

## PRELIMINARY AGREEMENT FOR THE SALE OF QUOTAS

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The present preliminary agreement for the sale of Quotas (hereinafter the "**Contract**"), is signed in Milan on January 31st, 2006, among:

- (1) Fineldo S.p.A., with registered offices in Roma, via della Scrofa 64, Tax code and Register of Enterprises no. 01549810420, VAT number 06713031000, registered in the Register of Enterprises (CCIAA) of Rome under number 953264, fully paid-up Capital Stock equal to Euro 17.891.923,32, represented by Mr. Gian Oddone Merli, born in Cremona on June, 27th ,1955, duly empowered, in his quality of Managing Director.
- (2) MPE S.p.A., with registered offices in Milan, viale Certosa 247, Tax code and Register of Enterprises no. 12956120153, registered in the Register of Enterprises (CCIAA) of Milan under number 1599269, fully paid-up Capital Stock equal to Euro 10.000.000,00, represented by Mr. Carmine Biello, born in Napoli on October 22nd 1962, duly empowered, in his quality of Managing Director.
- (3) Foster Wheeler Italiana S.p.A., with registered offices at via S. Caboto 1, Corsico (Milan), Tax code and Register of Enterprises no. 00897360152, registered in the Register of Enterprises (CCIAA) of Milan under number 511367, fully paid up Capital Stock Euro 16.500.000,00 represented by Mr. Giovanni Franco Brustia, born in Novara on November, 5th , 1942, duly empowered, in his quality of Vice President (hereinafter referred to as "**FWI**");

(Fineldo and MPE are hereinafter collectively referred to as "**Sellers**"; Sellers and Buyer are hereinafter collectively referred to as "**Parties**" and, individually, as the "**Party**")

### PREAMBLE

- A) MF Power S.r.l., with registered offices in Milan, Viale Certosa 247, Tax code and Register of Enterprises no. 03172730966, fully paid up Capital equal to Euro 750.000,00 (hereinafter "**MF Power**" or the "**Company**") is a company operating in the field of engineering, construction and operation of plants for the generation of electric power. At the present time, the Company is involved in

the engineering and construction of some wind farms in Campania (south Italy).

The Sellers own 382.500 MF Power quotas, corresponding to 51% of MFP capital stock. In particular:

(i) Fineldo owns 163.950 quotas, whose nominal value is equal to Euro 163.950,00, corresponding to 21,86% of MF Power capital (hereinafter referred to as “**Fineldo Quota**”);

(ii) MPE owns 218.550 quotas, whose face nominal is equal to Euro 218.550,00, corresponding to 29,14% of MFP capital (hereinafter referred to as “**MPE Quota**”),

MPE Quota and Fineldo Quota, equal to 51% of MF Power capital, are hereinafter collectively referred to as “**Quotas**”.

FWI owns 367.500 quotas, whose nominal value is equal to Euro 367.500,00, corresponding to the remaining 49% of MF Power capital (hereinafter referred to as “**Foster Wheeler Quota**”). Therefore, being a quotaholder managing the Company together with the Sellers, Foster Wheeler has decided not to carry out due diligence operations on the Company.

B) At the moment, MF Power is engaged with the following projects relevant to wind plants located in Campania:

(i) Vallesaccarda (hereinafter called the “**Project Vallesaccarda I**” and its enlargement, hereinafter referred to as “**Project Vallesaccarda II or Enlargement**”). Project Vallesaccarda I is relevant to 10 wind turbines of 1,5 MW each, for a total power of 15 MW, located in Vallesaccarda, Avellino. Project Vallesaccarda II is relevant to 6 wind turbines of 1,5 MW each, for a total power of 9 MW, located in Vallesaccarda, Avellino.

(ii) Scampitella (hereinafter referred to as “**Scampitella Project**”). The Scampitella Project is relevant to 16 wind turbines, for a total power equal to 36 MW, located in Scampitella, Avellino (the Project Vallesaccarda I, the Project Vallesaccarda II and the Project Scampitella are hereinafter referred to as the “**Projects**”).

C) On November 13th 2002, MF Power has submitted to the bank San Paolo IMI S.p.A., as agent bank of the Ministry of Industry, 2 (two) requests, aimed at obtaining grants related to assets, as foreseen by the law n. 488, dated October 22nd , 1992, (hereinafter referred to as the “**Requests 488**”). The first request is relevant to the Project Vallesaccarda I, and is aiming at obtaining a sum equal to Euro 9.360.000,00, the second is relevant to the Project Scampitella for a sum equal to Euro 12.986.000,00. By means of a decree dated June 23rd , 2003, the Ministry of Industry has decided to grant, with exclusive reference to Vallesaccarda I Project, a sum equal to Euro 6.667.856,00.

D) In order to finance the whole realisation of the Projects, the Sellers and FWI have proceeded with MF Power capitalization (the exact entity of which is subject to variations depending on the development of the Projects), through different means, inclusive of a proposal of financing through Project Financing. The relevant contract has been signed with BNP Paribas on November 16th , 2005 (hereinafter referred to as “**The Project Financing**”).

E) The Buyer has obtained by BNP Paribas the consent to the present sale, as per notice dated December 14th 2005, hereto attached as Attachment “A”.

F) With reference to the Project Vallesaccarda I, the “**Conditions for the Project Vallesaccarda I**” (see definitions), necessary for the start up of the Wind Park, have not occurred yet.

G) With reference to the Project Vallesaccarda II, as of today the “**Conditions for the Enlargement**”, necessary for the start up of the relevant wind park (see definitions) have not been met yet. Moreover,

with reference to the agreement signed on 5/6/01 between MF Power and the Municipality of Vallesaccarda and regarding, among other things, the possibility to install 6 new wind turbines, the Sellers are considering the option to install only 5 of them, as the actual possibility to install six wind turbines has turned out to be more onerous.

