

**Terms and Conditions of the Guaranteed Non-Dilutive Convertible Bonds**  
(the "**Terms and Conditions**")

**§ 1 Definitions**

In these Terms and Conditions the following terms will have the following meaning:

(a) General Definitions

"**Agents**" has the meaning set out in § 13(a).

"**AktG**" means the German Stock Corporation Act (*Aktiengesetz*) as amended from time to time.

"**Bond Market Price**" on a Scheduled Trading Day means the market price per Principal Amount of the Bonds (i) being the Bloomberg Generic Price per Principal Amount of the Bonds as at the close of business on such Scheduled Trading Day as derived from Bloomberg page DE000A2DAHU1 Corp HP (using the setting "*Last Price*" or any successor setting) or, (ii) if such Bloomberg page is not available, as derived from any substitute Bloomberg page or from any successor to Bloomberg (as determined by the Calculation Agent), or (iii) if no such Bloomberg page or page from any successor to Bloomberg is available, derived from any other public source providing substantially similar data to such Bloomberg page (as determined in good faith by a Third Party Adviser), or (iv) failing such source from such other source (if any) displaying trading prices in respect of the Bonds provided by leading institutions as shall be considered in good faith to be appropriate by a Third Party Adviser.

"**Bond(s)**" has the meaning set out in § 2(a).

"**Bondholder**" means the holder of a co-ownership interest or similar right in the Global Bond.

"**Business Day**" means a day (other than a Saturday or Sunday) (a) on which the Trans-European Automated Real-time Gross-settlement Express Transfer System 2 (TARGET) settles payments and (b) which is a Clearing System Business Day and (c) on which commercial banks and foreign exchange markets in Frankfurt am Main and London are open for business.

"**Calculation Agent**" has the meaning set out in § 13(a).

"**Call Redemption Date**" means the date fixed for redemption in the Issuer's notice pursuant to § 5(b) which must be a Business Day.

"**Capital Market Indebtedness**" has the meaning set out in § 3(b).

"**Clearing System**" means Clearstream Banking AG, Frankfurt am Main ("**Clearstream Frankfurt**") including any successor.

"**Clearing System Business Day**" means a day (other than a Saturday or Sunday) on which the Clearing System is open for business.

"**Conversion Agents**" has the meaning set out in § 13(a).

"**Custodian**" means any bank or other financial institution with which the Bondholder maintains a securities account in respect of any Bonds and having an account maintained with the Clearing System and includes Clearstream Frankfurt.

"**Early Redemption Amount**" means the higher of:

- (i) the Principal Amount per Bond; and

- (ii) the fair value per Bond on the Relevant Date as determined by a Third Party Adviser (appointed by the Issuer) using equitable discretion (§ 317 German Civil Code) taking into account, *inter alia*:
  - (a) the Bond Market Price (if any) on the Relevant Date;
  - (b) the arithmetic average of the daily Share Prices on the 30 Scheduled Trading Days following the Relevant Date;
  - (c) the settlement amount(s) in respect of any termination of any Hedge Position(s) entered into by the Issuer;
  - (d) the yield to maturity of any relevant senior unsecured bonds of, or guaranteed by the Issuer; and
  - (e) any other market parameter a Third Party Adviser using equitable discretion (§ 317 German Civil Code) deems to be relevant for the valuation of the Bond on the Relevant Date.

**"Early Redemption Date"** means the 15th Business Day following the 30<sup>th</sup> Scheduled Trading Day following the Relevant Date.

**"EBITDA"** means operating income plus depreciation and amortization and is derived from the operating income determined in accordance with IFRS.

**"Ex Date"** means the first Scheduled Trading Day on which the Shares are traded "ex dividend".

**"EUREX"** means EUREX Deutschland or any legal or functional successor thereof.

**"Financial Year"** means the financial year as set out in the Issuer's articles of association.

**"Fresenius Group"** means Fresenius SE & Co. KGaA and its Subsidiaries on a consolidated basis.

**"FSE"** means the Frankfurt Stock Exchange or any legal or functional successor.

**"Global Bond"** has the meaning set out in § 2(b).

**"IFRS"** refers to International Financial Reporting Standards of the International Accounting Standards Board, as adopted by the European Union.

**"Issue Date"** means 31 January 2017.

**"Issuer"** means Fresenius SE & Co. KGaA.

**"Material Subsidiary"** means any Subsidiary of Fresenius SE & Co. KGaA which:

- (a) has unconsolidated EBITDA representing 5% or more of the EBITDA of Fresenius SE & Co. KGaA and its subsidiaries on a consolidated basis (provided that for these purposes Fresenius Medical Care AG & Co. KGaA and its subsidiaries are regarded as Subsidiaries of Fresenius SE & Co. KGaA); or
- (b) has unconsolidated gross assets representing 5% or more of the gross assets of Fresenius SE & Co. KGaA and its subsidiaries on a consolidated basis (provided that for these purposes Fresenius Medical Care AG & Co. KGaA and its subsidiaries are regarded as Subsidiaries of Fresenius SE & Co. KGaA),

in each case as determined by reference to the latest audited annual financial statements prepared in accordance with IFRS.

**"Maturity Date"** means 31 January 2024.

**"Paying Agents"** has the meaning set out in § 13(a).

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency, instrumentality or political subdivision thereof, or any other entity.

**"Principal Amount"** has the meaning set out in § 2(a).

**"Principal Conversion Agent"** has the meaning set out in § 13(a).

**"Principal Paying Agent"** has the meaning set out in § 13(a).

**"Relevant Date"** means (i) in respect of an early redemption of the Bonds pursuant to § 5(d) the date of announcement of a termination of any option contract in respect of the Shares traded on EUREX, (ii) in respect of a Nationalisation, the date of the first public announcement of the relevant event, (iii) in respect of a Change in Law, the date on which the Issuer determines that a Change in Law has occurred or on which the Issuer receives a notice from a Hedging Counterparty that it has determined that a Change in Law has occurred, (iv) in the case of a Delisting, the date on which XETRA is required to make the public announcement and (v) in respect of an Illiquidity Event notified to the Issuer by the Calculation Agent, the second Business Day following (x) the end of the Relevant Month or (y) if later, the last Scheduled Trading Day in respect of which a Share Price is being determined pursuant to limb (b) of the definition of "Illiquidity Event".

**"Scheduled Trading Day"** means any day on which the XETRA system of the FSE and EUREX are both scheduled to be open for trading for their respective regular trading sessions.

**"Settlement Date"** means the 15th Business Day following the last Averaging Day in relation to the relevant Calculation Period.

**"Shares"** means the no par value ordinary bearer shares of Fresenius SE & Co. KGaA, ISIN DE0005785604, and each a **"Share"**, subject to adjustment pursuant to § 9.

**"Share Price"** means, in respect of any Scheduled Trading Day:

- (i) subject to § 10, in the case of a Share Price being determined for the purpose of determining the Share Reference Price or any Daily Cash Amount or Early Redemption Amount or the occurrence of an Illiquidity Event (x) the volume-weighted average price per Share on XETRA on such Scheduled Trading Day as displayed on Bloomberg screen page FRE GY Equity VWAP (or, if such Bloomberg page is not available, as derived from any substitute Bloomberg page or from any successor to Bloomberg (as determined by the Calculation Agent), or (y) if no such Bloomberg page or page from any successor to Bloomberg is available, derived from any other public source providing substantially similar data to such Bloomberg page (as determined in good faith by a Third Party Adviser)), in each case using the Custom-defined volume-weighted average price, with Custom Condition Codes: "*Normal Trade*", "*Closing Price at the End of Closing Auction*" and "*Opening Price at the End of Opening Auction*" (or any successor thereto) only, and having selected for the relevant Scheduled Trading Day the time period from 9.00 a.m. to 5.40 p.m. Frankfurt time; or
- (ii) in any other case, the Volume Weighted Average Price of the Share in respect of such Scheduled Trading Day.

**"Subsidiary"** means, with respect to any Person, any corporation, limited liability company, association, partnership or other business entity whose results of operations are consolidated in accordance with IFRS with those of:

- (a) such Person;
- (b) such Person and one or more Subsidiaries of such Person; or
- (c) one or more Subsidiaries of such Person;

provided, however, that this definition of Subsidiaries shall exclude Fresenius Medical Care AG & Co. KGaA and its Subsidiaries.

**"Subsidiary Guarantees"** has the meaning set out in § 3(c).

**"Subsidiary Guarantors"** means each of Fresenius Kabi AG and Fresenius ProServe GmbH.

**"Terms and Conditions"** means these terms and conditions of the Bonds.

**"Third Party Adviser"** means any financial institution of international repute or adviser with appropriate expertise, which may include the Calculation Agent, acting for this purpose in such Third Party Adviser capacity (as may be agreed at the relevant time between the Issuer and the Calculation Agent), appointed from time to time by the Issuer at its own expense.

**"United States"** means the United States of America (including the States thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands).

**"Volume Weighted Average Price"** means, in respect of the Share, asset, security or other property, on any Scheduled Trading Day, the volume-weighted average price of such Share, asset, security or other property on XETRA (or, other than in the case of a Share, if such asset, security or other property is not publicly traded on XETRA, on the principal stock exchange or securities market (if any) on which such asset, security or other property is traded) on such Scheduled Trading Day as displayed on Bloomberg screen page HP (or any successor screen page or information system) (using the setting "*Weighted Average Line*") for such Share, asset, security or other property in respect of such relevant exchange as aforesaid, or if no such Volume Weighted Average Price can be so determined in respect of such day (the "**Affected Volume Weighted Average Price Day**"), the Volume Weighted Average Price in respect of such day shall be the Volume Weighted Average Price determined as provided above in respect of the immediately preceding Scheduled Trading Day (if any) on which such Volume Weighted Average Price can be so determined, or, if such immediately preceding Scheduled Trading Day (if any) as aforesaid falls earlier than the fifth Scheduled Trading Day prior to such Affected Volume Weighted Average Price Day or if such Volume Weighted Average Price cannot be so determined (including but not limited to as a result of such asset, security or other property (other than the Share) not being publicly traded as aforesaid), the Volume Weighted Average Price in respect of such Affected Volume Weighted Average Price Day shall be such price as is determined in good faith to be appropriate by a Third Party Adviser.

**"XETRA"** means the electronic trading system of Deutsche Börse AG including any successor.

- (b) Definitions relating to Adjustment

**"Adjustment Event"** has the meaning set out in § 9(b)(i).

**"Affected CP Scheduled Trading Day"** has the meaning set out in § 9(h).

**"Allotment"** has the meaning set out in § 9(b)(i)(E).



"**Capital Increase Against Contributions with Subscription Rights**" has the meaning set out in § 9(b)(i)(C).

"**Capital Increase from Capital Reserves or Retained Earnings**" has the meaning set out in § 9(b)(i)(A).

"**Cash Dividend**" has the meaning set out in § 9(h).

"**Change in Share Classification**" has the meaning set out in § 9(b)(i)(B).

"**Closing Price**" has the meaning set out in § 9(h).

"**Demerger**" has the meaning set out in § 9(b)(i)(F).

