

## TERMS AND CONDITIONS OF THE GLOBAL DEPOSITARY RECEIPTS

*The following terms and conditions (subject to completion and amendment and excepting sentences in italics) will apply to the GDRs, and will be endorsed on the certificate in respect of each GDR in definitive registered form:*

The GDRs evidenced by this certificate are each issued in respect of two Shares. The GDRs are issued pursuant to, and subject to, an agreement dated the Closing Date and made between the Company and Citibank, N.A. as depositary (such agreement, as amended from time to time, being hereinafter referred to as the "Deposit Agreement"). Pursuant to the provisions of the Deposit Agreement, the Depositary (as defined below) has appointed Citibank (Poland) S.A. as custodian to receive and hold on its behalf in the Custodian's account at the National Securities Depository ("NSD") Shares deposited pursuant to the Deposit Agreement (the "Deposited Shares") and all rights, securities, property and cash for the time being, or in the future, held by the Custodian or the Depositary or their respective agents and attributable to the Deposited Shares together with any rights of the Depositary or the Custodian to receive Deposited Shares or any such rights, securities, property and cash (together with the Deposited Shares, the "Deposited Property"). The Depositary or its nominee shall hold the Deposited Property for the benefit of the Holders (as defined below) as bare trustee. In these terms and conditions (the "Conditions"), references to the "Depositary" are to Citibank, N.A. and/or any other depositary which may from time to time be appointed under the Deposit Agreement, references to the "Custodian" are to Citibank (Poland) S.A., or any other custodian from time to time appointed under the Deposit Agreement and references to the "Main Office" mean, in relation to the Custodian, its head office in Warsaw at Senatorska 12, 00-082 Warsaw, Poland, or such other location of the head office in Poland of the Custodian as may be designated by the Custodian with the approval of the Depositary or the head office of any other custodian from time to time appointed under the Deposit Agreement.

The Conditions are subject in all respects to the Deposit Agreement, which includes the form of the certificates in respect of the GDRs, and applicable laws and regulations, including the laws and regulations of the Republic of Poland. References in these Conditions to a "Holder" of any GDR shall mean the person registered on the books of the Depositary maintained for such purpose as holder for the time being of a GDR. References in these Conditions to a "Beneficial Owner" shall mean the person owning from time to time any beneficial interest in a GDR, including the International Master GDR or the Rule 144A Master GDR. Copies of the Deposit Agreement are available for inspection at the specified office of the Depositary and each Agent (as defined in Condition 18) and at the Main Office of the Custodian.

Terms used in these Conditions and not defined herein, but which are defined in the Deposit Agreement, have the meanings ascribed to them in the Deposit Agreement. The Holders are deemed to have notice of and be bound by all of the provisions of the Deposit Agreement applicable to them. Holders and Beneficial Owners of GDRs are not parties to the Deposit Agreement and thus, under English law, have no contractual rights against, or obligation to, the Company. However, the Deed Poll executed in favour of the Holders provides that, if the Company fails to perform the obligations imposed upon it by certain specified provisions of the Deposit Agreement, any Holder may enforce the relevant provisions of the Deposit Agreement as if it were a party to the Deposit Agreement and as if it were the "Depositary" in respect of that number of Deposited Shares to which the GDRs of which he is the Holder relate. The Depositary is under no duty to enforce any of the provisions of the Deposit Agreement on behalf of any Holder or Beneficial Owner of GDRs.

The Polish Securities Commission has limited the total share capital of the Company that may be represented by the GDRs to 26 per cent. of the total number of Shares outstanding or 52 million Shares. Without any further liability or obligation on the part of the Depositary, the Depositary shall not accept Shares for deposit hereunder in excess of 26 per cent. of the total number of Shares outstanding, or 52 million Shares.

### **1. Deposit of Shares and Other Securities**

- (A) The Depositary will accept additional Shares for deposit under the Deposit Agreement, subject to the terms and conditions of the Deposit Agreement, upon delivery to the Custodian of Shares (or evidence of rights to receive Shares) and accompanied by (i) appropriate instruments of transfer in a form satisfactory to the Custodian, (ii) appropriate certification as to ownership as referred to in Condition 1(B) below, (iii) such other certifications, documents and information as may be required by the Depositary, and (iv) payment of the fees, charges and taxes provided in the Deposit Agreement.
- (B) Any deposit of Shares for the issuance of Rule 144A GDRs is subject to the receipt of a written certification, substantially in the form of Schedule 2, Part II of the Deposit Agreement by or on behalf of

the person who will be the Beneficial Owner of the Rule 144A GDRs to be issued upon deposit of such Shares, stating that it (i) acknowledges that the Rule 144A GDRs and the Shares represented thereby have not been and will not be registered under the Securities Act and (ii)(a) is a qualified institutional buyer as defined in Rule 144A under the Securities Act ("QIB"), acquiring such beneficial ownership for its own account or for the account of one or more QIBs and (b) will comply with the restrictions set forth under "Transfer Restrictions – Rule 144A GDRs" on transfers of the Rule 144A GDRs and the Shares represented thereby.

Any deposit of Shares for the issuance of International GDRs must be accompanied by (a) a written acknowledgement and certification, substantially in the form of Schedule 2, Part I of the Deposit Agreement, by or on behalf of the person who will be the Beneficial Owner of the International GDRs to be issued upon deposit of such Shares that (i) the International GDRs and the Shares represented thereby have not been and will not be registered under the Securities Act, (ii) such Beneficial Owner is not a U.S. person (within the meaning of Regulation S) and is located outside the United States (within the meaning of Regulation S) and acquired, or has agreed to acquire and will acquire, the Shares to be deposited outside the United States, (iii) such Beneficial Owner is not an affiliate of the Company or a person acting on behalf of such an affiliate and (iv) such Beneficial Owner is not in the business of buying and selling securities or, if it is in such business, it did not acquire the Shares to be deposited from the Company or any affiliate thereof in the International Offering and (b) an agreement that, during the Restricted Period, (i) such Beneficial Owner will comply with the restrictions on transfer set forth under "Transfer Restrictions – International GDRs" on transfers of the International GDRs, and the Shares represented thereby and (ii) if it sells or otherwise transfers the International GDRs during the Restricted Period in accordance with such International GDR transfer restrictions to a person it reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A under the Securities Act it will cause such Shares to be withdrawn from the International Facility in accordance with the terms and conditions of the Deposit Agreement and be deposited into the Rule 144A Facility for issuance of Rule 144A GDRs in accordance with the terms and conditions of the Deposit Agreement as described in the second paragraph of Condition 2(D).

Each person depositing Shares shall be required to acknowledge, represent and warrant that such person is not a Polish person within the meaning of the Foreign Exchange Law of 2nd December, 1994 and that such deposit is not being made in connection with a transaction that is prohibited under Article 119b of the Polish Law on Public Trading of Securities and Trust Funds of 1991, as amended (the "Law on Public Trading"), which prohibits any artifice or manipulation (either alone or in collusion with other persons) that causes an increase or decrease in the price of securities.

- (C) The Depositary will refuse to accept Shares for deposit unless accompanied by evidence satisfactory to the Depositary that all applicable Polish laws and regulations have been complied with and any necessary governmental or quasi-government approval has been received. The Depositary will also refuse to accept certain Shares for deposit if notified in writing that the Shares are listed on a U.S. securities exchange or quoted on a U.S. automated inter-dealer quotation system, unless accompanied by evidence satisfactory to the Depositary that any Shares presented for deposit are eligible for resale pursuant to Rule 144A under the Securities Act. Neither the Depositary nor the Custodian, nor any nominee or person on their behalf, shall accept Rule 144A GDRs issued pursuant to the Deposit Agreement or Shares withdrawn from the Rule 144A Facility for the purpose of deposit into the International Facility or issue International GDRs against delivery thereof, as long as such Rule 144A GDRs or Shares are or may be deemed to be restricted securities within the meaning of Rule 144(a)(3) under the Securities Act. The Depositary may also refuse to accept Shares for deposit if such action is deemed necessary, desirable or advisable by the Depositary, in good faith, at any time because of any requirement of law or of any governmental authority, body or commission (including the National Securities Depository of Poland ("NSD")) or stock exchange or under any provision of the Deposit Agreement or for any other reason.