- H) With reference to the Project Scampitella, as of today MF Power has obtained only the certificate estimating the impact on the environment (Certificato di Valutazione Impatto Ambientale) and, therefore, the “**Conditions for the Project Scampitella**” (see definitions), necessary in order to open the Site, have not occurred yet.
- I) The Contract is based on mutual obligations contracted in good faith, as stated in artt. 1375 and 1175 of the Italian Civil Code. The Parties have decided to sign the present Contract on the essential and necessary assumption that all the permits, authorizations, licenses and prescriptions relevant to each Projects, which have not yet been obtained, will be obtained as soon as possible and in any case in a reasonable time period, having regard to the time period normally necessary to obtain similar permits, authorizations, licenses and prescriptions. Moreover, the Parties are stipulating the Contract on the essential and necessary assumption that the Parties will do their, so that the Conditions for the Projects Vallesaccarda I and II and of the Project Scampitella will take place as soon as possible, in accordance with the best practice and following the principles of economic convenience.
- J) The Parties acknowledge that, by means of a letter dated November 10th 2005, FWI exercised its pre-emption right on the basis of the following written notices: letters dated September 28th , October 13th and 20th undersigned by the Sellers and letters dated October 6th and October 19th undersigned by the Buyer.

Moreover, the Parties acknowledge that, following the above, the following further letters have been exchanged among them: letters dated 18.11.2005, 23.11.2005, 14.12.2005, 20.12.2005, 30.12.2005, 09.01.2006, undersigned by the Sellers, and letters dated 17.11.2005, 21.11.2005, 05.12.2005, 15.12.2005, 21.12.2005, 03.01.2006, undersigned by the Buyer.

- K) The Sellers have prepared a *pro forma* document about MFP financial situation, in compliance with the applicable law provisions and with the Accounting Principles applied by MFP in the last two financial years. Said document is attached to the Contract as Annex B and will be hereinafter referred to as the “**Financial Statement**”.

## **NOW THEREFORE**

on the basis of the above recitals, which, together with the Annexes, shall form an integral and substantive part of the present Contract, and on the basis of the mutual following agreements, statements, warranties and obligations, the Parties hereby agree and covenant as follows.

## **DEFINITIONS**

In the Contract, the following terms and expressions shall have the meanings respectively set forth below:

**Accounting Principles** means the principles applied for the drafting of the last two balance-sheets of MF Power, in accordance with the principles and the rules stated by Italian laws for the drafting of limited companies' balance-sheets and with the accounting principles acknowledged and applied by the National Association of accountants.

**Auditor** has the meaning specified under art. 3.3.

**Buyer** is Foster Wheeler Italiana S.p.A.

**Balance Sheet** is the financial statement of the Company as of December 31, 2004.

**Closing** is the execution of the notarial Deed of Transfer of the Quotas, as per art. 1.3.

**Company** means MF Power S.r.l.

**Conditions for the Enlargement** means the operation of the relevant plant, including the provisional acceptance of the plant itself, provided that no prohibition to use the whole energy produced is given out by the authority.

**Conditions for Project Vallesaccarda I** means the operation of the relevant plant, including the provisional acceptance of the plant itself, provided that no prohibition to use the whole energy produced is given out by the authority.

**Conditions for the Project Scampitella** is the opening of the relevant site, in the absence of public prohibitions to use the whole energy produced and

provided that all necessary authorizations for the construction of the wind park have been obtained.

**Conditions precedent** has the meaning specified under art. 1.4.

**Contract** is the present contract and its annexes.

**Deed of Transfer of the Quotas** is the deed signed before the notary chosen by the Buyer, as set forth in art. 1.3.

**Enlargement or Vallesaccarda II Project** has the meaning set forth under recital lett. B).

**Final Financial Situation** means the financial situation of the Company as per art. 3.

**Financial Situation** means the *pro forma* financial situation of MF Power as defined under recital K

**Fineldo Quota** has the meaning specified under recital A (i).

**First Instalment** has the meaning specified under art. 2.5.

**Lien** is every claim, request, interest, put and call, pre-emption, veto or other third party right of any kind, as well as any charge, pledge, mortgage, warranty, legal action such as, by way of example and not as a limitation, seizures, legal custodies or detrimental registrations, lien, legal burden or similar restriction, of any kind whatsoever, and in favour of anyone.

**Loss or Losses** means any liability, contingent liability or loss, which is not pointed out in the Financial Statement or has occurred after the Financial Statement and before the Closing.

**MF Power** has the meaning specified under recital A).

**MPE Quota** has the meaning specified under recital A (ii).

**Net Financial Situation** means the difference between the current assets and the debts (as per art. 2424 of the Italian civil code) in the Final Financial Situation.

**Net Sums** has the meaning specified under art. 2.

**Price** has the meaning specified under art. 2.1.

**Price Adjustment** has the meaning set forth in art. 3.

**Project Scampitella** has the meaning specified under recital B (ii).

**Project Vallesaccarda I** has the meaning specified under recital B (i).

**Project Vallesaccarda II** has the meaning specified under recital B (i).

**Projects** has the meaning specified under recital B (ii).

**Project Financing** has the meaning specified under recital D.

**Quotas** means n° 382.500 quotas, of a nominal value equal to Euro 382.500,00 corresponding to 51% of MF Power fully paid-up capital.

**Requests 488** means the applications for grants specified under recital C), inclusive of any integrations and/or modifications to them, occurred before the Closing.