"**Dividend Threshold**" has the meaning set out in § 9(h).

"**EUREX Corporate Actions Procedures**" has the meaning set out in § 9(h).

"**Merger Event**" has the meaning set out in § 9(a)(i).

"**Other Securities**" has the meaning set out in § 9(b)(i)(D).

"**Other Issue of Securities with Subscription Rights**" has the meaning set out in § 9(b)(i)(D).

"**Relevant Adjustment Date**" has the meaning set out in § 9(h).

"**Relevant Financial Year**" has the meaning set out in § 9(a)(ii).

"**Relevant Record Date**" has the meaning set out in § 9(h).

"**Settlement Cycle**" has the meaning set out in § 9(h).

"**Tender Offer**" has the meaning set out in § 9(a)(i).

(c) Definitions relating to Change of Control

"**Affiliate**" of any specified Person means (i) any other Person, directly or indirectly, controlling or controlled by, or (ii) 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 (section 15 of the German Stock Corporation Act (*Aktiengesetz*); and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Change of Control**" has the meaning set out in § 5(c)(iv).

"**Change of Control Triggering Event**" has the meaning set out in § 5(c)(iv).

"**Control Record Date**" has the meaning set out in § 5(c)(i)(C).

"**Fitch**" has the meaning set out in § 5(c)(iv).

"**General Partner**" means Fresenius Management SE, a *societas europaea* organised under the laws of Germany, including its successors and assigns and other Persons, in each case who serve as the general partner (*persönlich haftender Gesellschafter*) of Fresenius SE & Co. KGaA from time to time.

"**Investment Grade**" means a rating of (i) BBB- or higher by S&P and Fitch or (ii) Baa3 or higher by Moody's, or the equivalent of such ratings by S&P, Moody's or Fitch and the equivalent in respect of rating categories of any Rating Agencies substituted for S&P, Moody's or Fitch.

"**KGaA**" has the meaning set out in § 5(c)(iv).

"**Moody's**" has the meaning set out in § 5(c)(iv).

"**Permitted Holder**" has the meaning set out in § 5(c)(iv).

"**Put Event Notice**" has the meaning set out in § 5(c)(i).

"**Rating Agency**" has the meaning set out in § 5(c)(iv).

"**Rating Category**" has the meaning set out in § 5(c)(iv).

"**Ratings Decline**" has the meaning set out in § 5(c)(iv).

"**S&P**" has the meaning set out in § 5(c)(iv).

(d) Definitions relating to Conversion

"**Adjusted Parity Value**" has the meaning set out in § 8(a)(iv).

"**Averaging Day**" has the meaning set out in § 8(e)(i).

"**Bond Market Price Notification Date**" has the meaning set out in § 8(a)(iv).

"**Bond Market Price Unavailability Event**" has the meaning set out in § 8(a)(iv).

"**Bond Price Determination Date**" has the meaning set out in § 8(a)(iv).

"**Calculation Period**" has the meaning set out in § 8(e)(i).

"**Cash Amount**" has the meaning set out in § 8(e)(i).

"**Conditional Conversion Period**" has the meaning set out in § 8(a)(iv).

"**Conditional Conversion Period Commencement Date**" has the meaning set out in § 8(a)(iv).

"**Conversion Date**" means

- (i) if the day on which all of the requirements specified in these Terms and Conditions for the exercise of the Conversion Right during the Conversion Period have been fulfilled is on or before the last Business Day of the calendar month (other than where such month is the month in which the Conversion Period End Date falls) in which such day falls: the last Business Day of such month; and
- (ii) if the day on which all of the requirements specified in these Terms and Conditions for the exercise of the Conversion Right during the Conversion Period have been fulfilled falls (a) in the month in which the Conversion Period End Date falls and (b) on or prior to the Conversion Period End Date: the Conversion Period End Date.

"**Conversion Notice**" has the meaning set out in § 8(c)(i).

"**Conversion Period**" has the meaning set out in § 8(a)(iii).

"**Conversion Period End Date**" shall be the earlier of (A) 7 November 2023, and (B) the eighth Scheduled Trading Day preceding the Call Redemption Date fixed in the notice of early redemption if the Issuer declares the Bonds due for early redemption pursuant to § 5(b).

"**Conversion Premium**" means 45 per cent.

"**Conversion Price**" per Share is initially equal to the Share Reference Price multiplied by the sum of 1 and the Conversion Premium (rounded to four decimal places with 0.00005 being rounded

upwards). The Conversion Price will be adjusted from time to time in accordance with these Terms and Conditions.

**"Conversion Ratio"** on any day means the result (rounded to five decimal places with 0.000005 being rounded upwards) of the division of the Principal Amount by the prevailing Conversion Price on such day.

**"Conversion Right"** has the meaning set out in § 8(a)(i).

**"Daily Bond Market Price Unavailability Event"** has the meaning set out in § 8(a)(iv).

**"Daily Cash Amount"** or **"DCA"** has the meaning set out in § 8(e)(i).

**"Daily Parity Event"** has the meaning set out in § 8(a)(iv).

**"Event Notice"** has the meaning set out in § 8(a)(iv).

**"Event Notice Date"** has the meaning set out in § 8(a)(iv).

**"Parity Event"** has the meaning set out in § 8(a)(iv).

**"Parity Value"** has the meaning set out in § 8(a)(iv).

**"Reference Period"** has the meaning set out in § 8(a)(iv).

**"Relevant Conversion Ratio"** means, in respect of the relevant date, the result (rounded to five decimal places with 0.000005 being rounded upwards) of the division of the aggregate Principal Amount of Bonds delivered by a Bondholder in respect of a single Conversion Notice as determined by the Principal Conversion Agent pursuant to § 8(c)(ii) by the Conversion Price prevailing on the relevant date.

**"Share Reference Price Determination Day"** means, subject to an adjustment for Disrupted Days pursuant to § 10, each of the 10 consecutive Scheduled Trading Days commencing on and including 20 January 2017.

**"Share Reference Price"** means the simple arithmetic average (rounded to four decimal places with 0.00005 being rounded upwards) of the daily Share Prices on each Share Reference Price Determination Day, as determined by the Calculation Agent and notified by the Issuer to the Bondholders in accordance with § 14 (such notice specifying the Share Reference Price and the resulting initial Conversion Price and Conversion Ratio).

(e) Definitions relating to Disrupted Days

**"Disrupted Day"** has the meaning set out in § 10.

**"Exchange Disruption or Related Exchange Disruption"** has the meaning set out in § 10.

**"Failure to Open for Trading or Early Closure of the Exchange or Related Exchange"** has the meaning set out in § 10.

**"Market Disruption Event"** has the meaning set out in § 10.

**"Relevant Day"** has the meaning set out in § 10.

**"Trading Disruption"** has the meaning set out in § 10.

**"Valid Date"** has the meaning set out in § 10.

**"Valuation Time"** has the meaning set out in § 10.

- (f) Definitions relating to Nationalisation, Change in Law, Delisting and Illiquidity Event

"**Change in Law**" has the meaning set out in § 11.

"**Daily Traded Volumes of the Shares on the Relevant Exchange and on Relevant Multilateral Trading Facilities**" has the meaning set out in § 11.

"**Delisting**" has the meaning set out in § 11.

"**Hedge Counterparty**" has the meaning set out in § 11.

"**Hedge Position**" has the meaning set out in § 11.

"**Illiquidity Event**" has the meaning set out in § 11.

"**Nationalisation**" has the meaning set out in § 11.

"**Relevant Month**" has the meaning set out in § 11.

"**Relevant Testing Period**" has the meaning set out in § 11.

## § 2 Form and Denomination

- (a) The issue by the Issuer of Bonds in the aggregate principal amount of

EUR 500,000,000

(in words: euro five hundred million)

is divided into bonds in bearer form with a principal amount of EUR 100,000 (the "**Principal Amount**") each, which rank *pari passu* among themselves (the "**Bonds**" and each a "**Bond**").

- (b) The Bonds are represented by a global bond in bearer form (the "**Global Bond**"). The Global Bond will be signed manually by two authorised signatories of the Issuer and will be authenticated by or on behalf of the Principal Paying Agent. Definitive Bonds will not be issued.

The Bondholders will have no right to require the issue of definitive Bonds.

The Global Bond will be deposited with the Clearing System until the Issuer has satisfied and discharged all its obligations under the Bonds. Copies of the Global Bond are available for each Bondholder at the Principal Paying Agent.

- (c) The Bondholders will receive proportional co-ownership interests or comparable rights in the Global Bond, which are transferable in accordance with applicable law and the rules and regulations of the Clearing System.
- (d) Pursuant to the book-entry registration agreement between the Issuer and Clearstream, Frankfurt, the Issuer has appointed Clearstream, Frankfurt as its book-entry registrar in respect of the Bonds. Without prejudice to the issuance of the Bonds in bearer form and their status as bonds in bearer form the Issuer has agreed to maintain a register showing the aggregate number of the Bonds represented by the Global Bond under the name of Clearstream, Frankfurt, and Clearstream, Frankfurt has agreed, as agent of the Issuer, to maintain records of the Bonds credited to the accounts of the accountholders of Clearstream, Frankfurt for the benefit of the holders of the co-ownership interests in the Bonds represented by the Global Bond, and the Issuer and Clearstream, Frankfurt have agreed, for the benefit of the holders of co-ownership interests in the Global Bond, that the actual number of Bonds from time to time shall be evidenced by the records of Clearstream, Frankfurt.

### § 3 Status of the Bonds; Negative Pledge; Subsidiary Guarantees

#### (a) Status of the Bonds

The obligations under the Bonds constitute unsubordinated and unsecured obligations of the Issuer which rank *pari passu* among themselves. In the insolvency or liquidation of the Issuer, the obligations of the Issuer under the Bonds rank at least *pari passu* with all other present and future unsubordinated and unsecured obligations of the Issuer, save for such obligations which may be preferred by applicable law.

#### (b) Negative Pledge of Fresenius SE & Co. KGaA

So long as any of the Bonds remain outstanding, but only up to the time all amounts of principal payable in accordance with these Terms and Conditions have been placed at the disposal of the Clearing System and/or all conversion obligations pursuant to § 8 to 10 have been fulfilled, Fresenius SE & Co. KGaA undertakes

- (i) not to grant or permit to subsist any mortgage, land charge, lien or any other security right in rem (*dingliches Sicherungsrecht*) (the "**Security Interest**") over any or all of its present or future assets, as security for any present or future Capital Market Indebtedness; and
- (ii) to procure, to the extent legally possible, that none of its Subsidiaries will grant or permit to subsist any Security Interest over any or all of its present or future assets, as security for any present or future Capital Market Indebtedness,

without at the same time having the Bondholders share equally and rateably in such Security Interest.

