

## TERMS AND CONDITIONS OF THE NOTES

This Note is one of a duly authorised issue of notes (the “**Notes**”), issued either by JSC National Company KazMunayGas (“**KMG**”) or KazMunaiGaz Finance Sub B.V. (“**KMG Finance**”) under a U.S.\$10,500,000,000 Global Medium Term Note Programme (the “**Programme**”) established by KMG Finance and KMG. Where KMG Finance acts as the Issuer of Notes, the payment of all amounts owing by KMG Finance in respect of such Notes will be unconditionally and irrevocably guaranteed by KMG pursuant to the guarantee (the “**Guarantee**”) contained in the Trust Deed (as defined below).

The Notes are constituted by an amended and restated Trust Deed (as amended or supplemented as at the date of issue of the Notes (the “**Issue Date**”), the “**Trust Deed**”) dated 1 November 2010 between KMG Finance, KMG and Citicorp Trustee Company Limited (the “**Trustee**”, which expression shall include all Persons for the time being the trustee or trustees under the Trust Deed) as trustee for the Noteholders (as defined below). These terms and conditions include summaries of, and are subject to, the detailed provisions of the Trust Deed, which includes the forms of the Notes referred to below. An amended and restated Agency Agreement (as amended or supplemented as at the Issue Date, the “**Agency Agreement**”) dated 1 November 2010 has been entered into in relation to the Notes between KMG Finance, KMG, the Trustee, Citibank N.A., London as calculation agent (the “**Calculation Agent**”), principal paying agent (the “**Principal Paying Agent**” and a “**Paying Agent**”) and a transfer agent (a “**Transfer Agent**”), Citigroup Global Markets Deutschland AG as registrar (the “**Registrar**”), and Citibank N.A., London (in its capacity as paying agent, a “**Paying Agent**”, and in its capacity as transfer agent, a “**Transfer Agent**”). Copies of the Trust Deed, the Agency Agreement and any Final Terms are available for inspection during usual business hours at the principal office of the Trustee (presently at Citigroup Centre, Canada Square, Canary Wharf, London, E14 5LB) and at the specified offices of the Paying Agents and the Transfer Agents.

The Noteholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and are deemed to have notice of those provisions applicable to them of the Agency Agreement.

All subsequent references in these Conditions to “Notes” are to the Notes which are the subject of the relevant Final Terms. All Capitalised terms that are not defined in these conditions will have the meanings given to them in the Trust Deed and the relevant Final Terms.

As used in these Conditions, “**Tranche**” means Notes which are identical in all respects except for the Issue Date, Interest Commencement Date and the amount of the first interest payment.

### 1. **Form, Denomination and Title**

The Notes are issued in registered form in the Specified Denomination(s) shown in the relevant Final Terms or integral multiples thereof, without interest coupons, provided that (i) the Specified Denomination(s) shall not be less than €100,000 or its equivalent in other currencies, (ii) with respect to (a) Notes which are not admitted to trading on a regulated market within the European Economic Area or offered to the public in a Member State of the European Economic Area in circumstances which require the publication of a prospectus under the Prospectus Directive and (b) Notes with a maturity of less than 365 days, a lower Specified Denomination may apply as more fully set out in Part A of the relevant Final Terms and (iii) interests in the Rule 144A Notes shall be held in amounts of not less than U.S.\$200,000 or its equivalent in other currencies.

This Note may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, an Instalment Note, a Partly Paid Note, a combination of any of the foregoing or any other kind of Note, depending upon the Interest and Redemption/Payment Basis shown in the relevant Final Terms.

Title to the Notes shall pass by registration in the register that the Issuer shall procure to be kept by the Registrar in accordance with the provisions of the Agency Agreement (the “**Register**”). Except as ordered by a court of competent jurisdiction or as required by law, the holder (as defined below) of any Note shall be deemed to be and may be treated as its absolute owner for all purposes whether or not it is overdue and regardless of any notice of ownership, trust or an interest in it, any writing on it or its theft or loss and no Person shall be liable for so treating the holder.

In these Conditions, “**Noteholder**” means the Person in whose name a Note is registered, “**holder**” shall be read accordingly and capitalised terms have the meanings given to them in the relevant Final Terms, the absence of any such meaning indicating that such term is not applicable to the Notes.

## 2. Transfers of Notes

- (a) **Transfer of Notes:** One or more Notes may be transferred, in whole or in part in the authorised denominations set out in the applicable Final Terms and subject to minimum transfer amounts specified therein, upon the surrender (at the specified office of the Registrar or any Transfer Agent) of the relevant Note or Notes, together with the form of transfer endorsed on such Note or Notes (or another form of transfer substantially in the same form and containing the same representations and certifications (if any), unless otherwise agreed by the Issuer), duly completed and executed and any other evidence as the Registrar or Transfer Agent may reasonably require. In the case of a transfer of part only of a holding of a Note, a new Note shall be issued to the transferee in respect of the part transferred and a further new Note in respect of the balance of the holding not transferred shall be issued to the transferor. All transfers of Notes and entries on the Register will be made subject to the detailed regulations concerning transfers of Notes scheduled to the Agency Agreement. The regulations may be changed by the Issuer or, if the Issuer is KMG Finance, KMG, with the prior written approval of the Registrar and the Trustee. A copy of the current regulations will be made available by the Registrar to any Noteholder upon request.
- (b) **Exercise of Options or Partial Redemption in Respect of Notes:** In the case of an exercise of the Issuer’s, KMG’s or Noteholders’ options in respect of, or a partial redemption of, a holding of Notes, a new Note shall be issued to the holder to reflect the exercise of such option or in respect of the balance of the holding not redeemed. In the case of a partial exercise of an option resulting in Notes of the same holding having different terms, separate Notes shall be issued in respect of those Notes of that holding that have the same terms. New Notes shall only be issued against surrender of the existing Notes to the Registrar or any Transfer Agent. In the case of a transfer of Notes to a Person who is already a holder of Notes, a new Note representing the enlarged holding shall only be issued against surrender of the Note representing the existing holding.
- (c) **Delivery of New Notes:** Each new Note to be issued pursuant to Conditions 2(a) or (b) shall be available for delivery within five business days of receipt of the form of transfer or Exercise Notice (as defined in Condition 6(f)) and surrender of the Note for exchange. Delivery of the new Note(s) shall be made at the specified office of the Transfer Agent or of the Registrar (as the case may be) to whom delivery or surrender of such form of transfer, Exercise Notice or Note shall have been made or, at the option of the holder making such delivery or surrender as aforesaid and as specified in the relevant form of transfer, Exercise Notice or otherwise in writing, be mailed by uninsured post at the risk of the holder entitled to the new Note to such address as may be so specified, unless such holder requests otherwise and pays in advance to the relevant Transfer Agent the costs of such other method of delivery and/or such

insurance as it may specify. In this Condition (c), “**business day**” means a day, other than a Saturday or Sunday, on which banks are open for business in the place of the specified office of the relevant Transfer Agent or the Registrar (as the case may be).

- (d) **Transfer Free of Charge:** Transfer of Notes on registration, transfer, exercise of an option or partial redemption shall be effected without charge by or on behalf of the Issuer, the Registrar or the Transfer Agents, but upon payment of any tax or other governmental charges that may be imposed in relation to it (or the giving of such indemnity as the Registrar or the relevant Transfer Agent may require).
- (e) **Closed Periods:** No Noteholder may require the transfer of a Note to be registered (i) during the period of 15 days ending on the due date for redemption of, or payment of any Instalment Amount or Interest Amount in respect of, that Note, (ii) during the period of 15 days prior to any date on which Notes may be called for redemption by the Issuer at its option pursuant to Condition 6(e) or (iii) after any such Note has been called for redemption.
- (f) **Restrictions on Transfer:** If at any time, the Issuer determines that any beneficial owner of Notes, or any account for which such owner purchased Notes, who is required to be a QIB and a QP is not a QIB and a QP, the Issuer may (i) require such beneficial owner to sell its Notes, or may sell such Notes on behalf of such beneficial owner, to a non-U.S. person who purchases in an offshore transaction pursuant to Regulation S or to a person who is a QIB who is also a QP and who is otherwise qualified to purchase such Notes in a transaction exempt from registration under the Securities Act or (ii) require the beneficial owner to sell such Notes, or may sell such Notes on behalf of such beneficial owner, to the Issuer or an affiliate thereof at a price equal to the lesser of (x) the purchase price paid by the beneficial owner for such Notes, (y) 100 per cent. of the principal amount thereof and (z) the fair market value thereof. The Issuer has the right to refuse to honour the transfer of interests in the Rule 144A Global Note or of Rule 144A Definitive Notes to a U.S. person who is not a QIB and a QP.

### 3. Guarantee and Status

- (a) **Status of the Notes:** The Notes constitute direct, general, unconditional and (subject to Condition 4) unsecured obligations of the Issuer which rank and will rank *pari passu* among themselves and at least *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations of the Issuer, save only for such obligations as may be preferred by mandatory provisions of applicable law.
- (b) **Status of the Guarantee:** Where KMG Finance is the Issuer of the Notes, KMG has, in accordance with the Guarantee, unconditionally and irrevocably guaranteed the due and punctual payment of all sums from time to time payable by KMG Finance in respect of the Notes and the Trust Deed. The obligations of KMG under the Guarantee constitute direct, general, unconditional and (subject to Condition 4) unsecured obligations of KMG which rank and will rank at least *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations of KMG, save only for such obligations as may be preferred by mandatory provisions of applicable law.

#### 4 Negative Pledge and Covenants

So long as any amount remains outstanding under the Notes:

- (a) **Negative Pledge:** KMG shall not, and shall not permit any Material Subsidiary to, create, incur, assume or suffer to exist any Liens, other than Permitted Liens, on any of its or their assets, now owned or hereafter acquired, or any income or profits therefrom, securing any Indebtedness, unless, at the same time or prior thereto, the Notes are secured equally and rateably with such other Indebtedness or have the benefit of such other arrangement as may be approved by an Extraordinary Resolution (as defined in the Trust Deed) of Noteholders or as the Trustee in its sole discretion shall consider to be not materially less beneficial to the interests of the Noteholders.
- (b) **Limitation on Payments of Dividends**
  - (i) KMG will not pay any dividends, in cash or otherwise, or make any other distribution of any sort (whether by way of redemption, acquisition or otherwise) in respect of its share capital or by way of management or other similar fees payable to its direct or indirect shareholders:
    - (A) at any time when there exists an Event of Default (as defined in Condition 10 or an event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default); or
    - (B) at any time when no such Event of Default or event exists, in an aggregate amount exceeding 50 per cent. of KMG's Consolidated Net Income for the period in respect of which the dividend or other distribution or other fee is being paid; *provided* that for the purposes of this Condition 4(b)(i), Consolidated Net Income shall exclude any gains or losses from the Net Cash Proceeds of the sale of all or substantially all of the assets or property or any business or division, or the Capital Stock, respectively of any Material Subsidiary or Minority Company.
  - (ii) The above limitation shall not apply to the payment of (i) any dividends in respect of any Preferred Stock of KMG, which may be issued by KMG from time to time and (ii) any dividends in respect of any Capital Stock of KMG made out of the Net Cash Proceeds of the substantially concurrent sale of, or by issuance of, Capital Stock of KMG (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of KMG or an employee stock ownership plan or to a trust established by KMG or any of its Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by KMG from its shareholders.
  - (iii) KMG will not permit any Material Subsidiary to make any dividends or other distributions in respect of any series of Capital Stock of such Material Subsidiary unless such dividends or distributions are made on a *pro rata* basis to holders of such series of Capital Stock or such dividends or distributions are made on a basis that results in KMG or a Material Subsidiary receiving dividends or other distributions of greater value than would result on a *pro rata* basis.

(c) **Limitation on Sales of Assets and Subsidiary Stock**

KMG will not, and will not permit any Material Subsidiary to, consummate any Asset Disposition unless:

- (i) KMG or such Material Subsidiary receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value (including as to the value of all non-cash consideration) of the shares and assets subject to such Asset Disposition; and
- (ii) solely with respect to an Asset Disposition of shares of Capital Stock of a Material Subsidiary, after giving effect to any such Asset Disposition, KMG will continue to “beneficially own” (as such term is defined in Rule 13(d)(3) and Rule 13(d)(5) under the Exchange Act), directly or indirectly, at least the Restricted Percentage of the shares of Capital Stock of such Material Subsidiary.

(d) **Limitation on Indebtedness**

- (i) KMG will not, and will not permit any Material Subsidiary to Incur, directly or indirectly, any Indebtedness; *provided, however*, that KMG and Material Subsidiaries will be entitled to Incur Indebtedness if:
  - (A) after giving effect to such Incurrence and the application of the proceeds thereof, on a *pro forma* basis, no Default or Event of Default would occur or be continuing; and
  - (B) the ratio of Consolidated KMG Net Indebtedness as of any date of determination, after giving effect to such Incurrence and the application of the proceeds thereof, on a *pro forma* basis, to the aggregate amount of Consolidated KMG EBITDA for the most recent two semi-annual financial periods for which consolidated financial statements have been delivered pursuant to Condition 4(e), does not exceed 3.5 to 1.

