

# **Polygon AB (publ)**

Prospectus regarding listing of maximum EUR 180,000,000 senior  
secured floating rate notes issued by Polygon AB (publ)

### Important Information

In this prospectus, the “**Issuer**” and “**Polygon**” means Polygon AB (publ), reg. no. 556816-5855. The “**Guarantors**” means the Issuer, Polygon International AB, reg. no. 556807-6417 and Polygon Sverige AB, reg. no. 556034-6164 (each a “**Guarantor**”). The “**Parent**” means the Issuer’s parent company Polygon Holding AB reg.no. 556809-3511 and the “**Group**” means the Parent with all its subsidiaries (including the Issuer) from time to time (each a “**Group Company**”).

“**Euroclear Sweden**” refers to Euroclear Sweden AB. “**SEK**” refers to Swedish kronor and “**EUR**” refers to Euro.

Words and expressions defined in the terms and conditions for Polygon AB’s (publ) maximum EUR 180,000,000 senior secured floating rate notes dated 14 April 2014 (the “**Terms and Conditions**”) as set out in this prospectus (the “**Prospectus**”) beginning on page 41 have the same meanings when used in this Prospectus, unless expressly stated or the context requires otherwise.

### Notice to investors

On 28 March 2014 the Issuer resolved to issue maximum EUR 180,000,000 senior secured floating rate notes (the “**Notes**”). The Issuer’s obligations under the Notes are guaranteed by the Guarantors by way of a separated executed guarantee agreement dated 16 April 2014 (the “**Guarantee Agreement**”). This Prospectus has been prepared for the listing of the Notes on Nasdaq Stockholm. The Prospectus does not contain and does not constitute an offer or a solicitation to buy or sell Notes.

The Prospectus has been prepared pursuant to the provisions of the Swedish Financial Instruments Trading Act (*Sw. lagen (1991:980) om handel med finansiella instrument*) (the “**Trading Act**”) and the Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council (as amended). The Prospectus has been approved and registered by the Swedish Financial Supervisory Authority (*Sw. Finansinspektionen*) (the “**SFSA**”) pursuant to the provisions of Chapter 2, Sections 25 and 26 of the Trading Act. Approval and registration by the SFSA does not imply that the SFSA guarantees that the information provided in the Prospectus is correct and complete.

The Prospectus is governed by Swedish law. The courts of Sweden have exclusive jurisdiction to settle any dispute arising out of or in connection with this Prospectus. The Prospectus may not be distributed in any jurisdiction where such distribution would require any additional prospectus, registration or measures other than those required under Swedish law, or otherwise would conflict with regulations in such jurisdiction. Persons into whose possession the Prospectus may come are required to inform themselves about, and comply with such restrictions. Any failure to comply with such restrictions may result in a violation of applicable securities regulations. The Notes have not been, and will not be, registered under the United States Securities Act of 1933 or the securities laws of any state or other jurisdiction outside Sweden. Subject to certain exemptions, the Notes may not be offered, sold or delivered within the United States or to, or for the account or benefit of, U.S. persons.

No person has been authorised to provide any information or make any statements other than those contained in the Prospectus. Should such information or statements nevertheless be furnished, it/they must not be relied upon as having been authorised or approved by the Issuer and the Issuer assumes no responsibility for such information or statements. Neither the publication of the Prospectus nor the offering, sale or delivery of any Notes implies that the information in the Prospectus is correct and current as at any date other than the date of the Prospectus or that there have not been any changes to the business of the Issuer or the Group since the date of the Prospectus. If the information in the Prospectus becomes subject to any material change, such material change will be made public in accordance with the provisions governing the publication of supplements to prospectuses in the Trading Act.

Each potential investor of the Notes must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (a) have sufficient knowledge and experience to make a meaningful evaluation of the Notes, the merits and risks of investing in the Notes and the information contained in this Prospectus, any other documentation, any applicable supplement or other documentation received in relation to the Notes;
- (b) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Notes and the impact such investment will have on its overall investment portfolio;
- (c) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Notes, including where the currency for principal and interest payments is different from the potential investor’s currency;
- (d) understand thoroughly the terms of the Notes and be familiar with the behaviour of any relevant indices and financial markets; and
- (e) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment in the Notes and its ability to bear the applicable risks.

### Forward-looking statements and market data

To the extent the Prospectus contains forward-looking statements that reflect the Issuer’s current views or expectations with respect to future events and financial and operational performance. The words “intend”, “estimate”, “expect”, “may”, “plan”, “anticipate” or similar expressions regarding indications or forecasts of future developments or trends, which are not statements based on historical facts, constitute forward-looking information. Although the Issuer believes that these statements are based on reasonable assumptions and expectations, the Issuer cannot give any assurances that such statements will materialise. Because these forward-looking statements involve known and unknown risks and uncertainties, the outcome could differ materially from those set out in the forward-looking statement.

Factors that could cause the Issuer’s and the Group’s actual operations, result or performance to differ from the forward-looking statements include, but are not limited to, those described in “Risk Factors”. The forward-looking statements included in the Prospectus apply only to the date of the Prospectus. The Issuer undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, other than as required by law. Any subsequent forward-looking information that can be ascribed to the Issuer and the Group or persons acting on the Issuer behalf is subject to the reservations in or referred to in this section.

The Prospectus contains market data and industry forecasts, including information related to the sizes of the markets in which the Group participates. The information has been extracted from a number of sources. Although the Issuer regards these sources as reliable, the information contained in them has not been independently verified and therefore it cannot be guaranteed that this information is accurate and complete. However, as far as the Issuer is aware and can assure by comparison with other information made public by these sources, no information has been omitted in such a way as to render the information reproduced incorrect or misleading. In addition to the above, certain data in the Prospectus is also derived from estimates made by the Issuer.

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## **Risk Factors**

*Below are some of the risks that may be of significance for the business and future development of the Issuer and the Group. The risk factors are not presented in order of probability, importance or potential impact on the Group's business, profits or financial position. This presentation of risk factors is not complete; it merely includes examples of risk factors that an investor should consider together with other information received in relation to the Group and/or the Notes. Other risk factors that are not currently known or considered significant at this time could also impact the Group's business, profits or financial position. The value of the Notes may be significantly affected if any of the risk factors described below would be realised. Investors are therefore recommended to make their own evaluation of the significance of the Group's business and future development of the risk factors below as well as other potential risks. The risk factors are described at Group level. All risks are directly relevant for the Issuer being the direct or indirect owner of all the members of the Group but the Parent, whereas the risks are either directly or indirectly relevant for the Parent, being the holding company of the Issuer, and the Guarantors, being the direct and indirect subsidiaries of the Issuer.*

### **Group and market specific risks**

#### *Risk relating to the business model*

The business carried out by the Group, property damage restoration after e.g. flooding and fires, is to a large extent dependent on the occurrence of property damages. Hence, since the frequency of property damages can vary, depending on circumstances beyond Polygon's control, inter alia the outdoor temperature and weather, and since part of Polygon's cost structure is fixed, the proceeds of the operations are to some extent unpredictable and vary from time to time.

#### *Sourcing of equipment*

Polygon is dependent upon its ability to source new equipment, and to maintain the equipment owned by the Group, that are required to execute the property damage restoration and climate control solutions services. If such sourcing should not be successful, Polygon's operations, earnings and financial position may be affected.

#### *The use of sub-contractors*

The Group's ability to service its customers depends to some extent on the availability of local sub-contractors as Polygon frequently uses local sub-contractors across the markets to conduct the property damage restoration services. However, the local supply can from time to time be scarce and if Polygon cannot secure the proper sub-contractor for a specific job, it may have an adverse effect on services provided to the customer.

#### *Agreements with insurance companies*

Polygon is to a large extent dependent on its key customers, the insurance companies, and must maintain mutually beneficial relationships with them to compete effectively. As the agreements entered into with the insurance companies do not contain any volume undertakings or other purchase commitments by the insurance companies towards Polygon, changes in the insurance companies' strategies or purchasing patterns may adversely affect Polygon's net sales. Disagreements or deterioration of the Group's relationship with any of its major customers could lead to loss of current or future business, which could have a material adverse effect on Polygon's business, financial condition

and results of operations.

#### *Polygon depends on the financial health of its customers*

Polygon's customers may face financial or other difficulties which may impact their operations and cause them to cancel or reduce their level of purchases from Polygon, which could adversely affect the Group's results of operations. Customers may also respond to any price increase that Polygon may implement by reducing their purchases from the Group, resulting in reduced net sales. If net sales of Polygon's products to one or more of its largest customers are reduced, this reduction may have a material adverse effect on the Group's business, financial condition, and results of operations. Any bankruptcy or other business disruption involving one of Polygon's significant customers could also materially and adversely affect the Group's business, financial condition and results of operations.

#### *Negative publicity*

The Group's key clients are insurance companies, property management companies, government and public properties and general industrial companies. As stated above, insurance companies are the key customers to which Polygon to a large extent is dependent on. The Group relies on its brand and its ability to maintain and attract new customers and employees. Any negative publicity or announcement relating to the Group may, whether or not it is justifiable, deteriorate the brand value, affect future business relationships and have a negative effect on net sales, earnings and financial position.

#### *Bribe and corruption*

Polygon uses sub-contractors operating in different kind of fields relating to the construction industry. The construction industry in general is considered a high risk industry when it comes to different kinds of anti-competitive behaviors, and has historically on some occasions been exposed to legal cases relating to bribery and cartels. The Group's operations could be adversely affected if Polygon would become associated with illegal activities or otherwise unacceptable business methods, possibly resulting in, among other things, a negative perception of Polygon among its current and future customers, or problems in relationships with important contracting parties, e.g. insurance companies.

#### *Key personnel*

Polygon is dependent upon a number of key employees whom have together developed the efficient day-to-day operations and systems within Polygon. It cannot be excluded that such key personnel will leave the Group in the future, or that they will take up employment with a competing business, which could have a negative effect on Polygon's operations, earnings and financial position. It is not certain that Polygon will be able to recruit new, qualified personnel to the extent that Polygon wishes. The dependency on key personnel is not only a possible issue as regards employees on a high level in the organisation, but also in respect of employees locally as they possess important day-to-day relations with e.g. local customers and sub-contractors.

#### *Risks relating to inadequate insurance*

The Group has a broad insurance programme in place which provides coverage for operations at a level believed to be consistent with industry practice and appropriate for the risk associated therewith. Although the Group's insurance is intended to cover the majority of the risks to which the Group is exposed, there is a risk that it will not account for every potential risk associated with the Group's operations. An inability by the Group to maintain adequate insurance policies could have a material adverse effect on the Group's business, financial conditions and results of its operations.

### *Borrowing by the Group*

The Group has incurred, and may in compliance with the limits according to the Terms and Conditions further incur, financial indebtedness to finance its business operations. Such financing may generate interest costs which may be higher than the gains produced by the investments made by the Group. Borrowing money to make investments will increase Polygon's exposure to the loss of capital and higher interest expenses. Interests on the Group's borrowings from time to time are subject to fluctuations in the applicable interest rates. Higher interest rates could negatively affect Polygon's operations, earnings and financial position. Failure by the Group to comply with the terms (including financial covenants) of its financing arrangements may result in default under a credit agreement which may have a material adverse effect on the Group's operations and financial position.

### *Risks related to acquisitions*

From time to time, Polygon may evaluate potential acquisitions that are in line with the Group's strategic objectives. Such acquisitions have, and may in the future, result in an obligation to pay additional purchase price to the seller, possibly affecting the financial position of the Group. Acquisition activities may present certain financial, managerial and operational risks, including diversion of management's attention from existing core business, difficulties when integrating or separating businesses from existing operations and challenges presented by acquisitions which may not achieve sales levels and profitability that justify the investments made. If acquisitions are not successfully integrated, the Group's business, financial condition and results of operations may be adversely affected. Future acquisitions could also result in dilutive issuances of the Group's equity securities, the incurrence of debt, contingent liabilities, amortisation costs, impairment of goodwill or restructuring charges, any of which could harm the Group's financial condition or results of operations.

### *Risks related to IT infrastructure*

The Group depends on information technology to manage critical business processes, including administrative functions. The Group uses IT systems for internal purposes and externally in relation to its suppliers and customers. Extensive downtime of network servers, attacks by IT-viruses or other disruptions or failure of information technology systems are possible and could have a negative impact on Polygon's operations. Failure of Polygon's information technology systems could cause transaction errors and loss of customers as well as sales, and could have negative consequences for the Group, its employees, and those with whom Polygon does business.

### *Currency risk*

Since Polygon operates in various countries, a portion of its expenses and sales are in currencies other than EUR, principally SEK, Norwegian krona, Danish krona and Pound sterling. Typically, Polygon's costs and the corresponding sales are denominated in the same currency for each subsidiary. However, the Group presents its consolidated financial statements in EUR. As a result, the Group must translate the assets, liabilities, revenue and expenses of all of its operations with functional currencies other than EUR into EUR at then-applicable exchange rates. Consequently, increases or decreases in the value of the currency EUR may affect the value of these items with respect to the Group's non-EUR businesses in its consolidated financial statements, even if their values have not changed in their original currency. These translations could significantly affect the comparability of Polygon's results between financial periods or result in significant changes to the carrying value of the Group's assets, liabilities and equity.

### *Taxes and charges*

Polygon conducts its business in accordance with its interpretation of applicable tax regulations and applicable requirements and decisions. It is possible that Polygon's or its advisers' interpretation and

application of laws, provisions and judicial practice has been, or will at some point be, incorrect or that such laws, provisions and practice will be changed, potentially with retroactive effect. If such an event should occur, Polygon's tax liabilities can increase, which could have a negative effect on the Group's earnings and financial position.

#### *Ability to comply with the Terms and Conditions for the Notes*

Polygon is required to comply with the Terms and Conditions. Events beyond the Group's control, including changes in the economic and business conditions in which the Group operates, may affect the Group's ability to comply with, among other things, the undertakings set out in the Terms and Conditions. A breach of the Terms and Conditions could result in a default under the Terms and Conditions.

#### *Ability to service debt*

Polygon's ability to service its debt will depend upon, among other things, the Group's future financial and operating performance, which will be affected by prevailing economic conditions and financial, business, regulatory and other factors, some of which are beyond the Group's control. If the Group's operating income is not sufficient to service its current or future indebtedness, the Group will be forced to take actions such as reducing or delaying its business activities, acquisitions, investments or capital expenditures, selling assets, restructuring or refinancing its debt or seeking additional equity capital. The Group may not be able to affect any of these remedies on satisfactory terms, or at all. The aforementioned applies to both long-term and current liabilities and therefore, both the solidity as the liquidity may be affected in this respect.

#### *Credit risk*

When there is a risk for Polygon's counterparties being unable to fulfill their financial obligations towards Polygon, there is a credit risk. Polygon's current and potential customers and other counterparties may end up in a financial situation where they cannot pay the agreed fees or other amounts owed to Polygon as they fall due, or otherwise abstain from fulfilling their obligations. Credit risks within the financial operations arise, inter alia, from the investment of excess liquidity, when interest swap agreements are entered into and upon obtaining long- and short-term credit agreements. If Polygon's counterparties are not able to fulfil these obligations, it could negatively affect Polygon's earnings and financial position.

#### *Dependency on other companies within the Group*

The Issuer is a holding company and holds no significant assets other than investments in its subsidiaries. Thus, the Issuer is dependent upon receipt of sufficient income and cash flow related to the operations of the subsidiaries. Consequently, the Issuer is dependent on the subsidiaries' availability of cash, and their legal ability to make dividends which may from time to time be limited by corporate restrictions and law. A decrease in any such income and cash flow may have a material adverse effect on the Group's financial condition.

#### *Majority owner*

Polygon is currently controlled by one principal shareholder, whose interest may conflict with the Noteholders', particularly if the Group encounters difficulties or is unable to pay its debts as they fall due. A majority shareholder will be given the power to control a large amount of the matters to be decided by vote at a shareholders' meeting. For example, a majority shareholder will have the ability to elect the board of directors. Furthermore, a majority shareholder may also have an interest in pursuing acquisitions, divestitures, financings or other transactions that, in their judgment, could enhance their

equity investments, although such transactions might involve risks to the Noteholders. There is nothing that prevents a shareholder or any of its affiliates from acquiring businesses that directly compete with the Group. If such event were to arise this may adversely affect the Group's operations, financial position and results.

#### *Geographic breadth and compliance with existing laws and regulations*

The Group operates its business in many countries and must accordingly observe a large number of different regulatory systems across a number of jurisdictions. Ensuring compliance with such laws, regulations and permits could affect the Group's business, financial position and results.

#### *Equity*

If the Group should have net losses it may impact the Group's solidity which could affect the Group's reputation among suppliers as well as the Group's ability to raise financing and make new investments. This could have a negative effect on the Group's operations, earnings and financial position.

#### *Goodwill*

Polygon carries goodwill on its balance sheet. It is possible that changes in such circumstances, or in the numerous variables associated with the judgments, assumptions and estimates made by the Group in assessing the appropriate valuation of its goodwill, could in the future require the Group to write down a portion of its goodwill and record related non-cash impairment charges. If the Group was required to write down a portion of its goodwill and record related non-cash impairment charges, the Group's financial position and results of operations would be adversely affected.

#### *Legal disputes*

Claims or legal action may in the future be taken against the Group which may have significant unfavourable effects on the Group's financial position, performance, and market position, or pricing of the Notes. The risk of claims or legal action also relates to intellectual property rights, such as patents and trademarks, and the Group normally assumes liability for any infringement of third party intellectual property rights in relation to its customers.

#### *Global economic conditions*

A lengthy economic downturn, a sustained loss of consumer confidence in the markets in which the Group operates, or other problems relating to the Group's customers, could trigger a decrease in demand for the Group's products and a decline in sales for the industry as well as the Group companies. This could have an adverse impact on the Group's net sales, financial position and earnings.

#### *Changes in legislation*

A number of legislations and regulations, competition regulations, construction and environmental regulations, taxes and rules can affect the business conducted by the Group. New or amended legislations and regulations could call for unexpected costs or impose restrictions on the development of the business operations or otherwise affect net sales, which could have an adverse effect on the Group's business and results of business operations.

#### *Competitive landscape*

The Group has a number of competitors across different product categories, segments and geographic markets. It is possible that these competitors will grow to be stronger in the future, for example, by

means of further consolidation in the market. It is not certain that the Group will be able to compete successfully against current as well as future competitors, which may have a negative effect on the Group's operations, earnings and financial position.

## **Risks related to the Notes**

### *Credit risks*

Investors in the Notes carry a credit risk relating to the Group. Investors' ability to receive payment under the Terms and Conditions is therefore dependent on the Group's ability to meet its payment obligations, which in turn is largely dependent upon the performance of the Group's operations and its financial position. The Group's financial position is affected by several factors of which some have been mentioned above.

An increased credit risk may cause the market to charge the Notes a higher risk premium, which would affect the Notes' value negatively. Another aspect of the credit risk is that a deteriorating financial position of the Group may reduce the Group's possibility to receive debt financing at the time of the maturity of the Notes.

### *Refinancing risk*

Polygon may be required to refinance certain or all of its outstanding debt, including the Notes. The Super Senior Revolving Credit Facility which has been granted by Nordea Bank AB (publ) will expire within approximately four years and nine months after the issue date. The Company's ability to successfully refinance outstanding debt is dependent on the conditions of the capital markets and its financial condition at such time. Polygon's access to financing sources may not be available on favourable terms, or at all. The Issuers' inability to refinance its debt obligations on favourable terms, or at all, could have a material adverse effect on the Group's business, financial condition and results of operations and on the Noteholders' recovery under the Notes.

### *Liquidity risks*

Active trading in notes does not always occur. Hence, it is not certain that a liquid market for trading in the Notes will occur, or be maintained. This may result in that the Noteholders cannot sell their Notes when desired or at a price level which allows for a profit comparable to similar investments with an active and functioning secondary market. Lack of liquidity in the market may have a negative impact on the market value of the Notes.

It should also be noted that during a given time period it may be difficult or impossible to sell the Notes (at all or at reasonable terms) due to, for example, severe price fluctuations, close down of the relevant market or trade restrictions imposed on the market.

### *The market price of the Notes may be volatile*

The market price of the Notes could be subject to significant fluctuations in response to actual or anticipated variations in the Group's operating results and those of its competitors, adverse business developments, changes to the regulatory environment in which the Group operates, changes in financial estimates by securities analysts and the actual or expected sale of a large number of Notes, as well as other factors. In addition, the global financial markets have experienced significant price and volume fluctuations in recent years, which, if repeated in the future, could adversely affect the market price of the Notes without regard to the Group's operating results, financial condition or prospects.

### *Risks relating to the transaction security*

Although the obligations under the Notes and certain other obligations of the Group towards the Noteholders and certain other creditors (jointly the "**Secured Parties**") will be secured by first priority security, it is not certain that the proceeds of any enforcement sale of the security assets would be sufficient to satisfy all amounts then owed to the Secured Parties. Furthermore, if the Issuer issues additional Notes, the security position of the current Noteholders may be impaired.

The relation between the Secured Parties will be governed by an intercreditor agreement (the "**Intercreditor Agreement**") between, among others, the Issuer, a security agent (the "**Security Agent**", initially being Swedish Trustee AB (publ) and the Secured Parties.

The Security Agent shall take enforcement instructions primarily from the Agent (representing the Noteholders). However, if the Agent (representing the Noteholder) wishes to take enforcement actions, consultation with the other Secured Parties must (if not agreeing upon the proposed enforcement actions) first take place for a period of 30 days after which the Agent (representing the Noteholders) may instruct the Security Agent to take such actions. The other Secured Parties may thus delay enforcement which in the Noteholders' view is necessary. Furthermore, it is possible that the Security Agent will act in a manner that is not preferable to the Noteholders. In some situations (e.g. where another Secured Party has requested enforcement actions to be taken but the Noteholders have not provided any enforcement instruction to the Security Agent within three months after the end of the consultation period, or where the Noteholders requested enforcement actions have not resulted in any enforcement proceeds becoming available for the Security Agent), the other Secured Parties may give enforcement instructions to the Security Agent.

The Noteholders and the other Secured Parties will be represented by the Security Agent in all matters relating to the transaction security. There is a risk that the Security Agent, or anyone appointed by it, does not properly fulfil its obligations in terms of perfecting, maintaining, enforcing or taking other necessary actions in relation to the transaction security. The transaction security is subject to certain hardening periods during which times the Secured Parties do not fully, or at all, benefit from the transaction security.

Subject to the terms of the Intercreditor Agreement, the Security Agent is entitled to enter into agreements with the Issuer or a third party or take any other actions necessary for the purpose of maintaining, releasing or enforcing the transaction security or for the purpose of settling, among others, the Noteholders' rights to the security. The group is permitted to make certain non-distressed disposals in case of which the Security Agent shall release security which may impair the Secured Parties security interest.

### *Risks relating to enforcement of the transaction security*

The Noteholders will receive proceeds from an enforcement of the transaction security only after obligations of other Secured Parties secured on a super senior basis have been repaid in full.

If a subsidiary which shares are pledged in favour of the Secured Parties is subject to any foreclosure, dissolution, winding-up, liquidation, recapitalisation, administrative or other bankruptcy or insolvency proceedings, the shares that are subject to such share pledge may then have limited value because all of the subsidiary's obligations must first be satisfied, potentially leaving little or no remaining assets in the subsidiary for the Secured Parties. As a result, the Secured Parties may not recover full or any value in the case of an enforcement sale of such pledged shares. In addition, the value of the shares subject to the pledge may decline over time.