**Second Instalment** has the meaning specified under art. 2.5 (ii) (a) or (b).

**Sellers** means Fineldo and MPE together.

**Third Instalment** has the meaning specified under art. 2.5 (iii).

**Working day/s** is every calendar day during which the banking institutions are usually open to the public customer in Milan for the carrying out of their activities.

## **1. SUBJECT MATTER**

- 1.1 In accordance with the terms, conditions, warranties and representations set forth in the Contract, and upon the occurrence of the Conditions Precedent specified under the following art. 1.4, by undersigning the Contract the Sellers undertake to sell and transfer to the Buyer, who undertakes to buy, the Quotas on the date of the Closing.
- 1.2 The Sellers are the exclusive owner of the Quotas and are completely free to dispose of them. With the only exception of the pledge in favour of BNP Paribas as a consequence of the Project Financing mentioned under recital D), the Quotas will be transferred to the Buyer free from any Liens and with all the obligations, rights and benefits relevant to them, including the right to receive dividends (whether they are declared subject to distribution or not).
- 1.3 The Closing shall take place, within 30 (thirty) Working Days from the date in which the Conditions Precedent have occurred, before the public Notary chosen by the Buyer and indicated in a written notice to be sent to the Sellers at least 10 (ten) Working Days before the date of the Closing. Said written notice will be sent by registered mail – anticipated *via fax* –

and will specify the date, the time and the place where the sale of the Quotas will take place through the signing of the notarial Deed of Transfer of the Quotas. The Parties expressly declare and warrant that the notarial Deed of Transfer of the Quotas will be underwritten only in order to formally execute the transfer of the Quotas and to implement the necessary securities and registrations foreseen by the applicable laws, and that the Deed of Transfer of the Quotas will not have any novating effect nor will change in any way the terms and conditions of the Contract, which will entirely rule any and all Parties' rights and obligations arising out of the transfer of the Quotas.

1.4 The Parties mutually acknowledge that the transfer of the Quotas will take place only if the following conditions (hereinafter referred to as “**Conditions Precedent**”) will occur within June 30th , 2006:

(i) the authorization to the operations foreseen in the Contract, or similar statement issued by the Authority for Competition and Market according to the law on “ANTITRUST”, as foreseen in the following art. 1.1.

(ii) the occurrence of the Conditions for the Project Vallesaccarda I operation.

1.5 The Buyer will take possession of the Quotas from the date on which the Deed of Transfer of the Quotas has been undersigned before the Notary.

## 2. PRICE

2.1 The Parties mutually acknowledge that Price (hereinafter the “**Price**”) has been agreed in line with the principles specified under art. 2.5 and will be divided as follows, save the adjustment of the First Instalment, if any, as per art. 3:

(i) 42,86% to Fineldo,

(ii) 57,14% to MPE.

2.2 The Price has been fixed and agreed among the Parties on the assumption that the Conditions for the Project Vallesaccarda I, Vallesaccarda II and Scampitella will occur. Therefore, the Parties will make their best efforts, in good faith and with the due level of diligence, so as to allow MF Power to implement all the activities necessary for the occurrence of the above-mentioned Conditions as soon as possible, on the basis of the best practice applied in the field of wind energy, following the principles of economical convenience and according to the activities already put in place in order to achieve of the Conditions for the Project Vallesaccarda I. The Parties acknowledge that the above provisions are an essential assumption for the Contract execution.

2.3 The Parties agree that the Price and its payment are divided in three instalments, as better specified under art. 2.5. The Parties agree and mutually acknowledge that the occurrence of events of Force Majeure or of changes in law, if any, will in no case affect the Price.

2.4 The Price has been fixed by the Parties on the assumption that the costs to be borne after the Closing by the Company for the activities aimed at achieving the Conditions for the Project Vallesaccarda II, if exceeding the budget already approved by the Parties and hereto attached, will have to be previously agreed by the Parties on the basis of the principles set out under art. 2.2. In case of disagreement on their amount, the above-mentioned costs will be borne by the Buyer.

2.5 The Price, to be calculated on the basis of the following principles, will be paid by the Buyer to the Sellers at the occurrence of the following events and according to the schedule and the terms hereinafter specified:

(i) the “**First Instalment**”, equal to Euro 10.710.000,00 will be paid by the Buyer to the Sellers on the date of the Closing, by means of a bank transfer on the bank account specified by written notice by the Sellers to the Buyer, at least 3 (three) Working Days before the date of the Closing.

It is understood that the First Instalment has been estimated on the assumption that the Financial Position of the Company on the date of the Closing will be equal to zero and will be therefore subject to adjustment on the basis of the Final Financial Position, according to the provisions of the following art. 3.

(ii) The “**Second Instalment**” will depend on which event, out of the following two, will occur:

- a. Euro 5.610.000,00 in case n. 6 (six) wind turbines will be installed. It is expressly agreed that from the above sum will be deducted, *pro quota*, all the direct and necessary costs incurred by the Company after the Closing for the carrying out of the Project Vallesaccarda II, being understood what set forth under art. 2.4. It is agreed that, as a coverage for the financial burdens accounted by the Company during the Construction and after the Closing, , a monthly lump sum equal to Euro 10.000,00 will be deducted from the Second Instalment, independently from the actual amount of said financial burdens
- b. Euro 4.675.000,00 in case only 5 (five) wind turbines will be installed. It is expressly agreed that from the above sum will be deducted, *pro quota*, all the direct and necessary costs incurred by the Company after the Closing for the carrying out of the Project Vallesaccarda II, being understood what set forth under art. 2.4. It is agreed that, as a coverage for the financial burdens accounted by the

Company during the Construction and after the Closing, a monthly lump sum equal to Euro 10.000,00 will be deducted from the Second Instalment, independently from the actual amount of said financial burdens,

The Second Instalment, to be calculated as above, will be paid by the Buyer to the Sellers within 10 (ten) Working Days from the occurrence of the Conditions for the Enlargement.