For purposes of calculating the ratios described in this Condition 4(d)(i), acquisitions that have been made by KMG or any Material Subsidiary, including through mergers or consolidations and including any related financing transactions (including, without limitation, any acquisition giving rise to the need to make such calculation as a result of the incurrence or assumption of Indebtedness), during (a) for the most recent two semi-annual financial periods for which consolidated financial statements have been delivered pursuant to Condition 4(e) or (b) subsequent to such semi-annual financial periods and on or prior to the date on which the ratio is calculated, will be given pro forma effect as if they had occurred on the first day of the measurement period used in the calculation of Consolidated KMG EBITDA; *provided, however*, that (i) any such pro forma EBITDA in respect of an acquisition may only be so included in the calculation of Consolidated KMG EBITDA if such pro forma EBITDA shall have been derived from financial statements of, or relating to or including, such acquired entity and (ii) such financial statements have been prepared in accordance with IFRS, U.S. GAAP or any body of accounting principles that has been determined by the European Commission to be equivalent to IFRS

(without regard to any modification to such principles that may be required after the date of such financial statements in connection with or pursuant to such determination).

(ii) Condition 4(d)(i) will not prohibit the incurrence of any of the following items of Indebtedness:

(A) refinancing (including successive refinancing) of Indebtedness of KMG or any Material Subsidiary outstanding on the Issue Date (including the Notes issued on the Issue Date) or permitted to be Incurred under Condition 4(d)(i) above; *provided* that the aggregate principal amount is not thereby increased by more than the expenses incurred by KMG or its Material Subsidiaries in connection with such refinancing plus the amount of any premium to be paid in connection with such refinancing;

(B) intercompany debt (i) between KMG and any Material Subsidiary and (ii) between any Material Subsidiary and another Material Subsidiary; *provided, however*, that any subsequent issuance or transfer of any Capital Stock which results in any such Material Subsidiary ceasing to be a Material Subsidiary or any subsequent disposition, pledge or transfer of such Indebtedness (other than to KMG or a Material Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon; and

(C) Indebtedness arising out of interest rate agreements or currency hedging agreements for the benefit of KMG or any Material Subsidiary; *provided* that such interest rate agreements do not exceed the aggregate principal amount of the related Indebtedness and such currency hedging agreements do not increase the obligations of KMG or any Material Subsidiary other than as a result of fluctuations in interest or foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder.

(e) **Financial Information**

(i) KMG shall deliver to the Trustee as soon as they become available, but in any event within five months after the end of each of its financial years, copies of KMG's stand-alone financial statements and consolidated financial statements for such financial year, in each case audited by the Auditors and prepared in accordance with IFRS consistently applied with the corresponding financial statements for the preceding period.

(ii) KMG shall as soon as the same become available, but in any event within 90 days following the end of each first half year of each of its financial years, deliver to the Trustee KMG's stand-alone financial statements and consolidated financial statements for such period.

(iii) KMG hereby undertakes that it will deliver to the Trustee, without undue delay, such additional information regarding the financial position or the business of KMG, any Material Subsidiary or any Minority Company as the Trustee may reasonably request, including providing certification according to the Trust Deed.

- (iv) KMG shall ensure that each set of stand-alone financial statements and consolidated financial statements delivered by it pursuant to this Condition 4(e) is:
  - (A) prepared generally on the same basis as was used in the preparation of its Original Financial Statements (including with respect to presentation of prior periods) and in accordance with IFRS and consistently applied;
  - (B) in the case of the statements provided pursuant to Condition 4(e)(i), accompanied by a report thereon of the Auditors referred to in Condition 4(e)(i) (including opinions of such Auditors with accompanying notes and annexes); and
  - (C) in the case of the statements provided pursuant to Conditions 4(e)(i) and 4(e)(ii), certified by an Authorised Signatory of KMG that the information with respect to the Group included in the financial statements pursuant to Condition 4(e)(vi) give a true and fair view of the Group's consolidated financial condition as at the end of the period to which those consolidated financial statements relate and of the results of the Group's operations during such period.
- (v) KMG undertakes to furnish to the Trustee such information as the Regulated Market of the London Stock Exchange plc (the "**Stock Exchange**") (or any other or further stock exchange or stock exchanges or any relevant authority or authorities on which the Notes may, from time to time, be listed or admitted to trading) may require as necessary in connection with the listing or admission to trading on such stock exchange or relevant authority of such instruments.
- (vi) The semi-annual and annual financial information to be delivered pursuant to Conditions 4(e)(i) and 4(e)(ii) will be prepared on the basis of accounting principles consistent with those that formed the basis of the Original Financial Statements in respect of the Group, in each case as at and for the periods covered by the relevant financial information, either on the face of the financial statements or in the footnotes thereto.
- (f) **Limitations on Dividends from Material Subsidiaries**
  - (i) KMG shall procure that none of the Material Subsidiaries will create, assume or otherwise permit to subsist or become effective any encumbrance or restriction on the ability of such Material Subsidiaries to:
    - (A) pay any dividends or make any other payment or distribution on or in respect of its shares;
    - (B) make payments in respect of any Indebtedness owed to KMG or any other Material Subsidiary; or
    - (C) make loans or advances to KMG or any other Material Subsidiary or guarantee indebtedness of KMG or any other Material Subsidiary.

- (ii) The provisions of Condition 4(f)(i) will not prohibit:
  - (A) solely with respect to Condition 4(f)(i)(A), any encumbrance or restriction pursuant to an agreement relating to the Incurrence of Indebtedness; *provided, however* that any such encumbrance or restriction shall be limited such that the payment of dividends or other payments or distributions in any period in an amount up to 50 per cent. of Consolidated Net Income for such period shall be permitted;
  - (B) any encumbrance or restrictions pursuant to an agreement (including any shareholder or joint venture or similar agreement) in the form in effect at or entered into on the Issue Date the terms of which were disclosed in the Base Prospectus;
  - (C) any encumbrance or restriction with respect to an entity that becomes a Material Subsidiary after the Issue Date pursuant to an agreement relating to any Indebtedness Incurred prior to the date on which such Subsidiary becomes a Material Subsidiary (to the extent such encumbrance or restriction was not put in place in anticipation of such entity becoming a Material Subsidiary) and outstanding on such date;
  - (D) any encumbrance or restriction pursuant to an agreement effecting a refinancing of Indebtedness incurred pursuant to an agreement referred to in Condition 4(f)(ii)(B) above or Condition 4(f)(ii)(C) above or Condition 4(f)(ii)(E) below or contained in any amendment, modification, restatement, renewal, increase, supplement, refunding or replacement of an agreement referred to in Condition 4(f)(ii)(B) above or Condition 4(f)(ii)(C) above or Condition 4(f)(ii)(E) below; *provided, however*, that the encumbrances and restrictions with respect to such Material Subsidiary contained in any such refinancing agreement or amendment, modification, restatement, renewal, increase, supplement, refunding or replacement agreements are no more restrictive in any material respect than those encumbrances and restrictions, taken as a whole, with respect to such Material Subsidiary contained in such predecessor agreements; and
  - (E) any encumbrance or restriction that is as a result of applicable law or regulation.

(g) **Maintenance of Authorisations**

- (i) KMG shall, and shall procure that each of the Material Subsidiaries shall, take all necessary action to obtain and do or cause to be done all things necessary, in the opinion of KMG or the relevant Material Subsidiary, to ensure the continuance of its corporate existence, its business and/or operations; and
- (ii) KMG shall, and shall procure that each of the Material Subsidiaries shall, take all necessary action to obtain, and do or cause to be done all things necessary to ensure the continuance of, all consents, licences, approvals and authorisations, and make or cause to be made all registrations, recordings and filings, which may at any time be required to be obtained or made in any

relevant jurisdiction for the execution, delivery or performance of the Notes and the Agreements or for the validity or enforceability thereof.

(h) **Mergers and Consolidations**

- (i) KMG will not, directly or indirectly, in a single transaction or a series of related transactions, enter into any reorganisation (whether by way of a merger, accession, division, separation or transformation, as these terms are construed by applicable legislation or otherwise), participate in any other type of corporate reconstruction, or sell, lease, transfer, convey or otherwise dispose of all or substantially all of the assets of KMG or KMG and the Material Subsidiaries (taken as a whole) (in each case, a “**reorganisation**”) unless:
  - (A) KMG will be the surviving or continuing Person;
  - (B) immediately prior to and immediately after giving effect to such transaction and the incurrence of any Indebtedness to be incurred in connection therewith, and the use of any net proceeds therefrom on a *pro forma* basis, no Event of Default shall have occurred and be continuing; and
  - (C) during the period commencing upon the announcement or (in the absence of such announcement) the occurrence of any such reorganisation and ending upon the occurrence of such reorganisation, no Adverse Ratings Event shall have occurred by reason of such reorganisation; *provided* that any if any Adverse Ratings Event shall have occurred during the six months immediately following the occurrence of such reorganisation by reason of such reorganisation, the Issuer shall comply with provisions of Condition 6(d).
- (ii) KMG shall ensure that no Material Subsidiary will enter into any reorganisation unless:
  - (A) such Material Subsidiary will be the surviving or continuing Person;
  - (B) immediately prior to and immediately after giving effect to such transaction and the incurrence of any Indebtedness to be incurred in connection therewith, and the use of any net proceeds therefrom on a *pro forma* basis, no Event of Default shall have occurred and be continuing; and
  - (C) during the period commencing upon the announcement or (in the absence of such announcement) the occurrence of any such reorganisation and ending upon the occurrence of such reorganisation, no Adverse Ratings Event shall have occurred by reason of such reorganisation; *provided* that any if any Adverse Ratings Event shall have occurred during the six months immediately following the occurrence of such reorganisation by reason of such reorganisation, the Issuer shall comply with provisions of Condition 6(d).
- (iii) For purposes of the foregoing, the transfer (by lease, assignment, sale, conveyance or otherwise, in a single transaction or series of transactions) of

all or substantially all of the properties or assets of one or more Material Subsidiaries, the Capital Stock of which constitute all or substantially all of the properties and assets of KMG, will be deemed to be the transfer of all or substantially all of the properties and assets of KMG.

Notwithstanding the foregoing, any Material Subsidiary may consolidate with, merge with or into or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all of its assets to KMG or another Subsidiary of KMG (which after such transaction will be deemed to be a Material Subsidiary for purposes hereof).

(i) **Transactions with Affiliates**

KMG shall not, and shall ensure that none of the Material Subsidiaries, directly or indirectly, will enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, transfer, assignment, lease, conveyance or exchange of any property or the rendering of any service) with, or for the benefit of, any Affiliate (an “**Affiliate Transaction**”) including, without limitation, intercompany loans, disposals or acquisitions, unless the terms of such Affiliate Transaction are no less favourable to KMG or such Material Subsidiary, as the case may be, than those that could be obtained (at the time of such transaction or, if such transaction is pursuant to a written agreement, at the time of the execution of the agreement providing therefor) in a comparable arm’s-length transaction with a Person that is not an Affiliate of KMG or such Material Subsidiary.

This Condition 4(i) shall not apply to (i) compensation or employee benefit arrangements with any officer or director of KMG or any of its Subsidiaries arising as a result of their employment contract, (ii) Affiliate Transactions pursuant to agreements or arrangements entered into prior to the Issue Date the terms of which were disclosed in the Base Prospectus, (iii) any sale of equity of KMG, (iv) transactions between KMG and a Material Subsidiary, transactions between KMG and/or a Material Subsidiary and a Subsidiary or transactions between Material Subsidiaries and (v) Affiliate Transactions involving an aggregate amount not to exceed U.S.\$100 million in any one calendar year.

(j) **Payment of Taxes and Other Claims**

KMG shall, and shall ensure that the Material Subsidiaries will, pay or discharge or cause to be paid or discharged before the same shall become overdue all taxes, assessments and governmental charges levied or imposed upon, or upon the income, profits or property of, KMG and the Material Subsidiaries *provided* that none of KMG nor any Material Subsidiary shall be in breach of this Condition 4(j) if KMG or any Material Subsidiary has failed to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim (a) if such amount, applicability or validity is being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with IFRS or other appropriate provision has been made, or (b) if a failure to pay or discharge or cause to be paid or discharged such amount, together with all such other unpaid or undischarged taxes, assessments, charges and claims, would not have a Material Adverse Effect.

(k) **Officers’ Certificates**

(i) Within 14 days of any request by the Trustee, KMG shall deliver to the Trustee written notice in the form of an Officers’ Certificate stating whether any Potential Event of Default or Event of Default or Put Event has occurred

and, if it has occurred and shall be continuing, what action KMG is taking or proposes to take with respect thereto and that KMG has complied with its obligations under the Trust Deed.

- (ii) KMG will at the same time as delivering KMG's audited annual financial statements pursuant to Condition 4(e)(i) and within 30 days of a request from the Trustee, deliver to the Trustee an Officers' Certificate specifying those companies which were, at a date no more than 20 days before the date of such Officers' Certificate, Material Subsidiaries or Minority Companies, as the case may be.
- (iii) Following the occurrence of any matter or event specified in the Notes or the Trust Deed where the Notes or the Trust Deed provide for a determination of whether such matter or event has or will have a Material Adverse Effect, KMG, at the request of the Trustee, shall provide the Trustee with an Officers' Certificate certifying whether such matter or event has or will have a Material Adverse Effect and setting out such additional information as may be required to support such determination. The Trustee shall be entitled to rely solely on an Officers' Certificate from KMG, certifying whether or not such matter has or will have a Material Adverse Effect.