If the proceeds of an enforcement are not sufficient to repay all amounts due under or in respect of the Notes, then the Noteholders will only have an unsecured claim against the remaining assets (if any) of the Issuer for the amounts which remain outstanding under or in respect of the Notes.

#### *Structural subordination and insolvency of subsidiaries*

All assets are owned by and all revenues are generated in subsidiaries of the Issuer. The subsidiaries are legally separated from the Issuer and have no obligation to make payments to the Issuer of any surpluses generated from their business. The subsidiaries' ability to make payments is restricted by, among other things, the availability of funds, corporate restrictions and local law.

The Noteholders (and the other Secured Parties) benefit from guarantees provided by certain of the Issuer's subsidiaries. In the event of insolvency, liquidation or a similar event relating to one of the Guarantors, all other creditors of such subsidiary would be entitled to payment out of the assets of such subsidiary with the same priority as the Secured Parties to the extent that the guarantees are valid (see further under "*Security over assets granted to third parties*").

In case of an insolvency event in a subsidiary not being a guarantor, an entity within the Group, as a shareholder, or the Secured Parties as secured parties in relation to a share pledge over the shares in such subsidiary, would be entitled to any payments only after the other creditors have received full payment for their claims. Thus, the Notes are in the latter case structurally subordinated to the liabilities of such subsidiaries to the extent there is no provision for a prioritised position.

The Group and its assets are not protected from actions taken by the creditors of any subsidiary of the Group, whether under bankruptcy law, by contract or otherwise. In addition, defaults by, or the insolvency of, certain subsidiaries of the Group could result in the obligation of the Group to make payments under parent company financial or performance guarantees in respect of such subsidiaries' obligations or the occurrence of cross defaults on certain borrowings of the Group.

#### *Security over assets granted to third parties*

The Issuer may subject to certain limitations from time to time incur additional financial indebtedness and provide additional security for such indebtedness. In the event of bankruptcy, re-organisation or winding-up of the Issuer, the Noteholders will be subordinated in right of payment out of the assets being subject to security provided to a third party financier. In addition, if any such third party financier holding security provided by the Group would enforce such security due to a default by any company within the Group under the relevant finance documents, such enforcement could have a material adverse effect on the Group's assets, operations and ultimately the position of the Noteholders.

#### *Corporate benefit limitations in providing security and guarantees for third parties*

If a limited liability company guarantees or provides security for another party's obligations without deriving sufficient corporate benefit therefrom, the granting of the guarantee or security will require the consent of all shareholders of the grantor and will only be valid up to the amount the company could have distributed as dividend to its shareholders at the time the guarantee or the security was provided. If no corporate benefit is derived from the provided guarantee or security, such guarantee or security will be limited in validity as aforesaid. Consequently, the security granted by a subsidiary of the Issuer could be limited in accordance with the aforesaid which could have an adverse effect on the Noteholders' security position.

#### *Risks related to early redemption*

Under the Terms and Conditions the Issuer has reserved the possibility to redeem all outstanding Notes before the final redemption date. If the Notes are redeemed before the final redemption date, the Noteholders have the right to receive an early redemption amount which exceeds the nominal amount in accordance with the Terms and Conditions. However, there is a risk that the market value of the Notes is higher than the early redemption amount and that it may not be possible for Noteholders to reinvest such proceeds at an effective interest rate as high as the interest rate on the Notes and may only be able to do so at a significantly lower rate. It is further possible that the Issuer will not have sufficient funds at the time of the mandatory prepayment to make the required redemption of Notes.

#### *No action against the Issuer and Noteholders' representation*

In accordance with the Terms and Conditions, the Agent will represent all Noteholders in all matters relating to the Notes and the Noteholders are prevented from taking actions on their own against the Issuer or any other Group Company. Consequently, individual Noteholders do not have the right to take legal actions to declare any default by claiming any payment from or enforcing any security granted by the Issuer or any other Group Company and may therefore lack effective remedies unless and until a requisite majority of the Noteholders agree to take such action.

However, the possibility that a Noteholder, in certain situations, could bring its own action against the Issuer or any other Group Company (in breach of the Terms and Conditions) cannot be ruled out, which could negatively impact an acceleration of the Notes or other action against the Issuer or any other Group Company.

To enable the Agent to represent Noteholders in court, the Noteholders and/or their nominees may have to submit a written power of attorney for legal proceedings. The failure of all Noteholders to submit such a power of attorney could negatively affect the legal proceedings.

Under the Terms and Conditions, the Agent will in some cases have the right to make decisions and take measures that bind all Noteholders. Consequently, the actions of the Agent in such matters could impact a Noteholder's rights under the Terms and Conditions in a manner that would be undesirable for some of the Noteholders.

#### *Noteholders' meetings*

The Terms and Conditions will include certain provisions regarding Noteholders' meeting, or Written Procedures. Such meetings, or written procedures, may be held in order to resolve on matters relating to the Noteholders' interests. The Terms and Conditions will allow for stated majorities to bind all Noteholders, including Noteholders who have not taken part in the meeting, or written procedure, and those who have voted differently to the required majority at a duly convened and conducted Noteholders' meeting, or Written Procedure. Consequently, the actions of the majority in such matters could impact a Noteholder's rights in a manner that would be undesirable for some of the Noteholders.

#### *Restrictions on the transferability of the Notes*

The Notes have not been and will not be registered under the U.S. Securities Act of 1933, as amended, or any U.S. state securities laws. Subject to certain exemptions, a holder of the Notes may not offer or sell the Notes in the United States. The Issuer has not undertaken to register the Notes under the U.S. Securities Act or any U.S. state securities laws or to affect any exchange offer for the Notes in the future. Furthermore, the Issuer has not registered the Notes under any other

country's securities laws. It is the Noteholder's obligation to ensure that the offers and sales of Notes comply with all applicable securities laws.

*Risks relating to the clearing and settlement in Euroclear's book-entry system*

The Notes will be affiliated to Euroclear's account-based system, and no physical notes will be issued. Clearing and settlement relating to the Notes will be carried out within Euroclear's book-entry system as well as payment of interest and repayment of the principal. Investors are therefore dependent on the functionality of Euroclear's account-based system.

*Exits and Change of Control*

Private equity funds make investments with the objective of exiting the investment within a certain time frame. As part of their investment strategy, private equity funds take an active role in managing their portfolio companies. Pursuant to the Terms and Conditions, Triton may make an exit by way of a private sale or an initial public offering of the shares in the Issuer without the Noteholders being entitled to have their Notes repurchased, provided that (i) before an IPO, Triton holds more than 50 per cent of the voting shares of the Issuer or (ii) after an IPO, Triton holds more than 20 per cent of the voting shares of the Issuer. Such an exit may adversely impact the market price of the Notes.

## **Responsibility Statement**

On 28 March 2014 the Issuer resolved to issue maximum EUR 180,000,000 senior secured floating rate notes. The Prospectus has been prepared for the purpose of listing the Notes on Nasdaq Stockholm and in accordance with the Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council (as amended) and the provisions in Chapter 2 of the Swedish Financial Instruments Trading Act.

The Issuer accepts responsibility for the information contained in the Prospectus and declares that, having taken all reasonable care to ensure that such is the case, the information contained in the Prospectus is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import. The Board of Directors of the Issuer is, to the extent provided by law, responsible for the information, relating to the Issuer, contained in the Prospectus and declares that, having taken all reasonable care to ensure that such is the case, the information contained in the Prospectus is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

9 December 2014  
**Polygon AB (publ)**  
The Board of Directors

## Description of the Notes

The below is only intended to serve as an introduction to the Notes. Any decision to invest in the Notes should therefore be based on an assessment on all information contained in this Prospectus as well as all documents incorporated therein by reference. The complete terms and conditions applicable to the Notes are found under the section “Terms and Conditions” on pages 41 to 84 below.

### Introduction

<b>1</b>	<b>Issuer</b>	Polygon AB (publ), reg. no. 556816-5855.
<b>2</b>	<b>Parent</b>	Polygon Holding AB, reg. no. 556809-3511.
<b>3</b>	<b>Guarantors</b>	Issuer, Polygon International AB, reg. no. 556807-6417 and Polygon Sverige AB, reg. no. 556034-6164.
<b>4</b>	<b>Notes</b>	Debt instruments (Sw. <i>skuldförbindelser</i> ) issued under Swedish law of the type set forth in Chapter 1 Section 3 of the Swedish Financial Instruments Accounts Act, issued by the Issuer under the Terms and Conditions (each a “ <b>Note</b> ”).
<b>5</b>	<b>Agent</b>	Nordic Trustee & Agency AB (publ), reg. no. 556882-1879.
<b>6</b>	<b>ISIN</b>	SE0005878535
<b>7</b>	<b>Issuing Agent</b>	Nordea Bank AB (publ), reg. no. 516406-0120.
<b>8</b>	<b>Noteholder</b>	A person who is registered on a securities account as direct owner (Sw. <i>ägare</i> ) or nominee (Sw. <i>förvaltare</i> ) with respect to a Note.
<b>9</b>	<b>Total Nominal Amount</b>	EUR 180,000,000
<b>10</b>	<b>Nominal Amount</b>	EUR 100,000 or in multiples thereof.
<b>11</b>	<b>Currency</b>	EUR.
<b>12</b>	<b>First Issue Date</b>	16 April 2014.

- 13 Final Maturity Date** 16 April 2019.
- 14 Initial Issue** The maximum aggregate amount of the Notes issued in the initial issue is EUR 120,000,000 (each an “**Initial Note**”)
- 15 Subsequent Issue** The Issuer may, at one or several occasions, issue subsequent Notes under these terms and conditions (“**Subsequent Notes**”). The maximum total nominal amount of all Notes may not exceed EUR 180,000,000. The price of any Subsequent Notes may be set at a discount or at a premium compared to the Nominal Amount.
- 16 Purpose** The net proceeds have be applied towards refinancing of the then existing debt and for general corporate purposes of the Issuer and the Group and acquisitions.
- 17 Status** The Notes constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rant *pari passu* with (i) the Super Senior Debt (as defined in the Terms and Conditions) pursuant to the terms of the Intercreditor Agreement (as defined in the Terms and Conditions), but will receive proceeds distributable by the Security Agent (as defined in the Terms and Conditions) only after the Super Senior Debt have been repaid in full, and (ii) all direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them . The Notes are freely transferable.
- 18 Guarantee** Each Guarantor has irrevocably and unconditionally jointly and severally guaranteed, as principal obligor as for its own debt (Sw. *proprieborgen*) to each Secured Party (as defined in the Terms and Conditions) the full and punctual payment and performance within applicable grace periods of (i) all Guaranteed Obligations (as defined in the Terms and Conditions), (ii) of all other obligations of the Guarantors under the Senior Finance Documents (as defined in the Terms and Conditions), and (iii) all obligations and liabilities of the Guarantors under any Transaction Security Document (as defined in the Terms and Conditions) to which it is a party, by way of a separately executed Guarantee Agreement. T
- 19 Accounting Principles** IFRS.

## Interest

- 20 Interest** The Initial Notes carries interest at the interest rate from (but excluding) the First Issue Date up to (and including) the relevant

redemption date, at a rate which will be equal to the sum of (i) EURIBOR (3 months) and (ii) 5.00 per cent, per annum (the “**Interest Rate**”).

- 21 Interest Payment Dates** 16 April, 16 July, 16 October and 16 January of each year (with the first Interest Payment Date on 16 July 2014 and the last Interest Payment Date being the relevant redemption date).
- 22 Interest Period** The interest period shall be (i) in respect of the first Interest Period, the period from (but excluding) the First Issue Date to (and including) the first Interest Payment Date, and (ii) in respect of subsequent Interest Periods, the period from (but excluding) an Interest Payment Date to (and including) the next succeeding Interest Payment Date (or a shorter period if relevant).
- 23 Default interest:** 2 per cent per annum in addition to the Interest Rate on the overdue amount.

#### **Redemption and early repurchase**

- 24 Redemption at maturity** Unless previously redeemed, the Issuer shall redeem all of the outstanding Notes with an amount per Note equal to the Nominal Amount together with accrued but unpaid interest thereon, on the Final Maturity Date.
- 25 Early redemption at the option of the Issuer (call option)** The Issuer may redeem all, but not only some, of the outstanding Notes in full with the following amount per Note applicable to the relevant period for the repayment of the Nominal Amount together with accrued but unpaid Interest:
- (a) 100.00 per cent. of the Nominal Amount plus the Applicable Premium (as defined in the Terms and Conditions) together with accrued but unpaid interest, if the call option is exercised before 16 April 2016;
  - (b) 103.00 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the call option is exercised on or after 16 April 2016 to, but not including, 16 October 2016;
  - (c) 102.25 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the call option is exercised on or after 16 October 2016 but not including, 16 April 2017;
  - (d) 101.50 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the call option is exercised on or after 16 April 2017 to, but not including, 16 October

2017;

- (e) 100.75 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the call option is exercised on or after 16 October 2017 to, but not including, 16 October 2018; and
- (f) 100.00 of the Nominal Amount, together with accrued but unpaid interest, if the call option is exercised on or after 16 October 2018 to, but not including, 16 April 2019.

**26 Voluntary partial repayment**

The Issuer may repay all, but not only some, of the outstanding Notes with an amount not exceeding EUR 10,000 of the Nominal Amount of each Note.

Such partial repayment shall reduce the Nominal Amount of each Note *pro rata* (rounded down to the nearest EUR 100) (the "**Repayment Amount**"). Repayment shall be made to each Noteholder on an Interest Payment Date with an amount equal to the Repayment Amount, plus (i) a premium of three (3) per cent. of the Repayment Amount, and (ii) accrued but unpaid interest on the Repayment Amount. Partial repayment may only be made at one occasion per each twelve (12) month period (without carry-back or carry forward).

**27 Mandatory repurchase upon a Change of Control Event (put option)**

Upon a Change of Control Event occurring, each Noteholder shall have the right to request that all, or only some, of its Notes be repurchased at a price per Note equal to 101.00 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of thirty (30) calendar days following a notice from the Issuer of the Change of Control Event (after which time period such right shall lapse).

“**Change of Control Event**” means the occurrence of an event or series of events whereby:

- (a) prior to an Equity Listing Event (as defined in the Terms and Conditions), Triton (as defined in the Terms and Conditions) directly or indirectly ceases to own more than 50 per cent of the shares and votes of the Issuer; and
- (b) following an Equity Listing Event, (i) Triton directly or indirectly ceases to own more than 20 per cent. of the shares and votes of the Issuer, or (ii) one or more Persons, not being Triton, acting in concert, acquire control over the Issuer.

For the purpose of this definition, “**control**” means (a) acquiring or controlling, directly or indirectly, more than thirty (30) per cent. of the voting shares of the Issuer, or (b) the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of the Issuer, “**acting in concert**” means a group of Persons who, pursuant to an agreement or understanding

(whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Issuer by any of them, either directly or indirectly, to obtain or consolidate control of the Issuer.

- 28 Purchase of Notes by the Issuer or a Group Company** The Issuer and any other Group Company may, subject to applicable law, at any time and at any price purchase Notes on the market or in any other way.

## Terms and conditions

- 29 Terms and Conditions** The Terms and Conditions regulate the rights and obligations with respect to the Notes. In the event of any discrepancy between this Prospectus and the Terms and Conditions, the Terms and Conditions shall prevail.

By investing in the Notes, each investor accepts to be bound by the Terms and Conditions.

The Terms and Conditions include provisions on the Agent's right to represent the Noteholders, including a no action clause for individual Noteholders (described below), the duties of the Agent, procedures for Noteholders' meetings and decisions by way of direct communication and applicable quorum and majority requirements for Noteholders' consent (described below), the Noteholders' right to replace the Agent, as well as other provisions customary for a Swedish note offering.

**No action clause:** Other than to the extent expressly provided for under the Terms and Conditions, a Noteholder may not take any steps whatsoever against the Issuer or any other Group Company or with respect to the Transaction Security (as defined in the Terms and Conditions) to enforce or recover any amount due or owing to it pursuant to the Finance Documents (as defined in the Terms and Conditions), or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (Sw. *företagsrekonstruktion*) or bankruptcy (Sw. *konkurs*) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the liabilities of the Issuer or any other Group Company under the Finance Documents.

**Quorum and majority requirements:** Quorum at a Noteholders' meeting or in respect of a written procedure only exists if Noteholders representing at least twenty (20) per cent. of the Adjusted Nominal Amount (i) attend the Noteholders' meeting in due order, or (ii), if in respect of a written procedure, reply to the request.

Subject to the below, the following matters shall require the consent of Noteholders representing at least sixty-six and two thirds (66 2/3)

per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' meeting or for which Noteholders reply in a written procedure;

- (a) A waiver of a breach of an undertaking set out in clause 13 (*General Undertakings*) of the Terms and Conditions, with the exception of clauses 13.11 (*Intercompany Loans*) to 13.13 (*Conditions Subsequent*); and
- (b) An amendment to any provisions in the Finance Documents (as defined in the Terms and Conditions).

The following matters shall require the consent of Noteholders representing at least seventy-five (75) per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' meeting or for which Noteholders reply in a written procedure:

- (a) a change to the terms dealing with the requirements for Noteholders' consent set out in clause 16 (*Decisions by Noteholders*) set out in the terms and conditions;
- (b) to reduce the principal amount, interest rate or interest amount which shall be paid by the Issuer;
- (c) to amend any payment day for principal or interest amount or waive any breach of a payment undertaking;
- (d) an extension of the tenor of the Notes or any of the due date for payment of any principal or interest on the Notes; and
- (e) a mandatory exchange of the Notes for other securities.

(a)

## **Undertakings and covenants**

### **30 Information Undertakings**

The Issuer shall make the following information available in the English language to the Noteholders by publication on the website of the Issuer:

- (a) as soon as the same become available, but in any event within four (4) months after the end of each financial year, the annual audited consolidated financial statements of the Group and the annual audited unconsolidated financial statements of the Issuer, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors; and
- (b) as soon as the same become available, but in any event within two (2) months after the end of each quarter of its

financial year, the quarterly interim unaudited consolidated reports of the Group (the first report covering the period ending on 30 June 2014), including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors.

The Issuer shall immediately notify the Agent in writing when the Issuer is or becomes aware of that a Change of Control Event (as described in paragraph 27) is likely to occur and when a Change of Control Event has occurred, and shall provide the Agent with such further information as the Agent may request (acting reasonably) following receipt of such notice.

### **31 Information to the Agent** *Compliance certificate*

A compliance certificate shall be submitted to the Agent by the Issuer in connection with:

- (a) the incurrence of new Financial Indebtedness (as defined below) if such Financial Indebtedness (i) incurred by the Issuer meets the Incurrence Test tested pro forma including such incurrence, and (A) is incurred as a result of issuance of Subsequent Notes, or (B) such Financial Indebtedness ranks *pari passu* with or is subordinated to the obligations of the Issuer under the Finance Documents, and has a final redemption date or, when applicable, early redemption dates or installment dates which occur after the Final Maturity Date, or (ii) incurred as a result of any Group Company acquiring another entity and which is due to that such acquired entity holds indebtedness, provided that the Incurrence Test (as defined below) is met, tested pro forma including the acquired entity in question (provided that a clean-up period of 90 days shall be applied to unwind any acquired indebtedness which was not identified in the due diligence process prior to the acquisition and which would have resulted in the Incurrence Test not being met had such unforeseen indebtedness been included in the Incurrence Test);
- (b) upon a Permitted Distribution (as defined in the Terms and Conditions); or
- (c) within twenty (20) business days from the Agent's request.

#### *Other information*

The Issuer shall immediately notify the Agent (with full particulars) when the Issuer is or becomes aware of the occurrence of any event or circumstance which constitutes an Event of Default (as defined in the Terms and Conditions), or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the

foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.

## 32 Incurrence Test

The Incurrence Test is met if, on the relevant test date:

- (a) the ratio of Net Interest Bearing Debt to Group EBITDA does not exceed 3.75:1; and
- (b) the ratio of Group EBITDA to Net Finance Charges exceeds 2.75:1.

**“Net Interest Bearing Debt”** means the aggregate interest bearing debt (excluding pension liabilities, any shareholder loans, investor documents, any loan with PIK interest which has a final maturity date which occurs after the Final Maturity Date and which is subordinated to the Notes, and interest bearing debt borrowed from any Group Company) less Cash (as defined in the Terms and Conditions) and Cash Equivalents (as defined in the Terms and Conditions) of the Group in accordance with the applicable accounting principles of the Group from time to time.

**“Group EBITDA”** means, in respect of each period of twelve (12) consecutive calendar months (each a **“Relevant Period”**), Group EBIT for that Relevant Period after adding back any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group.

**“Group EBIT”** means, in respect of the Relevant Period, the consolidated profit of the Group, as the term operating income appears on the income statement of the Issuer on a consolidated basis, from ordinary activities according to the latest financial report(s):

- (a) before deducting any amount of tax on profits, gains or income paid or payable by any member of the Group;
- (b) before deducting any Net Finance Charges (as defined below);
- (c) before taking into account any one-off items;
- (d) before taking into account any unrealised gains or losses on any derivative instrument;
- (e) after adding back or deducting, as the case may be, the amount of any loss or gain against book value arising on a

disposal of any asset (other than in the ordinary course of trading) and any loss or gain arising from an upward or downward revaluation of any asset; and

- (f) after adding back the amount of any profit (or deducting the amount of any loss) which are attributable to (a) minority interests held by the Group which are not Subsidiaries, or (b) Joint Ventures of the Group.

**"Net Finance Charges"** means, for the Relevant Period, the aggregate of interest accrued (whether in cash or capitalised, but excluding any capitalised interest with respect to any shareholder loans) in respect of any Borrowings of any member of the Group during that Relevant Period, calculated on a consolidated basis during that period less interest income during that period (other than interest income on Financial Indebtedness (as defined below) between Group Companies).

### **33 General undertakings**

The following general undertakings applies for as long as any Notes remains outstanding:

#### *Distributions*

The Issuer shall not: (i) repurchase any of its own shares; or (ii) redeem its share capital or other restricted equity with repayment to Shareholders (as defined in the Terms and Conditions).

The Issuer shall not, and shall procure that none of its Subsidiaries will: (i) pay any dividend on its shares (other than dividends by a Subsidiary to its parent or payments by a Subsidiary that is not wholly-owned on a pro rata basis or on a basis that results in the receipt by the Issuer or a Subsidiary of dividends or distributions of greater value than the Issuer or such Subsidiary would receive on a pro rata basis); (ii) repay or pay cash interest under any Shareholder Loans (including for the avoidance of doubt the Investor Loan) (each as defined in the Terms and Conditions); or (iii) grant any loans to the Shareholders or Affiliates of the Shareholders.