*Subject to the terms and conditions of the Deposit Agreement, upon deposit of Shares in accordance with provisions of this Condition I, the Depositary will adjust its records for the number of GDRs issued in respect of Shares so deposited and will notify DTC as to the increase in the number of GDRs represented by the International Master GDR or the Rule 144A Master GDR, as the case may be. Each person receiving a GDR or interest therein will be deemed to make the representations, agreements and acknowledgements set forth in "Transfer Restrictions".*

- (D) The Depositary may issue GDRs against rights to receive Shares or deliver Shares prior to the receipt or cancellation of GDRs in accordance with Condition 29.

## **2. Withdrawal of Deposited Property**

- (A) Any Holder may request withdrawal of, and the Depositary shall thereupon relinquish, the Deposited Property evidenced by any GDRs upon production of such evidence of the entitlement of the Holder to the relevant GDRs as the Depositary may reasonably require, at the specified office of the Depositary or any Agent accompanied by:
- (i) a duly executed order (in a form reasonably approved by the Depositary) requesting the Depositary to cause the Deposited Property being withdrawn to be delivered at the Main Office of the Custodian, or (at the request, risk and expense of the Holder, and only if permitted by applicable law from time to time) at the specified office located in New York or London of the Depositary or any Agent to, or to the order in writing of, the person or persons designated in such order;
  - (ii) the payment of such fees, taxes, duties, charges and expenses as may be required under these Conditions or the Deposit Agreement;
  - (iii) the surrender (if appropriate) of GDR certificates in definitive registered form to which the Deposited Property being withdrawn is attributable; and
  - (iv) the delivery to the Depositary of an appropriate certification as referred to in Condition 2(D) below.
- (B) Upon production of such documentation and the making of such payment as aforesaid for withdrawal of the Deposited Property in accordance with Condition 2(A), the Depositary will direct the Custodian, by airmail letter or by tested telex or similar secure communication within a reasonable time after receiving such direction from such Holder, to deliver at its Main Office (or through the NSD if applicable) to, or to the order in writing of, the person or persons designated in the accompanying order:
- (i) a certificate for, or other appropriate instrument of title to or evidence of a book-entry transfer in respect of the relevant Deposited Shares, registered in the name of the Depositary or its nominee and accompanied by such instruments of transfer in blank or to the person or persons specified in the order for withdrawal and such other endorsements, if any, as are required by law for the transfer thereof; and
  - (ii) all other property forming part of the Deposited Property attributable to such GDRs, accompanied, if required by law, by one or more duly executed endorsements or instruments of transfer in respect thereof; provided however that the Depositary may make delivery at its specified office in New York of any Deposited Property which is in the form of cash;

Provided further that the Depositary (at the request, risk and expense of any Holder so surrendering a GDR);

- (a) will direct the Custodian to deliver the certificates for, or other instruments of title to, or book-entry transfer in respect of, the relevant Deposited Shares and any document relative thereto and any other documents referred to in sub-paragraphs (B)(i) and (ii) of this Condition 2 (together with any other property forming part of the Deposited Property which may be held by the Custodian or its agent and is attributable to such Deposited Shares); and/or
- (b) will deliver any other property forming part of the Deposited Property which may be held by the Depositary and is attributable to such GDR (accompanied, if required by law, by one or more duly executed endorsements or instruments of transfer in respect thereof);

in each case to the specified office located in New York or London of the Depositary (if permitted by applicable law from time to time) or at the specified office in Poland of any Agent as designated by the surrendering Holder in the order accompanying such GDR.

- (C) Prior to withdrawing any Deposited Property, the Holder may be required to open a brokerage account with the Custodian for delivery of such Deposited Property. Delivery by the Depositary, any Agent and the Custodian of all certificates, instruments, dividends or other property forming part of the Deposited Property as specified in this Condition will be made subject to any laws or regulations applicable thereto.



- (D) No Deposited Property represented by the Rule 144A GDRs may be withdrawn unless, at or prior to the time of surrender, the Depositary shall have received a written certificate and agreement, substantially in the form of Schedule 3, Part I of the Deposit Agreement, by or on behalf of the person surrendering such Rule 144A GDRs who, after withdrawal, will be the beneficial owner of the Shares withdrawn acknowledging that such Shares have not been and will not be registered under the Securities Act, certifying as to whether or not such Shares will remain restricted upon withdrawal and, in the case of Shares that will remain restricted, agreeing (a) not to offer, sell, pledge or otherwise transfer such Shares except in a transaction that complies with the restrictions on transfer set forth under "Transfer Restrictions – Rule 144A GDRs" and (b) not to deposit or cause to be deposited such Shares into any depositary receipt facility established or maintained by a depositary bank, other than a Rule 144A restricted depositary receipt facility, relating to such Shares unless and until such time as such Shares are no longer deemed to be restricted securities within the meaning of Rule 144(a)(3) under the Securities Act.

During the Restricted Period, no International Deposited Property may be withdrawn unless at or prior to the time of surrender, the Depositary shall have received a written certificate and agreement, substantially in the form of Schedule 3, Part II of the Deposit Agreement, by or on behalf of the person surrendering such International GDRs who after withdrawal will be the beneficial owner of the Shares withdrawn (a) acknowledging that such Shares have not been and will not be registered under the Securities Act, (b) certifying as to whether or not such Shares will remain restricted upon withdrawal and, in the case of Shares that will remain restricted, agreeing (i) during the Restricted Period, not to offer, sell, pledge or otherwise transfer such Shares except in a transaction that complies with the restrictions on transfer set forth below under "Transfer Restrictions – International GDRs" and (ii) during the Restricted Period, if such Shares are being transferred to a QIB, that it will prior to the settlement of such sale, withdraw the Shares from the International Facility in accordance with the terms and conditions of the Deposit Agreement and instruct that such Shares be delivered to the Custodian under the Rule 144A Facility thereunder and that Rule 144A GDRs be issued in accordance with the terms and conditions of the Deposit Agreement to, or for the account of, such QIB.

Each person withdrawing Shares shall be required to acknowledge, represent and warrant that such person is not a Polish person within the meaning of the Foreign Exchange Law of 2nd December, 1994 and that such withdrawal is not being made in connection with a transaction that is prohibited under Article 119b of the Law on Public Trading, which prohibits any artifice or manipulation (either alone or in collusion with other persons) that causes an increase or decrease in the price of securities.

- (E) Also, the Depositary may restrict the withdrawal of, or refuse to deliver, Deposited Property during any period when the transfer books of the Depositary, the Company, or the NSD, as appropriate, are closed generally or in one or more localities, or if such action is deemed necessary or desirable by the Depositary, in good faith, at any time or from time to time because of any requirement of law or of any government or governmental authority, body, commission (including the NSD) or stock exchange or under any provision of the Deposit Agreement or for any other reason.

### 3. Transfer and Ownership of GDRs

GDRs are in registered form each issued in respect of two Shares. Title to the GDRs passes by registration in the Register maintained by the Depositary in New York. The Holder of any GDR will (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not any payment or other distribution in respect of such GDR is overdue and regardless of any notice of ownership, trust or any interest in it or any writing thereon, or the theft or loss of any certificate issued in respect to it) and no person will be liable for so treating the Holder. The Depositary agrees that under no circumstances shall the Register be kept in England.

Interests in Rule 144A GDRs may be transferred to a person whose interest in such Rule 144A GDRs is subsequently represented by an interest in International GDRs only upon receipt by the Depositary of written certifications (in the forms provided in the Deposit Agreement) from the transferor and the transferee to the effect that such transfer is being made in accordance with Regulation S under the Securities Act and otherwise in accordance with the Deposit Agreement. Prior to expiration of the Restricted Period, no owner of International GDRs may transfer International GDRs or International Shares represented thereby except in accordance with Regulation S under the Securities Act or to, or for the account of, a QIB in a transaction meeting the requirements of such Rule 144A. Prior to the expiration of the Restricted Period there shall be no transfer of International GDRs by a Beneficial Owner thereof to a QIB except as aforesaid and unless such Beneficial Owner (i) withdraws International Shares from the International Facility in accordance with Clause 3(E) of the Deposit Agreement and Condition 2 hereof and (ii) instructs the Depositary to deliver the International Shares so withdrawn to the account of the Custodian to be deposited into the Rule 144A Facility for issuance thereunder of

Rule 144A GDRs to, or for the account of, such QIB. Issuance of such Rule 144A GDRs shall be subject to the terms and conditions of the Deposit Agreement, including with respect to the deposit of Shares and the issuance of Rule 144A GDRs, delivery of the duly executed and completed written certificate and agreement required under the Deposit Agreement and Condition 1(B) by or on behalf of each person who will be the Beneficial Owner of such Rule 144A GDRs representing that such person is a QIB and agreeing that it will comply with the restrictions on transfer set forth under "Transfer Restrictions – Rule 144A GDRs" and agreeing to payment of the fees, charges and taxes provided therein.