(l) **Change of Business**

KMG shall not, and shall ensure that no Material Subsidiary will engage in any business other than a Permitted Business.

**5. Interest and other Calculations**

- (a) **Interest on Fixed Rate Notes:** Each Fixed Rate Note bears interest on its outstanding nominal amount (or, if it is partly paid, the amount paid up) from (and including) the Interest Commencement Date at the rate(s) per annum (expressed as a percentage) equal to the Rate(s) of Interest, such interest being payable in arrear on each Interest Payment Date up to the Maturity Date.

If a Fixed Coupon Amount or a Broken Amount is specified in the Final Terms, the amount of interest payable on each Interest Payment Date will amount to the Fixed Coupon Amount or, if applicable, the Broken Amount so specified and in the case of the Broken Amount will be payable on the particular Interest Payment Date(s) specified in the Final Terms.

- (b) **Interest on Floating Rate Notes:**

- (i) *Interest Payment Dates:* Each Floating Rate Note bears interest on its outstanding nominal amount (or, if it is partly paid Note, the amount paid up) from the Interest Commencement Date at the rate per annum (expressed as a percentage) equal to the Rate of Interest, such interest being payable in arrear on each Interest Payment Date. Such Interest Payment Date(s) is/are either shown in the Final Terms as Specified Interest Payment Dates or, if no Specified Interest Payment Date(s) is/are shown in the Final Terms, Interest Payment Date shall mean each date which falls the number of months or other period shown in the Final Terms as the Interest Period after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date.

- (ii) *Business Day Convention:* If any date referred to in these Conditions that is specified to be subject to adjustment in accordance with a Business Day Convention would otherwise fall on a day that is not a Business Day, then, if the Business Day Convention specified is (A) the Floating Rate Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event (x) such date shall be brought forward to the immediately preceding Business Day and (y) each subsequent such date shall be the last Business Day of the month in which such date would have fallen had it not been subject to adjustment, (B) the Following Business Day Convention, such date shall be postponed to the next day that is a Business Day, (C) the Modified Following Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day or (D) the Preceding Business Day Convention, such date shall be brought forward to the immediately preceding Business Day.
- (iii) *Rate of Interest for Floating Rate Notes:* The Rate of Interest in respect of Floating Rate Notes for each Interest Accrual Period shall be determined in the manner specified in the Final Terms and the provisions below relating to either ISDA Determination or Screen Rate Determination shall apply, depending upon which is specified in the Final Terms.

(A) ISDA Determination for Floating Rate Notes

Where ISDA Determination is specified in the Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Accrual Period shall be determined by the Calculation Agent as a rate equal to the relevant ISDA Rate. For the purposes of this sub-paragraph (A), “**ISDA Rate**” for an Interest Accrual Period means a rate equal to the Floating Rate that would be determined by the Calculation Agent under a Swap Transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

(x) the Floating Rate Option is as specified in the Final Terms

(y) the Designated Maturity is a period specified in the Final Terms and

(z) the relevant Reset Date is the first day of that Interest Accrual Period unless otherwise specified in the Final Terms.

For the purposes of this sub-paragraph (A), “**Floating Rate**”, “**Calculation Agent**”, “**Floating Rate Option**”, “**Designated Maturity**”, “**Reset Date**” and “**Swap Transaction**” have the meanings given to those terms in the ISDA Definitions.

(B) Screen Rate Determination for Floating Rate Notes

Where Screen Rate Determination is specified in the Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Accrual Period shall be determined by the Calculation Agent at or about the Relevant Time on the Interest

Determination Date in respect of such Interest Accrual Period in accordance with the following:

(x) if the Primary Source for Floating Rate is a Page, subject as provided below, the Rate of Interest shall be:

(I) the Relevant Rate (where such Relevant Rate on such Page is a composite quotation or is customarily supplied by one entity); or

(II) the arithmetic mean of the Relevant Rates of the Persons whose Relevant Rates appear on that Page,

in each case appearing on such Page at the Relevant Time on the Interest Determination Date;

(y) if the Primary Source for the Floating Rate is Reference Banks or if sub-paragraph (x)(I) applies and no Relevant Rate appears on the Page at the Relevant Time on the Interest Determination Date or if sub-paragraph (x)(II) above applies and fewer than two Relevant Rates appear on the Page at the Relevant Time on the Interest Determination Date, subject as provided below, the Rate of Interest shall be the arithmetic mean of the Relevant Rates that each of the Reference Banks is quoting to leading banks in the Relevant Financial Centre at the Relevant Time on the Interest Determination Date, as determined by the Calculation Agent; and

(z) if paragraph (y) above applies and the Calculation Agent determines that fewer than two Reference Banks are so quoting Relevant Rates, subject as provided below, the Rate of Interest shall be the arithmetic mean of the rates per annum (expressed as a percentage) that the Calculation Agent determines to be the rates (being the nearest equivalent to the Benchmark) in respect of a Representative Amount of the Specified Currency that at least two out of five leading banks selected by the Calculation Agent in the principal financial centre of the country of the Specified Currency or, if the Specified Currency is euro, in Europe (the “**Principal Financial Centre**”) are quoting at or about the Relevant Time on the date on which such banks would customarily quote such rates for a period commencing on the Effective Date for a period equivalent to the Specified Duration (I) to leading banks carrying on business in Europe, or (if the Calculation Agent determines that fewer than two of such banks are so quoting to leading banks in Europe) (II) to leading banks carrying on business in the Principal Financial Centre; except that, if fewer than two of such banks are so quoting to leading banks in the Principal Financial Centre, the Rate of Interest shall be the Rate of Interest determined on the previous Interest Determination Date (after readjustment for any difference between any Margin, Rate Multiplier or Maximum or Minimum Rate of Interest applicable to the preceding Interest Accrual Period and to the relevant Interest Accrual Period).

(c) **Zero Coupon Notes:** Where a Note, the Interest Basis of which is specified to be Zero Coupon, is repayable prior to the Maturity Date and is not paid when due, the amount due and payable prior to the Maturity Date shall be the Early Redemption Amount of such Note. As from the due date for payment, the Rate of Interest for any

overdue principal of such a Note shall be a rate per annum (expressed as a percentage) equal to the Amortisation Yield (as described in Condition 6(b)(i)).

- (d) **Partly Paid Notes:** In the case of Partly Paid Notes (other than Partly Paid Notes which are Zero Coupon Notes), interest will accrue as aforesaid on the paid-up nominal amount of such Notes and otherwise as specified in the Final Terms.
- (e) **Accrual of Interest:** Interest shall cease to accrue on each Note on the due date for redemption unless, upon due presentation, payment is improperly withheld or refused, in which event interest shall continue to accrue (as well after as before judgment) at the Rate of Interest in the manner provided in this Condition 5 to the Relevant Date (as defined in Condition 8).
- (f) **Margin, Maximum/Minimum Rates of Interest, Instalment Amounts and Redemption Amounts, Rate Multipliers and Rounding:**
  - (i) If any Margin or Rate Multiplier is specified in the Final Terms (either (x) generally, or (y) in relation to one or more Interest Accrual Periods), an adjustment shall be made to all Rates of Interest, in the case of (x), or the Rates of Interest for the specified Interest Accrual Periods, in the case of (y), calculated in accordance with Condition 5(b) above by adding (if a positive number) or subtracting the absolute value (if a negative number) of such Margin or multiplying by such Rate Multiplier, subject always to the next paragraph.
  - (ii) If any Maximum or Minimum Rate of Interest, Instalment Amount or Redemption Amount is specified in the Final Terms, then any Rate of Interest, Instalment Amount or Redemption Amount shall be subject to such maximum or minimum, as the case may be.
  - (iii) For the purposes of any calculations required pursuant to these Conditions (unless otherwise specified), (x) all percentages resulting from such calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with halves being rounded up), (y) all figures shall be rounded to seven significant figures (with halves being rounded up) and (z) all currency amounts that fall due and payable shall be rounded to the nearest unit of such currency (with halves being rounded up), save in the case of yen, which shall be rounded down to the nearest yen. For these purposes “unit” means the lowest amount of such currency that is available as legal tender in the country or countries (as applicable) of such currency.
- (g) **Calculations:** The amount of interest payable in respect of any Note for any period shall be calculated by multiplying the product of the Rate of Interest and the outstanding nominal amount of such Note by the Day Count Fraction, unless an Interest Amount (or a formula for its calculation) is specified in respect of such period, in which case the amount of interest payable in respect of such Note for such period shall equal such Interest Amount (or be calculated in accordance with such formula). Where any Interest Period comprises two or more Interest Accrual Periods, the amount of interest payable in respect of such Interest Period shall be the sum of the amounts of interest payable in respect of each of those Interest Accrual Periods.
- (h) **Determination and Publication of Rates of Interest, Interest Amounts, Final Redemption Amounts, Early Redemption Amounts, Optional Redemption Amounts and Instalment Amounts:** As soon as practicable after the Relevant Time

on each Interest Determination Date or such other time on such date as the Calculation Agent may be required to calculate any rate or amount, obtain any quotation or make any determination or calculation, it shall determine such rate and calculate the Interest Amounts in respect of each Specified Denomination of the Notes for the relevant Interest Accrual Period, calculate the Final Redemption Amount, Early Redemption Amount, Optional Redemption Amount or Instalment Amount, obtain such quotation or make such determination or calculation, as the case may be, and cause the Rate of Interest and the Interest Amounts for each Interest Period and the relevant Interest Payment Date and, if required to be calculated, the Final Redemption Amount, Early Redemption Amount, Optional Redemption Amount or any Instalment Amount to be notified to the Trustee, the Issuer and, if the Issuer is KMG Finance, KMG, each of the Paying Agents, the Noteholders, any other Calculation Agent appointed in respect of the Notes that is to make a further calculation upon receipt of such information and, if the Notes are listed on a stock exchange and the rules of such exchange or other relevant authority so require, such exchange or other relevant authority as soon as possible after their determination but in no event later than (i) the commencement of the relevant Interest Period, if determined prior to such time, in the case of notification to such exchange of a Rate of Interest and Interest Amount, or (ii) in all other cases, the fourth Business Day after such determination. Where any Interest Payment Date or Interest Period Date is subject to adjustment pursuant to Condition 5(b)(ii), the Interest Amounts and the Interest Payment Date so published may subsequently be amended (or appropriate alternative arrangements made with the consent of the Trustee by way of adjustment) without notice in the event of an extension or shortening of the Interest Period. If the Notes become due and payable under Condition 10, the accrued interest and the Rate of Interest payable in respect of the Notes shall nevertheless continue to be calculated as previously in accordance with this Condition but no publication of the Rate of Interest or the Interest Amount so calculated need be made unless the Trustee otherwise requires. The determination of any rate or amount, the obtaining of each quotation and the making of each determination or calculation by the Calculation Agent(s) shall (in the absence of manifest error) be final and binding upon all parties.

- (i) **Determination or Calculation by Trustee:** If the Calculation Agent does not at any time for any reason determine or calculate the Rate of Interest for an Interest Period or any Interest Amount, Instalment Amount, Final Redemption Amount, Early Redemption Amount or Optional Redemption Amount, the Trustee may do so (or may appoint an agent on its behalf to do so) and such determination or calculation shall be deemed to have been made by the Calculation Agent. In doing so, the Trustee may apply the foregoing provisions of this Condition, with any necessary consequential amendments, to the extent that, in its opinion, it can do so, and, in all other respects it shall do so in such manner as it shall deem fair and reasonable in all the circumstances.

## **6. Redemption, Purchase and Options**

### **(a) Redemption by Instalments and Final Redemption:**

- (i) Unless previously redeemed, purchased and cancelled as provided in this Condition 6 or the relevant Instalment Date (being one of the dates so specified in the Final Terms) is extended pursuant to any Issuer's or Noteholder's option in accordance with Condition 6(d), 6(e) or 6(f), each Note that provides for Instalment Dates and Instalment Amounts shall be partially redeemed on each Instalment Date at the related Instalment Amount specified in the Final Terms. The outstanding nominal amount of each such Note shall be reduced by the Instalment Amount (or, if such Instalment

Amount is calculated by reference to a proportion of the nominal amount of such Note, such proportion) for all purposes with effect from the related Instalment Date, unless payment of the Instalment Amount is improperly withheld or refused on presentation of the related Receipt, in which case, such amount shall remain outstanding until the Relevant Date relating to such Instalment Amount.

- (ii) Unless previously redeemed, purchased and cancelled as provided below or its maturity is extended pursuant to any Issuer's or Noteholder's option in accordance with Condition 6(d), 6(e) or 6(f), each Note shall be finally redeemed on the Maturity Date specified in the Final Terms at its Final Redemption Amount (which, unless otherwise provided in the Final Terms, is its nominal amount) or, in the case of a Note falling within paragraph (i) above, its final Instalment Amount.

(b) **Early Redemption:**

- (i) *Zero Coupon Notes:*

(A) The Early Redemption Amount payable in respect of any Zero Coupon Note, the Early Redemption Amount of which is not linked to an index and/or a formula, upon redemption of such Note pursuant to Condition 6(c) or upon it becoming due and payable as provided in Condition 10 shall be the Amortised Face Amount (calculated as provided below) of such Note unless otherwise specified in the Final Terms.