Notwithstanding the above, a Restricted Payment (as defined in the Terms and Conditions) may be made:

- (a) if (i) no Event of Default is continuing or would result from such Restricted Payment, (ii) an Equity Listing Event has occurred, (iii), the amount of the Restricted Payment does not exceed the Permitted Distribution Amount (as defined in the Terms and Conditions), (iv) the Incurrence Test is met (calculated on a pro forma basis including the relevant Restricted Payment), and (v) the drawn amount outstanding under the Super Senior Revolving Credit Facility (as defined in the Terms and Conditions) (excluding guarantees) less Cash and Cash Equivalents (each as defined in the Terms

and Conditions) of the Group amounts to zero (0) or less, tested pro forma including such Restricted Payment; or

- (b) in a maximum amount of EUR 250,000 each calendar year (by payments on Shareholder loans or as dividend) to the owner(s) of the Issuer to service fees or administration costs in the group of holding companies.

Under certain circumstances, the Permitted Distribution Amount may be increased or decreased. For more information, please refer to clause 13.2 (e) of the Terms and Conditions.

*Nature of business*

The Issuer shall procure that no substantial change is made to the general nature of the business carried on by the Group as of the First Issue Date.

*Financial indebtedness*

The Issuer shall not, and shall procure that none of its Subsidiaries, incur any additional Financial Indebtedness (as defined below) or maintain any existing Financial Indebtedness, provided however that the Issuer and the Subsidiaries have a right to incur and maintain Financial Indebtedness that constitutes Permitted Debt (as defined in the Terms and Conditions) and, for the avoidance of doubt, any Financial Indebtedness incurred or maintained in compliance with the Terms and Conditions shall only be tested either on the First Issue Date or on the date of incurrence, as applicable.

**"Financial Indebtedness"** means any indebtedness in respect of:

- (a) monies borrowed or raised, including Market Loans;
- (b) the amount of any liability in respect of any financial lease (which is defined as a lease in the accounts of the Group or is treated as an asset and a corresponding liability), to the extent the arrangement is treated as a financial lease in accordance with the accounting principles applicable on the First Issue Date, for the avoidance of doubt, any leases treated as operational leases by the accounting principles applicable on the Issue Date shall not, regardless of any changes or amendments to the accounting principles, be considered as financial leases;
- (c) receivables sold or discounted (other than on a non-recourse basis, applying the accounting principles applicable on the First Issue Date);
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the

commercial effect of a borrowing;

- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account);
- (f) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution, in each case guaranteeing drawn debt; and
- (g) (without double counting) any guarantee or other assurance against financial loss in respect of a type referred to in the above items (a)–(f).

**"Market Loan"** means any loan or other indebtedness where an entity issues commercial paper, certificates, subordinated debentures, bonds or any other debt securities (including, for the avoidance of doubt, medium term note programmes and other market funding programmes), provided in each case that such instruments and securities are or can be subject to trade on Nasdaq Stockholm or any other regulated or unregulated recognised market place.

#### *Dealings with related parties*

The Issuer shall, and shall procure that each Group Company shall, conduct all dealings with the direct and indirect Shareholders of the Group Companies and/or any affiliates of such direct and indirect Shareholders at arm's length terms (or better) and in accordance with applicable transfer pricing, provided that this undertaking shall not apply to dealings between Group Companies which are made in the ordinary course of business.

#### *Disposals of assets*

The Issuer shall not, and shall procure that no Material Group Company, sell or otherwise dispose of shares in any Material Group Company or of all or substantially all of its or any Material Group Company's assets to any person not being the Issuer or any of its wholly-owned Subsidiaries which, in the case of a transfer of the shares in or the assets of a Guarantor, the acquiring Subsidiary is (or becomes) a Guarantor, unless the transaction is carried out at fair market value and on terms and conditions customary for such type of transaction and provided that it does not have a Material Adverse Effect. The Issuer shall notify the Agent of any such transaction and, upon request by the Agent, provide the Agent with any information relating to the transaction which the Agent deems necessary (acting reasonably).

“**Material Adverse Effect**” means a material adverse effect on (i) the business, financial condition or operations of the Group taken as a whole, (ii) the Issuer's ability to perform and comply with its payment obligations under the Terms and Conditions and with the undertakings set out in clause 13 (*General Undertakings*) (other than clause 13.11 (*Intercompany Loans*)) and the Obligor's ability to perform and comply with the undertaking set out in clause 13.12 (*Subordination and accession to the Intercreditor Agreement*) of the Terms and Conditions, or (iii) the validity or enforceability of the Finance Documents.

#### *Negative pledge*

The Issuer shall not, and shall procure that no Group Company shall, create or allow to subsist, retain, provide, prolong or renew any guarantee (Sw. *borgen*, or its equivalent in any other jurisdiction) or Security (as defined in the Terms and Conditions) over any of its/their assets (present or future) to secure any Financial Indebtedness, provided however that the Group Companies have a right to retain, allow to subsist, provide, prolong and renew any Permitted Security (as defined in the Terms and Conditions).

#### *Insurances*

The Issuer shall, and shall ensure that all other Group Companies will, maintain insurances on and in relation to its business and assets against those risks and to the extent as is commercially available and usual for companies carrying on the same or substantially similar business.

#### *Clean Down Period*

The Issuer shall procure that during each calendar year, there shall be a period of three (3) consecutive days during which the amount outstanding (and in respect of ancillaries, utilised or drawn) under the Super Senior Revolving Credit Facility Agreement (as defined in the Terms and Conditions) (excluding guarantees), less Cash and Cash Equivalents of the Group, amounts to zero (0) or less. Not less than three (3) months shall elapse between two such periods.

#### *Listing*

The Issuer shall ensure that the Notes are listed at the corporate bond list on Nasdaq Stockholm, or if such admission to trading is not possible to obtain or maintain, admitted to trading on another Regulated Market (as defined in the Terms and Conditions), no later than nine (9) months after the First Issue Date and shall take all measures required to ensure that the Notes, once listed on Nasdaq Stockholm (or any other Regulated Market, as applicable), continue being listed on Nasdaq Stockholm (or any other Regulated Market, as applicable) for as long as any Note is outstanding (however taking

into account the rules and regulations of Nasdaq Stockholm (or any other Regulated Market, as applicable) and the CSD (as defined below) (as amended from time to time) preventing trading in the Notes in close connection to the redemption of the Notes).

#### *Intercompany Loans*

- (a) The principal of any Intercompany Loan (as defined in the Terms and Conditions) granted to a Subsidiary with net proceeds from the issuance of Subsequent Notes shall become subject to the Transaction Security (as defined in the Terms and Conditions) and the Issuer shall, or ensure that the relevant grantor shall, enter into a loan pledge agreement with the Security Agent (as defined in the Terms and Conditions) (in form and substance reasonably satisfactory to the Security Agent) for the purpose of creating Security over the principal of such Intercompany Loan in favour of the Secured Parties.
- (b) The Intercompany Loans may only be repaid (or prepaid as the case may be) in accordance with the Intercreditor Agreement, but may always be repaid or prepaid to the extent the interest received by the Issuer under the other Intercompany Loans is not sufficient to service the payment obligations under these Terms and Conditions.

#### *Subordination and accession to the Intercreditor Agreement*

The following loans shall be subordinated to the Notes by way of the relevant creditor(s) and/or debtor(s) under such loans acceding to the Intercreditor Agreement (as defined in the Terms and Conditions):

- (a) Shareholder Loans and/or loans under the Investor Documents (other than the lenders under the Investor Loan) (each as defined in the Terms and Conditions);
- (b) Long Term Loans (as defined below) granted by a member of the Group to a Pledged Group Company (as defined in the Terms and Conditions) and the principal amount of which in aggregate exceeds EUR 2,000,000 per debtor;
- (c) Long Term Loans with an aggregate principal amount exceeding EUR 2,000,000 per debtor and granted by a Group Company to a Group Company who is a creditor under a Pledged Intercompany Loan (as defined in the Terms and Conditions); and
- (d) Long Term Loans between Group Companies (other than Pledged Intercompany Loans) the principal amount of which in aggregate exceeds EUR 10,000,000 per debtor (other than loans to

"**Long Term Loan**" means any existing or future loan entered (or to be entered into) between Group Companies which (i) has a contractual term exceeding twelve (12) months, or (ii) has a contractual term which is less than twelve (12) months but is renewed, prolonged or otherwise remain in place, in whole or in part, for a longer total duration than twelve (12) months.

### 34 Events of Default

Subject to the terms of the Intercreditor Agreement, and in certain cases that an Event of Default has a Material Adverse Effect (please refer to clause 14.10 (*Acceleration of the Notes*) of the Terms and Conditions for further information), the Agent is entitled to, on behalf of the Noteholders, declare all but not only some of the Notes due for payment immediately or at such later date as the Agent determines, and exercise any or all of its rights, remedies, powers and discretions under the Finance Documents if, among other events, any of the following events occur:

(a) *Non-payment*

the Issuer fails to pay an amount on the date it is due in accordance with the Finance Documents unless the non-payment is caused by technical or administrative error and is remedied within five (5) Business Days of the due date;

(b) *Breach of other obligations*

any of the Issuer, the Obligors (as defined in the Terms and Conditions) or any other party to a Finance Document (except for a Secured Party) (as defined in the Terms and Conditions), fails to comply with or in any other way acts in violation of the Finance Documents to which such non-compliant entity is a party, in any other way than as set out in section (a) (*Non-payment*) above, provided that such failure or violation of the Finance Documents continues unremedied twenty (20) business days after the Agent has urged the Issuer in writing to remedy such failure or violation;

(c) *Cross-acceleration*

any Financial Indebtedness of a Group Company is not paid when due as extended by any originally applicable grace period, or is declared to be due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Event of Default will occur if (i) the aggregate amount of Financial Indebtedness is less than EUR 2,000,000, (ii) the acceleration of the Financial Indebtedness has not been cured within 10 days, and (iii) it is not Financial Indebtedness owed to a Group Company;

(d) *Insolvency*

(i) any Material Group Company (as defined in the Terms and Conditions) is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors with a view to rescheduling its Financial Indebtedness; or (ii) moratorium is declared in respect of any Financial Indebtedness of any Material Group Company; or

(e) *Impossibility or illegality*

It is or becomes impossible or unlawful for an Obligor to fulfil or perform any of the provisions of the Finance Documents or if the obligations under the Finance Documents are not, or cease to be, legal, valid, binding and enforceable.

In the event of an acceleration of the Notes following an Event of Default, the Issuer shall redeem all Notes with an amount equal to the redemption amount as specified in paragraph 25 (*Early redemption at the option of the Issuer*), as applicable considering when the acceleration occurs.

- 35 Distribution of proceeds** Subject to the terms of the Intercreditor Agreement, all payments by the Issuer relating to the Notes and the other Senior Finance Documents and any proceeds received from an enforcement of the Transaction Security and/or the Guarantees shall be distributed in accordance with the Intercreditor Agreement in the following order of priority:
- (a) firstly, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Security Agent;
  - (b) secondly, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Issuing Agent, the agent under the Super Senior Revolving Credit Facility Agreement and the Agent;
  - (c) thirdly, towards payment pro rata of accrued interest unpaid under the Super Senior Revolving Credit Facility Documents;
  - (d) fourthly, towards payment pro rata of principal under the Super Senior Revolving Credit Facility Documents and any other costs or outstanding amounts under the Super Senior Revolving Credit Facility Documents, and any close out amount and any other outstanding amounts under the

Hedging Obligations;

- (e) fifthly, towards payment of accrued interest unpaid under the Notes (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
- (f) sixthly, towards payment of principal under the Notes;
- (g) seventhly, in or towards payment pro rata of any other costs or outstanding amounts unpaid under the final terms and conditions for the Notes;
- (h) eighthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), towards payment pro rata of accrued interest unpaid and principal under the Shareholder Debt (as defined in the Intercreditor Agreement);
- (i) ninthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), towards payment pro rata of accrued interest unpaid and principal under the Intercompany Debt (as defined in the Intercreditor Agreement); and
- (j) tenthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), in payment of the surplus (if any) to the relevant ICA Group Company (as defined in the Intercreditor Agreement) or other person entitled to it.

Any excess funds after the application of proceeds in accordance with paragraphs (a) to (j) above shall be paid to the Issuer.

## **Miscellaneous**

### **36 Amendment of terms**

Subject to the terms of the Intercreditor Agreement, the Issuer and the Agent (acting on behalf of the Noteholders) shall be entitled to make amendments or waive provisions of the Terms and Conditions provided that (i) such amendment or waiver is not detrimental to the interest of the Noteholders, or is made solely for the purpose of rectifying obvious errors and mistakes, (ii) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority, or (iii) such amendment or waiver has been duly approved by the Noteholders in accordance with the Terms and Conditions.

### **37 Transfer Restrictions**

The Notes are freely transferrable.

Noteholders may however be subject to purchase or transfer restrictions with regard to the Notes, as applicable from time to time

under local laws to which a Noteholder may be subject (due to, e.g., its nationality, its residency, its registered address or its place(s) of business). Each Noteholder must ensure compliance with local laws and regulations applicable at its own cost and expense.

**38 CSD**

The Issuer's central securities depository and registrar in respect of the Notes, from time to time, initially Euroclear Sweden AB (reg. no. 556112-8074, P.O. Box 191, 101 23 Stockholm, Sweden).

**39 Prescription**

The right to receive repayment of the principal of the Notes shall be prescribed and become void ten (10) years from the Redemption Date. The right to receive payment of interest (excluding any capitalised interest) shall be prescribed and become void three (3) years from the relevant due date for payment. The Issuer is entitled to any funds set aside for payments in respect of which the Noteholders' right to receive payment has been prescribed and has become void.

If a limitation period is duly interrupted in accordance with the Swedish Act on Limitations (*preskriptionslag* (1981:130)), a new limitation period of ten (10) years with respect to the right to receive repayment of the principal of the Notes, and of three (3) years with respect to receive payment of interest (excluding capitalised interest) will commence, in both cases calculated from the date of interruption of the limitation period, as such date is determined pursuant to the provisions of the Swedish Act on Limitations.

**40 Governing Law**

The Terms and Conditions shall be governed by and construed in accordance with Swedish law.

**41 Disputes**

Any dispute or claim arising in relation to the Terms and Conditions shall be determined by Swedish courts and the District Court of Stockholm shall be the court of first instance.

The submission to the jurisdiction of the Swedish courts shall however not limit the right of the Agent (or the Noteholders, as applicable) to take proceedings against the Issuer in any court which may otherwise exercise jurisdiction over the Issuer or any of its assets.

## Description of the Issuer and the Group

### The Polygon group

The Group is a provider of property damage restoration services and was previously the Moisture Control Service division of Munters AB (formerly listed on Nasdaq Stockholm until it was taken private in December 2010). The private equity firm Triton acquired the Group from Munters AB in September 2010.

The Group's service offering includes:

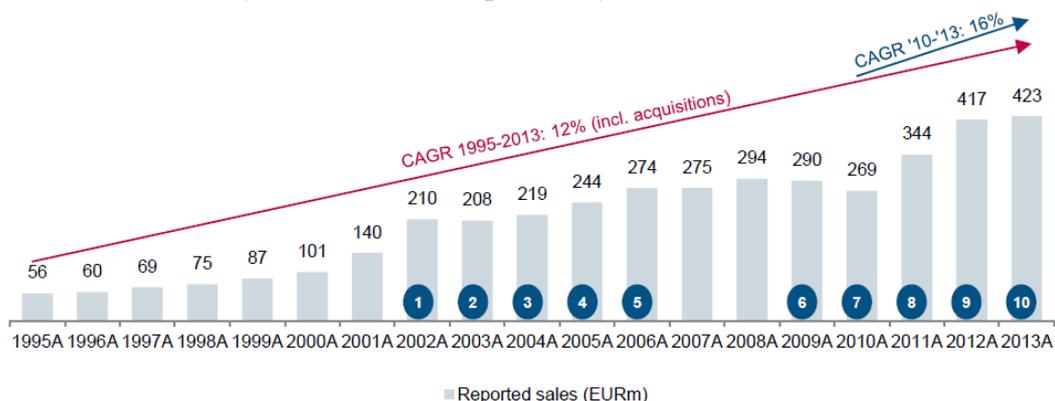
- Water damage restoration;
- Fire damage restoration;
- Reconstruction;
- Leak detection; and
- Temporary humidity control.

The Group is present in 13 countries worldwide and has around 2,800 employees across circa 300 depots (including approximately 60 franchise depots in Norway, which are included throughout this document) in Europe, North America, and Singapore.

### History and Development

The Group has been active in the business for over 50 years. Before 2010, the Group operated as the Moisture Control Service division of Munters, which is a Swedish company that provides indoor climate solutions to industrial customers. Since the divestment from Munters in 2010, the Group has grown significantly, both organically and through acquisitions.

The chart below shows key events in the Group's history.



<p><b>1</b> 2002: Acquisitions in Norway (sales around EUR 50m) and Germany (sales around EUR 20m)</p>	<p><b>2</b> 2003: Lack of weather events in Europe; acquisition integration</p>	<p><b>3</b> 2004: Large contracts won after tornado in the mid-western USA and hurricanes in Florida (sales around EUR 6m)</p>	<p><b>4</b> 2005: Large contracts (around EUR 12m) after hurricanes Katrina and Rita in the US</p>	<p><b>5</b> 2006: Strong growth and increased market shares; global framework agreement with AXA</p>
<p><b>6</b> 2009: Reduced occurrence of hurricanes, low activity in the construction sector and strategic decision to abandon low margin business</p>	<p><b>7</b> Sep 2010: Polygon divested from Munters to Triton. Closure of operations in Australia and Switzerland during 2010</p>	<p><b>8</b> Jun 2011: Acquisition of Vatro (sales around EUR 146m)</p>	<p><b>9</b> 2012: High activity in the US due to hurricane Sandy, which was the most costly hurricane in US history</p>	<p><b>10</b> 2013: Growth of 1.6% even though insurance companies report claim decrease</p>

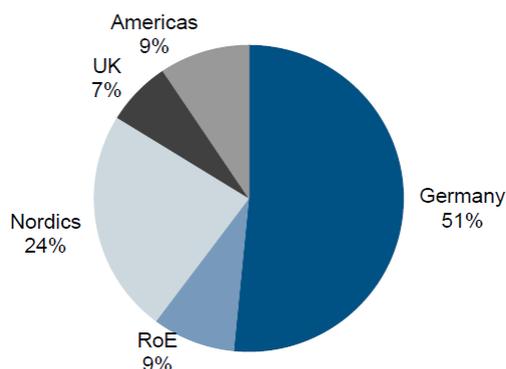
## Geographic market

The Group's business comes from both non-weather-related events such as water leaks in kitchens and bathrooms, and fires due to electricity flaws etc., which account for the main part, as well as major weather-related events such as floodings, which account for the remaining 20 per cent. The number of weather-related property damage restoration jobs can be volatile within a country or for a specific quarter, yet weather impact on a group level is mitigated by Polygon's geographic diversification across several different countries.

The Group's nationwide reach is seen as a competitive advantage as it is often required when competing for large framework agreements. Therefore, the Group's network of local depots constitutes a barrier-to-entry for smaller players.

The Group's operations in Europe accounted for around 91 per cent of sales in 2013, while North America (including Singapore) accounted for the remaining 9 per cent. Germany is the Group's single largest market with 59 depots (2013) and alone accounts for 51 per cent of sales. The Nordic region also accounts for a substantial portion of the European operations, with a presence of more than 160 depots and accounted for almost 24 per cent of sales in 2013.

The sales composition of the geographic regions is illustrated in the table below<sup>1</sup>.



## Organisational structure

The organisation is highly decentralised with significant responsibility given to each country manager. The headquarter, which is located in Stockholm, has 17 employees.

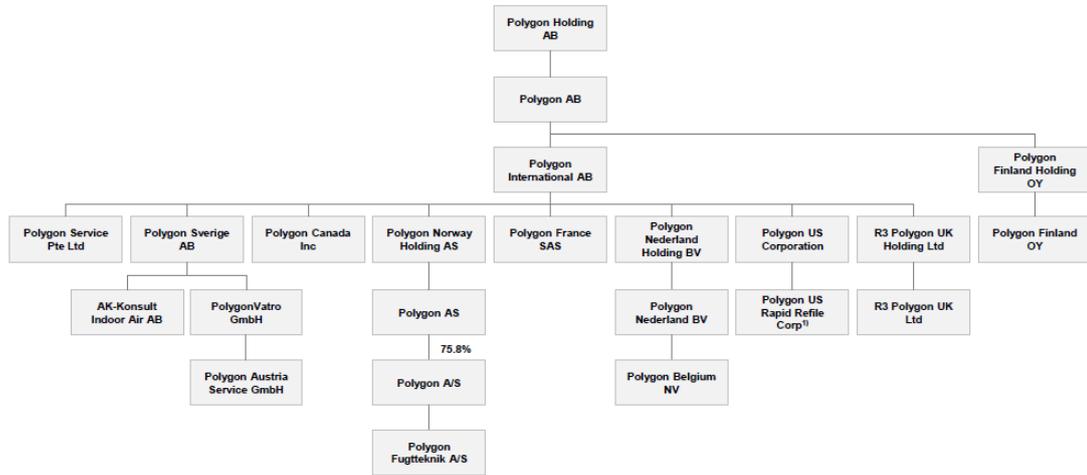
## The Issuer and the Guarantors

The Issuer, Polygon AB (publ), a public limited company with reg. no. 556816-5855, was incorporated in Sweden on 12 July 2010. The registered office of the Issuer is Sveavägen 9, 111 57 Stockholm, Sweden. The Guarantors, Polygon International AB, a private limited company with reg. no. 556807-6417, and Polygon Sverige AB, a private limited company with reg. no. 556034-6164, was incorporated on 4 May 2010 and 30 September 1935, respectively. The registered office of Polygon International AB is Sveavägen 9, 111 57 Stockholm, Sweden and the registered office of Polygon Sverige AB is P.O. Box 1227, 171 23 Solna, Sweden.

<sup>1</sup> Note: Sales from Singapore operations included in "Americas"

## Legal structure and ownership

Polygon Holding AB is the sole owner and parent of the Issuer. The chart below shows the current legal structure of the Group.



## Board of Directors, Group Executive Management and Auditor

### Board of Directors

#### *Polygon AB (publ)*

The Board of Directors of the Issuer consists of four members. The table below sets out the name and current position of each board member.

<b>Name</b>	<b>Position</b>	<b>Board member since</b>
Magnus Lindquist	Chairman	2010
Per Agebäck	Member	2010
Jonas Samuelsson	Member	2010
Torbjörn Torell	Member	2011

#### **Magnus Lindquist**

Born 1963

*Other selected current assignments include:* Board member in Polygon Holding AB, Ambea AB, Mehiläinen Oy, Ovako Group AB.

#### **Per Agebäck**

Born 1979

*Other selected current assignments include:*

Chairman in HBO Sweden AB, board member in Polygon Holding AB, Inflight Service Holding AB, OBH and OBH Nordica Holding AB.

#### **Jonas Samuelsson**

Born 1968

*Other selected current assignments include:* Board member in Electrolux Appliances AB.

#### **Torbjörn Torell**

Born 1956

*Other selected current assignments include:* Chairman in Nordomatic AB, board member in Amanco Holding AB. President & CEO of Svevia AB.

#### *Polygon Sverige AB*

The Board of Directors of Polygon Sverige AB consists of three members. The table below sets out the name and current position of each board member.

<b>Name</b>	<b>Position</b>	<b>Board member since</b>
Erik-Jan Jansen	Chairman	2014
Richard Nelléus	Member	2010

Mats Norberg	Member	2014
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**Erik-Jan Jansen**

Born 1965

*Other selected current assignments include:* CEO in the Issuer and CEO and chairman in Polygon International AB.

