarantors to secure a parallel debt obligation created under the Intercreditor Agreement. The obligations secured will be the obligations under the Note Guarantees.

In addition, if a French company receives, in return for issuing the guarantee, an economic return that is less than the economic benefit such French company would obtain in a transaction entered into on an

arms'-length basis, the difference between the actual economic benefit and that in a comparable arms'-length transaction could be taxable under certain circumstances.

Under French law, a securities account pledge agreement may be enforced, to the extent the Secured Obligations (as defined therein) have become due and payable, at the option of the Security Trustee either (i) by self-attribution of the pledged asset (*pacte commissoire*), (ii) by means of a sale of the pledged shares in a public auction (the proceeds of the sale being paid to the secured creditors and any excess over the amount of the secured debt being paid to the legal owner of the collateral) or (iii) by judicial foreclosure (*attribution judiciaire*) of the pledged shares in favor of the secured creditor, following which the secured creditor becomes the legal owner of the pledged shares.

If the securities account pledge agreement contains a self-attribution clause (*pacte commissoire*), the pledged assets may, depending on the terms of the securities account pledge agreement be transferred to the secured creditors after a notice of enforcement is sent to the pledgor. An expert designated by the parties will be in charge of the valuation of the pledged assets. If the expert determines that the value of the collateral exceeds the amount of secured debt, the secured creditor may be required to pay the security provider an amount (*soulte*) equal to the difference between the value of the shares as determined by the expert and the amount of the secured debt. This is true regardless of the actual amount of proceeds ultimately received by the secured creditor from a subsequent sale of the pledged shares.

In a judicial foreclosure proceeding under option (iii), the same rules as set out above for a self-attribute would apply.

As a result, if the Security Trustee enforces the collateral pursuant to option (ii), the proceeds of the sale of the collateral may not be sufficient to satisfy the claims of all secured creditors. If the Security Trustee enforces the collateral pursuant to options (i) or (iii), there is a risk that the secured creditors may not be able to sell the collateral for its full value as determined by the court-appointed expert, yet still be required to pay the security provider, at the time the Security Trustee becomes the legal owner of the collateral, the difference between the value of the collateral and the amount of the secured debt if the collateral is determined by the court-appointed expert to have a greater value than the amount of the secured debt.

In addition, as there is currently no established concept of "trust" or "trustee" under French law, the precise nature, effect and enforceability of the duties, rights and powers of a security agent as trustee for noteholders in respect of security interests such as pledges are uncertain under French law.

A concept of fiduciary agent (*fiduciaire*) was recently incorporated in French law, but the effects of such incorporation on the recognition of foreign law-governed "trusts" are not yet clear.

ITALY

Insolvency and restructuring proceedings

One of the Guarantors is incorporated under the laws of Italy (the "**Italian Guarantor**"). Consequently, in the event of an insolvency of the Italian Guarantor, insolvency proceedings may be initiated in Italy. Such proceedings would then be governed by Italian law. Under certain circumstances, Italian law also allows bankruptcy proceedings to be opened in Italy over the assets of companies that are not established under Italian law. The following is a brief description of certain aspects of Italian insolvency law.

Insolvency and restructuring proceedings (*procedure concorsuali*) conducted under Italian law may take the form of, inter alia, a forced liquidation (*fallimento*), a composition with creditors (*concordato preventivo*), a recovery plan (*piano di risanamento*), a restructuring arrangement with creditors (*accordi di ristrutturazione dei debiti*) and, in the case of major companies, extraordinary administration (*ammnistrazione straordinaria delle grandi imprese in stato di insolvenza*). Insolvency proceedings are only applicable to businesses (*imprese commerciali*) run either by companies or by individuals that meet certain minimum dimension requirements.

Bankruptcy (*fallimento*)

Pursuant to the Royal Decree No. 267 of March 16, 1942 (the "**Italian Bankruptcy Law**"), a debtor can be declared bankrupt (*fallito*) (either by its own initiative or upon the initiative of any of its creditors or of the public prosecutor) if it is insolvent (i.e. it is unable to regularly pay its debts as they fall due). As a consequence of the declaration of bankruptcy the debtor loses control over all its assets and over the management of its business which is taken over by a court-appointed receiver (*curatore fallimentare*).

Each creditor must lodge his claims with the court in charge; the judge delegated by the court (*giudice delegato*) will decide which claims are approved. Each creditor may appeal (*opposizione*) the decision of the judge in front of the court. The sale of the borrower's assets is conducted in compliance with a liquidation program proposed by the receiver and approved by the creditors' committee.

Once the bankruptcy proceeding is commenced, no enforcement and interim proceedings can be taken or continued against the debtor over the assets included in the bankruptcy estate. Moreover, all action taken and proceedings already initiated by creditors are automatically stayed.

Composition with Creditors (concordato preventivo)

A debtor that is insolvent or in "financial distress" (i.e., facing financial distress which does not yet amount to insolvency) may file for *concordato preventivo* by submitting a plan for the composition with its creditors which may provide, *inter alia*, for:

- the restructuring of debts and the satisfaction of creditors in any manner even through assignments of debts, novations (*accollo*) or extraordinary transactions, including the issue of shares, quotas, bonds (also convertible into shares) or other financial instruments and securities;
- the appointment of a third-party (including the creditors) to which the activity of the debtor could be allocated;
- the division of the creditors into different classes; and/or
- different treatments for creditors belonging to different classes.

The above documentation may be filed with the competent court after the filing of the initial request, such date to be determined by the court between 60 and 180 days thereafter.

The court determines whether the proposal for the composition is admissible, in which case the court, *inter alia*, delegates a judge to supervise the procedure, appoints one or more judicial officers (*commissari giudiziali*) and calls a creditors' meeting for the approval of the composition plan proposed by the debtor.

In accordance with article 177 of the Italian Bankruptcy Law, the *concordato preventivo* is considered approved by the creditors if it is approved, at the creditors' meeting or within a specified term thereafter, by the majority of the creditors entitled to vote (and, in case of different classes of creditors, by the majority of the creditors within each class). The court may also approve the *concordato preventivo* (notwithstanding the circumstance that one or more classes denied their consent) if (i) the majority of classes has approved the *concordato preventivo* and (ii) the court deems that the interest of dissenting creditors would be adequately safeguarded through the *concordato preventivo* compared to other solutions.

The procedure of the composition with creditors (*concordato preventivo*) ends with a decree of the court by which the *concordato preventivo* is validated (*omologa*).

Recovery plans

Recovery plans are fully private arrangements which do not entail the involvement of the courts. A debtor which is facing a temporary situation of distress may attempt to restructure all or part of its financial indebtedness by means of a recovery plan (*piano di risanamento*). The recovery plan must be certified by an "expert" (appointed by the debtor) confirming that the plan is reasonable and suitable to allow the recovery of the company's indebtedness and achieve stabilisation of its financial situation. The expert must be enrolled in the register of auditors and fulfil certain other requirements.

Restructuring Arrangements with Creditors (accordi di ristrutturazione dei debiti)

Pursuant to new Article 182-bis of the Italian Bankruptcy Law, a debtor which is insolvent or in "financial distress" may file with the relevant court an agreement for the restructuring of its indebtedness with creditors representing at least 60% of the company's indebtedness, together with an assessment made by an expert on the feasibility of the agreement and, in particular, on its impact on the timely payment to those creditors which are not parties to it.

The agreement is published in the companies' register and is effective as of the day of its publication. Creditors may oppose the agreement within thirty days from the publication. The court will, after having settled the oppositions (if any), validate the agreement by issuing a decree (*omologa*), which may be appealed within 15 days.

Extraordinary Administration

Prodi-bis proceeding

Legislative Decree No. 270 of 1999 introduced a specific extraordinary administration proceeding, otherwise known as the "*Prodi-bis*," applicable to insolvencies of major companies (the "**Extraordinary Administration**").

The aim of the Prodi-bis procedure is to ensure continuation of the business operated by the debtor by either enabling the same to regain the ability to meet its obligations in the ordinary course of business by the end of the procedure or by transferring the business (on a going concern basis) to third parties.

To qualify for the Prodi-bis procedure, the company must have:

- employed at least 200 employees in the year before the procedure was commenced; and
- debts equal to at least two-thirds of the value of its assets as shown in its financial statements and two-thirds of income from sales and the provision of services during the last financial year.

Companies, belonging to the group of a company that qualifies for the Prodi-bis, may be submitted to the Prodi-bis, if certain conditions are met, also if they do not qualify per-se for the Prodi-bis.

The Prodi-bis procedure is divided into two main phases:

- following a petition, the court will determine whether the company meets the criteria for admission and, in particular whether the company is insolvent. If the company is insolvent, the court will issue a decision to that effect and appoint one or three judicial commissioner(s) (*commissiario giudiziale*) to evaluate whether the business has serious prospects for recovery (either through a sale of assets or a reorganization of its business) and to report back to the court within 30 days. Following receipt of the report of the judicial receiver and an opinion from the Italian Economic Development Minister (the "**Ministry**"), the court has a further 30 days to decide whether to admit the company to the Extraordinary Administration procedure or place it into liquidation;
- once the Extraordinary Administration procedure has been approved, the extraordinary commissioner(s) appointed by the Ministry shall prepare a plan, to be approved by the Ministry, for either: (i) a full asset liquidation by means of the sale of the company businesses as going concerns within one year (unless extended by the Ministry); or (ii) a reorganization of the business leading to the economic and financial recovery of the company or group within two years (unless extended by the Ministry).

Once the Extraordinary Administration procedure has been approved, the principal effects are as follows:

- the company continues to trade and debts incurred during the Extraordinary Administration for the continuation of the business of the company are treated as priority claims which rank ahead of the claims of creditors whose rights accrued prior to the commencement of the Extraordinary Administration procedure and may be paid as they fall due;
- the Extraordinary Commissioner is entitled to terminate pending contracts to which the company is a party.

Furthermore in the context of the Prodi-bis a debt restructuring plan (*concordato*) may be authorized by the Ministry.

Marzano Proceeding

Law Decree No. 347 of December 23, 2003, converted into law by Italian law No. 39 of February 18, 2004, (the "**Marzano Decree**") introduced a specific extraordinary set of rules for companies meeting certain dimension requirements (the "**Marzano Procedure**"). The Marzano Decree is complementary to the Prodi-bis, except as otherwise provided in the Marzano Decree, the provisions of the Prodi-bis shall apply.

The Marzano Decree only applies to insolvent companies which, on a consolidated basis, have at least 500 employees in the year before the procedure was commenced and at least €300 million of debt.

Under the Marzano Decree, the decision whether to open the Marzano Procedure is taken by the Ministry that, upon request of the debtor (who at the same time must file with the relevant court an application for the declaration of its insolvency), assesses whether the relevant requirements are met and if such requirements are met appoints the extraordinary commissioner(s). The extraordinary commissioner(s)

immediately becomes responsible for the management of the company. The court contemporaneously decides on the insolvency of the company.

The extraordinary commissioner(s) has 180 days (or 270 days if the Ministry so agrees) to submit a disposal plan or recovery plan. The restructuring through the disposal plan or the recovery plan must be completed within, respectively, one year (extendable to two years) and two years. If no disposal or recovery is approved by the Ministry, the court will declare the company bankrupt and open bankruptcy proceedings.

Claw-Back and Ineffectiveness of Payments, guarantees and collateral interests in Bankruptcy

Pursuant to the Italian Bankruptcy Law if a company is declared bankrupt, the relevant receiver (*curatore fallimentare*) is entitled to "restore" the economic and financial condition of the bankruptcy estate to its pre-insolvency situation, by setting aside transactions and/or through claw-back. These powers are limited to certain transactions or agreements entered into in the six month, one year period or two year prior to the declaration of bankruptcy.

Pursuant to article 67, paragraph 1, of the Italian Bankruptcy Law, the receiver may ask the court in charge to revoke or claw-back, among other things, (a) pledges, collateral interests and mortgages voluntarily granted by the insolvent party, during the one year period prior to the declaration of bankruptcy, in respect of pre-existing debts, where such pre existing debts were not yet due, and (b) pledges, collateral interests and mortgages judicially imposed or voluntarily granted, during the six month period prior to the declaration of bankruptcy, in respect of matured debts, unless the secured creditor gives evidence that it was unaware of the state of insolvency of the insolvent party.

Pursuant to article 67, paragraph 2, of the Bankruptcy Law, the receiver may ask the court in charge to revoke or claw-back, *inter alia*, a collateral granted simultaneously with the creation of secured obligations during the six month period prior to the declaration of bankruptcy.

Pursuant to article 65 of the Bankruptcy Law, any payment made in the two year prior to the declaration of bankruptcy by an insolvent company for claims which become due on the day of bankruptcy or thereafter (i.e. a prepayment or a payment following acceleration) are deemed ineffective (*ineffecaci*). It is uncertain whether this principle applies to payments under a guarantee.

On the other hand, article 67 provides that payments of debts that are due and payable may only be clawed back if:

- the receiver of the bankruptcy estate demonstrates that the creditor was aware of the debtor's insolvency; and
- the prepayment was made in the six month period prior to the declaration of bankruptcy.

Exemption from Claw-Back

Pursuant to Article 67, paragraph 3, d) of the Italian Bankruptcy Law, all payments made by the debtor in implementation of the recovery plan are not subject to insolvency claw-back.

Pursuant to Article 67, paragraph 3, e) of the Italian Bankruptcy Law, all payments made by the debtor in implementation of the composition with creditors (*concordato preventivo*) and of the restructuring arrangements with creditors (*accordi di ristrutturazione dei debiti omologati*) are not subject to insolvency claw-back.

Enforceability of subordination arrangements

Under Italian law, it is to be pointed out that some uncertainty exists as to the effectiveness of subordination arrangements in insolvency proceedings as the question of enforceability of subordination clauses in the context of insolvency proceedings has not yet been tested by an Italian court.

Exemption from criminal liabilities

Pursuant to Article 217 *bis* of the Italian Bankruptcy Law, all payments made in implementation of composition with creditors (*concordato preventivo*), validated restructuring arrangements (*accordi di ristrutturazione dei debiti omologati*) and recovery plans and payments authorized by the court in accordance with Article 182 *quinquies* of the Italian Bankruptcy Law are exempted from criminal liabilities arising from (i) the so called "preferential bankruptcy" (*bancarotta preferenziale*) provided under

Article 216, paragraph 3 of the Italian Bankruptcy Law and (ii) simple bankruptcy (*bancarotta semplice*) provided under Article 217 of the Italian Bankruptcy Law.

Limitations on Validity and Enforceability of the Guarantees and the Security Interests

The obligations under the guarantee of the Italian Guarantor are subject to compliance with Italian rules on corporate benefit, corporate authorization and certain other Italian mandatory provisions. If the Guarantee is being provided in the context of an acquisition, group reorganization or restructuring, financial assistance issues may also be triggered.

An Italian company granting a guarantee must receive a real and adequate benefit in exchange for the guarantee. The concept of real and adequate benefit is not defined in the applicable legislation and is determined on a case by case basis. In particular, in case of upstream and cross-stream guarantees for the financial obligations of group companies, examples include financial consideration in the form of a guarantee fee or access to cash flows in the form of intercompany loans from other members of the group. The general rule is that the risk assumed by the Italian Guarantor must not be disproportionate to the economic benefit to the Italian Guarantor. Absence of a real and adequate benefit could render the Guarantee or the collateral *ultra vires* and potentially affected by conflict of interest. Thus, civil liabilities may be imposed on the directors of the Italian Guarantor if it is assessed that they did not act in the best interest of the Italian Guarantor and that the acts they carried out do not fall within the corporate purpose of the Italian Guarantor. The lack of corporate benefit could also result in the imposition of civil liabilities on those companies or persons ultimately exercising control over the Italian Guarantor or having knowingly received an advantage or profit from such improper control. Moreover, the Guarantee could be declared null and void if the lack of corporate benefit was known or presumed to be known by the third party and such third party acted intentionally against the interest of the Italian Guarantor. In order to enable Italian companies to grant upstream and cross-stream guarantees to secure liabilities of third parties, customary "limitation language" is usually inserted in indentures, credit agreements and guarantees for the purpose of, *inter alia*, limiting the amount guaranteed by a guarantor to an amount that is proportionate for the direct or indirect economic benefit to such guarantor derived from the transaction.

The rules on corporate benefit apply equally to collateral provided by subsidiaries in relation to the financial obligations of their parent or sister companies. As to corporate authorizations and financial assistance, the granting of a guarantee or collateral by an Italian company must be permitted by the by-laws (*statuto*) of the Italian company and cannot include any liability which would result in unlawful financial assistance within the meaning of article 2358 of the Italian Civil Code (and the corresponding provision applicable to Italian limited liability companies (such as the Italian Guarantor), as set out under article 2474 of the Italian Civil Code) pursuant to which, subject to specific exceptions, it is unlawful for a company to give financial assistance (whether by means of loans, collateral, guarantees or otherwise) for the acquisition of its own shares by a third party.

In the light of the above, each of the guarantees granted by the Italian Guarantor under each of the Notes Guarantees shall be limited, at any time, to the lower of (i) an amount equal to the aggregate of all amounts borrowed under each of the Notes to the extent on-lent to the Italian Guarantor under intercompany loan agreements, and outstanding at the date a payment is to be made by the Italian Guarantor under each of the Notes Guarantees, and which the Italian Guarantor is entitled to set-off against its claims of recourse or subrogation ("*regresso*" or "*surrogazione*") arising as a result of any payment made by the Italian Guarantor under the guarantee given under each of the Notes Guarantees, and (ii) any amount already paid by the Italian Guarantor in its capacity as Guarantor under the Senior Secured Facilities Agreement, and **provided further that**, in no event the obligations and liabilities of the Italian Guarantor under each of the Notes Guarantees shall include the obligation of the Italian Guarantor to guarantee financial indebtedness which was incurred, directly or indirectly, in full or in part, to purchase the shares of the Italian Guarantor and which would therefore constitute the provision of financial assistance within the meaning of article 2358 and/or article 2474, as the case may be, of the Italian Civil Code and/or any other law or regulation having the same effect, as interpreted by Italian courts.

Accordingly, the guarantees provided by the Italian Guarantor under each of the Notes Guarantees are, in all circumstances, limited to the amounts of intercompany debt incurred by the Italian Guarantor and financed with the proceeds of each of the Notes. If no proceeds made available under each of the Notes to the Issuers is made available to the Italian Guarantor, then the guarantees granted by the Italian Guarantor under each of the Notes Guarantees would be equal to zero.

Upon certain conditions, the granting of guarantees may considered to be a restricted financial activity within the meaning of Article 106 of the Legislative Decree No. 385 of September 1, 1993 (the "**Italian Banking Act**"), whose exercise is exclusively demanded to banks and authorised financial intermediaries. Non compliance with the provisions of the Italian Banking Act may, inter alia, entail the Guarantee being considered null and void. However, in the framework of a wider reorganisation of financial intermediary services in Italy and while waiting for implementing regulations of the recently amended Article 106 of the Italian Banking Act, the Legislative Decree No. 141 of August 13, 2010 states that the issuance of guarantees by a company for the obligations of another company which is member of the same group does not qualify as a restricted financial activity. For the above purposes, "group" includes controlling and controlled companies within the meaning of Article 2359 of the Italian Civil Code as well as companies which are under the control of the same entity. As a result of the above described rules, subject to the Italian Guarantor and the guaranteed entity being part of the same group of companies within the above meaning, the provision of the Guarantee would not amount to a restricted financial activity.

In addition, under Article 1938 of the Italian Civil Code, if a personal guarantee is issued to guarantee conditional or future obligations, the guarantee must be limited to a maximum amount. Such maximum amount should be expressly identified at the outset and expressed in figures (either in the text of the guarantee or by reference to a separate document, such as the relevant Indenture).

NOTICE TO INVESTORS

You are advised to consult legal counsel prior to making any offer, resale, pledge or other transfer of any of the Notes offered hereby.

The Notes have not been and will not be registered under the Securities Act, or any state securities laws, and, unless so registered, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. Accordingly, the Notes offered hereby are being offered and sold only to qualified institutional buyers (as defined in Rule 144A) in reliance on Rule 144A and to non-U.S. persons in offshore transactions in reliance on Regulation S.

We have not registered and will not register the Notes under the Securities Act and, therefore, the Notes may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, the Issuers are offering and selling the Notes to the initial purchaser for re-offer and resale only:

- in the United States to "qualified institutional buyers," commonly referred to as "QIBs" as defined in Rule 144A in compliance with Rule 144A; and
- to non-U.S. persons outside the United States in accordance with Regulation S.

We use the terms "offshore transaction," "U.S. person" and "United States" with the meanings given to them in Regulation S.

Each purchaser of Notes, by its acceptance thereof, will be deemed to have acknowledged, represented to and agreed with the Issuers and the initial purchaser as follows:

(1) You understand and acknowledge that the Notes and the Note Guarantees have not been registered under the Securities Act or any other applicable securities laws and that the Notes are being offered for resale in transactions not requiring registration under the Securities Act or any other securities laws, including sales pursuant to Rule 144A, and, unless so registered, may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities laws, pursuant to an exemption therefrom or in any transaction not subject thereto and in each case in compliance with the conditions for transfer set forth in paragraphs (4) and (5) below.

(2) You are not our "affiliate" (as defined in Rule 144A) or acting on our behalf and you are either:

  (a) a QIB, within the meaning of Rule 144A and are aware that any sale of these Notes to you will be made in reliance on Rule 144A, and such acquisition will be for your own account or for the account of another QIB; or

  (b) you are a non-U.S. person and are purchasing the Notes in an offshore transaction in accordance with Regulation S.

(3) You acknowledge that none of the Issuers, the Guarantors, or the initial purchaser, nor any person representing any of them, has made any representation to you with respect to us or the offer or sale of any of the Notes, other than the information contained in this offering memorandum, which offering memorandum has been delivered to you and upon which you are relying in making your investment decision with respect to the Notes. You acknowledge that neither the initial purchaser nor any person representing the initial purchaser make any representation or warranty as to the accuracy or completeness of this offering memorandum. You have had access to such financial and other information concerning us and the Notes as you have deemed necessary in connection with your decision to purchase any of the Notes, including an opportunity to ask questions of, and request information from, us and the initial purchaser.

(4) You are purchasing the Notes for your own account, or for one or more investor accounts for which you are acting as a fiduciary or agent, in each case for investment, and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act or any state securities laws, subject to any requirement of law that the disposition of your property or the property of such investor account or accounts be at all times within its or their control and subject to your or their ability to resell such Notes pursuant to Rule 144A, Regulation S or any other exemption from registration available under the Securities Act.

(5) You agree on your own behalf and on behalf of any investor account for which you are purchasing the Notes, and each subsequent holder of the Notes by its acceptance thereof will be deemed to agree, to offer, sell or otherwise transfer such Notes prior to the date (the "**Resale Restriction Termination Date**") that is one year (in the case of 144A Global Notes) after the latest of the closing date, the closing date of the issuance of any additional Notes and the last date on which the Issuer or any of its affiliates was the owner of the Notes or any predecessor of the Notes or 40 days (in the case of Regulation S Global Notes) after the later of the closing date and the date on which the Notes are first offered to persons other than distributors (as defined in Rule 902 of Regulation S) in reliance on Regulation S, only (i) to the Issuer, (ii) pursuant to a registration statement that has been declared effective under the Securities Act, (iii) for so long as the Notes are eligible pursuant to Rule 144A to a person you reasonably believe is a QIB that purchases for its own account or for the account of a QIB to whom notice is given that the transfer is being made in reliance on Rule 144A, (iv) pursuant to offers and sales to non-U.S. persons that occur outside the United States in compliance with Regulation S or (v) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and to compliance with any applicable state securities laws, and any applicable local laws and regulations, and further subject to the Issuer's and the Trustee's rights prior to any such offer, sale or transfer (I) pursuant to clauses (iv) and (v) to require the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them and (II) in each of the foregoing cases, to require that a certificate of transfer in the form appearing on the reverse of the security is completed and delivered by the transferor to the Trustee. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date.

Each purchaser acknowledges that each Note will contain a legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "**RESALE RESTRICTION TERMINATION DATE**") WHICH IS IN THE CASE OF RULE 144A NOTES: ONE YEAR AFTER THE LATEST OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), IN THE CSE OF REGULATION S NOTES: 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S, ONLY (A) TO THE ISSUER, THE GUARANTORS OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE U.S. SECURITIES ACT ("**RULE 144A**"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION

REQUIREMENTS OF THE U.S. SECURITIES ACT, SUBJECT IN EACH OF THE FOREGOING CASES TO ANY REQUIREMENT OF LAW THAT THE DISPOSITION OF ITS PROPERTY OR THE PROPERTY OF SUCH INVESTOR ACCOUNT OR ACCOUNTS BE AT ALL TIMES WITHIN ITS OR THEIR CONTROL AND TO COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, AND ANY APPLICABLE LOCAL LAWS AND REGULATIONS AND FURTHER SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER (I) PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, (II) IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND (III) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

If the Notes are issued with OID, the Notes will bear the following additional legend:

"THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). THE ISSUE PRICE IS , THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IS , THE ISSUE DATE IS AND THE YIELD TO MATURITY IS ."

If you purchase Notes, you will also be deemed to acknowledge that the foregoing restrictions apply to holders of beneficial interests in these Notes as well as to holders of these Notes.

(6) You agree that you will give to each person to whom you transfer the Notes notice of any restrictions on the transfer of such Notes.

(7) You acknowledge that until 40 days after the commencement of the offering, any offer or sale of the Notes within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with Rule 144A.

(8) You acknowledge that the Trustee will not be required to accept for registration or transfer any Notes acquired by you except upon presentation of evidence satisfactory to us and the Trustee that the restrictions set forth therein have been complied with.

(9) You acknowledge that we, the initial purchaser and others will rely upon the truth and accuracy of your acknowledgements, representations, warranties and agreements and agree that if any of the acknowledgements, representations, warranties and agreements deemed to have been made by your purchase of the Notes are no longer accurate, you shall promptly notify the initial purchaser. If you are acquiring any Notes as a fiduciary or agent for one or more investor accounts, you represent that you have sole investment discretion with respect to each such investor account and that you have full power to make the foregoing acknowledgements, representations and agreements on behalf of each such investor account.

(10) You understand that no action has been taken in any jurisdiction (including the United States) by the Issuer or the initial purchaser that would result in a public offering of the Notes or the possession, circulation or distribution of this offering memorandum or any other material relating to the Issuer or the Notes in any jurisdiction where action for such purpose is required. Consequently, any transfer of the Notes will be subject to the selling restrictions set forth under "*Plan of Distribution*."

ERISA considerations

Any purchaser, including, without limitation, any fiduciary purchasing on behalf of (i) an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to the provisions of part 4 of subtitle B of Title I of ERISA or a plan to which Section 4975 of the Code applies (each, a "**Plan**"), (ii) an entity whose underlying assets include "plan assets" by reason of a Plan's investment in such entity (each, a "**Benefit Plan Investor**"), or (iii) a governmental, church or non-U.S. plan which is subject to any federal, state, local, non-U.S. or other laws or regulations that are substantially similar to the fiduciary responsibility or prohibited transaction

provisions of ERISA or the provisions of Section 4975 of the Code ("**Similar Laws**"), transferee, or holder of the Notes will be deemed to have represented, in its corporate and fiduciary capacity, that:

(a) With respect to the acquisition, holding and disposition of Notes, or any interest therein, (1) either (A) it is not, and it is not acting on behalf of (and for so long as it holds such Notes or any interest therein will not be, and will not be acting on behalf of), a Plan, a Benefit Plan Investor, or a governmental, church or non-U.S. plan which is subject to Similar Laws, and no part of the assets used or to be used by it to acquire or hold such Notes or any interest therein constitutes the assets of any such Plan, Benefit Plan Investor or governmental, church or non-U.S. plan which is subject to Similar Laws, or (B)(i) its acquisition, holding and disposition of such Notes or any interest therein does not and will not constitute or otherwise result in a non-exempt prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code (or, in the case of a governmental, church or non-U.S. plan, a non-exempt violation of any Similar Laws); and (ii) none of the Issuer, the Guarantors, the initial purchaser, Trustee or any of their respective affiliates, is a sponsor of, or a fiduciary (within the meaning of Section 3(21) of ERISA or, with respect to a governmental, church or non-U.S. plan, any definition of "fiduciary" under Similar Laws) with respect to, the acquirer, transferee or holder in connection with any acquisition or holding of such Notes, or as a result of any exercise by the Issuer or any of its affiliates of any rights in connection with such Notes, and no advice provided by the Issuer or any of their affiliates has formed a primary basis for any investment or other decision by or on behalf of the acquirer or holder in connection with such Notes and the transactions contemplated with respect to such Notes; and (2) it will not sell or otherwise transfer such Notes or any interest therein otherwise than to a purchaser or transferee that is deemed (or if required by the applicable indenture, certified) to make these same representations, warranties and agreements with respect to its acquisition, holding and disposition of such Notes or any interest therein.

(b) The acquirer and any fiduciary causing it to acquire an interest in any Notes agrees to indemnify and hold harmless the Issuer, the Guarantors, the initial purchaser, the Trustee, and their respective affiliates, from and against any cost, damage or loss incurred by any of them as a result of any of the foregoing representations and agreements being or becoming false.

(c) Any purported acquisition or transfer of any Note or beneficial interest therein to an acquirer or transferee that does not comply with the requirements of the above provisions shall be null and void ab initio.

PLAN OF DISTRIBUTION

The Senior Secured Notes Issuer has agreed to sell to the initial purchasers, and the initial purchasers have agreed to purchase from the Senior Secured Notes Issuer, the entire principal amount of the Senior Secured Notes. In addition, the Senior Subordinated Notes Issuer has agreed to sell to the initial purchasers, and the initial purchasers have agreed to purchase from the Senior Subordinated Notes Issuer, the entire principal amount of the Senior Subordinated Notes. Each of the sales will be made pursuant to a purchase agreement among the Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer, the Guarantors and the initial purchasers to be dated the date of the final offering memorandum (the "**Purchase Agreement**").

The obligations of the initial purchasers under the Purchase Agreement, including their agreement to purchase the Senior Secured Notes and the Senior Subordinated Notes from the Senior Secured Notes Issuer and the Senior Subordinated Notes Issuer, respectively, are several and not joint. The Purchase Agreement provides that the initial purchasers will purchase all the Notes if they purchase any of them.

The initial purchasers initially propose to offer the Notes for resale at the respective issue prices that appear on the cover of this offering memorandum. The initial purchasers may change the prices at which the Notes are offered and any other selling terms at any time without notice. The initial purchasers may offer and sell the Notes through certain of their affiliates, including in respect of sales into the United States.

The Purchase Agreement provides that the obligations of the initial purchasers to pay for and accept delivery of the Senior Secured Notes and the Senior Subordinated Notes are subject to, among other conditions, the delivery of certain legal opinions by their counsel and our counsel. The Purchase Agreement also provides that, if an initial purchaser defaults, the purchase commitments of the non-defaulting initial purchasers may be increased or, in some cases, the offering may be terminated.

The Purchase Agreement provides that we will indemnify and hold harmless the initial purchasers against certain liabilities, including liabilities under the Securities Act, and will contribute to payments that the initial purchasers may be required to make in respect thereof. We have agreed, subject to certain limited exceptions, that during the period from the date the Purchase Agreement is executed through and including the date that is 120 days after the date the Purchase Agreement is executed, to not, and to cause our subsidiaries and our other controlled affiliates to not, without having received the prior written consent provided for in the Purchase Agreement, offer, sell, contract to sell or otherwise dispose of any debt (including any debt securities, loans or other debt instruments) issued or guaranteed by us or any of the Guarantors and having a tenor of more than one year.

The Notes and the Note Guarantees have not been and will not be registered under the Securities Act and may not be offered or sold within the United States except to qualified institutional buyers in reliance on Rule 144A and to certain persons in offshore transactions in reliance on Regulation S. Until 40 days after the later of (i) the commencement of this offering and (ii) the issue date of the Notes, an offer or sale of the Notes initially sold in reliance on Regulation S within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with Rule 144A under the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S. Resales of the Notes are restricted as described under "*Important Information About This Offering Memorandum*" and "*Notice to Investors*."

Each initial purchaser has represented, warranted and agreed that it:

- has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which section 21(1) of the FSMA does not apply to the Issuers or any Guarantor; and
- has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

No action has been taken in any jurisdiction, including the United States and the United Kingdom, by us or the initial purchasers that would permit a public offering of the Notes or the possession, circulation or distribution of this offering memorandum or any other material relating to us or the Notes in any jurisdiction where action for this purpose is required. Accordingly, the Notes may not be offered or sold, directly or indirectly, and neither this offering memorandum nor any other offering material or

advertisements in connection with the Notes may be distributed or published, in or from any country or jurisdiction, except in compliance with any applicable rules and regulations of any such country or jurisdiction. This offering memorandum does not constitute an offer to sell or a solicitation of an offer to purchase in any jurisdiction where such offer or solicitation would be unlawful. Persons into whose possession this offering memorandum comes are advised to inform themselves about and to observe any restrictions relating to the offering of the Notes, the distribution of this offering memorandum and resale of the Notes. See "*Notice to Investors*."

The Senior Secured Notes Issuer, the Senior Subordinated Notes Issuer and the Guarantors have also agreed that they will not at any time offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any securities under circumstances in which such offer, sale, pledge, contract or disposition would cause the exemption afforded by Section 4(2) of the Securities Act or the safe harbors of Rule 144A and Regulation S to cease to be applicable to the offer and sale of the Notes.

The Notes are a new issue of securities for which there currently is no market. The Issuers intend to apply, through their listing agent, to list the Notes on the official list of the Luxembourg Stock Exchange and trade the Notes on the Euro MTF Market, however, the Issuers cannot assure you that such listing will be obtained or, if obtained, maintained.

The initial purchasers have advised us that they intend to make a market in the Notes as permitted by applicable law. The initial purchasers are not obligated, however, to make a market in the Notes, and any market making activity may be discontinued at any time at the sole discretion of the initial purchasers without notice. In addition, any such market making activity will be subject to the limits imposed by the Securities Act and the U.S. Exchange Act. Accordingly, we cannot assure you that any market for the Notes will develop, that it will be liquid if it does develop, or that you will be able to sell any Notes at a particular time or at a price which will be favorable to you. See "*Risk Factors—Risks Related to the Notes—There may not be an active trading market for the Notes, in which case your ability to sell the Notes may be limited*."

We expect that delivery of the Notes will be made against payment on the Notes on or about the date specified on the cover page of this offering memorandum, which will be business days (as such term is used for purposes of Rule 15c6-1 of the U.S. Exchange Act) following the date of pricing of the Notes (this settlement cycle is being referred to as "T + "). Under Rule 15c6-1 of the U.S. Exchange Act, trades in the secondary market generally are required to settle in three business days unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes on the date of this offering memorandum or the following business days will be required to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the Notes who wish to make such trades should consult their own advisors.

The initial purchasers may engage in over-allotment, stabilizing transactions, covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which creates a short position for the relevant initial purchaser. Stabilizing transactions permit bidders to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Covering transactions involve purchases of the Notes in the open market after the distribution has been completed in order to cover short positions. Penalty bids permit the initial purchasers to reclaim a selling concession from a broker or dealer when the Notes originally sold by that broker or dealer are purchased in a stabilizing or covering transaction to cover short positions.

In connection with the offering, the Stabilizing Manager, or a person acting on its behalf, may engage in transactions that stabilize, maintain or otherwise affect the price of the Notes. Specifically, the Stabilizing Manager may bid for and purchase Notes in the open markets for the purpose of pegging, fixing or maintaining the price of the Notes. The Stabilizing Manager may also over-allot the offering, creating a syndicate short position, and may bid for and purchase Notes in the open market to cover the syndicate short position. In addition, the Stabilizing Manager may bid for and purchase Notes in market making transactions as permitted by applicable laws and regulations and impose penalty bids. These activities may stabilize or maintain the respective market price of the Notes above market levels that may otherwise prevail. The Stabilizing Manager is not required to engage in these activities, and may end these activities at any time. Accordingly, no assurance can be given as to the liquidity of, or trading markets for, the Notes. See "*Risk factors—Risks related to the Notes—There may not be an active trading market for the Notes, in which case your ability to sell the Notes may be limited*."

These stabilizing transactions, covering transactions and penalty bids may cause the price of the Notes to be higher than it would otherwise be in the absence of these transactions. These transactions may begin on or after the date on which adequate public disclosure of the terms of the offering of the Notes is made and, if commenced, may be discontinued at any time at the sole discretion of the initial purchasers. If these activities are commenced, they must end no later than the earlier of 30 days after the date of issuance of the Notes and 60 days after the date of the allotment of the Notes. These transactions may be effected in the over-the-counter market or otherwise.

The initial purchasers and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the initial purchasers or their respective affiliates from time to time have provided in the past and may provide in the future investment banking, financial advisory and commercial banking services to us and our affiliates in the ordinary course of business, for which they have received or may receive customary fees and commissions.The initial purchasers or their affiliates may also receive allocations of the Notes.

A portion of the proceeds of the offering of Notes will be used to repay our lenders under the Existing Senior Secured Facilities Agreement and to break part of our existing swap agreements. Certain of the initial purchasers or their affiliates are lenders under our Existing Senior Secured Facilities Agreement or are our current hedge counterparties and, as such, such parties may receive a portion of the proceeds of the offering of the Notes. In addition, an affiliate of Credit Agricole, one of the initial purchasers, is a lender of Thermie Serres, our unrestricted, partially-owned and indirect subsidiary in Greece. The initial purchasers or their affiliates will be lenders, hedging providers, arrangers or agents in respect of the Senior Secured Facilities. In connection therewith, such initial purchasers or affiliates will receive customary fees and commissions. Certain of the initial purchasers or their affiliates may be lenders of or hold positions in funds managed by Macquarie or its affiliates or provide financial advisory and hedging arrangements to Macquarie or its affiliates.

In the ordinary course of their business activities, the initial purchasers and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and instruments of ours or our affiliates. If the initial purchasers or their affiliates have a lending relationship with us, they routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, the initial purchasers and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the Notes offered hereby. Any such short positions could adversely affect future trading prices of the Notes offered hereby. The initial purchasers and their affiliates may also make investment recommendations and publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and short positions in such securities and instruments.

SERVICE OF PROCESS AND ENFORCEMENT OF CIVIL LIABILITIES

The Issuers are incorporated under the laws of Germany. Our directors and executive officers live outside the United States. The assets of our directors and executive officers and virtually of our assets are located outside the United States. As a result, although we have appointed an agent for service of process under the Indentures governing the Notes, it may be difficult for you to serve process on those persons or us in the United States or to enforce judgments obtained in U.S. courts against them or us based on civil liability provisions of the securities laws of the United States.