*For the purposes of Conditions 13 and 30, the term "owner of GDRs" is defined as such person who appears in the records of Cedel Bank, Euroclear or DTC in respect of the International Master GDR or the Rule 144A Master GDR, as the case may be.*

#### **4. Cash Distributions**

Whenever the Depositary or its nominee shall receive from the Company any cash dividend or other cash distribution on or in respect of the Deposited Shares (including any amounts received in the liquidation of the Company) or otherwise in connection with the Deposited Property, the Depositary shall as soon as practicable, and subject to Polish laws and regulations, convert the same into United States dollars in accordance with Condition 9. The Depositary shall as soon as practicable distribute any such amounts to the Holders in proportion to the number of Shares represented by the GDRs so held by them respectively, subject to and in accordance with the provisions of Conditions 10 and 12, provided that:

- (a) in the event that any GDRs shall not be entitled, by reason of the date of issue or transfer or otherwise, to such full proportionate amount, the amount so distributed to the relevant Holders shall be adjusted accordingly; and
- (b) the Depositary will distribute only such amounts of cash dividends and other distributions as may be distributed without attributing to any GDR a fraction of the lowest integral unit of currency in which the distribution is made by the Depositary and any balance remaining shall be retained by the Depositary beneficially as an additional fee under Condition 17.

#### **5. Distributions of Shares**

Whenever the Company intends to offer to the holders of any Deposited Property any distribution in respect of Deposited Property which consists of a dividend in, or free distribution of, Shares, the Depositary shall, subject to Polish law, cause to be distributed such Shares to the Holders entitled thereto, in proportion to the number of GDRs so held by them respectively, in any manner that the Depositary may deem equitable and practicable for effecting such distribution; provided that, if such Shares cannot in the opinion of the Depositary be distributed proportionately among the Holders of such GDRs or if and in so far as for any other reason (including, without limitation, any requirement that the Company or the Custodian or the Depositary withhold an amount on account of taxes or other governmental charges or that such securities be registered or otherwise officially qualified or approved outside Poland under any applicable law in order to be distributed to Holders) the Depositary deems a distribution of such Shares not to be reasonably practicable or to be unlawful, the Depositary shall sell such Shares (either by public or private sale and otherwise at its discretion, subject to Polish laws and regulations) and distribute the net proceeds of such sale as a cash distribution pursuant to Condition 4.

#### **6. Rights Issues**

Whenever the Company intends to offer to the holders of Shares rights to subscribe for additional Shares, the Company shall give timely notice thereof to the Depositary stating therein whether or not it wishes such rights to be made available to the Holders. Upon receipt of a notice indicating that the Company wishes such rights to be made available to the Holders, the Depositary shall consult with the Company to determine whether it is lawful to make such rights available to some or all of the Holders. The Company agrees to assist the Depositary in determining the lawfulness and practicability of making such rights available to Holders. The Depositary shall make such rights available to any Holder only if (x) the Company shall have (i) requested that such rights be made available to Holders, and (ii) furnished to the Depositary satisfactory documentation within the terms of the Deposit Agreement and (y) the Depositary shall have determined that such is reasonably practicable. In the event any of the conditions set forth above are not satisfied, the Depositary shall proceed with the sale of the rights as contemplated in the following paragraph. In the event all conditions set forth above are satisfied, the Depositary shall establish a record date and establish procedures to enable the Holders to instruct the Depositary to exercise the rights. The Company shall assist the Depositary to the extent reasonably necessary in establishing such procedures.

If (i) the Company does not request the Depositary to make the rights available to the Holders, (ii) the Depositary fails to receive satisfactory documentation within the terms of the Deposit Agreement or determines it is not reasonably practicable to make the rights available to the Holders, or (iii) any rights made available are not exercised and appear to be about to lapse, the Depositary shall determine after receipt of an opinion of U.S. or other applicable counsel (at the Company's expense) whether it is lawful and reasonably practicable to sell such rights, in a riskless principal capacity, at such place and upon such terms (including public and private sale) as it may deem proper. The Company shall assist the Depositary to the extent reasonably necessary to determine such practicability. The Depositary shall, upon such sale, convert, repatriate and distribute proceeds in such manner as the Depositary may at its discretion determine.

If by the terms of such rights offering or by reason of applicable law, the Depositary may neither make any rights available to the Holders nor arrange for the sale of the rights upon the terms herein, the Depositary shall instruct the Custodian to allow such rights to lapse.

#### **7. Distributions other than in Cash or Shares**

Whenever the Company intends to distribute to the holders of Deposited Property other than cash, Shares or rights upon Deposited Property, the Company shall give timely notice thereof to the Depositary and shall indicate therein whether or not it wishes such distribution to be made to the Holders. Upon receipt of a notice indicating that the Company wishes such distribution to be made to the Holders, the Depositary shall consult with the Company to determine whether such distribution to the Holders is lawful and reasonably practicable. The Depositary shall not make such distribution unless (i) the Company shall have requested the Depositary to make such distribution and shall have furnished to the Depositary satisfactory documentation within the terms of the Deposit Agreement, and (ii) the Depositary shall have determined that such distribution is reasonably practicable.

Upon receipt of satisfactory documentation and the request of the Company and after making the determination set forth above, the Depositary shall distribute the property so received to the Holders of record as of the record date set for that purpose, in proportion to the number of GDRs held by them respectively and in such manner as the Depositary may deem practicable for accomplishing such distribution, but only (i) upon receipt of the fees of the Depositary described in Condition 17, and (ii) net of any taxes withheld by the Depositary. The Depositary may dispose of all or a portion of the property so distributed and deposited, in such amounts and in such manner (including public or private sale) as the Depositary may deem practicable or necessary and distribute the net cash proceeds to the Holders as of the record date (i) to satisfy any taxes or governmental charges applicable to the distribution, and/or (ii) to avoid the issuance of fractional GDRs.

If (i) the Company does not request the Depositary to make such distribution available to the Holders, or (ii) the Depositary does not receive satisfactory documentation or determines that such distribution is not reasonably practicable, the Depositary shall cause such property to be sold (in a public or private sale) and shall (i) cause the proceeds of such sale to be converted into U.S. dollars and repatriated upon the terms of the Deposit Agreement and (ii) distribute the proceeds of such conversion received by the Depositary to the Holders as of the record date set for that purpose upon the terms of the Deposit Agreement, net of (i) the fees of the Depositary described in Condition 17, and (ii) any taxes withheld.

#### **8. Issuance of Additional Shares**

The Company agrees that in the event of any proposed (i) issuance of additional Shares, (ii) offering of rights to subscribe for Shares or other Deposited Property, (iii) issuance of securities convertible or exchangeable into Shares or other Deposited Property, (iv) elective cash or share dividends, or (v) redemptions of Deposited Property it will obtain U.S. legal advice and take all steps reasonably necessary to ensure that such proposed transaction does not violate the registration provisions of the Securities Act. In support of the foregoing, the Company will promptly furnish to the Depositary a written opinion of U.S. counsel (reasonably satisfactory to the Depositary) stating whether or not the circumstances of the application of such transaction to the Holders require a registration statement under the Securities Act to be in effect or is exempt from the registration requirements of the Securities Act.

If upon advice of its U.S. counsel the Company determines that the proposed transaction would require registration under the Securities Act, the Company shall (i) file the requisite registration statement, (ii) alter the terms of the transaction to avoid the need for a registration under the Securities Act or (iii) direct the Depositary to take specific measures with respect to the transaction to prevent any issuance of GDRs in violation of the registration provisions of the Securities Act. If the filing of a registration statement is required, the Depositary shall not have any obligation to proceed with the transaction unless it shall have received evidence reasonably satisfactory to it that such registration statement is in effect.