**Richard Nelléus**

Born 1964

*Other selected current assignments include:* VP Human Resources in the Issuer and deputy board member in Polygon International AB.

**Mats Norberg**

Born 1959

*Other selected current assignments include:* CFO in the Issuer and board member in Polygon International AB.

*Polygon International AB*

The Board of Directors of Polygon International AB consists of three members and one deputy. The table below sets out the name and current position of each board member.

<b>Name</b>	<b>Position</b>	<b>Board member since</b>
Erik-Jan Jansen	Chairman	2014
Ulf Gimbringer	Member	2010
Mats Norberg	Member	2014
Richard Nelléus	Deputy	2010

**Erik-Jan Jansen**

See above

**Ulf Gimbringer**

Born 1963

*Other selected current assignments include:* n/a.

**Richard Nelléus**

See above

**Mats Norberg**

See above

## Group Executive Management

The executive management of the Group consists of a team of eight persons.

Name	Position	Employed or retained since
Erik-Jan Jansen	Chief Executive Officer	2014
Mats Norberg	Chief Financial Officer	2013
Tim King	VP Operations	2013
Richard Nelléus	VP Human Resources	2008
Jonas Granath	VP Commercial	2014
John Campanelli	Business Country President USA	2011
Rene Just	Business Country President Germany	2013
Jeremy Sykes	Business Country President UK	2009

## Auditor

Ernst & Young AB (P.O. Box 7850, 103 99 Stockholm, Sweden) is the Issuer's and the Guarantors' auditor since 2010. Rickard Andersson is the auditor in charge. Rickard Andersson is an authorized public accountant and member of FAR, the professional institute for accountants in Sweden.

## Other information regarding the Board of Directors and Group Executive Management

### *Business address*

The address for all Board members and members of the executive management of the Issuer is Sveavägen 9, 111 57, Stockholm, Sweden.

### *Conflicts of interest*

None of the Board members or the members of the group executive management has a private or financial interest that may be in conflict with the interests of the Issuer.

Although there are currently no conflicts of interest, it cannot be excluded that conflicts of interest may come to arise between companies in which Board members and members of the group executive management have duties, as described above, and the Group.

## **Legal Considerations and Supplementary Information**

### **Authorization**

The Issuer has obtained all necessary consents, approvals and authorisations in connection with the issuance of the Notes. The issuance of the Notes was authorised pursuant to a resolution of the Board of Directors of the Issuer passed on 28 March 2014.

The Guarantors have obtained all necessary consents, approvals and authorisations in connection with the execution of the Guarantee Agreement. The execution of the Guarantee Agreement was authorised pursuant to resolutions of the Board of Directors of the Guarantors passed on 15 April 2014.

### **Material agreements**

Neither the Issuer nor the Guarantors has concluded any material agreements outside of its ordinary course of business which may materially affect the Issuer's ability to fulfil its obligations under the Notes or the Guarantor's obligations under the Guarantee Agreement.

### **Legal and arbitration proceedings**

Neither the Issuer nor any of the Group Companies are or have been involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) during the 12 months preceding the date of the Prospectus which may have or have had in the recent past significant effects, in the context of the Notes, on the financial position or profitability of the Issuer or of the Group.

### **Polygon Germany**

During the summer of 2014 external allegations were raised against a German Group Company, relating to *inter alia* inappropriate kick-backs. The allegations were reported by Polygon to a public prosecutor who, after assessing the matter, concluded that no criminal case could be established wherein no official investigation was opened and the case has thereafter been formally closed.

Polygon, together with an external legal advisor, has conducted an internal review regarding the allegations in order to ensure that there has been no misconduct and to further strengthen internal compliance programs. None of the allegations are however deemed to have any effect on the Issuer's ability to fulfil its obligations under the Notes.

### **Trend information**

There has been no material adverse change in the prospects of the Issuer or the Group since the publication of the Issuer's interim report for the period January – September 2014.

### **Significant adverse changes**

There has been no significant adverse change of the Issuer's or the Group's financial or market position since the publication of the Issuer's interim report for the period January – September 2014.

### **Costs associated with the listing of the Notes**

The Issuer estimates that the aggregated cost for listing the Notes amounts to approximately SEK 250,000 – 300,000. This includes, among others, consultant fees, costs for approval of the Prospectus by the SFSA and fees to Nasdaq Stockholm.

### **Parent pledge**

The Parent has pledged its shares in the Issuer for the purpose of securing the obligations and liabilities of the Issuer and its subsidiaries under, for example, the Notes, the Guarantee Agreement and the hedging agreements (if any). The Parent is not a guarantor under the Guarantee Agreement and the pledge is a third-party pledge (Sw. *tredjemanspant*).

### **Guarantee Agreement**

The Issuer's obligations under the Notes are guaranteed by the Guarantee Agreement. The Guarantee Agreement is a continuing guarantee and the Guarantors do not have any power of veto in relation to the Notes or the rights of the Noteholders.

## Documents Incorporated by Reference

The following documents have, in full, been incorporated into the Prospectus by reference and should be read as part of the Prospectus.

Documents incorporated by reference	Page reference
The Issuer's annual report 2012	As regard the audited consolidated financial information and audit report on pages 5-54
The Issuer's annual report 2013	As regard the audited consolidated financial information and audit report on pages 4-51
The Issuer's interim report for the period January - September 2014	As regard the unaudited consolidated financial information for the period January – September 2014 on pages 6-9
Polygon International AB's annual report 2012	As regard the audited consolidated financial information and audit report on pages 3-11
Polygon International AB's annual report 2013	As regard the audited consolidated financial information and audit report on pages 3-12
Polygon Sverige AB's annual report 2012	As regard the audited consolidated financial information and audit report on pages 3-11
Polygon Sverige AB's annual report 2013	As regard the audited consolidated financial information and audit report on pages 3-11

### Presentation of financial information

The Issuer's and the Guarantors' consolidated historical financial statements for the financial years ended 31 December 2012 and 31 December 2013, which have been prepared in accordance with International Financial Reporting Standards as adopted by the EU and have been audited by the Issuer's and the Guarantors' auditor and the Issuer's unaudited interim report for the period January – September 2014, are incorporated by reference in, and form part of, this Prospectus. Certain financial and other information presented in this Prospectus has been rounded off for the purpose of making this Prospectus more easily accessible for the reader.

With the exception of the Issuer's and Guarantors' consolidated historical financial statements for the financial years 31 December 2012 and 31 December 2013, no information in the Prospectus has been audited or reviewed by an auditor. Financial data in the Prospectus that has not been audited by the Issuer's and the Guarantors' auditor stem from internal accounting and reporting systems.

### Documents on display

Copies of the following documents are available in paper format at the Issuer's office, Sveavägen 9, 111 57, Stockholm, Sweden, during the validity period of the Prospectus (regular office hours):

- The Issuer's and the Guarantors' articles of associations
- All documents which are incorporated by reference into the Prospectus
- The Terms and Conditions
- The Guarantee Agreement

# Notes Terms and Conditions

## 1. Definitions and Construction

### 1.1 Definitions

In these terms and conditions (the "**Terms and Conditions**"):

"**Account Operator**" means a bank or other party duly authorised to operate as an account operator pursuant to the Financial Instruments Accounts Act and through which a Noteholder has opened a Securities Account in respect of its Notes.

"**Accounting Principles**" means the international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC (or as otherwise adopted or amended from time to time).

"**Adjusted Nominal Amount**" means the Total Nominal Amount less the Nominal Amount of all Notes owned by a Group Company or an Affiliate, irrespective of whether such person is directly registered as owner of such Notes.

"**Advance Purchase Agreements**" means (a) an advance or deferred purchase agreement if the agreement is in respect of the supply of assets or services and payment is due not more than 90 days after the date of supply, or (b) any other trade credit incurred in the ordinary course of business.

"**Affiliate**" means any Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means the agency agreement entered into between the Agent and the Issuer on or about the First Issue Date regarding, inter alia, the remuneration payable to the Agent.

"**Agent**" means Nordic Trustee & Agency AB (publ), Swedish Reg. No. 556882-1879, or another party replacing it, as Agent, in accordance with these Terms and Conditions.

"**Applicable Premium**" means the higher of:

- (a) 3.00 per cent. of the Nominal Amount; and
- (b) an amount equal to:
  - (i) 103.00 per cent. of the Nominal Amount; plus
  - (ii) all remaining scheduled Interest Payments (assuming that the Interest Rate for the period from the relevant redemption date to the First Call Date will be equal to the interpolated EUR mid-swap rate for the remaining term from the redemption date until the First Call Date plus the Floating Rate Margin) on the Notes to, but not including, the First Call Date,

discounted (for the time period starting from the date the relevant Notes are redeemed to the First Call Date) using a discount rate equal to the German

Government Note Rate with a maturity as close as possible to the First Call Date plus 0.50 per cent; minus

- (i) accrued but unpaid Interest up to the relevant Redemption Date; and
- (ii) the Nominal Amount.

**"Borrowings"** means, as at any particular time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of Financial Indebtedness (excluding any Financial Indebtedness under pension liabilities, any Shareholder Loans, Investor Documents and any loan with PIK interest which has a final maturity date which occurs after the Final Maturity Date and which is subordinated to the Notes and any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price) of Group Companies (excluding any Financial Indebtedness between Group Companies).

**"Business Day"** means a day in Sweden other than a Sunday or other public holiday. Saturdays, Midsummer Eve (Sw. *midsommarafton*), Christmas Eve (Sw. *julafton*) and New Year's Eve (Sw. *nyårsafton*) shall for the purpose of this definition be deemed to be public holidays.

**"Business Day Convention"** means the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day.

**"Call Option"** means the Issuer's right to redeem outstanding Notes in full in accordance with Clause 9.3 (*Voluntary Total Redemption*).

**"Call Option Amount"** means:

- (a) 100.00 per cent. of the Nominal Amount plus the Applicable Premium, together with accrued but unpaid interest, if the Call Option is exercised anytime before the First Call Date;
- (b) 103.00 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the Call Option is exercised on or after the First Call Date to, but not including, the date falling 30 months after the First Issue Date;
- (c) 102.25 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the Call Option is exercised on or after the date falling 30 months after the First Issue Date to, but not including, the date falling 36 months after the First Issue Date;
- (d) 101.50 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the Call Option is exercised on or after the date falling 36 months after the First Issue Date to, but not including, the date falling 42 months after the First Issue Date;
- (e) 100.75 per cent. of the Nominal Amount, together with accrued but unpaid interest, if the Call Option is exercised on or after the date falling 42 months after the First Issue Date to, but not including, the date falling 54 months after the First Issue Date; and
- (f) 100.00 of the Nominal Amount, together with accrued but unpaid interest, if the Call Option is exercised on or after the date falling 54 months after the First Issue Date to, but not including, the Final Maturity Date.

"**Cash**" means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a Group Company with a bank and to which a Group Company is alone (or together with other Group Companies) beneficially entitled and for so long as:

- (a) that cash is repayable within five (5) days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Group Company or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for any Permitted Security constituted by a netting or set-off arrangement entered into by Group Companies in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the of the indebtedness incurred under the Finance Documents.

"**Cash Equivalent Investments**" means, in respect of the Group, and at any time, (i) immediately available funds at bank or postal accounts and (ii) marketable debt securities held for cash management purposes that can be realised promptly and which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper or debt securities, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating.

"**Change of Control Event**" means the occurrence of an event or series of events whereby:

- (a) prior to an Equity Listing Event, Triton directly or indirectly ceases to own more than 50 per cent of the shares and votes of the Issuer; and
- (b) following an Equity Listing Event, (i) Triton directly or indirectly ceases to own more than 20 per cent of the shares and votes of the Issuer, or (ii) one or more Persons, not being Triton, acting in concert, acquire control over the Issuer.

For the purpose of this definition, "**control**" means (a) acquiring or controlling, directly or indirectly, more than thirty (30) per cent. of the voting shares of the Issuer, or (b) the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of the Issuer, and "**acting in concert**" means a group of Persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Issuer by any of them, either directly or indirectly, to obtain or consolidate control of the Issuer.

"**Compliance Certificate**" means a certificate, in form and substance satisfactory to the Agent, signed by the Issuer certifying (i) if relevant, the satisfaction of the Incurrence Test and the calculations and figures in respect of the Leverage and the Interest Coverage Ratio, and (ii) that so far as it is aware no Event of Default is continuing or, if it is aware that such event is continuing, specifying the event and steps, if any, being taken to remedy it.

"**CSD**" means the Issuer's central securities depository and registrar in respect of the Notes, from time to time, initially Euroclear Sweden AB, Swedish Reg. No. 556112-8074, P.O. Box 191, 101 23 Stockholm, Sweden.

"**Equity Listing Event**" means an initial public offering of shares in a Group Company or any direct, or indirect, parent of the Issuer, after which such shares shall be quoted, listed, traded or otherwise admitted to trading on a Regulated Market.

**"Escrow Account"** means a bank account of the Issuer held with a reputable bank, into which the Net Proceeds will be transferred and which has been pledged in favour of the Agent and the Noteholders (represented by the Agent) under the Escrow Account Pledge Agreement.

**"Escrow Account Pledge Agreement"** means the pledge agreement entered into between the Issuer and the Security Agent on or about the First Issue Date in respect of a first priority pledge over the Escrow Account and all funds held on the Escrow Account from time to time, granted in favour of the Agent and the Noteholders.

**"EURIBOR"** means:

- (a) the applicable percentage rate per annum displayed on Reuters screen EURIBOR01 (or through another system or website replacing it) as of or around 11.00 a.m. (Brussels time) on the Quotation Day for the offering of deposits in Euro and for a period comparable to the relevant Interest Period; or
- (b) if no screen rate is available for the relevant Interest Period, the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Issuing Agent at its request quoted by Nordea Bank AB (publ), Svenska Handelsbanken AB (publ) and Skandinaviska Enskilda Banken AB (publ) (or such other banks as may be appointed by the Issuing Agent in consultation with the Issuer), for deposits of EUR 10,000,000 for the relevant period; or
- (c) if no quotation is available pursuant to paragraph (b) above, the interest rate which according to the reasonable assessment of the Issuing Agent best reflects the interest rate for deposits in Euro offered for the relevant period; and

if any such rate is below zero, EURIBOR will be deemed to be zero.

**"Euro"** and **"EUR"** means the single currency of the participating member states in accordance with the legislation of the European Community relating to Economic and Monetary Union.

**"Existing Guarantees"** means all guarantees provided in relation to the Existing Senior Debt.

**"Existing Security"** means all security provided in relation to Existing Senior Debt.

**"Existing Senior Debt"** means the Group's indebtedness under the SEK 600,000,000 and EUR 79,000,000 facilities agreement originally dated 27 September 2010 (as amended and restated from time to time) between, among others, the Company as company, certain Subsidiaries as borrower and guarantors, Nordea Bank AB (publ) and Nordea Bank Finland Plc, Singapore Branch as lenders and Nordea Bank AB (publ) as agent, arranger and security agent.

**"Event of Default"** means an event or circumstance specified in any of the Clauses 14.1 (*Non-Payment*) to and including Clause 14.9 (*Continuation of the Business*).

**"Final Maturity Date"** means 16 April 2019.

**"Finance Charges"** means, for the Relevant Period, the aggregate of interest accrued (whether in cash or capitalized, but excluding any capitalized interest with respect to any Shareholder Loans) in respect of any Borrowings of any member of the Group during that Relevant Period, calculated on a consolidated basis.

**"Finance Documents"** these Terms and Conditions, the Intercreditor Agreement, the Security Documents, the Guarantee Agreement and the Agency Agreement and any other document designated as a Finance Document by the Issuer and the Agent.

**"Financial Indebtedness"** means any indebtedness in respect of:

- (a) monies borrowed or raised, including Market Loans;
- (b) the amount of any liability in respect of any financial lease (which is defined as a lease in the accounts of the Group or is treated as an asset and a corresponding liability), to the extent the arrangement is treated as a financial lease in accordance with the accounting principles applicable on the First Issue Date, for the avoidance of doubt, any leases treated as operational leases by the accounting principles applicable on the Issue Date shall not, regardless of any changes or amendments to the accounting principles, be considered as financial leases ;
- (c) receivables sold or discounted (other than on a non-recourse basis, applying the accounting principles applicable on the First Issue Date);
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account);
- (f) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution, in each case guaranteeing drawn debt; and
- (g) (without double counting) any guarantee or other assurance against financial loss in respect of a type referred to in the above items (a)–(f).

**"Financial Instruments Accounts Act"** means the Swedish Financial Instruments Accounts Act (*lag (1998:1479) om kontoföring av finansiella instrument*).

**"Financial Report"** means the Group's annual audited financial statements or quarterly interim unaudited reports, which shall be prepared and made available in accordance with Clause 11.1 (*Information from the Issuer*) and, if so requested by the Issuer in connection with a calculation in accordance with Clause 12.2 (*Calculation Adjustments*), an interim unaudited report prepared and made available on the same basis as a quarterly interim unaudited report in accordance with Clause 11.1 (*Information from the Issuer*).

**"First Call Date"** means the date falling twenty-four (24) months after the First Issue Date.

**"First Issue Date"** means 16 April 2014.

**"Floating Rate Margin"** means five (5.00) per cent.

**"German Government Note Rate"** means the yield to maturity at the time of computation of direct obligations of the Federal Republic of Germany (*Ge. Bund or Bundesanleihen*) with a constant maturity (as officially compiled and published in the most recent financial statistics that have become publicly available at least two (2) Business Days (but not more than five (5) Business Days) prior to the redemption date (or, if such financial statistics are not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the relevant Redemption Date to (but excluding) the First Call Date, provided, however that if the period from the relevant Redemption Date to (but excluding) the First Call Date is not equal to the constant maturity of the direct obligations of the Federal Republic of Germany for which a weekly average yield is given, the German Government Bond Rate shall be obtained by a linear interpolation (calculated to the nearest

one-twelfth of a year) from the weekly average yields of direct obligations of the Federal Republic of Germany for which such yields are given, except that if the period from such Redemption Date to (but excluding) the First Call Date is less than one year, the weekly average yield on actually traded direct obligations of the Federal Republic of Germany adjusted to a constant maturity of one year shall be used.

"**Group**" means the Issuer and each Subsidiary (each a "**Group Company**") of the Issuer, the assets and liabilities of which is included into the consolidated accounts with the Issuer pursuant to the Accounting Principles from time to time.

"**Group EBIT**" means, in respect of the Relevant Period, the consolidated profit of the Group, as the term operating income appears on the income statement of the Issuer on a consolidated basis, from ordinary activities according to the latest Financial Report(s):

- (a) before deducting any amount of tax on profits, gains or income paid or payable by any member of the Group;
- (b) before deducting any Net Finance Charges;
- (c) before taking into account any one-off items;
- (d) before taking into account any unrealised gains or losses on any derivative instrument;
- (e) after adding back or deducting, as the case may be, the amount of any loss or gain against book value arising on a disposal of any asset (other than in the ordinary course of trading) and any loss or gain arising from an upward or downward revaluation of any asset; and
- (f) after adding back the amount of any profit (or deducting the amount of any loss) which are attributable to (a) minority interests held by the Group which are not Subsidiaries, or (b) Joint Ventures of the Group.

"**Group EBITDA**" means, in respect of the Relevant Period, Group EBIT for that Relevant Period after adding back any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group.

"**Hedge Counterparty**" means any bank or institution being a hedge counterparty pursuant to the terms of the Intercreditor Agreement.

"**Hedging Obligations**" all and any obligations of the Group towards any Hedge Counterparty for any hedge.

"**Guarantee Agreement**" means the guarantee agreement dated on or about the date of these Terms and Conditions between the Issuer, the Guarantors and the Agent pursuant to which the Guarantors guarantee the Secured Obligations.

"**Guarantees**" means the guarantees provided by the Guarantors under the Guarantee Agreement.

"**Guarantors**" means the Issuer, Polygon International AB, Swedish Reg. No. 556807-6417 and Polygon Sverige AB, Swedish Reg. No. 556034-6164.

"**Incurrence Test**" means the test of the financial incurrence covenants as set out in Clause 12 (*Incurrence Covenant*).

"**Initial Notes**" means the Notes issued on the First Issue Date.

"**Insolvent**" means, in respect of a relevant person, that it is deemed to be insolvent, or

admits inability to pay its debts as they fall due, in each case within the meaning of Chapter 2, Sections 7-9 of the Swedish Bankruptcy Act (Sw. *konkurslagen (1987:672)*) (or its equivalent in any other jurisdiction), suspends making payments on any of its debts or by reason of actual financial difficulties commences negotiations with its creditors (other than the Noteholders) with a view to rescheduling any of its indebtedness (including company reorganisation under the Swedish Company Reorganisation Act (Sw. *lag (1996:764) om företagsrekonstruktion*) (or its equivalent in any other jurisdiction)) or is subject to involuntary winding-up, dissolution or liquidation.

**"Intercompany Loans"** means (i) any intercompany loan that will be entered into between the Issuer and any Subsidiary or between a Subsidiary and another Subsidiary, pursuant to which (A) the Net Proceeds from the issuance of the Initial Notes will be on-lent for the purpose of repaying the Existing Senior Debt and for general corporate purposes, or (B) pursuant to which any proceeds from the issuance of Subsequent Notes will be on-lent and used by a Subsidiary (if applicable), or (ii) any other loan between Group Companies.

**"Intercreditor Agreement"** means the intercreditor agreement to be entered into on or about the First Issue Date between the Issuer, certain Subsidiaries of the Issuer, the Agent, the Super Senior Revolving Credit Facility Creditors, the agent under the Super Senior Revolving Credit Facility and the Hedge Counterparty (if any).

**"Interest"** means the interest on the Notes calculated in accordance with Clauses 8(a) to 8(d).

**"Interest Coverage Ratio"** means the ratio of Group EBITDA to Net Finance Charges.

**"Interest Payment Date"** means 16 April, 16 July, 16 October and 16 January of each year or, to the extent such day is not a Business Day, the Business Day following from an application of the Business Day Convention. The first Interest Payment Date for the Notes shall be 16 July 2014 and the last Interest Payment Date shall be the relevant Redemption Date.

**"Interest Period"** means (i) in respect of the first Interest Period, the period from (but excluding) the First Issue Date to (and including) the first Interest Payment Date, and (ii) in respect of subsequent Interest Periods, the period from (but excluding) an Interest Payment Date to (and including) the next succeeding Interest Payment Date (or a shorter period if relevant).

**"Interest Rate"** means EURIBOR (3 months) plus the Floating Rate Margin *per annum*.

**"Issuer"** means Polygon AB (publ), a public limited liability company incorporated under the laws of Sweden, with Swedish Reg. No. 556816-5855.

**"Issuing Agent"** means Nordea Bank AB (publ), Swedish Reg. No. 516406-0120, or another party replacing it, as Issuing Agent, in accordance with these Terms and Conditions.

**"Investor Documents"** means any equity related documents which are issued by the Issuer or any Group Company, which in all respect is subordinated to the obligations of the Issuer or any of the Guarantors under the Terms and Conditions.