This undertaking shall not apply with respect to any Security Interest which (i) is provided by Fresenius SE & Co. KGaA or by any of its Subsidiaries over any of the Fresenius SE & Co. KGaA's claims or claims of any of its Subsidiaries against any affiliated companies within the meaning of sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*) or any third party, which claims exist now or arise at any time in the future, as a result of the passing on of the proceeds from the sale by the issuer of any securities, provided that any such security serves to secure obligations under such securities issued by Fresenius SE & Co. KGaA or by any of its Subsidiaries, (ii) is existing on assets at the time of the acquisition thereof by Fresenius SE & Co. KGaA or by any of its Subsidiaries or is existing over assets of a newly acquired company which becomes a member of the Fresenius Group, (iii) is existing on the Issue Date, (iv) secures a Capital Market Indebtedness existing at the time of acquisition that becomes an obligation of Fresenius SE & Co. KGaA or of any company within the Fresenius Group as a consequence of such acquisition, provided that such Capital Market Indebtedness was not created in contemplation of such acquisition (v) is mandatory pursuant to applicable laws or required as a prerequisite for obtaining any governmental approvals, (vi) is provided in connection with any issuance of asset backed securities by Fresenius SE & Co. KGaA or by any of its Subsidiaries, (vii) is provided in respect of any issuance of asset backed securities made by a special purpose vehicle where Fresenius SE & Co. KGaA or any of its Subsidiaries is the originator of the underlying assets, (viii) is provided in connection with the renewal, extension or replacement of any security pursuant to foregoing (i) through (vii) and, (ix) secures Capital Market Indebtedness the principal amount of which (when aggregated with the principal amount of any other Capital Market Indebtedness which has the benefit of a security other than any permitted under the sub-paragraphs (i) to (viii) above) does not exceed EUR 100,000,000 (or its equivalent in other currencies at any time).

For purposes of these Terms and Conditions, "**Capital Market Indebtedness**" means any obligation for the payment of borrowed money which is evidenced by a certificate of indebtedness

(*Schuldscheindarlehen*) or which is represented by any bond or debt security with an original maturity of more than one year which is, or is intended to be, or is capable of being listed or traded on a stock exchange or other recognized securities market.

(c) **Subsidiary Guarantees**

Each of the Subsidiary Guarantors has given towards the Principal Paying Agent for the benefit of the Bondholders the unconditional and irrevocable guarantee for the payment of principal together with all other sums payable by the Issuer under these Terms and Conditions pursuant to the guarantees, each dated on or around 20 January 2017 (the "**Subsidiary Guarantees**").

- (i) Each Subsidiary Guarantee constitutes unsubordinated and unsecured obligations of the relevant Subsidiary Guarantor. In the insolvency or liquidation of the relevant Subsidiary Guarantor, the obligations of the relevant Subsidiary Guarantor under the relevant Subsidiary Guarantee rank at least *pari passu* with all other present and future unsubordinated and unsecured obligations of the relevant Subsidiary Guarantor, save for such obligations which may be preferred by applicable law. Upon discharge of any payment obligation of a Subsidiary Guarantor subsisting under the Subsidiary Guarantee in favour of any Bondholder, the relevant guaranteed right of such Bondholder under these Terms and Conditions will cease to exist.
- (ii) Each of the Subsidiary Guarantees constitutes a contract for the benefit of the Bondholders from time to time as third party beneficiaries in accordance with § 328 paragraph 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), giving rise to the right of each Bondholder to require performance of the respective Subsidiary Guarantee directly from the respective Subsidiary Guarantor and to enforce the respective Subsidiary Guarantee directly against the respective Subsidiary Guarantor. Copies of each Subsidiary Guarantee may be obtained free of charge at the specified office of the Principal Paying Agent.

(d) **Release of Subsidiary Guarantees**

Pursuant to its terms, a Subsidiary Guarantee (but not any payment obligation under any Subsidiary Guarantee which has already become due and payable) will be automatically and unconditionally released (and thereupon shall terminate and be discharged and be of no further force and effect)

- (i) upon discharge in full of the aggregate principal amount of all Bonds then outstanding and all other obligations under the Bonds then due and owing as provided in the Terms and Conditions; or
- (ii) concurrently with any sale or other disposition or consolidation or merger of a Subsidiary Guarantor or any sale, transfer, assignment, lease, conveyance or other disposition of the property or assets of a Subsidiary Guarantor as an entirety or substantially as an entirety, to the extent that
  - (A) if the surviving person or entity is not the Issuer or another guarantor under the Bonds, the obligations of that Subsidiary Guarantor in relation to the Bonds have been expressly or by operation of law assumed by the surviving person or entity in valid and binding form and notification of this assumption has been provided by the Issuer pursuant to § 14; and
  - (B) at the time of and immediately after such transaction, no Event of Default under § 12(a) has occurred and is continuing.

Any Subsidiary Guarantor not released from its obligations under its Subsidiary Guarantee shall remain jointly and severally liable for the full amount of principal of the Bonds and for the other obligations of a Subsidiary Guarantor under its Subsidiary Guarantee; or

- (iii) at any time when a Subsidiary Guarantor is no longer an obligor under the 2013 Senior Credit Agreement.

**"2013 Senior Credit Agreement"** means the syndicated credit agreement, dated as of 20 December 2012, as amended, restated, modified, extended, renewed and/or supplemented or as refinanced or replaced from time to time, among Fresenius SE & Co. KGaA, Deutsche Bank AG New York Branch, as administrative agent, and the other borrowers, guarantors and lenders identified therein.

In case of a release of the Subsidiary Guarantees the Issuer will notify the Bondholders pursuant to § 14.

#### **§ 4 No Interest**

The Bonds will not pay any interest.

#### **§ 5 Maturity and Redemption**

- (a) To the extent the Bonds have not previously been redeemed or converted or repurchased and cancelled they will be redeemed at their Principal Amount on the Maturity Date.
- (b) The Issuer may, on giving not less than 45 nor more than 60 days' prior notice to the Bondholders in accordance with § 14, redeem all but not some only of the outstanding Bonds with effect from the Call Redemption Date fixed in the notice if at any time the aggregate principal amount of the Bonds outstanding is equal to or less than 15 per cent. of the aggregate principal amount of the Bonds originally issued (including any additional bonds issued in accordance with § 15). In the case such notice is given, the Issuer shall redeem the Bonds on the Call Redemption Date at their Principal Amount.
- (c) Redemption at the Option of Bondholders upon a Change of Control Triggering Event
  - (i) Each Bondholder, upon the occurrence of a Change of Control Triggering Event, will have the right to require that the Issuer redeems such Bondholder's Bonds not previously converted or redeemed, on the Control Record Date at a redemption price in cash equal to 101% of the Principal Amount.

Within 30 days upon the Issuer becoming aware that a Change of Control Triggering Event has occurred, the Issuer shall give notice (a **"Put Event Notice"**) to the Bondholders in accordance with § 14 stating:

- (A) that a Change of Control Triggering Event has occurred;
- (B) the circumstances and relevant facts regarding such Change of Control Triggering Event;
- (C) the redemption date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is published) (the **"Control Record Date"**);
- (D) that each Bond will be subject to redemption only in integral multiples of the Principal Amount; and
- (E) the instructions determined by the Issuer, consistent with this § 5(c), that a Bondholder must follow in order to have its Bonds redeemed.

- (ii) In order to exercise such option for redemption following a Change of Control Triggering Event, the Bondholder must submit during normal business hours at the specified office of the Principal Paying Agent a duly completed option exercise notice in the form available from the specified office of the Principal Paying Agent together with proof that such Bondholder at the time of such notice is a holder of the relevant Bonds by means of a certificate of his Custodian or in any other appropriate manner within the period of 20 days after a Put Event Notice is given. No option so exercised may be revoked or withdrawn without the prior consent of the Issuer. The respective Bondholder must deliver to the Principal Paying Agent the Bond(s) for which the right pursuant to § 5(c)(i) shall be exercised which must be received by the Principal Paying Agent by 4.00 p.m. (Frankfurt time) within the period of 20 days after a Put Event Notice is given.
- (iii) If any Bond is required by a Bondholder to be redeemed by the Issuer pursuant to § 5(c)(i), the Conversion Right in respect of such Bond may no longer be exercised by such Bondholder from the time of despatch by the Bondholder of its notice to the Principal Paying Agent pursuant to § 5(c)(ii).
- (iv) In this § 5(c):

"**Change of Control**" means the occurrence of one or more of the following events:

- (A) so long as Fresenius SE & Co. KGaA is organised as a KGaA, if the General Partner of Fresenius SE & Co. KGaA charged with the management of Fresenius SE & Co. KGaA shall at any time fail to be a Subsidiary of Else Kröner-Fresenius-Stiftung, or if Else Kröner-Fresenius-Stiftung shall fail at any time to own or control more than 10% of the capital stock with ordinary voting power in Fresenius SE & Co. KGaA;
- (B) if Fresenius SE & Co. KGaA is no longer organized as a KGaA, any event the result of which is that (A) any person or group ("**Relevant Person(s)**") acting in concert (as defined in § 30 (2) of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*)) or any person or group acting on behalf of any such Relevant Person(s), other than the Permitted Holder, is or becomes the direct or indirect legal or beneficial ownership or any legal or beneficial entitlement (as defined in § 22 of the German Securities Trading Act (*Wertpapierhandelsgesetz*)) of, in the aggregate, more than 50% of the voting shares of Fresenius SE & Co. KGaA; or
- (C) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of Fresenius SE & Co. KGaA to any Relevant Person or any person or group of related persons acting on behalf of any such Relevant Person(s).

"**Change of Control Triggering Event**" means the occurrence of a Change of Control together with a Ratings Decline.

"**KGaA**" means a partnership limited by shares under German law (*Kommanditgesellschaft auf Aktien*).

"**Permitted Holder**" means Else Kröner-Fresenius-Stiftung and any of its Affiliates.

"**Rating Agency**" means (1) Standard & Poor's Rating Service and its successors ("**S&P**"), (2) Moody's Investors Service Inc. and its successors ("**Moody's**"), and (3) Fitch Ratings Ltd. and its successors ("**Fitch**"), or (4) if S&P, Moody's or Fitch, or all three shall not make rating of Fresenius SE & Co. KGaA publicly available, a European-wide reputable securities rating



agency or agencies, as the case may be, selected by Fresenius SE & Co. KGaA, which shall be substituted for S&P, Moody's or Fitch or all three, as the case may be.

**"Rating Category"** means

- (a) with respect to S&P or Fitch, any of the following categories: BB, B, CCC, CC, C and D (or equivalent successor categories),
- (b) with respect to Moody's, any of the following categories: Ba, B, Caa, Ca, C and D (or equivalent successor categories), and
- (c) the equivalent of any such category of S&P, Moody's or Fitch used by another rating agency in determining whether the rating of Fresenius SE & Co. KGaA has decreased by one or more gradations, gradations within rating categories (+ and - for S&P, 1, 2 and 3 for Moody's, + and - for Fitch; or the equivalent gradations for another rating agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from BB+ to BB, as well as from BB- to B+, will constitute a decrease of one gradation).