We have been advised by our German counsel that there is doubt as to the enforceability in Germany of civil liabilities based on the state securities laws of the United States, either in an original action or in an action to enforce a judgment obtained in U.S. courts. The United States and Germany currently do not have a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitration awards, in civil and commercial matters. Consequently, a final judgment for payment given by any court in the United States, whether or not predicated solely upon U.S. securities laws, would not automatically be enforceable in Germany. A final judgment by a U.S. court, however, may be recognized and enforced in Germany in an action before a court of competent jurisdiction in accordance with the proceedings set forth by the German Code of Civil Procedure (*Zivilprozessordnung*). In such an action, a German court generally will not reinvestigate the merits of the original matter decided by a U.S. court, except as noted below. The recognition and enforcement of the U.S. judgment by a German court is conditional upon a number of factors, including the following:

- the judgment being final under U.S. law;
- the U.S. court having had jurisdiction over the original proceeding under German law;
- the defendant having had the chance to defend herself or himself against an unduly or untimely served complaint;
- the judgment of the U.S. court being consistent with the judgment of a German court or a recognized judgment of a foreign court handed down before the judgment of the U.S. court;
- the judgment of the U.S. court being consistent with the procedure of a matter pending before a German court, provided that such matter was pending before a German court before the U.S. court entered its judgment;
- the enforcement of the judgment by the U.S. court being compatible with German public policy, including the fundamental principles of German law, and in particular the civil liberties (*Grundrechte*) guaranteed by virtue of the German Constitution (*Grundgesetz*); and
- generally, the guarantee of reciprocity.

Subject to the foregoing, purchasers of securities may be able to enforce judgments in civil and commercial matters obtained from U.S. courts in Germany. We cannot, however, assure you that attempts to enforce judgments in Germany will be successful.

German courts usually deny the recognition and enforcement of punitive damages. Moreover, a German court may reduce the amount of damages granted by a U.S. court and recognize e damages only to the extent that they are necessary to compensate actual losses or damages.

German civil procedure differs substantially from U.S. civil procedure in a number of respects. In as far as the production of evidence is concerned, U.S. law and the laws of several other jurisdictions based on common law provide for pre-trial discovery, a process by which parties to the proceedings may prior to trial compel the production of documents by adverse or third parties and the deposition of witnesses. Evidence obtained in this manner may be decisive in the outcome of any proceeding. No equivalent pre-trial discovery process exists under German law.

AUSTRIA

Under Austrian law, agreements and contracts, such as the Notes or the Indentures, governed by foreign law, including the laws of the State of New York will be recognized and upheld by the Austrian courts, subject to

- certain mandatory rules of Austrian conflicts law such as, e.g., the *lex rei sitae* principle with respect to rights in real property;

- the principle that insolvency proceedings, the pre-requisites for their inception, and their legal effects are, generally (subject to a number of exceptions) governed by the law of the country where such proceedings are commenced; and
- the provisions of Regulation (EC) No. 593/2008 of June 17, 2008 (ROM I Regulation), e.g., Article 9 para. 1 of the ROM I Regulation which provides that effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful.

Despite the choice of New York law by the parties, an Austrian court may apply Austrian law if it cannot ascertain the content of New York law within reasonable time. What "reasonable time" means depends on the urgency of the matter (e.g., in case of a preliminary injunction it will be relatively short). According to § 79 para 2 of the Austrian Enforcement Act (*Exekutionsordnung*), however, enforcement of foreign court decisions by Austrian courts requires, *inter alia*, reciprocity (*Gegenseitigkeit*) for such enforcement by means of multilateral or bilateral treaties, ordinances or agreements securing the mutual recognition and enforcement of foreign judgments in Austria. As of the date of this offering circular, no such treaty exists between Austria and the United States. In addition, the Ministry of Justice (*Bundesministerium für Justiz*) issued guidelines according to which, *inter alia*, judgments of the U.S. are not enforceable in Austria. Consequently, judgments by courts of New York would not be enforceable in Austria.

The submission of an Austrian company to the jurisdiction of the Courts of New York is subject to Austrian public policy (*ordre public*), mandatory provisions of Austrian company law (such as, depending on the nature/content of the respective legal proceedings may need to be initiated, for instance, with the competent courts at the seat of such Austrian company, e.g. disputes between shareholders and the company) and mandatory provisions of Austrian insolvency law.

Belgium

The United States and Belgium do not have a treaty providing for the reciprocal recognition and enforcement of judgments. Any judgment rendered by any federal or state court in the United States, whether or not predicated solely upon U.S. federal securities law, would not be directly enforceable in Belgium.

In order to enforce any such judgment in Belgium, proceedings must be initiated on the judgment before a court of competent jurisdiction in Belgium in accordance with Article 22 to 25 of the Belgian Code of Private International Law.

In this type of action, a Belgian court will not decide on the merits of the original matter decided by a U.S. court. A Belgian court may only refuse to declare a foreign judgement enforceable in a number of circumstances, including those where (i) the judgement conflicts with the Belgian public order (*openbare orde/ordre public*) or the rights of defence (*rechten van de verdediging/droits de la defense*); (ii) the judgement has been obtained with the sole intention of avoiding the application of the applicable law (*wetsontduiking/fraude à la loi*); (iii) the judgement can still be reformed by any legal remedy (*enig rechtsmiddel/ quelconque recours*) in the United States of America; (iv) the judgement conflicts with an existing Belgian judgement or any other foreign judgement; (v) the claim was introduced in the United States of America, after the same claim between the same parties was introduced in Belgium and the procedure in Belgium is still ongoing; or (vi) the Belgian Courts have the exclusive jurisdiction over the claim.

Belgian courts have established that in certain events other than bankruptcy or judicial reorganization certain insolvency rules should also be applied. In relation to companies, the relevant events are (a) the attachment of assets by various creditors which leads to the sale of the assets (*saisie exécutoire/uitvoerend beslag*) and (b) the winding-up (*dissolution/ontbinding and liquidation/vereffening*) of the company.

Denmark

The United States and Denmark do not currently have a treaty providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters.

A final judgment properly obtained in a U.S. court will not be recognized nor enforced by the Danish courts without re-examination of the substantive matters thereby adjudicated. In connection with any such re-examination, the judgment will generally be accepted as material evidence, but the parties must provide

the Danish courts with satisfactory information about the contents of the relevant foreign law and, if they fail to do so, the Danish courts may apply Danish law instead.

Further, certain remedies available under the U.S. law may not be allowed in Danish courts as contrary to Danish public policy, including, among others, punitive damages.

FRANCE

The following summary with respect to the enforceability of certain U.S. court judgments in France is based upon advice provided to us by French legal advisors. The United States and France are not party to a treaty providing for reciprocal recognition and enforcement of judgments, other than arbitration awards rendered in civil and commercial matters.

Accordingly, a judgment rendered by any U.S. federal or state court based on civil liability, whether or not predicated solely upon U.S. federal or state securities laws, enforceable in the United States, would not be directly enforceable in France. A party in whose favor such judgment was rendered could initiate enforcement proceedings (*exequatur*) in France before the relevant civil court (*Tribunal de Grande Instance*).

An enforceable and valid U.S. judgment for a sum of money will be recognized and enforced by French courts by means of an *inter-partes* action for recognition and enforcement (*exequatur*). A French court will not in such an action re-open the merits of the case and enforcement of the U.S. judgment in France could only be refused on the following grounds:

- with regard to the jurisdiction of the U.S. court: (i) that by reference to French rules of jurisdiction, a French court had exclusive jurisdiction in relation to the dispute; (ii) that there is no sufficient link between the facts of the case and the court of Western Australia, to justify its jurisdiction or that such link was created by fraud; or (iii) that a valid jurisdiction clause gave jurisdiction to a court other than the court of Western Australia;
- that the judgment was not given by a body or person having a judicial function and does not appear on its face to be a judicial act;
- that the proceedings were not loyal and fair and the requirements of due process were not observed;
- that the judgment issued by the U.S. court was obtained by fraud;
- that the judgment issued by the U.S. court conflicts with a (i) French judicial decision which is *res judicata* and enforceable or alternatively, (ii) with a procedure pending in France or, (iii) possibly, with a foreign decision which would meet the requirements for recognition and enforcement in France, if the foreign decision is given prior to the judgment issued by a court of Western Australia;
- that the judgment issued by the U.S. court conflicts with the principles of French public policy as applicable in international matters (*ordre public international*).

In addition, the discovery process under actions filed in the United States could be adversely affected under certain circumstances by French criminal law No. 68-678 of July 26, 1968, as modified by French law No. 80-538 of July 16, 1980 (relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign authorities or persons), which could prohibit or restrict obtaining evidence in France or from French persons in connection with a judicial or administrative U.S. action. Similarly, French data protection rules (law No. 78-17 of January 6, 1978 on data processing, data files and individual liberties, as modified by law No. 2004-801 of August 6, 2004) can limit under certain circumstances the possibility of obtaining information in France or from French persons in connection with a judicial or administrative U.S. action in a discovery context.

Pursuant to articles 14 and 15 of the French Civil Code, a French national (either a company or an individual) can sue a foreign defendant before French courts (Article 14) and can be sued by a foreign claimant before French courts (Article 15). Case law has interpreted these provisions as meaning that a French national, either claimant or defendant, could not be forced against its will to appear before a jurisdiction other than French courts. However, according to recent case law, the French courts' jurisdiction towards French nationals is no longer mandatory (i.e. per se exclusive of the possible jurisdiction of a foreign court) to the extent an action has been commenced before a court in a foreign jurisdiction which has sufficient nexus with the dispute and the choice of jurisdiction is not fraudulent. In addition, the French national may validly waive (either expressly or by its mere procedural conduct) its rights to benefit from the provisions of Articles 14 and 15 of the French Civil Code.

As the "*submission to jurisdiction*" provides for the non-exclusive jurisdiction of U.S. Federal or New York State court in the Borough of Manhattan in the City, County and State of New York, United States of America, the parties may apply to French courts for an action on the merits or for such provisional or protective measures as may be available (such as provisional attachments on assets located in France, or summary proceedings to obtain an order for payment).

Furthermore, if an action on the merits is brought in France, French courts may refuse to apply the designated law if its application contravenes French public policy as applicable in international matters. Furthermore, in an action brought in France on the basis of U.S. federal or state securities laws, French courts may not have the requisite power to grant all of the remedies sought.

If, in connection with proceedings before a court in the United States commencing after service of process on the agent designated in the Notes Guarantee, a French Guarantor fails to appear, the resulting judgment may only be capable of enforcement in France if the judgment creditor proves that such party in fact received the process commencing the proceedings in such a way that it was able to arrange for its defense.

Italy

A final judgment for payment given by any federal or state court in the United States, whether or not predicated solely upon U.S. federal or state securities laws, would not automatically be enforceable in Italy. A final judgment by a U.S. federal or state court, however, may be recognized and enforced in Italy in accordance with Article 64 of Italian Law No. 218 of May 31, 1995 (*Riforma del sistema italiano di diritto internazionale privato*), provided that it meets the following requirements:

- the U.S. court which rendered the final judgment had jurisdiction according to Italian law principles of jurisdiction;
- the relevant summons and complaint was appropriately served on the defendants in accordance with U.S. law and during the proceeding the essential rights of the defendant have not been violated;
- the parties to the proceeding appeared before the court in accordance with U.S. law or, in the event of default by the defendant, the U.S. court declared such default in accordance with U.S. law;
- the judgment is final and not subject to any further appeal in accordance with U.S. law;
- there is no conflicting final judgment rendered by an Italian court;
- there is no action pending in Italy among the same parties for decision on the same matter which commenced prior to the action in the United States; and
- the provisions of such judgment would not violate Italian public policy.

If an original action is brought before an Italian court, the court may refuse to apply the U.S. law provisions or grant some of the remedies sought (e.g., punitive damages) if their application violates Italian public policy and mandatory provisions of Italian law.

The Netherlands

In the absence of an applicable treaty between the United States and the Netherlands, a judgment obtained against a subsidiary Guarantor in a U.S. Court will not be directly enforced in the Netherlands. In order to obtain a judgment which is enforceable in the Netherlands, the claim must be re-litigated before a competent court of the Netherlands. The relevant Netherlands court has discretion to attach such weight to a judgment of a U.S. Court as it deems appropriate. Based on case law, the courts of the Netherlands may be expected to recognize the binding effect of a final, conclusive and enforeceable money judgement of a court of competent jurisdiction in the U.S. without re-examination or re-litigation of the substantive matters adjudicated thereby, provided that (i) the relevant U.S. Court had jurisdiction in the matter in accordance with standards which are generally accepted internationally, (ii) the proceedings before such court complied with principles of proper procedure and (iii) such judgment does not conflict with the public policy of the Netherlands.

Poland

In Poland, the enforceability of judgments of foreign courts subject to enforcement (which generally represent judgments for the payment of money or specific performance) may be applied for: (i) under the

provisions of respective EU laws if the judgment was issued in a member state of the European Union, (ii) under international agreements, if a relevant bilateral/multilateral treaty provides for such enforcement or (iii) on the basis of the rules of the Polish Code of Civil Procedure if (i) and (ii) above do not apply. There is currently no treaty between the United States and Poland providing for the reciprocal recognition and enforcement of judgments (other than arbitration awards) rendered in civil and commercial matters. Therefore, in such a case, the rules of the Polish Code of Civil Procedure apply. Under that procedure, any final and conclusive judgment against a Guarantor with its registered office in Poland obtained in a court of the United States and arising out of or in relation to the obligations of the Guarantor under the Guarantee, would be recognizable and enforceable in Poland. The following circumstances may render impossible the obtaining of a U.S. court judgment's enforceability:

(i) the judgment is not final and binding in the U.S.;

(ii) the judgment was issued on an issue which is within the exclusive jurisdiction of Polish courts (such as matters relating to real property located in Poland);

(iii) the defendant who has not entered the dispute as to the essence of the disputed issue has not been served the complaint in the manner enabling the defendant to defend himself;

(iv) a party was deprived of the ability to defend itself in the course of the proceeding;

(v) a case related to the same claim between the same parties had been commenced in Poland before it was initiated in the U.S. court;

(vi) the judgment is contrary to a previously issued final and binding judgment of a Polish court or of a foreign court judgment fulfilling the pre-requisites for its recognition in Poland and was issued in a case related to the same claim between the same parties; and

(vii) the recognition of the judgment would be contrary to the fundamental principles of legal order of Poland.

Enforceability of any final and conclusive judgment against the Guarantor with its registered office in Poland obtained in a court of the United States and arising out of or in relation to the obligations of the Guarantor under the Guarantee, further requires that a Polish court issues a decision confirming that given judgment of the U.S. court is enforceable (which decision will be issued provided that given judgment is enforceable in the U.S. and all the conditions referred to under sections (i) through to (vi) above are met).

Once the motion to declare enforceability is considered and approved, the court issues a decision to grant an enforceability clause. Enforcement pursuant to such a decision may be initiated as soon as the decision granting the enforceability clause becomes final and binding.

Finally, it should be noted that the enforcement actions conducted by the court executive officer may be challenged and, therefore, the enforcement of obligations sometimes may not be successful or may be lengthy, even though the U.S. judgment is recognized and enforceable in Poland.

LEGAL MATTERS

Certain legal matters in connection with the offering be passed upon for us by Freshfields Bruckhaus Deringer LLP as to matters of German, English, U.S. federal and New York state law. Certain legal matters in connection with the offering will be passed upon for the initial purchasers by Cravath, Swaine & Moore LLP as to matters of U.S. federal and New York state law and Clifford Chance LLP as to matters of German and English law.

INDEPENDENT AUDITORS

The consolidated financial statements of Techem Energy Metering Service GmbH & Co. KG as at and for the financial years ended March 31, 2011 and 2012 included in this offering memorandum have been audited by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, as stated in their reports appearing herein. The auditor's address is Friedrich-Ebert-Anlage 35-37, 60327 Frankfurt am Main, Germany.

WHERE YOU CAN FIND OTHER INFORMATION

Each purchaser of the Notes from the initial purchasers will be furnished with a copy of this offering memorandum and any related amendments or supplements to this offering memorandum. Each person receiving this offering memorandum and any related amendments or supplements to the offering memorandum acknowledges that:

(1) such person has been afforded an opportunity to request from us, and to review and has received, all additional information considered by it to be necessary to verify the accuracy and completeness of the information herein;

(2) such person has not relied on the initial purchasers or any person affiliated with the initial purchasers in connection with its investigation of the accuracy of such information or its investment decision; and

(3) except as provided pursuant to (1) above, no person has been authorized to give any information or to make any representation concerning the Notes offered hereby other than those contained herein and, if given or made, such other information or representation should not be relied upon as having been authorized by us or the initial purchasers.

For so long as any of the Notes are "restricted securities" within the meaning of the Rule 144(a)(3) under the U.S. Securities Act, we will, during any period in which we are neither subject to the reporting requirements of Section 13 or 15(d) of the U.S. Exchange Act, nor exempt from the reporting requirements under Rule 12g3-2(b) of the U.S. Exchange Act, provide to the holder or beneficial owner of such restricted securities or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, in each case upon the written request of such holder, beneficial owner or prospective purchaser, the information required to be provided by Rule 144A(d)(4) under the U.S. Securities Act.

Pursuant to the Indentures governing the Notes and so long as the Notes are outstanding, we will furnish periodic information to holders of the Notes. See "*Description of Senior Secured Notes—Certain Covenants—Reports*" and "*Description of Senior Subordinated Notes—Certain Covenants—Reports*".

For so long as the Notes are listed on the Luxembourg Stock Exchange and the rules of that exchange so require, copies of the Issuer's organizational documents and the Indentures relating to the Notes and our most recent consolidated financial statements published by us may be inspected and obtained at the office of the listing agent in Luxembourg. See "*Listing and General Information.*"

LISTING AND GENERAL INFORMATION

LISTING

Application will be made for the Notes to be admitted to listing on the Official List and to trading on the Euro MTF Market operated by the Luxembourg Stock Exchange in accordance with the rules of such exchange. For so long as the Notes are listed on the Official List and are admitted to trading on the Euro MTF markets of the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange so require, notice of any optional redemption, change of control or any change in the rate of interest payable on the Notes will be published in a Luxembourg newspaper of general circulation (which is expected to be the *Luxemburger Wort*) or published on the Luxembourg Stock Exchange website (*www.bourse.lu*).

For so long as the Notes are listed on the Official List and admitted to trading on the Euro MTF market of the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange so require, copies of the following documents may be inspected and obtained free of charge at the specified office of the listing agent in Luxembourg during normal business hours on any weekday:

- the Issuers' organizational documents;
- the most recent audited consolidated financial statements and any interim consolidated financial statements published by the Senior Subordinated Notes Issuer;
- the Issuers' annual reports for the two most recent years;
- the documents granting security interests to Noteholders as described in this offering memorandum; and
- the Indentures relating to the Notes (which includes the form of the Notes) and the Intercreditor Agreement.

The Issuers may choose to maintain a paying and transfer agent in Luxembourg for as long as any of the Notes remain admitted to listing on the Official List and to trading on the Euro MTF market of the Luxembourg Stock Exchange. Each Issuer reserves the right to vary such appointment and it will publish notice of such change of appointment in a newspaper having a general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or on the Luxembourg Stock Exchange website (*www.bourse.lu*). Each person receiving this offering memorandum may make a written request to receive a copy of the Intercreditor Agreement.

CLEARING INFORMATION

The Notes sold pursuant to Regulation S and Rule 144A in this offering have been accepted for clearance through the facilities of Euroclear and Clearstream under common codes and , respectively. The ISIN for the Notes sold pursuant to Regulation S is and the ISIN for the Notes sold pursuant to Rule 144A is .

LEGAL INFORMATION

The share capital of the Senior Secured Notes Issuer is €23,538,412.00 divided into one (1) ordinary share with nominal value of €23,538,412.00. As at March 31, 2012, the Senior Subordinated Notes Issuer's limited partner MEIF II Germany Holdings S.à r.l. has contributed an amount of EUR 2.500 as partnership interest. The share capital of the Senior Subordinated Notes Issuer's General Partner Techem Energie GmbH is €25.000.

The creation and issuance of the Senior Secured Notes have been authorized by a resolution of the Senior Secured Notes Issuers' managing directors (*Geschäftsführer*) dated , 2012 and of the Senior Secured Notes Issuers' shareholders' meeting (*Gesellschafterversammlung*) dated , 2012. The creation and issuance of the Senior Subordinated Notes have been authorized by a resolution of the Senior Subordinated Notes Issuers' managing directors (*Geschäftsführer*) dated , 2012 and of the Senior Subordinated Notes Issuers' shareholders' meeting (*Gesellschafterversammlung*) dated , 2012.

Except as disclosed in this offering memorandum:

- there has been no material adverse change in either the Senior Secured Notes Issuer's or the Senior Subordinated Notes Issuer's financial position or the Group's financial position since June 30, 2012; and
- neither the Issuers nor the Group has been involved in any litigation, administrative proceeding or arbitration relating to claims or amounts which are material in the context of the offering of the Notes, and, so far as either the Issuers or the Group is aware, no such litigation, administrative proceeding or arbitration is pending or threatened.

The Senior Subordinated Notes Issuer was incorporated in its present form on March 16, 2006 in Germany. The managing directors (*Geschäftsführer*) of the general partner of the Senior Subordinated Notes Issuer are: Steffen Bätjer, Hilko Cornelius Schomerus, Cord von Lewinski and Hans-Lothar Schäfer. The business address of each of the directors is Hauptstraße 89, 65760 Eschborn, Germany.

The Senior Secured Notes Issuer was incorporated in its present form on March 5, 2009 in Germany. The managing directors (*Geschäftsführer*) of the Senior Secured Notes Issuer are: Steffen Bätjer and Hans-Lothar Schäfer. The business address of each of the directors is Hauptstraße 89, 65760 Eschborn, Germany.

GUARANTORS

The following is a description of the Senior Secured Notes Guarantors and the Senior Subordinated Notes Guarantors.

Techem Messtechnik GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Austria and registered with the commercial register of the regional court (*Landesgericht*) of Innsbruck under registration number FN 44092 t. As at June 30, 2012, Techem Messtechnik GmbH had a share capital of €300,000.00. The articles of association of Techem Messtechnik GmbH set forth its corporate purpose, among others, as follows: Development, production, purchase and sale of technical devices and equipment, in particular in the area of metering and control technology, and the provision of customer services and know-how in the area of residential real estate and property management including the collection of third party receivables as well as receivables that have been assigned for collection purposes. The managing director of Techem Messtechnik GmbH may be reached at its business address, St. Bartlmä 2, 6020 Innsbruck, Austria.

Caloribel SA is a company with limited liability (*Société Anonyme/Naamloze Vennootschap*) organized under the laws of Belgium and registered with the Crossroads Bank of Enterprises under registration number 461.014.472 (Commercial Court of Brussels). As at June 30, 2012, Caloribel SA had a share capital of €62,500.00. The articles of association of Caloribel SA set forth its corporate purpose as follows: Services in connection with the reading of any metering devices used to measure water and energy in any form, and all services in connection with the allocation of jointly borne charges related to buildings used for any purpose. Caloribel SA's management may be reached at its business address, rue De Koninck 40, 1080 Brussels, Belgium.

Techem Danmark A/S is a stock corporation (*Aktieselskab*) organized under the laws of Denmark and registered with the Danish Business Authority under the Danish company registration number (CVR) 29416982. As at June 30, 2012, Techem Danmark A/S had a share capital of DKK 1,100,000.00. The articles of association of Techem Danmark A/S set forth its corporate purpose, among others, as follows: (a) commercialization, distribution, agency, import, export, sale and lease of equipment used for the measurement, invoicing and regulation of water and energy consumption as well as for home automation, (b) rendering of certain services regarding such equipment, (c) rendering of services in connection with measurement, billing, and regulation of water and energy consumption, and (d) rendering of energy-related consultancy services and contractual assistance and services related to the home industry and its management. Members of Techem Danmark A/S's management board may be reached at its business address, Trindsovej 7B, 8000 Aarhus C, Denmark.

Techem SAS is a simplified stock corporation (*Société par actions simplifiée*) organized under the laws of France and registered with the commercial register of the chamber of commerce of Nanterre under registration number RSC 439 290 685. As at June 30, 2012, Techem SAS had a share capital of €5,978,000.00. The articles of association of Techem SAS set forth its corporate purpose, among others, as follows: All services related to thermal water meters and accessories and generally the rendering of all

services (including installation, maintenance and after-sales services) relating to technical devices and systems, in particular for the measurement and management of energy, water and heat consumption and rendering of regarding the management, measurement and billing of energy, heat and water consumption. Members of Techem SAS's management board may be reached at its business address, Bâtiment Gay Lussac, 18-22 rue Edouard Herriot, 92350 Le Plessis Robinson, France.

Techem Energie France SAS is a simplified stock corporation (*Société par actions simplifiée*) organized under the laws of France and registered with the commercial register of the chamber of commerce of Versailles under registration number RSC 492 316 591. As at June 30, 2012, Techem Energie France SAS had a share capital of €4,047,372.00. The articles of association of Techem Energie France SAS set forth its corporate purpose, among others, as follows: Holding and indirect and direct shareholding in the share capital of companies, consortiums, or legal entities of any type, the setting up and control of subsidiaries, the purchase, sale and negotiation of securities and company shares, financial instruments and other investment securities and services provided in connection with such transactions. Members of Techem SAS's management board may be reached at its business address, 20 ter, Rue Schnapper, 78100 Saint-Germain-en-Laye, France.

Techem Energy Services GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRB 74732. As at June 30, 2012, Techem Energy Services GmbH had a share capital of €9,000,000.00. The articles of association set forth its corporate purpose, among others, as follows: Production, purchase and sale as well as rental of technical devices and equipment, in particular in the area of metering, control and monitoring technology, and the provision of customer services in the area of residential real estate and property management including the collection of third party receivables as well as receivables that have been assigned for collection purposes. Members of Techem Energy Services GmbH's management board may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

Techem Energy Contracting GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRB 42524. As at June 30, 2012, Techem Energy Contracting GmbH had a share capital of €3,067,800.00. The articles of association set forth its corporate purpose, among others, as follows: Provision of services such as the supply of and trading in heating, cooling, steam, gas and electricity and all operational services, including advice, planning, construction, purchase, leasing, operation, service and maintenance of decentralized energy and utility facilities, and services in connection with the metering and billing service, the metering and control technology and energy management. Members of Techem Energy Contracting GmbH's management board may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

The Senior Secured Notes Issuer is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRB 85143. As at June 30, 2012, the Senior Secured Notes Issuer had a share capital of €23,538,412.00. The articles of association set forth its corporate purpose, among others, as follows: Holding and management of investments in other companies, including, in particular, companies within the Techem Group. Members of the Senior Secured Notes Issuer's management board may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

bautec Energiemanagement GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRB 78106. As at June 30, 2012, bautec Energiemanagement GmbH had a share capital of €25,000.00. The articles of association set forth its corporate purpose, among others, as follows: Integrated billing of a variety of energy consumption data on behalf of customers in the residential real estate and property management industry, and production, purchase and sale as well as rental of technical devices and equipment, in particular in the area of metering and control technology, and the provision of customer services in the area of residential real estate and property management including the collection of third party receivables as well as receivables that have been assigned for collection purposes. Members of bautec Energiemanagement GmbH's management board may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

Techem Verwaltungs GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered with the commercial register of the local court

(*Amtsgericht*) of Frankfurt am Main under registration number HRB 82700. As at June 30, 2012, Techem Verwaltungs GmbH had a share capital of €25,000.00. The articles of association set forth its corporate purpose as follows: Management and representation of Techem Vermögensverwaltung GmbH & Co. KG. Members of Techem Verwaltungs GmbH's management board may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

Techem Vermögensverwaltung GmbH & Co. KG is a limited partnership (*Kommanditgesellschaft*), with a limited liability company (*Gesellschaft mit beschränkter Haftung*) as general partner, organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRA 44585. The general partner is Techem Verwaltungs GmbH. The articles of association set forth its corporate purpose, among others, as follows: Management of its own assets, including, in particular, a share in Techem Energy Services GmbH. Members of the management board of Techem Vermögensverwaltung GmbH & Co. KG's general partner may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

The Senior Subordinated Notes Issuer is a limited partnership (*Kommanditgesellschaft*), with a limited liability company (*Gesellschaft mit beschränkter Haftung*) as general partner, organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRA 43010. The general partner is Techem Energie GmbH, a company established and existing under the laws of the Federal Republic of Germany and registered with the commercial register of the local court (*Amtsgericht*) under HRB 57974. As at June 30, 2012, its general partner had a share capital of €25,000.00. The articles of association set forth its corporate purpose, among others, as follows: acquisition, holding, management and sale of interests in companies or their assets and any associated action or transaction as well as the provision of services of any kind to its subsidiaries, including without limitation the provision of administrative, financial, commercial and/or other technical services. Members of the management board of Senior Subordinated Notes Issuer's general partner may be reached at its business address, Hauptstraße 89, 65760 Eschborn, Germany.

Techem S.r.l. is a company with limited liability (*Società a responsabilità limitata*) organized under the laws of Italy and registered with the commercial register of the chamber of commerce of Rome with VAT identification number 11629910156. As at June 30, 2012, Techem S.r.l. had a share capital of €80,000.00. The articles of association of Techem S.r.l. set forth its corporate purpose, among others, as follows: (i) the manufacturing, sale, marketing, distribution and installation of technical devices in general, (ii) the measurement and survey in the sector of energy supply in particular and (iii) the technical assistance service, as well as the maintenance of said products, all the services for the measurement, recording and heat management in the sector of energy supply. Members of Techem S.r.l.'s management board may be reached at its business address, Via dei Bounvisi 61, Rome, Italy.

Techem Energy Services B.V. is a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and registered with the commercial register of Zuidwest-Nederland under number 20086440. As at June 30, 2012 Techem Energy Services B.V. had an authorised share capital of €1,350,000.00 of which ordinary shares have been issued in the amount of €450,000.00. The articles of association of Techem Energy Services B.V. set forth its corporate purpose, among others, as follows: to perform activities in the Netherlands regarding marketing, lease, purchase and sale and distribution of measuring, regulating and control equipment for heating systems, as well as to conduct services in such area, and to incorporate, to participate in, to co-operate with, to manage and to render services to other companies and enterprises, as well to finance other companies and enterprises, to bind the company and to pledge its assets and give guarantees for the obligations of the companies and enterprises with which it forms a group as well as everything pertaining the foregoing, relating thereto or conductive thereto, all in the widest sense of the word. Members of Techem Energy Services B.V.'s management board may be reached at its registered office, Takkebijsters 17-1, 4817 BL Breda, the Netherlands.

Techem Techniki Pomiarowe Sp. z o.o. is a company with limited liability (*Spółka z ograniczoną odpowiedzialnością*) organized under the laws of Poland and registered with the commercial register of the National Court Register maintained by the District Court for the Capital City of Warsaw in Warsaw, XII Commercial Division of the National Court Register under registration number 0000010752. As at June 30, 2012, Techem Techniki Pomiarowe Sp. z o.o. had a share capital of PLN 16,411,000.00. The articles of association of Techem Techniki Pomiarowe Sp. z o.o. set forth its corporate purpose, among others, as follows: recording and billing of heating costs and water consumption and energy management. Members of Techem Techniki Pomiarowe Sp. z o.o.'s management board may be reached at its business address, ul. Romana Maya 1, 61-371 Poznań, Poland.

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The following auditor's report (*Bestätigungsvermerk*) has been issued in accordance with Section 322 of the German Commercial Code (*Handelsgesetzbuch*) on the consolidated financial statements and group management report (*Konzernlagebericht*) of Techem Energy Metering Service GmbH & Co. KG as of and for the fiscal year ended March 31, 2012. The group management report is neither included nor incorporated by reference in this Offering Memorandum.

Auditor's Report

We have audited the consolidated financial statements prepared by the Techem Energy Metering Service GmbH & Co. KG, Eschborn, comprising the statement of financial position, the income statement and statement of comprehensive income, statement of changes in equity, statement of cash flows and the notes to the consolidated financial statements, together with the group management report for the business year from April 1, 2011 to March 31, 2012. The preparation of the consolidated financial statements and the group management report in accordance with the IFRSs, as adopted by the EU, and the additional requirements of German commercial law pursuant to § (Article) 315a Abs. (paragraph) 1 HGB ("Handelsgesetzbuch": German Commercial Code) is the responsibility of the Managing Directors of the general limited partner *(Komplementär-GmbH)* of the parent Company. Our responsibility is to express an opinion on the consolidated financial statements and on the group management report based on our audit.

We conducted our audit of the consolidated financial statements in accordance with § 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (Institute of Public Auditors in Germany) (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the consolidated financial statements in accordance with the applicable financial reporting framework and in the group management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Group and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the consolidated financial statements and the group management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the annual financial statements of those entities included in consolidation, the determination of the entities to be included in consolidation, the accounting and consolidation principles used and significant estimates made by the Managing Directors of the general limited partner *(Komplementär-GmbH)*, as well as evaluating the overall presentation of the consolidated financial statements and the group management report. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion based on the findings of our audit the consolidated financial statements comply with the IFRSs as adopted by the EU and the additional requirements of German commercial law pursuant to § 315a Abs. 1 HGB and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The group management report is consistent with the consolidated financial statements and as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Frankfurt am Main, May 31, 2012

PricewaterhouseCoopers
Aktiengesellschaft
Wirtschaftsprüfungsgesellschaft

Susanne Michalowsky	ppa. Jürgen Körbel
Wirtschaftsprüfer	Wirtschaftsprüfer
(German Public Auditor)	(German Public Auditor)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated financial statements
for the financial year from
April 1, 2011 to March 31, 2012

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of financial position as at March 31, 2012

	Note	March 31, 2012	March 31, 2011	April 1, 2010
		EUR thousand	EUR thousand	EUR thousand
Cash and cash equivalents		72,208	64,466	33,154
Trade accounts receivable	**1**	293,138	354,374	331,378
Receivables from shareholder	**2**	1,617	1,523	1,336
Other receivables	**2**	12,395	15,044	12,020
Other financial assets	**2**	728	807	2,410
Inventories	**3**	30,924	37,552	31,206
Income tax receivables		899	765	189
Non-current assets held for sale	**19**	0	1,606	1,513
Total current assets		**411,909**	**476,137**	**413,206**
Metering devices for rent	**4**	201,788	187,143	173,108
Property, plant and equipment	**5**	130,861	140,483	42,885
Intangible assets	**6**	1,640,689	1,665,779	1,673,940
Investments in associates	**7**	4,632	17,909	12,952
Other receivables	**8**	419	419	360
Other financial assets	**8**	19,969	18,374	15,747
Deferred tax assets	**9**	2,172	4,374	1,895
Total non-current assets		**2,000,530**	**2,034,481**	**1,920,887**
Total assets		**2,412,439**	**2,510,618**	**2,334,093**
Trade accounts payable		39,905	101,394	57,768
Liabilities to shareholder	**10**	0	0	3
Other liabilities	**10**	40,246	30,206	18,488
Other financial liabilities	**10**	185,690	97,335	134,524
Financial liabilities	**11**	7,831	24,161	13,931
Other provisions	**12**	49,881	53,841	53,176
Income tax liabilities		8,426	7,752	7,793
Total current liabilities		**331,979**	**314,689**	**285,683**
Financial liabilities	**13**	1,114,610	1,135,314	1,045,169
Other liabilities	**14**	2,891	1,885	2,262
Other financial liabilities	**14**	7,396	5,519	1,015
Provisions for pensions	**15**	16,592	15,541	14,758
Other provisions	**16**	31,360	32,121	31,369
Deferred tax liabilities	**9**	114,813	127,637	115,698
Total non-current liabilities		**1,287,662**	**1,318,017**	**1,210,271**
Capital account of limited partner	**17**	3	3	3
Reserve account of limited partner	**17**	778,393	808,393	812,702
Retained earnings		14,402	69,516	25,434
Total equity		**792,798**	**877,912**	**838,139**
Total liabilities and equity		**2,412,439**	**2,510,618**	**2,334,093**

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated income statement and consolidated statement of comprehensive income for the financial year from April 1, 2011 to March 31, 2012

	Note	April 1, 2011 - March 31, 2012	April 1, 2010 - March 31, 2011
		EUR thousand	EUR thousand
Revenue	**21**	692,933	731,141
Capitalized internal work		12,040	9,834
Other income	**22**	6,662	7,548
Product expenses and purchased services	**23**	−238,150	−299,190
Personnel expenses		−169,959	−160,805
Depreciation of metering devices for rent, fixed and intangible assets		−105,173	−95,395
Other expenses	**24**	−85,355	−84,826
Earnings before interest and tax (EBIT)		**112,998**	**108,307**
Net share of loss/gain of associates	**25**	−448	129
Impairment of associates	**25**	−14,476	0
Financial income	**26**	3,401	41,096
Finance costs	**26**	−159,502	−97,379
Earnings before tax		**−58,027**	**52,153**
Income taxes	**27**	5,004	−8,706
(Net loss)/Net income[(1)]		**−53,023**	**43,447**
Statement of comprehensive income			
(Net loss)/Net income		**−53,023**	**43,447**
Currency translation adjustments		−238	635
Changes in fair value of interest rate instruments subject to hedge accounting		−2,593	0
Income taxes on other comprehensive income		740	0
Other comprehensive income		**−2,091**	**635**
Total comprehensive income		**−55,114**	**44,082**

(1) As at March 31, 2012 and as at March 31, 2011 there is no non-controlling interest in the Group.