## **9. Conversion of Foreign Currency**

Whenever the Depositary shall receive any currency other than United States dollars by way of dividend or other distribution or as the net proceeds from the sale of Shares, securities, other property or rights, and if at the time of the receipt thereof the currency so received can in the judgement of the Depositary be converted on a reasonable basis into United States dollars and distributed to the Holders entitled thereto, the Depositary shall, as soon as practicable, itself convert or cause to be converted by another bank, by sale or in any other manner that it may determine, the currency so received into United States dollars. If such conversion or distribution can be effected only with the approval or licence of any government or agency thereof, the Depositary shall make reasonable efforts to apply, or procure that an application be made, for such approval or licence, if any, as it may deem desirable. If at any time the Depositary shall determine that in its judgement any currency is not convertible on a reasonable basis into United States dollars and distributable to the Holders entitled thereto, or if any approval or licence of any government or agency thereof which is required for such conversion is denied or, in the opinion of the Depositary, is not obtainable, or if any such approval or license is not obtained within a reasonable period as determined by the Depositary, the Depositary may distribute such other currency received by it (or an appropriate document evidencing the right to receive such other currency) to the Holders entitled thereto to the extent permitted under applicable law, or the Depositary may in its discretion hold such other currency for the benefit of the Holders entitled thereto. If any conversion of any such currency can be effected in whole or in part for distribution to some (but not all) Holders entitled thereto, the Depositary may at its discretion make such conversion and distribution in United States dollars to the extent possible to the Holders entitled thereto and may, to the extent permitted by applicable law, distribute the balance of such other currency received by the Depositary to, or hold such balance for the account of, the Holders entitled thereto, and notify the Holders accordingly.

## **10. Distribution of Payments**

- (A) Any distribution under Condition 4, 5, 6, 7 or 11 will be made by the Depositary to the Holders of record on the record date established by the Depositary for that purpose (which shall be the same date as the corresponding record date set by the Company, or, if different from such record date, shall be set after consultation with the Company and shall be as near as practicable to such record date) and, if the same is practicable in the opinion of the Depositary, notice shall be given promptly to the Holders in accordance with Condition 24, in each case subject to any laws or regulations applicable thereto and (subject to the provisions of Condition 9) distributions will be made in United States dollars by cheque drawn upon a bank in New York City or, in the case of the Master GDRs, according to usual practice between the Depositary and Cedel Bank, Euroclear or DTC, as the case may be. The Depositary or the Agent, as the case may be, may deduct and retain from all moneys due in respect of such GDRs in accordance with the Deposit Agreement all fees, taxes, duties, charges, costs and expenses which may become and have become payable under the Deposit Agreement or under applicable law in respect of such GDRs or the relevant Deposited Property.
- (B) Delivery of any securities or other property or rights other than cash shall be made as soon as practicable to the entitled Holders, subject to any laws or regulations applicable thereto.

## **11. Capital Reorganisation**

Upon any change in the par value, sub-division, consolidation or other reclassification of the Shares or any other part of the Deposited Property or upon any reduction of capital, or upon any reorganisation, merger or consolidation of the Company or to which it is a party (except where the Company is the continuing corporation) or the compulsory acquisition of Shares, the Depositary shall as soon as practicable give notice of such event to the Holders in accordance with Condition 24 and may at its discretion treat such event as a distribution and comply with the relevant provisions of Condition 4, 5, 6, 7 and/or 11 (as appropriate) with respect thereto, or, subject to applicable Polish laws and regulations, may execute and deliver additional GDRs in respect of Shares or may require the exchange of existing GDRs for new GDRs which reflect the effect of such change.

## **12. Withholding Taxes and Applicable Laws**

- (A) Payments to the Holders of dividends or other distributions made to the Holders on or in respect of the Deposited Shares will be subject to deduction of Polish and other withholding taxes, if any, at the applicable rates in effect from time to time.

*For a description of Polish withholding taxes with respect to dividends on Deposited Shares and capital gains received on sales of Deposited Shares, see "Taxation – Polish Taxation – Income Tax"*

If any of the Company, the Depositary or the Depositary's agents or nominees is required to, and does, withhold from any cash dividend or other cash distribution in respect of any Deposited Property any amount on account of taxes or other governmental charges, the amount distributed to the Holders in respect of GDRs representing such Deposited Property shall be reduced accordingly. The Company may also deduct the amount of any tax or governmental charges payable by the Company or the Depositary, as the case may be, in respect of such distribution or gains or other payment or any document signed in connection therewith.

Notwithstanding any other provision hereof, if the Depositary determines that any distribution of property (including Shares, rights to subscribe therefor and other securities) or gains on the transfer of GDRs or Shares are subject to any tax or governmental charges which the Depositary is obliged to withhold or pay, the Depositary may dispose of any or all of such property in such amounts and in such manner (including public or private sale) as the Depositary deems necessary and practicable to pay such taxes or governmental charges, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes or governmental charges to the Holders entitled thereto in proportion to the number of GDRs held by them respectively in accordance with the provisions of the Deposit Agreement.

- (B) If any governmental or administrative authorisation, consent, registration or permit or any report to governmental authorities is required under any applicable law in Poland in order for the Depositary to receive Shares or other securities from the Company to be deposited under the Conditions, or in order for Shares or other securities or property to be distributed under Condition 4, 5, 7 or 11, or to be subscribed under Condition 6, or to offer any rights or sell any securities represented by such rights relevant to any Deposited Shares, the Depositary shall request that the Company apply for such authorisation, consent, registration or permit or file such report on behalf of the Holders within the time required under such laws. In this connection, the Company has undertaken in the Deposit Agreement, to the extent reasonably practicable without unreasonable burden or expense on behalf of the Company, to take such action as may be required in obtaining or filing the same. The Depositary shall not distribute GDRs, Shares, securities or other property deposited under these Conditions or make any offer of any such rights or sell any securities represented by any such rights with respect to which such authorisation, consent, registration or permit or such report has not been so obtained or filed by the Company as the case may be, and shall have no duty to obtain any such authorisation, consent, registration or permit, or to file any such report except in circumstances where the same may only be obtained or filed by the Depositary without unreasonable burden or expense.

### **13. Voting Rights**

- (A) Upon receipt of notice of any meeting of holders of Shares or other Deposited Property, and upon receipt of a Voting Opinion (where requested by the Depositary pursuant to Condition 13(F)), if requested in writing by the Company the Depositary will, as soon as practicable thereafter, mail to all Holders a notice containing (i) the information included in such notice of meeting received by the Depositary from the Company, (ii) a statement that the Holders as of the close of business on the specified record date established by the Depositary will be entitled, subject to any applicable provision of Polish law, the Deposited Property or the Statutes of the Company, to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the amount of Shares or other Deposited Property represented by their respective GDRs and (iii) a statement as to the manner in which such instructions may be given. In addition, the Depositary shall deliver or procure delivery to the Company, as required by Polish law, of a deposit certificate in respect of the Deposited Shares not less than seven days prior to the date of the annual ordinary meeting of the shareholders of the Company (or such date as may be required in the Statutes or pursuant to Polish law). Subject to paragraphs (B)-(E) below, the Depositary shall vote or cause to be voted Shares or other Deposited Property in accordance with sub-paragraphs (1) or (2) below:
- (1) Upon the written request of a Holder on the record date, received on or before the date established by the Depositary for such purpose, the Depositary shall endeavour (insofar as is reasonably practicable and (where appropriate) to the extent advised in the Voting Opinion that such action is permitted under applicable Polish law and the Statutes of the Company), to vote or cause to be voted the amount of Shares or other Deposited Property represented by the GDRs of such Holder in accordance with the non-discretionary voting instructions set forth in such request. Except to the extent indicated in paragraph (2) below, the Depositary shall not vote or attempt to exercise the right to vote that attaches to the Shares or other Deposited Property, other than in accordance with such instructions.



- (2) If the Depositary determines that it is not reasonably practicable or (where appropriate) it is advised in the Voting Opinion that it is not permissible under applicable Polish law or the Statutes of the Company to vote or cause to be voted some Shares or other Deposited Property represented by GDRs in favour of a resolution, and other Shares or Deposited Property against such resolution, in accordance with sub-paragraph (1) of (A) above, the Depositary may, if the Voting Opinion confirms it to be permissible under Polish law (i) calculate from the non-discretionary voting instructions that it has received from all Holders (x) the aggregate number of votes in favour of a particular resolution or other matter submitted to such vote and (y) the aggregate number of votes opposed to such resolution or other matter, and (ii) cast or cause to be cast in favour of or opposed to such resolution or other matter the number of votes representing the net positive difference between such aggregate number of votes in favour of such resolution or other matter and such aggregate number of votes opposed to such resolution or other matter.

However, if, prior to the time limit established by the Depositary for such purpose, completed instructions are not received by the Depositary from any Holders pursuant to the foregoing, or the Depositary is not permitted by applicable law or the Company's Statutes to vote the Shares or other Deposited Property represented by GDRs of the relevant Holder at the relevant shareholders meeting, the Depositary will not exercise the voting rights attributable to such Shares or other Deposited Property at such shareholders meeting.