**"Ratings Decline"** means that if, at the time of the occurrence of a Change of Control, Fresenius SE & Co. KGaA has been, from any Rating Agency it has solicited, (a) rated Investment Grade and such rating from any Rating Agency is, within 120 days from such time, either downgraded to a non-investment grade rating or withdrawn and is not within such 120-day period subsequently (in the case of a downgrade) upgraded to Investment Grade by such Rating Agency or (in the case of withdrawal) replaced by an Investment Grade rating from any other Rating Agency; or (b) rated below Investment Grade and such rating from any Rating Agency is, within 120 days from such time, downgraded by one or more gradations (including gradations within Rating Categories as well as between Rating Categories) and is not within such 120-day period subsequently upgraded to its earlier credit rating or better by such Rating Agency, provided that if at the time of the occurrence of the Change of Control Fresenius SE & Co. KGaA carries a rating from more than one Rating Agency, at least one of which is Investment Grade, then sub-paragraph (a) will apply; and in making the relevant decision(s) referred to above, the relevant Rating Agency announces publicly or confirms in writing to Fresenius SE & Co. KGaA that such decision(s) resulted, in whole or in part, from the occurrence of the Change of Control.

Provided however that, no Ratings Decline will occur if at the end of the 120-day period Fresenius SE & Co. KGaA has been rated by at least two Rating Agencies, it has solicited, Investment Grade.

- (d) If options contracts in respect of the Shares are traded on EUREX and any event occurs as a result of which such option contracts are settled in accordance with the EUREX Corporate Actions Procedures, for example following the occurrence of a Merger Event or Tender Offer as described in § 9(b)(ii)(G), the Issuer shall redeem all outstanding Bonds at their Early Redemption Amount on the Early Redemption Date.
- (e) Upon the occurrence of a Nationalisation, a Delisting, an Illiquidity Event and/or a Change in Law, § 11(a) applies.
- (f) The Issuer and any of its affiliates may at any time purchase Bonds, in the open market or otherwise. Any Bonds purchased by the Issuer or any of its affiliates may be cancelled or held and resold.

## § 6 Payments

- (a) All payments on the Bonds will be made in euro to the Principal Paying Agent for transfer to the Clearing System or to its order for credit to the accounts of the relevant account holders of the Clearing System outside the United States. Payments on the Bonds made to the Clearing System or to its order shall discharge the liability of the Issuer under the Bonds to the extent of the sums so paid.
- (b) If the due date for payment of any amount in respect of the Bonds is not a Business Day, then the Bondholder will not be entitled to payment until the next day which is a Business Day. In such case the Bondholders shall not be entitled to any interest or to any other compensation on account of such delay.

## § 7 Taxes

All payments with respect to the Bonds will be made without withholding or deduction for or on account of, any present or future taxes, duties, or governmental charges of any nature whatsoever imposed, levied or collected by way of deduction or withholding at source by, in or on behalf of the Federal Republic of Germany or by or on behalf of any political subdivision or authority thereof or therein having power to tax, unless the Issuer is required by applicable law to make any such payment with respect to the Bonds subject to any withholding or deduction for, or on account of, any present or future taxes, duties, or charges of whatever nature. In that case the Issuer shall effect such payment after such withholding or reduction has been made. Neither the Issuer nor the Subsidiary Guarantors shall be required to make additional payments to the Bondholders in respect of such withholding or reduction.

**The Issuer will not be obliged to pay any additional amounts as a result of such withholding or deduction.**

## § 8 Conversion

- (a) Conversion Right
  - (i) The Issuer grants to each Bondholder the right (the "**Conversion Right**") on any Conversion Date during each Conversion Period (as defined below) to require the Bond(s) held by it to be redeemed in accordance with the provisions of § 8(c).
  - (ii) The Conversion Right may not be exercised by a Bondholder, if such Bondholder has required the Issuer to redeem his Bonds in accordance with § 5(c) or has terminated his Bonds in accordance with § 12 or if the Bonds are terminated in accordance with § 5(d) or § 11.
  - (iii) Conversion Period

**"Conversion Period"** means:

    - (i) any Conditional Conversion Period commencing during the period from and including 13 March 2017 to but excluding 31 August 2023; and
    - (ii) the period from and including 31 August 2023 to and including 4:00 p.m. (Frankfurt time) on the Conversion Period End Date.
  - (iv) Conditional Conversion Period

**"Conditional Conversion Period"** means:

    - (i) if the Issuer declares the Bonds due for early redemption pursuant to § 5(b), the period from and including the date on which the notice of early redemption pursuant to § 5(b) is published to and including the eighth Scheduled Trading Day preceding the Call Redemption Date fixed in the notice of early redemption;

- (ii) if Fresenius SE & Co. KGaA makes a distribution to shareholders of cash, assets, securities or other property where the Volume Weighted Average Price of such distribution per Share on the day on which the terms of such distribution are first publicly announced by Fresenius SE & Co. KGaA is greater than 20 per cent. of the arithmetic average of the Share Prices on each Scheduled Trading Day in the 20 Scheduled Trading Day period ending on (and including) the Scheduled Trading Day immediately preceding the day on which the terms of such distribution were first publicly announced by Fresenius SE & Co. KGaA, the period from and including the date of first public announcement of the terms of such distribution to but excluding the Ex Date in respect of such distribution;
- (iii) if a Change of Control Triggering Event occurs, the period from and including the date of the notice of the Change of Control Triggering Event pursuant to § 5(c)(i) to and including the sixth Business Day prior to the Control Record Date;
- (iv) if any event of default set forth in § 12(a) occurs, the period from and including the date on which such event of default occurs to but excluding the earlier of (i) the date such Bondholder has terminated his Bonds in accordance with § 12 or (ii) the date on which such event of default shall have been cured or waived, subject to § 12(c); and
- (v) if a Parity Event or a Bond Market Price Unavailability Event, as the case may be, occurs, the period of 10 Scheduled Trading Days from and including the Conditional Conversion Period Commencement Date.

Where:

**"Adjusted Parity Value"** means 97 per cent. of the Parity Value in effect on each relevant Scheduled Trading Day.

**"Bond Market Price Notification Date"** means the tenth Scheduled Trading Day following the relevant Event Notice Date or, if such day is not a Business Day, the Business Day immediately following such day.

A **"Bond Market Price Unavailability Event"** occurs if (i) in respect of each Scheduled Trading Day during any Reference Period a Daily Bond Market Price Unavailability Event has occurred (as determined by the Calculation Agent) and (ii) the Bond Market Price (if any) per Principal Amount as at the Bond Price Determination Date (as determined by the Calculation Agent or (to the extent specified in the definition of Bond Market Price) a Third Party Adviser not later than on the Bond Price Determination Date), or where no such Bond Market Price is available, the fair market value per Principal Amount of a Bond as at the Bond Price Determination Date (as determined by a Third Party Adviser in good faith not later than on the Bond Price Determination Date), is less than the Adjusted Parity Value at the Bond Price Determination Date.

**"Bond Price Determination Date"** means the fifth Scheduled Trading Day, subject to an adjustment for Disrupted Days pursuant to § 10, following the end of the Reference Period in respect of sub-paragraph (i) of the definition of Bond Market Price Unavailability Event has occurred. If such fifth Scheduled Trading Day as aforesaid is a Disrupted Day and § 10 applies, the Share Price shall be deemed to be determined in accordance with sub-paragraph (i) of the definition of "Share Price" for the purpose of the determination of the Adjusted Parity Value at the Bond Price Determination Date.

**"Conditional Conversion Period Commencement Date"** means the first Business Day following the relevant Bond Market Price Notification Date.

A **"Daily Bond Market Price Unavailability Event"** occurs on any Scheduled Trading Day if no Bond Market Price pursuant to (i) or (ii) of the definition of "Bond Market Price" is available on such Scheduled Trading Day.

A **"Daily Parity Event"** occurs on any Scheduled Trading Day if the Bond Market Price pursuant to (i) or (ii) of the definition of "Bond Market Price" on such Scheduled Trading Day is less than the Adjusted Parity Value in effect on such Scheduled Trading Day (as determined by the Calculation Agent).

**"Event Notice"** means a notice sent by a Notifying Bondholder to the Principal Paying Agent specifying that in its opinion a Parity Event or a Bond Market Price Unavailability Event, as the case may be, has occurred in respect of the Reference Period specified in the notice. The Event Notice is irrevocable.

In order to be valid the Event Notice must be:

- (i) received (*Zugang*) by the Principal Paying Agent by 4.00 p.m. (Frankfurt time) on the fifth Business Day after the last Scheduled Trading Day of the specified Reference Period (excluding);
- (ii) delivered together with reasonable evidence that the alleged Parity Event or Bond Market Price Unavailability Event, as the case may be, has occurred in respect of the specified Reference Period; and
- (iii) delivered together with proof that the Notifying Bondholder at the time of such notice is a holder of the relevant Bonds by means of a certificate of its Custodian or in any other appropriate manner.

**"Event Notice Date"** means the date on which the Principal Paying Agent has received (*Zugang*) from a Notifying Bondholder a valid Event Notice.

A **"Parity Event"** occurs if in respect of each Scheduled Trading Day of any Reference Period a Daily Parity Event has occurred (as determined by the Calculation Agent).

**"Parity Value"** means, in respect of any Scheduled Trading Day, the Share Price on such Scheduled Trading Day multiplied by the Conversion Ratio on such Scheduled Trading Day.

**"Reference Period"** means, in relation to an Event Notice, the period of ten consecutive Scheduled Trading Days ending no earlier than the fifth Scheduled Trading Day prior to the Event Notice Date in respect of such Event Notice.

(b) Conditional Conversion Right

- (i) Neither the Issuer nor the Calculation Agent shall be under any duty to monitor, or notify Bondholders of the occurrence of a Conditional Conversion Period.
- (ii) In the case of paragraph (v) of the definition of the term "Conditional Conversion Period", the following applies:
  - (A) If a Bondholder (the **"Notifying Bondholder"**) has delivered to the Principal Paying Agent a valid Event Notice, the Issuer will be required to instruct the Calculation Agent no later than the second Scheduled Trading Day following the Event Notice Date (as

defined below) to verify whether a Parity Event or a Bond Market Price Unavailability Event, as the case may be, has occurred.

(B) If following a valid Event Notice:

- (I) the Calculation Agent determines that the Parity Event or the Bond Market Price Unavailability Event, as the case may be, to which the relevant Event Notice refers has occurred, the Issuer shall notify the Bondholders in accordance with § 14 specifying the relevant Conditional Conversion Period no later than on the Bond Market Price Notification Date; or
- (II) the Calculation Agent determines that the alleged Parity Event or Bond Market Price Unavailability Event, as the case may be, to which the relevant Event Notice refers has not occurred, the Issuer shall notify the Notifying Bondholder thereof no later than on the Bond Market Price Notification Date.

Any such determination by the Calculation Agent, which may require receipt of the relevant determination from a Third Party Adviser as set out in the definition of the Bond Market Price, will, in the absence of manifest error, be conclusive in all respects and binding upon the Issuer, all Bondholders and (in the case of a determination by a Third Party Adviser) the Calculation Agent.

When verifying whether a Parity Event or Bond Market Price Unavailability Event has occurred pursuant to this § 8(b)(ii)(B), the availability and level of any Bond Market Price in respect of any day shall be such availability and level as are observable in respect of such day as at such time on which such Bond Market Price is observed by the Calculation Agent (or, as the case may be, a Third Party Adviser).