- (iii) The “**Third Instalment**” has been fixed by the Parties in Euro 3.359.880,00. It is expressly agreed that all costs accounted by the Company for the Scampitella Project until the date of the Closing will have to be added *pro quota* to the above-mentioned amount.

Moreover, it is agreed that, should the total cost for the development of the Scampitella Project exceed the sum of Euro 1.000.000,00 (one million), the approval by the Parties will have to be given for each single cost item exceeding Euro 10.000,00. It is further agreed that, in case of disagreement among the Parties with respect to the above-mentioned costs, said costs will be borne by the Sellers.

The Parties mutually acknowledge and agree that should, from an economical point of view, the decrease of the effective power of Scampitella Project of the wind park with result more convenient respect to the power authorized by the public authority , the Third Instalment will be reduced of Euro 183.000,00 for each missing MW with respect to the 36 MW initially foreseen.

The Third Instalment, to be calculated as above, will be paid by the Buyer to the Sellers within 10 (ten) Working Days from the occurrence of the Conditions for the Project Scampitella. The Parties undertake to immediately the occurrence of the conditions relevant the Second and Third Instalment. The Parties irrevocably undertake to make their best efforts to allow the occurrence of the conditions relevant to the Second and Third Instalment.

In case within December 31st 2008 the Conditions for the Enlargement and/or the Conditions for the Project Scampitella have not occurred, nor can be reasonably expected to occur in the next future, the Parties will meet to discuss in good faith the opportunity to pursue with said projects and to agree on the relevant changes to the Contract, on the basis of a fair evaluation of the respective.

In case the Parties will not reach an agreement within 3 (three) months, the Parties agree that the Contract will be considered as automatically terminated with respect to the future obligations and rights, but will remain fully valid and effective with respect to all rights and obligations already in force on the date of the termination.

The Parties agree that, should the Company receive a financial grant as a consequence of the Requests 488, as indicated under recital C) of the Contract, the Buyer will pay to the Sellers, in

addition to the Price, additional sums *pro quota* with respect to the sums actually received by the Company as financial grants (it is understood that the payment by the Company of said additional sums will release the Company from its payment obligations in the same way as the payment of the Price). The payment of said additional sums will be effected within 30 (thirty) Working Days from the date on which the grant will be actually received, from time to time, by the Company, once the Company has deducted all the taxes, duties, fiscal fees and/or whatever withholding to be paid by the Company itself (said sums will be hereinafter referred to as “**Net Sums**”). The Buyer undertakes to immediately notify to the Sellers the (positive or negative) decision of the Authority with respect to the grants asked by means of the Requests 488, and to give back to the Sellers copy of the certificate stating the above decision and/or of whichever document, issued by the Authority, relevant to the grant and having a negative impact on the actual payment in favour of the Sellers of the sums foreseen by the present provision.

2.6 Moreover, in case within December 31st, 2008 the Conditions for the Project Scampitella have not occurred, nor can be reasonably expected that they will occur in the next future, and the Parties have mutually agreed, according to art. 2.5, not to proceed with the realization of said Project, the Sellers will be obliged to pay back to the Buyer, within 10 (ten) Working Days from receipt of the relevant written notice and in the form therein specified, a sum equal to Euro 1.000.000,00 (one million/00) as final settlement of the Price.

### 3. PRICE ADJUSTMENT

The Parties agree that the First Instalment will be subject to adjustment (i.e. increase or decrease, hereinafter referred to as the “**Price Adjustment**”) on the basis of the difference between the Company Net Financial Position on the date of the Closing, so as resulting from the Final Financial Position, and a Company Net Financial Position equal to zero, used by the Parties as a reference for the calculation of the Price, so as specified under art. 2.5 (i). It is further agreed that, in determining the Net Financial Position on the date of the Closing, the following items of the current assets will not be taken into account:

- credits arising out of the law 488 still to be paid to the Company (if and to the extent the adjustment of the price as per art. 2.5 last sentence of the Contract is applicable).

3.1 The Sellers can dispute each part of the Final Financial Situation through a registered letter, to be sent to the Buyer within 15 (fifteen) Working Days from the date on which the Sellers have received the Final Financial Situation, specifying each single contested item to be discussed and the disputed amount.

3.2 In case of dispute as per art. 3.1 the Buyer and the Sellers will try to amicably settle their disagreement and each kind of solution they will agree upon will be considered final and binding for the Parties.

3.3 Should the Parties not reach an agreement within 7 (seven) Working Days from the date of receipt of the letter mentioned in art. 3.1, the Buyer and the Sellers will submit the unsolved disputes to the attention of an auditor (hereinafter the “Auditor”), who will be chosen by Parties’ mutual agreement or, in case of disagreement, by the chief judge of Milan Court, upon request of the most diligent Party.

3.4 The Auditor will settle the above-mentioned disputes on the basis of the Accounting Principles applied by the Company in the previous balance sheets and in accordance with the applicable laws.

3.5 The Auditor will act as “arbitratore” as per art. 1349, first para., of the Italian civil code. Therefore, he will take a decision within 30 (thirty) Working Days from the date on which he was appointed and his decision will be final and binding for the Parties, except for the case of gross negligence and wilful misconduct.