- (B) Notwithstanding any other provision hereof or of the Deposit Agreement, no owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner holding more than 5 per cent. of the total voting equity securities of the Company, directly in the form of Shares or indirectly in the form of GDRs, shall instruct the Depositary to exercise any voting rights on behalf of such owner, Holder or Beneficial Owner to the extent that such exercise would result in such owner, Holder or Beneficial Owner exercising directly or indirectly more than 5 per cent. of the total voting equity securities of the Company, provided that, in the event an owner, Holder or Beneficial Owner has provided the Company with all necessary information required by Polish law to be provided to the Company, and provided further that such owner, Holder, or Beneficial Owner is not prohibited by Polish law from voting some or all of such securities, such owner, Holder or Beneficial Owner may instruct the Depositary to exercise voting rights in relation to its entire holding.
- (C) Notwithstanding any other provision hereof or of the Deposit Agreement, no owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner holding more than 10 per cent. of the total voting equity securities of the Company, directly in the form of Shares or indirectly in the form of GDRs, shall instruct the Depositary to exercise any voting rights on behalf of such owner, Holder, or Beneficial Owner to the extent that such exercise would result in such owner, Holder or Beneficial Owner exercising directly or indirectly more than 10 per cent. of the total voting equity securities of the Company, provided that, in the event that the Polish Securities Commission consents, an owner, Holder or Beneficial Owner holding more than 10 per cent. of such securities may instruct the Depositary to exercise voting rights in relation to its entire holding.
- (D) Notwithstanding any other provision hereof or of the Deposit Agreement, each owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner owning more than 33 per cent. of the total voting equity securities of the Company, directly in the form of Shares or indirectly in the form of GDRs, instructing the Depositary to exercise any voting rights on behalf of such owner, Holder or Beneficial Owner shall be deemed to represent and warrant that it has complied with the provisions of Article 87 of the Law on Public Trading and made a bid for the remaining voting equity securities of the Company as set out therein.
- (E) Notwithstanding any other provision hereof or of the Deposit Agreement each owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner instructing the Depositary to exercise voting rights on behalf of such owner, Holder or Beneficial Owner shall be deemed to represent and warrant that it has complied with the provisions of Condition 30 at the time of its acquisition of Shares and GDRs then held by such owner, Holder or Beneficial Owner.
- (F) If the Depositary determines that it is not reasonably practicable or (where appropriate) it is advised in the Voting Opinion that it is not permissible under applicable Polish law, or the Statutes of the Company to vote in accordance with sub-paragraphs (A) (1) or (2) hereof, then it shall not vote or attempt to exercise the rights to vote that attach to the Shares or other Deposited Property. Prior to acting or refraining from acting as described herein, the Depositary shall be entitled to receive a legal opinion from recognised legal counsel in Poland reasonably acceptable to the Depositary (such opinion to be provided at the expense of the Company and to be in form and substance reasonably satisfactory to the Depositary) confirming that it

is permitted under Polish law to exercise votes in accordance with Condition 13(A)(1) or (2) hereof (the "Voting Opinion").

#### 14. Documents to be Furnished, Recovery of Taxes, Duties and Other Charges

The Depositary shall not be liable for any taxes, duties, charges, costs or expenses which may become payable in respect of the Shares or other Deposited Property or the GDRs, whether under any present or future fiscal or other laws or regulations, and such part thereof as is proportionate or referable to a GDR shall be payable by the Holder thereof to the Depositary at any time on request or may be deducted from any amount due or becoming due on such GDR in respect of any dividend or other distribution. In default thereof, the Depositary may for the account of the Holder satisfy such obligations out of the proceeds of a sale of Shares on the Warsaw Stock Exchange or, subject to Polish law and regulations, of a sale of other Deposited Property and subsequently pay any surplus to the Holder. Any such request shall be made by giving notice in accordance with Condition 24.

#### 15. Liability

- (A) In acting hereunder the Depositary shall have only those duties, obligations and responsibilities expressly, specified in the Deposit Agreement and these Conditions, and, other than holding the Deposited Property for the benefit of Holders as bare trustee, does not assume any relationship of trust for or with the Holders or Beneficial Owners or any other person.
- (B) Neither the Depositary, the Custodian, the Company, any Agent, nor any of their agents, officers, directors or employees shall incur any liability to any other of them or to any Holder or Beneficial Owner or any other person if, by reason of any provision of any present or future law or regulation of Poland or any other country or of any relevant governmental authority, or by reason of the interpretation or application of any such present or future law or regulation or any change therein, or by reason of any other circumstances beyond their control, or in the case of the Depositary, the Custodian, any Agent or any of their agents, officers, directors or employees, by reason of any provision, present or future, of the constitutive documents of the Company, any of them shall be prevented, delayed or forbidden from doing or performing any act or thing which the terms of the Deposit Agreement or these Conditions provide shall or may be done or performed; nor shall any of them incur any liability to any Holder or Beneficial Owner or any other person with an interest in any GDR by reason of any exercise of, or failure to exercise, any voting rights attached to the Shares or other Deposited Property or any of them or any other discretion or power provided for in the Deposit Agreement. Any such party may rely on, and shall be protected in acting upon, any written notice, request, direction or other document believed by it to be genuine and to have been duly signed or presented (including a translation which is made by a translator believed by it to be competent or which appears to be authentic).
- (C) Neither the Depositary nor any Agent shall be liable (except for its own negligence or bad faith or that of its agents, officers, directors or employees) to the Company or any Holder or Beneficial Owner or any other person, by reason of having accepted as valid or not having rejected any certificate for Shares or GDRs or any signature on any transfer or instruction purporting to be such and subsequently found to be forged or not authentic or (except as provided in (Q)) below for its failure to perform any obligations under the Deposit Agreement or these Conditions.
- (D) The Depositary and its agents may engage or be interested in any financial or other business transactions with the Company or any of its subsidiaries or affiliates, or in relation to the Deposited Property (including without prejudice to the generality of the foregoing, the conversion of any part of the Deposited Property from one currency to another), may at any time hold or be interested in GDRs for its own account, and shall be entitled to charge and be paid all usual fees, commissions and other charges for business transacted and acts done by it as a bank and not in the capacity of Depositary, in relation to matters arising under the Deposit Agreement (including, without prejudice to the generality of the foregoing, charges on the conversion of any part of the Deposited Property from one currency to another and any sales of property) without accounting to Holders or any other person for any profit arising therefrom.
- (E) The Depositary shall endeavour to effect any such sale as is referred to or contemplated in Conditions 5, 6, 7, 11, 12, 14 or 22 or any such conversion as is referred to in Condition 9 in accordance with the Depositary's normal practices and procedures but shall have no liability (in the absence of its own negligence or bad faith or that of its agents, officers, directors or employees) with respect to the terms of such sale or conversion or if such sale or conversion shall not be reasonably practicable.