- (C) If, upon receipt of any valid Event Notice, the Issuer fails to duly notify, by the Bond Market Price Notification Date, (x) the Bondholders in accordance with § 8(b)(ii)(B)(I) of the occurrence of the Parity Event or the Bond Market Price Unavailability Event, as the case may be, or (y) the Notifying Bondholder in accordance with § 8(b)(ii)(B)(II) that such alleged Parity Event or Bond Market Price Unavailability Event, as the case may be, has not occurred, then such Parity Event or Bond Market Price Unavailability Event, as the case may be, will be deemed to have occurred until any Scheduled Trading Day (including) on which the Issuer makes such notification as aforesaid, and the Bondholders may exercise their Conversion Right during the relevant Conditional Conversion Period as set forth in paragraph (v) of the definition of the term "Conditional Conversion Period".

(c) Exercise of Conversion Right

- (i) To exercise the Conversion Right, the Bondholder must deliver at his own expense during the Conversion Period during normal business hours to the Principal Conversion Agent via its Custodian and the Clearing System a duly completed and executed conversion notice (the "**Conversion Notice**") (which may be by facsimile) using a form (from time to time current) obtainable from the Principal Conversion Agent which must be received by the Principal Conversion Agent by 4.00 p.m. Frankfurt time on the last day of the Conversion Period. Any Conversion Notice received by the Principal Conversion Agent after 4.00 p.m. Frankfurt time on any Business Day will be deemed received by the Principal Conversion Agent on the immediately following Business Day. The Conversion Notice is irrevocable and will, among other things:

- (A) state the name and address (natural persons) or name, domicile and address (legal persons) of the exercising Bondholder;
  - (B) specify the number of Bonds with respect to which the Conversion Right will be exercised;
  - (C) give directions to the Principal Conversion Agent for the payment of any cash amount which the Bondholder is entitled to receive pursuant to these Terms and Conditions and which are to be paid by way of transfer to a euro account of the payee maintained with a bank in the European Union;
  - (D) contain the certifications and undertakings set out in the form of the Conversion Notice relating to certain legal restrictions of the ownership of the Bonds and/or the Shares. If the Bondholder fails to deliver the above mentioned certifications and undertakings, the Issuer will not pay any amount of cash in respect of such a Conversion Notice.
- (ii) The exercise of the Conversion Right further requires that the Bonds will be delivered to the Principal Conversion Agent (A) by transferring the Bonds to the Clearing System account of the Principal Conversion Agent (book entry transfer or assignment) or (B) by irrevocable instruction to the Principal Conversion Agent to withdraw the Bonds from a deposit account with the Principal Conversion Agent (book entry transfer or assignment), in either case not later than on the last day of the Conversion Period. The Principal Conversion Agent will hold the Bonds for the account of the Bondholders until all claims of such Bondholder thereunder have been satisfied.
- (iii) Upon fulfilment of all requirements specified in § 8(c)(i) and (ii) for the exercise of the Conversion Right, the Principal Conversion Agent will verify whether the aggregate Principal Amount of Bonds delivered to the Principal Conversion Agent exceeds or falls short of the aggregate Principal Amount of Bonds specified in the Conversion Notice. In the event of any such excess or shortfall, the Principal Conversion Agent will determine the Relevant Conversion Ratio on the basis of the lower of (A) the aggregate Principal Amount of Bonds set forth in the Conversion Notice, or (B) the aggregate Principal Amount of Bonds in fact delivered. Any Bonds delivered in excess of the aggregate Principal Amount of Bonds specified in the Conversion Notice will be redelivered to the Bondholder at his cost. The Principal Conversion Agent will act in accordance with the regulations of the Clearing System.
- (iv) The Conversion Right will be deemed validly exercised on the relevant Conversion Date.
- (d) Redemption of the converted Bond(s) by the Issuer
- Upon the valid exercise of the Conversion Right by a Bondholder, the Issuer will be required to redeem the relevant Bond(s) at the Cash Amount calculated in accordance with § 8(e).
- (e) Cash Amount
- (i) Upon any exercise of the Conversion Right with respect to one or more Bonds, the Issuer shall redeem the Bonds at the Cash Amount on the relevant Settlement Date.

"**Averaging Day**" means, subject to an adjustment for Disrupted Days pursuant to § 10, each Scheduled Trading Day in relation to the Calculation Period.

"**Calculation Period**" means the period of 30 consecutive Scheduled Trading Days commencing on the fifth Scheduled Trading Day immediately following the Conversion Date.

**"Cash Amount"** means in respect of any exercise of Conversion Rights and the Calculation Period in relation thereto the sum (rounded to two decimal places with EUR 0.005 being rounded upwards) of the Daily Cash Amounts in respect of each Averaging Day in relation to such Calculation Period, where **"Daily Cash Amount"** or **"DCA"** means an amount in euro calculated by the Calculation Agent in accordance with the following formula:

$$DCA = \frac{1}{N} \times RCR_n \times P_n$$

Where:

N = 30;

P<sub>n</sub> = the Share Price on the nth Averaging Day; and

RCR<sub>n</sub> = the Relevant Conversion Ratio prevailing on the nth Averaging Day.

No interest will be payable with respect to the Cash Amount. The Issuer will pay the Cash Amount on the relevant Settlement Date.

- (ii) If following the valid exercise by a Bondholder of its Conversion Right and on or prior to the last Averaging Day in relation to the relevant Calculation Period an event occurs as a result of which the Bond(s) delivered for conversion would be terminated in accordance with § 5(d) or § 5(e) had the Bondholder not exercised its Conversion Right, the Issuer shall pay as consideration for redeeming the Bonds the Early Redemption Amount on the Early Redemption Date instead of the Cash Amount pursuant to § 8(d).

## § 9 Adjustment of the Conversion Price and/or the Share

- (a) The Calculation Agent (or, as the case may be, a Third Party Adviser) will adjust the Conversion Price as follows:
  - (i) If options contracts in respect of the Shares are traded on EUREX and EUREX adjusts such options contracts, in light of any corporate actions and/or capital adjustments, including for example, a Merger Event or a Tender Offer, the Calculation Agent shall, to the extent required and with effect as of the same date, adjust the Conversion Price and, conversely, the Conversion Ratio of the Bonds (or, as the case may be, the Share) to reflect the adjustments effected by EUREX, provided that in relation to the distribution by Fresenius SE & Co. KGaA to its shareholders of a Cash Dividend the Calculation Agent shall make the adjustments as set out in § 9(a)(ii) instead of the corresponding adjustments under the applicable EUREX Corporate Actions Procedures.

If no options contracts in respect of the Shares are traded on EUREX, the Calculation Agent shall make the necessary adjustments in light of any corporate actions and/or capital adjustments, other than in relation to the distribution by Fresenius SE & Co. KGaA to its shareholders of a Cash Dividend, in analogous application of the relevant EUREX Corporate Actions Procedures.

Where:

**"Merger Event"** means that, prior to the relevant Settlement Date, any (I) reclassification or change of the Shares that results in a transfer of or an irrevocable commitment to transfer all of such Shares outstanding to another entity or person, (II) consolidation, amalgamation, merger or binding share exchange of Fresenius SE & Co. KGaA with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which Fresenius SE & Co. KGaA is the

continuing entity and which does not result in a reclassification or change of all of such Shares outstanding), (III) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100% of the outstanding Shares of Fresenius SE & Co. KGaA that results in a transfer of or an irrevocable commitment to transfer all such Shares (other than such Shares owned or controlled by such other entity or person), (IV) consolidation, amalgamation, merger or binding share exchange of the Issuer or its subsidiaries with or into another entity in which Fresenius SE & Co. KGaA is the continuing entity and which does not result in a reclassification or change of all such Shares outstanding but results in the outstanding Shares (other than Shares owned or controlled by such other entity) immediately prior to such event collectively representing less than 50% of the outstanding Shares immediately following such event; and

**"Tender Offer"** means that, prior to the relevant Settlement Date, any takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 10% and less than 100% of the outstanding voting Shares of Fresenius SE & Co. KGaA, as determined by the Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as the Calculation Agent deems relevant.

- (ii) If (x) any Ex Date in respect of a Cash Dividend occurs or (y) the annual shareholders' meeting of Fresenius SE & Co. KGaA does not resolve to pay any Cash Dividend in respect of a Financial Year (such Financial Year, or in the case of (x) above, the Financial Year in respect of which such Cash Dividend is distributed, being the **"Relevant Financial Year"**), the Calculation Agent shall apply the following adjustments instead of the corresponding adjustments under the applicable EUREX Corporate Actions Procedures:

$$X_n = X_o \times R$$

Where:

- $X_n$  = the adjusted Conversion Price;
- $X_o$  = the Conversion Price on the Relevant Record Date;
- $R$  =  $(S_{prev} - D) / (S_{prev} - T)$ , provided that if  $R$  is negative,  $R$  shall be deemed to be equal to 0.00001;
- $S_{prev}$  = the official Closing Price of the Share on the Relevant Record Date;
- $D$  = (in the case of (x) above) the amount of such Cash Dividend, calculated on a per share basis, and prior to deduction of any withholding tax, or (in the case of (y) above) zero;
- $T$  = the applicable Dividend Threshold in respect of the Relevant Financial Year.

- (b) As at the Issue Date, the EUREX Corporate Actions Procedures provide for adjustments of option contracts in respect of shares, including the Shares, that would be applied by the Calculation Agent when determining adjustments of the Conversion Price, if any, pursuant to § 9(a) of the Terms and Conditions as set out above. The EUREX Corporate Actions Procedures are subject to changes from time to time. Neither the Issuer nor the Calculation Agent is responsible for informing Bondholders of any change to the EUREX Corporate Actions Procedures. This § 9(b) and the below summary are for information purposes only and have been prepared in order to provide Bondholders with



information of potential adjustments following the occurrence of the specified Adjustment Events. The information has been adjusted to fit with the terminology of the Bonds. However, EUREX may apply the EUREX Corporate Actions Procedures differently, in particular the definition and determination of the Adjustment Events below. In the case of any discrepancy between this description and the EUREX Corporate Actions Procedures, the EUREX Corporate Actions Procedures shall prevail.