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of cash flows for the financial year from April 1, 2011 to March 31, 2012

	Note	April 1, 2011 - March 31, 2012	April 1, 2010 - March 31, 2011
		EUR thousand	EUR thousand
Cash flows from operating activities			
Earnings before tax		**−58,027**	**52,153**
Net share of loss/gain of associates		448	−129
Impairment of associates		14,476	0
Financial income		−3,401	−41,096
Finance costs		159,502	97,379
Earnings before interest and tax (EBIT)		**112,998**	**108,307**
Depreciation and amortization		97,700	91,019
Impairment losses		7,473	4,376
EBITDA		**218,171**	**203,702**
Adjusted for:			
Gains on disposal of fixed and intangible assets		−218	−315
Gain from bargain purchase		0	−2,787
Subtotal		**217,953**	**200,600**
Changes in working capital		**6,573**	**16,344**
Changes in trade accounts receivable		−3,368	376
Changes in unbilled receivables		63,982	−20,009
Changes in inventories		8,409	−1,077
Changes in trade accounts payable		−62,450	37,054
Changes in other receivables		**−915**	**−1,287**
Changes in tax claims (eco tax)		3,478	−1,079
Changes in tax claims (VAT)		276	397
Changes in prepaid expenses		−1,051	413
Changes in non-current operating receivables		−3,689	−2,431
Changes in other receivables		71	1,413
Changes in other liabilities		**14,533**	**9,433**
Changes in commission liabilities		−807	878
Changes in salaries and wages		−59	−222
Changes in other tax liabilities		10,852	7,654
Changes in deferred income		3,569	−452
Changes in other liabilities		978	1,575
Changes in provisions		**−4,719**	**−6,658**
Changes in maintenance service provisions		−1,500	128
Changes in provisions for personnel expenses		359	−1,120
Changes in pension provisions		276	33
Changes in warranty provisions		1,754	−1,463
Changes in provisions for restructuring		135	−5,307
Changes in provisions for legal fees		−224	311
Changes in other provisions		−5,519	760
Changes in receivables/liabilities from shareholder		**−95**	**−189**
Cash generated by operating activities		**233,330**	**218,243**
Interest paid		**−83,442**	**−81,095**
Interest received		**1,463**	**1,079**
Income taxes paid/received		**−5,427**	**−6,032**
Net cash generated by operating activities		**145,924**	**132,195**
Cash flows from investing activities			
Cash flows from purchase/disposal of fixed and intangible assets		**−79,797**	**−83,705**
Purchase of fixed and intangible assets		−82,307	−84,935
Proceeds from/cash outflow for non-current assets held for sale		1,606	−92
Proceeds from disposal of fixed and intangible assets		904	1,322
Cash flows from investments and loans		**228**	**−498**
Cash inflow from/cash outflow for other investments and loans		11	−503
Cash inflow from shares and loans		17	5
Dividends received from associates		200	0
Cash flows from the acquisition of subsidiaries		**21**	**12,748**
Cash inflow from acquistion of fully consolidated subsidiaries	**18**	21	12,748
Cash flows used in investing activities		**−79,548**	**−71,455**
Free Cash flow		**66,376**	**60,740**
Cash flows from financing activities			
Cash flows from borrowings		**−28,534**	**15,451**
Proceeds from borrowings		1,440	40,126
Repayments of borrowings		−28,700	−23,892
Payments of finance leases	**13**	−1,274	−783
Cash flows used for distributions		**−30,000**	**−45,000**
Drawings by limited partner		−30,000	−45,000
Net cash used in financing activities		**−58,534**	**−29,549**
Change in cash and cash equivalents		**7,842**	**31,191**
Cash and cash equivalents at the beginning of the period		**64,466**	**33,154**
Currency effects of cash and cash equivalents		−100	121
Cash and cash equivalents at the end of the period		**72,208**	**64,466**

(The accompanying notes are an integral part of these financial statements.)

In the current financial year, the structure and the calculation method of the Group cash flow statement has been changed, leading to differences in the single positions in comparison to the amounts reported in the previous year for the reporting period April 1, 2010 to March 31, 2011.

Due to the new calculation method the respective amounts exclude currency translation differences and cannot be reconciled with the movements in the balance sheet.

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of changes in equity for the financial year from April 1, 2011 to March 31, 2012

	Capital account of limited partner	Reserve account of limited partner	Retained earnings	Total equity
	EUR thousand	EUR thousand	EUR thousand	EUR thousand
Balance as at April 1, 2010	**3**	**812,702**	**25,434**	**838,139**
Net income	0	0	43,447	**43,447**
Other comprehensive income	0	0	635	**635**
Drawings (−)/contributions (+) by limited partner, net	0	−4,309	0	**−4,309**
Balance as at March 31, 2011	**3**	**808,393**	**69,516**	**877,912**
Balance as at April 1, 2011	**3**	**808,393**	**69,516**	**877,912**
Net loss	0	0	−53,023	**−53,023**
Other comprehensive income	0	0	−2,091	**−2,091**
Drawings by limited partner	0	−30,000	0	**−30,000**
Balance as at March 31, 2012	**3**	**778,393**	**14,402**	**792,798**

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Notes to the consolidated financial statements
for the financial year from
April 1, 2011 to March 31, 2012

A. THE COMPANY

Techem Energy Metering Service GmbH & Co. KG (hereinafter also referred to as the "Company" or "TEMS KG") object is the holding, the purchase, the administration and the sale of participations in other companies or their assets as well as the execution of all actions and transactions associated herewith. The Company is registered in the commercial register in Frankfurt a. M./Germany with registration number HR A-Nr. 43010.

The head office of the Company is located in Eschborn/Germany (Hauptstraße 89, 65760 Eschborn).

The main operating business takes place in the Techem GmbH Group (hereinafter also referred to as "Techem" or "Techem Group"). The business activities of the Company comprise the two business segments ENERGY SERVICES and ENERGY CONTRACTING. The business segment ENERGY SERVICES comprises service providers to the housing and real-estate industry specializing in services for submetering, allocating and billing of energy and of water consumption. The business segment ENERGY CONTRACTING provides solutions for a professional energy management in the market segment of housing and commercial property. Furthermore, various heat generation plants are operated.

The limited partner of TEMS KG is MEIF II Germany Holdings Sàrl in Luxembourg; the general partner is Techem Energie GmbH in Eschborn. The ultimate parent company is Macquarie European Infrastructure Fund II Limited Partnership (MEIF II LP), an English limited partnership with its registered office in St. Peter Port, Guernsey.

B. BASIS OF PRESENTATION

These consolidated financial statements incorporate the financial statements of TEMS KG and its subsidiaries.

The consolidated financial statements of TEMS KG for the year ended March 31, 2012 have been prepared in accordance with the International Financial Reporting Standards (IFRS) of the International Accounting Standards Board (IASB) as adopted by the European Union (EU). Additionally, the regulations applicable according to section 315a German Commercial Code (HGB) have been observed. In accordance with IFRS, the consolidated financial statements have generally been prepared using the historical cost measurement basis. A different basis has been used in the measurement of other investments, financial instruments, provisions for pensions and other post-employment benefits, which is also in line with IFRS.

The measurement of assets and liabilities and the disclosure of contingent assets and liabilities at the relevant balance sheet dates, together with the amount of income and expenses for the period under review, are influenced by estimates and assumptions made in the preparation of the consolidated financial statements in accordance with IFRS. Although these estimates and assumptions have been made in accordance with the best knowledge and belief of the management of the Company (specifically in the case of provisions and intangible assets), actual figures may ultimately vary from these estimates.

Unless otherwise stated, all amounts are shown in thousands of Euros. Rounding may lead to discrepancies of ± one unit in the tables.

All standards of the IASB and all the interpretations of the International Financial Reporting Interpretations Committee (IFRIC), which have to be applied in the EU, that were subject to mandatory application as at March 31, 2012, have been applied by the Company in its consolidated financial statements.

An amendment of the authorized consolidated financial statements after issue is possible in case of major errors.

B. BASIS OF PRESENTATION (Continued)

The impact of the application of new or revised standards is shown below:

Standard/interpretation		Date of mandatory application[1]	Adopted by EU Commission[2]	Impact[2]
IAS 24 . . .	Related Party Disclosures	Jan 1, 2011	Yes	N. A.
IFRS 1 . . .	Amendment to IFRS 1: Limited Exemption from Comparative IFRS 7 Disclosures for First-time Adopters	Jul 1, 2010	Yes	N. A.
IFRIC 14 .	Amendment to IFRIC 14: Prepayments of a Minimum Funding Requirement	Jan 1, 2011	Yes	N. A.
IFRIC 19 .	Extinguishing Financial Liabilities with Equity Instruments	Jul 1, 2010	Yes	N. A.
	Improvements to IFRSs 2010	Jul 1, 2010	Yes	no significant impact

(1) For financial years commencing on or after this date

(2) As at March 31, 2012

Revised IAS 24 Related Party Disclosures

The revised IAS 24 addresses concerns that the previous disclosure requirements and definition of a related party were too complex and difficult to apply in practice, particularly in environments where government control is pervasive. The IASB has revised IAS 24 in order to provide a partial exemption for government-related entities and providing a revised definition of a related party. This amendment has no impact on the financial statements of the Company.

Amendment to IFRS 1: Limited Exemption from Comparative IFRS 7 Disclosures for First-time Adopters

The amendment to IFRS 1 provides first-time adopters with the same relief available to those already applying IFRSs when they first apply Improving Disclosures about Financial Instruments (Amendments to IFRS 7 Financial Instruments: Disclosures) issued in March 2009. This amendment does not impact the Company.

Amendment to IFRIC 14 Prepayments of a Minimum Funding Requirement

The amendment applies in the limited circumstances when an entity is subject to minimum funding requirements and makes an early payment of contributions to cover those requirements. The amendment permits such an entity to treat the benefit of such an early payment as an asset. This amendment has no impact on the financial statements of the Company.

IFRIC 19 Extinguishing Financial Liabilities with Equity Instruments

IFRIC 19 clarifies the requirements of IFRS when a creditor agrees to accept the entity's shares or other equity instruments to settle the financial liability fully or partially.

It clarifies that: (a) The entity's equity instruments issued to a creditor are thought to be part of the consideration paid to extinguish the financial liability, (b) The equity instruments are measured at fair value and (c) The difference between the carrying amount of the liability and the initial measurement of the equity instruments will be included in profit or loss for the period. This does not have an impact on the Company.

B. BASIS OF PRESENTATION (Continued)

Improvements to IFRSs 2010

The standard "Improvements to IFRSs", published on May 6, 2010, applies to the following IFRSs:

IFRS 1 . . . —First-time Adoption of IFRS
- Accounting policy changes in the year of adoption
- Revaluation basis as deemed cost
- Use of deemed cost for operations subject to rate regulation

IFRS 3 . . . —Business Combinations
- Transition requirements for contingent consideration from a business combination that occurred before the effective date of the revised IFRS 3 (2008)
- Measurement of non-controlling interests
- Un-replaced and voluntarily replaced share-based payment awards
- Amendments to IFRS 7, IAS 32 and IAS 39 as a result of the amendments to IFRS 3

IFRS 7 . . . —Financial Instruments: Disclosures
- Clarification of disclosures

IAS 1 . . . . —Presentation of Financial Statements
- Clarification of statement of changes in equity

IAS 27 . . . —Consolidated and Separate Financial Statements
- Transition requirements for amendments of IAS 21, IAS 28 and IAS 31 as a result of the amendment to IAS 27

IAS 34 . . . —Interim Financial Reporting
- Significant events and transactions

IFRIC 13 . —Customer Loyalty Programmes
- Clarification of fair value measurement of award credits

The amendments have no significant impact on the financial statements of the Company.

B. BASIS OF PRESENTATION (Continued)

The following new or revised standards have not been applied:

Standard/interpretation		Date of mandatory application[1]	Adopted by EU Commission[2]	Expected impact[2]
IAS 1	Amendment to IAS 1 Presentation of Financial Statements: Presentations of Items of Other Comprehensive Income (OCI)	Jul 1, 2012	Outstanding	no significant impact
IAS 12	Amendment to IAS 12 Deferred Tax: Recovery of Underlying Assets	Jan 1, 2012	Outstanding	no significant impact
IAS 19	Amendments to IAS 19 Employee Benefits	Jan 1, 2013	Outstanding	see below
IAS 32/IFRS 7	Amendments to IAS 32 Financial Instruments: Presentation/IFRS 7 Financial Instruments: Disclosures: Offsetting Financial Assets and Financial Liabilities	Jan 1, 2014/ Jan 1, 2013	Outstanding	no significant impact
IFRS 1	Amendments to IFRS 1: Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters	Jul 1, 2011	Outstanding	N. A.
IFRS 1	Amendment to IFRS 1: Government Loans	Jan 1, 2013	Outstanding	N. A.
IFRS 7	Amendment to IFRS 7 Financial Instruments: Disclosures—Transfer of Financial Assets	Jul 1, 2011	Yes	N. A.
IFRS 9	Financial Instruments	Jan 1, 2015	Outstanding	see below
IFRS 9/IFRS 7	Amendments to IFRS 9 and IFRS 7: Mandatory Effective Date and Transition Disclosures	Jan 1, 2015	Outstanding	see below
IFRS 10/IAS 27	Consolidated Financial Statements/New Version of IAS 27 Separate Financial Statements	Jan 1, 2013	Outstanding	no significant impact
IFRS 11/IAS 28	Joint Arrangements/Investments in Associates and Joint Ventures	Jan 1, 2013	Outstanding	no significant impact
IFRS 12	Disclosures of Interests in Other Entities	Jan 1, 2013	Outstanding	see below
IFRS 13	Fair Value Measurement	Jan 1, 2013	Outstanding	see below

(1) For financial years commencing on or after this date

(2) As at March 31, 2012

All the above mentioned new or revised standards/interpretations which have an impact on the Company will be applied by the Company as soon as application is mandatory.

B. BASIS OF PRESENTATION (Continued)

Amendment to IAS 1 Presentation of Financial Statements: Presentations of Items of Other Comprehensive Income (OCI)

The amendment will improve the presentation of items in the statement of OCI (Other Comprehensive Income) and align the presentation between IFRS and US-GAAP. Items presented in OCI should be grouped into those that will be recycled to profit and loss at a future point in time and those that will not. No significant impact on the financial statements is expected.

Amendment to IAS 12—Deferred Tax: Recovery of Underlying Assets

IAS 12 requires an entity to measure the deferred tax relating to an asset depending on whether the entity expects to recover the carrying amount of the asset through use or sale. The amendment provides a practical solution to the problem by introducing a presumption that recovery of the carrying amount will, normally, be through sale. No significant impact on the financial statements is expected.

Amendments to IAS 19 Employee Benefits

The amendments include the following important improvements:

- eliminating an option to defer the recognition of actuarial gains and losses, known as the so called corridor method;
- requiring the recognition of actuarial gains and losses to be presented in OCI as they occur;
- the expected return on plan assets is no longer determined by using the expected interest rate of the portfolio but based on the discount rate;
- enhancing of the disclosure requirements.

These amendments will have an impact on the presentation and disclosure of the company. Currently, the company recognizes all actuarial gains and losses in the income statement as they occur. These amount to losses of EUR 1,138 thousand in the current financial year.

Amendments to IAS 32 Financial Instruments: Presentation/IFRS 7 Financial Instruments: Disclosures: Offsetting Financial Assets and Financial Liabilities

With these amendments, the IASB clarifies the offsetting requirements relating to financial instruments and the relating disclosures. No significant impact on the financial statements is expected.

Amendments to IFRS 1: Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters

The amendment relating to severe hyperinflation provides guidance on how an entity should resume presenting financial statements in accordance with IFRSs after a period when the entity was unable to comply with IFRSs because its functional currency was subject to severe hyperinflation.

The second amendment replaces references to a fixed date of "1 January 2004" with "the date of transition to IFRSs", thus eliminating the need for companies adopting IFRSs for the first time to restate derecognition transactions that occurred before the date of transition to IFRSs. Both amendments will have no impact on the financial statements.

Amendment to IFRS 1: Government Loans

The amendment, dealing with loans received from governments at an interest rate below market interest rate, give first-time adopters of IFRSs relief from full retrospective application of IFRSs when accounting for these loans on transition. No impact on the financial statements is expected.

B. BASIS OF PRESENTATION (Continued)

Amendment to IFRS 7 Financial Instruments: Disclosures—Transfer of Financial Assets

An entity shall disclose information that enables users of its financial statements:

(a) to understand the relationship between transferred financial assets that are not derecognized in their entirety and the associated liabilities; and

(b) to evaluate the nature of, and risks associated with, the entity's continuing involvement in derecognized financial assets.

No impact on the financial statements is expected from this amendment.

IFRS 9 Financial Instruments

The objective is to implement new regulations regarding the classification and measurement of financial instruments. IFRS 9 will ultimately replace IAS 39 Financial Instruments: Recognition and Measurement. The future impact of IFRS 9 on the financial statements can currently not be determined.

Amendments to IFRS 9 and IFRS 7: Mandatory Effective Date and Transition Disclosures

With this amendment, the mandatory effective date of IFRS 9 was moved to January 1, 2015. Furthermore, the amendments include regulations under which an entity is allowed to make additional disclosures on the date of transition instead of a restatement of comparative figures. The additional disclosures required by IFRS 9 were added to the amendments of IFRS 7. The future impact of IFRS 9 on the financial statements can currently not be determined.

IFRS 10 Consolidated Financial Statements/New Version of IAS 27 Separate Financial Statements

IFRS 10 changes the definition of "Control" to that extent that the same criteria shall be applied when determining "the proportion of ownership". IFRS 10 replaces the consolidation requirements of IAS 27 which will be renamed into IAS 27 Separate Financial Statements. Furthermore, SIC 12 will also be replaced by IFRS 10. No significant impact on the financial statements is expected.

IFRS 11 Joint Arrangements/IAS 28 Investments in Associates and Joint Ventures

IFRS 11 provides for a more realistic reflection of joint arrangements by focusing on the rights and obligations of the arrangement, rather than its legal form (as is currently the case). The standard addresses inconsistencies in the reporting of joint arrangements by requiring a single method to account for interests in jointly controlled entities. IFRS 11 supersedes SIC-13 as well as IAS 31 and therefore eliminates the proportional consolidation method. The changes of definitions and the alignment of IAS 28 should be considered. No significant impact on the financial statements is expected.

IFRS 12 Disclosures of Interests in Other Entities

IFRS 12 is a new and comprehensive standard on disclosure requirements for subsidiaries, all forms of interests in other entities, including joint arrangements, associates, special purpose vehicles and other off balance sheet vehicles. This standard will have an impact on the notes to the financial statements of the company.

IFRS 13 Fair Value Measurement

IFRS 13 includes a new definition of fair value and a single source of fair value measurement and disclosure requirements for use across all IFRSs. The future impact of IFRS 13 on the financial statements is currently under review.

C. ACCOUNTING PRINCIPLES

Principles of consolidation. TEMS KG and all German and non-German subsidiaries directly or indirectly controlled by TEMS KG are included in the consolidated financial statements. Subsidiaries are companies in which the Group holds more than half of the voting rights or where the Group is otherwise able to govern the financial and operating policies. Investments in associates over which the Company exercises significant influence are accounted for using the equity method. All single-entity financial statements fully consolidated into TEMS KG are prepared in accordance with uniform accounting policies.

Subsidiaries acquired by the Company are accounted for using the acquisition method. The acquisition cost is equivalent to the fair value of the assets given up on the date of acquisition. For each business combination the assets, liabilities and contingent liabilities identified as part of the business combination are measured at their fair value on the date of acquisition regardless of the extent of the non-controlling interest. The excess of acquisition cost over the Group's share in the fair value of the net assets is recognized as goodwill. If the Group's share in the fair value of the net assets exceeds the acquisition cost, the remaining excess from a bargain purchase is recognized in the income statement. Costs directly attributable to the acquisition are recognized in the income statement.

C. ACCOUNTING PRINCIPLES (Continued)

All intercompany gains and losses, revenue, income and expenses, receivables and payables, provisions and contingent liabilities within the basis of consolidation are eliminated. Deferred taxes are recognized using the liabilities method for all temporary differences between the assets and liabilities tax base and their carrying amounts.

Basis of consolidation and shareholdings	Shareholding (%)
Techem GmbH, Eschborn/Germany	100.0
Techem Energy Services GmbH, Eschborn/Germany	100.0
Techem Energy Contracting GmbH, Eschborn/Germany	100.0
Biomasse Heizkraftwerk Eisenberg GmbH, Eschborn/Germany[1]	100.0
bautec Energiemanagement GmbH, Eschborn/Germany	100.0
Techem Verwaltungs GmbH, Eschborn/Germany	100.0
Techem Vermögensverwaltung GmbH & Co. KG, Eschborn/Germany	100.0
IHKW Industrieheizkraftwerk Andernach GmbH, Eschborn/Germany[4]	100.0
GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Eschborn/Germany[4]	100.0
IHKW Industrieheizkraftwerk Heidenheim GmbH, Heidenheim/Germany[4]	100.0
IWPV Industrie-Wärmeverbund Heidenheim GmbH, Heidenheim/Germany[4]	100.0
Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany[2],[4]	33.33
IHKW Industrieheizkraftwerk Weißbach GmbH, Weißbach/Germany[2],[4]	25.0
MessKom Energiemanagement GmbH, Magdeburg/Germany	100.0
Techem Messtechnik Ges.m.b.H., Innsbruck/Austria	100.0
Techem Wassertechnik Ges.m.b.H., Wels/Austria	100.0
Techem Energy Services B.V., Breda/Netherlands	100.0
Techem (Schweiz) AG, Urdorf/Switzerland	100.0
"Techem" Techniki Pomiarowe Sp.z.o.o., Poznan/Poland	100.0
Techem S.r.l., Rome/Italy	100.0
Techem Kft., Budapest/Hungary	100.0
Techem Services e.o.o.d., Sofia/Bulgaria	100.0
Techem spol. s.r.o., Prague/Czech Republic	100.0
Techem AB, Helsingborg/Sweden	100.0
Techem spol. s.r.o., Bratislava/Slovakia	100.0
Techem Energy Contracting Hellas EPE, Athens/Greece	100.0
Thermie Serres Societe Anonyme of Co-Generation of Power and Heat, Glyfada/Greece[2],[3]	50.24
Techem Calorlux S.à r.l., Bereldange/Luxembourg	100.0
Caloribel S. A., Brussels/Belgium	100.0
Techem Energy Services S.R.L., Bucharest/Romania	100.0
Techem d.o.o., Belgrade/Serbia	100.0
Techem OOO, Moscow/Russia	100.0
Techem do Brasil Serviços de Medição de Àgua Ltda., São Paulo/Brazil	100.0
Techem Enerji Hizmetleri Sanayi ve Ticaret Limited Şirketi, Ankara/Turkey	100.0
Techem Danmark A/S, Aarhus/Denmark	100.0
Techem Energy Services Middle East FZCO, Dubai Silicon Oasis, Dubai/United Arab Emirates	100.0
Techem Energy Services Korea Co., Ltd., Seoul/South Korea	100.0
Techem Energy Services India Private Limited, Pune/India	100.0
Techem Energie France SAS, Saint-Germain-en-Laye/France	100.0
Holding Farnier SAS, Le Plessis Robinson/France	100.0
Compteurs Farnier SAS, Le Plessis Robinson/France	100.0

(1) in liquidation

(2) consolidated using the equity method

(3) hereinafter the company is referred to as "Thermie Serres S. A."

(4) Hereinafter these companies are referred to as "GWE Group". As at March 31, 2011, GWE Projectdevelopment GmbH, Freiburg/Germany had also been included herein (see "Changes to the basis of consolidation").

As at March 31, 2012 and as at March 31, 2011, there is no non-controlling interest in the Group.

C. ACCOUNTING PRINCIPLES (Continued)

Changes to the basis of consolidation.

During the financial year 2011/2012 the Company has made the following changes to the basis of consolidation:

- On June 10, 2011, the liquidation of Biomasse Heizkraftwerk Eisenberg GmbH, Eschborn/Germany was registered in the commercial register.
- On June 15, 2011, GWE Projectdevelopment GmbH, Freiburg/Germany was merged into Techem Energy Contracting GmbH, Eschborn/Germany.
- On July 22, 2011, Techem S.r.l. transferred its registered seat from Milan/Italy to Rome/Italy.
- On July 27, 2011, IHKW Industrieheizkraftwerk Dormagen GmbH, Freiburg/Germany and IHKW Industrieheizkraftwerk Brunsbüttel GmbH, Freiburg/Germany were merged into GWE Holding GmbH, Freiburg/Germany.
- On August 2, 2011, GWE Industrie- und Krankenhausprojekte GmbH, Freiburg/Germany was merged into GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Freiburg/Germany.
- On September 14, 2011, the registered seats of GWE Holding GmbH and of IHKW Industrieheizkraftwerk Andernach GmbH were transferred from Freiburg/Germany to Eschborn/Germany.
- On October 31, 2011, GWE Projektentwicklungs Verwaltungs GmbH, Freiburg/Germany was merged into GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Freiburg/Germany.
- On October 31, 2011, ERSTE DOL-KONCON Gesellschaft für Mobilien-Vermietung mbH & Co. KG, Bad Homburg/Germany was merged into GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Freiburg/Germany by accretion.
- On November 17, 2011, GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Freiburg/Germany was merged into GWE Holding GmbH, Eschborn/Germany.
- On December 8, 2011, the company name of GWE Holding GmbH, Eschborn/Germany was changed to GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Eschborn/Germany.
- On March 31, 2012, Techem Energy Services GmbH acquired all the shares in MessKom Energiemanagement GmbH, Magdeburg/Germany. The subsidiary is fully consolidated (see note 18).

The Company had made the following changes to the basis of consolidation during 2010/2011:

- On April 12, 2010, the company name of MEIF II Energie France SAS had been changed to Techem Energie France SAS. Furthermore, the registered seat had been transferred from Paris/France to Saint-Germain-en-Laye/France.
- On March 16, 2011, Techem SAS, Ronchin/France, had been merged into Compteurs Farnier SAS, Le Plessis Robinson/France.
- On March 17, 2011, Techem Energy Technical Services (Beijing) Co., Ltd., Beijing/China had been liquidated.
- On March 25, 2011, Techem Energy Services GmbH had acquired all the shares in GWE Projectdevelopment GmbH, Freiburg/Germany and in GWE Holding GmbH, Freiburg/Germany. These subsidiaries are fully consolidated.
- On March 31, 2011, "Techem" (TEXEM) Limited Liability Partnership, Astana/Kazakhstan, had been liquidated.

C. ACCOUNTING PRINCIPLES (Continued)

Currency translation. The functional currency of each subsidiary is its local currency. As a result, financial information from foreign subsidiaries is translated to Euros as follows: balance sheet figures are translated at the middle rate on the balance sheet date, equity is translated at the historical rate, and income statements are translated at average rates for the financial year. Currency translation gains or losses are recognized directly in equity.

Foreign currency transactions are translated into the functional currency using the exchange rates at the transaction date. Gains and losses resulting from such transactions and from the translation at the closing rate of monetary assets and liabilities managed in foreign currency are recognized in the income statement.

D. ACCOUNTING POLICIES

Balance sheet items are broken down into current and non-current items, non-current items being items for which the maturity is expected to exceed twelve months.

Cash and cash equivalents. The Company deems all highly liquid financial investments with an original maturity of up to three months to be cash equivalents. These cash equivalents are primarily favourable bank balances realizable at short notice. Additionally, other investments are included in cash equivalents. These are recognized at fair value through profit and loss (market value), as they were acquired with intent to sell in the short term. Gains and losses are recognized in the income statement as financial income or finance costs when they are incurred.

Trade and other accounts receivable. Trade and other accounts receivable are measured at fair value on the date of recognition and subsequently at amortized cost using the effective interest method. Imminent or actual irrecoverable receivables are accounted for by means of write-downs based on the age of the receivable concerned.

In the case of instalment payments, deferred interest income for the subsequent periods is recognized in addition to a receivable. The deferred interest income is released to income over the term of the agreement. Most of the Group's instalment-based business is in Eastern Europe.

Inventories. Inventories are reported at the lower of cost and net realizable value. The cost of inventories is determined mainly on the basis of a weighted average. Potential losses resulting from obsolete or non-saleable inventories are accounted for by means of appropriate write-downs.

Metering devices for rent and property, plant and equipment. Metering devices for rent and property, plant and equipment are recognized at cost and reduced by depreciation. Gains or losses on the disposal of property, plant and equipment are recognized as other income or other expenses.

Any subsidies received are deducted from the cost of the property, plant and equipment concerned and are recognized over the useful life of the related asset by way of a reduced depreciation charge.

For the most part, the estimated useful lives used as the basis for straight-line depreciation are as follows:

	Estimated useful life (years)
Metering devices for rent	6 to 12
Office furniture and equipment, machinery	2 to 20
Buildings	20 to 25
Leasehold improvements	3 to 20 (or shorter lease term)

Upon contract cancellation, the carrying amount of the metering device for rent is transferred to inventories. Payments receivable upon contract cancellation are recognized as revenues and the inventories are disposed of and charged to product expenses.

D. ACCOUNTING POLICIES (Continued)

Leases. Leases where the Group is the lessee and where substantially all the risks and rewards associated with the use of the leased equipment are transferred to the Group are classified as finance leases. Such leases are reported at the inception of the lease at the lower of the fair value of the leased equipment and the present value of the minimum lease payments. A corresponding liability is recognized. The leased asset on the balance sheet is depreciated over the term of the lease or over its useful life. Part of the lease payment is reported as interest cost; the remainder reduces the liability.

In the case of sale and leaseback transactions resulting in a finance lease, any excess of sale proceeds over the carrying amount is deferred and recognized in income over the lease term.

In addition to finance leases, the Company has entered into other leases classified as operating leases. In this case, the lease payments are recognized as an expense in the income statement.

The Group is involved in finance leases as lessor. These leases are primarily rental agreements for the renting out of heat generation plant. To account for these leases, the Company recognizes a receivable equal to the present value of the minimum lease payments. Payments by the lessee are treated as repayment of principal and financial income.

Intangible assets. Purchased intangible assets are recognized at cost.

If the requirements under IAS 38 are satisfied, internally generated intangible assets are also recognized at cost.

Intangible assets are always amortized on a straight-line basis over their useful life.

For the most part, the estimated useful lives used as the basis for straight-line amortization are as follows:

	Estimated useful life (years)
Trademark	indefinite
Software and licenses	3 to 24
Customer relationships/customer agreements	3 to 33

The classification of the Techem trademark as an intangible asset with an indefinite useful life is based on the fact that Techem as a trademark exists since 1952. Brand awareness of Techem is very high in the market and it is not planned to abandon this trademark. Nevertheless, this classification is verified once a year.

The estimated useful life of the internally generated core software of the Energy Services business, HZ/3, has been extended by 10 years after thorough re-assessment during the financial year.

Recoverability of non-current assets. Property, plant and equipment and other non-current assets, including intangible assets, are tested for impairment as soon as events highlight, or there are indicators, that their carrying amount exceeds the recoverable amount. An impairment loss is recognized equal to the amount by which the carrying amount of an asset exceeds its recoverable amount, the recoverable amount being the higher of fair value less costs to sell or the value in use of the asset concerned. The value in use is defined as the present value of estimated future cash flows to be derived from an asset or a cash generating unit (CGU). The fair value of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction. For the purposes of determining impairment, assets are grouped together into the smallest group for which separate cash flows can be identified.

Goodwill is not subject to straight-line amortization, but is subject to an impairment test at least once a year. The impairment test is carried out on a CGU basis. The trademark, as another asset with an indefinite useful life, is also tested for impairment at least once a year. Goodwill and trademark are measured at their original cost less any accumulated impairment. Impairment losses recognized for goodwill are not reversed.

D. ACCOUNTING POLICIES (Continued)

Non-current accounts receivable and other financial assets. Non-current non-interest-bearing accounts receivable are recognized at present value. Where market prices cannot be determined, other financial assets are recognized at amortized cost.

Investments in associates. In accordance with IAS 28, associates are accounted for using the equity method and are recognized initially at acquisition cost.

Deferred taxes. Deferred taxes are calculated using the liabilities method. Deferred tax assets or deferred tax liabilities are recognized for temporary differences between the carrying amounts in the consolidated financial statements and the corresponding tax accounts, the result of which will be a future tax refund or tax expense. Deferred tax assets or liabilities are calculated using the tax rates expected to apply to the taxable income in the years in which these temporary differences are expected to reverse. If there is a change in the tax rates, the effect on the deferred tax assets and/or liabilities is recognized in the income statement of the period in which the new tax rate is enacted.

Deferred tax assets are recognized (e.g. on loss carried forwards) to the extent that it is probable there will be an available taxable profit against which the temporary difference can be applied.

Provisions. Provisions for pensions and other post-employment benefits are determined in accordance with IAS 19 using the actuarial projected unit credit method. This method takes into account, in particular, the current long-term capital market interest rate and current assumptions regarding future salary and annuity increases in addition to biometric calculation bases. The actuarial gains and losses are recognized directly in the income statement. The interest element in the pension expense is reported under finance costs.

With the exception of the other personnel-related provisions calculated in accordance with IAS 19, all other provisions are recognized on the basis of IAS 37, providing there is a present legal or constructive obligation, a probable outflow of resources embodying economic benefits, and a reliable estimate can be made of the amount of the obligation. The amount recognized is determined based on the full amount required to settle the probable obligation. Non-current provisions are discounted; the interest element is reported under finance costs.

Liabilities. At the time of recognition, liabilities are measured at fair value. They are then subsequently measured at amortized cost using the effective interest method. Non-current non-interest-bearing liabilities are discounted. Liabilities denominated in foreign currencies are translated at the closing rate.

Derivative financial instruments and hedging. In accordance with IAS 39, all derivative financial instruments are recognized on the balance sheet at fair value. On the trade date of a derivative, it is determined whether this derivative is an instrument to maintain fair value, to hedge a planned transaction or to hedge against future cash flow fluctuations relating to a recognized asset or a liability.

Most of the interest rate instruments of the Company do not meet the requirements of IAS 39 for hedge accounting, although they amount to hedges when viewed from an economic perspective. Hedge accounting has therefore not been applied. Changes in the fair value of these derivatives are recognized as financial income and finance costs.

The interest rate instruments of the Company which do meet the requirements of IAS 39 for hedge accounting are accounted for as follows: a) the effective part of the change in market value is recognized in other comprehensive income in equity, b) the ineffective part is recognized in the income statement.

Regarding the foreign exchange hedging instruments, changes in the fair value of these derivatives are recognized as financial income and finance costs.

Fair value of financial instruments. The fair value of cash and cash equivalents and of current trade and other accounts receivable and payable is the same as their respective carrying amounts. The fair value of

D. ACCOUNTING POLICIES (Continued)

non-current trade and other accounts receivable and financial liabilities is roughly equivalent to their carrying amounts. The fair value of derivatives is equivalent to their selling price at the balance sheet date.

Non-current assets held for sale and associated liabilities. Non-current assets held for sale and associated liabilities are reported as separate items on the face of the balance sheet in accordance with IFRS 5. They are measured at the lower of carrying amount and fair value less costs to sell. These assets are no longer depreciated.

Borrowing costs. In accordance with IAS 23, borrowing costs are capitalized and thereafter amortized over the useful life of the asset. Borrowing costs, which are not related to IAS 23, are expensed.

Research and development. Research costs are expensed as incurred. Costs incurred as part of development projects (mainly being software development) are recognized as intangible assets if it is considered probable that the project will be commercially successful, is technically feasible and the costs can be reliably determined. Other development costs that do not satisfy these criteria are expensed as incurred.

Recognition of revenue and expense. Rental and maintenance agreements are billed as part of fixed-price agreements in accordance with IAS 18 and recognized on a straight-line basis over the term of the agreement.

Using the percentage-of-completion method, accrued income is recognized for billing services to an amount equivalent to the cost of services already rendered plus a profit margin. The calculation is based on the percentage of completion of the billing process of the buildings as at the balance sheet date.

Revenue from the sale of goods is recognized when the significant risks and rewards of ownership have been transferred to the buyer, it is probable that the economic benefits associated with the transaction will flow to the Company and the amount of revenue can be measured reliably.

Revenue in respect of the delivery of heat is recognized to the amount of the services already rendered plus a profit margin. Accrued income is recognized for services not yet billed.

Expected deductions from revenue (e. g. cash discounts, quantity or trade discounts, non-contractual deductions) have been recognized.

Revenue is reported net of value-added tax and also net of the abovementioned deductions.

Estimations and assumptions. The preparation of the consolidated financial statements under IFRS requires assumptions and estimates to be made which can impact the valuation of the assets and liabilities recognized, the income and expenses, as well as the disclosure of contingent liabilities.

Assumptions and estimations also relate to the accounting and measurement of provisions. Regarding non-current provisions, the discount rate is an important estimate. It is based on market yields of high-quality, fixed-rate corporate bonds observable on the financial markets at the balance sheet date. For pension provisions, assumptions about life expectancy, future salary and pension increases are made.

The recoverability of goodwill is assessed based on forecasts of the cash flows of cash generating units for the next five years using a discount rate adjusted for the business risk.

Deferred tax assets are recognized to the extent that the recoverability of future tax benefits is probable. The actual usability of deferred tax assets depends on the future actual taxable profit situation. This situation may differ from the estimations at the date of capitalization of the deferred tax assets.

The valuation of interest and foreign exchange derivatives is dependent on future interest and exchange rate developments and assumptions on which these are based.

Further explanations concerning estimations and assumptions on which the preparation of this annual report is based are made within the relevant notes.

D. ACCOUNTING POLICIES (Continued)

All assumptions and estimations made are based on the circumstances as at the balance sheet date. The actual future circumstances may differ. When this occurs the assumptions are adjusted, and if applicable, the book values of the respective assets and liabilities are also adjusted.

E. ACCOUNTING CHANGE

The outcome of a close examination of the economic content of the contractual relationships regarding the metering devices for rent as well as the submetering, allocating and billing of energy and water consumption with customers was that these relationships have to be considered as one service in an overall view. According to civil law, rental contracts and submetering and billing contracts are independent of each other. However the rental contracts only establish the basis for Techem to provide the submetering and billing services as regulated in the service contracts. Therefore, from an accounting perspective, most of the rental contracts are no longer within the scope of lease accounting.

Historically most of the rental contracts of metering devices were classified as operating lease with Techem as lessor, leading to the disclosure of the devices as "rental equipment" and the recognition of "rental and associated service revenue". Due to the change in accounting, the disclosure of the rental devices has been changed to "metering devices for rent". Estimated useful lives used as the basis for depreciation remain unchanged being 6 to 12 years. Recognition and disclosure of the rental income has not changed. This change in accounting reflects the economic substance of the rental contracts better. The change in presentation follows the common treatment and improves the comparability of the financial statements.

The rental contracts of metering devices of the subsidiaries Techem Energy Services B.V., Breda/ Netherlands and Techem Energy Services Middle East FZCO, Dubai Silicon Oasis, Dubai/United Arab Emirates have historically been classified as finance leases, leading to the disclosure of finance lease receivables and the immediate recognition of revenue. During the term of the contracts, payments by the lessee were treated as repayment of principal and financial income.

As a result of the change in accounting, the metering devices for rent are capitalized retrospectively and are depreciated on a straight-line basis over their useful lives of 6 to 12 years. The income from the metering devices for rent is recognised as rental and associated service revenue.