**"Investor Loan"** means a loan with the principal amount of EUR 52,451,000 evidenced by a loan agreement amended and restated on 19 April 2013 and as further amended and restated on or about the First Issue Date, between the lenders as set out therein and Polygon International AB as borrower, under which interest is not payable in cash and which has a final maturity date exceeding the Final Maturity Date with more than twelve (12) months or any Investor Document replacing such loan in whole or in part provided that (i) no cash interest may be paid under such replacing loan and (ii) such replacing loan shall have a final maturity date exceeding the Final Maturity Date with more than twelve (12) months.

**"Leverage"** means the ratio of Net Interest Bearing Debt to Group EBITDA.

**"Long Term Loan"** means any existing or future loan entered (or to be entered into) between Group Companies which (i) has a contractual term exceeding twelve (12) months, or (ii) has a contractual term which is less than twelve (12) months but is renewed, prolonged or otherwise remain in place, in whole or in part, for a longer total duration than twelve (12) months.

**"Market Loan"** means any loan or other indebtedness where an entity issues commercial paper, certificates, subordinated debentures, bonds or any other debt securities (including, for the avoidance of doubt, medium term note programmes and other market funding programmes), provided in each case that such instruments and securities are or can be subject to trade on NASDAQ OMX Stockholm or any other regulated or unregulated recognised market place.

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the business, financial condition or operations of the Group taken as a whole;
- (b) the Issuer's ability to perform and comply with its payment obligations under these Terms and Conditions and with the undertakings set out in Clause 13 (*General Undertakings*) (other than Clause 13.11 (*Intercompany Loans*)) and the Obligors' ability to perform and comply with the undertaking set out in Clause 13.12 (*Subordination and accession to the Intercreditor Agreement*); or
- (c) the validity or enforceability of the Finance Documents.

**"Material Group Company"** means (i) the Issuer, (ii) any Guarantor, (iii) any Pledged Group Company and a Group Company which shares shall be subject to Security in favour of the Secured Parties pursuant to the terms of the Intercreditor Agreement, and (iv) any Group Company whose EBITDA (calculated in the same manner as Group EBITDA) or assets (on a consolidated basis) exceeds five (5) per cent. of the Group EBITDA or assets.

**"Net Finance Charges"** means, for the Relevant Period, the Finance Charges during that period less interest income during that period (other than interest income on Financial Indebtedness between Group Companies).

**"Net Interest Bearing Debt"** means the aggregate interest bearing debt (excluding pension liabilities, any Shareholder Loans, Investor Documents, any loan with PIK interest which has a final maturity date which occurs after the Final Maturity Date and which is subordinated to the Notes, and interest bearing debt borrowed from any Group Company) less Cash and Cash Equivalents of the Group in accordance with the applicable accounting principles of the Group from time to time.

**"Net Proceeds"** means the proceeds from the issuance of the Initial Notes which after deduction has been made for the Transaction Costs (save for the costs relating to listing of the Notes) payable by the Issuer to the Sole Bookrunner for the services provided in relation to the placement and issuance of the Notes.

**"Nominal Amount"** has the meaning set forth in Clause 2(c).

**"Noteholder"** means the person who is registered on a Securities Account as direct registered owner (Sw. *ägare*) or nominee (Sw. *förvaltare*) with respect to a Note.

**"Noteholders' Meeting"** means a meeting among the Noteholders held in accordance with Clause 17 (*Noteholders' Meeting*).

**"Notes"** means a debt instrument (Sw. *skuldförbindelse*) for the Nominal Amount and of the type set forth in Chapter 1 Section 3 of the Financial Instruments Accounts Act and which are governed by and issued under these Terms and Conditions, including the Initial Notes and the

Subsequent Notes.

"**Obligors**" means the Issuer, each Guarantor and any person who has acceded to the Intercreditor Agreement pursuant to Clause 13.12 (*Subordination and accession to the Intercreditor Agreement*).

"**Permitted Debt**" means any Financial Indebtedness:

- (a) of the Group incurred under the Notes and the Super Senior Revolving Credit Facility Documents (including any replacement Super Senior Revolving Credit Facility Documents);
- (b) of the Group pursuant to any financial leasing arrangements incurred in the ordinary course of the Group's business, not exceeding an aggregate amount of EUR 2,500,000 at any one time outstanding;
- (c) taken up from a Group Company;
- (d) under a Shareholder Loan or Intercompany Loan;
- (e) arising under any Investor Documents, in each case as in force on the First Issue Date or arising thereafter and subject always to these Terms and Conditions and subordinated to the Notes;
- (f) in the ordinary course of business under Advance Purchase Agreements;
- (g) any recourse claim for a guarantee in the ordinary course of business (for the avoidance of doubt not including guarantees or security in respect of monies borrowed);
- (h) under hedging transactions in the ordinary course of business or in respect of payments to be made under these Terms and Conditions or the Super Senior Revolving Credit Facility but not for investment or speculative purposes;
- (i) as a result of any Group Company acquiring another entity and which is due to that such acquired entity holds indebtedness, provided that the Incurrence Test is met, tested pro forma including the acquired entity in question (provided that a clean-up period of 90 days shall be applied to unwind any acquired indebtedness which was not identified in the due diligence process prior to the acquisition and which would have resulted in the Incurrence Test not being met had such unforeseen indebtedness been included in the Incurrence Test);
- (j) by any Group Company under any pension and tax liabilities incurred in the ordinary course of business;
- (k) any netting or set-off or cash pooling arrangements entered into by any member of the Group in the ordinary course of business of its financial arrangements for the purposes of netting debit and credit balances of the members of the Group (other than the Issuer until the occurrence of a merger between the Issuer and Polygon International AB);
- (l) incurred by the Issuer if such Financial Indebtedness meets the Incurrence Test tested pro forma including such incurrence, and (i) is incurred as a result of issuance of Subsequent Notes, or (ii) such Financial Indebtedness ranks pari passu with or is subordinated to the obligations of the Issuer under the Finance

Documents, and has a final redemption date or, when applicable, early redemption dates or installment dates which occur after the Final Maturity Date; or

- (m) if not permitted by any of paragraphs (a) – (l) above, which does not in aggregate at any time, when aggregated with the amount of the total commitment under the Super Senior Revolving Credit Facility Documents, exceed an amount in EUR equal to 15 per cent. of the aggregate principal amount of outstanding Notes from time to time.

**"Permitted Distribution"** means a distribution made in accordance with Clause 13.2(c).

**"Permitted Distribution Amount"** means fifty (50) per cent. of the consolidated net profit (defined as profit / (loss) as it appears on the Group's income statement prepared in accordance with the Accounting Principles) of the Group for the financial year 2013 (before taking into account any interest payable in kind on any Shareholder Loan) and as increased or decreased pursuant to Clause 13.2 (*Distributions*).

**"Permitted Mergers"** means (i) the merger between Polygon AB (publ) and Polygon International AB provided that Polygon AB (publ) is the surviving entity, and (ii) the merger between Polygon A/S and Polygon Fugtteknik A/S provided that Polygon A/S is the surviving entity.

**"Permitted Security"** means any guarantee or security:

- (a) created in accordance with these Terms and Conditions and the Intercreditor Agreement, including hedging transactions permitted under Permitted Debt;
- (b) guarantees or security arising by operation of law or in the ordinary course of business (for the avoidance of doubt not including guarantees or security in respect of any monies borrowed);
- (c) any guarantee in the ordinary course of business, which is in force and has been notified to the Security Agent prior to the First Issue Date, or any counter-indemnities issued by any Group Company for such guarantees;
- (d) any security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Company in the ordinary course of trading;
- (e) any guarantee qualifying as Permitted Debt;
- (f) in relation to any leasing of real property which leasing obligation constitutes Permitted Debt;
- (g) in relation to liabilities for any financial leasing arrangement which constitutes Permitted Debt;
- (h) security interests on assets of an acquired company that exist at the time of an acquisition, provided that the debt secured by such security is Permitted Debt and provided further that the security interest is released within 90 days from the closing of the acquisition;
- (i) created to secure Financial Indebtedness incurred to finance the acquisition of a company, provided that (i) the Financial Indebtedness secured constitutes

Permitted Debt, (ii) Security is only provided over the shares in such company or the assets in such company, and (iii) the Incurrence Test is met;

- (j) any rights of netting or set-off over credit balances on bank accounts arising in the ordinary course of the banking arrangements of the Group and any lien arising under the general terms and conditions of banks or Sparkassen (Ge. Allgemeine Geschäftsbedingungen der Banken oder Sparkassen) with whom any Group Company maintains a banking relationship in the ordinary course of business;
- (k) any security given in order to comply with the requirements of Section 8a of the German Altersteilzeitgesetz (Act on Partial Retirement) and of Section 7b of the German Sozialgesetzbuch (Social Security Code);
- (l) any security to be granted by any Group Company for pension liabilities or pension liability insurances; or
- (m) provided in relation to the Existing Senior Debt, subject to the Clause 13.13 (*Conditions Subsequent*).

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organisation, government, or any agency or political subdivision thereof, or any other entity, whether or not having a separate legal personality.

**"Pledged Intercompany Loans"** means the Intercompany Loans set out in paragraphs (g)-(k) of the definition of "Security Documents" and any Intercompany Loan over which Security is granted pursuant to Clause 13.11 (*Intercompany Loans*).

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period.

**"Record Date"** means the fifth (5) Business Day prior to (i) an Interest Payment Date, (ii) a Redemption Date, (iii) a date on which a payment to the Noteholders is to be made under Clause 15 (*Distribution of Proceeds*), (iv) the date of a Noteholders' Meeting, or (v) another relevant date, or in each case such other Business Day falling prior to a relevant date if generally applicable on the Swedish bond market.

**"Redemption Date"** means the date on which the relevant Notes are to be redeemed, repaid or repurchased in accordance with Clause 9 (*Redemption and Repurchase of the Notes*).

**"Regulated Market"** means any regulated market (as defined in Directive 2004/39/EC on markets in financial instruments).

**"Relevant Period"** means each period of twelve (12) consecutive calendar months.

**"Restricted Payment"** means any distribution set forth in Clauses 13.2(a) and 13.2(b).

**"Secured Obligations"** means all obligations of the Group under the Finance Documents, the Super Senior Revolving Credit Facility Documents and under any documents relating to any such debt and the Hedging Obligations.

**"Secured Parties"** means the Noteholders, the Agent, the Super Senior Revolving Credit Facility Creditors, the Hedge Counterparty and the agent under the Super Senior Revolving Credit Facility.

**"Securities Account"** means the account for dematerialised securities maintained by the CSD pursuant to the Financial Instruments Accounts Act in which (i) an owner of such security is directly registered or (ii) an owner's holding of securities is registered in the name of

a nominee.

**"Security"** means a mortgage, charge, pledge, lien, security assignment or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Security Agent"** means the security agent, appointed by the Secured Parties pursuant to the Intercreditor Agreement, holding the Transaction Security on behalf of the Secured Parties, being Nordic Trustee & Agency AB (publ) on the First Issue Date.

**"Security Documents"** means:

- (a) the share pledge agreement dated on or about the First Issue Date between Polygon Holding AB and the Security Agent with respect to the shares in the Issuer;
- (b) the share pledge agreement dated on or about the First Issue Date between the Issuer and the Security Agent with respect to the shares in Polygon International AB;
- (c) the share pledge agreement dated on or about the First Issue Date between Polygon International AB and the Security Agent with respect to the shares in Polygon Sverige AB;
- (d) the share pledge agreement dated on or about the First Issue Date between Polygon Sverige AB and the Security Agent with respect to the shares in Polygonvatro GmbH (German Reg. No. 116512);
- (e) the share pledge agreement dated on or about the First Issue Date between the Issuer and the Security Agent with respect to the shares in Polygon Finland Holding Oy (Finnish Reg. No. 2354769-0);
- (f) the share pledge agreement dated on or about the First Issue Date between Polygon International AB and the Security Agent with respect to the shares in R3 Polygon UK Holding Ltd (UK Reg. No. 7452971);
- (g) the intercompany loan pledge agreement dated on or about the First Issue Date between the Issuer and the Security Agent with respect to the intercompany loan granted by the Issuer to Polygon International AB in an approximate principal amount of EUR 80,000,000;
- (h) the intercompany loan pledge agreement dated on or about the First Issue Date between Polygon International AB and the Security Agent with respect to the intercompany loan granted by Polygon International AB to Polygon Sverige AB in an approximate principal amount of EUR 22,600,000;
- (i) the intercompany loan assignment agreement dated on or about the First Issue Date between Polygon International AB and the Security Agent with respect to the intercompany loan granted by Polygon International AB to Polygonvatro GmbH in an approximate principal amount of EUR 59,800,000;
- (j) the intercompany loan pledge agreement dated on or about the First Issue Date between the Issuer and the Security Agent with respect to the intercompany loan granted by the Issuer to Polygon Finland Holding Oy in an approximate principal amount of EUR 13,800,000;

- (k) the loan pledge agreement dated on or about the First Issue Date between the lenders under the Investor Loan and the Security Agent with respect to the Investor Loan, or any Investor Document which replaces the Investor Loan in whole or in part;
- (l) the Escrow Account Pledge Agreement; and
- (m) any other Transaction Security Document (as defined in the Intercreditor Agreement).

**"Senior Finance Documents"** means the Finance Documents, the Super Senior Revolving Credit Facility Documents and any document relating to the Hedging Obligations.

**"Shareholder Loans"** means any shareholder loans made by the Shareholders to the Issuer or any of its Subsidiaries, where the Issuer or the relevant Subsidiary is the debtor, provided, that (a) the Shareholder lender is a party to the Intercreditor Agreement (other than the lenders under the Investor Loan, which for the avoidance of doubt for other purposes is a Shareholder Loan) and the Shareholder Loan is thus subordinated to the obligations of the Issuer in respect of the Notes, (b) according to its terms have a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final Maturity Date, and (c) according to its terms do not provide for any cash pay interest but interest to be non-cash paid or to accrue to be paid-in-kind by being added to principal (however, for the avoidance of doubt, such loan may be converted in to an Investor Document).

**"Shareholders"** means Polygon Holding AB, Swedish Reg. No. 556809-3511 and any direct or indirect shareholder of Polygon Holding AB.

**"Sole Bookrunner"** means Nordea Bank AB (publ), Swedish Reg. No. 516406-0120.

**"Subsequent Notes"** means any Notes issued after the First Issue Date on one or more occasions.

**"Subsidiary"** means a subsidiary of the Issuer according to Chapter 1 Section 11 of the Swedish Companies Act (or under such provision as may replace this provision).

**"Super Senior Debt"** means the indebtedness under the Super Senior Revolving Credit Facility Documents and under the Hedging Obligations.

**"Super Senior Debt Creditors"** means the Hedge Counterparty and the Super Senior Revolving Credit Facility Creditors.

**"Super Senior Revolving Credit Facility Agreement"** means any working capital facility to be provided to certain Group Companies by a bank (initially Nordea Bank AB (publ)) being a party to the Intercreditor Agreement for general corporate purposes of the Group (and any refinancing, amendments or replacements thereof), amended from time to time (as the case may be).

**"Super Senior Revolving Credit Facility Creditors"** mean the finance parties under the Super Senior Revolving Credit Facility Documents.

**"Super Senior Revolving Credit Facility Documents"** means the Super Senior Revolving Credit Facility Agreement and any other document entered into in relation thereto.

**"Total Nominal Amount"** means the total aggregate Nominal Amount of the Notes outstanding at the relevant time.

**"Transaction Costs"** means all fees, costs and expenses incurred by a Group Company in connection with (a) the issuance of the Initial Notes, (b) the issuance of any Subsequent Notes, (c) the Super Senior Debt, (d) the Transaction Security, (e) the repayment of the Existing

Senior Debt, (f) acquisitions which are not prohibited hereunder and (g) the listing of the Notes.

"**Transaction Security**" means the Security provided for the Secured Obligations pursuant to the Security Document and as provided pursuant to Clause 13.11 (*Intercompany Loans*).

"**Triton**" means Triton Managers III Ltd. acting on behalf of Triton Fund III General Partner L.P, in its turn acting for Triton Fund III L.P., Triton Fund III no. 2 L.P, Triton Fund III F&F No. 2 L.P., Triton Fund III F&F No. 3 L.P., Triton Fund III F&F No. 4 L.P. Triton Fund III F&F G L.P., Triton Fund III German L.P., and TFF III Ltd acting on behalf of Triton III F&F L.P.

"**Written Procedure**" means the written or electronic procedure for decision making among the Noteholders in accordance with Clause 18 (*Written Procedure*).

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in these Terms and Conditions to:
  - (i) "**assets**" includes present and future properties, revenues and rights of every description;
  - (ii) any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
  - (iii) a "**regulation**" includes any regulation, rule or official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (iv) an Event of Default is continuing if it has not been remedied or waived;
  - (v) a provision of law is a reference to that provision as amended or re-enacted; and
  - (vi) a time of day is a reference to Stockholm time.
- (b) A notice shall be deemed to be sent by way of press release if it is made available to the public within Sweden promptly and in a non-discriminatory manner.
- (c) No delay or omission of the Agent or of any Noteholder to exercise any right or remedy under the Finance Documents shall impair or operate as a waiver of any such right or remedy, other than as explicitly set out in these Terms and Conditions.

## 2. Status of the Notes

- (a) The Notes are denominated in EUR and each Note is constituted by these Terms and Conditions. The Issuer undertakes to make payments in relation to the Notes and to comply with these Terms and Conditions.

- (b) By subscribing for Notes, each initial Noteholder agrees that the Notes shall benefit from and be subject to the Finance Documents and by acquiring Notes, each subsequent Noteholder confirms such agreement.
- (c) The Nominal Amount of each Note is EUR 100,000 less the aggregate amount by which each Note has been redeemed or repaid in part pursuant to Clause 9 (*Redemption and Repurchase of the Notes*) (the "**Nominal Amount**"). The maximum Total Nominal Amount of the Initial Notes is EUR 120,000,000. All Initial Notes are issued on a fully paid basis at an issue price of 100 per cent. of the Nominal Amount.
- (d) Provided that the Incurrence Test is met and that no Event of Default is continuing or would result from such issue, the Issuer may, at one or several occasions, issue Subsequent Notes. Subsequent Notes shall benefit from and be subject to the Finance Documents, and, for the avoidance of doubt, the applicable ISIN, the interest rate, the currency, the nominal amount and the final maturity applicable to the Initial Notes shall apply to Subsequent Notes. The price of the Subsequent Notes may be set at a discount or at a premium compared to the Nominal Amount. The maximum total nominal amount of the Notes (the Initial Notes and all Subsequent Notes) may not exceed EUR 180,000,000.
- (e) The Notes are freely transferrable. Noteholders may however be subject to purchase or transfer restrictions with regard to the Notes, as applicable from time to time under local laws to which a Noteholder may be subject (due to, e.g., its nationality, its residency, its registered address or its place(s) of business). Each Noteholder must ensure compliance with local laws and regulations applicable at its own cost and expense.
- (f) Notes constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rank *pari passu* with (i) the Super Senior Debt pursuant to the terms of the Intercreditor Agreement, but will receive proceeds distributable by the Security Agent only after the Super Senior Debt have been repaid in full, and (ii) all direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them.
- (g) No action is being taken in any jurisdiction that would or is intended to permit a public offering of the Notes or the possession, circulation or distribution of any document or other material relating to the Issuer or the Notes in any jurisdiction other than Sweden, where action for that purpose is required. Each Noteholder must inform itself about, and observe, any applicable restrictions to the transfer of material relating to the Issuer or the Notes.

### **3. Use of Proceeds**

The Net Proceeds from the issuance of the Initial Notes shall be applied against repayment in full of the Existing Senior Debt and any remaining amount shall be used for general corporate purposes of the Group and acquisitions. Any proceeds from any issuance of Subsequent Notes shall be used for Permitted Distributions, acquisitions or general corporate purposes of the Group.

#### 4. Conditions Precedent

- (a) The payment of the Net Proceeds to the Escrow Account is subject to the Issuing Agent having received documents and evidence of the Escrow Account Pledge Agreement being duly executed and perfected.
- (b) The Issuer shall provide, or procure the provision of, to the Agent, in form and substance satisfactory to the Agent (acting reasonably):
  - (i) copies of constitutional documents of the Issuer and each Guarantor;
  - (ii) copies of necessary corporate resolutions (including authorisations) from each Group Company to execute the relevant Finance Documents and only to the extent that Group Company is a party to a relevant Finance Document;
  - (iii) duly executed copies of release notice(s) from the lenders under the Existing Senior Debt confirming that all Existing Security and Existing Guarantees will be released upon repayment;
  - (iv) evidence that the amounts to be released from the Escrow Account shall be applied towards repayment of the Existing Senior Debt in full in accordance with Clause 3 (*Use of Proceeds*);
  - (v) duly executed copy of the Intercreditor Agreement;
  - (vi) duly executed copy of the Guarantee Agreement;
  - (vii) duly executed copies of the Security Documents; and
  - (viii) duly executed legal opinions relating to the Security Documents, the Terms and Conditions and the Intercreditor Agreement.
- (c) When the conditions precedent for disbursement set out in Clause 4(b) have been fulfilled to the satisfaction of the Agent (acting reasonably), the Agent shall instruct the bank (with which the Company holds the Escrow Account) to transfer the funds from the Escrow Account for the purpose of repayment of the Existing Senior Debt and in accordance with Clause 3 (*Use of Proceeds*), and the Agent shall thereafter or in connection therewith release the pledge over the Escrow Account.
- (d) If the conditions precedent for disbursement set out in Clause 4(b) have not been fulfilled to the satisfaction of the Agent (acting reasonably) or waived by the Agent within twenty (20) Business Days from the First Issue Date (a "**Conditions Precedent Failure**"), the Issuer shall immediately repurchase all Notes at a price equal to 100 per cent. of the Nominal Amount together with any accrued but unpaid interest. Any funds distributed by the Agent to the Noteholders (as a result of the Conditions Precedent Failure) in accordance with the Escrow Account Pledge Agreement shall be deemed to be paid by the Issuer for the redemption under this Clause 4(d).

## **5. Notes in Book-Entry Form**

- (a) The Notes will be registered for the Noteholders on their respective Securities Accounts and no physical notes will be issued. Accordingly, the Notes will be registered in accordance with the Financial Instruments Accounts Act. Registration requests relating to the Notes shall be directed to an Account Operator.
- (b) Those who according to assignment, Security, the provisions of the Swedish Children and Parents Code (*föräldrabalken (1949:381)*), conditions of will or deed of gift or otherwise have acquired a right to receive payments in respect of a Note shall register their entitlements to receive payment in accordance with the Financial Instruments Accounts Act.
- (c) The Issuer (and the Agent when permitted under the CSD's applicable regulations) shall be entitled to obtain information from the debt register (Sw. *skuldbok*) kept by the CSD in respect of the Notes. At the request of the Agent, the Issuer shall promptly obtain such information and provide it to the Agent.
- (d) For the purpose of or in connection with any Noteholders' Meeting under Clause 17 (*Noteholders' Meeting*) or any direct communication to the Noteholders under Clause 18 (*Written Procedure*), the Issuing Agent shall be entitled to obtain information from the debt register kept by the CSD in respect of the Notes.
- (e) The Issuer shall issue any necessary power of attorney to such persons employed by the Agent, as notified by the Agent, in order for such individuals to independently obtain information directly from the debt register kept by the CSD in respect of the Notes. The Issuer may not revoke any such power of attorney unless directed by the Agent or unless consent thereto is given by the Noteholders.