(i) Adjustment Events

For the purposes of this § 9(b) "**Adjustment Event**" means any of the following events:

- (A) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA increases its share capital out of capital reserves or retained earnings by means of issuance of new Shares or increasing the nominal amount of existing Shares (a "**Capital Increase from Capital Reserves or Retained Earnings**");
- (B) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA:
  - (I) increases the number of outstanding shares by reduction of the interest in the share capital represented by each share (share split) or reduces the number of outstanding shares by increasing the interest in the share capital represented by each share without reducing the share capital (reverse share split); or
  - (II) reduces its share capital by combining its shares,
 (a "**Change in Share Classification**");
- (C) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA increases its share capital through the issuance of new shares against cash contributions while granting its shareholders a direct or indirect subscription right (§§ 182, 186 of the AktG) (a "**Capital Increase Against Contributions with Subscription Rights**");
- (D) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA grants to its shareholders direct or indirect subscription rights in relation to (I) own shares, (II) securities with subscription or option or conversion rights in relation to shares of Fresenius SE & Co. KGaA (but excluding the granting of subscription rights in the course of share capital increases pursuant to a Capital Increase Against Contributions with Subscription Rights) or (III) other debt securities, participation rights or other securities of Fresenius SE & Co. KGaA (the securities listed in (I) through (III) together, "**Other Securities**") (an "**Other Issue of Securities with Subscription Rights**");
- (E) if, prior to the relevant Settlement Date, Fresenius SE & Co. KGaA distributes, allots or grants to its shareholders (I) assets other than a Cash Dividend (whether in the form of a dividend in kind (including a dividend paid in Shares) or in the form of a capital decrease) for the purpose of repaying parts of the share capital (in which case the repayment will constitute assets for purposes of (I)); or (II) debt securities or warrants or conversion rights (with the exclusion of the rights mentioned in relation to Other Issue of Securities); or (III) put options in the case of a share repurchase (an "**Allotment**"); and
- (F) if a demerger (*Aufspaltung*, § 123(1) of the UmwG) or a spin-off (*Abspaltung*, § 123(2) of the UmwG) of Fresenius SE & Co. KGaA occurs prior to the relevant Settlement Date (a "**Demerger**").

(ii) Consequences of Adjustment Events

Upon the occurrence of any Adjustment Event, the following adjustments are likely to occur in respect of certain terms of the Bonds, as derived from and subject to the EUREX Corporate Actions Procedures:

(A) In the case of a Capital Increase from Capital Reserves or Retained Earnings:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $N_o / N_n$ ;

$N_n$  = the number of issued Shares of Fresenius SE & Co. KGaA after the share capital increase; and

$N_o$  = the number of issued Shares of Fresenius SE & Co. KGaA before the share capital increase.

(B) In the case of a Change in Share Classification, the adjustment as provided in subparagraph (A) will apply. Notwithstanding, that, if prior to the relevant Settlement Date Fresenius SE & Co. KGaA decreases the share capital of Fresenius SE & Co. KGaA by way of a reduction of the interest in the share capital represented by each share, the Conversion Price will remain unchanged. In this case, the Shares will be delivered with their respective new portion of the share capital allotted to them and, in the case of any cash settlement, the Cash Amount will be adjusted accordingly.

(C) In the case of a Capital Increase Against Contributions with Subscription Rights:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $((N_o / N_n) \times (1 - (E / S_o))) + (E / S_o)$ ;

$E$  = the issue price of the new Shares increased by the amount of any potential dividend disadvantage;

$S_o$  = old Share price;

$N_n$  = the number of issued shares of Fresenius SE & Co. KGaA after the dilution event; and

$N_o$  = the number of issued Shares of Fresenius SE & Co. KGaA before the dilution event.

(D) In the case of an Other Issue of Securities with Subscription Rights:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R = S_{ex} / S_{cum}$ ;

$S_{ex} = S_{cum} - E$ ;

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market (last day of the Share trading cum entitlement); and

$E$  = the value of the Subscription Rights as determined by the Calculation Agent.

(E) In the case of an Allotment:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R = S_{ex} / S_{cum}$ ;

$S_{ex} = S_{cum} - E$ ;

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market (last day of the Share trading cum entitlement); and

$E$  = the value of the Allotment as determined by the Calculation Agent.

(F) In the case of a Merger Event or Tender Offer where the offer consideration is shares or a combination of shares and cash where the share component is at least 33% of the total value:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R = x / y$ ; and

$y$  = the number of shares offered for every  $x$  shares held in the underlying company, provided that where combined cash and share considerations are applicable,  $y$  shall be the actual number of shares offered plus the value of the cash amount offered expressed as a number of shares.

(G) In the case of a Merger Event or Tender Offer where the offer consideration is cash or a combination of cash and shares where the share component is less than 33% of the total value, the Bonds (in line with any related options contract traded at EUREX) would be settled in cash in accordance with § 5(d) above.

(H) In the case of a Demerger EUREX applies the package method where the old share is replaced by a basket of two or more shares. When a Demerger becomes effective the sum of the basket components in theory matches the value of the old share. However,

under certain circumstances the package method might not be the appropriate procedure to adjust options contracts. In such cases the following adjustment shall apply:

$$X_n = X_o \times R$$

where:

$X_n$  = the adjusted Conversion Price;

$X_o$  = the Conversion Price prevailing prior to the adjustment;

$R$  =  $(S_{cum} - \text{value of the demerged company per share}) / (S_{cum})$ ; and

$S_{cum}$  = official closing price of the cum entitlement Share of the relevant cash market.

- (I) An adjustment of the Conversion Price pursuant to a Capital Increase Against Contributions with Subscription Rights or an Issue of Other Securities will not take effect if Fresenius SE & Co. KGaA grants each Bondholder the direct or indirect subscription rights to the number of new Shares or Other Securities, as the case may be, to which such Bondholder would have been entitled had the Bondholder exercised the Conversion Right immediately prior to the date of the adjustment.
- (c) Adjustments in accordance with this § 9 will become effective as of (i) in the case of an adjustment stipulated by EUREX, on the same date as any corresponding adjustments made by EUREX; and (ii) in all other cases, the beginning of the Relevant Adjustment Date. Adjustments in accordance with this § 9 will not be made, if the effective date for such adjustments is later than, in the case of Bonds in respect of which the Conversion Right has been exercised, the date on which the Shares have been credited to the securities account specified by the relevant Bondholder or the relevant Cash Amount has been paid by the Paying Agent to the Clearing System or, in relation to Bonds not converted, the first day after the end of the Conversion Period pursuant to § 8(a)(iv), as the case may be.
- (d) Adjustments to the Conversion Price will be performed by the Calculation Agent (or, where required by these Terms and Conditions to be determined by a Third Party Adviser, a Third Party Adviser), subject to § 13(c). The Conversion Price determined in accordance with this § 9 will be rounded to four decimal places with EUR 0.00005 being rounded upwards.
- (e) The Issuer will give notice in accordance with § 14 of an adjustment to the Conversion Price and/or any other adjustment to the terms of the Conversion Right made by the Calculation Agent pursuant to this § 9 without undue delay.
- (f) In the event that any Share Price relevant for the calculation of a price or cash amount or an adjustment is subsequently corrected by the exchange and the correction is published within less than one Settlement Cycle after the original publication, the Calculation Agent shall notify the Issuer, and the Issuer shall notify the Bondholders of the corrected Share Price, the Cash Amount (if any such Cash Amount was determined on the basis of such Share Price subsequently corrected by the exchange) re-calculated taking into account this Share Price and any necessary further adjustment of the terms of the Bond.
- (g) If any event shall constitute both an event as described in § 11 or § 5(d) and an event which would otherwise result in adjustments to be made to the Conversion Price and/or the Shares in accordance with this § 9, such event shall be treated as set out in § 11 or § 5(d), as applicable, and no such adjustments shall apply.

- (h) In this § 9 the following terms shall have the following meaning:

**"Cash Dividend"** means any dividend distributed by Fresenius SE & Co. KGaA per Share in respect of a Financial Year (provided that where any Cash Dividend is not expressed to be distributed in respect of a Financial Year, such Cash Dividend shall be deemed to be distributed in respect of the Financial Year immediately preceding the Financial Year in which the Ex Date thereof falls) payable (i) in cash or (ii) either in cash or in the form of shares of Fresenius SE & Co. KGaA in lieu of the cash amount thereof at the option of the holders of the Shares (the cash dividend subject to such option, a **"Scrip Dividend"**), provided that in the case of a Scrip Dividend the amount of such Scrip Dividend shall be equal to the total cash amount thereof payable per Share prior to deduction of any withholding tax, disregarding the value of the shares payable in lieu of such cash amount at the option of the holders of the Shares.

**"Closing Price"** means, in respect of the Share, on any Scheduled Trading Day, the closing price of the Share on the Relevant Stock Exchange on such Scheduled Trading Day as published by or derived from the relevant Bloomberg page HP (setting *"Last Price"*) (or any successor page or setting or, in case there is no such Bloomberg page, any equivalent Reuters page, if any), as determined by the Calculation Agent, for the Share in respect of the Relevant Stock Exchange in respect thereof, if any or, in case there is no such Bloomberg page or equivalent Reuters page, such other source (if any) as shall be determined in good faith to be appropriate by a Third Party Adviser on such Scheduled Trading Day, provided that if on any such Scheduled Trading Day (the **"Affected CP Scheduled Trading Day"**) such price is not available or cannot otherwise be determined as provided above, the Closing Price of the Share in respect of such Scheduled Trading Day shall be the Closing Price, determined as provided above, on the immediately succeeding Scheduled Trading Day on which the same can be so determined (provided that where such Closing Price on such immediately succeeding Scheduled Trading Day is ex the Cash Dividend such Closing Price shall be increased by the amount equal to the gross amount of the Cash Dividend as determined by the Calculation Agent), and further provided that if the Closing Price cannot be so determined on any of the five Scheduled Trading Days immediately succeeding the Affected CP Scheduled Trading Day, a Third Party Adviser shall determine the Closing Price in respect of the Affected CP Scheduled Trading Day in good faith.

The **"Dividend Threshold"** means, in relation to any particular Financial Year, EUR 0.62, provided that (i) if adjustments of the Conversion Price are required to be made pursuant to § 9 (including, for the avoidance of doubt, pursuant to § 9(a)(ii)), the Dividend Threshold shall be adjusted concurrently on a proportionate basis (and rounded to four decimal places with EUR 0.00005 being rounded upwards), and (ii) upon any adjustment to the Conversion Price pursuant to § 9(a)(ii) in respect of a Cash Dividend distributed in respect of such Financial Year, the Dividend Threshold applicable to any subsequent Cash Dividend distributed in respect of such Financial Year shall be zero.

**"EUREX Corporate Actions Procedures"** means the manual published by EUREX Frankfurt AG addressing the capital adjustments to equity options at the EUREX exchange, as amended from time to time or any successor publication by EUREX Frankfurt AG.

**"Relevant Adjustment Date"** means, in case Fresenius SE & Co. KGaA distributes to its shareholders a Cash Dividend, the Ex Date and, in case the annual shareholders' meeting of Fresenius SE & Co. KGaA does not resolve to pay any Cash Dividend in relation to a Financial Year, the first Scheduled Trading Day following the date of the annual shareholders' meeting.

**"Relevant Record Date"** means the Scheduled Trading Day which immediately precedes the Relevant Adjustment Date.

**"Settlement Cycle"** means the period of Scheduled Trading Days following a trade in the Shares on XETRA in which settlement will customarily occur according to the rules of XETRA.