- (F) The Depositary shall not be required or obliged to monitor, supervise or enforce the observance and performance by the Company of its obligations under or in connection with the Deposit Agreement or these Conditions.
- (G) The Depositary shall have no responsibility whatsoever to the Company, any Holders or Beneficial Owners or any other person as regards any deficiency which might arise because the Depositary is subject to any tax in respect of the Deposited Property or any part thereof or any income therefrom or any proceeds thereof.
- (H) In connection with any proposed modification, waiver, authorisation or determination permitted by the terms of the Deposit Agreement, the Depositary shall not, except as otherwise expressly provided in Condition 23, be obliged to have regard to the consequence thereof for the Holders or Beneficial Owners or any other person.
- (I) Notwithstanding anything else contained in the Deposit Agreement or these Conditions, the Depositary may refrain from doing anything which could or might, in its opinion, be contrary to any law of any jurisdiction or any directive or regulation of any agency or state or which would or might otherwise render it liable to any person and the Depositary may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.
- (J) The Depositary may, in relation to the Deposit Agreement and these Conditions, act or take no action on the advice or opinion of, or any certificate or information obtained from, any lawyer, valuer, accountant, banker, broker, securities company or other expert whether obtained by the Company, the Depositary or otherwise and shall not be responsible or liable for any loss or liability occasioned by so acting or refraining from acting or relying on information from persons presenting Shares for deposit or GDRs for surrender or requesting transfer thereof.
- (K) Any such advice, opinion, certificate or information (as discussed in (J) above) may be sent or obtained by letter, telex, facsimile transmission, telegram or cable and the Depositary shall not be liable for acting on any advice, opinion, certificate or information purported to be conveyed by any such letter, telex or facsimile transmission although the same shall contain some error or shall not be authentic.
- (L) The Depositary may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing, a certificate, letter or other communication, whether oral or written, signed or otherwise communicated on behalf of the Company or by a person duly authorised by the Management Board of the Company or such other certificate from persons specified in (J) above which the Depositary considers appropriate and the Depositary shall not be bound in any such case to call for further evidence or be responsible for any loss or liability that may be occasioned by the Depositary acting on such certificate.
- (M) The Depositary shall have no obligation under the Deposit Agreement except to perform its obligations as are specifically set out therein without negligence or bad faith.
- (N) The Depositary may delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons, whether being a joint Depositary of this the Deposit Agreement or not and not being a person to whom the Company may reasonably object, all or any of the powers, authorities and discretions vested in the Depositary by the Deposit Agreement and such delegation may be made upon such terms and subject to such conditions, including power to sub-delegate and subject to such regulations as the Depositary may in the interests of the Holders think fit provided that no objection from the Company to any such delegation as aforesaid may be made to a person whose financial statements are consolidated with those of the Depositary's ultimate holding company. Any delegation by the Depositary shall be on the basis that the Depositary is acting on behalf of the Holders and Beneficial Owners and the Company in making such delegation. The Company shall not in any circumstances and the Depositary shall not (provided that it shall have exercised reasonable care in the selection of such delegate) be bound to supervise the proceedings or be in any way responsible for any loss, liability, cost, claim, action, demand or expense incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate. However, the Depositary shall, if practicable, and if so requested by the Company, pursue (at the Company's expense and subject to receipt by the Depositary of such indemnity and security for costs as the Depositary may reasonably require) any legal action it may have against such delegate or sub-delegate, arising out of any such loss caused by reason of any such misconduct or default. The Depositary shall, within a reasonable time of any such delegation or any renewal, extension or termination thereof, give notice thereof to the Company. Any delegation under this Condition which includes the power to sub-delegate shall provide that the delegate shall, within a specified time of any sub-delegation or amendment, extension or termination thereof, give notice thereof to the Company and the Depositary.



- (O) The Depositary may, in the performance of its obligations hereunder, instead of acting personally, employ and pay an agent, whether a solicitor or other person, to transact or concur in transacting any business and do or concur in doing all acts required to be done by such party, including the receipt and payment of money.
- (P) The Depositary shall be at liberty to hold or to deposit the Deposit Agreement and any deed or document relating thereto in any part of the world with any banking company or companies (including itself) whose business includes undertaking the safe custody of deeds or documents or with any lawyer or firm of lawyers of good repute, and the Depositary shall not (in the case of deposit with itself, in the absence of its own negligence, wilful default or bad faith or that of its agents, directors, officers or employees) be responsible for any losses, liability or expenses incurred in connection with any such deposit.
- (Q) Notwithstanding anything to the contrary contained in the Deposit Agreement or these Conditions, the Depositary shall not be liable in respect of any loss or damage which arises out of or in connection with its performance or non-performance or the exercise or attempted exercise of, or the failure to exercise any of, its powers or discretions under the Deposit Agreement except to the extent that such loss or damage arises from the negligence, wilful default or bad faith of the Depositary or that of its agents, officers, directors or employees.
- (R) No provision of the Deposit Agreement or these Conditions shall require the Depositary to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and security against such risk of liability is not assured to it.

#### **16. Issue and Delivery of Replacement GDRs**

Subject to relevant Polish laws and regulations and the payment of the relevant fees, taxes, duties, charges, costs and expenses and such terms as to evidence and indemnity as the Depositary may require, replacement GDRs will be issued by the Depositary and will be delivered in exchange for, or replacement of, outstanding, lost, stolen, mutilated, defaced or destroyed GDRs upon surrender thereof (except in the case of destruction, loss or theft) to the Depositary or (at the request, risk and expense of the Holder) at the specified office of any Agent.

#### **17. Depositary's Fees, Costs and Expenses**

The Depositary will be entitled to charge and receive from any party withdrawing Shares or surrendering GDRs the following remuneration and reimbursement (such remuneration and reimbursement being payable on demand) where applicable: (1) taxes and other governmental charges; (2) such registration fees as may from time to time be in effect for the registration of transfers of Shares generally on the share register of the Company or Foreign Registrar (or any other appointed agent of the Company for transfer and registration of Shares) and applicable to transfers of Shares to the name of the Depositary or its nominee or the Custodian or its nominee on the making of deposits or withdrawals; (3) such cable, telex and facsimile transmission expenses as are generally expressly provided in the Deposit Agreement; (4) such reasonable and customary expenses as are incurred by the Depositary in the conversion of Foreign Currency pursuant to the Deposit Agreement; (5) a fee not in excess of U.S. \$5.00 per 100 GDRs (or portion thereof) for the surrender of GDRs pursuant to the Deposit Agreement; (6) a fee not in excess of U.S. \$0.01 per GDR for cash dividend payments; and (7) a fee not in excess of U.S. \$0.02 per GDR (or portion thereof) for any other cash distribution made pursuant to the Deposit Agreement.

#### **18. Agents**

- (A) The Depositary shall be entitled, with the approval of the Company, to appoint one or more agents (the "Agents") for the purpose, *inter alia*, of making distributions to the Holders.
- (B) Notice of appointment or removal of any Agent or of any change in the specified office of the Depositary or any Agent will be duly given by the Depositary to the Holders in accordance with Condition 24.

#### **19. Listing**

The Company has undertaken in the Deposit Agreement to use all reasonable endeavours to maintain, so long as any GDR is outstanding, a listing for the GDRs on the London Stock Exchange so long as the requirements for such listing are not unduly onerous or burdensome and the cost of such listing is not unreasonable in each case when compared to other official stock exchanges based in Europe. For that purpose the Company will pay all fees and execute and deliver all undertakings required by the London Stock Exchange in connection therewith. In the event that such listing is not maintained, the Company has undertaken in the Deposit Agreement to use its best endeavours to obtain and maintain a listing of the GDRs on another internationally

recognised stock exchange in Europe designated as a "recognised investment exchange" for the purposes of the Financial Services Act 1986.

## **20. The Custodian**

The Depositary has agreed with the Custodian that the Custodian will receive and hold in custody (or appoint agents approved by the Depositary to receive and hold in custody) all Deposited Property for the account, and to the order, of the Depositary in accordance with the applicable terms of the Deposit Agreement and any custodian agreement between the Depositary and the Custodian which terms include a requirement to segregate the Deposited Property from the other property of, or held by, the Custodian provided that the Custodian shall not be obliged to segregate cash comprised in the Deposited Property from cash otherwise held by the Custodian. Upon receiving notice of the resignation of the Custodian, the Depositary shall promptly appoint a successor Custodian, which shall upon acceptance of such appointment become the Custodian under the Deposit Agreement. Whenever the Depositary in its discretion determines that it is in the best interests of the Holders to do so, it may, after prior consultation with the Company, terminate the appointment of the Custodian and, in the event of the termination of the appointment of the Custodian, the Depositary shall promptly appoint a successor Custodian, which shall upon acceptance of such appointment become the Custodian under the Deposit Agreement on the effective date of such termination and notify Holders of such change immediately upon such change taking effect in accordance with Condition 24. Notwithstanding the foregoing, the Depositary may temporarily deposit the Deposited Property in a manner or a place other than as herein specified; provided that in the case of such temporary deposit in another place the Company shall have consented to such deposit, and such consent of the Company shall have been delivered to the Custodian.

## **21. Resignation and Termination of Appointment of the Depositary**

- (A) The Company may terminate the appointment of the Depositary under the Deposit Agreement by giving at least 90 days' notice in writing to the Depositary and the Custodian, and the Depositary may resign as Depositary by giving at least 90 days' notice in writing to the Company and the Custodian. Within 30 days after the giving of such notice, notice thereof shall be duly given by the Depositary to the Holders.

The termination of appointment or resignation of the Depositary shall take effect on the date specified in such notice; provided that the Depositary shall procure that no such termination of appointment or resignation shall take effect until the appointment by the Company of a successor depositary under the Deposit Agreement and the acceptance of such appointment to act in accordance with the terms hereof, by the successor depositary. The Company has undertaken in the Deposit Agreement to use its best endeavours to procure the appointment of a successor depositary (and, to the extent required by applicable Polish law, to obtain the approval of such successor depositary by the Polish Securities Commission), as soon as reasonably possible following notice of such termination or resignation (or, if later, upon receipt of any approval required by applicable Polish law, including if applicable the approval of the successor depositary by the Polish Securities Commission). Upon any such appointment and acceptance, notice thereof shall be duly given by the successor depositary to the Holders.