## **6. Right to Act on Behalf of a Noteholder**

- (a) If any person other than a Noteholder wishes to exercise any rights under the Finance Documents, it must obtain a power of attorney or other proof of authorisation from the Noteholder or a successive, coherent chain of powers of attorney or proofs of authorisation starting with the Noteholder and authorising such person.
- (b) A Noteholder may issue one or several powers of attorney to third parties to represent it in relation to some or all of the Notes held by it. Any such representative may act independently under the Finance Documents in relation to the Notes for which such representative is entitled to represent the Noteholder and may further delegate its right to represent the Noteholder by way of a further power of attorney.
- (c) The Agent shall only have to examine the face of a power of attorney or other proof of authorisation that has been provided to it pursuant to Clause 6(b) and may assume that it has been duly authorised, is valid, has not been revoked or superseded and that it is in full force and effect, unless otherwise is apparent from its face.

## **7. Payments in Respect of the Notes**

- (a) Any payment or repayment under the Finance Documents shall be made to such person who is registered as a Noteholder on a Securities Account on the Record Date immediately preceding the relevant payment date.
- (b) If a Noteholder has registered, through an Account Operator, that principal and interest shall be deposited in a certain bank account, such deposits will be effected by the CSD on the relevant payment date. In other cases, payments will be transferred by the CSD to the Noteholder at the address registered with the CSD on the Record Date. Should the CSD, due to a delay on behalf of the Issuer or some other obstacle, not be able to effect the payment of amounts according to the aforesaid, the CSD will pay such amount to the relevant Noteholder being registered as such on the Record Date as soon as possible after such obstacle has been removed.
- (c) If, due to any obstacle for the CSD, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue in accordance with Clause 8(c) during such postponement.
- (d) If payment or repayment is made in accordance with this Clause 7, the Issuer and the CSD shall be deemed to have fulfilled their obligation to pay, irrespective of whether such payment was made to a person not entitled to receive such amount.
- (e) The Issuer is not liable to gross-up any payments under the Terms and Conditions by virtue of any withholding tax, public levy or the similar.

## **8. Interest**

- (a) Each Initial Note carries Interest at the Interest Rate from (but excluding) the First Issue Date up to (and including) the relevant Redemption Date. Any Subsequent Note will carry Interest at the Interest Rate from (but excluding) the Interest Payment Date falling immediately prior to its issuance up to (and including) the relevant Redemption Date.
- (b) Interest accrues during an Interest Period. Payment of Interest in respect of the Notes shall be made quarterly in arrears to the Noteholders on each Interest Payment Date for the preceding Interest Period.
- (c) Interest shall be calculated on the basis of the actual number of days in the Interest Period in respect of which payment is being made divided by 360 (actual/360-days basis).
- (d) If the Issuer fails to pay any amount payable by it under the Finance Documents on its due date, default interest shall accrue on the overdue amount from (but excluding) the due date up to (and including) the date of actual payment at a rate which is two (2) per cent. higher than the Interest Rate. Accrued default interest shall not be capitalised. No default interest shall accrue where the failure to pay was solely attributable to the Agent or the CSD, in which case the Interest Rate shall apply instead.

## **9. Redemption and Repurchase of the Notes**

### **9.1 Redemption at maturity**

The Issuer shall redeem all, but not only some, of the outstanding Notes in full on the Final Maturity Date with an amount per Note equal to the Nominal Amount together with accrued but unpaid Interest. If the Final Maturity Date is not a Business Day, then the redemption shall occur on the Business Day following from an application of the Business Day Convention.

### **9.2 The Group Companies' purchase of Notes**

The Issuer and any other Group Company may, subject to applicable law, at any time and at any price purchase Notes on the market or in any other way.

### **9.3 Voluntary Total Redemption**

- (a) The Issuer may redeem all, but not only some, of the outstanding Notes in full with an amount per Note equal to the Call Option Amount applicable to the relevant period for the repayment of the Nominal Amount together with accrued but unpaid Interest.
- (b) Redemption in accordance with Clause 9.3(a) shall be made by the Issuer giving not less than twenty (20) Business Days' notice prior to the relevant Redemption Date to the Noteholders and the Agent and in accordance with the instructions of the Issuer or the Issuing Agent, as applicable. Any such notice is irrevocable and, upon expiry of such notice, the Issuer is bound to redeem the Notes in full with the applicable amounts.

### **9.4 Voluntary Partial Repayment**

- (a) The Issuer may repay all, but not only some, of the outstanding Notes with an amount not exceeding EUR 10,000 of the Nominal Amount of each Note.
- (b) Partial repayment in accordance with Clause 9.4(a) shall reduce the Nominal Amount of each Note pro rata (rounded down to the nearest EUR 100) (the "**Repayment Amount**"). Repayment shall be made to each Noteholder on an Interest Payment Date with an amount equal to the Repayment Amount, plus (i) a premium of three (3) per cent. of the Repayment Amount, and (ii) accrued but unpaid interest on the Repayment Amount.
- (c) Partial repayment in accordance with Clause 9.4(a) shall be made by the Issuer giving not less than twenty (20) Business Days' notice prior to the relevant Redemption Date (being an Interest Payment Date) to the Noteholders and the Agent and in accordance with the instructions of the Issuer or the Issuing Agent, as applicable. Any such notice is irrevocable and, upon expiry of such notice, the Issuer is bound to repay each Note with the applicable amounts.
- (d) Partial repayment in accordance with this Clause 9.4 may only be made at one occasion per each twelve (12) month period (without carry-back or carry forward).

### **9.5 Mandatory Repurchase due to a Change of Control Event**

- (a) Upon a Change of Control Event occurring, each Noteholder shall have the right to request that all, or only some, of its Notes be repurchased at a price per Note equal

to 101.00 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of thirty (30) calendar days following a notice from the Issuer of the Change of Control Event pursuant to Clause 11.1(b) (after which time period such right shall lapse).

- (b) The notice from the Issuer pursuant to Clause 11.1(b) shall specify the repurchase date and include instructions about the actions that a Noteholder needs to take if it wants Notes held by it to be repurchased. If a Noteholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer shall repurchase the relevant Notes and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to Clause 11.1(b). The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in Clause 9.5(a).

## **9.6 Voluntary Partial Prepayment upon an Equity Listing Event**

- (a) The Issuer may, in connection with an Equity Listing Event, repay all, but not only some, of the outstanding Notes by up to thirty-five (35) per cent. of the Total Nominal Amount as of the First Issue Date, provided that (i) at least fifty (50) per cent. of the total Nominal Amount per Note remains outstanding after such repayment, and (ii) such repayment is made with funds in an aggregate amount not exceeding the cash proceeds received by the Issuer as a result of such Equity Listing Event (net of fees, charges and commissions actually incurred in connection with such offering and net of taxes paid or payable as a result of such offering).
- (b) Partial repayment in accordance with Clause 9.6(a) shall reduce the Nominal Amount of each Note pro rata (rounded down to the nearest EUR 100) (the "**Repayment Amount**").
- (c) Repayment shall be made to each Noteholder on an Interest Payment Date occurring within one hundred eighty (180) days following the Equity Listing Event (giving not less than twenty (20) Business Days' notice prior to the relevant repayment date to the Noteholders and the Agent), with an amount equal to the Repayment Amount, plus (i) a premium of five (5) per cent. of the Repayment Amount, and (ii) accrued but unpaid interest on the Repayment Amount.
- (d) Partial repayment in accordance with this Clause 9.6 may only be made at one occasion.

## **9.7 General**

- (a) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Notes. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 9, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 9 by virtue of the conflict.
- (b) Any Notes repurchased by the Issuer or any other Group Company pursuant to this Clause 9 may at the Issuer's or such other Group Company's discretion be retained, sold or (if held by the Issuer) cancelled.

## **10. Transaction Security**

### **10.1 Granting of the Transaction Security**

- (a) As continuing Security for the due and punctual fulfilment of the Secured Obligations, Polygon Holding AB, the Issuer and the Guarantors (subject to corporate law limitations) grant on the First Issue Date the Transaction Security and the Guarantees (as applicable) to the Secured Parties as represented by the Security Agent on the terms set out in the Security Documents and the Guarantee Agreement.
- (b) The Security Agent shall hold the Transaction Security and the Guarantees on behalf of the Secured Parties in accordance with the Security Documents and the Intercreditor Agreement. Polygon Holding AB, the Issuer and the Guarantors shall enter into the Security Documents and the Guarantee Agreement (as applicable) and perfect the Transaction Security in accordance with the Security Documents on or before the First Issue Date.
- (c) Unless and until the Security Agent has received instructions from the Agent to the contrary in accordance with the Intercreditor Agreement, the Security Agent shall (without first having to obtain the Noteholders' consent), be entitled to enter into agreements with the Issuer or a third party or take any other actions, if it is, in the Security Agent's opinion, necessary for the purpose of maintaining, releasing or enforcing the Transaction Security or for the purpose of settling the Noteholders', the Super Senior Revolving Credit Facility Creditors', the Hedge Counterparty's or the Issuer's rights to the Transaction Security, in each case in accordance with the terms of the Security Documents, the Intercreditor Agreement and the Terms and Conditions and provided that such agreements or actions are not detrimental to the interests of the Noteholders.
- (d) The Agent shall be entitled to give instructions relating to the Transaction Security and the Guarantees to the Security Agent in accordance with the Intercreditor Agreement.

### **10.2 Replacement of the Super Senior Revolving Credit Facility**

- (a) The Issuer shall from time to time be entitled to replace the Super Senior Revolving Credit Facility with new debt facilities for general corporate purposes and/or working capital purposes and/or replace the Notes with new notes or debt facilities, provided that:
  - (i) the Transaction Security shall secure the new debt on the same terms, *mutatis mutandis*, as it secures the replaced debt, including the terms of the Intercreditor Agreement;
  - (ii) each new creditor(s) shall directly or through an agent or a trustee be a party to the Transaction Security;
  - (iii) the Security Agent shall hold the Transaction Security on behalf of the new creditors on the same terms, *mutatis mutandis*, as the Transaction Security is held by the Security Agent on behalf of the Secured Parties;

- (iv) the new creditor(s) shall directly or through an agent or a trustee be a party to the Intercreditor Agreement; and
  - (v) the new creditor(s) shall have the same right to the Transaction Security and the Guarantees and the proceeds pertaining thereto as the previous Super Senior Revolving Credit Facility Creditor.
- (b) Provided that the terms set out in Clause 10.2(a) are complied with, the Security Agent may from time to time, at the request of the Issuer, amend vary and/or restate the Transaction Security on behalf of itself and the Secured Parties in order to release Security provided to an existing Secured Party (with the prior consent of such existing Secured Party) and/or to create Security in favour of such new creditor(s).

### 10.3 Intra-group restructurings

- (a) Subject to the terms of the Senior Finance Documents, a Group Company shall be entitled to make disposals of shares in Pledged Group Companies (a "**Share Disposal**") or Pledged Intercompany Loans (a "**Loan Disposal**") or merge with another Group Company (a "**Merger**"), provided that:
- (i) in case of a Share Disposal, the transfer shall be made subject to the Security over such shares and the Issuer shall procure that the acquiring Group Company shall enter into any agreements, execute any documents and take all actions requested by the Security Agent for the purpose of maintaining Security over such Pledged Group Company;
  - (ii) in case of a Loan Disposal of a Pledged Intercompany Loan, the transfer shall be made subject to the Security over such Pledged Intercompany Loan and the Issuer shall procure that the acquiring Group Company and/or the debtor under such Pledged Intercompany Loan shall enter into any agreements, execute any documents and take all actions requested by the Security Agent for the purpose maintaining Security over such Pledged Intercompany Loan;
  - (iii) in case of a Merger, if the shares in the transferor Group Company but not the shares in the transferee Group Company are subject to the Transaction Security, the shares in the transferee Group Company are pledged to the Secured Parties on terms satisfactory to the Security Agent;
  - (iv) in case of a Merger, if the transferor Group Company but not the transferee Group Company is a Guarantor, the Issuer shall procure that the transferee Group Company shall accede to the Guarantee Agreement as an Additional Guarantor; and
  - (v) in case of a Merger, any Pledged Intercompany Loans transferred as a result of a Merger remain subject to the Transaction Security and the Issuer shall procure that the creditors and/or debtors under such Pledged Intercompany Loans shall enter into any agreements, execute any documents and take all actions requested by the Security Agent for the purpose of maintaining Security over such Pledged Intercompany Loans.

- (b) Notwithstanding anything to the contrary in paragraph (a) above, the Issuer may not enter into a Merger as transferor Group Company.
- (c) Subject to paragraph (b) above, the Security Agent shall in connection with a disposal made pursuant to paragraph (a) above, release the Transaction Security and/or Guarantees (as applicable) for the purpose of enabling such disposal.

#### 10.4 Release and granting of security upon disposals

- (a) A Group Company shall be entitled to dispose of shares in a Pledged Group Company (a "**Disposed Company**") to a person or entity not being a Group Company, provided that, prior to the disposal, Security is granted to the Secured Parties (represented by the Security Agent) over:
  - (i) shares in another Group Company (the "**Substitute Company**") on terms equivalent to the terms of other Security Documents and that, provided that the EBITDA of the Substitute Company (on a consolidated basis) amount to at least ninety (90) per cent. of the EBITDA of the Disposed Company (on a consolidated basis); or
  - (ii) the following assets:
    - (A) a bank account held by the disposing Group Company with a reputable bank (in the sole discretion of the Security Agent) (the "**Proceeds Account**") on terms similar to the terms of other Security Documents, to which account the Issuer and the disposing Group Company shall ensure that the cash purchase price (less transaction costs) for the Disposed Company is transferred directly from the purchaser; and
    - (B) any vendor loan granted by a disposing Group Company to a purchaser of the Disposed Company, on terms similar to the terms of other Security Documents.
- (b) Prior to a disposal in accordance with paragraph (a)(i) above, the Issuer shall provide to the Security Agent a certificate signed by authorized signatories of the Issuer setting out and certifying the EBITDA of the Disposed Company and the Substitute Company (each on a consolidated basis).
- (c) Subject to paragraph (a) above, a Disposed Company shall be entitled to repay Pledged Intercompany Loans, provided that the Disposed Company makes such payment to (i) a Proceeds Account which is pledged in favour of the Secured Parties, or (ii) a bank account held by the creditor under such Pledged Intercompany Loan, with a reputable bank (in the sole discretion of the Security Agent) which bank account, prior to the repayment of the Pledged Intercompany Loan, has been granted as Security by such creditor on terms similar to the terms of other Security Documents.
- (d) A Group Company which has granted Security over a Proceeds Account may request that the Security Agent releases any funds (in whole or in part) standing to the credit on the Proceeds Account for the purpose of such Group Company's acquisition of shares in a target company (the "**Target Company**"), provided that (i) the Issuer provides evidence to the Security Agent that the purchase price (less

refinancing debt, costs and taxes) for the shares in the Target Company corresponds to at least the amount to be released from the Proceeds Account, and (ii) the Issuer and such Group Company shall ensure that all shares in the Target Company are immediately following the acquisition pledged to the Secured Parties (represented by the Security Agent) on terms similar to the terms of other Security Documents and that such pledge is duly perfected as soon as possible.

- (e) The Security Agent shall not release any Security over the shares in a Disposed Company until the conditions set out in paragraph (a)(i) or (a)(ii) have been fulfilled.
- (f) When determining EBITDA for a company in this Clause 10.4, EBITDA shall be calculated for that company in the same manner as Group EBITDA is calculated for the Issuer.

## **10.5 Enforcement of Security and Guarantees**

- (a) The Agent may only take any action to accelerate or enforce any Transaction Security or Guarantees in accordance with the terms of the Intercreditor Agreement. The Intercreditor Agreement contains a stand-still provision (binding upon the Secured Parties) relating to the enforcement of the Transaction Security and the Guarantees.
- (b) Upon an enforcement of the Transaction Security and/or the Guarantees, the proceeds shall be distributed in accordance with the Intercreditor Agreement.
- (c) All security and/or guarantees or arrangement having similar effects may be released by the Security Agent, without the need for any further referral to or authority from anyone, upon any enforcement provided that the proceeds are distributed in accordance with the provisions set out in the Intercreditor Agreement.

## **11. Information to Noteholders**

### **11.1 Information from the Issuer**

- (a) The Issuer shall make the following information available in the English language to the Noteholders by publication on the website of the Issuer:
  - (i) as soon as the same become available, but in any event within four (4) months after the end of each financial year, the annual audited consolidated financial statements of the Group and the annual audited unconsolidated financial statements of the Issuer, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors; and
  - (ii) as soon as the same become available, but in any event within two (2) months after the end of each quarter of its financial year, the quarterly interim unaudited consolidated reports of the Group (the first report covering the period ending on 30 June 2014), including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors.

When the Notes have been listed, the reports referred to under (i) and (ii) above, shall be made available in accordance with the rules and regulations of NASDAQ OMX Stockholm (or any other Regulated Market, as applicable) (as amended from time to time) and the Swedish Securities Markets Act (Sw. lag (2007:582) om värdepappersmarknaden).

- (b) The Issuer shall immediately notify the Agent in writing when the Issuer is or becomes aware of that a Change of Control Event is likely to occur and when a Change of Control Event has occurred, and shall provide the Agent with such further information as the Agent may request (acting reasonably) following receipt of such notice.
- (c) When the financial statements and other information are made available to the Noteholders pursuant to paragraph (a) above, the Issuer shall send copies of such financial statements and other information (specified by the Agent, acting reasonably) to the Agent.
- (d) The Issuer shall:
  - (i) in connection with the incurrence of new Financial Indebtedness incurred pursuant to paragraphs (i) or (l) of the definition of "Permitted Debt";
  - (ii) upon a Permitted Distribution in accordance with Clause 13.2(c)(i); or
  - (iii) within twenty (20) Business Days from the Agent's request,submit to the Agent a Compliance Certificate which, in cases (i) and (ii) above, shall also contain calculations and figures in respect of the Incurrence Test.
- (e) The Issuer shall immediately notify the Agent (with full particulars) when the Issuer is or becomes aware of the occurrence of any event or circumstance which constitutes an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.
- (f) The Issuer is only obliged to inform the Agent according to this Clause 11.1 if informing the Agent would not conflict with any applicable laws or, when the Notes are listed, the Issuer's registration contract with the Regulated Market. If such a conflict would exist pursuant to the listing contract with the Regulated Market or otherwise, the Issuer shall however be obliged to either seek approval from the Regulated Market or undertake other reasonable measures, including entering into a non-disclosure agreement with the Agent, in order to be able to timely inform the Agent according to this Clause 11.1.

## **11.2 Information from the Agent**

The Agent is entitled to disclose to the Noteholders any event or circumstance directly or indirectly relating to the Issuer or the Notes. Notwithstanding the foregoing, the Agent may

if it considers it to be beneficial to the interests of the Noteholders delay disclosure or refrain from disclosing certain information other than in respect of an Event of Default that has occurred and is continuing.

### **11.3 Publication of Finance Documents**

- (a) The latest version of these Terms and Conditions (including any document amending these Terms and Conditions) shall be available on the websites of the Issuer and the Agent.
- (b) The latest versions of the other Finance Documents shall be available to the Noteholders at the office of the Agent during normal business hours.

## **12. Incurrence Covenant**

### **12.1 Incurrence Test**

- (a) The Incurrence Test is met if, on the relevant test date:
  - (i) the Leverage does not exceed 3.75:1; and
  - (ii) the Interest Coverage Ratio exceeds 2.75:1,calculated in accordance with the calculation principles set out in Clause 12.2 (*Calculation Adjustments*), on a consolidated basis and based on the most recently delivered Financial Report.
- (b) No event relevant for the application of the Incurrence Test shall be permitted if an Event of Default is continuing or would occur following such event.

### **12.2 Calculation Adjustments**

- (a) The calculation of the Leverage and the Interest Cover Ratio shall be made as per a testing date determined by the Issuer, falling no more than one month prior to the event relevant for the application of the Incurrence Test. The Net Interest Bearing Debt, Net Finance Charges, and Group EBITDA for the Relevant Period shall be measured on the relevant testing date or in respect of the Relevant Period, the last day of the period covered by the most recent Financial Report, on a pro forma basis assuming the implementation of the proposed transaction in respect of which the Incurrence Test is being measured including the application of the net proceeds therefrom (in the case of new Financial Indebtedness, this shall be included where applicable, provided it is an interest bearing obligation (however, any cash balance resulting from the incurrence of the new Financial Indebtedness shall not reduce the Net Interest Bearing Debt).
- (b) The figures Group EBITDA and Net Finance Charges for the Relevant Period ending on the last day of the period covered by the most recent Financial Report shall be used when calculating of the Interest Coverage Ratio and the Leverage, but adjusted so that:
  - (i) entities acquired or disposed of by the Group during the Relevant Period, or after the end of the Relevant Period but before the relevant testing date,

shall be included or excluded (as applicable), pro forma for the entire Relevant Period;

- (ii) any entity to be acquired with the proceeds from any new Financial Indebtedness shall be included, pro forma, for the entire Relevant Period; and
  - (iii) proforma Group EBITDA shall be adjusted to take into account cost savings realisable and reasonable synergies, and if requested by the Agent, such savings and synergies to confirmed by a reputable accounting firm.
- (c) Transaction Costs will be excluded from the total calculation of Interest Cover Ratio and Leverage (without any double-counting).

### **13. General Undertakings**

#### **13.1 General**

The Issuer undertakes to (and shall, where applicable, procure that each other Group Company will) comply with the undertakings set out in this Clause 13 for as long as any Notes remain outstanding.

#### **13.2 Distributions**

- (a) The Issuer shall not:
  - (i) repurchase any of its own shares; or
  - (ii) redeem its share capital or other restricted equity with repayment to Shareholders.
- (b) The Issuer shall not, and shall procure that none of its Subsidiaries will:
  - (i) pay any dividend on its shares (other than dividends by a Subsidiary to its parent or payments by a Subsidiary that is not wholly-owned on a pro rata basis or on a basis that results in the receipt by the Issuer or a Subsidiary of dividends or distributions of greater value than the Issuer or such Subsidiary would receive on a pro rata basis);
  - (ii) repay or pay cash interest under any Shareholder Loans (including for the avoidance of doubt the Investor Loan) or other loans from Shareholders or any Investor Document; or
  - (iii) grant any loans to the Shareholders or Affiliates of the Shareholders.
- (c) Notwithstanding paragraphs (a) and (b) above, a Restricted Payment may be made:
  - (i) if:
    - (A) no Event of Default is continuing or would result from such Restricted Payment;
    - (B) an Equity Listing Event has occurred;

- (C) the amount of the Restricted Payment does not exceed the Permitted Distribution Amount;
  - (D) the Incurrence Test is met (calculated on a pro forma basis including the relevant Restricted Payment); and
  - (E) the drawn amount outstanding under the Super Senior Revolving Credit Facility (excluding guarantees) less Cash and Cash Equivalents of the Group amounts to zero (0) or less, tested pro forma including such Restricted Payment, or
    - (ii) in a maximum amount of EUR 250,000 each calendar year (by payments on Shareholder Loans or as dividend) to the owner(s) of the Issuer to service fees or administration costs in the group of holding companies.
- (d) A Permitted Distribution made in accordance with paragraph (c) above shall decrease the Permitted Distribution Amount accordingly.
  - (e) When the Issuer has made its annual audited consolidated financial statements of the Group available in accordance with Clause 11.1(a), then the Permitted Distribution Amount shall be increased or decreased (as the case may be) by fifty (50) per cent. of consolidated net profit or loss (defined as profit / (loss) as it appears on the Group's income statement prepared in accordance with the Accounting Principles) of the Group as set out in the financial statements (before taking into account any interest payable in kind on any Shareholder Loan).