(B) Subject to the provisions of sub-paragraph (C) below, the "**Amortised Face Amount**" of any such Note shall be the scheduled Final Redemption Amount of such Note on the Maturity Date discounted at a rate per annum (expressed as a percentage) equal to the Amortisation Yield (which, if none is shown in the Final Terms, shall be such rate as would produce an Amortised Face Amount equal to the issue price of the Notes if they were discounted back to their issue price on the Issue Date) compounded annually.

(C) If the Early Redemption Amount payable in respect of any such Note upon its redemption pursuant to Condition 6(c) or upon it becoming due and payable as provided in Condition 10 is not paid when due, the Early Redemption Amount due and payable in respect of such Note shall be the Amortised Face Amount of such Note as defined in sub-paragraph (B) above, except that such sub-paragraph shall have effect as though the date on which the Note becomes due and payable were the Relevant Date. The calculation of the Amortised Face Amount in accordance with this sub-paragraph shall continue to be made (as well after as before judgment) until the Relevant Date, unless the Relevant Date falls on or after the Maturity Date, in which case the amount due and payable shall be the scheduled Final Redemption Amount of such Note on the Maturity Date together with any interest that may accrue in accordance with Condition 5(c).

Where such calculation is to be made for a period of less than one year, it shall be made on the basis of the Day Count Fraction shown in the Final Terms.

- (ii) *Other Notes:* The Early Redemption Amount payable in respect of any Note (other than Notes described in (i) above), upon redemption of such Note pursuant to Condition 6(c) or upon it becoming due and payable as provided

in Condition 10, shall be the Final Redemption Amount unless otherwise specified in the Final Terms.

- (c) **Redemption for Taxation Reasons:** The Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date or, if so specified in the Final Terms, at any time, on giving not less than 30 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable) at their Early Redemption Amount (as described in Condition 6(b) above) (together with interest accrued to the date fixed for redemption), if, immediately before giving such notice, the Issuer satisfies the Trustee that (a) (i) the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 as a result of any change in, or amendment to, the laws or regulations of the Netherlands (in the case of KMG Finance) or Kazakhstan (in the case of KMG) or any political subdivision or any authority thereof having power to tax therein, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), which change or amendment becomes effective on or after the date on which agreement is reached to issue of the first Tranche of the Notes and (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it or (b) (i) in respect of Notes issued by KMG Finance, KMG has or (if a demand was made under the Guarantee) would become obliged to pay additional amounts as provided or referred to in Condition 8 or the Guarantee, as the case may be, or KMG has or will become obliged to make any such withholding or deduction of the type referred to in Condition 8 or in the Guarantee, as the case may be, from any amount paid by it to KMG Finance in order to enable KMG Finance to make a payment of principal or interest in respect of the Notes, in either case to any greater extent than would have been required had such a payment been required to be made before the date on which agreement is reached to issue the first Tranche of the Notes as a result of any change in, or amendment to, the laws or regulations of the Republic of Kazakhstan or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), which change or amendment becomes effective on or after the date on which agreement is reached to issue the first Tranche of the Notes, and (ii) such obligation cannot be avoided by KMG (or KMG Finance, as the case may be) taking reasonable measures available to it; provided, however, that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer or, if the Issuer is KMG Finance, KMG would be obliged to pay such additional amounts or KMG would be obliged to make such withholding or deduction if a payment in respect of the Notes were then due, or (as the case may be) a demand under the Guarantee (if applicable) were then made or (also as the case may be) KMG would be obliged to make a payment to KMG Finance to enable it to make a payment of principal or interest in respect of the Notes if any such payment on the Notes were then due. Before the publication of any notice of redemption pursuant to this paragraph, the Issuer shall deliver to the Trustee (1) a certificate signed by two directors of the Issuer (or KMG, as the case may be) stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred and (2) an opinion of independent legal advisers in form and substance satisfactory to the Trustee of recognised standing to the effect that the Issuer or (as the case may be) KMG has or will become obliged to pay such additional amounts and the Trustee shall be entitled to accept such certificate and opinion as sufficient evidence of the satisfaction of the condition precedent set out in (a)(ii) and/or (b)(ii) above in which event it shall be conclusive and binding on Noteholders.

- (d) **Redemption at the Option of Noteholders upon a Change of Status:** If at any time while any Note remains outstanding a Change of Status occurs, the Issuer shall, at the option of the holder of any such Note, upon the holder of such Note giving not less than 15 nor more than 30 days' notice to the Issuer redeem such Note on the Optional Redemption Date(s) at 101 per cent. of its principal amount together with (or, where purchased, together with an amount equal to) interest accrued to but excluding the Change of Status Put Date (as defined below).

Such option (the "**Change of Status Put Option**") shall operate as set out below.

If a Change of Status occurs then, within 14 days of the occurrence of the Change of Status, the Issuer shall, and upon the Trustee becoming so aware (the Issuer having failed to do so) the Trustee may, and, if so requested by the holders of at least one-fifth in principal amount of the Notes then outstanding, shall, give notice (a "**Change of Status Notice**") to the Noteholders in accordance with Condition 16 specifying the nature of the Change of Status and the procedure for exercising the Change of Status Put Option.

To exercise the Change of Status Put Option, a holder of Notes must deliver at the specified office of any Paying Agent on any Business Day falling within the period commencing on the occurrence of a Change of Status and ending 90 days after such occurrence or, if later, 90 days after the date on which the Change of Status Notice is given to Noteholders as required by this Condition 6(d) (the "**Change of Status Put Period**"), a duly signed and completed notice of exercise in the form (for the time being current and which may, if the certificate for such Notes is held in a clearing system, be any form acceptable to the clearing system delivered in any manner acceptable to the clearing system) obtainable from any specified office of any Paying Agent (a "**Change of Status Put Option Notice**") and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this paragraph accompanied by the certificate for such Notes or evidence satisfactory to the Paying Agent concerned that the certificate for such Notes will, following the delivery of the Change of Status Put Option Notice, be held to its order or under its control.

The Issuer shall at its option redeem or purchase (or procure the purchase of) the Notes the subject of each Change of Status Put Option Notice on the date (the "**Change of Status Put Date**") seven days after the expiration of the Change of Status Put Period unless previously redeemed or purchased and cancelled. A Change of Status Put Option Notice given by a holder of any Note shall be irrevocable except where, prior to the due date of redemption, an Event of Default has occurred and is continuing, in which event such holder, at its option, may elect by notice to the Issuer to withdraw the Change of Status Put Option Notice.

For the purposes of this Condition 6(d):

A "**Change of Status**" will be deemed to have occurred upon the occurrence of any of the following:

- (i) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that the Republic of Kazakhstan and/or any other federal or state agencies appropriately authorised to hold the shares of KMG ceases to own and control (directly or indirectly) 100 per cent. of the issued and outstanding voting share capital of KMG; or
- (ii) KMG ceasing to be a "national company" within the meaning of Article 1 of the Law of the Republic of Kazakhstan No. 291-IV "On Subsoil and Subsoil Use" dated 24 June 2010 (the "**Subsoil Law**"); or

- (iii) any change to such laws the result of which is that KMG ceases to act as the government of Kazakhstan's agent in relation to domestic production sharing agreements, or ceases to benefit from KMG's first right of refusal to acquire the participation and operating rights in any hydrocarbon deposits in Kazakhstan being alienated as provided by Articles 12 and 13 of the Subsoil Law, or ceases to benefit from its right of having at least 50 per cent. participatory interest in all new off-shore contracts (as provided by Article 93.3 of the Subsoil Law); or
  - (iv) the occurrence of an Adverse Ratings Event during the six months immediately following the occurrence of a reorganisation entered into by KMG (directly or indirectly) or any Material Subsidiary in accordance with Condition 4(h)(i) and (ii), by reason of such reorganisation.
- (e) **Redemption at the Option of the Issuer and Exercise of Issuer's Options:** If Call Option is specified in the Final Terms, the Issuer may, on giving not less than 15 nor more than 30 days' irrevocable notice to the Noteholders (or such other notice period as may be specified in the Final Terms) redeem, or exercise any option of the Issuer (as may be described in the Final Terms) in relation to, all or, if so provided, some of the Notes on any Optional Redemption Date or Option Exercise Date, as the case may be. Any such redemption of Notes shall be at their Optional Redemption Amount together with interest accrued to the date fixed for redemption. Any such redemption or exercise must relate to Notes of a nominal amount at least equal to the Minimum Redemption Amount to be redeemed specified in the Final Terms and no greater than the Maximum Redemption Amount to be redeemed specified in the Final Terms.

All Notes in respect of which any such notice is given shall be redeemed, or the Issuer's option shall be exercised, on the date specified in such notice in accordance with this Condition.

In the case of a partial redemption or a partial exercise of a Issuer's option, the notice to Noteholders shall specify the nominal amount of Notes drawn and the holder(s) of such Notes, to be redeemed or in respect of which such option has been exercised, which shall have been drawn in such place as the Trustee may approve and in such manner as it deems appropriate, subject to compliance with any applicable laws and stock exchange or other relevant authority requirements. So long as the Notes are listed on the Official List of the Financial Services Authority and admitted to trading on the Stock Exchange or any other stock exchange and the rules of the relevant stock exchange so require, the Issuer shall, once in each year in which there has been a partial redemption of the Notes, cause to be published in a leading newspaper of general circulation in London or as specified by such other stock exchange, a notice specifying the aggregate nominal amount of Notes outstanding and a list of the Notes drawn for redemption but not surrendered.

- (f) **Redemption at the Option of Noteholders and Exercise of Noteholders' Options:** If Put Option is specified in the Final Terms, the Issuer shall, at the option of the holder of any such Note, upon the holder of such Note giving not less than 15 nor more than 30 days' notice to the Issuer (or such other notice period as may be specified in the Final Terms) redeem such Note on the Optional Redemption Date(s) at its Optional Redemption Amount together with interest accrued to (but excluding) the date fixed for redemption.

To exercise such option or any other Noteholders' option that may be set out in the Final Terms (which must be exercised on an Option Exercise Date) the holder must deposit the Note(s) with the Registrar or any Transfer Agent at its specified office,

together with a duly completed option exercise notice (“**Exercise Notice**”) in the form obtainable from any Paying Agent, the Registrar or any Transfer Agent (as applicable) within the notice period. No Note so deposited and option exercised may be withdrawn (except as provided in the Agency Agreement) without the prior consent of the Issuer.

- (g) **Partly Paid Notes:** Partly Paid Notes will be redeemed, whether at maturity, early redemption or otherwise, in accordance with the provisions of this Condition and the provisions specified in the Final Terms.
- (h) **Purchases:** KMG Finance, KMG and any of their subsidiaries may at any time purchase Notes in the open market or otherwise at any price.
- (i) **Cancellation:** All Notes purchased by or on behalf of KMG Finance, KMG or any of their subsidiaries may be held, resold or, at the option of the Issuer, surrendered for cancellation by surrendering the Notes to the Registrar and, if so surrendered, shall, together with all Notes redeemed by the Issuer, be cancelled forthwith. Any Notes so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer and, if the Issuer is KMG Finance, KMG in respect of any such Notes shall be discharged.

## 7. Payments

- (a) **Payments of Principal and Interest:**
  - (i) Payments of principal (which for the purposes of this Condition 7(a) shall include final Instalment Amounts but not other Instalment Amounts) in respect of Notes shall be made against presentation and surrender of the relevant Notes at the specified office of any of the Transfer Agents or of the Registrar and in the manner provided in paragraph (ii) below.
  - (ii) Interest (which for the purpose of this Condition 7(a) shall include all Instalment Amounts other than final Instalment Amounts) on Notes shall be paid to the Person shown on the Register at the close of business on the fifteenth day before the due date for payment thereof (the “**Record Date**”). Payments of interest on each Note shall be made in the relevant currency by cheque drawn on a bank and mailed by uninsured post to the holder (or to the first named of joint holders) of such Note at its address appearing in the Register. The holder of such Notes will not be entitled to any interest or other payment for any delay in receiving any amount due in respect of such Notes as a result of a cheque posted in accordance with this Condition arriving after the due date for payment or being lost in the post. Upon application by the holder to the specified office of the Registrar or any Transfer Agent before the Record Date, such payment of interest may be made by transfer to an account in the relevant currency maintained by the payee with a bank.
- (b) **Payments subject to Laws:** Without prejudice to the provisions of Condition 8, all payments are subject in all cases to any applicable fiscal or other laws, regulations and directives. No commission or expenses shall be charged to the Noteholders in respect of such payments.

All payments are subject in all cases to any withholding or deduction required pursuant to an agreement described in FATCA or any law implementing an intergovernmental approach thereto. In that event, the Issuer or such Paying Agent (as the case may be) shall make such payment after such withholding tax or deduction

has been made and shall account to the relevant authorities for the amount so required to be withheld or deducted. Neither the Issuer nor the Paying Agent nor any other person will be obliged to make any additional payments to the Noteholders in respect of any amounts so withheld or deducted.