3.6 In case the Sellers owes any sum to the Buyer, or *vice versa*, as Price Adjustment as per the present article, said sum will have to be paid within 10 (ten) Days from the date on which the Parties have reached an agreement or from the date on which the Auditor has notified his decision. Once the above-mentioned ten days have expired, interests will accrue on the delayed payment, to the tune of 3% above the legal rate.



3.7 The burdens and the costs associated with Auditor' activities of the and their sharing among the Parties will be decided by the Auditor, in accordance with the results of his decision.

#### **4. PARTIES' OBLIGATIONS ON THE DATE OF THE CLOSING**

4.1 On the date of the Closing:

- (i) the Sellers jointly and severally, also as per art. 1381 of the Italian civil code, undertake to:
  - a. hand over to the Buyer the resignation letters of the company directors and of the internal auditors of MF Power chosen by the Sellers. Said resignation letters will be effective as of the date of the Closing, and

each of them will specify that the resigning director/auditor has no credit towards MF Power with respect to his activity as director/auditor, except for the sums, if any, due to them on the basis of the agreed compensations.

- b. call a meeting of the Company, in order to accept the above-mentioned resignations and to state the fullest disclaimer of liability in favour of the resignating directors, and at the same time appoint the new directors and internal auditors of MF Power;
    - c. allow the person appointed by the Company as Company director (hereinafter the "Director"), in accordance with the provisions of the following paragraph (ii) c of the present article, to accept the appointment and get him to irrevocably resign at Buyer's simple request and, in any case, within 5 (five) Working Days from the day in which the Third Instalment has been paid;

(ii) The Buyer undertakes to:

- a. Pay to the Sellers the First Instalment;
- b. Allow MF Power to carry out any further activity reasonably necessary or useful in order to obtain the grants requested by means of the Requests 488;
- c. Appoint a Director chosen by the Sellers, who will act in accordance with Buyer's instructions and will be held harmless from any and all adversely affecting consequence arising to the Company as a consequence of his acting in accordance with Buyer's instructions.

4.2 The Parties expressly agree and acknowledge that the various obligations specified above are part of a sole and indivisible obligation. The Parties also acknowledge that all the actions and operations specified under art. 4.1 will be considered as a single operation: in this way, no action or operation will be considered as completed until all the other actions and operations have been carried out in accordance with the Contract. The Parties acknowledge that the present clause is an essential provision of the Contract.

#### **5. SELLER'S REPRESENTATIONS AND WARRANTIES**

The Sellers hereby represent and warrant to the Buyer that all information and data contained in the representation and warranties of the present art. 5 are true and correct, and that the Sellers have not been silent about any relevant information concerning the Projects. The representations and warranties foreseen by the present art. 5 are and will be true, accurate and complete on the date of the Contract and on the date of the Closing, with the exception of every circumstance or situation, if any, occurring or coming to Vendor's knowledge after the date of the Contract which could cause differences or non-fulfilments on the representation and warranties specified in the present art. 5. It is understood that the Sellers hereby undertake to

promptly notify, and in any case within and not later than the date of the Closing, every change, if any, in

their representation and warranties.

In particular, the Sellers represent and warrant:

**(A) INCORPORATION AND CAPACITY OF THE SELLERS**

- (i) Seller's companies are duly organized, validly existing and registered in the Register of Enterprises of Milan and Rome. They have never been submitted to dissolution, liquidation or bankruptcy, they are not insolvent or unable to pay their debts and no situation is currently envisaged, which could lead to any of the above insolvency proceedings.
- (ii) The Sellers have the full legal power and authority necessary to execute the present Contract and fulfill the obligations stated therein; said obligations do not conflict with any corporate by-laws or any legal or judicial provision, as well as with any agreement, contract or undertaking relevant to the regular continuation of Sellers' activities.
- (iii) The Sellers have obtained all necessary authorizations for the execution and fulfilment of the present Contract.
- (iv) With respect to the present Contract no further authorization is required, other than the one foreseen in art. 11.

**(B) QUOTAS CAPITAL**

The quotas capital of MF Power amounts to Euro 750.000,00, is fully subscribed and paid-up and has been duly issued. The Quota are not subject to any put and call, nor to any other right of any kind whatsoever allowing third parties to subscribe or buy Vendor's quotas, nor to any other third party right. The Sellers are the exclusive owners of the Quotas, which are free from any claim, request, interest, put and call, veto or other third party right of any kind, as well as from any pledge, mortgage, seizure, priority, lien, legal burden or similar restriction of any kind whatsoever, including the right to receive the dividends, with the only exception of the pledge in favour of BNP Paribas, as per art. 1.2.

**(C) ENTITY OF THE QUOTAS**

- (i) The Quotas represent 51% of the subscribed and paid-up corporate capital of the Company and their nominal value is equal to 1 Euro for each single Quota.
- (ii) No agreement relevant to the Company and or to the transfer of the Quotas, which binds or could bind the Buyer or in any way prevent or could prevent the fulfilment of the Contract, is in force among the Sellers and third parties.

**(D) CORPORATE AND ACCOUNTING ASPECTS**

- (i) The Company does not possess, directly or indirectly, shares, securities or any participation in any other company or entity.
- (ii) All account books as well as any accounting records required by the applicable law are kept in accordance with the relevant law provisions. All the above-mentioned books and records are in Company's possession and under its control, are accurate and have at the date hereof been fully, properly and accurately kept in all material respects.
- (iii) The Company has duly registered its account books in the Register of Enterprises, after their regular and duly approval by the Company' General Meeting.