- (B) Upon the termination of appointment or resignation of the Depositary, the Depositary shall deliver to its successor as depositary sufficient information and records to enable such successor to perform its obligations under the Deposit Agreement and shall deliver and pay to such successor depositary all property and cash held by it under the Deposit Agreement. Upon the date when such termination of appointment or resignation takes effect, the Deposit Agreement provides that the Custodian shall be deemed to be the Custodian thereunder for such successor depositary and shall hold the Deposited Property for such successor depositary.

## **22. Termination of Deposit Agreement**

Either the Company or the Depositary may terminate the Deposit Agreement by giving at least 90 days' notice to the other and to the Custodian. Within 30 days after the giving of such notice, notice of such termination shall be duly given by the Depositary to the Holders. During the period from the giving of such notice to the Holders until termination, each Holder shall be entitled to obtain delivery of the Deposited Property relative to each GDR held by it, subject to and upon compliance with, among other things, the provisions of Condition 2, free of charge for such delivery and surrender but otherwise in accordance with the Deposit Agreement. If any GDRs shall remain outstanding after the date of termination of the Deposit Agreement, the Depositary shall forthwith sell the Deposited Property then held by it under the Deposit Agreement and thereafter deliver the net proceeds of any such sale, together with any other cash then held by it under the Deposit Agreement, *pro rata* to Holders of GDRs which have not previously been so surrendered. After making such sale, the Depositary shall be

discharged from all obligations under the Deposit Agreement and these Conditions, except to account to Holders for such net proceeds and other cash.

### **23. Amendment of Deposit Agreement and Conditions**

All and any of the provisions of the Deposit Agreement and these Conditions (other than this Condition 23) may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable. Notice of any amendment of these Conditions (except to correct a manifest error) shall be duly given to the Holders in accordance with Condition 24 by the Depositary, and any amendment (except as aforesaid) which shall increase or impose fees or charges payable by Holders or which shall otherwise, in the opinion of the Depositary, be materially prejudicial to the interests of the Holders (as a class) shall not become effective as to the outstanding GDRs until the expiration of 30 days after such notice shall have been given. During such period of 30 days, each Holder shall be entitled to obtain, subject to and upon compliance with, among other things, Condition 2, delivery of or require sale of the Deposited Property relative to each GDR held by it upon surrender thereof free of charge for such delivery or sale and surrender but otherwise in accordance with the Deposit Agreement. Each Holder at the time when any such amendment so becomes effective shall be deemed, by continuing to hold a GDR, to approve such amendment and to be bound by the terms thereof in so far as they affect the rights of the Holders. In no event shall any amendment impair the right of any Holder to receive, subject to and upon compliance with Condition 2, the Deposited Property attributable to the relevant GDR.

For the purposes of this Condition 23, an amendment shall not be regarded as being materially prejudicial to the interests of Holders if its principal effect is to permit the issue of GDRs in respect of additional Shares according to the relevant Polish laws and regulations to be held by the Depositary or its nominee which are or will become fully consolidated as a single series with the other Deposited Shares, provided that temporary GDRs will represent such Shares until they are so consolidated.

### **24. Notices**

- (A) Any and all notices to be given to any Holder shall be deemed to have been duly given if personally delivered, or sent by mail (if domestic, first class; if overseas, first class airmail) or air courier, or by telex or facsimile transmission confirmed by letter sent by mail or air courier, addressed to such Holder at the address of such Holder as it appears on the register maintained by the Depositary, or, if such Holder shall have filed with the Depositary a written request that notices intended for such Holder be mailed to some other address, at the address specified in such request.
- (B) Delivery of a notice sent by mail or air courier shall be deemed to be effective at the time when a duly addressed letter containing the same is deposited, postage prepaid, in a post office letter box, and any notice sent by telex transmission, as provided in this Condition, shall be deemed to be effective when the sender receives the answer back from the addressee at the end of telex and any notice sent by facsimile transmission, as provided in this Condition, shall be deemed to be effective upon receipt of confirmation of transmission.

### **25. Reports and Other Communications**

The Depositary will make available for inspection by the Holders at its Principal Office any reports and communications, including any proxy soliciting material, received from the Company which are both (a) received by the Depositary as the holder of the Deposited Property or by the Custodian on behalf of the Depositary and (b) made generally available to the holders of such Deposited Property by the Company. The Depositary will also send to the Holders copies of any notices and reports furnished by the Company pursuant to the Deposit Agreement. Any such reports and communications, including any proxy soliciting material, furnished to the Depositary by the Company will be furnished in English. In no event will the Depositary have any liability for the contents of any such reports, communications or other material.

Pursuant to the deed poll dated the Closing Date (the "Deed Poll"), the Company has undertaken that for so long as any of the GDRs or the Deposited Shares are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, during any period in which it is neither subject to Section 13 or 15(d) of the Exchange Act nor exempt from reporting pursuant to Rule 12g3-2(b) thereunder, provide to any Holder or Beneficial Owner of such restricted securities or to any prospective purchaser of such restricted securities designated by a Holder or Beneficial Owner, upon the request of such Holder, Beneficial Owner or prospective purchaser, in the English language, any information required to be provided by Rule 144A(d)(4) under the Securities Act.



## **26. Copies of Company Notices**

On or before the day on which the Company first gives notice, by mail, publication or otherwise, to holders of any Shares or other Deposited Property, whether in relation to the taking of any action in respect thereof or in respect of any dividend or other distribution thereon or of any meeting or adjourned meeting of such holders or otherwise, the Company has undertaken in the Deposit Agreement to transmit to the Custodian and the Depositary such number of copies of such notice and any other material (which contains information having a material bearing on the interests of the Holders) furnished to such holders by the Company in connection therewith as the Depositary may reasonably request, at the Company's own expense. The Depositary shall arrange for prompt mailing of copies thereof to all Holders and, at the reasonable request of the Company, shall also make such notices, reports and communications available to all Holders in the same manner as the Company makes them generally available to holders of Shares or on such other basis as the Company may advise the Depositary is required by any law or regulation, or any requirement of any stock exchange to which the Company may be subject, subject to any limitations imposed by any applicable law.

The Company shall also provide the Depositary with an English language version of the Company's annual reports and English language translations of notices and communications relating to matters to be voted on by holders of Shares and may provide English language summaries of other notices, reports and communications. If the Company fails to provide such English language reports, translations or summaries, or if the Depositary has reason to believe that such English language reports, translations or summaries are deficient, the Depositary may, but shall not be required to, at the Company's expense, obtain English translations or adequate English translations or adequate English summaries of any such notices, reports or communications.

The Depositary shall make available for inspection during business hours by Holders at its Principal London or New York Office, copies of the Deposit Agreement and any notices, reports or communications, including any voting instruction forms, received from the Company which are both (a) received by the Depositary or its nominee, as the holder of the Deposited Property and (b) made generally available to the holders of such Deposited Property by the Company.

## **27. Fixing of Record Date**

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or whenever the Depositary shall receive notice of any meeting of holders of Shares or other Deposited Property, or whenever for any reason the Depositary causes a change in the number of Shares that are represented by each GDR, or whenever the Depositary shall find it necessary or convenient, the Depositary shall fix a record date, which date shall, to the extent practicable, be the same as the record date fixed by the Company, (a) for the determination of the Holders who shall be (i) entitled to receive such dividend, distribution or rights or the net proceeds of the sale thereof or (ii) entitled to give instructions for the exercise of voting rights at any such meeting, (b) for fixing the date on or after which each GDR will represent the changed number of Shares or (c) for such other purpose specified by the Depositary. Subject to the terms and conditions of the Deposit Agreement, the Holders on such record date shall be entitled, as the case may be, to receive the amount distributable or such rights or the net proceeds of sale thereof in proportion to the number of GDRs held by them respectively and to give voting instructions, to exercise the rights of Holders under the Deposit Agreement with respect to such changed number of Shares and to act in respect of any other such matter.

## **28. Moneys Held by the Depositary**

The Depositary shall be entitled to deal with moneys paid to it by the Company for the purposes of the Deposit Agreement in the same manner as other moneys paid to it as a banker by its customers and shall not be liable to account to the Company or any Holder or any other person for any interest thereon, except as otherwise agreed and shall not be obliged to segregate such moneys from other moneys belonging to the Depositary.