- (c) **Appointment of Agents:** The Paying Agents, the Registrar, the Transfer Agents and the Calculation Agent initially appointed by KMG Finance and KMG and their respective specified offices are listed below. The Paying Agents, the Registrar, the Transfer Agents and the Calculation Agent act solely as agents of KMG Finance, KMG and, in certain circumstances, the Trustee and do not assume any obligation or relationship of agency or trust for or with any Noteholder. KMG Finance and KMG reserve the right at any time with the approval of the Trustee to vary or terminate the appointment of any Paying Agent, the Registrar, any Transfer Agent or the Calculation Agent(s) and to appoint additional or other Paying Agents or Transfer Agents, provided that the Issuer shall at all times maintain (i) a Principal Paying Agent, (ii) a Registrar, (iii) a Transfer Agent, (iv) a Paying Agent and a Transfer Agent having specified offices in such cities as may be required by any stock exchange on which the Notes may be listed in each case, as approved by the Trustee and (v) a Paying Agent with a specified office in a European Union member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000. Notice of any such change or any change of any specified office shall promptly be given to the Noteholders in accordance with Condition 16.
- (d) **Calculation Agent and Reference Banks:** The Issuer shall procure that there shall at all times be four Reference Banks (or such other number as may be required) with offices in the Relevant Financial Centre and one or more Calculation Agents if provision is made for them in the Notes and for so long as any such Note is outstanding (as defined in the Trust Deed). If any Reference Bank (acting through its relevant office) is unable or unwilling to continue to act as a Reference Bank, then the Issuer shall (with the prior written approval of the Trustee) appoint another Reference Bank with an office in the Relevant Financial Centre to act as such in its place. Where more than one Calculation Agent is appointed in respect of the Notes, references in these Conditions to the Calculation Agent shall be construed as each Calculation Agent performing its respective duties under the Conditions. If the Calculation Agent is unable or unwilling to act as such or if the Calculation Agent fails duly to establish the Rate of Interest for an Interest Period or Interest Accrual Period or to calculate any Interest Amount, Instalment Amount, Final Redemption Amount, Early Redemption Amount or Optional Redemption Amount, as the case may be, or to comply with any other requirement, within 7 days of the date upon which any such amount is due to be calculated, the Issuer shall (with the prior written approval of the Trustee) appoint a leading bank or investment banking firm engaged in the interbank market (or, if appropriate, money, swap or over-the-counter index options market) that is most closely connected with the calculation or determination to be made by the Calculation Agent (acting through its principal London office or any other office actively involved in such market) to act as such in its place. The Calculation Agent may not resign its duties without a successor having been appointed as aforesaid.

Notice of any such change shall promptly be given to the Noteholders.

- (e) **Non-Business Days:** If any date for payment in respect of any Note is not a business day, the holder shall not be entitled to payment until the next following business day nor to any interest or other sum in respect of such postponed payment. In this paragraph, “**business day**” means a day (other than a Saturday or a Sunday) on which

banks and foreign exchange markets are open for business in the relevant place of presentation, in such jurisdictions as shall be specified as “**Financial Centres**” in the Final Terms and:

- (i) (in the case of a payment in a currency other than euro) where payment is to be made by transfer to an account maintained with a bank in the relevant currency, on which foreign exchange transactions may be carried on in the relevant currency in the principal financial centre of the country of such currency; or
- (ii) (in the case of a payment in euro) which is a TARGET Business Day.

## 8. Taxation

All payments by or on behalf of the Issuer or, if the Issuer is KMG Finance, KMG in respect of the Notes or under the Guarantee shall be made free and clear of, and without deduction or withholding for, any taxes, duties, assessments, or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within the Netherlands or the Republic of Kazakhstan or, in either case, any political subdivision or any authority thereof or therein having the power to tax (collectively “**Taxes**”) unless such withholding or deduction is required by law. In such event, KMG Finance or (as the case may be) KMG will pay such additional amounts to the holder of any Note as will result in receipt by the Noteholder of such amounts as would have been received by them had no such withholding or deduction on account of any such Taxes had been required, except that no additional amounts shall be payable with respect to any Note:

- (a) **Other connection:** to, or to a third party on behalf of, a holder who is liable to such Taxes in respect of such Note by reason of his having some connection with the Netherlands or, in the case of payments by KMG, the Republic of Kazakhstan other than the mere holding of the Note or the receipt of payment thereunder or under the Guarantee; or
- (b) **Presentation more than 30 days after the Relevant Date:** presented (or in respect of which the Note representing it is presented) for payment more than 30 days after the Relevant Date except to the extent that the holder of it would have been entitled to such additional amounts on presenting it for payment on the thirtieth day;
- (c) **Payment to individuals:** where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/ EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26–27 November 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive;
- (d) **Presentation in another jurisdiction:** presented for payment by or on behalf of a holder who would have been able to avoid such withholding or deduction by presenting the relevant Note to another Paying Agent in a member state of the European Union.

Notwithstanding anything to the contrary in this Condition 8, none of KMG Finance, KMG, any Paying Agent or any other Person shall be required to pay any additional amounts with respect to any withholding or deduction imposed on or in respect of any Note pursuant to FATCA, any treaty, law, regulation or other official guidance enacted by the Netherlands or the Republic of Kazakhstan implementing FATCA, or any agreement between KMG Finance or KMG and the United States or any authority thereof implementing FATCA.

As used in these Conditions, “**Relevant Date**” in respect of any Note means the date on which payment in respect of it first becomes due or (if any amount of the money payable is improperly withheld or refused) the date on which payment in full of the amount outstanding is made or (if earlier) the date seven days after that on which notice is duly given to the Noteholders that, upon further presentation of the Note being made in accordance with the Conditions, such payment will be made, provided that payment is in fact made upon such presentation. References in these Conditions to (i) “**principal**” shall be deemed to include any premium payable in respect of the Notes, all Instalment Amounts, Final Redemption Amounts, Early Redemption Amounts, Optional Redemption Amounts, Amortised Face Amounts and all other amounts in the nature of principal payable pursuant to Condition 6 or any amendment or supplement to it, (ii) “**interest**” shall be deemed to include all Interest Amounts and all other amounts payable pursuant to Condition 5 or any amendment or supplement to it and (iii) “**principal**” and/or “**interest**” shall be deemed to include any additional amounts that may be payable under this Condition or any undertaking given in addition to or in substitution for it under the Trust Deed.

## 9. Prescription

Claims against KMG Finance and/or KMG for payment in respect of the Notes shall be prescribed and become void unless made within 10 years (in the case of principal) or five years (in the case of interest) from the appropriate Relevant Date in respect of them.

## 10. Events of Default

If any of the following events (each an “**Event of Default**”) occurs, the Trustee at its discretion may, and if so requested in writing by holders of at least one-fifth in nominal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution shall, subject to it being indemnified and/or secured to its satisfaction, give notice to the Issuer that the Notes are, and they shall immediately become, due and payable at their Early Redemption Amount together with accrued interest to the date of such notice:

- (a) **Non-payment:** the Issuer fails to pay the principal of any of the Notes when the same becomes due and payable either at maturity, by declaration or otherwise or the Issuer is in default with respect to the payment of interest or additional amounts on any of the Notes and such default in respect of interest or additional amounts continues for a period of five days; or
- (b) **Breach of other obligations:** KMG Finance or KMG is in default in the performance, or is otherwise in breach, of any covenant, obligation, undertaking or other agreement under Notes issued by it, the Guarantee (if applicable) or the Trust Deed (other than a default or breach elsewhere specifically dealt with in this Condition 10) and such default or breach is not remedied within 30 days (or such longer period as the Trustee may in its sole discretion determine) after notice thereof has been given to KMG Finance or KMG, as the case may be, by the Trustee; or
- (c) **Cross-default:** (i) any Indebtedness for Borrowed Money of KMG Finance, KMG or any Material Subsidiary (a) becomes (or becomes capable of being declared) due and payable prior to the due date for payment thereof by reason of default by KMG Finance, KMG or such Material Subsidiary or (b) is not repaid at maturity as extended by the period of grace, if any, applicable thereto or (ii) any Indebtedness Guarantee given by KMG Finance, KMG or any Material Subsidiary in respect of Indebtedness for Borrowed Money of any other Person is not honoured when due and called, provided that the aggregate principal amount of such Indebtedness for Borrowed Money exceeds U.S.\$50,000,000 (or its equivalent in other currencies); or

- (d) **Bankruptcy:** (i) any Person shall have instituted a proceeding or entered a decree or order for the appointment of a receiver, administrator or liquidator in any insolvency, rehabilitation, readjustment of debt, marshalling of assets and liabilities, moratorium of payments or similar arrangements involving KMG Finance or KMG or any Material Subsidiary or all or (in the opinion of the Trustee) substantially all of their respective properties and such proceeding, decree or order shall not have been vacated or shall have remained in force undischarged or unstayed for a period of 45 days; or (ii) KMG Finance or KMG or any Material Subsidiary shall institute proceedings under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect to be adjudicated a bankrupt or shall consent to the filing of a bankruptcy, insolvency or similar proceeding against it or shall file a petition or answer or consent seeking reorganisation under any such law or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, administrator or liquidator or trustee or assignee in bankruptcy or liquidation of KMG Finance or KMG or any Material Subsidiary, as the case may be, or in respect of its property, or shall make an assignment for the benefit of its creditors or shall otherwise be unable or admit its inability to pay its debts generally as they become due or KMG Finance or KMG or any Material Subsidiary commences proceedings with a view to the general adjustment of its Indebtedness which event is, in the case of the Material Subsidiary, (in the sole opinion of the Trustee) materially prejudicial to the interests of the Noteholders; or
- (e) **Judgments:** The failure by KMG or any subsidiary to pay any final judgment in excess of U.S.\$10,000,000 (or its equivalent in other currencies) which final judgment remains unpaid, and undischarged, and unwaived and unstayed for a period of more than 30 consecutive days after such judgement becomes final and non-appealable, and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment that is not promptly stayed; or
- (f) **Material compliance with applicable laws:** KMG Finance or KMG fails to comply in any respect with any applicable laws or regulations (including any foreign exchange rules or regulations) of any governmental or other regulatory authority for any purpose to enable KMG Finance or KMG lawfully to exercise its rights or perform or comply with its obligations under the Notes, the Guarantee or the Trust Deed or the Agency Agreement or to ensure that those obligations are legally binding and enforceable or to ensure that all necessary agreements or other documents are entered into and that all necessary consents and approvals of, and registrations and filings with, any such authority in connection therewith are obtained and maintained in full force and effect and the Trustee certifies that such non compliance is, in the sole opinion of the Trustee, materially prejudicial to the interests of Noteholders; or
- (g) **Invalidity or Unenforceability:** (i) the validity of Notes, the Trust Deed, the Guarantee or the Agency Agreement is contested by KMG Finance or KMG or KMG Finance or KMG shall deny any of its obligations under the Notes, the Trust Deed, the Guarantee (if applicable) or the Agency Agreement (whether by a general suspension of payments or a moratorium on the payment of debt or otherwise) or (ii) it is or becomes unlawful for KMG Finance or KMG to perform or comply with all or any of its obligations set out in the Notes, the Trust Deed, the Guarantee (if applicable) or the Agency Agreement or (iii) all or any of KMG Finance's or KMG's obligations set out in the Notes, the Trust Deed, the Guarantee (if applicable) or the Agency Agreement shall be or become unenforceable or invalid and, following the occurrence of any of the events specified in this Condition 10(g), the Trustee is of the opinion (determined in its sole discretion) that such occurrence is materially prejudicial to the interests of the Noteholders; or

- (h) **Government Intervention:** (i) all or any substantial part of the undertaking, assets and revenues of KMG Finance or KMG or any Material Subsidiary is condemned, seized or otherwise appropriated by any Person acting under the authority of any national, regional or local government or (ii) KMG Finance, KMG or any Material Subsidiary is prevented by any such Person from exercising normal control over all or any substantial part of its undertaking, assets, revenues and, following the occurrence of any of the events specified in this Condition 10(h), the Trustee is of the opinion (determined in its sole discretion) that such occurrence is materially prejudicial to the interests of the Noteholders.