**(E) FINANCIAL SITUATION**

- (i) The Financial Statement is attached to the present Contract as Annex B.
- (ii) The Financial Statement of the Company, which has been prepared in compliance with the applicable provisions of law and with the Accounting Principles, clearly and accurately reflects, providing a faithful picture thereof, the economic and financial situation of the Company. The Company has no actual or potential contingencies or contingent liability towards third Parties, nor debts, properties, guarantees or similar, which are not reflected in the Financial Situation, according with Accounting Principles.
- (iii) Up to the date of the Financial Statement, the Company has not incurred in any kind of liability other than the ones arising out of the carrying out of Company's normal activities.

#### **(F) CONTRACTS**

- (i) The Sellers declare that none of their employees and/or consultant have entered into any contractual obligation or have otherwise taken on any liability, in the name and on behalf of Company, which is in breach of Company's management procedures agreed and applied by the Parties.
- (ii) All Vendor's contractual obligations towards MF Power have been or will be fulfilled on time by the Sellers.
- (iii) There are no actions, suits, or other proceedings of whatsoever nature, pending or threatened against the Company with respect to requests of compensation for damages or any other payment obligation, with the only exception of the ones communicated to the Buyer in accordance with Company's management procedures agreed and applied by the Parties.
- (iv) The Company has no employees
- (v) All the contracts, agreements and other commitments executed by the Company are valid and binding, the Company and the other Parties to

said contracts have fulfilled all their obligations arising therefrom until today, neither the Company nor any of the Parties is in breach or in delay with respect to any of the terms of the above-mentioned contracts and there is no situation or particular circumstance that could lead to suppose the breach of one of said contracts.

- (vi) The Sellers represent that the Company has no contract in force with any of the companies of the Merloni group, with the only exception of the service contract with MPE dated June 17th 2005.
- (vii) The Sellers represent that the Company has no credit towards the Sellers and that, in particular, the loan granted to Fineldo has been totally reimbursed.

#### **(G) PENDING LITIGATIONS**

- (i) With the exception of the claim relevant the injunction for the payment of sums, which is pending before the Court of Potenza (decision n. 647/04 dated 16.09.2004, notified on 27.09.2004 –r.g. 1789/04), no actions, suits, administrative, arbitration or other proceedings of any kind, judicial or extrajudicial, is pending or has been threatened against the Company.
- (ii) The Company is not a party in any pending proceedings against any actual or former Director of the Company concerning any action or omission for which the Company or said Director could be liable.

#### **(H) TAXES AND DUTIES**

- (i) The Company has regularly filed on time all tax returns and accounting documents required by the applicable law, and has duly paid all relevant burdens. The originals or the copies of the whole tax documentation are at Company's disposal.
- (ii) The Company has regularly paid on time all due taxes, within the terms imposed by the law or, as the case may be, has obtained the postponement of the payment, as well as has regularly paid on time any other taxes and contribution and any other kind of national, regional and local taxes.
- (iii) The Company has regularly made every withholding relevant to the payments effected and has regularly paid all the sums withheld by the Tax Authority.
- (iv) The Company has no fiscal obligations, other than the ones specified in the financial statement and in the tax returns filed by the Company until today.
- (v) The execution of the Contract will not cause any negative change in the fiscal situation, in the fiscal benefits and, in general, in the fiscal credits, rights and obligations of the Company.
- (vi) The Company is not subject, at the moment, to any fiscal inspection, nor has it been notified that an inspection proceedings is going to start.
- (vii) In accordance with Accounting Principles, the Company has set aside all necessary and fully sufficient funds, in order to cover the payment of any taxes relevant to all kind of operations, including those for which the term of payment has not yet matured and those whose payment has been postponed.
- (viii) All Company's debts and obligations at the date of the Balance-sheet, with respect to taxes or towards fiscal Authorities, for which the Company is principal or residual debtor, are duly evidenced and covered by specific Provision of the Balance-sheet.

**(I) INSURANCES**

- (i) Company's insurance policies in force are the one listed in Annex 5.1 (I).
- (ii) No claim for damages compensation with respect to Company's insurance policies are pending, with the exception of the pending accidents no 012046425 and 01204628, CAR policy 248752351.

**(J) FIXED ASSETS**

- (i) The Company owns and is in possession of all the fixed assets listed in the Balance-sheets. Each and every sum due for any cause whatsoever to the owners of the real estates rented by the Company until the date of the Closing has been and will be duly paid.
- (ii) The costs, burdens and expenses of any kind, including those relevant to possible consultancies rendered before the Closing (or thereafter, if relevant to notices received before the Closing) by third parties to the Company's benefit, in order to conform the assets rented by the Company to the legal provisions about safety, will be exclusively borne by the Sellers, who undertake to let the above operations be carried out within the necessary technical time. The Sellers will pay directly or will reimburse the costs to the Company, at Company's first request, in case the Company has paid some sums in advance to let the above activities be carried out.

**(K) COMPLIANCE WITH LAW**

- (i) The Company has not received any written notice, request or claim by the competent authorities, that could have an impact on the carrying out of its activities, or reduce its profitability, or limit or prevent Company's full availability and right of use with respect to its properties.

**(L) CURRENT ACTIVITIES**

- (i) On the date of the Financial Situation, and save for what stated in the Contract and fin its Annexes and until the date of the Closing, all Company's activities have been and will be carried out in the ordinary way and following the same principles as the ones used in the past, and no facts or events have occurred, that could have a negative impact on Company's financial situation or on its activities.

**(M) LICENSES**

- (i) As of today, the Company has not received any notification concerning the breach of any licence necessary for the development of its business.

**(N) ENVIRONMENT**

- (i) As of today, the Company has never been sanctioned for breaches of environmental laws.