### **13.3 Nature of Business**

The Issuer shall procure that no substantial change is made to the general nature of the business carried on by the Group as of the First Issue Date.

### **13.4 Financial Indebtedness**

The Issuer shall not, and shall procure that none of its Subsidiaries, incur any additional Financial Indebtedness or maintain any existing Financial Indebtedness, provided however that the Issuer and the Subsidiaries have a right to incur and maintain Financial Indebtedness that constitutes Permitted Debt and, for the avoidance of doubt, any Financial Indebtedness incurred or maintained in compliance with these Terms and Conditions shall only be tested either on the First Issue Date or on the date of incurrence, as applicable.

### **13.5 Dealings with Related Parties**

The Issuer shall, and shall procure that each Group Company shall, conduct all dealings with the direct and indirect Shareholders of the Group Companies and/or any Affiliates of such direct and indirect Shareholders at arm's length terms (or better) and in accordance with applicable transfer pricing, provided that this undertaking shall not apply to dealings between Group Companies which are made in the ordinary course of business.

### **13.6 Disposal of Assets**

The Issuer shall not, and shall procure that no Material Group Company, sell or otherwise dispose of shares in any Material Group Company or of all or substantially all of its or any Material Group Company's assets to any person not being the Issuer or any of its wholly-owned Subsidiaries which, in the case of a transfer of the shares in or the assets of a Guarantor, the acquiring Subsidiary is (or becomes) a Guarantor, unless the transaction is carried out at

fair market value and on terms and conditions customary for such type of transaction and provided that it does not have a Material Adverse Effect. The Issuer shall notify the Agent of any such transaction and, upon request by the Agent, provide the Agent with any information relating to the transaction which the Agent deems necessary (acting reasonably).

### **13.7 Negative Pledge**

The Issuer shall not, and shall procure that no Group Company shall, create or allow to subsist, retain, provide, prolong or renew any guarantee (Sw. *borgen*, or its equivalent in any other jurisdiction) or Security over any of its/their assets (present or future) to secure any Financial Indebtedness, provided however that the Group Companies have a right to retain, allow to subsist, provide, prolong and renew any Permitted Security.

### **13.8 Insurances**

The Issuer shall, and shall ensure that all other Group Companies will, maintain insurances on and in relation to its business and assets against those risks and to the extent as is commercially available and usual for companies carrying on the same or substantially similar business.

### **13.9 Clean Down Period**

The Issuer shall procure that during each calendar year, there shall be a period of three (3) consecutive days during which the amount outstanding (and in respect of ancillaries, utilised or drawn) under the Super Senior Revolving Credit Facility Agreement (excluding guarantees), less Cash and Cash Equivalents of the Group, amounts to zero (0) or less. Not less than three (3) months shall elapse between two such periods.

### **13.10 Listing of the Notes**

- (a) The Issuer shall ensure that the Notes are listed at the corporate bond list on NASDAQ OMX Stockholm, or if such admission to trading is not possible to obtain or maintain, admitted to trading on another Regulated Market, no later than nine (9) months after the First Issue Date and shall take all measures required to ensure that the Notes, once listed on NASDAQ OMX Stockholm (or any other Regulated Market, as applicable), continue being listed on NASDAQ OMX Stockholm (or any other Regulated Market, as applicable) for as long as any Note is outstanding (however taking into account the rules and regulations of NASDAQ OMX Stockholm (or any other Regulated Market, as applicable) and the CSD (as amended from time to time) preventing trading in the Notes in close connection to the redemption of the Notes).
- (b) Upon any issuance of Subsequent Notes, the Issuer shall promptly, but no later than ten (10) Business Days after the relevant issue date, procure that the volume of the Notes listed is increased accordingly.

### **13.11 Intercompany Loans**

- (a) The principal of any Intercompany Loan granted to a Subsidiary with net proceeds from the issuance of Subsequent Notes shall become subject to the Transaction Security and the Issuer shall, or ensure that the relevant grantor shall, enter into a loan pledge agreement with the Security Agent (in form and substance reasonably satisfactory to the Security Agent) for the purpose of creating Security over the principal of such Intercompany Loan in favour of the Secured Parties.

- (b) The Intercompany Loans may only be repaid (or prepaid as the case may be) in accordance with the Intercreditor Agreement, but may always be repaid or prepaid to the extent the interest received by the Issuer under the other Intercompany Loans is not sufficient to service the payment obligations under these Terms and Conditions.

### **13.12 Subordination and accession to the Intercreditor Agreement**

The following loans shall be subordinated to the Notes by way of the relevant creditor(s) and/or debtor(s) under such loans acceding to the Intercreditor Agreement:

- (a) Shareholder Loans and/or loans under the Investor Documents (other than the lenders under the Investor Loan);
- (b) Long Term Loans granted by a member of the Group to a Pledged Group Company and the principal amount of which in aggregate exceeds EUR 2,000,000 per debtor;
- (c) Long Term Loans with an aggregate principal amount exceeding EUR 2,000,000 per debtor and granted by a Group Company to a Group Company who is a creditor under a Pledged Intercompany Loan; and; and
- (d) Long Term Loans between Group Companies (other than Pledged Intercompany Loans) the principal amount of which in aggregate exceeds EUR 10,000,000 per debtor (other than loans to Polygon US Corporation and Polygon US Rapid Refile Corp).

### **13.13 Conditions Subsequent**

The Issuer shall provide to the Agent evidence, in form and substance satisfactory to the Agent, showing that any Existing Security has been released, as soon as possible after the conditions set out in Clause 4(b) have been fulfilled and the payments from the Escrow Account has been made, but no later than 20 Business Days after the First Issue Date.

## **14. Events of Default and Acceleration of the Notes**

Each of the events or circumstances set out in this Clause 14 (other than Clause 14.10 (*Acceleration of the Notes*)) is an Event of Default.

### **14.1 Non-Payment**

The Issuer fails to pay an amount on the date it is due in accordance with the Finance Documents unless the non-payment:

- (a) is caused by technical or administrative error; and
- (b) is remedied within five (5) Business Days of the due date.

### **14.2 Other Obligations**

Any of the Issuer, the Obligors or any other party to a Finance Document (except for a Secured Party), fails to comply with or in any other way acts in violation of the Finance Documents to which such non-compliant entity is a party, in any other way than as set out in Clause 14.1 (*Non-Payment*), provided that such failure or violation of the Finance Documents continues unremedied twenty (20) Business Days after the Agent has urged the Issuer in writing to remedy such failure or violation.

### **14.3 Cross-Acceleration**

Any Financial Indebtedness of a Group Company is not paid when due as extended by any originally applicable grace period, or is declared to be due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Event of Default will occur under this Clause 14.3 if (i) the aggregate amount of Financial Indebtedness is less than EUR 2,000,000, (ii) the acceleration of the Financial Indebtedness referred to in this Clause 14.3 has not been cured within 10 days, and (iii) it is not Financial Indebtedness owed to a Group Company.

### **14.4 Insolvency**

- (a) Any Material Group Company is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors with a view to rescheduling its Financial Indebtedness; or
- (b) a moratorium is declared in respect of any Financial Indebtedness of any Material Group Company.

### **14.5 Insolvency Proceedings**

Any corporate action, legal proceedings or other procedures are taken (other than (i) proceedings or petitions which are being disputed in good faith and are discharged, stayed or dismissed within thirty (30) calendar days of commencement or, if earlier, the date on which it is advertised or (ii), in relation to Subsidiaries of the Issuer, solvent liquidations) in relation to:

- (a) the suspension of payments, winding-up, dissolution, administration or reorganisation (Sw. företagsrekonstruktion) (by way of voluntary agreement, scheme of arrangement, formal restructuring proceedings or otherwise) of any Material Group Company;
- (b) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Material Group Company or any of its assets; or
- (c) any analogous procedure or step is taken in any jurisdiction in respect of any Material Group Company.

### **14.6 Mergers and Demergers**

Save with respect to any Permitted Merger, a decision is made that any Material Group Company shall be merged or demerged into a company which is not a Group Company, unless the Agent has given its consent (not to be unreasonably withheld or delayed) in writing prior to the merger and/or demerger (where consent is not to be understood as a waiver of the rights that applicable law at the time assigns the concerned creditors).

### **14.7 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Group Company and is not discharged within thirty (30) calendar days.

#### **14.8 Impossibility or Illegality**

It is or becomes impossible or unlawful for an Obligor to fulfil or perform any of the provisions of the Finance Documents or if the obligations under the Finance Documents are not, or cease to be, legal, valid, binding and enforceable.

#### **14.9 Continuation of the Business**

The Group ceases to carry on its business as of the First Issue Date, other than pursuant to a merger or demerger which is permitted under these Terms and Conditions.

#### **14.10 Acceleration of the Notes**

- (a) Subject to the terms of the Intercreditor Agreement, if an Event of Default has occurred and is continuing at the time of the Agent's declaration of the Event of Default, the Agent is entitled to, on behalf of the Noteholders (i) by notice to the Issuer, declare all, but not only some, of the Notes due for payment together with any other amounts payable under the Finance Documents, immediately or at such later date as the Agent determines (but such date may not fall after the Final Maturity Date), and (ii) exercise any or all of its rights, remedies, powers and discretions under the Finance Documents, provided in each case that:
  - (i) in case of an Event of Default set out in Clause 14.2 (*Other Obligations*) to and including 14.3 (*Cross-Acceleration*), such Event of Default has a Material Adverse Effect; and
  - (ii) in case of an Event of Default set out in Clauses 14.4 (*Insolvency*) to and including 14.9 (*Continuation of the Business*) and which is attributable to a Group Company (other than the Issuer), such Event of Default has a Material Adverse Effect.
- (b) If the Noteholders (in accordance with these Terms and Conditions) instruct the Agent to accelerate the Notes, the Agent shall, provided that the provisions of the Intercreditor Agreement has been complied with, promptly declare the Notes due and payable and take such actions as, in the opinion of the Agent, may be necessary or desirable to enforce the rights of the Noteholders under the Finance Documents, unless the relevant Event of Default is no longer continuing.
- (c) If the right to accelerate the Notes is based upon a decision of a court of law or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of acceleration to be deemed to exist.
- (d) In the event of an acceleration of the Notes in accordance with this Clause 14, the Issuer shall redeem all Notes with an amount equal to the redemption amount specified in Clause 9.3 (*Voluntary Total Redemption*), as applicable considering when the acceleration occurs.

#### **15. Distribution of Proceeds**

- (a) Subject to the terms of the Intercreditor Agreement, all payments by the Issuer relating to the Notes and the other Senior Finance Documents and any proceeds received from an enforcement of the Transaction Security and/or the Guarantees

shall be distributed in accordance with the Intercreditor Agreement in the following order of priority:

- (i) firstly, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Security Agent;
- (ii) secondly, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Issuing Agent, the agent under the Super Senior Revolving Credit Facility Agreement and the Agent;
- (iii) thirdly, towards payment pro rata of accrued interest unpaid under the Super Senior Revolving Credit Facility Documents;
- (iv) fourthly, towards payment pro rata of principal under the Super Senior Revolving Credit Facility Documents and any other costs or outstanding amounts under the Super Senior Revolving Credit Facility Documents, and any close out amount and any other outstanding amounts under the Hedging Obligations;
- (v) fifthly, towards payment of accrued interest unpaid under the Notes (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
- (vi) sixthly, towards payment of principal under the Notes;
- (vii) seventhly, in or towards payment pro rata of any other costs or outstanding amounts unpaid under the final terms and conditions for the Notes;
- (viii) eighthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), towards payment pro rata of accrued interest unpaid and principal under the Shareholder Debt (as defined in the Intercreditor Agreement);
- (ix) ninthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), towards payment pro rata of accrued interest unpaid and principal under the Intercompany Debt (as defined in the Intercreditor Agreement); and
- (x) tenthly, after the Final Discharge Date (as defined in the Intercreditor Agreement), in payment of the surplus (if any) to the relevant ICA Group Company (as defined in the Intercreditor Agreement) or other person entitled to it.

Any excess funds after the application of proceeds in accordance with paragraphs (i) to (x) above shall be paid to the Issuer.

- (b) Funds that the Agent receives (directly or indirectly) in connection with the acceleration of the Notes or the enforcement of the Transaction Security and/or the Guarantees shall constitute escrow funds (*redovisningsmedel*) and must be promptly turned over to the Security Agent to be applied in accordance with the Intercreditor Agreement.

## 16. Decisions by Noteholders

- (a) Any decision by the Noteholders on a matter relating to the Finance Documents shall (at the option of the Agent) be dealt with at a Noteholders' Meeting or by way of a Written Procedure.
- (b) Any request from the Issuer or a Noteholder (or Noteholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount (such request may only be validly made by a person who is a Noteholder on the Business Day immediately following the day on which the request is received by the Agent and shall, if made by several Noteholders, be made by them jointly) for a decision by the Noteholders on a matter relating to the Finance Documents shall be directed to the Agent and dealt with at a Noteholders' Meeting or by way a Written Procedure, as determined by the Agent. The person requesting the decision may suggest the form for decision making, but if it is in the Agent's opinion more appropriate that a matter is dealt with at a Noteholders' Meeting than by way of a Written Procedure, it shall be dealt with at a Noteholders' Meeting.
- (c) The Agent may refrain from convening a Noteholders' Meeting or instigating a Written Procedure if (i) the suggested decision must be approved by any person in addition to the Noteholders and such person has informed the Agent that an approval will not be given, or (ii) the suggested decision is not in accordance with applicable laws.
- (d) Only a person who is, or who has been provided with a power of attorney pursuant to Clause 6 (*Right to Act on Behalf of a Noteholder*) from a person who is, registered as a Noteholder:
  - (i) on the Record Date prior to the date of the Noteholders' Meeting, in respect of a Noteholders' Meeting, or
  - (ii) on the Business Day specified in the communication pursuant to Clause 18(c), in respect of a Written Procedure,may exercise voting rights as a Noteholder at such Noteholders' Meeting or in such Written Procedure, provided that the relevant Notes are included in the definition of Adjusted Nominal Amount.
- (e) Subject to Clause 16(f), the following matters shall require the consent of Noteholders representing at least sixty-six and two thirds ( $66 \frac{2}{3}$ ) per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 18(c):
  - (i) a waiver of a breach of an undertaking set out in Clause 13 (*General Undertakings*), with the exception of Clauses 13.11 (*Intercompany Loans*) to 13.13 (*Conditions Subsequent*); and
  - (ii) an amendment to any provision in the Finance Documents.
- (f) The following matters shall require the consent of Noteholders representing at least seventy-five (75) per cent. of the Adjusted Nominal Amount for which Noteholders

are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 18(c):

- (i) a change to the terms dealing with the requirements for Noteholders' consent set out in this Clause 16;
  - (ii) to reduce the principal amount, interest rate or interest amount which shall be paid by the Issuer;
  - (iii) to amend any payment day for principal or interest amount or waive any breach of a payment undertaking;
  - (iv) an extension of the tenor of the Notes or any of the due date for payment of any principal or interest on the Notes; and
  - (v) a mandatory exchange of the Notes for other securities.
- (g) Any matter not covered by Clause 16(e) or 16(f) shall require the consent of Noteholders representing more than fifty (50) per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 18(c). This includes, but is not limited to, any amendment to, or waiver of, the terms of any Finance Document that does not require a higher majority (other than an amendment permitted pursuant to Clause 19(a)(i) or 19(a)(ii)) or the enforcement of any Transaction Security.
- (h) Quorum at a Noteholders' Meeting or in respect of a Written Procedure only exists if a Noteholder (or Noteholders) representing at least twenty (20) per cent. of the Adjusted Nominal Amount:
- (i) if at a Noteholders' Meeting, attend the meeting in person or by telephone conference (or appear through duly authorised representatives); or
  - (ii) if in respect of a Written Procedure, reply to the request.
- (i) If a quorum does not exist at a Noteholders' Meeting or in respect of a Written Procedure, the Agent or the Issuer shall convene a second Noteholders' Meeting (in accordance with Clause 17(a)) or initiate a second Written Procedure (in accordance with Clause 18(a)), as the case may be, provided that the relevant proposal has not been withdrawn by the person(s) who initiated the procedure for Noteholders' consent. The quorum requirement in Clause 16(h) shall not apply to such second Noteholders' Meeting or Written Procedure.
- (j) Any decision which extends or increases the obligations of the Issuer or the Agent, or limits, reduces or extinguishes the rights or benefits of the Issuer or the Agent, under the Finance Documents shall be subject to the Issuer's or the Agent's consent, as applicable.
- (k) A Noteholder holding more than one Note need not use all its votes or cast all the votes to which it is entitled in the same way and may in its discretion use or cast some of its votes only.

- (l) The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Noteholder for or as inducement to any consent under these Terms and Conditions, unless such consideration is offered to all Noteholders that consent at the relevant Noteholders' Meeting or in a Written Procedure within the time period stipulated for the consideration to be payable or the time period for replies in the Written Procedure, as the case may be.
- (m) A matter decided at a duly convened and held Noteholders' Meeting or by way of Written Procedure is binding on all Noteholders, irrespective of them being present or represented at the Noteholders' Meeting or responding in the Written Procedure. The Noteholders that have not adopted or voted for a decision shall not be liable for any damages that this may cause other Noteholders.
- (n) All reasonable costs and expenses incurred by the Issuer or the Agent for the purpose of convening a Noteholders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Agent, shall be paid by the Issuer.
- (o) If a decision shall be taken by the Noteholders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Agent provide the Agent with a certificate specifying the number of Notes owned by Group Companies, irrespective of whether such person is directly registered as owner of such Notes. The Agent shall not be responsible for the accuracy of such certificate or otherwise be responsible to determine whether a Note is owned by a Group Company.
- (p) Information about decisions taken at a Noteholders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Noteholders and published on the websites of the Issuer and the Agent, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Noteholders' Meeting or Written Procedure shall at the request of a Noteholder be sent to it by the Issuer or the Agent, as applicable.

## **17. Noteholders' Meeting**

- (a) The Agent shall convene a Noteholders' Meeting by sending a notice thereof to each Noteholder no later than five (5) Business Days after receipt of a request from the Issuer or the Noteholder(s) (or such later date as may be necessary for technical or administrative reasons).
- (b) Should the Issuer want to replace the Agent, it may convene a Noteholders' Meeting in accordance with Clause 17(a) with a copy to the Agent. After a request from the Noteholders pursuant to Clause 20.4(c), the Issuer shall no later than five (5) Business Days after receipt of such request (or such later date as may be necessary for technical or administrative reasons) convene a Noteholders' Meeting in accordance with Clause 17(a).
- (c) The notice pursuant to Clause 17(a) shall include (i) time for the meeting, (ii) place for the meeting, (iii) agenda for the meeting (including each request for a decision by the Noteholders) and (iv) a form of power of attorney. Only matters that have been included in the notice may be resolved upon at the Noteholders' Meeting. Should prior notification by the Noteholders be required in order to attend the Noteholders' Meeting, such requirement shall be included in the notice.

- (d) The Noteholders' Meeting shall be held no earlier than eight (8) Business Days and no later than twenty (20) Business Days from the notice.
- (e) If the Agent, in breach of these Terms and Conditions, has not convened a Noteholders' Meeting within 20 Banking Days after having received such notice, the requesting person may convene the Noteholders' Meeting itself. If the requesting person is a Noteholder, the Issuer shall upon request from such Noteholder provide the Noteholder with necessary information from the register kept by the CSD and, if no person to open the Noteholders' Meeting has been appointed by the Agent, the meeting shall be opened by a person appointed by the requesting person.
- (f) At a Noteholders' Meeting, the Issuer, the Noteholders (or the Noteholders' representatives/proxies) and the Agent may attend along with each of their representatives, counsels and assistants. Further, the directors of the board, the managing director and other officials of the Issuer and the Issuer's auditors may attend the Noteholders' Meeting. The Noteholders' Meeting may decide that further individuals may attend. If a representative/proxy shall attend the Noteholders' Meeting instead of the Noteholder, the representative/proxy shall present a duly executed proxy or other document establishing its authority to represent the Noteholder.
- (g) Without amending or varying these Terms and Conditions, the Agent may prescribe such further regulations regarding the convening and holding of a Noteholders' Meeting as the Agent may deem appropriate. Such regulations may include a possibility for Noteholders to vote without attending the meeting in person.

## **18. Written Procedure**

- (a) The Agent shall instigate a Written Procedure no later than five (5) Business Days after receipt of a request from the Issuer or the Noteholder(s) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to each such person who is registered as a Noteholder on the Business Day prior to the date on which the communication is sent.
- (b) Should the Issuer want to replace the Agent, it may send a communication in accordance with Clause 18(a) to each Noteholder with a copy to the Agent.
- (c) A communication pursuant to Clause 18(a) shall include (i) each request for a decision by the Noteholders, (ii) a description of the reasons for each request, (iii) a specification of the Business Day on which a person must be registered as a Noteholder in order to be entitled to exercise voting rights, (iv) instructions and directions on where to receive a form for replying to the request (such form to include an option to vote yes or no for each request) as well as a form of power of attorney, and (v) the stipulated time period within which the Noteholder must reply to the request (such time period to last at least eight (8) Business Days from the communication pursuant to Clause 18(a)). If the voting shall be made electronically, instructions for such voting shall be included in the communication.
- (d) When the requisite majority consents of the total Adjusted Nominal Amount pursuant to Clauses 16(e), 16(f) and 16(g) have been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to

Clause 16(e), 16(f) or 16(g), as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

## **19. Amendments and Waivers**

- (a) Subject to the terms of the Intercreditor Agreement, the Issuer and the Agent (acting on behalf of the Noteholders) may agree to amend the Finance Documents or waive any provision in a Finance Document, provided that:
  - (i) such amendment or waiver is not detrimental to the interest of the Noteholders, or is made solely for the purpose of rectifying obvious errors and mistakes;
  - (ii) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
  - (iii) such amendment or waiver has been duly approved by the Noteholders in accordance with Clause 16 (*Decisions by Noteholders*).
- (b) The Agent shall promptly notify the Noteholders of any amendments or waivers made in accordance with Clause 19(a), setting out the date from which the amendment or waiver will be effective, and the Agent and the Issuer shall ensure that any amendments to the Finance Documents are published and/or made available (as applicable) in the manner stipulated in Clause 11.3 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to the Finance Documents are duly registered with the CSD and each other relevant organisation or authority.
- (c) The consent of the Noteholders is not necessary to approve the particular form of any amendment to the Finance Documents. It is sufficient if such consent approves the substance of the amendment.
- (d) An amendment to the Finance Documents shall take effect on the date determined by the Noteholders Meeting, in the Written Procedure or by the Agent, as the case may be.