## 11. Meetings of Noteholders, Modification, Waiver and Substitution

- (a) **Meetings of Noteholders:** The Trust Deed contains provisions for convening meetings of Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution (as defined in the Trust Deed) of a modification of any of these Conditions or any provisions of the Trust Deed. Such a meeting may be convened by KMG Finance or KMG (as the case may be) or the Trustee and shall be convened by the Trustee upon the request in writing of Noteholders holding not less than 10 per cent. in nominal amount of the Notes for the time being outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution shall be two or more Persons holding or representing a clear majority in nominal amount of the Notes for the time being outstanding, or at any adjourned meeting two or more Persons being or representing Noteholders whatever the nominal amount of the Notes held or represented, unless the business of such meeting includes consideration of proposals, *inter alia*, (i) to amend the dates of maturity or redemption of the Notes, any Instalment Date or any date for payment of interest or Interest Amounts on the Notes, (ii) to reduce or cancel the nominal amount of, or any Instalment Amount of, or any premium payable on redemption of, the Notes, (iii) to reduce the rate or rates of interest in respect of the Notes or to vary the method or basis of calculating the rate or rates or amount of interest or the basis for calculating any Interest Amount in respect of the Notes, (iv) if a Minimum and/or a Maximum Rate of Interest, Instalment Amount or Redemption Amount is shown in the Final Terms, to reduce any such Minimum and/or Maximum, (v) to vary any method of, or basis for, calculating the Final Redemption Amount, the Early Redemption Amount or the Optional Redemption Amount, including the method of calculating the Amortised Face Amount, (vi) to vary the currency or currencies of payment or denomination of the Notes, (vii) to take any steps that as specified in the Final Terms may only be taken following approval by an Extraordinary Resolution to which the special quorum provisions apply, (viii) to modify the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass the Extraordinary Resolution or any resolution, or (ix) (if applicable) to modify or cancel the Guarantee, in which case the necessary quorum shall be two or more Persons holding or representing not less than 75 per cent., or at any adjourned meeting not less than 25 per cent., in nominal amount of the Notes for the time being outstanding. Any Extraordinary Resolution duly passed shall be binding on Noteholders (whether or not they were present at the meeting at which such resolution was passed).
- (b) **Modification:** The Trustee may agree, without the consent of the Noteholders, to (i) any modification of any of the provisions of the Notes or the Trust Deed that is, in its opinion, of a formal, minor or technical nature or is made to correct a manifest error, and (ii) any other modification (except as mentioned in the Trust Deed), and any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Notes or the Trust Deed that is in the opinion of the Trustee not materially prejudicial to the interests of the Noteholders. Any such modification, authorisation

or waiver shall be binding on the Noteholders and, if the Trustee so requires, such modification shall be notified to the Noteholders as soon as practicable.

- (c) **Substitution:** The Trust Deed contains provisions permitting the Trustee to agree, subject to such amendment of the Trust Deed and such other conditions as the Trustee may require, but without the consent of the Noteholders, to the substitution of the Issuer's successor in business (if applicable) or of KMG or its successor in business or any subsidiary of KMG or its successor in business in place of the Issuer or (if applicable) KMG, or of any previous substituted company, as principal debtor or guarantor under the Trust Deed and the Notes. In the case of such a substitution the Trustee may agree, without the consent of the Noteholders, to a change of the law governing the Notes and the Trust Deed provided that such change would not in the opinion of the Trustee determined in its sole discretion be materially prejudicial to the interests of the Noteholders.
- (d) **Entitlement of the Trustee:** In connection with the exercise of its functions (including but not limited to those referred to in this Condition) the Trustee shall have regard to the interests of the Noteholders as a class and shall not have regard to the consequences of such exercise for individual Noteholders and the Trustee shall not be entitled to require, nor shall any Noteholder be entitled to claim, from KMG Finance or KMG any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders.

## 12. Enforcement

At any time after the Notes become due and payable, the Trustee may, at its discretion and without further notice, institute such proceedings against KMG Finance and/or KMG as it may think fit to enforce the terms of the Trust Deed, the Notes or the Guarantee but it shall not be bound to take any such proceedings unless (a) it shall have been so directed by an Extraordinary Resolution or so requested in writing by Noteholders holding at least one-fifth in nominal amount of the Notes outstanding, and (b) it shall have been indemnified and/or secured to its satisfaction. No Noteholder may proceed directly against KMG Finance or KMG unless the Trustee, having become bound so to proceed, fails to do so within a reasonable time and such failure is continuing.

## 13. Indemnification of the Trustee

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking proceedings to enforce payment unless indemnified to its satisfaction and to be paid its costs and expenses in priority to the claims of Noteholders. The Trustee is entitled to enter into business transactions with KMG Finance, KMG and any entity related to KMG Finance or KMG without accounting for any profit.

In the exercise of its powers and discretions under these Conditions and the Trust Deed, the Trustee will have regard to the interests of the Noteholders as a class and will not be responsible for any consequence for individual holders of Notes as a result of such holders being connected in any way with a particular territory or tax jurisdiction and the Trustee shall not be entitled to require, nor shall any Noteholder be entitled to claim, from the Issuer, any indemnification or payment in respect of any tax consequences of such exercise upon individual Noteholders.

#### **14. Replacement of Notes**

If a Note is lost, stolen, mutilated, defaced or destroyed, it may be replaced, subject to applicable laws, regulations and stock exchange or other relevant authority regulations, at the specified office of the Registrar or such other Paying Agent or Transfer Agent, as the case may be, as may from time to time be designated by the Issuer for the purpose and notice of whose designation is given to Noteholders, in each case on payment by the claimant of the fees and costs incurred in connection therewith and on such terms as to evidence, security and indemnity (which may provide, *inter alia*, that if the allegedly lost, stolen or destroyed Note is subsequently presented for payment, there shall be paid to the Issuer on demand the amount payable by the Issuer in respect of such Notes) and otherwise as the Issuer may require. Mutilated or defaced Notes must be surrendered before replacements will be issued.

#### **15. Further Issues**

The Issuer may from time to time without the consent of the Noteholders create and issue further securities either having the same terms and conditions as the Notes in all respects (or in all respects except for the first payment of interest on them) and so that such further issue shall be consolidated and form a single Series with the outstanding securities of any Series or upon such terms as the Issuer may determine at the time of their issue. References in these Conditions to the Notes include (unless the context requires otherwise) any other securities issued pursuant to this Condition and forming a single Series with existing Notes or a separate Series. Any further securities forming a single Series with the outstanding securities of any Series shall, and any other securities forming a separate Series may (with the consent of the Trustee), be constituted by the Trust Deed or any deed supplemental to it. The Trust Deed contains provisions for convening a single meeting of the Noteholders of a Series and the holders of securities of other Series where the Trustee so decides.

#### **16. Notices**

Notices to the Noteholders shall be sent by first class mail of (if posted overseas) by airmail to them (or, in the case of joint holders, to the first-named in the Register) at their respective addresses in the Register and deemed to have been given on the fourth weekday (being a day other than a Saturday or a Sunday) after the date of mailing. In addition, so long as any Notes are listed on a stock exchange, such notice will be published in a daily newspaper of general circulation in the place or places required by the rules of such stock exchange. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once or on different dates, on the first date on which publication is made, as provided above.

#### **17. Contracts (Rights of Third Parties) Act 1999**

No Person shall have any right to enforce any term or condition of the Notes under the Contracts (Rights of Third Parties) Act 1999.

#### **18. Governing Law, Jurisdiction and Arbitration**

- (a) **Governing law:** The Trust Deed and the Notes, including any non-contractual obligations arising out of or in connection with the Trust Deed and/or the Notes, are governed by, and shall be construed in accordance with, English Law.
- (b) **Submission to Jurisdiction; Arbitration:** Each of KMG Finance and KMG have in the Trust Deed (i) submitted irrevocably to the jurisdiction of the courts of England for the purposes of hearing and determining any suit, action or proceedings or settling any disputes arising out of or in connection with the Trust Deed or the Notes; (ii)

waived any objection which it might have to such courts being nominated as the forum to hear and determine any such suit, action or proceedings or to settle any such disputes and agreed not to claim that any such court is not a convenient or appropriate forum; (iii) designated Jordans International Limited at 20-22 Bedford Row, London WC1R 4JS to accept service of any process on its behalf in England; (iv) consented to the enforcement of any judgment; (v) to the extent that it may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process, and to the extent that in any such jurisdiction there may be attributed to itself or its assets or revenues such immunity (whether or not claimed), agreed not to claim and irrevocably waived such immunity to the full extent permitted by the laws of such jurisdiction; and (vi) agreed that the Trustee may elect by written notice to KMG Finance or KMG (as the case may be) that any dispute (including a claim, dispute or difference regarding the existence, termination or validity of the Notes), shall be finally settled by arbitration in accordance with the Rules of the London Court of International Arbitration as at present in force and as modified by the Trust Deed.

## 19. Definitions

In these Conditions, unless the context otherwise requires, the following defined terms shall have the meanings set out below:

“**Adverse Ratings Event**” shall be deemed to have occurred if any Rated Security or any corporate credit rating of KMG or any Material Subsidiary assigned by any Rating Agency is (i) placed on “credit watch” or formal review or equivalent with negative implications or negative outlook or (ii) downgraded or withdrawn on the date such Rated Security or corporate rating of KMG is so placed, downgraded or withdrawn as the case may be;

“**Affiliates**” of any specified person means any other persons, directly or indirectly, controlling or controlled by or under direct or indirect control with such specified person. For the purposes of this definition, “control” when used with respect to any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing;

“**Agreements**” means the Agency Agreement and the Trust Deed;

“**Asset Disposition**” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by KMG or any Material Subsidiary, including any disposition by means of a merger, consolidation or similar transaction, of:

- (i) any shares of Capital Stock of a Material Subsidiary or Minority Company; or
- (ii) any other assets of KMG or any Material Subsidiary or Minority Company;

Notwithstanding the preceding, transfers of assets between or among KMG and any Subsidiaries shall not be deemed to be Asset Dispositions;

“**Attributable Indebtedness**” in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Notes, compounded semi-annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended);

“**Auditors**” means the Ernst & Young LLP or, if they are unable or unwilling to carry out any action requested of them under the Agreements, such other internationally recognised firm of accountants as may be nominated by KMG and approved in writing by the Trustee for this purpose;

“**Authorised Signatory**” means, in relation to KMG, any Person who is duly authorised and in respect of whom the Trustee has received a certificate or certificates signed by a director or another Authorised Signatory of KMG setting out the name and signature of such Person and confirming such Person's authority to act;

“**Base Prospectus**” means the base prospectus relating to the Programme which comprises a base prospectus for the purpose of Article 5.4 of Directive 2003/71/EC (as amended by Directive 2010/73/EU, the “**Prospectus Directive**”) (which term shall include those documents incorporated in it by reference from time to time as provided in it) as from time to time amended, supplemented or replaced (but not including any information or documents replaced or superseded by any information so subsequently included or incorporated) and, in relation to each Tranche, the relevant Final Terms;

“**Business Day**” means:

- (i) in the case of a currency other than euro, a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments in the principal financial centre for such currency; and/or
- (ii) in the case of euro, a day on which the TARGET System is operating (a “**TARGET Business Day**”); and/or
- (iii) in the case of a currency and/or one or more Business Centres (specified in the Final Terms) a day (other than a Saturday or a Sunday) on which commercial banks and foreign exchange markets settle payments in such currency in the Business Centre(s) or, if no currency is indicated, generally in each of the Business Centres;

“**Capital Stock**” of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity;

“**Capitalised Lease Obligations**” means an obligation that is required to be classified and accounted for as a capitalised lease for financial reporting purposes in accordance with IFRS, and the amount of Indebtedness represented by such obligation will be the capitalised amount of such obligation at the time any determination thereof is to be made as determined in accordance with IFRS, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty;

“**Commodity Hedging Agreements**” means, in respect to any Person, any forward, futures, spot-deferred or option contract or other similar agreement or arrangement to which such Person is a party or a beneficiary entered into for protection against or to benefit from fluctuations in the price of any commodity produced or used by KMG or its Material Subsidiaries pursuant to a Permitted Business;

“**Consolidated KMG EBITDA**” means EBITDA of KMG and its Material Subsidiaries on a consolidated basis in accordance with IFRS as shown in the then most recent financial statements delivered pursuant to Condition 4(e);

**“Consolidated KMG Net Indebtedness”** means, at any date of determination, Consolidated KMG Total Indebtedness *minus* cash and Temporary Cash Investments of KMG and KMG Finance;

**“Consolidated KMG Total Asset Value”** means, at any date of determination, the amount of the consolidated total assets of KMG and its Material Subsidiaries, as calculated in accordance with the then most recent financial statements delivered pursuant to Condition 4(e);

**“Consolidated KMG Total Indebtedness”** means, at any date of determination, the total amount (without duplication) of the Indebtedness of KMG and its Material Subsidiaries on a consolidated basis in accordance with IFRS;

**“Consolidated Income Taxes”** means, with respect to any Person for any period, taxes imposed upon such person or other payments required to be made by such Person by any governmental authority which taxes or other payments are calculated by reference to the income or profits of such Person or person and its Material Subsidiaries (to the extent such income or profits were included in computing Consolidated Net Income for such period), regardless of whether such taxes or payments are required to be remitted to any governmental authority;

**“Consolidated Interest Expense”** means, for any period, the total interest expense of KMG and its Subsidiaries, on a consolidated basis, whether paid or accrued, plus, to the extent not included in such interest expense:

- (i) interest expense attributable to Capitalised Lease Obligations and the interest portion of rent expense associated with Attributable Indebtedness in respect of the relevant lease giving rise thereto, determined as if such lease were a capitalised lease in accordance with IFRS and the interest component of any deferred payment obligations;
- (ii) amortisation of debt discount and debt issuance cost;
- (iii) non-cash interest expense;
- (iv) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing;
- (v) interest actually paid by KMG or any such Material Subsidiary under any Guarantee of Indebtedness or other obligation of any other Person;
- (vi) net costs associated with Hedging Obligations;
- (vii) the consolidated interest expense of such Person and its Material Subsidiaries that was capitalised during such period;
- (viii) all dividends paid or payable in cash, Temporary Cash Investments or Indebtedness or accrued during such period on any series of Disqualified Stock of such Person or on Preferred Stock of its Material Subsidiaries payable to a party other than KMG or a Material Subsidiary; and
- (ix) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than KMG) in connection with Indebtedness Incurred by such plan or trust, *provided, however*, that there will be excluded therefrom any such interest

expense of any Immaterial Subsidiary to the extent the related Indebtedness is not guaranteed or paid by KMG or any Material Subsidiary.