**(O) ABSENCE OF CONSTRAINTS, THIRD PARTIES' CONSENTS AND AUTHORIZATIONS**

- (i) The execution of the Contract and of its relevant documents, their fulfilment and the performance of the obligations therein set forth by the Sellers do not represent a breach of Seller's corporate by-laws, or of Seller's contractual obligations of any kind, or of any decision or judgment, taken by a judge or by an arbitrator, towards the Sellers, or the breach of any laws of any kind. At the present date, there is no pending judicial proceedings or arbitration that could have an impact on the validity, enforceability and execution of the Contract.
- (ii) With the exception of what is stated by art. 8 of Company's corporate by-laws, at the present date there is no valid and binding right of any kind, such as, by way of example, any put and call or pre-emption right, which give or could give to third parties the right to buy or be invited to buy, in whole or in part, the Quotas.
- (iii) With the exception of the authorization to be given by the Antitrust authority, as explained in art. 11, and of the Authorization specified under Annex A, the execution of the Contract and of the relevant documents, their fulfilment and the performance by the Sellers of the obligations set forth therein (i) do not need to be approved or in any way authorized, through any kind of permit or license, by the public authorities or by any private entity; (ii) do not give to any third party the right to terminate any contract in force with the Company; (iii) do not involve the loss, ineffectiveness or withdrawal of any license, authorization or public permit already given to the Company; (iv) are not in breach of any agreement to which the Company is part, nor with

any judicial decision or arbitration award, order or measure addressed to the Company.

- (iv) At the present date, there is no agreement of any kind which could give to any third party the right to claim for damages compensation as a result of the transfer of the Quotas as per the present Contract.

**6. BUYER'S WARRANTIES AND REPRESENTATIONS – INDEMNIFICATION**

6.1 The Buyer represents and warrants that:

- (i) Its company is duly organized, validly existing and *in bonis* as per Italian law and has the authority and the capacity necessary in order to execute the Contract and fulfill the obligations stated therein.
- (ii) The execution of the Contract and the fulfilment and performance of the obligations therein set forth

do not represent a breach of Seller's corporate by-laws, or of Seller's contractual obligations of any kind, or of any decision or judgment, taken by a judge or by an arbitrator, towards the Sellers, or a breach of any applicable laws or regulation of any kind, or of any provision of Buyer's corporate by-laws, or a breach of any agreement or contract to which the Buyer is part.

- (iii) It has taken all necessary action in order to empower the persons signing the contract to undersign, carry out and fulfill all Buyer's obligations arising out of the present Contract and to let the Contract be binding and in force.
- (iv) Except for the provisions of artt. 1.4 and 11, the execution of the Contract, and its fulfillment by the Buyer, do not need any notice to or approval or authorization by any public or governmental, national or international authority.
- (v) It has any necessary resource, including financial resources, in order to fulfill all its obligations arising out of the present Contract.
- (vi) It has not executed any contract or agreement of any kind with third parties, which could give to anyone the right to claim, towards the Buyer or the Sellers, the payment of a fee for services rendered as broker, consultant or agent with regard to the transactions foreseen by the present Contract.

6.2 By executing this Contract the Buyer undertakes to indemnify and hold the Sellers harmless with respect to any loss arising out of any misrepresentation in, or breach of, any of the warranties or representations specified in the present article. Any claim relevant to the above will be notified by the Sellers within December 31st, 2008. Buyer's obligations to indemnify the Sellers hereunder shall be limited to claims notified by the Sellers within said time period, being however understood that any claim or request notified within said time period will remain valid till the final decision of the merit of the same.

6.3 The representations and warranties specified under the present article 6 are true, accurate and complete as of the date of Contract execution.

## **7. SELLERS' INDEMNIFICATION**

7.1 The Sellers undertake to indemnify and hold the Buyer – or, at Buyer's request, the Company – harmless from any Loss, damage, liability and expense (including attorneys' fees) or any other financial consequence of any kind whatsoever which may be directly or indirectly incurred or suffered by the Buyer or by the Company as a result of:

- a. Seller's breach of Contract;
- b. any misrepresentation in, or breach of, any of the warranties or representations set forth in article 5 or in the Annexes;
- c. any claim based on Company's liabilities or obligations not included in the Financial Situation;
- d. any third party's claim against the Company arising out of facts, acts or omissions occurred before the date of the Closing, which have not been disclosed;
- e. Company's actual or possible liabilities already existing at the date of the Closing and not disclosed.

It is understood that the above indemnification right shall not apply to liabilities arising out of contracts or other written undertakings undersigned by Buyer's representatives.

7.2 Buyer's claims with respect to indemnification as per the present art. 7 will be notified in writing to the Sellers within 15 (fifteen) Working Days of Buyer's becoming aware of the event upon which the claim is based. Said written notice will have to be accompanied by every possible evidence and document supporting the claim.

7.3 The Sellers will have 15 (fifteen) Working Days to dispute in writing Buyer's notification as per art. 7.2.

It is understood that, in case said time limit is not respected, the Sellers will be obliged to effect the payment requested by the Buyer, as well as the payment of the relevant accrued interests, within 15 Working Days from the expiry of the time limit fixed for the notification of the dispute.