E. ACCOUNTING CHANGE (Continued)

Reconciliation of consolidated statement of financial position:

	Mar 31, 2011			Apr 1, 2010		
	as reported	change in accounting	adjusted	as reported	change in accounting	adjusted
			EUR thousand			
Cash and cash equivalents	64,466		64,466	33,154		33,154
Trade accounts receivable	354,878	−504	354,374	331,814	−436	331,378
Receivables from shareholder	1,523		1,523	1,336		1,336
Other receivables	15,044		15,044	12,020		12,020
Other financial assets	807		807	2,410		2,410
Inventories	37,552		37,552	31,070	136	31,206
Income tax receivables	765		765	189		189
Non-current assets held for sale	1,606		1,606	1,513		1,513
Total current assets	**476,641**	**−504**	**476,137**	**413,506**	**−300**	**413,206**
Metering devices for rent	186,259	884	187,143	172,679	429	173,108
Property, plant and equipment	140,483		140,483	42,885		42,885
Intangible assets	1,665,779		1,665,779	1,673,940		1,673,940
Investments in associates	17,909		17,909	12,952		12,952
Other receivables	419		419	360		360
Other financial assets	21,065	−2,691	18,374	17,190	−1,443	15,747
Deferred tax assets	3,956	418	4,374	1,603	292	1,895
Total non-current assets	**2,035,870**	**−1,389**	**2,034,481**	**1,921,609**	**−722**	**1,920,887**
Total assets	**2,512,511**	**−1,893**	**2,510,618**	**2,335,115**	**−1,022**	**2,334,093**
Trade accounts payable	101,394		101,394	57,768		57,768
Liabilities to shareholder	0		0	3		3
Other liabilities	29,947	259	30,206	18,352	136	18,488
Other financial liabilities	97,335		97,335	134,524		134,524
Financial liabilities	24,161		24,161	13,931		13,931
Other provisions	53,841		53,841	53,176		53,176
Income tax liabilities	7,752		7,752	7,793		7,793
Total current liabilities	**314,430**	**259**	**314,689**	**285,547**	**136**	**285,683**
Financial liabilities	1,135,314		1,135,314	1,045,169		1,045,169
Other liabilities	2,030	−145	1,885	2,262		2,262
Other financial liabilities	5,519		5,519	1,015		1,015
Provisions for pensions	15,541		15,541	14,758		14,758
Other provisions	32,121		32,121	31,369		31,369
Deferred tax liabilities	127,637		127,637	115,698		115,698
Total non-current liabilities	**1,318,162**	**−145**	**1,318,017**	**1,210,271**	**0**	**1,210,271**
Capital account of limited partner	3		3	3		3
Reserve account of limited partner	808,393		808,393	812,702		812,702
Retained earnings	71,523	−2,007	69,516	26,592	−1,158	25,434
Total equity	**879,919**	**−2,007**	**877,912**	**839,297**	**−1,158**	**838,139**
Total liabilities and equity	**2,512,511**	**−1,893**	**2,510,618**	**2,335,115**	**−1,022**	**2,334,093**

E. ACCOUNTING CHANGE (Continued)

Reconciliation of consolidated income statement and consolidated statement of comprehensive income:

	Apr 1, 2010 - Mar 31, 2011		
	as reported	change in accounting	adjusted
		EUR thousand	
Revenue	732,436	−1,295	731,141
Capitalized internal work	9,771	63	9,834
Other income	7,548		7,548
Product expenses and purchased services	−299,536	346	−299,190
Personnel expenses	−160,805		−160,805
Depreciation/amortization of fixed and intangible assets	−95,322	−73	−95,395
Other expenses	−84,826		−84,826
Earnings before interest and tax (EBIT)	**109,266**	**−959**	**108,307**
Net share of gain of associates	129		129
Financial income	41,155	−59	41,096
Finance costs	−97,379		−97,379
Loss before tax	**53,171**	**−1,018**	**52,153**
Income taxes	−8,831	125	−8,706
Net loss	**44,340**	**−893**	**43,447**
Statement of comprehensive income			
Net loss	**44,340**	**−893**	**43,447**
Currency translation adjustments	591	44	635
Other comprehensive income	**591**	**44**	**635**
Total comprehensive income	**44,931**	**−849**	**44,082**

E. ACCOUNTING CHANGE (Continued)

Reconciliation of consolidated statement of cash flows:

	Apr 1, 2010 - March 31, 2011		
	as reported [1]	change in accounting	adjusted
	EUR thousand		
Cash flows from operating activities			
Earnings before tax	**53,171**	**−1,018**	**52,153**
Net share of gain in associates	−129		−129
Financial income	−41,155	59	−41,096
Finance costs	97,379		97,379
Earnings before interest and tax (EBIT)	**109,266**	**−959**	**108,307**
Depreciation and amortization	90,946	73	91,019
Impairment losses	4,376		4,376
EBITDA	**204,588**	**−886**	**203,702**
Adjusted for:			
Gains on disposal of fixed and intangible assets	−315		−315
Gain from bargain purchase	−2,787		−2,787
Subtotal	**201,486**	**−886**	**200,600**
Changes in working capital	**16,136**	**208**	**16,344**
Changes in trade accounts receivable	307	69	376
Changes in unbilled receivables	−20,009		−20,009
Changes in inventories	−1,216	139	−1,077
Changes in trade accounts payable	37,054		37,054
Changes in other receivables	**−2,591**	**1,304**	**−1,287**
Changes in tax claims (eco tax)	−1,079		−1,079
Changes in tax claims (VAT)	397		397
Changes in prepaid expenses	413		413
Changes in non-current operating receivables	−3,735	1,304	−2,431
Changes in other receivables	1,413		1,413
Changes in other liabilities	**9,511**	**−78**	**9,433**
Changes in commission liabilities	878		878
Changes in salaries and wages	−222		−222
Changes in other tax liabilities	7,654		7,654
Changes in deferred income	−590	138	−452
Changes in other liabilities	1,791	−216	1,575
Changes in provisions	**−6,658**		**−6,658**
Changes in maintenance service provisions	128		128
Changes in provisions for personnel expenses	−1,120		−1,120
Changes in pension provisions	33		33
Changes in warranty provisions	−1,463		−1,463
Changes in provisions for restructuring	−5,307		−5,307
Changes in provisions for legal fees	311		311
Changes in other provisions	760		760
Changes in receivables and payables from shareholder	**−189**		**−189**
Cash generated by operating activities	**217,695**	**548**	**218,243**
Interest paid	**−81,095**		**−81,095**
Interest received	**1,079**		**1,079**
Income taxes paid	**−6,032**		**−6,032**
Net cash generated by operating activities	**131,647**	**548**	**132,195**

E. ACCOUNTING CHANGE (Continued)

Reconciliation of consolidated statement of cash flows (continued):

	Apr 1, 2010 - March 31, 2011		
	as reported (1)	change in accounting	adjusted
		EUR thousand	
Cash flows from investing activities			
Change in fixed and intangible assets	**−83,157**	**−548**	**−83,705**
Purchase of fixed and intangible assets	−84,387	−548	−84,935
Changes in non-current assets held for sale	−92		−92
Proceeds from disposal of fixed and intangible assets	1,322		1,322
Changes in investments and loans	**−498**		**−498**
Changes in other investments and loans	−503		−503
Income from shares and loans	5		5
Changes in the scope of consolidation	**12,748**		**12,748**
Cash inflow from acquisition of fully consolidated subsidiaries	12,748		12,748
Cash flows used in investing activities	**−70,907**	**−548**	**−71,455**
Free cash flow	**60,740**	**0**	**60,740**
Cash flows from financing activities			
Net change in debt	**15,451**		**15,451**
Proceeds from borrowings	40,126		40,126
Repayments of borrowings	−23,892		−23,892
Payment of finance lease liabilities	−783		−783
Change in distributions	**−45,000**		**−45,000**
Drawings by limited partner	−45,000		−45,000
Net cash used in financing activities	**−29,549**		**−29,549**
Change in cash and cash equivalents	**31,191**	**0**	**31,191**
Cash and cash equivalents at the beginning of the period	**33,154**		**33,154**
Currency effects of cash and cash equivalents	121		121
Cash and cash equivalents at the end of the period	**64,466**		**64,466**

(1) In the current financial year, the structure and the calculation method of the Group cash flow statement has been changed, leading to differences in the single positions in comparison to the amounts reported in the previous year for the reporting period April 1, 2010 to March 31, 2011.

Due to the new calculation method the respective amounts exclude currency translation differences and cannot be reconciled with the movements in the balance sheet.

Reconciliation of consolidated statement of changes in equity:

	Capital account	Reserve account	Retained earnings	Total equity
		EUR thousand		
Balance as at Apr 1, 2010	**3**	**812,702**	**26,592**	**839,297**
Change in accounting	0	0	−1,158	−1,158
Balance as at Apr 1, 2010—adjusted	**3**	**812,702**	**25,434**	**838,139**
Balance as at Apr 1, 2011	**3**	**808,393**	**71,523**	**879,919**
Change in accounting Apr 1, 2010	0	0	−1,158	−1,158
Effect on total comprehensive income 2010/2011 from change in accounting	0	0	−849	−849
Balance as at Apr 1, 2011—adjusted	**3**	**808,393**	**69,516**	**877,912**

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES

1. Trade accounts receivable

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Billed receivables	90,813	88,672	87,377
Finance lease receivables[1]	1,107	783	616
Valuation allowances	−4,655	−4,923	−6,421
Unbilled receivables	205,873	269,842	249,806
Trade accounts receivable	**293,138**	**354,374**	**331,378**

(1) see note 8 for disclosures

Unbilled receivables represent revenue from equipment rental, billing and maintenance agreements that are billed once a year. These services have been rendered but have not yet been billed at the balance sheet date.

In 2011/2012, receivables of EUR 1,532 thousand (2010/2011: EUR 1,811 thousand) were written off. These are included in other expenses.

The following table shows the maturity breakdown for the billed receivables:

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Not yet due	34,966	40,376	29,996
Overdue but not written down			
Less than 30 days overdue	37,776	34,169	39,358
30 to 90 days overdue	11,215	6,800	8,665
Overdue and written down	6,856	7,327	9,358
Billed receivables	**90,813**	**88,672**	**87,377**

In 2011/2012, the changes in the valuation allowances on trade accounts receivable were as follows:

	2011/2012	2010/2011
	EUR thousand	
Valuation allowances at the beginning of the period	**−4,923**	**−6,421**
Additions to valuation allowances	−3,410	−3,114
Reduction of valuation allowances	3,596	4,562
Currency translation	82	50
Valuation allowances at the end of the period	**−4,655**	**−4,923**

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

2. Receivables from shareholder, other receivables and other financial assets—current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Receivables from shareholder	**1,617**	**1,523**	**1,336**
Prepaid expenses	4,905	3,811	4,203
Eco tax	1,398	4,876	3,797
Value-added tax reclaims	409	697	1,097
Advances paid	228	1,648	474
Other tax receivables	169	865	305
Other	5,286	3,147	2,144
Other receivables	**12,395**	**15,044**	**12,020**
Receivables from associates	316	431	329
Accounts payable with debit balance	311	109	1,916
Receivables from hedging instruments	11	79	17
Other	90	188	148
Other financial assets	**728**	**807**	**2,410**

Receivables from shareholder are tax receivables from MEIF II Germany Holdings Sàrl, Luxembourg.

3. Inventories

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Raw materials and supplies	4,595	3,882	1,981
Merchandise	29,543	36,114	31,872
Inventories, gross	**34,138**	**39,996**	**33,853**
Valuation allowances	−3,214	−2,444	−2,647
Inventories, net	**30,924**	**37,552**	**31,206**

In 2011/2012, a total of EUR 379 thousand (2010/2011: EUR 619 thousand) was written off and recognized in the income statement. The inventory write-off and valuation allowances are reported under product expenses and purchased services.

Appropriate write-downs are recognized on obsolete or non-saleable inventories.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

4. Metering devices for rent

	EUR thousand
Cost	
Cost, balance as at Apr 1, 2010	**241,038**
Additions	57,745
Reclassifications	547
Currency translation	−104
Disposals	−21,594
Cost, balance as at Mar 31, 2011	**277,632**
Additions	58,574
Change in scope	889
Currency translation	−168
Disposals	−25,076
Cost, balance as at Mar 31, 2012	**311,851**
Depreciation and impairment	
Depreciation and impairment, balance as at Apr 1, 2010	**67,930**
Additions	37,771
Impairment losses	4,105
Currency translation	−12
Disposals	−19,305
Depreciation and impairment, balance as at Mar 31, 2011	**90,489**
Additions	39,311
Impairment losses	3,812
Currency translation	−42
Disposals	−23,507
Depreciation and impairment, balance as at Mar 31, 2012	**110,063**
Carrying amounts	
Metering devices for rent carrying amount as at Apr 1, 2010	173,108
Metering devices for rent carrying amount as at Mar 31, 2011	187,143
Metering devices for rent carrying amount as at Mar 31, 2012	201,788
Thereof finance leases	
Finance leases carrying amount as at Apr 1, 2010	479
Finance leases carrying amount as at Mar 31, 2011	0
Finance leases carrying amount as at Mar 31, 2012	0

Metering devices for rent relate to metering devices on long-term rental to customers.

The impairment losses to the amount of EUR 3,812 thousand (2010/2011: EUR 4,105 thousand) relate to the write-offs of the remaining carrying amount of metering devices for rent when exchanging these, furthermore the impairment losses also relate to rental contract cancellations during the current financial year.

The change in scope to the amount of EUR 889 thousand is due to the acquisition of MessKom Energiemanagement GmbH (see note 18).

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

5. Property, plant and equipment (PPE)

	Land and buildings	Machinery	Office furniture and equipment	Work in progress	Subsidies	Total
			EUR thousand			
Cost						
Cost, balance as at Apr 1, 2010	**3,494**	**27,613**	**31,203**	**1,388**	**−1,579**	**62,119**
Additions	54	1,996	8,686	1,286	0	12,022
Change in scope	103	100,192	463	137	0	100,895
Reclassifications	0	397	18	−962	0	−547
Currency translation	0	−7	146	−17	0	122
Disposals	0	−1,486	−3,804	−276	796	−4,770
Cost, balance as at Mar 31, 2011	**3,651**	**128,705**	**36,712**	**1,556**	**−783**	**169,841**
Additions	151	4,862	5,114	815	0	10,942
Change in scope	11	5	9	0	0	25
Reclassifications	119	451	406	−893	0	83
Currency translation	−3	−8	−6	0	0	−17
Disposals	−204	−1,963	−6,202	−483	224	−8,628
Cost, balance as at Mar 31, 2012	**3,725**	**132,052**	**36,033**	**995**	**−559**	**172,246**
Depreciation and impairment						
Depreciation and impairment, balance as at Apr 1, 2010	**155**	**8,398**	**11,433**	**0**	**−752**	**19,234**
Additions	106	4,313	9,380	0	−166	13,633
Impairment losses	0	168	1	0	0	169
Reclassifications	0	27	−27	0	0	0
Currency translation	0	−4	125	0	0	121
Disposals	0	−945	−3,650	0	796	−3,799
Depreciation and impairment, balance as at Mar 31, 2011	**261**	**11,957**	**17,262**	**0**	**−122**	**29,358**
Additions	107	9,724	8,088	0	−123	17,796
Impairment losses	112	1,039	731	0	0	1,882
Reclassifications	30	−30	−13	0	0	−13
Currency translation	−1	−5	8	0	0	2
Disposals	−204	−1,551	−6,109	0	224	−7,640
Depreciation and impairment, balance as at Mar 31, 2012	**305**	**21,134**	**19,967**	**0**	**−21**	**41,385**
Carrying amounts						
PPE carrying amount as at Apr 1, 2010	3,339	19,215	19,770	1,388	−827	42,885
PPE carrying amount as at Mar 31, 2011	3,390	116,748	19,450	1,556	−661	140,483
PPE carrying amount as at Mar 31, 2012	3,420	110,918	16,066	995	−538	130,861
Thereof finance leases						
Finance leases carrying amount as at Apr 1, 2010	3,050	1,482	339	0	0	4,871
Finance leases carrying amount as at Mar 31, 2011	2,986	2,198	314	0	0	5,498
Finance leases carrying amount as at Mar 31, 2012	2,921	812	405	0	0	4,138

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The change in scope amounting to EUR 25 thousand is due to the acquisition of MessKom Energiemanagement GmbH (see note 18).

In 2010/2011 the change in scope amounting to EUR 100,895 thousand was due to the acquisition of the GWE Group.

The subsidies include investment subsidies, grants and construction subsidies paid to Techem Energy Contracting GmbH.

In 2011/2012, impairment losses amounting to EUR 1,882 thousand mainly include impairment losses on one energy generating plant (machinery), on a telephone system (office furniture and equipment) and on leasehold improvements (land and buildings).

6. Intangible assets

	Software, licenses and other intangible assets	Goodwill	Software in development	Total
		EUR thousand		
Cost				
Cost, balance as at Apr 1, 2010	**1,079,914**	**682,709**	**6,035**	**1,768,658**
Additions	9,687	0	5,550	15,237
Change in scope	16,356	0	0	16,356
Reclassifications	4,807	0	−4,807	0
Currency translation	78	0	0	78
Disposals	−425	0	−32	−457
Cost, balance as at Mar 31, 2011	**1,110,417**	**682,709**	**6,746**	**1,799,872**
Additions	5,677	0	7,330	13,007
Change in scope	2,623	1,889	0	4,512
Reclassifications	4,045	0	−4,128	−83
Currency translation	41	0	0	41
Disposals	−6,329	0	−138	−6,467
Cost, balance as at Mar 31, 2012	**1,116,474**	**684,598**	**9,810**	**1,810,882**
Amortization and impairment				
Amortization and impairment, balance as at Apr 1, 2010	**94,718**	**0**	**0**	**94,718**
Additions	39,615	0	0	39,615
Impairment losses	102	0	0	102
Currency translation	82	0	0	82
Disposals	−424	0	0	−424
Amortization and impairment, balance as at Mar 31, 2011	**134,093**	**0**	**0**	**134,093**
Additions	40,593	0	0	40,593
Impairment losses	1,779	0	0	1,779
Reclassifications	13	0	0	13
Currency translation	44	0	0	44
Disposals	−6,329	0	0	−6,329
Amortization and impairment, balance as at Mar 31, 2012	**170,193**	**0**	**0**	**170,193**
Carrying amounts				
Intangible assets carrying amount as at Apr 1, 2010	985,196	682,709	6,035	1,673,940
Intangible assets carrying amount as at Mar 31, 2011	976,324	682,709	6,746	1,665,779
Intangible assets carrying amount as at Mar 31, 2012	946,281	684,598	9,810	1,640,689

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

As at March 31, 2012, the carrying amount of internally generated intangible assets was EUR 13,020 thousand (additions: EUR 4,368 thousand; disposals: EUR −19 thousand; amortization and impairment: EUR 1,284 thousand; disposal amortization: EUR −17 thousand; cumulative historical cost: EUR 18,861 thousand).

The carrying amount of internally generated intangible assets as at March 31, 2011 had been EUR 9,938 thousand (additions: EUR 2,396 thousand; disposals: EUR 0 thousand; amortization and impairment: EUR 1,599 thousand; cumulative historical cost: EUR 14,512 thousand).

The change in scope in the current financial year amounting to EUR 4,512 thousand is due to the acquisition of Messkom Energiemanagement GmbH (see note 18). The change in scope in the previous financial year resulted from the acquisition of GWE Group.

The position software, licenses and other intangible assets also includes customer relationships. In addition, it also includes the trademark Techem. The trademark Techem has a book value of EUR 61,818 thousand and has an indefinite useful life.

Impairment losses in financial year 2011/2012 amount to EUR 1,779 thousand. Thereof EUR 1,348 thousand relate to the trademark of Compteurs Farnier SAS, Le Plessis Robinson/France. This trademark had been capitalized at the acquisition of the subsidiary and will no longer be continued after the planned change of the company's name. Furthermore, software of Techem Energy Contracting GmbH, Eschborn/Germany to the amount of EUR 323 thousand as well as further positions of various subsidiaries have been impaired. In 2010/2011, impairment losses included impairment losses on customer contracts of Techem Energy Contracting GmbH, Eschborn/Germany.

The customer relationships, recognized in the financial statements of the Group, arose from the following companies:

	Remaining useful life (years)	Carrying amount as at Mar 31, 2012
		EUR thousand
Techem Energy Services GmbH	approx. 29	630,467
Techem Energy Contracting GmbH	approx. 29	96,310
Techem Messtechnik Ges.m.b.H.	approx. 29	22,461
GWE Group	approx. between 2 to 13	14,534
bautec Energiemanagement GmbH	approx. 29	12,617
Caloribel S. A.	approx. 29	12,384
Techem (Schweiz) AG	approx. 29	11,017
Other companies	approx. 29	46,605
Total		**846,395**

The useful life of the customer relationships is between 3 to 33 years, based on historical customer loyalty.

In compliance with IFRS 3/IAS 36, goodwill is subject to an annual impairment test within three months of April 1.

The recoverable amount of each cash generating unit (CGU) is determined by calculating the value in use.

Impairment tests are carried out as described below:

Goodwill is assigned to appropriate CGUs. Techem is considered as one CGU with the exception of the CGU TEC Hellas (Energy Contracting business in Greece). Another CGU comprises the GWE Group (heat and energy generating plant business in Germany). As this CGU does not contain goodwill, an impairment test is only carried out in case of a triggering event.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The future cash flows are determined for each CGU using the multi-year plan based on historical values. The multi-year plan covers a period of five years. Figures for subsequent periods are based on the assumption of a 1.5 percent growth rate (being the historical growth rate) and an unchanged cost ratio. These future cash flows are then discounted to present value. The discount rate used (weighted average cost of capital (WACC)) was determined using the capital asset pricing model (CAPM) and results in an average rate for the Company of 10.63 percent (before tax) (2010/2011: 12.01 percent).

If the carrying amount of a CGU exceeds the calculated value in use, respectively the fair value less costs to sell, an impairment loss must be recognized.

If there are new indicators during the course of a year that a CGU may be impaired, an additional impairment test is carried out for this CGU.

As at March 31, 2012 goodwill amounts to EUR 684,598 thousand. This goodwill is completely assigned to the CGU Techem.

7. Investments in associates

	Mar 31, 2012	Mar 31, 2011
	EUR thousand	
Balance at the beginning of the period	**17,909**	**12,952**
Net share of loss/gain of associates	−448	129
Impairment of associates	−14,476	0
Dividend received from IHKW W	−200	0
Capital increase Thermie Serres S. A.	1,847	502
Change in scope—Addition EKL	0	3,112
Change in scope—Addition IHKW W	0	1,214
Balance at the end of the period	**4,632**	**17,909**

In 2011/2012, due to an impairment test, the investment in Thermie Serres S. A. was impaired by 100 percent. The reason is the higher international risk of Greece and the lower than expected growth of the company. The remaining balance of the investments comprises the shares in Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany (EKL) and in IHKW Industrieheizkraftwerk Weißbach GmbH, Weißbach/Germany (IHKW W).

The following table shows the information of the financial position and financial performance of the associated companies. The values are based on the companies' single-entity financial statements as well as the step-ups, both based on the amount of the percentage of the shares.

	Assets	Liabilities	Income	Profit/Loss	Share
	EUR thousand				
Thermie Serres S. A.	32,555	20,934	7,078	129	50.24%
EKL	6,878	3,767	n. s.	n. s.	33.33%
IHKW W	1,991	747	n. s.	n. s.	25.00%
Balance as at Mar 31, 2011	**41,424**	**25,448**	**7,078**	**129**	
Thermie Serres S. A.	20,791	18,036	8,302	−954	50.24%
EKL	6,995	3,547	2,292	336	33.33%
IHKW W	1,865	681	2,320	170	25.00%
Balance as at Mar 31, 2012	**29,651**	**22,264**	**12,914**	**−448**	

n. s.: not specified, as EKL and IHKW W as part of the GWE Group were acquired on March 25, 2011

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The loan agreement of Thermie Serres S. A. regulates that the total excess cash flow after regular repayments has to be used for unscheduled repayments of the loan and therefore is not available for disbursements to the shareholder.

The decrease of the assets of Thermie Serres S.A. in 2011/2012 results from the impairment of the included step-ups.

8. Other receivables and other financial assets—non-current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Other receivables	**419**	**419**	**360**
Trade accounts receivable	6,633	6,810	5,497
Finance lease receivables	13,000	9,456	8,428
Receivables from associates	159	1,931	1,645
Other	177	177	177
Other financial assets	**19,969**	**18,374**	**15,747**

Non-current trade accounts receivable mainly result from instalment-based business in Eastern Europe, each agreement having a term of between one and ten years.

Finance lease receivables. These leases are finance leases relating to heat generation plant.

The following table shows the total gross capital investment in finance leases and the present value of outstanding minimum lease payments:

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Total gross capital investment	19,991	14,423	12,998
Financial income not yet recognized	−5,884	−4,184	−3,954
Net capital investment	**14,107**	**10,239**	**9,044**
Present value of the residual value	0	0	0
Present value of minimum lease payments	**14,107**	**10,239**	**9,044**
Finance lease receivables—current[(1)]	−1,107	−783	−616
Finance lease receivables—non-current	**13,000**	**9,456**	**8,428**

(1) see note 1

The maturity breakdown for the total gross capital investment and the present value of the minimum lease payments is as follows:

	Mar 31, 2012		Mar 31, 2011		Apr 1, 2010	
	Total gross capital investment	Present value of minimum lease payments	Total gross capital investment	Present value of minimum lease payments	Total gross capital investment	Present value of minimum lease payments
			EUR thousand			
Maturity						
Up to one year	1,889	1,107	1,334	783	1,034	616
Between one year and five years	7,386	4,554	5,919	3,793	3,982	2,704
More than five years	10,716	8,446	7,170	5,663	7,982	5,724
Total	**19,991**	**14,107**	**14,423**	**10,239**	**12,998**	**9,044**

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

9. Deferred taxes

Deferred taxes are broken down as follows:

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Deferred tax assets resulting from:			
Tax loss carried forwards	31,012	29,738	24,447
Interest rate instruments	22,744	11,442	15,580
Provisions for pensions	1,573	1,318	1,126
Calculation of effective interest	1,535	3,094	1,832
Finance leases	193	737	521
Other timing differences	3,600	4,244	2,826
Write-down on net loss carried forwards	−10,648	−10,740	−6,509
Offsetting	−47,837	−35,459	−37,928
Total deferred tax assets	**2,172**	**4,374**	**1,895**
Deferred tax liabilities resulting from:			
Step-ups and recognition of assets as a result of purchase price allocations	−136,358	−141,000	−136,778
Metering devices for rent	−16,615	−13,208	−9,085
Work in progress	−4,228	−4,251	−4,164
Finance leases	−900	−586	−441
Interest rate instruments	0	−17	0
Other timing differences	−4,549	−4,034	−3,158
Offsetting	47,837	35,459	37,928
Total deferred tax liabilities	**−114,813**	**−127,637**	**−115,698**
Net deferred tax assets (+), deferred tax liabilities (−)	**−112,641**	**−123,263**	**−113,803**

At the balance sheet date, tax loss carried forwards of approximately EUR 194.0 million (March 31, 2011: EUR 183.0 million) exist, of which EUR 39.7 million (March 31, 2011: EUR 39.4 million) were not recognized due to uncertain usability. The current estimate of the write-downs on the net loss carried forwards may change depending on the financial performance of the Company and tax legislation in future years, which may necessitate an adjustment to the write-downs.

A tax group exists between TEMS KG, Techem GmbH, Techem Energy Services GmbH, Techem Energy Contracting GmbH and bautec Energiemanagement GmbH.

As TEMS KG is a partnership, it is only subject to trade tax with a rate of 12.94 percent.

Of the deferred tax assets resulting from interest rate instruments amounting to EUR 22,744 thousand, the amount of EUR 740 thousand (March 31, 2011: EUR 0 thousand) was directly recognized in equity.

The deferred taxes include non-current deferred tax assets of EUR 2,100 thousand and non-current deferred tax liabilities of EUR 107,223 thousand.

Deferred tax liabilities due to step-ups and recognition of assets as a result of purchase price allocations are reduced as a result of the depreciation of the assets over their useful life. They will not affect cash in future.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The unused tax losses of EUR 39.7 million for which no deferred tax asset has been recognized as at March 31, 2012 mainly relate to the following entities:

	Expiring within (years)	Amount as at Mar 31, 2012
		EUR thousand
GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Germany[1]	unlimited	12,528
Techem AB, Sweden	unlimited	5,914
TEC Hellas EPE, Greece	approx. 5	4,500
Techem do Brasil Serviços de Medição de Àgua Ltda., Brazil	unlimited	3,970
Biomasse Heizkraftwerk Eisenberg GmbH, Germany	unlimited	3,792
Techem Energie France SAS, France	unlimited	3,281
Techem Enerji Hizmetleri Sanayi ve Ticaret Limited Şirketi, Turkey	approx. 5	2,695
Techem Energy Services S.R.L., Romania	approx. 5	1,908
Other companies	—	1,107
Total		**39,695**

(1) until change of company name GWE Holding GmbH (see "changes to the basis of consolidation")

10. Liabilities to shareholder, other liabilities and other financial liabilities—current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Liabilities to shareholder	**0**	**0**	**3**
Other taxes	26,390	15,513	6,479
Deferred income	12,113	9,339	9,399
Advances received	269	1,063	275
Other	1,474	4,291	2,335
Other liabilities	**40,246**	**30,206**	**18,488**
Liabilities from hedging instruments	164,512	83,295	121,907
Guarantee deposits received	5,055	5,063	5,095
Outstanding purchase price liability MessKom	4,415	0	0
Commissions	3,941	4,748	3,870
Liabilities to associates	2,691	2,439	1,859
Other	5,076	1,790	1,793
Other financial liabilities	**185,690**	**97,335**	**134,524**

The other taxes primarily comprise income tax on wages and salaries and value-added tax (VAT).

11. Financial liabilities—current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Loans[1]	7,252	8,522	2,013
Lease liabilities[1]	579	639	685
Bank overdraft	0	15,000	11,233
Financial liabilities	**7,831**	**24,161**	**13,931**

(1) For disclosures, see note 13

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

12. Other provisions—current

	Apr 1, 2010	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Mar 31, 2011
				EUR thousand			
Personnel	23,612	−20,165	20,349	−1,261	550	85	23,170
Maintenance services	8,688	−8,688	115	0	0	9,015	9,130
Warranties	5,005	−2,202	2,540	−1,878	0	0	3,465
Legal fees	497	−286	644	−47	494	0	1,302
Restructuring	7,852	−6,585	1,475	−433	0	260	2,569
Other	7,522	−6,364	7,212	−418	5,350	903	14,205
Other provisions	**53,176**	**−44,290**	**32,335**	**−4,037**	**6,394**	**10,263**	**53,841**

	Apr 1, 2011	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Mar 31, 2012
				EUR thousand			
Personnel	23,170	−18,769	20,302	−1,148	0	27	23,582
Maintenance services	9,130	−9,130	30	−1,090	0	9,531	8,471
Warranties	3,465	−1,830	4,600	−1,011	0	0	5,224
Legal fees	1,302	−520	661	−465	0	0	978
Restructuring	2,569	−2,437	2,527	−170	0	284	2,773
Other	14,205	−12,490	7,961	−1,052	27	202	8,853
Other provisions	**53,841**	**−45,176**	**36,081**	**−4,936**	**27**	**10,044**	**49,881**

The personnel provisions mainly comprise provisions for outstanding vacation entitlements, bonuses and workers' compensation.

Maintenance services provisions have been recognized in order to allow for the exchange of equipment under maintenance agreements. The breakdown of the provision into non-current and current elements is based on the age structure of the agreements. The current portion comprises agreements due to expire in less than one year.

The provision for warranties is computed by multiplying the relevant revenue for 2011/2012 by the warranty claims ratio for the previous years. Techem provides a two-year warranty on its products.

The provision for restructuring relates to a reorganization program of Techem Energy Services GmbH, which started in the financial year 2008/2009.

The amount of EUR 8,853 thousand reported under "Other" includes provisions for commercial representatives, renovation obligations and charges according to the Renewable Energy Law (EEG).

Net exchange differences are not disclosed separately because they are not material. They are included in the "Reversals" column.

13. Financial liabilities—non-current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Loans	1,110,849	1,130,554	1,040,513
Lease liabilities	3,761	4,760	4,656
Financial liabilities	**1,114,610**	**1,135,314**	**1,045,169**

The company has a Senior Facilities Agreement of EUR 1,000 million, consisting of EUR 850 million senior facility, EUR 100 million capital expenditure facility ("capex facility") and EUR 50 million working capital facility, and a Junior Facilities Agreement of EUR 150 million.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The term of the senior facility is seven years (until January 2015). At the start of the loan agreement, interest had been based on the EURIBOR plus a spread of 200 basis points (payments are currently made on basis of the one-month-EURIBOR). As a result of an amendment to the loan agreement on July 2, 2008 the spread had been increased by 50 basis points. Based on the arrangements currently in force, the spread currently is 300 basis points over EURIBOR, rising to 375 basis points over EURIBOR after five years from the start of the loan agreement. As at March 31, 2012, the effective interest rate for the senior facilities is 4.77 percent (March 31, 2011: 5.27 percent). EUR 831.0 million of the senior facility have been drawn down as at March 31, 2012.

The term of the junior facility is seven and a half years (until July 2015). At the start of the loan agreement, interest had been based on the EURIBOR plus a spread of 450 basis points (payments are currently made on basis of the one-month-EURIBOR). As a result of an amendment to the loan agreement on July 2, 2008 the spread had been increased by 50 basis points. Based on the arrangements currently in force, the spread currently is 550 basis points over EURIBOR, rising to 650 basis points over EURIBOR after five years from the start of the loan agreement. As at March 31, 2012, the effective interest rate for the junior facility is 7.18 percent (March 31, 2011: 8.02 percent). EUR 150 million of the junior facility have been drawn down as at March 31, 2012.

The loans are bullet loans. However, the loan agreements specify that if certain cash flows are realized, these cash flows must be used for the early redemption of the loans. These cash flows comprise an "excess cash flow" adjusted for one-off items, the precise details of which are defined in the loan agreements. From September 2010, such cash flows must be used to make loan repayments at six-monthly intervals, the amount of the repayment being gradually increased based on a rising scale from 25 percent to 100 percent of the cash flows concerned. In the financial year 2011/2012, EUR 0.1 million have been repaid in August 2011 (based on the excess cash flow per March 2011) and EUR 6.5 million have been repaid in January 2012 (based on the excess cash flow per September 2011). In the financial year 2010/2011, EUR 12.4 million senior facility had been repaid in January 2011 (based on the excess cash flow per September 2010). As at March 31, 2012, EUR 831.0 million of the senior facility have been drawn down (March 31, 2011: EUR 837.6 million). Additionally, specific proceeds arising from events outside the normal operating activities of the Company must also be used for the repayment of the loans. The order of repayment of the loans is based on the repayment ranking as specified in the loan agreements.

The company has a capital expenditure facility of EUR 100 million and a working capital facility of EUR 50 million. The term of the capex facility is seven years, in line with the senior facility's term, and is reported under non-current financial liabilities. The term of the working capital facility ends on January 3, 2013. The facility is reported under current financial liabilities (bank overdraft; see note 11). Of the working capital facility amounting to EUR 50 million, EUR 30 million may be used for cash drawings and EUR 20 million may be used for cash drawings as well as for as guarantees. As at March 31, 2012, the Company has made use of EUR 67.0 million of the capital expenditure facility (March 31, 2011: EUR 67.0 million) and there had been no cash drawings on the working capital facility (March 31, 2011: EUR 15.0 million). Furthermore, EUR 15.7 million have been drawn on the working capital facility by way of guarantees (March 31, 2011: EUR 11.3 million).

On March 28, 2011, the German companies GWE Gesellschaft für wirtschaftliche Energieversorgung mbH (former GWE Holding GmbH—see "Changes to the basis of consolidation") and GWE Projectdevelopment GmbH (merged into Techem Energy Contracting GmbH in June 2011—see "Changes to the basis of consolidation") had acceded to the loan agreements as guarantors.

On November 20, 2009, the Senior and the Junior Facilities Agreement had been amended to allow the accession of the French companies Techem Energie France SAS, Holding Farnier SAS and Compteurs Farnier SAS as additional guarantors.

The shares in Techem GmbH/Germany (EUR 1,431,084 thousand, being the book value in accordance with German Commercial Code as at March 31, 2012; March 31, 2011: EUR 1,431,084 thousand) serve

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

as collateral as per the loan agreement. Furthermore, the following shares (book values before consolidation) also serve as collateral: Techem Energy Services GmbH/Germany (EUR 996,084 thousand; March 31, 2011: EUR 996,084 thousand), Techem Energy Contracting GmbH/Germany (EUR 33,460 thousand; March 31, 2011: EUR 33,174 thousand), bautec Energiemanagement GmbH/Germany (EUR 16,055 thousand; March 31, 2011: EUR 16,055 thousand), Techem Messtechnik Ges.m.b.H./Austria (EUR 6,498 thousand; March 31, 2011: EUR 6,498 thousand) and Techem Danmark A/S/Denmark (EUR 23,346 thousand; March 31, 2011: EUR 23,346 thousand). Techem GmbH/Germany directly and indirectly owns 100 percent of the shares in Techem Energy Services GmbH/Germany while Techem Energy Services GmbH/Germany owns the remaining shares shown above. Since December 1, 2009, the shares in Techem Energie France SAS/France (EUR 20,125 thousand; March 31, 2011: 20,125 thousand), which are owned by Techem Energy Services GmbH/Germany, and the shares in Holding Farnier SAS/France (EUR 45,989 thousand; March 31, 2011: EUR 45,989 thousand), which are owned by Techem Energie France SAS/France, and the shares in Compteurs Farnier SAS/France, (EUR 10,983 thousand; March 31, 2011: EUR 10,983 thousand), which are owned by Techem Energie France SAS/France and by Holding Farnier SAS/France, also serve as a collateral. Since the acquisition of GWE Group the shares in GWE Gesellschaft für wirtschaftliche Energieversorgung mbH/Germany (former GWE Holding GmbH—see "Changes to the basis of consolidation") (EUR 40,405 thousand; March 31, 2011: EUR 40,691 thousand), which are owned by Techem Energy Services GmbH/Germany, also serve as a collateral. As at March 31, 2011, the shares in GWE Projectdevelopment GmbH/Germany also served as a collateral (EUR 286 thousand). These shares have been merged during the current financial year into Techem Energy Contracting GmbH/Germany.

In addition the loans are secured by various assets lodged as collateral. The carrying amounts of the assets concerned were as follows:

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Metering devices for rent	169,925	161,575	153,788
Trade accounts receivable	54,737	50,282	58,419
Cash at bank	51,386	37,875	10,605
Inventories	8,411	8,054	7,270
Total collateral	**284,459**	**257,786**	**230,082**

The Company also had entered into an agreement assigning intellectual property rights as security for the loans. These intellectual property rights include patents, brands, utility models, inventions and other intellectual property rights used by the Company.

Under the financing arrangements covenants have to be complied with and have to be reported to the participating banks as part of a bank reporting. A compliance certificate was submitted to the banks based on September 30, 2011 figures wherein all covenants had been adhered to. For March 31, 2012, preliminary calculations indicate no issues.

In addition, four subsidiaries have bank debt amounting to a total of EUR 67,453 thousand (facility: EUR 86,237 thousand; March 31, 2011: EUR 73,136 thousand, facility: EUR 87,349 thousand). Thereof EUR 66,048 thousand (facility: EUR 84,180 thousand; March 31, 2011: EUR 71,174 thousand,

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

facility: EUR 85,180 thousand) relate to GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and two of its subsidiaries.