## **20. Appointment and Replacement of the Agent**

### **20.1 Appointment of Agent**

- (a) By subscribing for Notes, each initial Noteholder appoints:
  - (i) the Agent to act as its agent in all matters relating to the Notes and the Finance Documents, and authorises the Agent to act on its behalf (without first having to obtain its consent, unless such consent is specifically required by these Terms and Conditions) in any legal or arbitration proceedings relating to the Notes held by such Noteholder; and
  - (ii) confirms the appointment under the Intercreditor Agreement of the Security Agent to act as its agent in all matters relating to the Transaction Security, the Security Documents, the Guarantees and the Guarantee Agreement, including any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction

Security and the Guarantees and acknowledges and agrees that the rights, obligations, role of and limitations of liability for the Security Agent is further regulated in the Intercreditor Agreement.

- (b) By acquiring Notes, each subsequent Noteholder confirms the appointment and authorisation for the Agent and the Security Agent to act on its behalf as set out in paragraph (a).
- (c) Each Noteholder shall immediately upon request provide the Agent and the Security Agent with any such documents, including a written power of attorney (in form and substance satisfactory to the Agent or the Security Agent, as applicable), that the Agent or Security Agent (as applicable) deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. Neither the Agent nor the Security Agent is under any obligation to represent a Noteholder which does not comply with such request.
- (d) The Issuer shall promptly upon request provide the Agent with any documents and other assistance (in form and substance satisfactory to the Agent), that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents.
- (e) The Agent is entitled to fees for its work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents and the Agency Agreement and the Agent's obligations as Agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- (f) The Agent may only act as agent or trustee for several issues of securities issued by or relating to the Issuer and other Group Companies where these issues are ranked *pari passu* and do not otherwise entail any obvious conflicts of interest for the Agent.

## **20.2 Duties of the Agent**

- (a) The Agent shall represent the Noteholders in accordance with the Finance Documents, and, where relevant, in relation to instructions to the Security Agent to enforce the Transaction Security or the Guarantees on behalf of the Noteholders.
- (b) When acting in accordance with the Finance Documents, the Agent is always acting with binding effect on behalf of the Noteholders. The Agent shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- (c) The Agent is entitled to delegate its duties to other professional parties, provided that such professional parties are selected with due care and subject to that the Agent shall remain liable for the actions of such parties under the Finance Documents.
- (d) The Agent shall treat all Noteholders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Noteholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other person, other than as explicitly stated in the Finance Documents.

- (e) The Agent is entitled to engage external experts when carrying out its duties under the Finance Documents. The Issuer shall on demand by the Agent pay all reasonable costs for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event which the Agent reasonably believes is or may lead to an Event of Default or (ii) a matter relating to the Issuer which the Agent reasonably believes may be detrimental to the interests of the Noteholders under the Finance Documents. Any compensation for damages or other recoveries received by the Agent from external experts engaged by it for the purpose of carrying out its duties under the Finance Documents shall be distributed in accordance with Clause 15 (*Distribution of Proceeds*).
- (f) Notwithstanding any other provision of the Finance Documents to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- (g) If in the Agent's reasonable opinion the cost, loss or liability which it may incur (including reasonable fees to the Agent) in complying with instructions of the Noteholders, or taking any action at its own initiative, will not be covered by the Issuer, the Agent may refrain from acting in accordance with such instructions, or taking such action, until it has received such indemnities (or adequate Security has been provided therefore) as it may reasonably require.

### **20.3 Limited liability for the Agent**

- (a) The Agent will not be liable to the Noteholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its negligence or wilful misconduct. The Agent shall never be responsible for indirect loss.
- (b) The Agent shall not be considered to have acted negligently if it has acted in accordance with advice from or opinions of reputable external experts engaged by the Agent or if the Agent has acted with reasonable care in a situation when the Agent considers that it is detrimental to the interests of the Noteholders to delay the action in order to first obtain instructions from the Noteholders.
- (c) The Agent shall not be liable for any delay (or any related consequences) in crediting an account with an amount required pursuant to the Finance Documents to be paid by the Agent to the Noteholders, provided that the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) The Agent shall have no liability to the Noteholders for damage caused by the Agent acting in accordance with instructions of the Noteholders given in accordance with Clause 16 (*Decisions by Noteholders*) or a demand by Noteholders given pursuant to Clause 14.10(a).
- (e) Any liability towards the Issuer which is incurred by the Agent in acting under, or in relation to, the Finance Documents shall not be subject to set-off against the obligations of the Issuer to the Noteholders under the Finance Documents.

## 20.4 Replacement of the Agent

- (a) Subject to Clause 20.4(f), the Agent may resign by giving notice to the Issuer and the Noteholders, in which case the Noteholders shall appoint a successor Agent at a Noteholders' Meeting convened by the retiring Agent or by way of Written Procedure initiated by the retiring Agent.
- (b) Subject to Clause 20.4(f), if the Agent is Insolvent, the Agent shall be deemed to resign as Agent with immediate effect and the Issuer shall within ten (10) Business Days appoint a successor Agent which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (c) A Noteholder (or Noteholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount may, by notice to the Issuer (such notice may only be validly given by a person who is a Noteholder on the Business Day immediately following the day on which the notice is received by the Issuer and shall, if given by several Noteholders, be given by them jointly), require that a Noteholders' Meeting is held for the purpose of dismissing the Agent and appointing a new Agent. The Issuer may, at a Noteholders' Meeting convened by it or by way of Written Procedure initiated by it, propose to the Noteholders that the Agent be dismissed and a new Agent appointed.
- (d) If the Noteholders have not appointed a successor Agent within ninety (90) days after (i) the earlier of the notice of resignation was given or the resignation otherwise took place or (ii) the Agent was dismissed through a decision by the Noteholders, the Issuer shall appoint a successor Agent which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation or dismissal shall only take effect upon the appointment of a successor Agent and acceptance by such successor Agent of such appointment and the execution of all necessary documentation to effectively substitute the retiring Agent.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of the Finance Documents and remain liable under the Finance Documents in respect of any action which it took or failed to take whilst acting as Agent. Its successor, the Issuer and each of the Noteholders shall have the same rights and obligations amongst themselves under the Finance Documents as they would have had if such successor had been the original Agent.
- (h) In the event that there is a change of the Agent in accordance with this Clause 20.4, the Issuer shall execute such documents and take such actions as the new Agent may reasonably require for the purpose of vesting in such new Agent the rights, powers and obligation of the Agent and releasing the retiring Agent from its further obligations under the Finance Documents and the Agency Agreement.

## **21. Appointment and Replacement of the Issuing Agent**

- (a) The Issuer appoints the Issuing Agent to manage certain specified tasks under these Terms and Conditions and in accordance with the legislation, rules and regulations applicable to and/or issued by the CSD and relating to the Notes.
- (b) The Issuing Agent may retire from its assignment or be dismissed by the Issuer, provided that the Issuer has approved that a commercial bank or securities institution approved by the CSD accedes as new Issuing Agent at the same time as the old Issuing Agent retires or is dismissed. If the Issuing Agent is Insolvent, the Issuer shall immediately appoint a new Issuing Agent, which shall replace the old Issuing Agent as issuing agent in accordance with these Terms and Conditions.

## **22. No Direct Actions by Noteholders**

- (a) A Noteholder may not take any steps whatsoever against the Issuer or any other Group Company or with respect to the Transaction Security to enforce or recover any amount due or owing to it pursuant to the Finance Documents, or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (Sw. *företagsrekonstruktion*) or bankruptcy (Sw. *konkurs*) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the liabilities of the Issuer or any other Group Company under the Finance Documents.
- (b) Clause 22(a) shall not apply if (i) the Agent has been instructed by the Noteholders in accordance with these Terms and Conditions to take certain actions but is legally unable to take such actions, or (ii) the Security Agent has been instructed by the Instructing Group (as defined in the Intercreditor Agreement) in accordance with the Intercreditor Agreement to enforce the Transaction Security and/or Guarantees but is legally unable to take such enforcement actions.

## **23. Prescription**

- (a) The right to receive repayment of the principal of the Notes shall be prescribed and become void ten (10) years from the Redemption Date. The right to receive payment of interest (excluding any capitalised interest) shall be prescribed and become void three (3) years from the relevant due date for payment. The Issuer is entitled to any funds set aside for payments in respect of which the Noteholders' right to receive payment has been prescribed and has become void.
- (b) If a limitation period is duly interrupted in accordance with the Swedish Act on Limitations (*preskriptionslag (1981:130)*), a new limitation period of ten (10) years with respect to the right to receive repayment of the principal of the Notes, and of three (3) years with respect to receive payment of interest (excluding capitalised interest) will commence, in both cases calculated from the date of interruption of the limitation period, as such date is determined pursuant to the provisions of the Swedish Act on Limitations.

## **24. Notices**

- (a) Any notice or other communication to be made under or in connection with the Finance Documents:

- (i) if to the Agent, shall be given at the address registered with the Swedish Companies Registration Office (*Bolagsverket*) on the Business Day prior to dispatch or, if sent by email by the Issuer, to such email address notified by the Agent to the Issuer from time to time;
- (ii) if to the Issuer, to the following address or e-mail (or such other e-mail address as notified by the Issuer to the Agent from time to time):

Polygon AB (publ)  
Attention: Mats Norberg  
Sveavägen 9  
111 57 Stockholm  
Sweden

E-mail: mats.norberg@polygongroup.com with a copy (not serving as a notice) to: polygon.wp@triton-partners.com

- (iii) if to the Noteholders, shall be given at their addresses as registered with the CSD, on the Business Day prior to dispatch, and by either courier delivery or letter for all Noteholders.
- (b) Any notice to the Noteholders shall also be published on the websites of the Issuer and the Agent.
  - (c) Any notice or other communication made by one person to another under or in connection with the Finance Documents shall be sent by way of courier, personal delivery or letter and will only be effective, in case of courier or personal delivery, when it has been left at the address specified in Clause 24(a) or, in case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 24(a).
  - (d) If any notice or other communication made by the Agent to the Issuer or the Issuer to the Agent under or in connection with the Finance Documents is sent by email, it will be effective on the day of dispatch (unless a delivery failure message was received by the Agent or the Issuer), save that any notice or other communication sent by email that is sent after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## **25. Governing Law and Jurisdiction**

- (a) These Terms and Conditions, and any non-contractual obligations arising out of or in connection therewith, shall be governed by and construed in accordance with the laws of Sweden.
- (b) The Issuer submits to the non-exclusive jurisdiction of the City Court of Stockholm (*Stockholms tingsrätt*).
- (c) Paragraphs (a) and (b) above shall not limit the right of the Agent (or the Noteholders, as applicable) to take proceedings against the Issuer in any court which may otherwise exercise jurisdiction over the Issuer or any of its assets.

We hereby certify that the above terms and conditions are binding upon ourselves.

Place: Stockholm, Sweden

Date: \_\_\_\_ April 2014

For and behalf of

**Polygon AB (publ)**

as Issuer

---

Title:

Name:

We hereby undertake to act in accordance with the above terms and conditions to the extent they refer to us.

Place: Stockholm, Sweden

Date: \_\_\_\_ April 2014

**Nordic Trustee & Agency AB (publ)**

as Agent

---

Name:

## Guarantee Agreement

This **Guarantee Agreement** (this "**Agreement**") is dated 16 April 2014 and made between:

- (a) **Polygon AB (publ)**, a limited liability company incorporated in Sweden, with reg. no. 556816-5855 (the "**Company**");
- (b) **The Limited Liability Companies** listed in Schedule 1 (*The Original Guarantors*) (the "**Original Guarantors**"); and
- (c) **Nordic Trustee & Agency AB (publ)**, as security agent for the Secured Parties (the "**Security Agent**").

### Background

- A. In consideration of the Secured Parties entering into the Senior Finance Documents and purchasing Notes under the Terms and Conditions and providing facilities under the RCF Documents, the Guarantors have agreed to enter into this Agreement in order to grant guarantees on the terms and conditions set forth herein (each capitalised term as defined in the Intercreditor Agreement (as defined below)).
- B. This Agreement is entered into subject to the terms of the Intercreditor Agreement.

### 1. Definitions and Construction

#### 1.1 Definitions

"**Accession Letter**" means a document substantially in the form set out in Schedule 2 (Form of Accession Letter).

"**Additional Guarantor**" means any company which becomes a Guarantor in accordance with Clause 9 (Additional Guarantors).

"**Guarantee**" means the guarantee granted by each Guarantor pursuant to Clause 2 (Guarantee).

"**Guaranteed Obligations**" means all present and future payment obligations and liabilities (whether actual and contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by a member of the Group or by some other person) of each member of the Group under each of the Senior Finance Documents.

"**Guarantors**" means the Company, the Original Guarantors and each Additional Guarantor.

"**Intercreditor Agreement**" means the intercreditor agreement in between, among others, the Company as Company, Nordea Bank AB (publ) as Original RCF Creditor and Facility Agent, Nordic Trustee & Agency AB (publ) as Notes Agent and Security Agent and certain subsidiaries of the Guarantors as Original ICA Group Companies, Intercompany Creditors and Intercompany Debtors, dated on or about the date hereof.

## 1.2 Construction

Unless otherwise defined in this Agreement, terms defined in the Intercreditor Agreement shall have the same meanings when used in this Agreement and the rules of construction set out in the Intercreditor Agreement shall apply also to this Agreement.

## 2. Guarantee

- (a) Each Guarantor irrevocably and unconditionally jointly and severally guarantees, as principal obligor as for its own debt (*Sw. proprieborgen*), to each Secured Party and their successors and assigns:
  - (i) the full and punctual payment and performance within applicable grace periods of all Guaranteed Obligations, including the payment of principal and premium, if any, and interest under the Senior Finance Documents when due, whether at maturity, by acceleration, by redemption or otherwise, and interest on any such obligation which is overdue, and of all other monetary obligations of the Guarantors to the Secured Parties under the Senior Finance Documents;
  - (ii) the full and punctual performance within applicable grace periods of all other obligations and liabilities of the Guarantors under the Senior Finance Documents; and
  - (iii) the full and punctual performance of all obligations and liabilities of the Guarantors under any Transaction Security Document to which it is a party.
- (b) Each Guarantor agrees to indemnify each Secured Party against any loss incurred by such Secured Party arising out of the non-payment, invalidity or unenforceability of the Guaranteed Obligations, in each case, all in accordance with the terms of the Intercreditor Agreement.
- (c) Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Guarantor and that such Guarantor will remain bound under this Agreement notwithstanding any extension or renewal of any Guaranteed Obligation.
- (d) The obligations of each Guarantor hereunder shall not be affected by:
  - (i) the failure of any Secured Party or the Security Agent to assert any claim or demand or to enforce any right or remedy against any Guarantor or any other person under the Senior Finance Documents or any other agreement or otherwise;
  - (ii) any extension or renewal of any Senior Finance Document;
  - (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of any Senior Finance Document or any other agreement;
  - (iv) any repayment of any amount owed by any Guarantor under the Senior Finance Documents;

- (v) the release of any Note held by any Noteholder for the Guaranteed Obligations or any of them;
  - (vi) the failure of any Secured Party or the Security Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or;
  - (vii) except as set forth in Clause 6 (*Release of Guarantors*), any change in the ownership of such Guarantor.
- (e) Until all of the Guaranteed Obligations have been irrevocably paid and discharged in full, the Security Agent may:
- (i) refrain from applying or enforcing any other security, moneys or rights held or received by them in respect of such amounts or apply and enforce the same in such manner and order as they see fit (whether against such amounts or otherwise), however always in accordance with the terms of the Intercreditor Agreement, and no Guarantor shall be entitled to the benefit of the same; and
  - (ii) place in an interest-bearing suspense account any moneys received from a Guarantor or on account of a Guarantor's liability hereunder.
- (f) Except as expressly set forth in Clause 6 (*Release of Guarantors*) and Clause 8 (*Guarantee Limitations*), the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defence of set-off, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations, any Guarantee or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Secured Party or the Security Agent to assert any claim or demand or to enforce any remedy under the Senior Finance Documents or any other agreement.
- (g) Each Guarantor further agrees that its Guarantee herein is a continuing guarantee and shall extend to the ultimate balance of the Guaranteed Obligations and shall continue to be effective or be reinstated in full force and effect, as the case may be, if at any time any payment, or any part thereof, by any Guarantor to the Security Agent or any Secured Party of any Guaranteed Obligation, whether for principal or interest or otherwise, is rescinded or must otherwise be restored or returned, upon the bankruptcy, insolvency or reorganization of any Guarantor or otherwise, by any Secured Party or the Security Agent to any Guarantor or any custodian, trustee, administrator, liquidator or other similar official acting in relation to such Guarantor or its property.
- (h) Each Guarantor agrees that it shall not be entitled to any right of subrogation or contribution in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations.
- (i) Without limiting the foregoing, each Guarantor hereby agrees that any claim by it against any Guarantor that arises from the payment, performance or enforcement of such Guarantor's obligations under its Guarantee or the Senior Finance Documents, including, without limitation, any right of subrogation or indemnity, shall be

subject and subordinate to, and no payment with respect to any such claim of such Guarantor shall be made before, the irrevocable payment in full in cash of all outstanding obligations under the Senior Finance Documents in accordance with the provisions provided therefore in the Intercreditor Agreement.

- (j) Payments to be made by a Guarantor hereunder shall be made in immediately available funds in the same currency in which the corresponding obligations are payable by a relevant Guarantor to such account as the Security Agent may specify.

### **3. Successors and Assigns**

This Agreement shall be binding upon each Guarantor and its successors and assigns and shall ensure to the benefit of the successors and assignees of the Secured Parties and the Security Agent and, in the event of any transfer or assignment of rights by any Secured Party or the Security Agent, the rights and privileges conferred upon that party in the Senior Finance Documents shall automatically extend to and be vested in such transferee or assignee, all subject to the Intercreditor Agreement.

### **4. No Waiver**

Neither a failure nor a delay on the part of either, the Secured Parties or the Security Agent in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Secured Parties and the Security Agent herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Agreement, by law or otherwise.

### **5. Modifications**

No modification, amendment or waiver of any provision of this Agreement nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Security Agent, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

### **6. Release of Guarantors**

- (a) The Guarantee of each Guarantor which is a Subsidiary (and of any other Guarantor which is a Subsidiary of such Guarantor) will be deemed released from all obligations under this Agreement without any further action required on the part of any Secured Party or the Security Agent upon (i) the irrevocable payment in full in cash of all obligations under the Senior Finance Documents, or (ii) release in accordance with Clause 16 (*Release of security*) of the Intercreditor Agreement.
- (b) The Security Agent shall, at the request and at the sole cost and expense of the Company deliver an appropriate instrument evidencing such release referred to in paragraph (a) above.

## **7. Severability**

In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## **8. Guarantee Limitations**

- (a) The obligations of each Guarantor incorporated in Sweden (other than the Company) shall in relation to the Guaranteed Obligations be limited if (and only if) required by an application of the provisions of the Swedish Companies Act (Sw. *aktiebolagslagen (2005:551)*) in force from time to time regulating the purpose of a company's business, financial assistance and distribution of assets (including profits/dividends) and it is understood that the liability of any such Guarantor under this Agreement only applies to the extent permitted by the above mentioned provisions of the Swedish Companies Act.
- (b) In addition to subparagraph (a) above, the obligations of an Additional Guarantor is subject to any limitation set out in the Accession letter under which such Additional Guarantor accedes to this Agreement.

## **9. Additional Guarantors**

- (a) The Company shall procure that any other member of the Group that is required to accede to this Agreement as a Guarantor pursuant to the Senior Finance Documents, accedes as an Additional Guarantor.
- (b) A member of the Group shall become an Additional Guarantor if:
  - (i) the Company and the proposed Additional Guarantor deliver to the Security Agent a duly completed and executed Accession Letter; and
  - (ii) the Security Agent has received all of the documents and other evidence listed in Schedule 3 (*Conditions precedent*) in relation to that Additional Guarantor in form and substance satisfactory to the Security Agent.
- (c) The Security Agent shall notify the Company promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Schedule 3 (*Conditions precedent*).

## **10. Notices**

Clause 23 (*Notices*) of the Intercreditor Agreement shall apply also to this Agreement.

## **11. Governing Law and Jurisdiction**

- (a) This Agreement is governed by Swedish law.
- (b) Subject to Clause 11(c), the courts of Sweden have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement). The City Court of Stockholm (Stockholms tingsrätt) shall be court of first instance.

- (c) Clause 11(b) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings in any other courts with jurisdiction over a Guarantor or any of its assets. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**Polygon AB (publ)**

as Company

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**Polygon International AB**

as Guarantor

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**Polygon Sverige AB**

as Guarantor

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**Nordic Trustee & Agency AB (publ)**

as Security Agent, acting for itself and on behalf of the Secured Parties

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

## **SCHEDULE 1**

### **The Original Guarantors**

Polygon International AB 556807-6417

Polygon Sverige AB 556034-6164

**Form of Accession Letter**

To: [ ] as Security Agent  
From: [Subsidiary] and [Company]  
Dated: [ ]

Dear Sirs

**Guarantee Agreement relating to the senior secured bond issue 2014/2019 by Polygon AB (publ) on 16 April 2014 (the "Guarantee Agreement")**

1. We refer to the Guarantee Agreement. This is an Accession Letter. Terms defined in the Intercreditor Agreement to which the Guarantee Agreement refers have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Guarantee Agreement, pursuant to Clause 9 (*Additional Guarantors*) of the Guarantee Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company, with registration number [ ].
3. [Relevant limitation language]
4. [Subsidiary's] administrative details are as follows:  
  
Address:  
E-mail:  
Attention:
5. This Accession Letter is governed by Swedish law.

[Company]

By:

[Subsidiary]

By:

**Conditions precedent**

Conditions precedent required to be delivered by an Additional Guarantor

1. A copy of the articles of association or other constitutional documents of the Additional Guarantor.
2. Up-to-date copy of registration certificate of the Additional Guarantor.
3. A copy of a resolution of the board of directors or alternatively, if applicable in the relevant jurisdiction, of the shareholders of the Additional Guarantor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Senior Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Senior Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Letter and other Senior Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Senior Finance Documents to which it is a party; and
  - (d) authorising the Company to act as its agent in connection with the Senior Finance Documents.
4. If applicable, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Senior Finance Documents to which the Additional Guarantor is a party.
5. A legal opinion from counsel in the relevant jurisdiction as to the capacity and authority of the Additional Guarantor and the enforceability of the Accession Letter and this Agreement.

## Addresses

### **The Issuer**

*Polygon AB (publ)*  
Tel: + 46 750 33 00  
Sveavägen 9  
111 57 Stockholm  
Sweden

### **The Guarantors**

*Polygon International AB*  
Tel: + 46 750 33 00  
Sveavägen 9  
111 57 Stockholm  
Sweden

### *Polygon Sverige AB*

Tel: + 46 750 33 00  
P.O. Box 1227, 171 23 Solna  
Sweden

### **Auditor**

*Ernst & Young Aktiebolag*  
P.O. Box 7850  
103 99 Stockholm  
Sweden

### **Issuing Agent**

*Nordea Bank AB (publ)*  
Smålandsgatan 17  
105 71 Stockholm  
Sweden

### **Agent**

*Nordic Trustee & Agency AB*  
Kungsgatan 35  
P.O. Box 7329  
103 90 Stockholm  
Sweden

### **CSD**

*Euroclear Sweden AB*  
Box 191  
101 23 Stockholm  
Sweden

### **Legal advisor to the Issuer**

*Hannes Snellman Attorneys*  
Kungsträdgårdsgatan 20  
P.O. Box 7801  
103 96 Stockholm  
Sweden