For purposes of the foregoing, total interest expense will be determined after giving effect to any net payments made or received by KMG and its Subsidiaries, on a consolidated basis, with respect to Interest Rate Agreements;

“**Consolidated Net Income**” means, for any period, the net income (loss) (being income (loss) attributable to equity shareholders of KMG) of KMG and its Subsidiaries, on a consolidated basis, determined in accordance with IFRS; *provided, however*, that there will not be included in such Consolidated Net Income:

- (i) any net income (loss) of any Person if such Person is not a Material Subsidiary, except that:
  - (A) subject to the limitations contained in paragraphs (iii), (iv) and (v) below, KMG’s equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to KMG or a Material Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Material Subsidiary, to the limitations contained in paragraph (ii) below); and
  - (B) KMG’s equity in a net loss of any such Person for such period will be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from KMG or a Material Subsidiary;
- (ii) any net income (but not loss) of any Material Subsidiary if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Material Subsidiary, directly or indirectly, to KMG, except that:
  - (A) subject to the limitations contained in paragraphs (iii), (iv) and (v) below, KMG’s equity in the net income of any such Material Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Material Subsidiary during such period to KMG or another Material Subsidiary as a dividend or distribution paid or permitted to be paid, directly or indirectly, by loans, advances, intercompany transfers or otherwise (for so long as permitted) to KMG or a Material Subsidiary of KMG (subject, in the case of such a dividend or distribution to another Material Subsidiary, to the limitation contained in this clause); and
  - (B) KMG’s equity in a net loss of any such Material Subsidiary for such period will be included in determining such Consolidated Net Income;
- (iii) any gain (loss) realised upon the sale or other disposition of any property, plant or equipment of KMG or its consolidated Material Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (loss) realised upon the sale or other disposition of any Capital Stock of any Person;
- (iv) any extraordinary gain or loss;
- (v) any foreign exchange gains or losses; and

(vi) the cumulative effect of a change in accounting principles;

“**Currency Agreement**” means in respect of a Person, any foreign exchange contract, currency swap agreement or other similar agreement as to which such Person is a party or a beneficiary;

“**Day Count Fraction**” means, in respect of the calculation of an amount of interest on any Note for any period of time (from and including the first day of such period to but excluding the last) (whether or not constituting an Interest Period, the “**Calculation Period**”):

- (i) if “**Actual/365**” or “**Actual/Actual - ISDA**” is specified in the Final Terms, the actual number of days in the Calculation Period divided by 365 (or, if any portion of that Calculation Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (ii) if “**Actual/365 (Fixed)**” is specified in the Final Terms, the actual number of days in the Calculation Period divided by 365;
- (iii) if “**Actual/360**” is specified in the Final Terms, the actual number of days in the Calculation Period divided by 360;
- (iv) if “**30/360**”, “**360/360**” or “**Bond Basis**” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

“**Y<sub>1</sub>**” is the year, expressed as a number, in which the first day of the Interest Period falls;

“**Y<sub>2</sub>**” is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**M<sub>1</sub>**” is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

“**M<sub>2</sub>**” is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**D<sub>1</sub>**” is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D<sub>1</sub> will be 30; and

“**D<sub>2</sub>**” is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30;

- (v) if “**30E/360**” or “**Eurobond Basis**” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

“**Y1**” is the year, expressed as a number, in which the first day of the Interest Period falls;

“**Y2**” is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**M1**” is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

“**M2**” is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**D1**” is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case  $D_1$  will be 30; and

“**D2**” is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case  $D_2$  will be 30;

- (vi) if “**30E/360 (ISDA)**” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

“**Y1**” is the year, expressed as a number, in which the first day of the Interest Period falls;

“**Y2**” is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**M1**” is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

“**M2**” is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

“**D1**” is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case  $D_1$  will be 30; and

“**D2**” is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case  $D_2$  will be 30;

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

- (i) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;
- (ii) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or
- (iii) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

**“EBITDA”** means, for any period with respect to any Person, without duplication, the Consolidated Net Income for such period of such Person, plus the following to the extent deducted in calculating such Consolidated Net Income:

- (i) Consolidated Interest Expense;
- (ii) Consolidated Income Taxes;
- (iii) consolidated depreciation expense;
- (iv) consolidated amortisation of intangibles;
- (v) other non-cash charges reducing Consolidated Net Income (excluding any such non-cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortisation of a prepaid cash expense that was paid in a prior period not included in the calculation) less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period); and
- (vi) minority interest in (income)/loss of consolidated subsidiaries;

in each case on a consolidated basis and in accordance with IFRS;

**“Effective Date”** means, with respect to any Floating Rate to be determined on an Interest Determination Date, the date specified as such in the Final Terms or, if none is so specified, the first day of the Interest Accrual Period to which such Interest Determination Date relates;

**“Event of Default”** has the meaning assigned to such term in Condition 10 hereof;

**“Extraordinary Resolution”** has the meaning assigned to such term in the Trust Deed;

**“Fair Market Value”** means, with respect to any asset or property, the price which could be negotiated in an arm's-length, market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value will be determined in good faith by the Board of Directors of KMG, whose determination will be conclusive or, in the case of any sale of the Capital Stock of a Material Subsidiary or a Minority Company exceeding U.S.\$200 million, in writing by an Independent Appraiser;

**“FATCA”** means section 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended, as of the date of the Base Prospectus (or any successor version that is substantively

comparable) and any current or future regulations or agreements thereunder or official interpretations thereof;

“**Final Terms**” means, in relation to a Tranche, the Final Terms issued specifying the relevant details of such Tranche”

“**Group**” means KMG and its Subsidiaries taken as a whole;

“**guarantee**” means any financial obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise); or
- (ii) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

*provided, however*, that the term “guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning. The term “guarantor” shall mean any Person guaranteeing any obligation;

“**Guarantor**” means KMG where KMG Finance is the Issuer for a Series, as specified in the relevant Final Terms;

“**Hedging Obligations**” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement;

“**IFRS**” means International Financial Reporting Standards (formerly International Accounting Standards) issued by the International Accounting Standards Board (“**IASB**”) and interpretations issued by the International Financial Reporting Interpretations Committee of the IASB (as amended, supplemented or re-issued from time to time), as consistently applied, and any variation to such accounting principles and practices which is not material;

“**Immaterial Subsidiary**” means any Subsidiary of KMG that is not a Material Subsidiary;

“**Incur**” means issue, assume, guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness of a Person existing at the time such Person becomes a Material Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Material Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning. Solely for purposes of determining compliance with Condition 4(d):

- (i) amortisation of debt discount or the accretion of principal with respect to a non interest bearing or other discount security;
- (ii) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms; and

- (iii) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or the making of a mandatory offer to purchase such Indebtedness,

will not be deemed to be the Incurrence of Indebtedness;

“**Indebtedness**” means, with respect to any Person on any date of determination (without duplication):

- (i) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (ii) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (iii) the principal component of all obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and such obligation is satisfied within 30 days of Incurrence);
- (iv) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto;
- (v) Capitalised Lease Obligations and all Attributable Indebtedness of such Person;
- (vi) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (vii) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination and (b) the amount of such Indebtedness of such other Persons;
- (viii) the principal component of Indebtedness of other Persons to the extent guaranteed by such Person; and
- (ix) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

In addition, “Indebtedness” of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

- (i) such Indebtedness is the obligation of a partnership or Joint Venture that is not a Material Subsidiary;
- (ii) such Person or a Material Subsidiary of such Person is a general partner of the Joint Venture (a “**General Partner**”); and
- (iii) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Material Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:
  - (A) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Material Subsidiary of such Person; or
  - (B) if less than the amount determined pursuant to clause (A) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Material Subsidiary of such Person, if the Indebtedness is evidenced in writing and is for a determinable amount and the related interest expense shall be included in Consolidated Interest Expense to the extent actually paid by KMG or its Material Subsidiaries;

“**Indebtedness for Borrowed Money**” means any Indebtedness of any Person for or in respect of (i) moneys borrowed, (ii) amounts raised by acceptance under any acceptance credit facility, (iii) amounts raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or similar instruments, (iv) the amount of any liability in respect of leases or hire purchase contracts which would, in accordance with generally accepted accounting standards in the jurisdiction of incorporation of the lessee, be treated as finance or capital leases, (v) the amount of any liability in respect of any purchase price for assets or services the payment of which is deferred primarily as a means of raising finance or financing the acquisition of the relevant asset or service and (vi) amounts raised under any other transaction (including any forward sale or purchase agreement and the sale of receivables or other assets on a “with recourse” basis) having the commercial effect of a borrowing;

“**Indebtedness Guarantee**” means in relation to any Indebtedness of any Person, any obligation of another Person to pay such Indebtedness including (without limitation) (i) any obligation to purchase such Indebtedness, (ii) any obligation to lend money, to purchase or subscribe shares or other securities or to purchase assets or services in order to provide funds for the payment of such Indebtedness, (iii) any indemnity against the consequences of a default in the payment of such Indebtedness and (iv) any other agreement to be responsible for repayment of such Indebtedness;

“**Independent Appraiser**” means any of PricewaterhouseCoopers LLC, KPMG LLC, Deloitte & Touche LLP, Ernst & Young LLP or such reputable investment banking, accountancy or appraisal firm of international standing selected by the competent management body of KMG or relevant Material Subsidiary; *provided* it is not an Affiliate of KMG or any Material Subsidiary;

“**Interest Accrual Period**” means the period beginning on (and including) the Interest Commencement Date and ending on (but excluding) the first Interest Period Date and each

successive period beginning on (and including) an Interest Period Date and ending on (but excluding) the next succeeding Interest Period Date;

“**Interest Amount**” means the amount of interest payable, and in the case of Fixed Rate Notes, means the Fixed Coupon Amount or Broken Amount, as the case may be;

“**Interest Commencement Date**” means the Issue Date or such other date as may be specified in the Final Terms;

“**Interest Determination Date**” means, with respect to a Rate of Interest and Interest Accrual Period, the date specified as such in the Final Terms or, if none is so specified, (i) the first day of such Interest Accrual Period if the Specified Currency is Sterling or (ii) the day falling two London Business Days prior to the first day of such Interest Accrual Period if the Specified Currency is neither Sterling nor euro or (iii) the day falling two TARGET Business Days prior to the first day of such Interest Accrual Period if the Specified Currency is euro;

“**Interest Period**” means the period beginning on (and including) the Interest Commencement Date and ending on (but excluding) the first Interest Payment Date and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date;

“**Interest Period Date**” means each Interest Payment Date unless otherwise specified in the Final Terms;

“**Interest Rate Agreements**” means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary;

“**ISDA Definitions**” means the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., unless otherwise specified in the Final Terms;

“**Issuer**” means KMG Finance or KMG, as specified in the relevant supplemental Trust Deed for the Series;

“**Lien**” means any mortgage, pledge, encumbrance, easement, restriction, covenant, right-of-way, servitude, lien, charge or other security interest or adverse claim of any kind (including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction and any conditional sale or other title retention agreement or lease in the nature thereof);

“**Material Adverse Effect**” means a material adverse effect on (a) the business, property, condition (financial or otherwise), operations or prospects of KMG, its Material Subsidiaries, its Minority Companies, or the Group (taken as a whole), (b) the Issuer’s ability to perform its obligations under the Notes or the Trust Deed, (c) KMG’s ability to perform its obligations as a guarantor under the Notes or (d) the validity, legality or enforceability of the Notes or any Agreement;

“**Material Subsidiary**” means any Subsidiary of KMG that (a) becomes a directly held Subsidiary of either KMG or a Material Subsidiary and is designated as a Material Subsidiary by the Board of Directors of KMG, (b) has either (i) assets which constitute 5 per cent. or greater of the total assets of KMG and its Subsidiaries on a consolidated basis or (ii) EBITDA which accounts for 5 per cent. or greater of EBITDA of KMG and its Subsidiaries on a consolidated basis as of the date of the most recently delivered financial statements to the

Trustee pursuant to Condition 4(e)(i) or 4(e)(ii) or (c) is the direct or indirect parent company of any Subsidiary required to be designated a Material Subsidiary or Minority Company. The Board of Directors of KMG may designate any Subsidiary of KMG (including any newly acquired or newly formed Subsidiary) to be a Material Subsidiary. Any such designation by the Board of Directors of KMG shall be evidenced to the Trustee by promptly providing to the Trustee a copy of the resolution of the Board of Directors of KMG giving effect to such designation. Any Subsidiary of KMG designated by the Board of Directors of KMG as a Material Subsidiary shall not be capable of subsequently being undesignated as a Material Subsidiary.