Facility		Book value			
Mar 31, 2012	Mar 31, 2011	Mar 31, 2012	Mar 31, 2011	Term	Interest rate
EUR thousand		EUR thousand			
30,832	30,832	23,450	25,759	until Mar 31, 2022	fix 5.20%
24,268	24,268	22,783	23,416	until Mar 31, 2023	variable 3-month-EURIBOR +0.95%
10,000	10,000	7,555	8,219	until Mar 31, 2023	fix 5.05%
10,750	10,750	6,868	6,503	until Jun 30, 2020	variable 3-month-EURIBOR +2.50%
5,000	5,000	3,912	4,252	until Mar 31, 2023	variable 3-month-EURIBOR +5.00%
3,330	4,330	1,480	3,025	between Jul 31, 2012 and Apr 30, 2017	fix 4.40% to 5.50%
84,180	**85,180**	**66,048**	**71,174**		

The loans are repayable based on terms fixed in the individual loan agreements. The table below shows the maturity breakdown of the future cash payments due.

Of the loans drawn down, EUR 58,606 thousand are secured by a land charge against a hereditary building right in the amount of EUR 81,400 thousand, by assignment of the rights of the significant contracts with suppliers and of project contracts of the project Industrie- und Heizkraftwerk Andernach and by security assignment of all current assets of the respective heat generating plant. EUR 6,868 thousand are secured by assignment of the rights from the energy service contract with a customer and by the pledge of EUR 538 thousand in a money market account.

Some of the financing agreements of the GWE Group have to comply with covenants and have to be reported regularly to the participating banks as part of a bank reporting.

The maturity breakdown for the loans is as follows:

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Loans			
Up to one year[1]	7,252	8,522	2,013
Between one year and five years	1,071,425	1,078,174	1,042,000
More than five years	37,800	41,883	0
Total amortizable loans	**1,116,477**	**1,128,579**	**1,044,013**

(1) see note 11

In 2011/2012, the average interest rate is 7.60 percent (2010/2011: 7.89 percent).

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The breakdown of lease liabilities is as follows:

	Mar 31, 2012		Mar 31, 2011		Apr 1, 2010	
	Nominal amount of lease liabilities	Present value of minimum lease payments	Nominal amount of lease liabilities	Present value of minimum lease payments	Nominal amount of lease liabilities	Present value of minimum lease payments
	EUR thousand					
Up to one year	759	579	908	639	976	685
Between one year and five years	1,589	1,291	2,537	2,199	2,358	2,076
More than five years	3,230	2,470	2,568	2,561	3,573	2,580
Total	**5,578**	**4,340**	**6,013**	**5,399**	**6,907**	**5,341**
Less: discounting amount	−1,238		−614		−1,566	
Net present value	**4,340**		**5,399**		**5,341**	
Lease liabilities—current[1]	−579	−579	−639	−639	−685	−685
Lease liabilities— non-current	**3,761**	**3,761**	**4,760**	**4,760**	**4,656**	**4,656**

(1) see note 11

The Company has entered into lease agreements for office equipment, hardware and machinery.

The repayment of lease liabilities (in accordance with the statement of cash flows) is computed as follows:

	Mar 31, 2012	Mar 31, 2011
	EUR thousand	
Present value of lease liabilities	4,340	5,399
Less:		
Additions in year under review	−215	−841
Opening balance as at Apr 1	−5,399	−5,341
Repayment of lease liabilities	**−1,274**	**−783**

14. Other liabilities and other financial liabilities—non-current

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Deferred income	2,718	1,709	2,137
Other	173	176	125
Other liabilities	**2.891**	**1,885**	**2,262**
Liabilities from hedging instruments[1]	4,848	2,270	0
Trade accounts payable	1,585	2,235	0
Guarantee deposits received	963	1,014	1,015
Other financial liabilities	**7,396**	**5,519**	**1,015**

(1) see part G. Other disclosures "Concentration of risk"

The deferred income mainly includes deferred interest relating to instalment-based payment agreements.

Furthermore deferred income contains the deferred gain from the sale and leaseback transaction of land and buildings of Techem Messtechnik Ges.m.b.H./Austria. The transaction had taken place in financial year 2005/2006.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

15. Provisions for pensions and other post-employment benefits

Post-employment benefit plans of the subsidiaries vary depending on the legal, tax and economic situation in each country.

Most of the pension schemes in place in Germany as well as in other countries are defined benefit plans, some of which are funded and others unfunded.

There are pension schemes in place for an active and former members of the senior management of Techem Energy Services GmbH and Techem GmbH, with a separate scheme for each person. These pension schemes are based on the pensionable remuneration of each employee and the employee's period of service. For the most part the pension schemes are insured. In addition, the Company has set up a relief fund.

The provisions for pensions and other post-employment benefits are computed on the basis of independent actuarial reports. The provisions for defined benefit obligations are determined in accordance with IAS 19 ("Employee benefits") using the standard international method known as the Projected Unit Credit Method (in Germany, in conjunction with the Heubeck 2005 G mortality tables).

The funded obligations are supported by suitable insurance policies that meet the requirements of IAS 19 for plan assets. These plan assets are then set off accordingly against the provisions.

The following table shows the changes in post-employment benefit obligations in each reporting period:

	Mar 31, 2012	Mar 31, 2011	Mar 31, 2010	Mar 31, 2009	Mar 31, 2008
			EUR thousand		
Present value of funded obligations	12,192	10,662	8,864	7,633	6,417
Fair value of plan assets	−10,225	−9,284	−8,007	−6,970	−5,752
Deficit	**1,967**	**1,378**	**857**	**663**	**665**
Present value of unfunded obligations	14,625	14,163	13,901	12,998	13,910
Balance recognized (net)	**16,592**	**15,541**	**14,758**	**13,661**	**14,575**

The following table shows the change in the present value of the defined benefit obligations for the year under review:

	2011/2012	2010/2011
	EUR thousand	
Balance at the beginning of the year	**24,825**	**22,765**
Actuarial losses[1]	1,216	921
Exchange rate differences on foreign plans	722	631
Derecognition of obligations covered by insurance companies	−401	−339
Employees moving from/to other companies	−440	14
Current service costs[1]	912	1,135
Interest costs[1]	1,075	936
Pension payments	−1,092	−1,238
Balance at the end of the year	**26,817**	**24,825**

(1) positions recognized in the current income

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The following table shows the change in the present value of the fair value of plan assets for the year under review:

	2011/2012	2010/2011
	EUR thousand	
Balance at the beginning of the year	**9,284**	**8,007**
Actuarial gains[1]	78	48
Exchange rate differences on foreign plans	506	530
Derecognition of plan assets covered by insurance companies	−401	−339
Employees moving from/to other companies	−354	14
Expected return on plan assets[1]	289	173
Employer contributions	479	557
Employee contributions	344	302
Pension payments	0	−8
Balance at the end of the year	**10,225**	**9,284**

(1) positions recognized in the current income

Since all the pension obligations relating to existing retired employees of Techem (Schweiz) AG, Urdorf/ Switzerland are covered by the insurance company, both the present value of the funded obligation and the fair value of the plan assets were each reduced by EUR 401 thousand in 2011/2012 (2010/2011: EUR 339 thousand).

The defined benefit obligation is split into non-current (EUR 15,586 thousand) and current (EUR 1,006 thousand) obligations.

The actual return on plan assets in 2011/2012 was EUR 299 thousand.

The current service costs as well as actuarial gains and losses are included in the personnel expenses. The interest costs and the expected return on plan assets are included in the financial result.

The basic assumptions applied in the computation of the pension provisions are as follows (average values):

	Mar 31, 2012	Mar 31, 2011
Discount rate	4.24%	4.92%
Salary increases	2.53%	2.58%
Annuity increases	1.52%	1.57%
Expected return on plan assets	3.15%	3.10%

An average discount rate of 4.50 percent was applied to German defined benefit obligations. The discount rates applying to non-German defined benefit obligations in 2011/2012 were between 2.62 percent and 4.35 percent.

In 2011/2012, EUR 63 thousand were paid into a defined contribution plan by Techem Energy Services B.V., Breda/Netherlands.

In 2012/2013, contributions to the plan assets are expected to be EUR 818 thousand.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

16. Other provisions—non-current

	Apr 1, 2010	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Unwinding of discount	Mar 31, 2011
				EUR thousand				
Maintenance services	25,042	−12	8,727	−19	0	−9,015	247	24,970
Restructuring	873	−7	140	0	0	−260	19	765
Other	5,454	−102	964	−286	1,197	−988	147	6,386
Other provisions	**31,369**	**−121**	**9,831**	**−305**	**1,197**	**−10,263**	**413**	**32,121**

	Apr 1, 2011	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Unwinding of discount	Mar 31, 2012
				EUR thousand				
Maintenance services	24,970	−13	8,745	−13	0	−9,531	306	24,464
Restructuring	765	0	451	−236	0	−284	19	715
Other	6,386	−246	1,163	−769	0	−229	−124	6,181
Other provisions	**32,121**	**−259**	**10,359**	**−1,018**	**0**	**−10,044**	**201**	**31,360**

A discount rate of 3.91 percent was applied to the provisions (the risk premium was taken into account in the measurement of future cash outflows).

Net exchange differences are not disclosed separately because they are not material. They are included in the "Reversal" column.

17. Equity

Capital account of limited partner. The contribution by MEIF II Germany Holdings Sàrl amounting to EUR 2,500 as at March 31, 2012, to which its liability is limited, is shown as capital share of the limited partner in the capital account (March 31, 2011: EUR 2,500).

Reserve account of limited partner. The reserves of the limited partner relate to its drawings and contributions and amount to EUR 778,393,525 as at March 31, 2012 (March 31, 2011: EUR 808,393,525).

The decrease of the reserves results from the board resolution dated February 7, 2012 (EUR 30,000,000) where a repayment to the limited partner has been resolved.

Capital management disclosures. Among its objectives, TEMS KG is endeavouring to secure its equity base over the long-term and generate an appropriate return on capital employed. However, in this regard, the equity as per the Group's balance sheet is only a indirect management criterion, whereas revenue, EBITDA and free cash flow function as direct management criteria.

The following table shows the change in equity and financial liabilities:

	Mar 31, 2012	Mar 31, 2011	Change (%)	Apr 1, 2010
		EUR thousand		
Equity	**792,798**	**877,912**	**−9.70**	**838,139**
as percentage of total equity and financial liabilities	41.39	43.09		44.18
Financial liabilities current	7,831	24,161		13,931
Financial liabilities non-current	1,114,610	1,135,314		1,045,169
Financial liabilities	**1,122,441**	**1,159,475**	**−3.19**	**1,059,100**
as percentage of total equity and financial liabilities	58.61	56.91		55.82
Total equity and financial liabilities	**1,915,239**	**2,037,387**	**−6.00**	**1,897,239**

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

18. Acquisition of MessKom Energiemanagement GmbH

With effective date of March 31, 2012, Techem Energy Services GmbH acquired all the shares in MessKom Energiemanagement GmbH, Magdeburg/Germany. The purchase price was EUR 4,415 thousand.

The business of MessKom Energiemanagement GmbH mainly comprises the recording, allocating and billing of energy and of water consumption.

The breakdown of the net assets acquired is as follows:

	Carrying amount	Adjustment of carrying amount to fair value	Fair value
		EUR thousand	
Cash and cash equivalents	21	0	21
Current trade accounts receivable	125	0	125
Other current assets	26	0	26
Metering devices for rent	769	120	889
Property, plant and equipment	25	0	25
Customer contracts	0	2,623	2,623
Current trade accounts payable	−24	0	−24
Other current liabilities	−266	0	−266
Current provisions	−27	0	−27
Deferred tax liabilities	0	−866	−866
Total net assets acquired	**649**	**1,877**	**2,526**
Goodwill			1,889
Total purchase price			**4,415**
Outstanding purchase price liability			−4,415
Less: Cash and cash equivalents acquired			21
Net cash inflow relating to the acquisition			**21**

As part of the acquisition, contractual relationships to the amount of EUR 2,623 thousand were identified as intangible assets and a step-up on metering devices for rent to the amount of EUR 120 thousand was identified. The period of amortization of the contractual relationship is 33 years. The period of depreciation of the metering devices for rent is between 4 and 10 years.

The goodwill of EUR 1,889 thousand mainly comprises intangible assets which cannot be determined separately and mainly reflect expected synergies in the sector Energy Services.

The purchase price is a conditional purchase price which includes a retained guarantee reserve of EUR 500 thousand in case, the cancellation rate of existing customer contracts is higher than 5 percent within one year after the date of acquisition. With a high probability, it is assumed that the retained guarantee reserve has to be paid to the seller after one year. At the balance sheet date, the purchase price has not been paid.

If the acquired company had been part of the TEMS KG Group since April 1, 2011, Group revenues would have amounted to EUR 694,217 thousand and the net loss to EUR 52,932 thousand.

Costs directly attributable to the purchase of MessKom Energiemanagement GmbH are EUR 29 thousand which have been recognized in other expenses.

19. Non-current assets held for sale

In April 2011, the district heating network in Olching, which was "held for sale" until then, together with the machinery and the contracts regulating the supply of district heating was sold.

As regulated in the sales contract, the district heating network was to be transferred to the new owner upon approval of the respective community. The community had approved the sales contract in February 2011. The selling price corresponded to the anticipated net carrying amount at the date of transfer of the heating network to the new owner. The carrying amount of the heating network and its machinery on March 31, 2011 had been EUR 1,606 thousand (Apr 1, 2010: EUR 1,513 thousand).

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

20. Categories of financial assets and financial liabilities

The following table provides an overview of the financial instruments in TEMS KG.

	Mar 31, 2012	Mar 31, 2011	Apr 1, 2010
		EUR thousand	
Financial assets			
Category: Loans and receivables			
Measurement at amortized cost			
Carrying amount is approximately equivalent to fair value			
Cash and cash equivalents (excl. other investments)[1]	66,440	58,283	26,412
Trade accounts receivable (current)	293,138	354,374	331,378
Receivables from shareholder (current)[2];[6]	0	0	0
Other financial assets (current)[3];[6]	717	728	2,393
Other financial assets (non-current)[6]	19,969	18,374	15,747
Investments in associates	4,632	17,909	12,952
Category: Financial assets measured at fair value and recognized in income			
Measurement at fair value			
Hedging instruments not subject to hedge accounting	11	79	17
Cash equivalents (other investments)	5,768	6,183	6,742
Financial liabilities			
Category: Loans and payables			
Measurement at amortized cost			
Carrying amount is approximately equivalent to fair value			
Trade accounts payable (current and non-current)	41,490	103,629	57,768
Other financial liabilities (current)[4];[6]	21,178	14,040	12,617
Other financial liabilities (non-current)[5];[6]	963	1,014	1,015
Financial liabilities (current and non-current)	1,122,441	1,159,475	1,059,100
Liabilities to shareholder (current and non-current)	0	0	3
Category: Financial liabilities measured at fair value and recognized in income			
Measurement at fair value			
Hedging instruments not subject to hedge accounting	164,512	83,295	121,907
Hedging instruments subject to hedge accounting	4,848	2,270	0

(1) As at March 31, 2012, other investments to the amount of EUR 5,768 thousand are reported in the category "Financial assets measured at fair value and recognized in income" (March 31, 2011: EUR 6,183 thousand; Apr 1, 2010: EUR 6,742 thousand).

(2) As at March 31, 2012, balance sheet item includes EUR 1,617 thousand (March 31, 2011: EUR 1,523 thousand; Apr 1, 2010: EUR 1,336 thousand) tax receivables from shareholder.

(3) As at March 31, 2012, balance sheet item also includes interest rate instruments of EUR 6 thousand (March 31, 2011: EUR 79 thousand; Apr 1, 2010: EUR 17 thousand) and foreign exchange hedging instruments of EUR 5 thousand (March 31, 2011 and Apr 1, 2010: EUR 0 thousand).

(4) As at March 31, 2012, balance sheet item also includes interest rate instruments of EUR 164,505 thousand (March 31, 2011: EUR 83,295 thousand; Apr 1, 2010: EUR 121,907 thousand) and foreign exchange hedging instruments of EUR 7 thousand (March 31, 2011 and Apr 1, 2010: EUR 0 thousand).

(5) As at March 31, 2012, balance sheet item also includes interest rate instruments of EUR 4,848 thousand (March 31, 2011: EUR 2,270 thousand; Apr 1, 2010: EUR 0 thousand) and non-current trade accounts payable of EUR 1,585 thousand (March 31, 2011: EUR 2,235 thousand; Apr 1, 2010: EUR 0 thousand).

(6) Only financial instruments as defined in IAS 39/IFRS 7

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The fair value of all current items is roughly equivalent to the carrying amount. The main reason for this is the short maturity of these instruments. As far as non-current accounts receivable, other financial assets and non-current financial liabilities are concerned, no material differences have arisen between the carrying amounts and the fair values determined for these items. The carrying amounts of the non-current items are therefore approximately equivalent to their fair values. Acquisitions and sales of financial assets common to the market are generally accounted for at the settlement date.

Other investments and hedging instruments are measured at fair value. The fair value of other investments is based on quoted market prices on an active market at the balance sheet date and is therefore attributed to level 1 in the fair value measurement hierarchy in accordance with IFRS 7. The fair value of the hedging instruments is based on valuation techniques for which all significant inputs are observable and is therefore attributed to level 2.

21. Revenue

	2011/2012	2010/2011
	EUR thousand	
ENERGY SERVICES		
Billing services	257,940	250,329
Rental and associated service revenue	165,429	158,090
Sales	74,549	73,649
Maintenance	30,901	32,088
Other	1,315	1,573
ENERGY CONTRACTING	162,799	215,412
Revenue	**692,933**	**731,141**

22. Other income

	2011/2012	2010/2011
	EUR thousand	
Gains on foreign exchange	2,388	1,054
Gains on the disposal of fixed and intangible assets	353	521
Gain from a bargain purchase	0	2,787
Other	3,921	3,186
Other income	**6,662**	**7,548**

The gains on foreign exchange arose primarily as a result of differences between foreign exchange rates on the dates the receivables/payables were recognized and those on the dates of payment or those used in remeasurement at the balance sheet date.

The gain from a bargain purchase amounting to EUR 2,787 thousand in financial year 2010/2011 had been a result of the purchase of the GWE Group.

23. Product expenses and purchased services

	2011/2012	2010/2011
	EUR thousand	
Material expenses	−144,708	−204,486
External workforce	−47,323	−49,999
Commercial representatives and other commissions	−32,559	−31,347
Replacement expenses	−7,088	−9,921
Research and development costs	−86	−95
Other	−6,386	−3,342
Product expenses and purchased services	**−238,150**	**−299,190**

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

24. Other expenses

	2011/2012	2010/2011
	EUR thousand	
Rent	−17,999	−17,525
IT	−16,054	−17,281
Consultancy	−8,073	−8,194
Advertising and promotion	−6,572	−6,782
Communication costs	−4,286	−4,606
Losses on foreign exchange	−3,212	−1,465
Write-downs and valuation allowance on receivables	−1,352	−380
Research and development costs	−522	−652
Losses on the disposal of fixed and intangible assets	−135	−206
Other	−27,150	−27,735
Other expenses	**−85,355**	**−84,826**

The losses on foreign exchange arose primarily as a result of differences between foreign exchange rates on the dates the receivables/payables were recognized and those on the dates of payment or those used in remeasurement at the balance sheet date.

Besides the above mentioned research and development costs amounting to EUR 522 thousand (2010/2011: EUR 652 thousand), further costs are included in personnel expenses amounting to EUR 2,700 thousand (2010/2011: EUR 2,895 thousand).

25. Net share of loss/gain of associates

	2011/2012	2010/2011
	EUR thousand	
Share of loss/gain of Thermie Serres S. A.	−673	410
Share of gain of EKL	336	0
Share of gain of IHKW W	170	0
Amortization of step-ups of Thermie Serres S. A.	−281	−281
Net share of loss/gain of associates	**−448**	**129**

	2011/2012	2010/2011
	EUR thousand	
Impairment of Thermie Serres S. A.[(1)]	−14,476	0
Impairment of associates	**−14,476**	**0**

(1) see note 7

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

26. Financial income and finance costs

	2011/2012	2010/2011
	EUR thousand	
Interest income	2,217	1,160
Gains on foreign exchange resulting from intercompany loans	1,038	1,128
Gains on hedging instruments measured at fair value	32	38,618
Other financial income	114	190
Total financial income	**3,401**	**41,096**
Losses on hedging instruments measured at fair value	−81,302	0
Interest expense	−75,333	−94,101
Losses on foreign exchange resulting from intercompany loans	−1,591	−1,929
Interest expense on provisions	−1,276	−1,349
Total finance costs	**−159,502**	**−97,379**
Financial income and finance costs	**−156,101**	**−56,283**

In 2011/2012, interest income from instalment-based business amounted to EUR 179 thousand (2010/2011: EUR 155 thousand).

27. Income taxes

	2011/2012	2010/2011
	EUR thousand	
Current income taxes		
Germany	−1,191	19
Other countries	−4,571	−4,539
Total income taxes	**−5,762**	**−4,520**
Deferred taxes		
Recognition of tax loss carried forwards	1,366	1,060
Tax effect from temporary differences	9,400	−5,246
Total deferred taxes	**10,766**	**−4,186**
Total tax expense/income	**5,004**	**−8,706**

Due to the existence of a TEMS KG-tax group (see note 9), the weighted average tax rate for the Company was approx. 12.94 percent (financial year 2010/2011: approx. 12.93 percent).

According to German tax law, income taxes for partnerships only comprise trade tax (12.94 percent).

Deferred taxes have been calculated using the relevant enacted tax rate.

F. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The following table shows the reconciliation from the weighted average tax rate for the Group to the effective tax rate:

	2011/2012		2010/2011	
	EUR thousand	%	EUR thousand	%
Expected income tax	**7,509**	**12.9**	**−6,743**	**12.9**
Differences in foreign tax rates	−1,427	−2.4	−845	1.6
Change in tax rate for deferred taxes	74	0.1	−1,126	2.2
Permanent differences	824	1.4	2,090	−4.0
Permanent differences due to impairment of Thermie Serres S. A.	−1,873	−3.2	0	0
Taxes unrelated to the reporting period	−45	−0.1	11	0
Change of tax loss carried forwards	606	1.0	−2,618	5.0
Change in write-down on recognized loss carried forwards	−415	−0.7	−854	1.6
Other	−249	−0.4	1,379	−2.6
Effective tax income/expense/tax rate	**5,004**	**8.6**	**−8,706**	**16.7**

The changes in tax rate for deferred taxes in the financial year 2010/2011 mainly resulted from changes of the trade tax rate from 12.78 percent to 12.93 percent.

In both financial years, the position "Permanent differences" mainly relates to deduction of special business expenses of TEMS KG and the non-deductible portion of interest expenses.

The permanent differences amounting to EUR −1,873 thousand are due to the impairment of Thermie Serres S. A. and present non-deductible expenses (see note 7).

In the current financial year, the position "Change of tax loss carried forwards" mainly results from GWE Gesellschaft für wirtschaftliche Energieversorgung mbH and IHKW Industrieheizkraftwerk Andernach GmbH. In the prior financial year, the change resulted from an adjustment of beginning balances relating to tax loss carried forwards from trade tax of TEMS KG—tax group.

G. OTHER DISCLOSURES

Operating leases

The Group as lessee. The Company has entered into leases for buildings (head office in Eschborn—fixed term until January 31, 2024, as well as other leases for subsidiaries and field organizations), vehicles and office equipment. The leases have renewal options and various terms. The total expense for these leases in 2011/2012 was EUR 22,792 thousand (2010/2011: EUR 20,027 thousand).

The minimum lease obligations as at March 31, 2012 were as follows:

	Mar 31, 2012	Mar 31, 2011
	EUR thousand	
2011/2012	—	24,723
2012/2013	25,065	20,953
2013/2014	18,961	15,913
2014/2015	12,945	11,360
2015/2016	10,710	8,742
2016/2017	8,800	4,416
After 2016/2017	37,266	5,462
Total minimum lease obligations	**113,747**	**91,569**

The increase of the minimum lease obligations after 2016/2017 mainly results from the prolongation of the term of the contract for the building in Eschborn from 2017 until 2024.

G. OTHER DISCLOSURES (Continued)

Other financial obligations / Financial guarantees

	Up to one year	Between one year and five years	Over five years	Mar 31, 2012
		EUR thousand		
Financial obligations due to supply contracts	27,342	9	0	27,351
Financial obligations due to maintenance contracts	677	992	0	1,669
Financial obligations due to insurance premiums	1,072	0	0	1,072
Financial obligations due to warranty contracts	200	0	0	200
Financial obligations due to service contracts	100	0	0	100
Other financial obligations	66	12	0	78
Other financial obligations	**29,457**	**1,013**	**0**	**30,470**

The Company has entered into financial obligations under supply agreements of EUR 27,351 thousand (March 31, 2011: EUR 22,879 thousand). These agreements include long-term supply agreements for wireless metering equipment and IT services as part of ongoing maintenance agreements and projects, as well as subcontracting agreements in the service business.

Techem Energy Services GmbH had issued a subordinated, fixed-term suretyship letter to the lender of Thermie Serres S. A. (being Emporiki Bank of Greece S. A.) which had been limited to EUR 20 million. In the current financial year, this was reduced to EUR 0. At the same time, the bank guarantees were increased to EUR 10 million in 2011/2012 (March 31, 2011: EUR 5 million). These are included in the working capital facility (see note 13).

In addition, as at March 31, 2012, financial guarantees to an amount of EUR 243 thousand have been issued.

Concentration of risk

Credit risks. The Company offers its services to a large number of customers active in various sectors and geographical regions. Techem grants credit terms to eligible customers and believes it is not exposed to an unreasonable concentration of risk.

Imminent or actual irrecoverable receivables are accounted for by write-downs of 50 and 75 percent respectively depending on the age of the receivable concerned. Several dunning stages are also used. When a certain dunning stage is reached, legal action is initiated and the receivable is automatically written down by 75 percent.

As at March 31, 2012, the total of trade accounts receivable, including receivables from finance lease (each current and non-current), was EUR 312.8 million (maximum default risk).

Liquidity risk. The Company has long-term loan agreements with a bank consortium to secure the financing until the beginning respectively middle of 2015. In addition, the GWE Group has loan agreements with different terms, the longest until March 2023. The long-term budget of the Company shows a positive development of the financial position, financial result and cash flows. Therefore, the Company is not exposed to any particular liquidity risk.

Interest rate risk and interest rate management. Interest rate risks arise from the fact that the major part of the financial liabilities are subject to a floating rate of interest (see note 13).

Interest rate risk in the Company is analyzed centrally and managed by the Treasury department. Interest rate risk items are separated from the liquidity commitment in individual hedge agreements with the help of interest rate derivatives, such as interest rate swaps and caps, and are managed as an overall portfolio to balance the risks.

G. OTHER DISCLOSURES (Continued)

Interest rate derivatives are used exclusively to optimize credit terms and limit interest rate risks as part of the Company's financing strategies and are not used for trading or speculation purposes.

Hedging instruments are only used in the Group to hedge interest rate risks on variable cash flows. However, the criteria for hedge accounting are only satisfied for IHKW Industrieheizkraftwerk Andernach GmbH.

The Company pursues a conservative strategy in hedging financial risks. In accordance with internal guidelines, the use of derivatives is restricted to the hedging of existing risks. Generally the Company only uses hedging instruments that are measurable and have a transparent risk profile.

All derivatives are measured at fair value. This is determined using the mark-to-market method. The market values of interest rate swaps and caps are reported as other financial assets or other financial liabilities or in retained earnings in the case of hedge accounting.

Interest rate instruments not subject to hedge accounting (FVTPL). Changes in market value are recognized in the income statement, but do not affect cash.

For the Senior and Junior facilities, the Company has payer-swap-agreements (nominal value March 31, 2012: EUR 1,000 million), which swap the six-month EURIBOR against a 10 year fixed interest rate.

Furthermore, IHKW Industrieheizkraftwerk Heidenheim GmbH has a swap agreement with a term until June 30, 2020 (nominal value March 31, 2012: EUR 8,869 thousand). This interest rate swap includes an additional right of cancellation.

	Nominal amount
	EUR thousand
Interest rate limited to (not subject to hedge accounting)	
4.589% plus margin	398,000
4.590% plus margin	420,000
4.615% plus margin	182,000
2.980%	8,869
	1,008,869

By entering into a basis-swap-agreement (swapping the six-month EURIBOR for the one-month EURIBOR), the interest payments according to the loan agreement are made based on the one-month EURIBOR plus margin. This is valid until July 2012 and resulted in an interest benefit of 51 basis points for the financial year 2011/2012 on the agreed nominal value of EUR 1,000 million.

Details of instruments at the balance sheet date related to the Senior and Junior facilities as well as to the financing of IHKW Industrieheizkraftwerk Heidenheim GmbH, together with market values and maturities, are as follows:

	Mar 31, 2012		Mar 31, 2011	
	Nominal amount	Market value	Nominal amount	Market value
	EUR thousand			
Interest rate swaps				
Up to one year	1,000,000	−139	1,000,000	396
Between one year and five years	0	0	0	0
More than five years	1,008,869	−164,366	1,009,944	−83,634
Interest rate instruments	**2,008,869**	**−164,505**	**2,009,944**	**−83,238**

The market value of EUR −139 thousand relates to the additional swap agreements swapping the six-month EURIBOR for the one-month EURIBOR, as mentioned above.

G. OTHER DISCLOSURES (Continued)

As at March 31, 2012, the Company has also entered into an interest rate cap outside Germany with a market value of EUR 6 thousand (March 31, 2011: EUR 22 thousand) and a nominal amount of EUR 3,260 thousand (March 31, 2011: EUR 3,260 thousand).

Interest rate instruments subject to hedge accounting. The effective part of the change in market value is recognized in the other comprehensive income in equity. The ineffective part is recognized in the income statement.

IHKW Industrieheizkraftwerk Andernach GmbH had entered into three interest rate swaps with terms until December 31, 2022 and until March 31, 2023.

	Nominal amount
	EUR thousand
Interest rate limited to (subject to hedge accounting)	
4.345%	8,254
4.770%	12,540
5.175%	16,144
	36,938

Details of instruments at the balance sheet date related to the financing of IHKW Industrieheizkraftwerk Andernach GmbH, together with market values and maturities, are as follows:

	Mar 31, 2012		Mar 31, 2011	
	Nominal amount	Market value	Nominal amount	Market value
	EUR thousand			
Interest rate swaps				
Up to one year	0	0	0	0
Between one year and five years	0	0	0	0
More than five years	36,938	−4,848	37,448	−2,270
Interest rate instruments	**36,938**	**−4,848**	**37,448**	**−2,270**

Currency risk and currency management. In the financial year 2011/2012, the following currency instruments without hedge accounting were entered into for the first time:

	Mar 31, 2012	
	Nominal amount	Market value
	EUR thousand	
Currency swaps		
Czech Crowns (CZK 30,000 thousand)—term until June 8, 2012	1,212	1
Danish Crowns (DKK 18,000 thousand)—term until June 25, 2012	2,423	−3
Currency instruments	**3,635**	**−2**

Employees

	2011/2012	2010/2011
Average number of employees		
Germany	2,079	2,069
Other countries	1,058	1,012
Employees	**3,137**	**3,081**
Average number of employees of associated companies	31	30
Total employees	**3,168**	**3,111**

The total employer's contribution for the German companies to the statutory pension scheme was EUR 8,957 thousand (2010/2011: EUR 8,513 thousand).

G. OTHER DISCLOSURES (Continued)

Transactions with related parties

The parent company of Techem Energy Metering Service GmbH & Co. KG is MEIF II Germany Holdings Sàrl, Luxembourg. The ultimate parent company is Macquarie European Infrastructure Fund II Limited Partnership, an English limited partnership with its registered office in St. Peter Port, Guernsey.

Hilko Cornelius Schomerus, Cord von Lewinski, Hans-Lothar Schäfer and Steffen Bätjer are directors of the managerial Techem Energie GmbH. Mr. Schomerus and Mr. von Lewinski have responsibility for the activities of several funds within the Macquarie Group. It is not possible to make a reasonable apportionment of their emoluments. Accordingly, these emoluments are not reported. Mr. Schomerus and Mr. von Lewinski did not receive any remuneration from TEMS KG. Mr. Schäfer and Mr. Bätjer are paid by Techem GmbH and additionally have responsibility for other Group companies. In financial year 2011/2012, the remuneration of Mr. Schäfer and Mr. Bätjer amount to EUR 1,863 thousand (2010/2011: EUR 1,400 thousand). Thereof, basic salary is EUR 450 thousand (2010/2011: EUR 415 thousand), variable remuneration is EUR 1,356 thousand (2010/2011: EUR 922 thousand) and other expenses amount to EUR 57 thousand (2010/2011: EUR 63 thousand).

As at March 31, 2012, current receivables due from MEIF II Germany Holdings Sàrl to the amount of EUR 1,617 thousand (March 31, 2011: EUR 1,523 thousand) have been recognized (see note 2).

On March 31, 2012 the main part of the current receivables from associates are receivables from EKL, Ludwigsburg/Germany, from a gas supply contract, amounting to EUR 158 thousand (March 31, 2011: EUR 275 thousand (electricity and gas supply contract)) and from Thermie Serres S. A., Glyfada/Greece. These amount to EUR 158 thousand (March 31, 2011: EUR 153 thousand) and result from a service contract (see note 2).

Non-current receivables from associates mainly consist of a loan to EKL, Ludwigsburg/Germany (EUR 153 thousand; March 31, 2011: EUR 171 thousand). In the previous years, non-current receivables from associates included a loan to Thermie Serres S. A., Glyfada/Greece (March 31, 2011: EUR 1,760 thousand), which was converted into equity during the current financial year (see note 8).

The main part of the current liabilities to associates result from a heat supply contract with Thermie Serres S. A. Glyfada/Greece: EUR 2,682 thousand (March 31, 2011: EUR 2,427 thousand) (see note 10).

Audit fees

In financial year 2011/2012, the following audit fees for the Group auditor, PricewaterhouseCoopers Aktiengesellschaft, are included:

	2011/2012
	EUR thousand
Audit fees for:	
Year-end audit services	408
Services for tax consultancy	159
Other services	16
Total audit fees	**583**

The audit fees for year-end audit services include the fees for the audit of the stand-alone year-end accounts and the Group accounts of the Company as well as the fees for the audit of the stand-alone year-end accounts of several companies in Germany.

Exemption from disclosure requirements

The subsidiaries Techem GmbH, Techem Energy Services GmbH and Techem Energy Contracting GmbH and bautec Energiemanagement GmbH have exercised the exemption option available under section 264 (3) German Commercial Code (HGB) with regard to disclosures for 2011/2012.

G. OTHER DISCLOSURES (Continued)

Events after the balance sheet date

On April 1, 2012, Holding Farnier SAS, Le Plessis Robinson/France, was merged into Compteurs Farnier SAS, Le Plessis Robinson/France which was recorded in the French commercial register on April 25, 2012. The merger has no financial impact on the Company.

On April 1, 2012 the company name of Compteurs Farnier SAS, Le Plessis Robinson/France was changed to Techem SAS.

Eschborn, May 31, 2012

Techem Energy Metering Service GmbH & Co. KG
The Board of Directors

Cord von Lewinski

Hilko Cornelius Schomerus

Hans-Lothar Schäfer

Steffen Bätjer

The following auditor's report (Bestätigungsvermerk) has been issued in accordance with Section 322 of the German Commercial Code (Handelsgesetzbuch) on the consolidated financial statements and group management report (Konzernlagebericht) of Techem Energy Metering Service GmbH & Co. KG as of and for the fiscal year ended March 31, 2011. The group management report is neither included nor incorporated by reference in this Offering Memorandum.

Auditor's Report

We have audited the consolidated financial statements prepared by the Techem Energy Metering Service GmbH & Co. KG, Eschborn, comprising the statement of financial position, the income statement and statement of comprehensive income, statement of changes in equity, statement of cash flows and the notes to the consolidated financial statements, together with the group management report for the business year from April 1, 2010 to March 31, 2011. The preparation of the consolidated financial statements and the group management report in accordance with the IFRSs, as adopted by the EU, and the additional requirements of German commercial law pursuant to § (Article) 315a Abs. (paragraph) 1 HGB ("Handelsgesetzbuch": German Commercial Code) is the responsibility of the Managing Directors of the general limited partner (Komplementär-GmbH) of the parent Company. Our responsibility is to express an opinion on the consolidated financial statements and on the group management report based on our audit.

We conducted our audit of the consolidated financial statements in accordance with § 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (Institute of Public Auditors in Germany) (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the consolidated financial statements in accordance with the applicable financial reporting framework and in the group management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Group and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the consolidated financial statements and the group management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the annual financial statements of those entities included in consolidation, the determination of the entities to be included in consolidation, the accounting and consolidation principles used and significant estimates made by the Managing Directors of the general limited partner (Komplementär-GmbH), as well as evaluating the overall presentation of the consolidated financial statements and the group management report. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion based on the findings of our audit the consolidated financial statements comply with the IFRSs as adopted by the EU and the additional requirements of German commercial law pursuant to § 315a Abs. 1 HGB and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The group management report is consistent with the consolidated financial statements and as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Frankfurt am Main, May 30, 2011

PricewaterhouseCoopers
Aktiengesellschaft
Wirtschaftsprüfungsgesellschaft

Susanne Michalowsky	ppa. Jürgen Körbel
Wirtschaftsprüfer	Wirtschaftsprüfer
(German Public Auditor)	(German Public Auditor)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated financial statements
for the financial year from
April 1, 2010 to March 31, 2011

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of financial position as at March 31, 2011

	Note	March 31, 2011	March 31, 2010
		EUR thousand	EUR thousand
Cash and cash equivalents		64,466	33,154
Trade accounts receivable	**1**	354,878	331,814
Receivables from shareholders	**2**	1,523	1,336
Other receivables	**2**	15,044	12,020
Other financial assets	**2**	807	2,410
Inventories	**3**	37,552	31,070
Income tax receivables		765	189
Non-current assets held for sale	**19**	1,606	1,513
Total current assets		**476,641**	**413,506**
Rental equipment	**4**	186,259	172,679
Property, plant and equipment	**5**	140,483	42,885
Intangible assets	**6**	1,665,779	1,673,940
Investments in associates	**7**	17,909	12,952
Other non-current receivables	**8**	419	360
Other non-current financial assets	**8**	21,065	17,190
Deferred tax assets	**9**	3,956	1,603
Total non-current assets		**2,035,870**	**1,921,609**
Total assets		**2,512,511**	**2,335,115**
Trade accounts payable		101,394	57,768
Current liabilities to shareholders	**10**	0	3
Other liabilities	**10**	29,947	18,352
Other financial liabilities	**10**	97,335	134,524
Financial liabilities	**11**	24,161	13,931
Other provisions	**12**	53,841	53,176
Income tax liabilities		7,752	7,793
Total current liabilities		**314,430**	**285,547**
Financial liabilities	**13**	1,135,314	1,045,169
Other liabilities	**14**	2,030	2,262
Other non-current financial liabilities	**14**	5,519	1,015
Provisions for pensions	**15**	15,541	14,758
Other provisions	**16**	32,121	31,369
Deferred tax liabilities	**9**	127,637	115,698
Total non-current liabilities		**1,318,162**	**1,210,271**
Capital account of limited partner		3	3
Reserve account of limited partner		808,393	812,702
Retained earnings		71,523	26,592
Total equity		**879,919**	**839,297**
Total liabilities and equity		**2,512,511**	**2,335,115**

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated income statement and consolidated statement of comprehensive income for the financial year from April 1, 2010 to March 31, 2011

	Note	April 1, 2010 - March 31, 2011	April 1, 2009 - March 31, 2010
		EUR thousand	EUR thousand
Revenue	**21**	732,436	687,543
Capitalized internal work		9,771	8,541
Other income	**22**	7,548	5,177
Product expenses and purchased services	**23**	−299,536	−282,955
Personnel expenses		−160,805	−160,711
Depreciation of rental equipment, fixed and intangibles assets		−95,322	−96,686
Other expenses	**24**	−84,826	−90,210
Earnings before interest and tax (EBIT)		**109,266**	**70,699**
Net share of gain/loss of associates	**25**	129	−1,679
Financial income	**26**	41,155	5,178
Finance costs	**26**	−97,379	−115,677
Earnings before tax		**53,171**	**−41,479**
Income taxes	**27**	−8,831	24,525
Net income/ (Net loss)[(1)]		**44,340**	**−16,954**
Statement of comprehensive income			
Net income/ (Net loss)		**44,340**	**−16,954**
Currency translation adjustments		591	789
Other comprehensive income		**591**	**789**
Total comprehensive income		**44,931**	**−16,165**

(1) As at March 31, 2011, there is no non-controlling interest in the group.