## § 10 Disrupted Days

If any Scheduled Trading Day on which an Averaging Day or Share Reference Price Determination Day (each of such Averaging Day or Share Reference Price Determination Day, a **"Relevant Day"**) or, as the case may be, the Bond Price Determination Date was (but for the occurrence of a Market Disruption Event on such Scheduled Trading Day) scheduled to fall is a Disrupted Day, then such Relevant Day or, as the case may be, such Bond Price Determination Date shall be deemed to occur on the first Scheduled Trading Day that is not a Disrupted Day (and, in the case of a Relevant Day, on which another Relevant Day does not or is not deemed to occur) (a **"Valid Date"**). If such first Valid Date falls after the eighth Scheduled Trading Day following (i) (in the case of a Relevant Day) the last day of the originally scheduled Calculation Period or originally scheduled period of Share Reference Price Determination Days or (ii) (in the case of a Bond Price Determination Date) such original Scheduled Trading Day on which such Bond Price Determination Date was (but for the occurrence of a Market Disruption Event on such Scheduled Trading Day) scheduled to fall, such eighth Scheduled Trading Day shall be deemed to be the Relevant Day or Bond Price Determination Date (irrespective, in the case of a Relevant Day, of whether that eighth Scheduled Trading Day is already a day on which a Relevant Day occurs or is deemed to occur). If no Share Price can be determined pursuant to the definition thereof in respect of such eighth Scheduled Trading Day, a Third Party Adviser shall determine the Share Price on such eighth Scheduled Trading Day. Any such determination by a Third Party Adviser of the Share Price shall be in a commercially reasonable manner.

**"Disrupted Day"** means a day on which the Calculation Agent determines that a Market Disruption Event has occurred.

**"Exchange Disruption or Related Exchange Disruption"** means any event that disrupts or impairs the ability of market participants in general (i) to effect transactions in, or obtain market values for, the Share on XETRA, or (ii) to effect transactions in, or obtain market values for, futures or options contracts on EUREX relating to the Share at any time during the one hour period that ends at the relevant Valuation Time or for an aggregate of more than one hour over the course of a day.

**"Failure to Open for Trading or Early Closure of the Exchange or Related Exchange"** means the failure to open for trading of XETRA or EUREX or the closure of XETRA or EUREX prior to its scheduled closing time unless such earlier closing time is announced by the relevant exchange(s) at least one hour earlier, in any case, however, one hour prior to the submission deadline for orders to be entered into the relevant exchange system for execution on the relevant Scheduled Trading Day.

**"Market Disruption Event"** means each of (i) Trading Disruption, (ii) Exchange Disruption or Related Exchange Disruption and (iii) Failure to Open for Trading or Early Closure of the Exchange or Related Exchange but in respect of (i) and (ii) only if the Calculation Agent determines that such event is material.

**"Trading Disruption"** means any suspension of or limitation imposed on trading (i) relating to the Share on XETRA or (ii) in futures or options contracts relating to the Share on EUREX at any time during the one hour period that ends at the relevant Valuation Time or for an aggregate of more than one hour over the course of a day.

**"Valuation Time"** means the close of trading in respect of the relevant day.

**§ 11 Nationalisation, Change in Law, Delisting and Illiquidity**

- (a) (i) If a Nationalisation and/or a Delisting occurs, the Issuer shall and (ii) if a Change in Law and/or an Illiquidity Event occurs the Issuer may, by providing notice of the occurrence of such event in accordance with § 14 within five Business Days of the Relevant Date specifying the date of such termination (or, in the case of a Change in Law, such lesser notice as may be required to comply with such Change in Law) redeem all but not only some of the outstanding Bonds at their Early Redemption Amount on the Early Redemption Date.

- (b) Where:

**"Change in Law"** means that, on or after the Issue Date, (A) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (B) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Issuer determines in good faith or a Hedge Counterparty notifies the Issuer that it has determined that (X) it has become illegal to hold, acquire or dispose of Shares, any Hedge Positions or the Bonds or effect its necessary Hedging Activities, or (Y) it would incur a materially increased cost in performing its obligations under, in the case of the Issuer, the Bonds or a Hedge Position or, in the case of the Hedge Counterparty, any Hedge Positions or in effecting its Hedging Activities (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position, and, among others, due to any withholding tax on dividends paid by the Issuer to the Hedge Counterparty under its Hedge Positions), provided that, where the Change in Law relates to the Hedge Counterparty, the Hedge Counterparty notifies the Issuer upon at least two Scheduled Trading Days' advance notice that it will terminate the Hedge Position as a result of the Change in Law.

**"Delisting"** means that the Shares cease (or will cease) to be listed, traded or publicly quoted on XETRA pursuant to the rules of XETRA, and are not immediately re-listed, re-traded or re-quoted on another organised market or trading facility located in the same country as XETRA (or, where XETRA is within the European Union, in any member state of the European Union), as determined by the Calculation Agent.

**"Hedge Counterparty"** means the counterparty or counterparties of the Issuer in respect of the Hedge Position.

**"Hedge Position"** means: (i) with respect to the Issuer, a transaction including a share option transaction (a **"Transaction"**) or asset the Issuer deems appropriate to hedge the equity price risk of entering into and performing its obligations with respect to the Bonds; or (ii) with respect to a Hedge Counterparty, (a) any Transaction or (b) any purchase, sale, entry into or maintenance of one or more (1) positions or contracts in securities, options, futures, derivatives or foreign exchange, (2) stock loan transactions or (3) other instruments or arrangements (howsoever described) by a Hedge Counterparty (or an affiliate thereof) to hedge, individually or on a portfolio basis, a Transaction.

**"Hedging Activities"** means any activities or transactions undertaken in connection with the establishment, maintenance, adjustment or termination of a Hedge Position.

**"Illiquidity Event"** means, in respect of any calendar month (the **"Relevant Month"**) ending after the Issue Date and with regards to any period of 30 consecutive Scheduled Trading Days ending on any Scheduled Trading Day comprised in such Relevant Month (each a **"Relevant Testing Period"**), that the arithmetic average of the daily products of (a) the Daily Traded Volume of the Shares on the Relevant Exchange and on Relevant Multilateral Trading Facilities on each Scheduled Trading Day during such Relevant Testing Period and (b) the Share Price as set out in limb (i)(x) of the definition

of Share Price on such Scheduled Trading Day (or, if no Share Price as set out in limb (i)(x) of the definition of Share Price can be determined by the Calculation Agent in respect of such day, the Share Price as set out in limb (i)(x) of the definition of Share Price on the next following Scheduled Trading Day on which a Share Price as set out in limb (i)(x) of the definition of Share Price can be determined by the Calculation Agent, provided that if such next following Scheduled Trading Day on which a Share Price can be so determined falls after the fifth Scheduled Trading Day following the last day of the Relevant Testing Period, the Share Price shall be the Share Price on the immediately preceding Scheduled Trading Day on which a Share Price could be so determined), is less than EUR 20,000,000, as determined by the Calculation Agent and notified by it to the Issuer and any Hedging Counterparty no later than the second Business Day following (x) the end of such Relevant Month or (y) if later, the last Scheduled Trading Day in respect of which a Share Price is being determined pursuant to limb (b) above (and such date on which such notification is made to the Issuer shall be deemed to be the date of occurrence of such Illiquidity Event).

**"Daily Traded Volumes of the Shares on the Relevant Exchange and on Relevant Multilateral Trading Facilities"** means the daily traded volume in number of Shares as published on Bloomberg page FRE EU Equity HP (or any successor ticker or Bloomberg page) (using the setting labelled "Volume", or any successor setting).

**"Nationalisation"** means that all Shares or all or substantially all the assets of Fresenius SE & Co. KGaA have been nationalised, expropriated or are otherwise required to be transferred to any authority, legal entity under public law (*juristische Person des öffentlichen Rechts*) or other governmental agency, as determined by the Calculation Agent.

## **§ 12 Events of Default and Termination Rights of the Bondholders**

- (a) Each Bondholder will be entitled to declare all or some only of his Bonds due and demand immediate redemption of such Bonds at the Principal Amount as provided hereinafter, if:
  - (i) the Issuer fails to pay principal in respect of the Bonds or any other amount in respect of the Bonds, in each case within 30 days from the relevant due date, whether at maturity, upon redemption or otherwise; or
  - (ii) the Issuer fails to duly perform any other material obligation arising from the Bonds and such failure continues unremedied for more than 60 days after the Principal Paying Agent has received a request thereof in the manner set forth in § 12(b) from a Bondholder to perform such obligation; or
  - (iii) any Capital Market Indebtedness of the Issuer or any of its Material Subsidiaries or any Subsidiary Guarantor (unless the relevant Subsidiary Guarantee has been released in accordance with these Terms and Conditions) becomes prematurely repayable as a result of a default in respect of the terms thereof, or the Issuer or any of its Material Subsidiaries or any Subsidiary Guarantor (unless the relevant Subsidiary Guarantee has been released in accordance with these Terms and Conditions) fails to fulfill any payment obligation in excess of EUR 75,000,000 or the equivalent thereof under any Capital Market Indebtedness or under any guarantees or suretyships given for any Capital Market Indebtedness of others within 30 days from its due date or, in the case of such guarantee or suretyship, within 30 days of such guarantee or suretyship being invoked, unless the Issuer or the relevant Material Subsidiary or the relevant Subsidiary Guarantor contests in good faith that such payment obligation exists or is due or that such guarantee or suretyship has been validly invoked or if a security granted therefor is enforced on behalf of or by the creditor(s) entitled thereto; or



- (iv) the Issuer or any of its Material Subsidiaries or any Subsidiary Guarantor (unless the relevant Subsidiary Guarantee has been released in accordance with these Terms and Conditions) announces its inability to meet its financial obligations or ceases its payments generally; or
- (v) a court opens insolvency proceedings against the Issuer or any Subsidiary Guarantor (unless the relevant Subsidiary Guarantee has been released in accordance with these Terms and Conditions) and such proceedings are instituted and have not been discharged or stayed within 90 days, or the Issuer applies for or institutes such proceedings; or
- (vi) the Issuer or any Subsidiary Guarantor (unless the relevant Subsidiary Guarantee has been released in accordance with these Terms and Conditions) enters into liquidation unless this is done in connection with a merger or other form of combination with another company and such company assumes all obligations contracted by the Issuer or the relevant Subsidiary Guarantor in connection with the Bonds or the relevant Subsidiary Guarantee; or
- (vii) any Subsidiary Guarantee shall cease to be in full force and effect in accordance with its terms for any reason except pursuant to these Terms and Conditions or terms of the relevant Subsidiary Guarantee governing the release of the Subsidiary Guarantee or the satisfaction in full of all the obligations thereunder or shall be declared invalid or unenforceable other than as contemplated by its terms, or any Subsidiary Guarantor shall repudiate, deny or disaffirm any of its obligations thereunder or under the terms of the relevant Subsidiary Guarantee.

The right to declare Bonds due will terminate if the situation giving rise to it has been cured before such right is exercised.

- (b) Any notice declaring Bonds due in accordance with § 12(a) shall be made at least in text form (§ 126b German Civil Code) to the specified office of the Principal Paying Agent together with proof that such Bondholder at the time of such notice is a holder of the relevant Bonds by means of a certificate of his Custodian or in any other appropriate manner.
- (c) In the events specified in § 12(a)(iii) and (iv), any notice declaring Bonds due shall, unless at the time such notice is received any of the events specified in § 12(a)(i), (ii) and (v) through (vii) entitling Bondholders to declare their Bonds due has occurred, become effective only, if the Principal Paying Agent has received such default notices from Bondholders representing at least 25 per cent. of the aggregate principal amount of Bonds then outstanding.
- (d) If any Bond is declared due for early redemption by a Bondholder pursuant to this § 12, the Conversion Right in respect of such Bond may no longer be exercised by such Bondholder from the time of despatch by the Bondholder of its notice of termination to the Principal Paying Agent pursuant to § 12(b).