**“Minority Company”** means any Subsidiary of KMG that (a) becomes a directly held Subsidiary of either KMG or a Material Subsidiary and is designated as a Minority Company by the Board of Directors of KMG, (b) has either (i) assets which constitute 5 per cent. or greater of the total assets of KMG and its Subsidiaries on a consolidated basis or (ii) EBITDA which accounts for 5 per cent. or greater of EBITDA of KMG and its Subsidiaries on a consolidated basis as of the date of the most recently delivered financial statements to the Trustee pursuant to Condition 4(e)(i) or 4(e)(ii) or (c) is the direct or indirect parent company of any Subsidiary required to be designated a Material Subsidiary or Minority Company. The Board of Directors of KMG may designate any Subsidiary of KMG (including any newly acquired or newly formed Subsidiary) to be a Minority Company. Any such designation by the Board of Directors of KMG shall be evidenced to the Trustee by promptly providing to the Trustee a copy of the resolution of the Board of Directors of KMG giving effect to such designation. Any Subsidiary of KMG designated by the Board of Directors of KMG as a Minority Company shall not be capable of subsequently being undesignated a Minority Company.

**“Net Cash Proceeds”** with respect to any issuance or sale of Capital Stock or Indebtedness, means the cash proceeds of such issuance or sale net of lawyers' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions, and brokerage, consultant and other fees actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof;

**“Officer”** means, with respect to any Person, any managing director, director, general director, the chairman of the board, the president, any vice president, principal executive officer, deputy general director, the chief financial officer, principal financial officer, principal accounting officer, the controller, the treasurer or the secretary of such Person or any general partner or other person holding a corresponding or similar position of responsibility;

**“Officers’ Certificate”** means a certificate signed by two Officers of KMG at least one of whom shall be the principal executive officer, principal accounting officer or principal financial officer of KMG;

**“Original Financial Statements”** means the audited stand-alone financial statements and consolidated financial statements of KMG as at and for the year ended 31 December 2012;

**“Page”** means such page, section, caption, column or other part of a particular information service (including, but not limited to, Reuters Markets 3000 (**“Reuters”**) and Telerate (**“Telerate”**)) as may be specified for the purpose of providing a Relevant Rate, or such other page, section, caption, column or other part as may replace it on that information service or on such other information service, in each case as may be nominated by the Person or organisation providing or sponsoring the information appearing there for the purpose of displaying rates or prices comparable to that Relevant Rate;

**“Permitted Business”** means (a) oil and gas exploration, production, transportation, refining and processing, (b) electricity generation, (c) chemicals, (d) any wholesale or retail marketing

relating to any of the foregoing and (e) any business reasonably related, ancillary or complementary thereto;

“**Permitted Liens**” means, without duplication:

- (i) Liens existing as at the Issue Date of these Notes;
- (ii) Liens granted in favour of KMG or any Material Subsidiary;
- (iii) Liens on property acquired (or deemed to be acquired) under a financial lease, or claims arising from the use or loss of or damage to such property; *provided* that any such Lien secures Indebtedness only under such lease;
- (iv) Liens securing Indebtedness of a Person existing at the time that such Person is merged into or consolidated with KMG or a Material Subsidiary or becomes a Material Subsidiary; *provided* that such Liens were not created in contemplation of such merger or consolidation or event and do not extend to any assets or property of KMG already existing or any Material Subsidiary other than those of the surviving Person and its subsidiaries or the Person acquired and its subsidiaries;
- (v) Liens already existing on assets or property acquired or to be acquired by KMG or any Material Subsidiary; *provided* that such Liens were not created in contemplation of such acquisition and do not extend to any other assets or property (other than proceeds of such acquired assets or property);
- (vi) Liens granted upon or with regard to any property hereafter acquired or constructed in the ordinary course of business by any member of the Group to secure the purchase price of such property or to secure Indebtedness incurred solely for the purpose of financing the acquisition of such property and transactional expenses related to such acquisition and repairs related to such property; *provided* that the maximum amount of Indebtedness thereafter secured by such Lien does not exceed the purchase price of such property (including transactional expenses) or the Indebtedness incurred solely for the purpose of financing the acquisition of such property and related transactional expenses;
- (vii) any Liens arising by operations of law;
- (viii) Liens for ad valorem, income or property taxes or assessments and similar charges which either are not delinquent or are being contested in good faith by appropriate proceedings and for which KMG or any Material Subsidiary has set aside in its books of account appropriate reserves;
- (ix) easements, rights of way, restrictions (including zoning restrictions), reservations, permits, servitudes, minor defects or irregularities in title and other similar charges or encumbrances, and Liens arising under leases or subleases granted to others, in each case not interfering in any material respect with the business of the Group and existing, arising or incurred in the ordinary course of business;
- (x) (a) statutory landlords’ Liens (so long as such Liens do not secure obligations constituting Indebtedness for borrowed money and such Liens are incurred in the ordinary course of business), and (b) Liens arising from any judgment, decree or other order which does not constitute an Event of Default under Condition 10(e);

- (xi) a right of set-off, right to combine accounts or any analogous right which any bank or other financial institution may have relating to any credit balance of any member of the Group;
- (xii) Liens on Capital Stock of Immaterial Subsidiaries or on the assets and properties of Immaterial Subsidiaries securing Indebtedness, *provided* that, at the time that any such Immaterial Subsidiary is designated a Material Subsidiary, the Indebtedness of such Immaterial Subsidiary that is secured by such Liens shall be deemed, for the purposes of paragraph (xiii) below, to be Indebtedness of a Material Subsidiary Incurred at such time that such Immaterial Subsidiary is designated a Material Subsidiary;
- (xiii) any Lien granted in favour of a Person providing Project Financing if the Lien is solely on the property, income, assets or revenues of the project for which the financing was incurred *provided* (i) such Lien is created solely for the purpose of securing Indebtedness incurred by KMG or a Subsidiary of KMG in compliance with Condition 4(d) and (ii) no such Lien shall extend to any other property, income assets or revenues of KMG or any Material Subsidiary or their respective Subsidiaries.
- (xiv) any Liens on the property, income or assets of any member of the Group securing Indebtedness to the extent that at the time of Incurrence of such Indebtedness, such Indebtedness together with the aggregate principal amount of other Indebtedness subject to any Lien granted in accordance with this paragraph (xiv) does not exceed in the aggregate 20 per cent. of Consolidated KMG Total Asset Value at any one time outstanding. For the avoidance of doubt, this paragraph (xiv) does not include any Lien created in accordance with paragraphs (i) to (xiii) above; and
- (xv) any Liens arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by a Lien permitted by any of the above exceptions, *provided* that the Indebtedness thereafter secured by such Lien does not exceed the amount of the original Indebtedness and such Lien is not extended to cover any property not previously subject to such Lien;

“**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;

“**Potential Event of Default**” means any event or circumstance which could with the giving of notice or the lapse of time become an Event of Default;

“**Preferred Stock**” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person;

“**Project Financing**” means any financing of all or part of the costs of the acquisition, construction or development of any asset or project if (i) the revenues derived from such asset or project are the principal source of repayment for the monies advanced and (ii) the person or persons providing such financing have been provided with a feasibility study prepared by competent independent experts on the basis of which it is reasonable to conclude that such project would generate sufficient operating income to service the indebtedness incurred in connection with such project;

“**Rate of Interest**” means the rate of interest payable from time to time in respect of this Note and that is either specified or calculated in accordance with the provisions in the Final Terms;

**“Rated Security”** means the Notes and any Indebtedness of KMG or any Material Subsidiaries having an initial maturity of one year or more which is rated by a Rating Agency;

**“Rating Agency”** means Standard & Poors Rating Services, a division of the McGraw Hill Companies, Inc. (“**S&P**”), Moody’s Investors Service Limited (“**Moody’s**”), Fitch Ratings or any of their successors or any rating agency substituted for any of them (or any permitted substitute of them) by KMG, from time to time, with the prior written approval of the Trustee;

**“Reference Banks”** means the institutions specified as such in the Final Terms or, if none, four major banks selected by the Calculation Agent in the interbank market (or, if appropriate, money, swap or over-the-counter index options market) that is most closely connected with the Benchmark (which, if EURIBOR is the relevant Benchmark, shall be Europe);

**“Relevant Financial Centre”** means, with respect to any Floating Rate to be determined in accordance with a Screen Rate Determination on an Interest Determination Date, the financial centre as may be specified as such in the Final Terms or, if none is so specified, the financial centre with which the relevant Benchmark is most closely connected (which, in the case of EURIBOR, shall be Europe) or, if none is so connected, London;

**“Relevant Rate”** means the Benchmark, being either LIBOR or EURIBOR (as specified in the relevant Final Terms), for a Representative Amount of the Specified Currency for a period (if applicable or appropriate to the Benchmark) equal to the Specified Duration commencing on the Effective Date;

**“Relevant Time”** means, with respect to any Interest Determination Date, the local time in the Relevant Financial Centre specified in the Final Terms or, if no time is specified, the local time in the Relevant Financial Centre at which it is customary to determine bid and offered rates in respect of deposits in the Specified Currency in the interbank market in the Relevant Financial Centre or, if no such customary local time exists, 11.00 hours in the Relevant Financial Centre and, for the purpose of this definition, **“local time”** means, with respect to Europe as a Relevant Financial Centre, Brussels time;

**“Representative Amount”** means, with respect to any Floating Rate to be determined in accordance with a Screen Rate Determination on an Interest Determination Date, the amount specified as such in the Final Terms or, if none is specified, an amount that is representative for a single transaction in the relevant market at the time;

**“Restricted Percentage”** means (a) with respect to the Issuer, 100 per cent. of its issued and outstanding Capital Stock, (b) with respect to any other Material Subsidiary of which KMG, directly or indirectly, owned 100 per cent. of its Capital Stock on the earlier of the Issue Date and the date such Person was designated a Material Subsidiary, 75 per cent. of total voting power of the capital stock of such Material Subsidiary, (c) with respect to any Material Subsidiary of which KMG, directly or indirectly, owned less than 100 per cent. of its Capital Stock but more than 75 per cent. of its Capital Stock on the earlier of the Issue Date and the date such Person was designated a Material Subsidiary, 75 per cent. of total voting power of the capital stock of such Material Subsidiary and (d) with respect to any Material Subsidiary of which KMG, directly or indirectly, owned 75 per cent. or less but more than 50 per cent. of its Capital Stock on the earlier of the Issue Date and the date such Person was designated a Material Subsidiary, 50 per cent. plus one share of total voting power of the capital stock of such Material Subsidiary;

**“Sale/Leaseback Transaction”** means an arrangement relating to property now owned or hereafter acquired whereby KMG or a Material Subsidiary transfers such property to a Person and KMG or a Material Subsidiary leases it from such Person;

“**Specified Currency**” means the currency specified as such in the Final Terms or, if none is specified, the currency in which the Notes are denominated;

“**Specified Duration**” means, with respect to any Floating Rate to be determined in accordance with a Screen Rate Determination on an Interest Determination Date, the duration specified in the Final Terms or, if none is specified, a period of time equal to the relative Interest Accrual Period, ignoring any adjustment pursuant to Condition 5(b)(ii);

“**Stated Maturity**” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof;

“**Subsidiary**” means in respect of any Person (including KMG), any corporation, partnership, joint venture, association or other business entity, whether now existing or hereafter organised or acquired, (a) in the case of a corporation, of which more than 50 per cent. of the total voting power of the Voting Stock is held by KMG and/or any of its Subsidiaries and KMG and/or any of its Subsidiaries has the power to direct the management, policies and affairs thereof; or (b) in the case of a partnership, joint venture, association, or other business/entity, with respect to which KMG or any of its Subsidiaries has the power to direct or cause the direction of the management and policies of such entity by contract, if (in the case of each of (a) or (b) above) in accordance with IFRS such entity would be consolidated with KMG for financial statement purposes;

“**TARGET2 System**” means the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) system or any successor thereto;

“**taxes**” means any taxes (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) which are now or hereafter imposed, levied, collected, withheld or assessed by the Netherlands or any taxing authority thereof or therein;

“**Temporary Cash Investments**” means any of the following:

- (i) any investment in direct obligations of a member of the European Union, the United States or any agency thereof or obligations guaranteed by a member of the European Union or the United States or any agency thereof maturing within one year of the date of acquisition thereof;
- (ii) any investment in demand and time deposit accounts, certificates of deposit and money market deposits with a maturity of one year or less from the date of acquisition thereof issued by a bank or trust issuer which is organised under the laws of a member of the European Union or the United States or any state thereof, and which bank or trust issuer has capital, surplus and undivided profits aggregating in excess of U.S.\$500 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated “A” (or such similar equivalent rating) or higher by at least one Rating Agency;
- (iii) any investment in repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraph (i) above entered into with a bank meeting the qualifications described in paragraph (ii) above;
- (iv) any investment in commercial paper with a maturity of six months or less from the date of acquisition, issued by a corporation (other than an Affiliate KMG) organised

and in existence under the laws of a member of the European Union or the United States with a rating at the time as of which any investment therein is made of “P 1” (or higher) according to Moody’s or “A 1” (or higher) according to S&P;

- (v) any investment in securities with maturities of six months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of a member of the European Union or the United States, or by any political subdivision or taxing authority thereof, and rated at least “A” by S&P or “A” by Moody’s; and
- (vi) any investment in money market funds that invest substantially all their assets in securities of the types described in paragraphs+ (i) through (v) above;

“**U.S. Dollars**”, “**USD**” and “**U.S.\$**” denote the lawful currency of the United States of America; and

“**Voting Stock**” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of the board of directors, managers or trustees (or Persons performing similar functions) thereof.

There will appear at the foot of the Terms and Conditions endorsed on each Certificate the name and specified office of the Agents as set out at the end of this Base Prospectus.