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of cash flows for the financial year from April 1, 2010 to March 31, 2011

	Note	April 1, 2010 - March 31, 2011	April 1, 2009 - March 31, 2010
		EUR thousand	EUR thousand
Net income/ (Net loss)		**44,340**	**−16,954**
Cash flows from operating activities			
Depreciation and amortization		90,946	89,016
Impairment losses of non-current assets		4,376	7,670
Gain from bargain purchase		−2,787	0
Changes in deferred taxes		4,311	−28,488
Gain/loss on disposal of non-current assets		−315	210
Changes in non-current receivables		−3,729	−5,397
Changes in non-current liabilities		2,000	845
Changes in provisions for pensions and other non-current provisions		10,825	11,846
Gain/loss on financial instruments		−38,618	8,188
Changes in investments in associates		−129	1,679
Changes in deferred finance costs		12,836	22,581
		124,056	**91,196**
Changes in trade accounts receivable		418	1,953
Changes in unbilled receivables		−20,036	−8,676
Changes in other receivables		−1,858	16,877
Changes in current receivables/payables from shareholders		−564	−112
Changes in inventories		−1,178	1,709
Changes in trade accounts payable		37,007	8,980
Changes in other liabilities		11,141	−6,584
Changes in other provisions		−16,216	−9,077
Changes in income tax liabilities		−1,070	−1,481
Net cash provided by operating activities		**131,700**	**94,785**
Cash flows from investing activities			
Acquisition of subsidiaries, net of cash acquired	**18**	12,748	6,891
Cash outflow for non-current assets held for sale	**19**	−92	0
Cash outflow for other investments and loans		−503	−2,763
Purchase of non-current assets		−84,387	−70,679
Proceeds from disposal of non-current assets		1,322	1,324
Net cash used in investing activities		**−70,912**	**−65,227**
Free cash flow		**60,788**	**29,558**
Cash flows from financing activities			
Payment of finance lease liabilities	**13**	−783	−821
Proceeds from borrowings		40,199	22,490
Repayments of borrowings		−23,892	−5,077
Cash drawings by limited partner		−45,000	−145,895
Net cash used in financing activities		**−29,476**	**−129,303**
Net change in cash and cash equivalents		**31,312**	**−99,745**
Cash and cash equivalents at beginning of period		33,154	132,899
Cash and cash equivalents at end of period		64,466	33,154
Additional information to statement of cash flows			
—Interest paid (financing activities)		*81,095*	*77,952*
—Interest received (operating activities)		*1,079*	*1,356*
—Income taxes paid (operating activities)		*6,032*	*−5,562*

(The accompanying notes are an integral part of these financial statements.)

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of changes in equity for the financial year from April 1, 2010 to March 31, 2011

	Capital account of limited partner	Reserve account of limited partner	Retained earnings	Total equity
	EUR thousand	EUR thousand	EUR thousand	EUR thousand
Balance as at April 1, 2009	**3**	**911,894**	**42,757**	**954,654**
Net loss	0	0	−16,954	**−16,954**
Currency translation adjustments	0	0	789	**789**
Drawings (−) / Contributions (+) of shareholders (net)	0	−99,192	0	**−99,192**
Balance as at March 31, 2010	**3**	**812,702**	**26,592**	**839,297**
Balance as at April 1, 2010	**3**	**812,702**	**26,592**	**839,297**
Net income	0	0	44,340	**44,340**
Currency translation adjustments	0	0	591	**591**
Drawings (−) / Contributions (+) of shareholders (net)	0	−4,309	0	**−4,309**
Balance as at March 31, 2011	**3**	**808,393**	**71,523**	**879,919**

(The accompanying notes are an integral part of these financial statements.)

A. THE COMPANY

Techem Energy Metering Service GmbH & Co. KG (hereinafter also referred to as the "Company" or "TEMS KG") object is the holding, the purchase, the administration and the sale of participations in other companies or their assets as well as the execution of all actions and transactions associated herewith. The Company is registered in the commercial register in Frankfurt a. M./Germany with registration number HR A-Nr. 43010.

The head office of the Company is located in Eschborn/Germany (Hauptstraße 89, 65760 Eschborn).

The main operating business takes place in the Techem GmbH Group (hereinafter also referred to as "Techem" or "Techem Group") which is a service provider to the housing and real-estate industry specializing in services for submetering, allocating and billing of energy and of water consumption. The business activities of the Company comprises two segments: ENERGY SERVICES and ENERGY CONTRACTING. The Group's market is primarily concentrated in Germany, although international markets are becoming increasingly important.

The limited partner of TEMS KG is MEIF II Germany Holdings Sàrl in Luxembourg; the general partner is Techem Energie GmbH in Eschborn. The ultimate parent company is Macquarie European Infrastructure Fund II Limited Partnership (MEIF II LP), an English limited partnership with its registered office in St. Peter Port, Guernsey.

B. BASIS OF PRESENTATION

These consolidated financial statements incorporate the financial statements of TEMS KG and its subsidiaries.

The consolidated financial statements of TEMS KG for the year ended March 31, 2011 have been prepared in accordance with the International Financial Reporting Standards (IFRS) of the International Accounting Standards Board (IASB) as adopted by the European Union (EU). Additionally, the regulations applicable according to section 315a German Commercial Code (HGB) have been observed. In accordance with IFRS, the consolidated financial statements have generally been prepared using the historical cost measurement basis. A different basis has been used in the measurement of other investments, financial instruments, provisions for pensions and other post-employment benefits, which is also in line with IFRS.

The measurement of assets and liabilities and the disclosure of contingent assets and liabilities at the relevant balance sheet dates, together with the amount of income and expenses for the period under review, are influenced by estimates and assumptions made in the preparation of the consolidated financial statements in accordance with IFRS. Although these estimates and assumptions have been made in accordance with the best knowledge and belief of the management of the Company (specifically in the case of provisions and intangible assets), actual figures may ultimately vary from these estimates.

Unless otherwise stated, all amounts are shown in thousands of Euros. Rounding may lead to discrepancies of ± one unit in the tables.

All standards of the IASB and all the interpretations of the International Financial Reporting Interpretations Committee (IFRIC), which have to be applied in the EU, that were subject to mandatory application as at March 31, 2011, have been applied by the Company in its consolidated financial statements.

The consolidated financial statements are authorized for issue by the shareholder's meeting. An amendment of the consolidated financial statements after issue is possible in case of major errors.

B. BASIS OF PRESENTATION (Continued)

The impact of the application of new or revised standards is shown below:

Standard/Interpretation		Date of mandatory application[1]	Adopted by EU Commission[2]	Impact[2]
IAS 27/IFRS 3 . .	Consolidated and Separate Financial Statements/ Business Combinations—Revised version	Jul 1, 2009	Yes	see below
IAS 32	Financial instruments: Presentation: Classification of Rights Issues	Feb 1, 2010	Yes	N. A.
IAS 39	Financial instruments: Recognition and Measurement: Eligible Hedged Items	Jul 1, 2009	Yes	N. A.
IAS 39/IFRIC 9 .	Embedded Derivatives	Jul 1, 2009	Yes	N. A.
IFRS 1	First Time Adoption of IFRS	Jan 1, 2010	Yes	N. A.
IFRS 1	Additional Exemptions for First-time Adopters	Jan 1, 2010	Yes	N. A.
IFRS 2	Group Cash-settled Share-based Payment Transactions	Jan 1, 2010	Yes	N. A.
IFRIC 15	Agreements for the Construction of Real Estate	Jan 1, 2010	Yes	N. A.
IFRIC 16	Hedges of a Net Investment in a Foreign Operation	Jul 1, 2009	Yes	N. A.
IFRIC 17	Distributions of Non-cash Assets to Owners	Nov 1, 2009	Yes	N. A.
IFRIC 18	Transfer of Assets from Customers	Nov 1, 2009	Yes	see below

(1) For financial years commencing on or after this date

(2) As at March 31, 2011

Amended IAS 27 "Consolidated and Separate Financial Statements" and revised IFRS 3 "Business Combinations"

In January 2008, amended/revised versions of IAS 27 and IFRS 3 have been issued. Therewith, the project "Business Combination II" has been completed. The main changes of the two standards result in an extensive revision relating to the application of the acquisition method. The amended standards have been applied when accounting for the acquisition of GWE Group in financial year 2010/2011. Costs directly attributable to the acquisition are recognized in the income statement.

Amendment to IAS 32 "Financial instruments: Presentation: Classification of Rights Issues"

The amendment addresses the accounting for rights issues (rights, options or warrants) that are denominated in a currency other than the functional currency of the issuer. Previously such rights issues were accounted for as derivative liabilities. However, this amendment requires that, provided certain conditions are met, such rights issues are classified as equity regardless of the currency in which the exercise price is denominated. No impact on the financial statements is expected from this amendment.

Amendment to IAS 39 "Financial instruments: Recognition and Measurement: Eligible Hedged Items"

The amendment clarifies how the principles that determine whether a hedged risk or portion of cash flows is eligible for designation should be applied in the following two particular situations: (a) the designation of a one-sided risk in a hedged item and (b) the designation of inflation in particular situations. No impact on the financial statements is expected from this amendment.

B. BASIS OF PRESENTATION (Continued)

IAS 39 "Embedded derivatives" and Amendments to IFRIC 9

The amendments clarify that on reclassification of a financial asset out of the 'at fair value through profit or loss' category all embedded derivatives have to be assessed and, if necessary, separately accounted for in the financial statements. No impact on the financial statements is expected from this amendment.

Revised IFRS 1 "First time adoption of IFRS"

The revised version of IFRS 1 includes an improved structure but does not contain any technical changes. No impact on the financial statements is expected from this revision.

Amendments to IFRS 1: "Additional Exemptions for First-time Adopters"

The amendments address the retrospective application of IFRSs to particular situations and are aimed at ensuring that entities applying IFRSs will not face undue cost or effort in the transition process. No impact on the financial statements is expected from this amendment.

Amendments to IFRS 2: "Group Cash-settled Share-based Payment Transactions"

The objective of the amendments is to clarify how an individual subsidiary in a group should account for some share-based payment arrangements in its own financial statements. In these arrangements, the subsidiary receives goods or services from employees or suppliers but its parent or another entity in the group must pay the employees or suppliers. No impact on the financial statements is expected from this amendment.

IFRIC 15 "Agreements for the Construction of Real Estate"

IFRIC 15 standardizes accounting practice across jurisdictions for the recognition of revenue by real estate developers for sales of units, such as apartments or houses, 'off plan'—that is, before construction is complete. No impact on the financial statements is expected from IFRIC 15.

IFRIC 16 "Hedges of a Net Investment in a Foreign Operation"

IFRIC 16 applies to an entity that hedges the foreign currency risk arising from its net investments in foreign operations and wishes to qualify for hedge accounting in accordance with IAS 39. It does not apply to other types of hedge accounting. No impact on the financial statements is expected from IFRIC 16.

IFRIC 17 "Distributions of Non-cash Assets to Owners"

IFRIC 17 applies to the entity making the distribution, not to the recipient. It applies when non-cash assets are distributed to owners or when the owner is given a choice of taking cash in lieu of the non-cash assets. It applies to pro rata distributions of non-cash assets (all owners are treated equally) but does not apply to common control transactions. No impact on the financial statements is expected from IFRIC 17.

IFRIC 18 "Transfers of Assets from Customers"

IFRIC 18 clarifies the requirements of IFRSs for agreements in which an entity receives from a customer an item of property, plant, and equipment that the entity must then use either to connect the customer to a network or to provide the customer with ongoing access to a supply of goods or services (such as a supply of electricity, gas or water). In some cases, the entity receives cash from a customer that must be used only to acquire or construct the item of property, plant, and equipment in order to connect the customer to a network or provide the customer with ongoing access to a supply of goods or services (or to do both).

The basic principle of IFRIC 18 is that when the item of property, plant and equipment transferred from a customer meets the definition of an asset under the IASB Framework from the perspective of the recipient, the recipient must recognize the asset in its financial statements. If the customer continues to

B. BASIS OF PRESENTATION (Continued)

control the transferred item, the asset definition would not be met even if ownership of the asset is transferred to the utility or other recipient entity. The deemed cost of that asset is its fair value on the date of the transfer. IFRIC 18 is applied by the companies of the GWE Group which were acquired during the current year.

The following new or revised standards have not been applied:

Standard/Interpretation		Date of mandatory application[1]	Adopted by EU Commission[2]	Expected impact[2]
IAS 12 . . .	Deferred tax: Recovery of Underlying Assets	Jan 1, 2012	Outstanding	No significant impact
IAS 24 . . .	Related Party Disclosures	Jan 1, 2011	Yes	N. A.
IFRS 1 . . .	Limited Exemption from Comparative IFRS 7 Disclosures for First-time Adopters	Jul 1, 2010	Yes	N. A.
IFRS 1 . . .	Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters	Jul 1, 2011	Outstanding	N. A.
IFRS 7 . . .	Amendments to IFRS 7—Financial Instruments: Disclosures	Jul 1, 2011	Outstanding	N. A.
IFRS 9 . . .	Financial Instruments	Jan 1, 2013	Outstanding	see below
IFRIC 14 .	Prepayments of a Minimum Funding Requirement	Jan 1, 2011	Yes	N. A.
IFRIC 19 .	Extinguishing Financial Liabilities with Equity Instruments	Jul 1, 2010	Yes	N. A.
	Improvements to IFRSs 2010	Jul 1, 2010	Yes	No significant impact

(1) For financial years commencing on or after this date

(2) As at March 31, 2011

All the above mentioned new or revised standards/ interpretations which have not been applied yet and which are applicable to the Company will be applied by the Company as soon as application is mandatory.

IAS 12—Deferred Tax: Recovery of Underlying Assets

IAS 12 requires an entity to measure the deferred tax relating to an asset depending on whether the entity expects to recover the carrying amount of the asset through use or sale. The amendment provides a practical solution to the problem by introducing a presumption that recovery of the carrying amount will, normally be, through sale. No significant impact on the financial statements is expected.

Revised IAS 24 "Related Party Disclosures"

The revised IAS 24 addresses concerns that the previous disclosure requirements and definition of a 'related party' were too complex and difficult to apply in practice, particularly in environments where government control is pervasive, by providing a partial exemption for government-related entities and providing a revised definition of a related party. No impact on the financial statements is expected from this amendment.

Amendment to IFRS 1: "Limited Exemption from Comparative IFRS 7 Disclosures for First-time Adopters"

The proposed amendment to IFRS 1 will provide first-time adopters with the same relief available to those already applying IFRSs when they first apply Improving Disclosures about Financial Instruments

B. BASIS OF PRESENTATION (Continued)

(Amendments to IFRS 7 Financial Instruments: Disclosures) issued in March 2009. No impact on the financial statements is expected from this amendment.

Amendment to IFRS 1: "Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters"

The amendment relating to severe hyperinflation provides guidance on how an entity should resume presenting financial statements in accordance with IFRSs after a period when the entity was unable to comply with IFRSs because its functional currency was subject to severe hyperinflation.

The second amendment replaces references to a fixed date of '1 January 2004' with 'the date of transition to IFRSs', thus eliminating the need for companies adopting IFRSs for the first time to restate derecognition transactions that occurred before the date of transition to IFRSs.

Amendments to IFRS 7—Financial Instruments: Disclosures

An entity shall disclose information that enables users of its financial statements:

(a) to understand the relationship between transferred financial assets that are not derecognized in their entirety and the associated liabilities; and

(b) to evaluate the nature of, and risks associated with, the entity's continuing involvement in derecognized financial assets.

No impact on the financial statements is expected from this amendment.

IFRS 9 "Financial Instruments"

The objective is to improve the decision-usefulness of financial statements for users by simplifying the classification and measurement requirements for financial instruments. The project will ultimately replace IAS 39 Financial Instruments: Recognition and Measurement. Future impact from IFRS 9 on the financial statements is currently under review.

Amendment to IFRIC 14 "Prepayments of a Minimum Funding Requirement"

The amendment applies in the limited circumstances when an entity is subject to minimum funding requirements and makes an early payment of contributions to cover those requirements. The amendment permits such an entity to treat the benefit of such an early payment as an asset. Currently, no impact on the financial statements is expected from this amendment.

IFRIC 19 "Extinguishing Financial Liabilities with Equity Instruments"

IFRIC 19 clarifies the requirements of IFRS when an entity renegotiates the terms of a financial liability with its creditor and the creditor agrees to accept the entity's shares or other equity instruments to settle the financial liability fully or partially.

It clarifies that: (a) The entity's equity instruments issued to a creditor are part of the consideration paid to extinguish the financial liability, (b) The equity instruments are measured at fair value and (c) The difference between the carrying amount of the liability and the initial measurement of the equity instruments will be included in profit or loss for the period. Currently, no impact on the financial statements is expected from IFRIC 19.

B. BASIS OF PRESENTATION (Continued)

Improvements to IFRSs 2010

The standard „Improvements to IFRSs, published on May 6, 2010, applies to the following IFRSs:

IFRS 1 —First-time Adoption of IFRS
- Accounting policy changes in the year of adoption
- Revaluation basis as deemed cost
- Use of deemed cost for operations subject to rate regulation

IFRS 3 —Business Combinations
- Transition requirements for contingent consideration from a business combination that occurred before the effective date of the revised IFRS 3 (2008)
- Measurement of non-controlling interests
- Un-replaced and voluntarily replaced share-based payment awards

IFRS 7 —Financial Instruments: Disclosures
- Clarification of disclosures

IAS 1 —Presentation of Financial Statements
- Clarification of statement of changes in equity

IAS 27 —Consolidated and Separate Financial Statements
- Transition requirements for amendments of IAS 21, IAS 28 and IAS 31 made as a result of the amendment to IAS 27

IAS 34 —Interim Financial Reporting
- Significant events and transactions

IFRIC 13 —Customer Loyalty Programmes
- Clarification of fair value measurement of award credits

No significant impact on the financial statements of the Company is expected from the amendments.

C. ACCOUNTING PRINCIPLES

Principles of consolidation. TEMS KG and all German and non-German subsidiaries directly or indirectly controlled by TEMS KG are included in the consolidated financial statements. Subsidiaries are companies in which the Group holds more than half of the voting rights or where the Group is otherwise able to govern the financial and operating policies. Investments in associates over which the Company exercises significant influence are accounted for using the equity method. All single-entity financial statements fully consolidated into TEMS KG are prepared in accordance with uniform accounting policies.

Subsidiaries acquired by the Company are accounted for using the acquisition method. The acquisition cost is equivalent to the fair value of the assets given up on the date of acquisition. For each business combination the assets, liabilities and contingent liabilities identified as part of the business combination are measured at their fair value on the date of acquisition regardless of the extent of the non-controlling interest. The excess of acquisition cost over the Group's share in the fair value of the net assets is recognized as goodwill. If the acquisition has been effected in various steps and once control has been obtained, the excess will be deducted from equity. Costs directly attributable to the acquisition are recognized in the income statement.

If the Group's share in the fair value of the net assets exceeds the acquisition cost, the remaining excess from a bargain purchase is recognized in the income statement.

C. ACCOUNTING PRINCIPLES (Continued)

All intercompany gains and losses, revenue, income and expenses, receivables and payables, provisions and contingent liabilities within the basis of consolidation are eliminated. Deferred taxes are recognized using the liabilities method for all temporary differences between the assets and liabilities tax base and their carrying amounts.

Basis of consolidation and shareholdings	Shareholding (%)
Techem GmbH, Eschborn/Germany	100.0
Techem Energy Services GmbH, Eschborn/Germany	100.0
Techem Energy Contracting GmbH, Eschborn/Germany	100.0
Biomasse Heizkraftwerk Eisenberg GmbH, Eschborn/Germany	100.0
bautec Energiemanagement GmbH, Eschborn/Germany	100.0
Techem Verwaltungs GmbH, Eschborn/Germany	100.0
Techem Vermögensverwaltung GmbH & Co. KG, Eschborn/Germany	100.0
GWE Projectdevelopment GmbH, Freiburg/Germany	100.0
GWE Holding GmbH, Freiburg/Germany	100.0
IHKW Industrieheizkraftwerk Andernach GmbH, Freiburg/Germany	100.0
IHKW Industrieheizkraftwerk Dormagen GmbH, Freiburg/Germany	100.0
IHKW Industrieheizkraftwerk Brunsbüttel GmbH, Freiburg/Germany	100.0
GWE Gesellschaft für wirtschaftliche Energieversorgung mbH, Freiburg/Germany	100.0
GWE Projektentwicklungs Verwaltungs GmbH, Freiburg/Germany	100.0
GWE Industrie- und Krankenhausprojekte GmbH, Freiburg/Germany	100.0
IHKW Industrieheizkraftwerk Heidenheim GmbH, Heidenheim/Germany	100.0
ERSTE DOL-KONCON Gesellschaft für Mobilien-Vermietung mbH & Co. KG, Bad Homburg/Germany	100.0
IWPV Industrie-Wärmeverbund Heidenheim GmbH, Heidenheim/Germany	100.0
Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH, Ludwigsburg/Germany[1]	33.33
IHKW Industrieheizkraftwerk Weißbach GmbH, Weißbach/Germany[1]	25.0
Techem Messtechnik Ges.m.b.H., Innsbruck/Austria	100.0
Techem Wassertechnik Ges.m.b.H., Wels/Austria	100.0
Techem Energy Services B.V., Breda/Netherlands	100.0
Techem (Schweiz) AG, Urdorf/Switzerland	100.0
„Techem“ Techniki Pomiarowe Sp.z.o.o., Poznan/Poland	100.0
Techem S.r.l., Milan/Italy	100.0
Techem Kft., Budapest/Hungary	100.0
Techem Services e.o.o.d., Sofia/Bulgaria	100.0
Techem spol. s.r.o., Prague/Czech Republic	100.0
Techem AB, Helsingborg/Sweden	100.0
Techem spol. s.r.o., Bratislava/Slovakia	100.0
Techem Energy Contracting Hellas EPE, Athens/Greece	100.0
Thermie Serres Societe Anonyme of Co-Generation of Power and Heat, Glyfada/ Greece[1],[2]	50.24
Techem Calorlux S.à r.l., Bereldange/Luxembourg	100.0
Caloribel S. A., Brussels/Belgium	100.0
Techem Energy Services S.R.L., Bucharest/Romania	100.0
Techem d.o.o., Belgrade/Serbia	100.0
Techem OOO, Moscow/Russia	100.0
Techem do Brasil Serviços de Medição de Àgua Ltda., São Paulo/Brazil	100.0
Techem Enerji Hizmetleri Sanayi ve Ticaret Limited Şirketi, Ankara/Turkey	100.0
Techem Danmark A/S, Aarhus/Denmark	100.0
Techem Energy Services Middle East FZCO, Dubai Silicon Oasis, Dubai/United Arab Emirates	100.0

C. ACCOUNTING PRINCIPLES (Continued)

Basis of consolidation and shareholdings	Shareholding (%)
Techem Energy Services Korea Co., Ltd., Seoul/South Korea	100.0
Techem Energy Services India Private Limited, Pune/India	100.0
Techem Energie France SAS, Saint-Germain-en-Laye/France	100.0
Holding Farnier SAS, Le Plessis Robinson/France	100.0
Compteurs Farnier SAS, Le Plessis Robinson/France	100.0

(1) Consolidated using equity method

(2) hereinafter the company is referred to as "Thermie Serres S. A."

As at March 31, 2011, there is no non-controlling interest in the Group.

Changes to the basis of consolidation.

During the financial year 2010/2011 the Company has made the following changes to the basis of consolidation:

- On April 12, 2010, the company name of MEIF II Energie France SAS was changed to Techem Energie France SAS. Furthermore, the registered seat was transferred from Paris/France to Saint-Germain-en-Laye/France.
- On March 16, 2011, Techem SAS, Ronchin/France, was merged in to Compteurs Farnier SAS, Le Plessis Robinson/France.
- On March 17, 2011, Techem Energy Technical Services (Beijing) Co., Ltd., Beijing/China was liquidated.
- On March 25, 2011, Techem Energy Services GmbH acquired all the shares in GWE Projectdevelopment GmbH, Freiburg/Germany and in GWE Holding GmbH, Freiburg/Germany (hereinafter also referred to both as "GWE Group"). These subsidiaries are fully consolidated (see note 18).
- On March 31, 2011, "Techem" (TEXEM) Limited Liability Partnership, Astana/Kazakhstan, was liquidated.

The Company had made the following changes to the basis of consolidation during 2009/2010:

- On May 27, 2009, I.G.B. Data spol. s.r.o., Ostrava/Czech Republic had been merged into Techem spol. s.r.o., Prague/Czech Republic.
- On November 26, 2009, MESA messen und abrechnen GmbH, Didderse/Germany had been merged into Techem Energy Services GmbH, Eschborn/Germany, with a retroactive effective date of October 1, 2009.
- On July 8, 2009, Techem Energy Services India Private Limited had been set up in Pune/India. This subsidiary is fully consolidated.
- On December 1, 2009, Techem Energy Services GmbH had acquired all the shares in MEIF II Energie France SAS from its indirect parent company MEIF II Luxembourg Holdings Sàrl. MEIF II Energie France SAS was based in Paris/France, and holds 100 percent of the shares in Holding Farnier SAS and 4.92 percent of the shares in Compteurs Farnier SAS, both located in Le Plessis Robinson. Holding Farnier SAS holds the remaining 95.08 percent of the shares in Compteurs Farnier SAS.
- On January 15, 2010, Techem Energy Services (Dalian) Co. Ltd., Dalian/China, had been liquidated.
- Thermie Serres S. A. had been included in the Group financial statements of TEMS KG as a fully consolidated company until financial year 2008/2009. Techem Energy Contracting Hellas EPE

C. ACCOUNTING PRINCIPLES (Continued)

(hereinafter referred to as „TEC Hellas EPE") holds 50.24 percent of the shares in Thermie Serres S. A. and International Technological Application S. A. (ITA) holds the remaining shares. After a renewed examination of the articles of association, as well as of the Shareholders Agreement and Business Collaboration entered into between TEC Hellas EPE and ITA, also considering Greek law, it was established that TEC Hellas EPE does not control Thermie Serres S. A. Thermie Serres S. A. is an associated company. Accordingly, Thermie Serres S. A. had been accounted for as an associated company under application of the equity-method with retroactive effect from its acquisition date.

Currency translation. The functional currency of each subsidiary is its local currency. As a result, financial information from foreign subsidiaries is translated to Euros as follows: balance sheet figures are translated at the middle rate on the balance sheet date, equity is translated at the historical rate, and income statements are translated at average rates for the financial year. Currency translation gains or losses are recognized directly in equity.

Foreign currency transactions are translated into the functional currency using the exchange rates at the transaction date. Gains and losses resulting from such transactions and from the translation at the closing rate of monetary assets and liabilities managed in foreign currency are recognized in the income statement.

D. ACCOUNTING POLICIES

Balance sheet items are broken down into current and non-current items, non-current items being items for which the maturity is expected to exceed twelve months.

Cash and cash equivalents. The Company deems all highly liquid financial investments with an original maturity of up to three months to be cash equivalents. These cash equivalents are primarily favourable bank balances realizable at short notice. Additionally, other investments are included in cash equivalents. These are recognized at fair value through profit and loss, as they were acquired with intent to sell in the short-term. Gains and losses are recognized in the income statement as financial income or finance costs when they are incurred.

Trade and other accounts receivable. Trade and other accounts receivable are measured at fair value on the date of recognition and subsequently at amortized cost using the effective interest method. Imminent or actual irrecoverable receivables are accounted for by means of write-downs based on the age of the receivable concerned.

In the case of instalment payments, deferred interest income for the subsequent periods is recognized in addition to a receivable. The deferred interest income is released to income over the term of the agreement. Most of the Group's instalment-based business is in Eastern Europe.

Inventories. Inventories are reported at the lower of cost and net realizable value. The cost of inventories is determined mainly on the basis of a weighted average. Potential losses resulting from obsolete or non-saleable inventories are accounted for by means of appropriate write-downs.

Rental equipment and property, plant and equipment. Property, plant and equipment is recognized at cost and reduced by depreciation. Gains or losses on the disposal of property, plant and equipment are recognized as income or expense.

Any subsidies received are deducted from the cost of the property, plant and equipment concerned and are thereby recognized as income over the useful life of the related asset by way of a reduced depreciation charge.

D. ACCOUNTING POLICIES (Continued)

For the most part, the estimated useful lives used as the basis for straight-line depreciation are as follows:

	Estimated useful life (years)
Rental equipment	6 to 12
Office furniture and equipment, machinery	2 to 20
Buildings	20 to 25
Leasehold improvements	3 to 20 (or shorter lease term)

Rental equipment refers to equipment owned and rented out by Techem. The assets concerned are carried on Techem's balance sheet, the depreciation expense and income from the rentals being recognized in the income statement. Depreciation is based on the technical useful life of the equipment concerned.

Upon contract cancellation, the carrying amount of the rental device is transferred to inventories. Payments receivable upon contract cancellation are recognized as revenues and the inventories are disposed of and charged to product expenses.

Leases. Leases where the Group is the lessee and where substantially all the risks and rewards associated with the use of the leased equipment are transferred to the Group are classified as finance leases. Such leases are reported at the inception of the lease at the lower of the fair value of the leased equipment and the present value of the minimum lease payments. A corresponding liability is recognized. The leased asset on the balance sheet is depreciated over the term of the lease or over its useful life. Part of the lease payment is reported as interest cost; the remainder reduces the liability.

In the case of sale and leaseback transactions resulting in a finance lease, any excess of sale proceeds over the carrying amount is deferred and recognized in income over the lease term.

In addition to finance leases, the Company has entered into other leases classified as operating leases. In this case, the lease payments are recognized as an expense in the income statement.

The Group is also involved in finance leases as lessor. These leases are primarily rental agreements for the renting out of heat generation plant. To account for these leases, the Company recognizes a receivable equal to the present value of the minimum lease payments. Payments by the lessee are treated as repayment of principal and financial income.

Intangible assets. Purchased intangible assets are recognized at cost.

If the requirements under IAS 38 are satisfied, internally generated intangible assets are also recognized at cost.

Intangible assets are always amortized on a straight-line basis over their useful life.

For the most part, the estimated useful lives used as the basis for straight-line amortization are as follows:

	Estimated useful life (years)
Trademark	indefinite
Software and licenses	3 to 14
Customer relationships/customer agreements	3 to 33

The classification of the Techem trademark as an intangible asset with an indefinite useful life is based on the fact that Techem as a trademark exists since 1952. Brand awareness of Techem is very high in the market and it is not planned to abandon this trademark. Nevertheless, this classification is verified once a year.

D. ACCOUNTING POLICIES (Continued)

Recoverability of non-current assets. Property, plant and equipment and other non-current assets, including intangible assets, are tested for impairment as soon as events highlight, or there are indicators, that their carrying amount exceeds the recoverable amount. An impairment loss is recognized equal to the amount by which the carrying amount of an asset exceeds its recoverable amount, the recoverable amount being the higher of fair value less costs to sell or the value in use of the asset concerned. The value in use is defined as the present value of estimated future cash flows to be derived from an asset or a cash generating unit (CGU). The fair value of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction. For the purposes of determining impairment, assets are grouped together into the smallest group for which separate cash flows can be identified.

Goodwill is not subject to straight-line amortization, but is subject to an impairment test at least once a year. The impairment test is carried out on a CGU basis. The trademark, as another asset with an indefinite useful life, is also tested for impairment at least once a year. Goodwill and trademark are measured at their original cost less any accumulated impairment. Impairment losses recognized for goodwill are not reversed.

Non-current accounts receivable and other financial assets. Non-current non-interest-bearing accounts receivable are recognized at present value. Where market prices cannot be determined, other financial assets are recognized at amortized cost.

Investments in associates. In accordance with IAS 28, associates are accounted for using the equity method and are recognized initially at acquisition cost.

Deferred taxes. Deferred taxes are calculated using the liabilities method. Deferred tax assets or deferred tax liabilities are recognized for temporary differences between the carrying amounts in the consolidated financial statements and the corresponding tax accounts, the result of which will be a future tax expense or tax refund. Deferred tax assets or liabilities are calculated using the tax rates expected to apply to the taxable income in the years in which these temporary differences are expected to reverse. If there is a change in the tax rates, the effect on the deferred tax assets and/or liabilities is recognized in income in the period in which the new tax rate is enacted.

Deferred tax assets are recognized (e.g. on loss carried forwards) to the extent that it is probable there will be an available taxable profit against which the temporary difference can be applied.

Provisions. Provisions for pensions and other post-employment benefits are determined in accordance with IAS 19 using the actuarial projected unit credit method. This method takes into account, in particular, the current long-term capital market interest rate and current assumptions regarding future salary and annuity increases in addition to biometric calculation bases. The actuarial gains and losses are recognized directly in income. The interest element in the pension expense is reported under finance costs.

With the exception of the other personnel-related provisions calculated in accordance with IAS 19, all other provisions are recognized on the basis of IAS 37, providing there is a present legal or constructive obligation, a probable outflow of resources embodying economic benefits, and a reliable estimate can be made of the amount of the obligation. The amount recognized is determined based on the full amount required to settle the probable obligation. Non-current provisions are discounted; the interest element is reported under finance costs.

Liabilities. At the time of recognition, liabilities are measured at fair value. They are then subsequently measured at amortized cost using the effective interest method. Non-current non-interest-bearing liabilities are discounted. Liabilities denominated in foreign currencies are translated at the closing rate.

Derivative financial instruments and hedging. In accordance with IAS 39, all derivative financial instruments are recognized on the balance sheet at fair value. On the trade date of a derivative, it is

D. ACCOUNTING POLICIES (Continued)

determined whether this derivative is an instrument to maintain fair value, to hedge a planned transaction or to hedge against future cash flow fluctuations relating to a recognized asset or a liability.

One part of the interest rate instruments of the Company does not meet the requirements of IAS 39 for recognition as hedging transactions, although they amount to hedges when viewed from an economic perspective. Hedge accounting has therefore not been applied. Changes in the fair value of these derivatives are recognized as financial income and finance costs.

The part of the interest rate instruments of the Company which do meet the requirements of IAS 39 for recognition as hedging transactions are accounted for as follows: a) the effective part of the change in market value is recognized in the revaluation reserves in equity, b) the ineffective part is recognized in the income statement.

Fair value of financial instruments. The fair value of cash and cash equivalents and of current trade and other accounts receivable and payable is the same as their respective carrying amounts. The fair value of non-current trade and other accounts receivable and financial liabilities is roughly equivalent to their carrying amounts. The fair value of derivatives is equivalent to their selling price at the balance sheet date.

Non-current assets held for sale and associated liabilities. Non-current assets held for sale and associated liabilities are reported as separate items on the face of the balance sheet in accordance with IFRS 5. They are measured at the lower of carrying amount and fair value less costs to sell. These assets are no longer depreciated.

Borrowing costs. In accordance with IAS 23, borrowing costs are capitalized and thereafter amortized over the useful life of the asset.

Borrowing costs, which are not related to IAS 23, are expensed.

Research and development. Research costs are expensed as incurred. Costs incurred as part of development projects (software development for the most part) are recognized as intangible assets if it is considered probable that the project will be commercially successful, is technically feasible and the costs can be reliably determined. Other development costs that do not satisfy these criteria are expensed as incurred.

Recognition of revenue and expense. Rental and maintenance agreements are billed as part of fixed-price agreements in accordance with IAS 18 and recognized on a straight-line basis over the term of the agreement.

Using the percentage-of-completion method, accrued income is recognized for billing services to an amount equivalent to the cost of services already rendered plus a profit margin. The calculation is based on the percentage of completion of the billing process of the buildings as at the balance sheet date.

Revenue from the sale of goods is recognized when the significant risks and rewards of ownership have been transferred to the buyer, it is probable that the economic benefits associated with the transaction will flow to the Company and the amount of revenue can be measured reliably.

Revenue in respect of the delivery of heat is recognized to the amount of the services already rendered plus a profit margin. Accrued income is recognized for services not yet billed.

Provisions are recognized for expected deductions from revenue (e. g. cash discounts, quantity or trade discounts, non-contractual deductions).

Revenue is reported net of value-added tax and also net of the abovementioned deductions.

Estimations and assumptions. The preparation of the consolidated financial statements under IFRS requires assumptions and estimates to be made which can impact the valuation of the assets and liabilities recognized, the income and expenses, as well as the disclosure of contingent liabilities.

D. ACCOUNTING POLICIES (Continued)

Assumptions and estimations also relate to the accounting and measurement of provisions. Regarding non-current provisions, the discount rate is an important estimate. It is based on market yields of high-quality, fixed-rate corporate bonds observable on the financial markets at the balance sheet date. For pension provisions, assumptions about life expectancy, future wage and pension increases are made.

The recoverability of goodwill is assessed based on forecasts for the cash flows of cash generating units for the next five years using a discount rate adjusted for the business risk.

Deferred tax assets are recognized to the extent that the recoverability of future tax benefits is probable. The actual usability of deferred tax assets depends on the future actual taxable profit situation. This situation may differ from the estimations at the date of capitalization of the deferred tax assets.

The valuation of interest derivatives is dependent on future interest developments and assumptions on which these are based.

Further explanations concerning estimations and assumptions on which the preparation of this annual report is based are made within the relevant notes.

All assumptions and estimations made are based on the circumstances as at the balance sheet date. The actual future circumstances may differ. When this occurs the assumptions are adjusted, and if applicable, the book values of the respective assets and liabilities are also adjusted.

Change in presentation of the consolidated income statement. In the current financial year, the presentation of the consolidated income statement was changed from the presentation "by function of expense" to "by nature of expense". This presentation is more appropriate to manage the Company.