### **§ 13 Paying Agents, Conversion Agents and Calculation Agent**

- (a) Deutsche Bank Aktiengesellschaft will be the principal paying agent (the "**Principal Paying Agent**", and together with any additional paying agent appointed by the Issuer in accordance with § 13(b), the "**Paying Agents**"). Deutsche Bank Aktiengesellschaft will also be the principal Conversion Agent (the "**Principal Conversion Agent**", and together with any additional Conversion Agent appointed by the Issuer in accordance with § 13(b), the "**Conversion Agents**"). Conv-Ex Advisors Limited will be the calculation agent (the "**Calculation Agent**" and together with the Paying Agents and the Conversion Agents, the "**Agents**"). The address of the specified offices of the Agents are:

#### **Principal Paying Agent and Principal Conversion Agent**

Deutsche Bank Aktiengesellschaft  
Taunusanlage 12  
60325 Frankfurt am Main  
Federal Republic of Germany

**Calculation Agent**

Conv-Ex Advisors Limited  
30 Crown Place  
London EC2A 4EB  
United Kingdom

Each Agent will be exempt from the restrictions set forth in § 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions of other applicable laws.

In no event will the specified office of any Agent be within the United States or its possessions.

- (b) The Issuer will procure that there will at all times be a Principal Paying Agent, a Principal Conversion Agent and a Calculation Agent. The Issuer is entitled to appoint other banks of international standing as Agents. Furthermore, the Issuer is entitled to terminate the appointment of any Agent. In the event of such termination or such bank being unable or unwilling to continue to act as Agent in the relevant capacity, the Issuer will appoint another bank of international standing (or, in the case of the Calculation Agent, financial adviser with relevant expertise) as Agent in the relevant capacity. Such appointment or termination will be published without undue delay in accordance with § 14, or, should this not be possible, be published in another appropriate manner.
- (c) All determinations, calculations and adjustments made by any Agent or a Third Party Adviser will be made in conjunction with the Issuer and will, in the absence of manifest error, be conclusive in all respects and binding upon the Issuer and all Bondholders.

Each Agent may engage the advice or services of any lawyers or other experts whose advice or services it deems necessary and may rely upon any advice so obtained. No Agent will incur any liability as against the Issuer, the Bondholders in respect of any action taken, or not taken, or suffered to be taken, or not taken, in accordance with such advice in good faith.

- (d) Each Agent acting in such capacity, or, as the case may be, any Third Party Adviser appointed by the Issuer in accordance with these Terms and Conditions, acts only as agent of and upon request from the Issuer. Each Agent (and, as the case may be, any Third Party Adviser appointed by the Issuer in accordance with these Terms and Conditions), will not thereby assume any obligations towards or relationship of agency or fiduciary with, and shall not be liable and shall incur no liability as against, the Bondholders.

**§ 14 Notices**

All notices concerning the Bonds to be given by the Issuer under these Terms and Conditions, except as stipulated in § 17(h), will be made as follows:

- (a) The Issuer shall publish all its notices concerning the Bonds on its homepage ([www.fresenius.de](http://www.fresenius.de)). Any such notice will be deemed to have been given when so published or despatched by the Issuer.
- (b) If the Bonds are listed on any stock exchange and the rules of that stock exchange so require, the Issuer will make all its notices concerning the Bonds in accordance with the rules of the stock exchange on which the Bonds are listed.

- (c) In addition the Issuer will deliver all its notices concerning the Bonds to the Clearing System for communication by the Clearing System to the Bondholders.
- (d) A notice effected pursuant to § 14(a) to (c) above will be deemed to be effected on the day on which the first such communication is, or is deemed to be, effective.

#### **§ 15 Issue of Additional Bonds**

The Issuer reserves the right from time to time without the consent of the Bondholders to issue additional Bonds with identical terms (save for inter alia the issue date), so that the same shall be consolidated, form a single issue with and increase the aggregate principal amount of these Bonds. The term "Bonds" shall, in the event of such increase, also comprise such additionally issued Bonds.

#### **§ 16 Presentation Period, Prescription**

The period for presentation of the Bonds pursuant to § 801(1) sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) will be ten years. The period of limitation for claims under the Bonds presented during the period for presentation will be two years calculated from the expiration of the relevant presentation period.

#### **§ 17 Amendments to the Terms and Conditions, by resolution of the Bondholders; Joint Representative**

- (a) The Bondholders may with the consent of the Issuer (if required) by a resolution pursuant to § 5 et seqq. of the German Act on Issues of Debt Securities (*Gesetz über Schuldverschreibungen aus Gesamtemissionen* - "SchVG"), as amended from time to time, agree to amendments of the Terms and Conditions or resolve any other matters provided for by the SchVG. In particular, the Bondholders may consent to amendments which materially change the substance of the Terms and Conditions, including such measures as provided for under § 5 paragraph 3 SchVG, by resolutions passed by such majority of the votes of the Bondholders as stated under § 17(b) below. A duly passed majority resolution shall be binding upon all Bondholders.
- (b) Except as provided by the following sentence and provided that the quorum requirements are being met, the Bondholders may pass resolutions by simple majority of the voting rights participating in the vote. Resolutions which materially change the substance of the Terms and Conditions, in particular in the cases of § 5 paragraph 3 numbers 1 through 9 SchVG, or relating to material other matters, may only be passed by a majority of at least 75 per cent. of the voting rights participating in the vote (a "Qualified Majority").
- (c) The Bondholders can pass resolutions in a meeting (*Gläubigerversammlung*) in accordance with § 5 et seqq. SchVG or by means of a vote without a meeting (*Abstimmung ohne Versammlung*) in accordance with § 18 and § 5 et seqq. SchVG.
- (d) Attendance at the meeting and exercise of voting rights is subject to the Bondholders' registration. The registration must be received at the address stated in the convening notice no later than the third day preceding the meeting. As part of the registration, Bondholders must demonstrate their eligibility to participate in the vote by means of a special confirmation of the Custodian in accordance with § 19(d)(i)(A) and (B) hereof in text form and by submission of a blocking instruction by the Custodian stating that the relevant Bonds are not transferable from and including the day such registration has been sent until and including the stated end of the meeting.
- (e) Together with casting their votes Bondholders must demonstrate their eligibility to participate in the vote by means of a special confirmation of the Custodian in accordance with § 19(d)(i)(A) and (B) hereof in text form and by submission of a blocking instruction by the Custodian stating that the

relevant Bonds are not transferable from and including the day such votes have been cast until and including the day the voting period ends.

- (f) If it is ascertained that no quorum exists for the meeting pursuant to § 17(d) or the vote without a meeting pursuant to § 17(e), in case of a meeting the chairman (*Vorsitzender*) may convene a second meeting in accordance with § 15 paragraph 3 sentence 2 SchVG or in case of a vote without a meeting the scrutineer (*Abstimmungsleiter*) may convene a second meeting within the meaning of § 15 paragraph 3 sentence 3 SchVG. Attendance at the second meeting and exercise of voting rights is subject to the Bondholders' registration. The provisions set out in §17 (d) sentence 3 shall apply *mutatis mutandis* to the Bondholders' registration for a second meeting.
- (g) The Bondholders may by majority resolution provide for the appointment or dismissal of a joint representative (the "**Joint Representative**"), the duties and responsibilities and the powers of such Joint Representative, the transfer of the rights of the Bondholders to the Joint Representative and a limitation of liability of the Joint Representative. Appointment of a Joint Representative may only be passed by a Qualified Majority if such Joint Representative is to be authorised to consent, in accordance with § 17(b) hereof, to a material change in the substance of the Terms and Conditions.
- (h) Any notices concerning this § 17 shall be made exclusively pursuant to the provisions of the SchVG.
- (i) The provisions set out above in this § 17 applicable to the Bonds shall apply *mutatis mutandis* to the Subsidiary Guarantees.

## **§ 18 Issuer Substitution**

- (a) Substitution

The Issuer may at any time, without the consent of the Bondholders, substitute for the Issuer any other company which is directly or indirectly controlled by the Issuer, as new issuer (the "**New Issuer**") in respect of all obligations arising under or in connection with the Bonds with the effect of releasing the Issuer of all such obligations, if:

- (i) the New Issuer assumes any and all obligations of the Issuer arising under or in connection with the Bonds and, if service of process vis-à-vis the New Issuer would have to be effected outside the Federal Republic of Germany, appoints a process agent within the Federal Republic of Germany;
- (ii) the Issuer and the New Issuer have obtained all authorisations and approvals necessary for the substitution and the fulfilment of the obligations arising under or in connection with the Bonds;
- (iii) the New Issuer is in the position to pay to the Clearing System or to the Principal Paying Agent in Euro and without deducting or withholding any taxes or other duties of whatever nature imposed, levied or deducted by the country (or countries) in which the New Issuer has its domicile or tax residence all amounts required for the performance of the payment obligations arising from or in connection with the Bonds; and
- (iv) the Issuer irrevocably and unconditionally guarantees such obligations of the New Issuer under the Bonds on terms which ensure that each Bondholder will be put in an economic position that is at least as favourable as that which would have existed if the substitution had not taken place.

(b) References

- (i) In the event of a substitution pursuant to § 18(a), any reference in these Terms and Conditions to
  - (A) the Issuer shall be a reference to the New Issuer; and
  - (B) the Federal Republic of Germany (except in § 19) shall be a reference to the New Issuer's country of domicile for tax purposes.
- (ii) In § 12 a further event of default shall be deemed to have been included; such event of default shall exist in the case that the guarantee pursuant to § 18(a)(iv) is or becomes invalid for any reasons.

**§ 19 Final Clauses**

- (a) The form and content of the Bonds and the rights and duties of the Bondholders and the Issuer will in all respects be governed by the laws of the Federal Republic of Germany.
- (b) Place of performance is Frankfurt am Main, Federal Republic of Germany.
- (c) Subject to any mandatory jurisdiction for specific proceedings under the Bond Act, and to the extent legally permitted, the courts of Frankfurt am Main, Federal Republic of Germany will have jurisdiction for any action or other legal proceedings arising out of or in connection with the Bonds.
- (d) Any Bondholder may in any proceedings against the Issuer or to which the Bondholder and the Issuer are parties protect and enforce in his own name his rights arising under his Bonds on the basis of:
  - (i) a certificate issued by his Custodian
    - (A) stating the full name and address of the Bondholder;
    - (B) specifying an aggregate principal amount of Bonds credited on the date of such statement to such Bondholder's securities account(s) maintained with his Custodian; and
    - (C) confirming that his Custodian has given a written notice to the Clearing System and the Principal Paying Agent containing the information specified in (A) and (B) and bearing acknowledgements of the Clearing System and the relevant account holder in the Clearing System; as well as
  - (ii) a copy of the Global Bond relating to the Bonds, certified as being a true copy by a duly authorised officer of the Clearing System or the Principal Paying Agent.