## **29. Pre-Release**

The Depositary and its agents may own and deal in any class of securities of the Company and its affiliates and in GDRs. The Depositary may issue GDRs against evidence of rights to receive Shares from the Company, or any custodian, registrar, transfer agent, clearing agency or other entity involved in ownership or transaction records in respect of the Shares. Such evidence of rights shall consist of written blanket or specific guarantees of ownership of Shares furnished on behalf of the holder thereof. In its capacity as Depositary, the Depositary shall not lend Shares or GDRs; provided, however, that the Depositary may (i) issue GDRs prior to the receipt of Shares pursuant to Condition 1, (ii) deliver Shares prior to the receipt and cancellation of GDRs pursuant to Condition 2, including GDRs which were issued under (i) above but for which Shares may not have been received (each such transaction a "Pre-Release Transaction"). The Depositary may receive GDRs in lieu of Shares under (i) above and receive Shares in lieu of GDRs under (ii) above. Each such Pre-Release Transaction

will be (a) accompanied by or subject to a written agreement whereby the person or entity (the "Applicant") to whom GDRs or Shares are to be delivered (w) represents that at the time of the Pre-Release Transaction the Applicant or its customer owns the Shares or GDRs that are to be delivered by the Applicant under such Pre-Release Transaction, (x) agrees to indicate the Depositary as owner of such Shares or GDRs in its records and to hold such Shares or GDRs in trust for the Depositary until such Shares or GDRs are delivered to the Depositary or the Custodian, (y) unconditionally guarantees to deliver to the Depositary or the Custodian, as applicable, such Shares or GDRs and (z) agrees to any additional restrictions or requirements that the Depositary deems appropriate, (b) at all times fully collateralised with cash, United States government securities or such other collateral as the Depositary deems appropriate, (c) terminable by the Depositary on not more than five (5) business days notice and (d) subject to such further indemnities and credit regulations as the Depositary deems appropriate. The Depositary will normally limit the number of GDRs and Shares involved in such Pre-Release Transactions at any one time to thirty percent (30 per cent.) of the GDRs outstanding (without giving effect to GDRs outstanding under (i) above) provided, however, that the Depositary reserves the right to change or disregard such limit from time to time as it deems appropriate. The Depositary may also set limits with respect to the number of GDRs and Shares involved in Pre-Release Transactions with any one person on a case by case basis as it deems appropriate.

The Depositary may retain for its own account any compensation received by it in connection with the foregoing. Collateral provided pursuant to (b) above, but not the earnings thereon, shall be held for the benefit of the Holders.

### **30. Disclosure of Interests**

- (A) The Company and the Depositary may from time to time request Holders to provide information as to the capacity in which such Holders own or owned GDRs and regarding the identity of any other persons then or previously interested in such GDRs and the nature of such interest and various other matters. Each Holder agrees to provide any such information requested by the Company or the Depositary.
- (B) To the extent that provisions of or governing any Deposited Property, the Statutes of the Company or applicable law may require the disclosure of, or limitations in relation to, beneficial or other ownership of Deposited Property and other securities of the Company, the Holders and Beneficial Owners of GDRs shall comply with the Company's instructions to Holders and Beneficial Owners of GDRs in respect of such disclosure or limitation, as may be forwarded to them from time to time by the Depositary pursuant to Condition 26. Holders and Beneficial Owners shall comply with all such disclosure requirements of the Company from time to time.
- (C) In addition to any other notification requirements applicable under Polish law, any owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner which acquires, directly through its ownership of Shares or indirectly through its ownership of GDRs or otherwise, 5 per cent. or more or 10 per cent. or more of the total voting equity securities of the Company shall provide written notification of such fact to the Depositary (which notice shall specify its name and the number of GDRs held directly or indirectly by such owner, Holder or Beneficial Owner) within 7 days of such acquisition of 5 per cent. or more or 10 per cent. or more, as the case may be, of such voting equity securities. The Depositary shall forward such notice to the Company as soon as possible after receipt and the Company shall promptly forward such notice from the Depositary to the Polish Securities Commission.
- (D) In addition to any other notification requirements applicable under Polish law, any owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner which holds, directly through its ownership of Shares or indirectly through its ownership of GDRs or otherwise, 10 per cent. or more of the total voting equity securities of the Company, shall provide written notification to the Depositary of any change in the number of voting equity securities held directly or indirectly by such Holder or Beneficial Owner to the extent that such change is by an amount equal to 2 per cent. or more of the total voting equity securities of the Company. Such notice shall specify its name and the number of GDRs held directly or indirectly by such owner, Holder or Beneficial Owner and shall be made within 7 days of such change. The Depositary shall forward such notice to the Company as soon as practicable after receipt and the Company shall promptly forward such notice from the Depositary to the Polish Securities Commission.
- (E) In addition to any other notification requirements applicable under Polish law, any owner, Holder (other than DTC or its nominee, Cede & Co.) or Beneficial Owner which acquires, directly through its ownership of Shares or indirectly through its ownership of GDRs or otherwise, or which intends to acquire 25 per cent., 33 per cent. or 50 per cent. or more of the total voting equity securities of the Company shall provide written notification of such fact to the Depositary (which notice shall specify its name and the

number of GDRs held directly or indirectly by such Holder, Owner or Beneficial Owner prior to such acquisition). The Depositary shall forward such notice to the Company as soon as practicable after receipt and the Company shall promptly forward such notice from the Depositary to the Polish Securities Commission. Such Owner, Holder or Beneficial Owner shall not make any such acquisition if the Polish Securities Commission or any other Polish governmental authority issues an order prohibiting the acquisition of such securities.

### **31. Severability**

In case any one or more of the provisions contained in the Deposit Agreement or in these Conditions shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained therein or herein shall in no way be affected, prejudiced or otherwise disturbed thereby.

### **32. Governing Law**

- (A) The Deposit Agreement and the GDRs are governed by and construed in accordance with English law except that the certifications referred to in Conditions 1 and 2 and set forth in Schedules 2 and 3 to the Deposit Agreement and any provisions relating thereto shall be governed by and construed in accordance with the laws of the State of New York and the United States. The rights and obligations attaching to the Deposited Shares are governed by Polish law.
- (B) Disputes arising under the Deposit Agreement brought by the Depositary may, at the discretion of the Depositary, be settled by arbitration in accordance with the Rules of the London Court of International Arbitration.
- (C) The Company has submitted in respect of the Deposit Agreement and the Deed Poll to the jurisdiction of the English courts and the courts of the State of New York and any United States Federal court sitting in New York City. The Company irrevocably appoints KGHM Polish Copper Ltd, Lowndes House, 1-9 City Road, London EC1Y 1AA, as its agent in England to receive service of process in any Proceedings (as defined below) in England based on the Deposit Agreement and the Deed Poll and appoints CT Corporation with offices at 1633 Broadway, New York, NY 10019 as its agent in New York to receive service of process in any Proceedings in New York based on the Deposit Agreement and the Deed Poll. If for any reason the Company does not have such an agent in England or New York as the case may be, it will promptly appoint a substitute process agent and notify the Holders and the Depositary of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.
- (D) The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Deposit Agreement and accordingly any legal action or proceedings arising out of or in connection with the Deposit Agreement ("Proceedings") may be brought in such courts. Without prejudice to the foregoing, the Depositary and the Company further irrevocably agree that any Proceedings may be brought in any New York State or United States Federal Court sitting in New York City. The Company and the Depositary each irrevocably submits to the non-exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.
- (E) These submissions are made for the benefit of each of the Holders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdictions (whether concurrently or not).
- (F) In the event that the Depositary is made a party to, or is otherwise required to participate in, any litigation, arbitration, or proceeding (whether judicial or administrative) which arises from or is related to or is based upon any act or failure to act by the Company, or which contains allegations to such effect, upon notice from the Depositary, the Company shall fully cooperate with the Depositary in connection with such litigation, arbitration or proceeding.
- (G) The Depositary irrevocably appoints Citibank, London Branch, Cottons Centre, Hays Lane, London SE1 2QP as its agent in England to receive service of process in any Proceedings in England based on any of the GDRs. If for any reason the Depositary does not have such an agent in England, it will promptly appoint a substitute process agent and notify the Holders and the Company of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.



- (H) To the extent that the Company may in any jurisdiction claim for itself or its assets or revenues immunity, sovereign or otherwise, from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Company or its assets or revenues, the Company agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction and, in particular, in any proceedings taken in New York City the foregoing waiver of immunity shall have effect under and be construed in accordance with the United States Foreign Sovereign Immunities Act of 1976.