Transition of the separate positions of financial year 2009/2010:

	2009/2010	Capitalized internal work	Product expenses and purchased services	Personnel expenses	Depreciation/ amortization of fixed and intangible assets	Other expenses
			EUR thousand			
Cost of sales	**−476,450**	8,541	−282,955	−83,547	−94,021	−24,468
Selling expenses	**−87,025**	0	0	−52,683	−939	−33,403
Administrative expenses	**−52,771**	0	0	−21,946	−1,726	−29,099
Other expenses	**−2,020**	0	0	0	0	−2,020
Research and development costs	**−3,755**	0	0	−2,535	0	−1,220
Total by function/by nature of expense	**−622,021**	**8,541**	**−282,955**	**−160,711**	**−96,686**	**−90,210**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES

1. Trade accounts receivable

	March 31, 2011	March 31, 2010
	EUR thousand	
Billed receivables	88,666	87,451
Finance lease receivables[1]	1,293	978
Valuation allowances	−4,923	−6,421
Unbilled receivables	269,842	249,806
Trade accounts receivable	**354,878**	**331,814**

(1) see note 8 for disclosures

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

Unbilled receivables represent revenue from equipment rental, billing and maintenance agreements that are billed once a year. These services have been rendered but have not yet been billed at the balance sheet date.

In 2010/2011, receivables of EUR 1,811 thousand (2009/2010: EUR 2,295 thousand) were written off. These are included in other expenses.

The following table shows the maturity breakdown for the billed receivables:

	March 31, 2011	March 31, 2010
	EUR thousand	
Not yet due	40,370	30,070
Overdue but not written down		
Less than 30 days overdue	34,169	39,358
30 to 90 days overdue	6,800	8,665
Overdue and written down	7,327	9,358
Billed receivables	**88,666**	**87,451**

In 2010/2011, the changes in the valuation allowances on trade accounts receivable were as follows:

	2010/2011	2009/2010
	EUR thousand	
Valuation allowances at the beginning of the period	**−6,421**	**−5,646**
Additions to valuation allowances	−3,114	−3,872
Reduction of valuation allowances	4,562	3,898
Change in scope	0	−653
Currency translation	50	−148
Valuation allowances at the end of the period	**−4,923**	**−6,421**

2. Receivables from shareholders, other receivables and other financial assets

	March 31, 2011	March 31, 2010
	EUR thousand	
Receivables from shareholders	**1,523**	**1,336**
Eco tax	4,876	3,797
Prepaid expenses	3,811	4,203
Advances paid	1,648	474
Other tax receivables	865	305
Value-added tax reclaims	697	1,097
Other	3,147	2,144
Other receivables	**15,044**	**12,020**
Receivables from associates	431	329
Accounts payable with debit balance	109	1,916
Financial instruments	79	17
Other	188	148
Other financial assets	**807**	**2,410**

Receivables from shareholders are tax receivables from MEIF II Germany Holdings Sàrl, Luxembourg.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

3. Inventories

	March 31, 2011	March 31, 2010
	EUR thousand	
Raw materials and supplies	3,882	1,981
Merchandise	36,114	31,736
Inventories, gross	**39,996**	**33,717**
Valuation allowances	−2,444	−2,647
Inventories, net	**37,552**	**31,070**

In 2010/2011, a total of EUR 619 thousand (2009/2010: EUR 554 thousand) was written off and recognized in the income statement. The inventory write-off and valuation allowances are reported under product expenses and purchased services.

Appropriate write-downs are recognized on obsolete or non-saleable inventories.

4. Rental equipment

	EUR thousand
Cost	
Cost, balance as at Apr 1, 2009	**191,813**
Additions	47,573
Change in scope	14,396
Currency translation	253
Disposals	−13,497
Cost, balance as at Mar 31, 2010	**240,538**
Additions	57,199
Reclassifications	547
Currency translation	−84
Disposals	−21,594
Cost, balance as at Mar 31, 2011	**276,606**
Depreciation and impairment	
Depreciation and impairment, balance as at Apr 1, 2009	**41,257**
Additions	35,087
Impairment losses	3,319
Currency translation	60
Disposals	−11,864
Depreciation and impairment, balance as at Mar 31, 2010	**67,859**
Additions	37,698
Impairment losses	4,105
Currency translation	−10
Disposals	−19,305
Depreciation and impairment, balance as at Mar 31, 2011	**90,347**
Carrying amounts	
Rental equipment carrying amount as at Mar 31, 2010	172,679
Rental equipment carrying amount as at Mar 31, 2011	186,259
Thereof finance leases	
Finance leases carrying amount as at Mar 31, 2010	479
Finance leases carrying amount as at Mar 31, 2011	0

Rental equipment relates to metering devices on long-term rental to customers.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The impairment losses to the amount of EUR 4,105 thousand relate to the write-offs of the remaining carrying amount of metering devices when exchanging these, furthermore the impairment losses also relate to rental contract cancellations during the current financial year.

5. Property, plant and equipment (PPE)

	Land and buildings	Machinery	Office furniture and equipment	Work in progress	Subsidies	Total
			EUR thousand			
Cost						
Cost, balance as at Apr 1, 2009	**3,351**	**30,423**	**24,887**	**1,547**	**−3,343**	**56,865**
Additions	9	1,044	10,461	1,555	−159	12,910
Change in scope	141	0	117	2	0	260
Reclassifications	0	240	350	−590	0	0
Currency translation	3	5	500	53	0	561
Transfer to non-current assets held for sale	0	−2,897	0	−977	1,913	−1,961
Disposals	−10	−1,202	−5,112	−202	10	−6,516
Cost, balance as at Mar 31, 2010	**3,494**	**27,613**	**31,203**	**1,388**	**−1,579**	**62,119**
Additions	54	1,996	8,686	1,286	0	12,022
Change in scope	103	100,192	463	137	0	100,895
Reclassifications	0	397	18	−962	0	−547
Currency translation	0	−7	146	−17	0	122
Disposals	0	−1,486	−3,804	−276	796	−4,770
Cost, balance as at Mar 31, 2011	**3,651**	**128,705**	**36,712**	**1,556**	**−783**	**169,841**
Depreciation and impairment						
Depreciation and impairment, balance as at Apr 1, 2009	**85**	**5,331**	**5,081**	**0**	**−418**	**10,079**
Additions	79	3,895	10,764	0	−334	14,404
Impairment losses	0	39	30	0	0	69
Currency translation	1	4	314	0	0	319
Transfer to non-current assets held for sale	0	−448	0	0	0	−448
Disposals	−10	−423	−4,756	0	0	−5,189
Depreciation and impairment, balance as at Mar 31, 2010	**155**	**8,398**	**11,433**	**0**	**−752**	**19,234**
Additions	106	4,313	9,380	0	−166	13,633
Impairment losses	0	168	1	0	0	169
Reclassifications	0	27	−27	0	0	0
Currency translation	0	−4	125	0	0	121
Disposals	0	−945	−3,650	0	796	−3,799
Depreciation and impairment, balance as at Mar 31, 2011	**261**	**11,957**	**17,262**	**0**	**−122**	**29,358**
Carrying amounts						
PPE carrying amount as at Mar 31, 2010	3,339	19,215	19,770	1,388	−827	42,885
PPE carrying amount as at Mar 31, 2011	3,390	116,748	19,450	1,556	−661	140,483
Thereof finance leases						
Finance leases carrying amount as at Mar 31, 2010	3,050	1,482	339	0	0	4,871
Finance leases carrying amount as at Mar 31, 2011	2,986	2,198	314	0	0	5,498

The change in scope amounting to EUR 100,895 thousand is due to the acquisition of the GWE Group (see note 18).

The subsidies include investment subsidies, grants and construction subsidies paid to Techem Energy Contracting GmbH.

The transfer to non-current assets held for sale in 2009/2010 related to the district heating network including the machinery in Olching (see note 19).

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

6. Intangible assets

	Software, licenses and other intangible assets	Goodwill	Software in development	Total
		EUR thousand		
Cost				
Cost, balance as at Apr 1, 2009	**1,063,887**	**645,085**	**5,895**	**1,714,867**
Additions	6,073	0	4,124	10,197
Change in scope	6,904	37,624	0	44,528
Reclassifications	3,856	0	−3,856	0
Currency translation	175	0	0	175
Disposals	−981	0	−128	−1,109
Cost, balance as at Mar 31, 2010	**1,079,914**	**682,709**	**6,035**	**1,768,658**
Additions	9,687	0	5,550	15,237
Change in scope	16,356	0	0	16,356
Reclassifications	4,807	0	−4,807	0
Currency translation	78	0	0	78
Disposals	−425	0	−32	−457
Cost, balance as at Mar 31, 2011	**1,110,417**	**682,709**	**6,746**	**1,799,872**
Amortization and impairment				
Amortization and impairment, balance as at Apr 1, 2009	**51,694**	**0**	**0**	**51,694**
Additions	39,525	0	0	39,525
Impairment losses	4,282	0	0	4,282
Currency translation	117	0	0	117
Disposals	−900	0	0	−900
Amortization and impairment, balance as at Mar 31, 2010	**94,718**	**0**	**0**	**94,718**
Additions	39,615	0	0	39,615
Impairment losses	102	0	0	102
Currency translation	82	0	0	82
Disposals	−424	0	0	−424
Amortization and impairment, balance as at Mar 31, 2011	**134,093**	**0**	**0**	**134,093**
Carrying amounts				
Intangible assets carrying amount as at Mar 31, 2010	985,196	682,709	6,035	1,673,940
Intangible assets carrying amount as at Mar 31, 2011	976,324	682,709	6,746	1,665,779

As at March 31, 2011, the carrying amount of internally generated intangible assets was EUR 9,938 thousand (additions: EUR 2,396 thousand; disposals: EUR 0 thousand; amortization and impairment: EUR 1,599 thousand; cumulative historical cost: EUR 14,512 thousand).

The carrying amount of internally generated intangible assets as at March 31, 2010 had been EUR 9,141 thousand (additions: EUR 1,382 thousand; disposals: EUR −2 thousand; amortization and impairment: EUR 1,393 thousand; cumulative historical cost: EUR 12,116 thousand).

The change in scope in the current financial year amounting to EUR 16,356 thousand is due to the acquisition of GWE Group (see note 18).

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The addition in goodwill in financial year 2009/2010 resulted from the acquisition of Techem Energie France SAS, France, by Techem Energy Services GmbH, Germany.

The position software, licenses and other intangible assets also includes customer relationships. In addition, it also includes the trademark Techem. The trademark has a book value of EUR 61,818 thousand and has an indefinite useful life.

In 2010/2011, impairment losses relate solely to impairment losses on customer contracts of Techem Energy Contracting GmbH, Eschborn/Germany. In 2009/2010, impairment losses relate mainly to impairment losses on customer relationships which had been allocated to the companies „Techem" (TEXEM) Limited Liability Partnership, Astana/Kazakhstan, Techem Energy Technical Services (Beijing) Co., Ltd., Beijing/China und Techem Energy Services (Dalian) Co. Ltd., Dalian/China as a result of the initial recognition of the Techem Group.

The customer relationships, recognized in the financial statements of the Group, arose from the following companies:

	Remaining useful life (years)	Carrying amount as at March 31, 2011
		EUR thousand
Techem Energy Services GmbH	approx. 30	652,524
Techem Energy Contracting GmbH	approx. 30	99,679
Techem Messtechnik Ges.m.b.H.	approx. 30	23,246
GWE Group[1]	approx. 3 to 14	16,305
bautec Energiemanagement GmbH	approx. 30	13,058
Caloribel S. A.	approx. 30	12,817
Techem (Schweiz) AG	approx. 30	11,402
Other companies	approx. 30	45,839
Total		**874,870**

(1) see note 18

The useful life of the customer relationships is between 3 to 33 years, based on historical customer loyalty.

In compliance with IFRS 3/IAS 36, goodwill is subject to an annual impairment test within three months of April 1.

The recoverable amount of each CGU is determined by calculating the value in use. In the previous financial year, the recoverable amount was determined based on fair value less costs to sell, as this was higher than the value in use.

Impairment tests are carried out as described below:

All goodwill is assigned to appropriate cash generating units (CGUs). Techem is considered as one CGU with the exception of the CGU TEC Hellas (Energy Contracting business in Greece), and with the exception of the GWE Group acquired at the end of the financial year which is considered to be a separate CGU (see note 18).

The future cash flows are determined for each CGU using the multi-year plan based on historical values. The multi-year plan covers a period of five years. Figures for subsequent periods are based on the assumption of a 1.5 percent growth rate (being the historical growth rate) and an unchanged cost ratio. These future cash flows are then discounted to present value. The discount rate used (weighted average cost of capital (WACC)) was determined using the capital asset pricing model (CAPM) and results in an average rate for the Company of 12.01 percent (before tax) (2009/2010: 7.81 percent (after tax), 11.07 percent (before tax)).

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

If the carrying amount of a CGU exceeds the calculated recoverable amount (value in use), an impairment loss must be recognized.

If there are new indicators during the course of a year that a CGU may be impaired, an additional impairment test is carried out for this CGU.

As at March 31, 2011, goodwill amounts to EUR 682,709 thousand. This goodwill is completely assigned to the CGU Techem.

7. Investments in associates

	March 31, 2011	March 31, 2010
	EUR thousand	
Balance as at the beginning of the period	**12,952**	**11,868**
Share of gain (+) / loss (-) Thermie Serres S. A.	129	−1,679
Capital increase Thermie Serres S. A.	502	2,763
Change in scope—Addition EKL	3,112	0
Change in scope—Addition IHKW W	1,214	0
Balance as at the end of the period	**17,909**	**12,952**

In addition to the shares of Thermie Serres S. A., recognized as at March 31, 2010, the shares of Energieversorgungsgesellschaft Klinikum Ludwigsburg mbH (EKL) as well as of IHKW Industrieheizkraftwerk Weißbach GmbH (IHKW W) are recognized due to the acquisition of GWE Holding GmbH during the current financial year (see note 18).

The following table shows the information about the financial position and financial performance of the associated companies. The values are based on the companies' single-entity financial statements as well as the step-ups, both based on the amount of the percentage of the shares.

	Assets	Liabilities	Income	Profit/Loss	Share
	EUR thousand				
Thermie Serres S. A.	32,194	21,204	4,525	−1,679	50.24%
Balance as at Mar 31, 2010	**32,194**	**21,204**	**4,525**	**−1,679**	
Thermie Serres S. A.	32,555	20,934	7,078	129	50.24%
EKL	6,878	3,767	0	0	33.33%
IHKW W	1,991	747	0	0	25.00%
Balance as at Mar 31, 2011	**41,424**	**25,448**	**7,078**	**129**	

The loan agreement of Thermie Serres S. A. regulates that the total excess cash flow after regular repayments has to be used for unscheduled repayments of the loan and therefore is not available for disbursements to the shareholders.

The impairment test of the investment in Thermie Serres S. A. resulted in a recoverable amount which is greater than the carrying amount of the investment. The calculation is based on a growth rate of 1.5 percent for periods subsequent to the multi-year budget period (5 years) and on a discount rate of 11.32 percent (equity interest rate, adjusted for country specific risk). A sensitivity analysis was performed: an equity interest rate of up to 11.36 percent results in a recoverable amount exceeding the book-value of the investment in Thermie Serres S. A. If the growth rate is lower than 1.4 percent, the recoverable amount is below the book-value.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

8. Other non-current receivables and other non-current financial assets

	March 31, 2011	March 31, 2010
	EUR thousand	
Other non-current receivables	**419**	**360**
Trade accounts receivable	6,810	5,497
Finance lease receivables	12,147	9,871
Receivables from associates	1,931	1,645
Other	177	177
Other non-current financial assets	**21,065**	**17,190**

Non-current trade accounts receivable specifically result from instalment-based business in Eastern Europe, each agreement having a term of between one and ten years.

Finance lease receivables. These leases are primarily finance leases for the renting out of heat generation plant.

The following table shows the total gross capital investment in finance leases and the present value of outstanding minimum lease payments:

	March 31, 2011	March 31, 2010
	EUR thousand	
Total gross capital investment	20,502	17,209
Financial income not yet recognized	−7,062	−6,360
Net capital investment	**13,440**	**10,849**
Present value of the residual value	0	0
Present value of minimum lease payments	**13,440**	**10,849**
Less: current finance lease receivables[(1)]	−1,293	−978
Total non-current finance lease receivables	**12,147**	**9,871**

(1) see note 1

The maturity breakdown for the total gross capital investment and the present value of the minimum lease payments is as follows:

	March 31, 2011		March 31, 2010	
	Total gross capital investment	Present value of minimum lease payments	Total gross capital investment	Present value of minimum lease payments
	EUR thousand			
Maturity				
Up to one year	2,372	1,293	1,610	978
Between one year and five years	7,932	4,895	5,459	3,326
More than five years	10,198	7,252	10,140	6,545
Total	**20,502**	**13,440**	**17,209**	**10,849**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

9. Deferred taxes

Deferred taxes are broken down as follows:

	March 31, 2011	March 31, 2010
	EUR thousand	
Deferred tax assets resulting from:		
Tax loss carried forwards	29,738	24,447
Provisions for pensions	1,318	1,126
Finance leases	319	229
Interest rate instruments	11,442	15,580
Calculation of effective interest	3,094	1,832
Other timing differences	4,244	2,826
Write-down on net loss carried forwards	−10,740	−6,509
Offsetting	−35,459	−37,928
Total deferred tax assets	**3,956**	**1,603**
Deferred tax liabilities resulting from:		
Step-ups and recognition of assets as a result of purchase price allocations	−141,000	−136,778
Interest rate instruments	−17	0
Finance leases	−586	−441
Work in progress	−4,251	−4,164
Rental equipment	−13,208	−9,085
Other timing differences	−4,034	−3,158
Offsetting	35,459	37,928
Total deferred tax liabilities	**−127,637**	**−115,698**
Net deferred tax assets (+), deferred tax liabilities (−)	**−123,681**	**−114,095**

At the balance sheet date, the Company has tax loss carried forwards of approximately EUR 183.0 million (March 31, 2010: EUR 163.9 million), of which EUR 39.4 million (March 31, 2010: EUR 24.5 million) were not recognized due to uncertain usability. The current estimate of the write-downs on the net loss carried forwards may change depending on the financial performance of the Company and tax legislation in future years, which may necessitate an adjustment to the write-downs.

A tax group exists between TEMS KG, Techem GmbH, Techem Energy Services GmbH, Techem Energy Contracting GmbH and bautec Energiemanagement GmbH.

As TEMS KG is a partnership, it is only subject to trade tax with a rate of 12.93 percent.

The figure for deferred taxes includes non-current deferred tax assets of EUR 3,828 thousand and non-current deferred tax liabilities of EUR 123,587 thousand.

Deferred tax liabilities due to step-ups and recognition of assets as a result of purchase price allocations are reduced according to the depreciation of the assets over their useful life. They will not affect cash in future.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The unused tax losses of EUR 39.4 million for which no deferred tax asset has been recognized as at March 31, 2011 mainly relate to the following entities:

	Expiring within (years)	Amount as at March 31, 2011
		EUR thousand
GWE Holding GmbH, Germany	unlimited	14,844
Techem AB, Sweden	unlimited	5,803
Techem do Brasil Serviços de Medição de Àgua Ltda., Brazil	unlimited	3,807
Biomasse Heizkraftwerk Eisenberg GmbH, Germany	unlimited	3,672
TEC Hellas EPE, Greece	approx. 5	3,473
Techem Enerji Hizmetleri Sanayi ve Ticaret Limited Şirketi, Turkey	approx. 5	2,415
Techem Energie France SAS, France	unlimited	2,355
Techem Energy Services S.R.L., Romania	approx. 5	2,055
Other companies	—	943
Total		**39,367**

10. Current liabilities to shareholders, other liabilities and other financial liabilities

	March 31, 2011	March 31, 2010
	EUR thousand	
Current liabilities to shareholders	**0**	**3**
Other taxes	15,513	6,479
Deferred income	9,080	9,263
Advances received	1,063	275
Other	4,291	2,335
Other liabilities	**29,947**	**18,352**
Interest rate instrument liabilities	83,295	121,907
Guarantee deposits received	5,063	5,095
Commissions	4,748	3,870
Liabilities to associates	2,439	1,859
Social security contributions	945	810
Wages and salaries	845	983
Other financial liabilities	**97,335**	**134,524**

The other taxes primarily comprise income tax on wages and salaries and value-added tax (VAT).

11. Financial liabilities (current)

	March 31, 2011	March 31, 2010
	EUR thousand	
Loans[1]	8,522	2,013
Lease liabilities[1]	639	685
Bank overdraft	15,000	11,233
Financial liabilities (current)	**24,161**	**13,931**

(1) For disclosures, see note 13

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

12. Other provisions (current)

	Apr 1, 2010	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Mar 31, 2011
				EUR thousand			
Personnel	23,612	−20,165	20,349	−1,261	550	85	23,170
Maintenance services	8,688	−8,688	115	0	0	9,015	9,130
Warranties	5,005	−2,202	2,540	−1,878	0	0	3,465
Legal expenses	497	−286	644	−47	494	0	1,302
Restructuring	7,852	−6,585	1,475	−433	0	260	2,569
Other	7,522	−6,364	7,212	−418	5,350	903	14,205
Other provisions (current)	**53,176**	**−44,290**	**32,335**	**−4,037**	**6,394**	**10,263**	**53,841**

The personnel provisions mainly comprise provisions for outstanding vacation entitlements, bonuses and workers' compensation.

Maintenance services provisions have been recognized in order to allow for the exchange of equipment under maintenance agreements. The breakdown of the provision into non-current and current elements is based on the age structure of the agreements. The current portion comprises agreements due to expire in less than one year.

The provision for warranties is computed by multiplying the relevant revenue for 2010/2011 by the warranty claims ratio for the previous year. Techem provides a two-year warranty on its products.

The provision for restructuring relates to a reorganization program of Techem Energy Services GmbH, which started in the financial year 2008/2009.

The figure of EUR 14,205 thousand reported under "Other" includes provisions for severance pay for representatives, renovation obligations and charges according to the Renewable Energy Law (EEG).

Net exchange differences are not disclosed separately because they are not material. They are included in the "Reversals" column.

13. Financial liabilities (non-current)

	March 31, 2011	March 31, 2010
	EUR thousand	
Loans	1,130,554	1,040,513
Lease liabilities	4,760	4,656
Financial liabilities (non-current)	**1,135,314**	**1,045,169**

In November 2007, MEIF II Germany Holdings Sàrl and TEMS KG had concluded a Senior Facilities Agreement of EUR 1,000 million, consisting of EUR 850 million senior facility, EUR 100 million capital expenditure facility ("capex facility") and EUR 50 million working capital facility. Additionally, and MEIF II Germany Holdings Sàrl had concluded a Junior Facilities Agreement of EUR 150 million. In January 2008, Techem GmbH had acceded to this financing agreement.

On April 15, 2009, with retroactive effect of April 1, 2009, a debt push into Techem GmbH occurred pursuant to the terms and conditions of the two financial agreements. As a result of this debt push the junior facility amounting to EUR 150 million were drawn by Techem GmbH. This facility had previously been drawn by MEIF II Germany Holdings Sàrl. In total, EUR 837.6 million of the senior facility and EUR 150 million of the junior facility are included in TEMS KG group annual financial statements. In addition, in financial year 2009/2010 the unamortized part of the fees relating to the junior facility of EUR 3.3 million were charged to Techem GmbH.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The term of the senior facility is seven years (until January 2015). At the start of the loan agreement, interest had been based on the EURIBOR plus a spread of 200 basis points (payments are currently made on basis of the one-month-EURIBOR). As a result of an amendment to the loan agreement on July 2, 2008 the spread had been increased by 50 basis points. Based on the arrangements currently in force, the spread currently is 300 basis points over EURIBOR, rising to 375 basis points over EURIBOR after five years from the start of the loan agreement. As at March 31, 2011, the effective interest rate for the senior facilities is 5.27 percent (March 31, 2010: 5.58 percent).

The term of the junior facility is seven and a half years (until July 2015). At the start of the loan agreement, interest had been based on the EURIBOR plus a spread of 450 basis points (payments are currently made on basis of the one-month-EURIBOR). As a result of an amendment to the loan agreement on July 2, 2008 the spread had been increased by 50 basis points. Based on the arrangements currently in force, the spread currently is 550 basis points over EURIBOR, rising to 650 basis points over EURIBOR after five years from the start of the loan agreement. As at March 31, 2011, the effective interest rate for the junior facility is 8.02 percent (March 31, 2010: 8.19 percent).

The loans are bullet loans. However, the loan agreements specify that if certain cash flows are realized, these cash flows must be used for the early redemption of the loans. These cash flows comprise an ''excess cash flow'' adjusted for one-off items, the precise details of which are defined in the loan agreements. From September 2010, such cash flows must be used to make loan repayments at six-monthly intervals, the amount of the repayment being gradually increased based on a rising scale from 25 percent to 100 percent of the cash flows concerned. Based on the excess cash flow per September 2010, EUR 12.4 million senior facility have been repaid in January 2011. As at March 31, 2011, EUR 837.6 million of the senior facility have been drawn down. Additionally, specific proceeds arising from events outside the normal operating activities of the Company must also be used for the repayment of the loans. The order of repayment of the loans is based on the repayment ranking as specified in the loan agreements.

Further components of the Senior Agreement include a capital expenditure facility of EUR 100 million and a working capital facility of EUR 50 million. The term of the capex facility is seven years, in line with the senior facility's term, and is reported under non-current financial liabilities. The working capital facility is reported under current financial liabilities (bank overdraft; see note 11). Of the working capital facility amounting to EUR 50 million, EUR 30 million may be used for cash drawings and EUR 20 million may be used for cash drawings as well as for as guarantees. As at March 31, 2011, the Company has made use of EUR 67 million of the capital expenditure facility (March 31, 2010: EUR 42 million) and it has made cash drawings on the working capital facility of EUR 15.0 million (March 31, 2010: EUR 11.2 million). Furthermore, EUR 11.3 million have been drawn on the working capital facility by way of guarantees (March 31, 2010: EUR 8.4 million).

On March 28, 2011, the German companies GWE Holding GmbH and GWE Projectdevelopment GmbH acceded to the loan agreements as guarantors.

On November 20, 2009, the Senior and the Junior Facilities Agreement had been amended to allow the accession of the French companies Techem Energie France SAS, Holding Farnier SAS and Compteurs Farnier SAS as additional guarantors.

The shares in Techem GmbH/Germany (EUR 1,431,084 thousand, being the book value in accordance with German Commercial Code as at March 31, 2011; March 31, 2010: EUR 1,390,393 thousand) serve as collateral as per the loan agreement. Furthermore the following shares (book values before consolidation) also serve as collateral: Techem Energy Services GmbH/Germany (EUR 996,084 thousand; March 31, 2010: EUR 955,373 thousand), Techem Energy Contracting GmbH/Germany (EUR 33,174 thousand; March 31, 2010: EUR 33,174 thousand), bautec Energiemanagement GmbH/Germany (EUR 16,055 thousand; March 31, 2010: EUR 16,055 thousand), Techem Messtechnik Ges.m.b.H./Austria (EUR 6,498 thousand; March 31, 2010: EUR 6,498 thousand) and Techem Danmark A/S/Denmark

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

(EUR 23,346 thousand; March 31, 2010: EUR 23,346 thousand). Techem GmbH directly and indirectly owns 100 percent of the shares in Techem Energy Services GmbH while Techem Energy Services GmbH owns the remaining shares shown above. Since December 1, 2009, the shares in Techem Energie France SAS/France, (EUR 20,125 thousand; March 31, 2010: EUR 20,125 thousand), which are owned by Techem Energy Services GmbH/Germany, and the shares in Holding Farnier SAS/France, (EUR 45,989 thousand; March 31, 2010: EUR 45,989 thousand), which are owned by Techem Energie France SAS/France, and the shares in Compteurs Farnier SAS/France, (EUR 10,983 thousand; March 31, 2010: EUR 10,983 thousand), which are owned by Techem Energie France SAS/France, and by Holding Farnier SAS/France, also serve as a collateral. Since March 28, 2011, the shares in GWE Holding GmbH (EUR 40,691 thousand) and in GWE Projectdevelopment GmbH (EUR 286 thousand) serve as a collateral. Both are owned by Techem Energy Services GmbH/Germany.

The loans are secured by various assets lodged as collateral. The carrying amounts of the assets concerned were as follows:

	March 31, 2011	March 31, 2010
	EUR thousand	
Bank credit balances	37,875	10,605
Trade accounts receivable	50,282	58,419
Inventories	8,054	7,270
Rental equipment	161,575	153,788
Total collateral	**257,786**	**230,082**

The Company also had entered into an agreement assigning intellectual property rights as security for the new loan. These intellectual property rights include patents, brands, utility models, inventions and other intellectual property rights used by the Company.

Under the financing arrangements covenants have to be complied with and have to be reported to the participating banks as part of a bank reporting. A compliance certificate was submitted to the banks based on September 30, 2010 figures wherein all covenants had been adhered to. For March 31, 2011, preliminary calculations indicate no issues.

In addition, four subsidiaries have bank debt amounting to a total of EUR 73,136 thousand (facility: EUR 87,349 thousand; March 31, 2010: EUR 2,013 thousand, facility: EUR 2,330 thousand). Thereof EUR 71,174 thousand (facility: EUR 85,180 thousand) relate to three companies of GWE Holding GmbH which had been acquired at the end of the financial year.

Facility	Book value	Term	Interest rate
EUR thousand	EUR thousand		
30,832	25,759	until Mar 31, 2022	fix 5.20%
24,268	23,416	until Mar 31, 2023	variable 3-month-EURIBOR+0.95%
10,000	8,219	until Mar 31, 2023	fix 5.05%
10,750	6,503	until Jun 30, 2020	variable 3-month-EURIBOR+2.50%
5,000	4,252	until Mar 31, 2023	variable 3-month-EURIBOR+5.00%
4,330	3,025	between Jul 31, 2012 and Mar 31, 2017	fix 4.40% to 5.50% or variable 1-month-EURIBOR+0.95%
85,180	**71,174**		

The loans are repayable based on terms fixed in the individual loan agreements. The table below shows the maturity breakdown of the future cash payments due.

Of the loans drawn down, EUR 62,646 thousand are secured by a land charge against a hereditary building right in the amount of EUR 81,400 thousand, by assignment of the rights from the significant contracts

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

with suppliers and from project contracts of the project Industrie- und Heizkraftwerk Andernach and by security of all current assets of the respective heat generating plant. EUR 6,503 thousand are secured by a first-ranking uncertificated land charge immediately enforceable of EUR 17,895 thousand, by assignment of the rights from the energy service contract with a customer plus the correlating agreements and by the pledge of EUR 538 thousand in a money market account.

In some of the financing agreements of the GWE Group covenants have to be complied with and have to be reported regularly to the participating banks as part of a bank reporting.

The maturity breakdown for the loans is as follows:

	March 31, 2011	March 31, 2010
	EUR thousand	
Loans		
Up to one year[1]	8,522	2,013
Between one year and five years	1,078,174	1,042,000
More than five years	41,883	0
Total amortizable loans	**1,128,579**	**1,044,013**

(1) see note 11

In 2010/2011, the average interest rate is 7.89 percent (2009/2010: 7.38 percent).

The breakdown of lease liabilities is as follows:

	March 31, 2011		March 31, 2010	
	Nominal amount of lease liabilities	Present value of minimum lease payments	Nominal amount of lease liabilities	Present value of minimum lease payments
		EUR thousand		
Up to one year	908	639	976	685
Between one year and five years	2,537	2,199	2,358	2,076
More than five years	2,568	2,561	3,573	2,580
Total	**6,013**	**5,399**	**6,907**	**5,341**
Less: discounting amount	−614		−1,566	
Net present value	**5,399**		**5,341**	
Lease liabilities (current)[1]	−639	−639	−685	−685
Lease liabilities (non-current)	**4,760**	**4,760**	**4,656**	**4,656**

(1) see note 11

The Company has entered into lease agreements for office equipment, hardware and machinery.

The repayment of lease liabilities (in accordance with the statement of cash flows) is computed as follows:

	March 31, 2011	March 31, 2010
	EUR thousand	
Present value of lease liabilities	5,399	5,341
Less:		
Additions in year under review	−841	0
Opening balance as at Apr 1	−5,341	−6,162
Repayment of lease liabilities	**−783**	**−821**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

14. Other non-current liabilities and other non-current financial liabilities

	March 31, 2011	March 31, 2010
	EUR thousand	
Deferred income	1,709	2,137
Other	321	125
Other non-current liabilities	**2,030**	**2,262**
Liabilities from financial instruments[1]	2,270	0
Trade accounts payable	2,235	0
Guarantee deposits received	1,014	1,015
Other non-current financial liabilities	**5,519**	**1,015**

(1) see part F. Other disclosures "Concentration of risk"

The deferred income mainly includes deferred interest relating to instalment-based payment agreements.

Furthermore deferred income contains the deferred gain from the sale and leaseback transaction of land and buildings of Techem Messtechnik Ges.m.b.H., Austria. The transaction had taken place in financial year 2005/2006.

15. Provisions for pensions and other post-employment benefits

Post-employment benefit plans of the subsidiaries vary depending on the legal, tax and economic situation in each country.

Most of the pension schemes in place in Germany as well as in other countries are defined benefit plans, some of which are funded and others unfunded.

There are pension schemes in place for an active and former members of the senior management of Techem Energy Services GmbH and Techem GmbH, with a separate scheme for each person. These pension schemes are based on the pensionable remuneration of each employee and the employee's period of service. For the most part the pension schemes are insured. In addition, the Company has set up a relief fund.

The provisions for pensions and other post-employment benefits are computed on the basis of independent actuarial reports. The provisions for defined benefit obligations are determined in accordance with IAS 19 ("Employee benefits") using the standard international method known as the Projected Unit Credit Method (in Germany, in conjunction with the Heubeck 2005 G mortality tables).

The funded obligations are supported by suitable insurance policies that meet the requirements of IAS 19 for plan assets. These plan assets are then set off accordingly against the provisions.

The following table shows the changes in post-employment benefit obligations in each reporting period:

	Mar 31, 2011	Mar 31, 2010	Mar 31, 2009	Mar 31, 2008	Mar 31, 2007
			EUR thousand		
Present value of funded obligations	10,662	8,864	7,633	6,417	7,859
Fair value of plan assets	−9,284	−8,007	−6,970	−5,752	−6,009
Deficit	**1,378**	**857**	**663**	**665**	**1,850**
Present value of unfunded obligations	14,163	13,901	12,998	13,910	13,143
Balance recognized on the face of the balance sheet (net)	**15,541**	**14,758**	**13,661**	**14,575**	**14,993**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The following table shows the change in the present value of the defined benefit obligations for the year under review:

	2010/2011	2009/2010
	EUR thousand	
Balance at the beginning of the year	**22,765**	**20,631**
Actuarial losses[1]	921	1,200
Exchange-rate differences on foreign plans	631	371
Derecognition of obligations covered by insurance companies	−339	−411
Employees moving from/to other companies	14	−35
Current service costs[1]	1,135	894
Past service costs[1]	0	70
Interest costs[1]	936	1,051
Pension payments	−1,238	−1,103
Change in scope	0	97
Balance at the end of the year	**24,825**	**22,765**

(1) positions recognized in the current income

The following table shows the change in the present value of the fair value of plan assets for the year under review:

	2010/2011	2009/2010
	EUR thousand	
Balance at the beginning of the year	**8,007**	**6,970**
Actuarial gains[1]	48	23
Exchange rate differences on foreign plans	530	311
Derecognition of plan assets covered by insurance companies	−339	−411
Employees moving from/to other companies	14	−35
Expected return on plan assets[1]	173	229
Employer contributions	557	663
Employee contributions	302	257
Pension payments	−8	0
Balance at the end of the year	**9,284**	**8,007**

(1) positions recognized in the current income

Since all the pension obligations relating to existing retired employees of Techem (Schweiz) AG, Urdorf/ Switzerland, are covered by the insurance company, both the present value of the funded obligation and the fair value of the plan assets were each reduced in 2010/2011 by EUR 339 thousand (2009/2010: EUR 411 thousand).

The defined benefit obligation breaks down into non-current (EUR 14,533 thousand) and current (EUR 1,008 thousand) obligations.

The actual return on plan assets in 2010/2011 was EUR 133 thousand.

The current and past service costs as well as actuarial gains and losses are included in the personnel expenses. The interest costs and the expected return on plan assets are included in the financial result.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The basic assumptions applied in the computation of the pension provisions are as follows (average values):

	Mar 31, 2011	Mar 31, 2010
Discount rate	4.92%	5.08%
Salary increases	2.58%	2.25%
Annuity increases	1.57%	1.65%
Expected return on plan assets	3.10%	3.45%

An average discount rate of 5.17 percent was applied to German defined benefit obligations. The discount rates applying to non-German defined benefit obligations used in 2010/2011 were between 3.00 percent and 5.00 percent.

In 2010/2011, EUR 59 thousand was paid into a defined contribution plan by Techem Energy Services B.V., Breda/Netherlands.

16. Other provisions (non-current)

	Apr 1, 2010	Utilizations	Additions	Reversals	Change in scope	Reclass. from non-current to current	Unwinding of discount	Mar 31, 2011
					EUR thousand			
Maintenance services	25,042	−12	8,727	−19	0	−9,015	247	24,970
Restructuring	873	−7	140	0	0	−260	19	765
Other	5,454	−102	964	−286	1,197	−988	147	6,386
Other provisions (non-current)	**31,369**	**−121**	**9,831**	**−305**	**1,197**	**−10,263**	**413**	**32,121**

A discount rate of 4.06 percent was applied to the provisions (the risk premium was taken into account in the measurement of future cash outflows).

Net exchange differences are not disclosed separately because they are not material. They are included in the "Reversal" column.

17. Equity

Capital account of limited partner. The contribution by MEIF II Germany Holdings Sàrl amounting to EUR 2,500 as at March 31, 2011, to which its liability is limited, is shown as capital share of the limited partner in the capital account (March 31, 2010: EUR 2,500).

Reserve account of limited partner. The reserves of the limited partner relate to its drawings and contributions and amount to EUR 808,393,525 as at March 31, 2011 (March 31, 2010: EUR 812,702,176).

The decrease of the reserves results from the board resolutions dated September 2, 2010 (EUR 15,000,000) and February 8, 2011 (EUR 30,000,000) where the repayment to the limited partner of a total amount of EUR 45,000,000 has been resolved.

In a board resolution of March 25, 2011, an increase of the reserves of the limited partner of EUR 40,691,349 has been resolved.

Capital management disclosures. Among its objectives, TEMS KG is endeavouring to secure its equity base over the long-term and generate an appropriate return on capital employed. However, in this regard, the equity as per the Group's balance sheet is only an indirect management criterion, whereas revenue, EBIT and EBITDA function as direct management criteria.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The following table shows the change in equity and financial liabilities:

	Mar 31, 2011	Mar 31, 2010	Change (%)
		EUR thousand	
Equity	**879,919**	**839,297**	**4.84**
as percentage of total equity and financial liabilities	43.15	44.21	
Financial liabilities current	24,161	13,931	
Financial liabilities non-current	1,135,314	1,045,169	
Financial liabilities	**1,159,475**	**1,059,100**	**9.48**
as percentage of total equity and financial liabilities	56.85	55.79	
Total equity and financial liabilities	**2,039,394**	**1,898,397**	**7.43**

18. Acquisition of GWE Group

With effective date of March 25, 2011, Techem Energy Services GmbH first acquired the shares in GWE Projectdevelopment GmbH from GWE Holding GmbH and directly afterwards it acquired all the shares in GWE Holding GmbH from MEIF II Saubere Energie GmbH & Co. KG. GWE Holding GmbH directly and indirectly holds the shares in nine subsidiaries and additionally it holds the shares in two associated companies. The purchase price was EUR 40,977 thousand. The acquisition is recognized as at March 31, 2011, as the date of acquisition and the date of the end of the financial year are very close. The acquisition of the two companies is reported as one combined acquisition.

The business activities of GWE Holding GmbH with its subsidiaries and GWE Projectdevelopment GmbH comprise the development, the construction and the operation of combined heat and energy generating plant of different sizes.

The breakdown of the net assets acquired is as follows:

	Carrying amount	Adjustment of carrying amount to fair value	Fair value
		EUR thousand	
Cash and cash equivalents	12,748	0	12,748
Current trade accounts receivable	3,439	0	3,439
Other current assets	4,900	817	5,717
Property, plant and equipment and other non-current assets	94,561	6,539	101,100
Intangible assets	51	16,305	16,356
Investments in associates	1,211	3,115	4,326
Deferred tax assets	1,400	493	1,893
Current and non-current financial liabilities	−71,945	0	−71,945
Current and non-current other liabilities	−14,855	−262	−15,117
Current and non-current provisions	−6,200	−1,391	−7,591
Deferred tax liabilities	−105	−7,057	−7,162
Total net assets acquired	**25,205**	**18,559**	**43,764**
Excess from a bargain purchase			−2,787
Total purchase price			**40,977**
Purchase price financed by capital contribution (non-cash)			−40,691
Outstanding purchase price liability			−286
Less: Cash and cash equivalents acquired			12,748
Net cash inflow relating to the acquisition			**12,748**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

As part of the acquisition, contractual relationships to the amount of EUR 16,305 thousand were identified as intangible assets and a step-up on production equipment to the amount of EUR 6,539 thousand was identified and additionally recognized. The period of amortization was based on the contractual relationship between 3 and 14 years. The period of depreciation of the production equipment is 13 years.

Furthermore, the investments in associates were increased by EUR 3,115 thousand during the course of purchase price allocation.

Additionally, onerous contracts to the amount of EUR −1,366 thousand were identified.

After the purchase price allocation and its intensive review, an excess from a bargain purchase to the amount of EUR 2,787 thousand resulted. This amount has been recorded in net income (see note 22). The excess is caused by the fact that at the transaction date the GWE Group is in the process of restructuring.

If GWE Holding GmbH and its subsidiaries had been part of the TEMS KG Group from the beginning of financial year 2010/2011, group revenues would have amounted to EUR 783,474 thousand and the net income to EUR 45,477 thousand.

Costs directly attributable to the purchase of GWE Group are EUR 1,280 thousand which have been recognized in other expenses.

19. Non-current assets held for sale

The Company had—as at the end of the last financial year—the intention to sell the district heating network in Olching due to portfolio regrouping in the ENERGY CONTRACTING segment together with the machinery and the contracts regulating the supply of district heating.

As regulated in the sales contract the district heating network will be transferred to the new owner upon approval of the respective community. The community has approved the sales contract in February 2011. The selling price corresponds to the net carrying amount at the date of transfer of the heating network to the new owner. The carrying amount of the heating network and its machinery on March 31, 2011 is EUR 1,606 thousand (March 31, 2010: EUR 1,513 thousand).

The Company runs the heating network and the relating machinery until the date of transfer of ownership. The heating network with its machinery has no longer been depreciated since its reclassification into the position "Non-current assets held for sale" as at March 31, 2010. The sale took place in April 2011.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

20. Categories of financial assets and financial liabilities

The following table provides an overview of the financial instruments in TEMS KG.

	Mar 31, 2011	Mar 31, 2010
	EUR thousand	
Financial assets		
Category: Loans and receivables		
Measurement at amortized cost		
Carrying amount is approximately equivalent to fair value		
Cash and cash equivalents (excl. other investments)[1]	58,283	26,412
Trade accounts receivable (current)	354,878	331,814
Receivables from shareholders (current)[2];[6]	0	0
Other financial assets (current)[3];[6]	728	2,393
Other financial assets (non-current)[6]	21,065	17,190
Investments in associates	17,909	12,952
Category: financial assets measured at fair value and recognized in income		
Measurement at fair value		
Interest rate instruments without hedge accounting	79	17
Cash equivalents (other investments)	6,183	6,742
Financial liabilities		
Category: Loans and receivables		
Measurement at amortized cost		
Carrying amount is approximately equivalent to fair value		
Trade accounts payable (current and non-current)	103,629	57,768
Other financial liabilities (current)[4];[6]	14,040	12,617
Other financial liabilities (non-current)[5];[6]	1,014	1,015
Financial liabilities (current and non-current)	1,159,475	1,059,100
Liabilities to shareholders (current and non-current)	0	3
Category: financial liabilities measured at fair value and recognized in income		
Measurement at fair value		
Interest rate instruments without hedge accounting	83,295	121,907
Interest rate instruments with hedge accounting	2,270	0

(1) As at March 31, 2011, other investments to the amount of EUR 6,183 thousand are reported in the category "Financial assets measured at fair value and recognized in income" (March 31, 2010: EUR 6,742 thousand).

(2) As at March 31, 2011, balance sheet item includes EUR 1,523 thousand (March 31, 2010: EUR 1,336 thousand) tax receivables from shareholders.

(3) As at March 31, 2011, balance sheet item also includes interest rate instruments of EUR 79 thousand (March 31, 2010: EUR 17 thousand).

(4) As at March 31, 2011, balance sheet item also includes interest rate instruments of EUR 83,295 thousand (March 31, 2010: EUR 121,907 thousand).

(5) As at March 31, 2011, balance sheet item also includes interest rate instruments of EUR 2,270 thousand (March 31, 2010: EUR 0 thousand) and non-current trade accounts payable of EUR 2,235 thousand (March 31, 2010: EUR 0 thousand).

(6) Only financial instruments as defined in IAS 39/IFRS 7

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The fair value of all current items is roughly equivalent to the carrying amount. The main reason for this is the short maturity of these instruments. As far as non-current accounts receivable, other financial assets, and non-current financial liabilities are concerned, no material differences have arisen between the carrying amounts and the fair values determined for these items. The carrying amounts of the non-current items are therefore approximately equivalent to their fair values. Acquisitions and sales of financial assets common to the market are generally accounted for at the settlement date.

Interest rate instruments are measured at fair value using the mark-to-market method.

Other investments and interest rate instruments are measured at fair value. The fair value of other investments is based on quoted market prices on an active market at the balance sheet date and is therefore attributed to level 1 in the fair value measurement hierarchy in accordance with IFRS 7. The fair value of the interest rate instruments is based on valuation techniques for which all significant inputs are observable and is therefore attributed to level 2, pursuant to IFRS 7.

21. Revenue

	2010/2011	2009/2010
	EUR thousand	
ENERGY SERVICES		
Billing services	250,329	238,537
Rental and associated service revenue	157,900	149,876
Sales	75,134	66,610
Maintenance	32,088	30,194
Other	1,573	3,399
ENERGY CONTRACTING	215,412	198,927
Revenue	**732,436**	**687,543**

22. Other income

	2010/2011	2009/2010
	EUR thousand	
Gains on foreign exchange	1,054	2,169
Gains on the disposal of non-current assets	521	433
Gain from a bargain purchase[1]	2,787	0
Other	3,186	2,575
Other income	**7,548**	**5,177**

(1) see note 18

The gains on foreign exchange arose primarily as a result of differences between foreign exchange rates on the dates the receivables/payables were recognized and those on the dates of payment or those used in remeasurement at the balance sheet date.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

23. Product expenses and purchased services

	2010/2011	2009/2010
	EUR thousand	
Material expenses	−204,832	−185,712
External workforce	−49,999	−49,350
Commercial representatives and other commissions	−31,347	−30,004
Replacement expenses	−9,921	−10,877
Other	−3,437	−7,012
Product expenses and purchased services	**−299,536**	**−282,955**

24. Other expenses

	2010/2011	2009/2010
	EUR thousand	
Communications costs	−4,606	−4,360
Rent	−17,525	−18,916
IT	−17,281	−17,055
Advertising and promotion	−6,782	−7,329
Consultancy	−8,194	−7,848
Research and development costs	−314	−196
Losses on the disposal of non-current assets	−206	−643
Losses on foreign exchange	−1,465	−1,063
Write-downs and valuation allowance on receivables	−380	−2,268
Other	−28,073	−30,532
Other expenses	**−84,826**	**−90,210**

The losses on foreign exchange arose primarily as a result of differences between foreign exchange rates on the dates the receivables/payables were recognized and those on the dates of payment or those used in remeasurement at the balance sheet date.

Besides the above mentioned research and development costs amounting to EUR 314 thousand (2009/2010: EUR 196 thousand), further costs are included in personnel expenses amounting to EUR 2,895 thousand (2009/2010: EUR 2,535 thousand) as well as in other expenses (other) amounting to EUR 338 thousand (2009/2010: EUR 1,024 thousand).

25. Net share of gain/(loss) of associates

	2010/2011	2009/2010
	EUR thousand	
Share of loss of Thermie Serres S. A.	410	−1,398
Amortization of step-ups of Thermie Serres S. A.	−281	−281
Net share of gain/(loss) of associates	**129**	**−1,679**

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

26. Financial income and finance costs

	2010/2011	2009/2010
	EUR thousand	
Interest income	1,219	1,559
Gains on foreign exchange resulting from intercompany loans	1,128	1,543
Gains on financial instruments measured at fair value	38,618	2,027
Other financial income	190	49
Total financial income	**41,155**	**5,178**
Interest expense	−94,101	−100,539
Interest expense on provisions	−1,349	−3,904
Losses on financial instruments measured at fair value	0	−10,215
Losses on foreign exchange resulting from intercompany loans	−1,929	−1,019
Total finance costs	**−97,379**	**−115,677**
Financial income and finance costs	**−56,224**	**−110,499**

In 2010/2011, interest income from instalment-based business amounted to EUR 155 thousand (2009/2010: EUR 185 thousand).

27. Income taxes

	2010/2011	2009/2010
	EUR thousand	
Current income taxes		
Germany	19	−481
Other countries	−4,539	−3,482
Total income taxes	**−4,520**	**−3,963**
Deferred taxes		
Recognition of tax loss carried forwards	1.060	17.775
Tax effect from temporary differences	−5.371	10.713
Total deferred taxes	**−4.311**	**28.488**
Total tax expense/income	**−8.831**	**24.525**

Due to the existence of a TEMS KG-tax group (see note 9), the weighted average tax rate for the Company was approx. 12.93 percent (financial year 2009/2010: approx. 12.78 percent).

According to German tax law, income taxes for partnerships only comprise trade tax (12.93 percent).

Deferred taxes have been calculated using the relevant enacted tax rate.

E. STATEMENT OF FINANCIAL POSITION AND INCOME STATEMENT DISCLOSURES (Continued)

The following table shows the reconciliation from the weighted average tax rate for the Group to the Company's effective tax rate:

	2010/2011		2009/2010	
	EUR thousand	%	EUR thousand	%
Expected income tax	**−6,875**	**12.9**	**5,301**	**12.8**
Differences in foreign tax rates	−838	1.6	314	0.8
Change in tax rate for deferred taxes	−1,126	2.1	−151	−0.4
Permanent differences	2,090	−3.9	−1,596	−3.8
Taxes unrelated to the reporting period	11	0	−437	−1.1
Change of tax loss carried forwards	−2,618	4.9	16,067	38.7
Change in write-down on recognized loss carried forwards	−854	1.6	−1,129	−2.7
Adjustment of the beginning balance of the deferred taxes	0	0	5,908	14.2
Other	1,379	−2.6	248	0.6
Effective tax expense/income / tax rate	**−8,831**	**16.6**	**24,525**	**59.1**

The changes in tax rate for deferred taxes mainly results from changes of the trade tax rate from 12.78 percent to 12.93 percent.

In both financial years, the position "Permanent differences" mainly relates to deduction of special business expenses of TEMS KG and the non-deductible portion of interest expenses.

In the financial year 2009/2010, the taxes unrelated to the reporting period mainly result from a tax audit of Techem GmbH, Techem Energy Services GmbH and Techem Energy Contracting GmbH for financial years 2002/2003 until 2005/2006.

In the current financial year, the change of tax loss carried forwards results from an adjustment of beginning balances relating to tax loss carried forwards from trade tax of the TEMS KG—tax group. In the prior financial year, tax loss carried forwards relating to prior financial years had been recognized for the first time, resulting from interest expenses based on the interest barrier.

In financial year 2009/2010, the „Adjustment of the beginning balance of the deferred taxes" resulted from bautec Energiemanagement GmbH and MESA messen und abrechnen GmbH when entering into the TEMS KG—tax group. The deferred taxes of these two companies have been reduced by corporate tax and the solidarity surcharge.

F. OTHER DISCLOSURES

Operating leases

The Group as lessee. The Company has entered into leases for buildings (head office in Eschborn—fixed term until January 31, 2017, as well as other leases for subsidiaries and field organizations), vehicles and office equipment. The leases have renewal options and various terms. The total expense for these leases in 2010/2011 was EUR 20,027 thousand (2009/2010: EUR 21,461 thousand).

F. OTHER DISCLOSURES (Continued)

The minimum lease obligations as at March 31, 2011 were as follows:

	Mar 31, 2011	Mar 31, 2010
	EUR thousand	
2010/2011	—	22,395
2011/2012	24,723	17,167
2012/2013	20,953	14,743
2013/2014	15,913	11,592
2014/2015	11,360	9,109
2015/2016	8,742	7,524
After 2015/2016	9,878	8,503
Total minimum lease obligations	**91,569**	**91,033**

The Group as lessor. Revenue from rental agreements in 2010/2011 was EUR 157,924 thousand (2009/2010: EUR 149,876 thousand). The rental agreements involve metering and control equipment and have terms of five to ten years (see note 4).

As at the balance sheet date, the breakdown of the total future minimum lease payments from non-cancellable operating leases payable to the Group was as follows:

	Mar 31, 2011	Mar 31, 2010
	EUR thousand	
Up to one year	160,253	148,676
Between one year and five years	456,132	417,014
Over five years	165,230	154,899
Total minimum lease payments	**781,615**	**720,589**

Other financial obligations / Financial guarantees

	Mar 31, 2011
	EUR thousand
Up to one year	22,501
Between one year and five years	140
Over five years	238
Financial obligations under supply agreements	**22,879**

The Company has entered into financial obligations under supply agreements of EUR 22,879 thousand (March 31, 2010: EUR 22,680 thousand). These agreements include long-term supply agreements for wireless metering equipment and IT services as part of ongoing maintenance agreements and projects, as well as subcontracting agreements in the service business.

Furthermore, the Company has entered into commitments arising from warranty contracts amounting to EUR 100 thousand.

Techem Energy Services GmbH has issued a subordinated, time limited suretyship letter to the lender of Thermie Serres S. A. (being Emporiki Bank of Greece S. A.). The suretyship letter is limited to EUR 20 million and will be reduced by bank guarantees submitted to Emporiki Bank. As at March 31, 2011 bank guarantees amounting to EUR 5 million have been submitted. Therefore the remaining commitment resulting from the suretyship letter amounts to EUR 15 million.

As at March 31, 2011, additional financial guarantees to an amount of EUR 1,126 thousand and comfort letters amounting to EUR 256 thousand have been issued.

F. OTHER DISCLOSURES (Continued)

Concentration of risk

Credit risks. The Company offers its services to a large number of customers active in various sectors and geographical regions. Techem grants credit terms to eligible customers and believes it is not exposed to an unreasonable concentration of risk.

Imminent or actual irrecoverable receivables are accounted for by write-downs of 50 and 75 percent respectively depending on the age of the receivable concerned. Several dunning stages are also used. When a certain dunning stage is reached, legal action is initiated and the receivable is automatically written down by 75 percent.

As at March 31, 2011, the total of trade accounts receivable, including receivables from finance lease, (each current and non-current) was EUR 373.8 million (maximum default risk).

Liquidity risk. The Company entered into long-term loan agreements with a bank consortium to secure the financing until the beginning respectively middle of 2015. In addition, the GWE Group has loan agreements with different terms, the longest until March 2023. The long-term budget of the Company shows a positive development of the financial position, financial result and cash flows. Therefore, the company is not exposed to any particular liquidity risk.

Interest rate risk and interest rate management. Interest rate risks arise from the fact that the financial liabilities are subject to a floating rate of interest (see note 13).

Interest rate risk in the TEMS KG is analyzed centrally and managed by the Treasury department. Interest rate risk items are separated from the liquidity commitment in individual hedge agreements with the help of interest rate derivatives, such as interest rate swaps and caps, and are managed as an overall portfolio to balance the risks.

Interest rate derivatives are used exclusively to optimize credit terms and limit interest rate risks as part of the Company's financing strategies and are not used for trading or speculation purposes.

Hedging instruments are only used in the Group to hedge interest rate risks on variable cash flows. However, the criteria for hedge accounting is only satisfied for IHKW Andernach GmbH.

The Company pursues a conservative strategy in hedging financial risks. In accordance with internal guidelines, the use of derivatives is restricted to the hedging of existing risks. Generally the Company only uses hedging instruments that are measurable and have a transparent risk profile.

All derivatives are measured at fair value. This is determined using the mark-to-market method. The market values of interest rate swaps and caps are reported as other assets or other liabilities or in the revaluation reserves in equity in the case of hedge accounting.

Financial instruments without hedge accounting (FVTPL). Changes in market value are recognized in the income statement, but do not affect cash.

In January 2008, Techem GmbH had entered into an interest rate swap with a nominal value of EUR 398.0 million. This payer-swap-agreement swaps the six-month EURIBOR against a 10 year fixed interest rate.

On April 15, 2009, effective date April 1, 2009, a debt push had occurred pursuant to the terms and conditions of the Senior Facilities Agreement and the Junior Facilities Agreement. As a result of this debt push, the A1 Senior Facility amounting to EUR 431.0 million and the Junior Facility amounting to EUR 150.0 million had been drawn by Techem GmbH. These Facilities had been previously drawn by TEMS KG (A1 Senior Facility) and by MEIF II Germany Holdings Sàrl (Junior Facility).

F. OTHER DISCLOSURES (Continued)

In terms of the Novation Confirmations, the interest rate swaps previously held by TEMS KG had been transferred to Techem GmbH. The transfer had taken place on April 15, 2009, effective date April 1, 2009. These interest rate swaps have a nominal value of EUR 602.0 million. This payer-swap-agreement also swaps the six-month EURIBOR against a 10 year fixed interest rate.

By entering into a basis-swap-agreement (swapping the six-month EURIBOR for the one-month EURIBOR), the interest payments according to the loan agreement are made based on the one-month EURIBOR plus margin. This is valid until September 2011 and resulted in an interest benefit of 34 basis points p. a. on the agreed nominal value of EUR 1,000.0 million.

Therefore, the interest expense for the financing of the Company amounts to the interest rate levels mentioned in the chart above decreased by the interest benefit of 34 basis points resulting from the basis-swap-agreement.

On June 23, 2010, IHKW Industrieheizkraftwerk Heidenheim GmbH had entered into a swap agreement with a term until June 30, 2020 (nominal value March 31, 2011: EUR 9,944 thousand). This interest rate swap includes an additional right of cancellation.

Interest rate limited to (without hedge accounting)	Nominal amount
	EUR thousand
4.589% plus margin	398,000
4.590% plus margin	420,000
4.615% plus margin	182,000
2.980%	9,944
	1,009,944

Details of instruments at the balance sheet date related to the Senior and Junior facilities as well as related to the financing of IHKW Industrieheizkraftwerk Heidenheim GmbH, together with market values and maturities, are as follows:

	March 31, 2011		March 31, 2010	
	Nominal amount	Market value	Nominal amount	Market value
	EUR thousand			
Interest rate swaps				
Up to one year	1,000,000	396	1,000,000	−1,382
Between one year and five years	0	0	0	0
More than five years	1,009,944	−83,634	1,000,000	−120,525
Interest rate instruments	**2,009,944**	**−83,238**	**2,000,000**	**−121,907**

The market value of EUR 396 thousand relates to the additional swap agreements swapping the six-month EURIBOR for the one-month EURIBOR, as mentioned above.

As at March 31, 2011, the Company has also entered into an interest rate cap outside Germany with a market value of EUR 22 thousand (March 31, 2010: EUR 17 thousand) and a nominal amount of EUR 3,260 thousand (March 31, 2010: EUR 3,260 thousand).

F. OTHER DISCLOSURES (Continued)

Financial instruments with hedge accounting. The effective part of the change in market value is recognized in the revaluation reserves in equity. The ineffective part is recognized in the income statement.

IHKW Industrieheizkraftwerk Andernach GmbH had entered into an interest rate swap on February 23, 2007 with a term until December 31, 2022 and additionally into two further interest rate swaps on August 31, 2007 with a term until March 31, 2023.

Interest rate limited to (with hedge accounting)	Nominal amount
	EUR thousand
4.345%	8,822
4.770%	12,482
5.175%	16,144
	37,448

Details of instruments at the balance sheet date related to the financing of IHKW Industrieheizkraftwerk Andernach GmbH, together with market values and maturities, are as follows:

	March 31, 2011	
	Nominal amount	Market value
	EUR thousand	
Interest rate swaps		
Up to one year	0	0
Between one year and five years	0	0
More than five years	37,448	−2,270
Interest rate instruments	**37,448**	**−2,270**

Currency risk and currency management. The Company does not enter into currency hedges. Most of the Company's business volume is generated in the Euro zone.

Employees

	2010/2011	2009/2010
Average number of employees		
Germany[1]	2,069	2,014
Other countries	1,012	946
Employees	**3,081**	**2,960**
Average number of employees of associated companies[2]	30	17
Total employees	**3,111**	**2,977**

(1) thereof with GWE-companies: 57 employees

(2) thereof with GWE-companies: 13 employees

The total employer's contribution for the German companies to the statutory pension scheme was EUR 8,513 thousand (2009/2010: EUR 8,332 thousand).

Transactions with related parties

The parent company of Techem Energy Metering Service GmbH & Co. KG is MEIF II Germany Holdings Sàrl, Luxembourg. The ultimate parent company is Macquarie European Infrastructure Fund II Limited Partnership, an English limited partnership with its registered office in St. Peter Port, Guernsey.

Hilko Cornelius Schomerus, Cord von Lewinski (since November 30, 2010), Hans-Lothar Schäfer and Steffen Bätjer are directors of the managerial Techem Energie GmbH. Until November 30, 2010, Klaus Thalheimer was director of Techem Energie GmbH. He has been replaced by Mr. von Lewinski. Mr. Thalheimer, Mr. Schomerus and Mr. von Lewinski have responsibility for the activities of several

F. OTHER DISCLOSURES (Continued)

funds within the Macquarie Group. It is not possible to make a reasonable apportionment of their emoluments. Accordingly, these emoluments are not reported. Mr. Thalheimer, Mr. Schomerus and Mr. von Lewinski did not receive any remuneration from TEMS KG. Mr. Schäfer and Mr. Bätjer are paid by Techem GmbH and additionally have responsibility for other Group companies. In financial year 2010/2011 the remuneration of Mr. Schäfer and Mr. Bätjer amount to EUR 1,400 thousand (2009/2010: EUR 966 thousand). Thereof, basic salary is EUR 415 thousand (2009/2010: EUR 287 thousand), variable remuneration is EUR 922 thousand (2009/2010: EUR 613 thousand) and other expenses amount to EUR 63 thousand (2009/2010: EUR 66 thousand).

As at March 31, 2011, current receivables due from MEIF II Germany Holdings Sàrl to the amount of EUR 1,523 thousand (March 31, 2010: EUR 1,336 thousand) have been recognized (see note 2).

As at March 31, 2011, no current liabilities to Techem Energie GmbH (March 31, 2010: EUR 3 thousand) exist (see note 10).

Audit fees

In financial year 2010/2011, the following audit fees for the Group auditor, PricewaterhouseCoopers Aktiengesellschaft, are included:

	2010/2011
	EUR thousand
Audit fees for:	
Year-end audit services	366
Services for tax consultancy	255
Other services	90
Total audit fees	**711**

The audit fees for year-end audit services include the fees for the audit of the stand-alone year-end accounts and the Group accounts of the Company as well as the fees for the audit of the stand-alone year-end accounts of several companies in Germany.

Exemption from disclosure requirements

The subsidiaries Techem GmbH, Techem Energy Services GmbH and Techem Energy Contracting GmbH and bautec Energiemanagement GmbH have exercised the exemption option available under section 264 (3) German Commercial Code (HGB) with regard to disclosures for 2010/2011.

Events after the balance sheet date

No major events occurred after the balance sheet date.

Eschborn, May 30, 2011

Techem Energy Metering Service GmbH & Co. KG
The Board of Directors

Cord von Lewinski

Hilko Cornelius Schomerus

Hans-Lothar Schäfer

Steffen Bätjer

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Interim consolidated financial statements
April 1, 2012 to June 30, 2012

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of financial position as at June 30, 2012

	June 30, 2012	March 31, 2012
	EUR thousand Unaudited	EUR thousand Audited
Cash and cash equivalents	77,871	72,208
Trade accounts receivable	240,186	293,138
Receivables from shareholder	1,617	1,617
Other receivables	15,752	12,395
Other financial assets	1,777	728
Inventories	34,587	30,924
Income tax receivables	715	899
Total current assets	**372,505**	**411,909**
Metering devices for rent	202,248	201,788
Property, plant and equipment	127,847	130,861
Intangible assets	1,634,774	1,640,689
Investments in associates	4,804	4,632
Other receivables	414	419
Other financial assets	20,966	19,969
Deferred tax assets	2,195	2,172
Total non-current assets	**1,993,248**	**2,000,530**
Total assets	**2,365,753**	**2,412,439**
Trade accounts payable	22,195	39,905
Other liabilities	23,263	40,246
Other financial liabilities	212,010	185,690
Financial liabilities	7,641	7,831
Other provisions	39,460	49,881
Income tax liabilities	8,169	8,426
Total current liabilities	**312,738**	**331,979**
Financial liabilities	1,111,651	1,114,610
Other liabilities	2,664	2,891
Other financial liabilities	6,665	7,396
Provisions for pensions	16,537	16,592
Other provisions	31,860	31,360
Deferred tax liabilities	110,148	114,813
Total non-current liabilities	**1,279,525**	**1,287,662**
Capital account of limited partner	3	3
Reserve account of limited partner	778,393	778,393
Retained earnings	−4,906	14,402
Total equity	**773,490**	**792,798**
Total liabilities and equity	**2,365,753**	**2,412,439**

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated income statement and consolidated statement of comprehensive income for the interim period from April 1, 2012 to June 30, 2012

	April 1, 2012-June 30, 2012	April 1, 2011-June 30, 2011
	EUR thousand Unaudited	EUR thousand Unaudited
Revenue	150,702	158,804
Capitalized internal work	2,721	2,550
Other income	1,312	1,055
Product expenses and purchased services	−48,382	−59,000
Personnel expenses	−43,399	−42,157
Depreciation of metering devices for rent, fixed and intangible assets	−24,945	−24,956
Other expenses	−20,921	−19,783
Earnings before interest and tax (EBIT)	**17,088**	**16,513**
Net share of gain/loss of associates	265	−627
Financial income	582	449
Finance costs	−40,611	−52,361
Earnings before tax	**−22,676**	**−36,026**
Income taxes	3,693	4,386
Net loss[(1)]	**−18,983**	**−31,640**
Statement of comprehensive income		
Net loss	**−18,983**	**−31,640**
Currency translation adjustments	26	272
Changes in fair value of interest rate instruments subject to hedge accounting	−495	−429
Income taxes on other comprehensive income	144	128
Other comprehensive income	**−325**	**−29**
Total comprehensive income	**−19,308**	**−31,669**

(1) As at June 30, 2012 and as at June 30, 2011 there is no non-controlling interest in the Group.

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of cash flows for the interim period from April 1, 2012 to June 30, 2012

	April 1, 2012 - June 30, 2012	April 1, 2011 - June 30, 2011
	EUR thousand Unaudited	EUR thousand Unaudited
Cash flows from operating activities		
Earnings before tax	**−22,676**	**−36,026**
Net share of gain/loss of associates	−265	627
Financial income	−582	−449
Finance costs	40,611	52,361
Earnings before interest and tax (EBIT)	**17,088**	**16,513**
Depreciation and amortization	24,119	24,206
Impairment losses	826	750
EBITDA	**42,033**	**41,469**
Adjusted for:		
Gains on disposal of fixed and intangible assets	−31	−46
Subtotal	**42,002**	**41,423**
Changes in working capital	**31,742**	**16,695**
Changes in billed trade accounts receivable	32,472	19,732
Changes in unbilled trade accounts receivable	20,303	35,516
Changes in inventories	−3,353	−3,778
Changes in trade accounts payable	−17,680	−34,775
Changes in other receivables	**−5,484**	**−973**
Changes in tax claims (eco tax)	−789	2
Changes in tax claims (VAT)	−439	−130
Changes in prepaid expenses	1,124	−185
Changes in non-current operating receivables	−1,056	−1,004
Changes in other receivables	−4,324	344
Changes in other liabilities	**−21,937**	**−5,102**
Changes in commission liabilities	−1,081	−1,822
Changes in salaries and wages	−171	9
Changes in other tax liabilities	−14,964	−852
Changes in deferred income	−1,999	−1,217
Changes in other liabilities	−3,722	−1,220
Changes in provisions	**−10,764**	**−11,867**
Changes in maintenance service provisions	260	5
Changes in provisions for personnel expenses	−7,422	−4,789
Changes in pension provisions	−208	−207
Changes in warranty provisions	−143	−17
Changes in provisions for restructuring	−409	−1,491
Changes in provisions for legal fees	−120	−369
Changes in other provisions	−2,722	−4,999
Changes in receivables/liabilities from shareholder	**0**	**1**
Cash generated by operating activities	**35,559**	**40,177**
Interest paid	**−8,438**	**−9,334**
Interest received	**343**	**281**
Income taxes paid/received	**−940**	**−847**
Net cash generated by operating activities	**26,524**	**30,277**
Cash flows from investing activities		
Cash flows from purchase/disposal of fixed and intangible assets	**−16,876**	**−13,627**
Purchase of fixed and intangible assets	−16,970	−15,391
Proceeds from non-current assets held for sale	0	1,606
Proceeds from disposal of fixed and intangible assets	94	158
Cash flows from investments and loans	**99**	**134**
Cash inflow from other investments and loans	6	0
Cash inflow from shares and loans	0	34
Dividends received from associates	93	100
Cash flows used for the acquisition of subsidiaries	**−3,915**	**0**
Acquisition of subsidiary[1]	−3,915	0
Cash flows used in investing activities	**−20,692**	**−13,493**
Free Cash flow	**5,832**	**16,784**
Cash flows from financing activities		
Cash flows from borrowings	**−93**	**−16,313**
Proceeds from borrowings	634	0
Repayments of borrowings	−489	−15,443
Payments of finance leases	−238	−870
Net cash used in financing activities	**−93**	**−16,313**
Change in cash and cash equivalents	**5,739**	**471**
Cash and cash equivalents at the beginning of the period	**72,208**	**64,466**
Currency effects of cash and cash equivalents	−76	36
Cash and cash equivalents at the end of the period	**77,871**	**64,973**

(1) With effective date of March 31, 2012, Techem Energy Services GmbH had acquired all the shares in MessKom Energiemanagement GmbH, Magdeburg/Germany. The purchase price was EUR 4,418 thousand. The unconditional part of the purchase price (EUR 3,915 thousand) was paid in the first quarter of the current financial year.

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Consolidated statement of changes in equity for the interim period from April 1, 2012 to June 30, 2012

	Capital account of limited partner	Reserve account of limited partner	Retained earnings	Total equity
	EUR thousand	EUR thousand	EUR thousand	EUR thousand
Balance as at April 1, 2011	**3**	**808,393**	**69,516**	**877,912**
Net loss	**0**	**0**	**−31,640**	**−31,640**
Currency translation adjustments	0	0	272	272
Changes in fair value of interest rate instruments subject to hedge accounting	0	0	−429	−429
Income taxes on other comprehensive income	0	0	128	128
Other comprehensive income	**0**	**0**	**−29**	**−29**
Balance as at June 30, 2011	**3**	**808,393**	**37,847**	**846,243**
Balance as at April 1, 2012	**3**	**778,393**	**14,402**	**792,798**
Net loss	**0**	**0**	**−18,983**	**−18,983**
Currency translation adjustments	0	0	26	**26**
Changes in fair value of interest rate instruments subject to hedge accounting	0	0	−495	**−495**
Income taxes on other comprehensive income	0	0	144	**144**
Other comprehensive income	**0**	**0**	**−325**	**−325**
Balance as at June 30, 2012	**3**	**778,393**	**−4,906**	**773,490**

Techem Energy Metering Service GmbH & Co. KG, Eschborn

Notes to the condensed interim three-month-report

April 1, 2012 through June 30, 2012

The Company

The business activities of Techem Energy Metering Service GmbH & Co. KG and its subsidiaries (hereinafter also referred to as "Company") comprise the business segment ENERGY SERVICES (services for submetering, allocating and billing of energy and of water consumption in the housing and real-estate industry) and the business segment ENERGY CONTRACTING (energy management in the market segment of housing and commercial property and the operation of heat generation plants).

The head office of the Company is located in Eschborn/Germany.

The condensed consolidated interim financial statements of the Techem Group cover the period from April 1, 2012 to June 30, 2012.

During the period, no subsidiaries have been acquired.

Accounting principles

This Interim Report has been prepared in accordance with the International Financial Reporting Standards (IFRS) applicable on the reporting date and endorsed by the European Union. The Interim Report was drawn up in compliance with IAS 34 'Interim Financial Reporting'. The accounting policies applied to the condensed consolidated interim financial statements are generally based on the same accounting policies used in the consolidated financial statements for financial year 2011/2012.

For further information on new accounting standards and interpretations as well as on amendments to issued standards, please refer to the consolidated financial statements for the financial year ended March 31, 2012.

The application of the following amendment to a standard already issued is mandatory for the Company since April 1, 2012, the beginning of the current financial year:

- IFRS 7 (amendment): Financial Instruments: Disclosures—Transfer of Financial Assets.

This amendment has no impact on the financial statements of the Company.

Since March 31, 2012, the following amendments to accounting standards have been endorsed by the European Union: the amendments to IAS 1 Presentation of Financial Statements: Presentations of Items of Other Comprehensive Income and the amendments to IAS 19 Employee Benefits which already had been published by the IASB were endorsed by the European Union on June 5, 2012 and published on June 6, 2012. The application of both amendments is mandatory for financial years starting on or after January 1, 2013. For further details regarding the impact of these amendments, please refer to section B. Basis of Presentation in the Notes to the consolidated financial statements for financial year 2011/2012.

The preparation of interim financial statements requires management to make judgements, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities, income and expense. Actual results may differ from these estimates. The judgements, estimates and assumptions were the same as those applied to the consolidated financial statements for the year ended March 31, 2012. The results obtained thus far in financial year 2012/2013 are not necessarily an indication of how business will develop in the future.

The income tax expense for the reporting period was deferred on the basis of the tax rate expected to apply to the full financial year.

Seasonal influences

Unbilled services are recognized as revenue to the amount of the cost of the services already rendered plus a profit margin, based on the percentage-of-completion method ("POC").

As most of the measuring activity occurs during the winter months, the final billing to most of the customers of the Company is generated in the months of March and April.

Rental and maintenance agreements are fixed-price agreements in accordance with IAS 18 and are recognized on a straight-line basis over the term of the agreement.

Revenue in respect of the delivery of heat (Energy Contracting) is recognized to the amount of the cost of the services already rendered plus a profit margin. Accrued income is recognized for services not yet billed.

Notes to the statement of financial position, income statement and statement of cash flows

Trade accounts receivable are EUR 52,952 thousand below March 31, 2012, following the ordinary course of Techem business. Main billing is generated in the months of March and April, leading to a high level of billed receivables in these months and a high cash inflow in the following months due to the payment of the customers.

Trade accounts payable are EUR 17,710 thousand below March 31, 2012, due to the settlement of accounts payable to suppliers.

Other liabilities (current) have decreased by EUR 16,983 thousand in comparison to March 31, 2012, due to repayments of tax liabilities.

Other financial liabilities (current) are EUR 26,320 thousand above March 31, 2012, due to the increased market value of the interest rate instruments used by the Company to hedge interest rate risks on variable cash flows.

Other provisions (current) have decreased by EUR 10,421 thousand in comparison to March 31, 2012, because of bonus payments in the first quarter of financial year 2012/2013.

Earnings before interest and tax (EBIT) is EUR 575 thousand above previous year's EBIT of the first quarter. Although revenues are below previous year due to a decrease in Energy Contracting business caused by changes in eco tax regulation, EBIT has increased as a result of margin improvements in the Energy Services segment. EBIT-margin of the first quarter of financial year 2012/2013 is 11.3 percent (first quarter 2011/2012: 10.4 percent).

Finance costs are EUR 11,750 thousand lower than in the first quarter of the previous year.This development mainly results from a decline in interest rates.

Contingent liabilities

As of June 30, 2012, there were no material changes in the contingent liabilities and other financial obligations as described in the annual report of March 31, 2012.

Transactions with related parties

There were no significant transactions with related parties during the first quarter of financial year 2012/2013.

Events after the balance sheet date

IHKW Industrieheizkraftwerk Heidenheim GmbH, Heidenheim/Germany operates a gas boiler to generate steam and electricity. Its main customer has exercised the option to purchase the plant in 2013 with effective date September 30, 2013. Furthermore, the subsidiary IWPV Industrie-Wärmeverbund

Heidenheim GmbH, Heidenheim/Germany has been sold to this main customer with effective date September 30, 2013.

Eschborn, August 22, 2012

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PRELIMINARY OFFERING MEMORANDUM

techem

€ % Senior Secured Notes due 2019
€ % Senior Subordinated Notes due 2020

Joint Bookrunners

J.P. Morgan	Deutsche Bank	Crédit Agricole CIB	Commerzbank	RBS	UniCredit Bank
Global Coordinator	*Global Coordinator*	*Global Coordinator*			