- 7.4 In case of timely notification of the dispute relevant to the request for indemnification, should the Parties fail to reach an agreement within the following 30 (thirty) Working Days, the Buyer will have the right to start an arbitration proceeding as per art. 9.
- 7.5 In case of any request of indemnification arising out of a suit or an exception introduced by third parties (including, without limitation, any public or fiscal authority) against the Buyer and/or the Company, the Buyer and the Sellers will manage the litigation together and will jointly appoint reliable consultants and lawyers. With respect to the signature of possible agreements for the settlement of the dispute and to decisions involving Sellers' acknowledgment and taking on, in whole or in part, of the obligations object of the litigation, should the Sellers and the Buyer fail to reach an agreement within a reasonable time-period, the Sellers will have the right to take the final decision, in any case (and unless the Sellers declares they are willing to take on, in whole or in part, the disputed obligations) taking into account the position of the Buyer and of its consultant and lawyers. For the settlement of disputes the Sellers will have the right to avail themselves, at their own cost, of new laws and/or fiscal amnesty.
- 7.6 It is understood that the right to obtain damage compensation as per the present art. 7 is the exclusive remedy relevant to the Sellers breach of the representations and warranties given in the present Contract and is in lieu of any other right, suit, remedy, claim or protective measure, including the right to terminate the Contract.
- 7.7 Seller's liability as per the present art. 7 will never exceed an amount equal to 50% of the portion of the Price actually paid by the Buyer on the date on which the request for indemnification has been notified.
- 7.8 Sellers shall be under the obligation to indemnify the Buyer for liabilities under this indemnification clause only (i) provided that such liabilities exceed Euro 100.000,00 and (ii) exclusively for any amount in excess of such threshold.
- 7.9 The Sellers shall not have the obligation to indemnify the Buyer for single indemnification request not exceeding Euro 1.000,00. = (onethousand).
- 7.10 With respect to the obligation to indemnify the Buyer for liabilities under this indemnification clause, the Sellers will be jointly and severally liable towards the Buyer.
- 7.11 Any claim relevant to the above shall be notified by the Buyer within December 31st, 2008. Buyer's obligations to indemnify the Buyer hereunder shall be limited to claims notified by the Buyer within said time period, being however understood that any claim or request notified within said time period will remain valid till the final decision on the merito of the same

## **8. GENERAL PROVISIONS AND CONFIDENTIALITY**

- 8.1 The original documentation relevant to MF Power which is in Sellers' possession will be put at Buyer's disposal, in his offices, as from the 10th Working Day after the Contract execution. The Buyer undertakes to collect the documentation within the following 15 Working Days, upon signature of the relevant receipt and anticipating *via fax* at least 24 hours in advance to the Sellers his will to collect the documentation.
- 8.2 The Contract, together with its Annexes, which form an integral part thereof, represents the entire understanding and agreement of the Parties and supersedes all prior communications, agreements and understandings among the Parties, whether oral or written, relating to the subject matter hereof. Any modification to the contract or any other further obligation taken by one of the Parties with respect to the subject matter hereof will be binding only if confirmed in writing and undersigned by duly

authorized Parties' representatives.

- 8.3 Unless otherwise expressly provided for in the present Contract, any failing by either Party to exercise its rights under the Contract shall not be interpreted as waiver of said rights or of any other right arising out of the Contract.
- 8.4 Should any provision of the Contract be partially or fully null or void, all other contractual provisions will remain valid and in force. In such a case, the Parties will be obliged to agree in good faith on the replacement of the provisions affected through new clauses substantially having the same effect, having regard to the subject matter and to the purpose of the Contract, unless the affected clause is not automatically replaced by a mandatory law provision, as per art. 1419 of the Italian civil code.
- 8.5 Each Party will bear all the expenses and costs relevant to the activities of their own legal, accounting and financial consultant, as well as for the activities of any other kind of consultant, necessary for the drafting and negotiation of the Contract and of the agreements which will be signed as a consequence of the Contract. None of said costs and expenses will be charged to MF Power.
- 8.6 The Parties will have to keep, and cause their officers, employees, consultants, and representatives to keep, the strictest confidentiality on the present Contract. As for the Projects, the above confidentiality obligation will be binding for the Parties until the Closing, being understood Sellers' obligation not to disclose any information relevant the Projects.
- 8.7 Any communication which has to be sent with respect to the Contract shall be made in writing, sent by registered mail, by courier or by telefax (confirmed by registered mail) and addressed as follows:

(i) if the addressee is Fineldo:

(ii)

- 8.8 All communications will be considered effectively and validly served upon their receipt at the addressee's address.
- 8.9 The headings of the individual articles of the Contract have been adopted solely for the purpose of clarity and, therefore, have not to be considered as integral part of the Contract and no account shall be taken of them in the interpretation thereof.
- 8.10 The Parties will sign three copies of the present Contract, each of them will be considered as original copy, being however the three copies together a sole document.

## **9. APPLICABLE LAW AND DISPUTE RESOLUTION**

- 9.1 The Contract and the documents signed in compliance with its provisions shall be construed, executed and interpreted in accordance with Italian law.
- 9.2 All disputes among the Parties arising out of the interpretation or execution of the Contract and/or of the agreements therewith connected,



will be finally solved by three arbitrators in accordance with the Rules of the National and International Arbitration Chamber of Milan, that the Parties hereby declare to know and accept in their entirety. For the purpose of the arbitration proceedings, the Sellers will be considered as a sole and single party. Each Party will have the right to appoint one of the three arbitrators, while the third arbitrator, who will act as President of the Arbitral Tribunal, will be appointed, by mutual agreement, by the two arbitrators appointed by the Parties. Failing such agreement, the third arbitrator will be appointed by the President of Milan Court, upon request of the most diligent party. The arbitrators will apply Italian laws. The arbitration shall take place in Milan. The arbitration costs shall be charged as decided by the Arbitral Tribunal.

## **10. TAXES**

Any registration tax, stamp duty and notary's fees relevant to the Purchase and Sale Contract of the Quotas will be equally divided among the Parties. Any registration tax and stamp duty becoming due in case of use will be borne by the using Party. The taxes on the Quotas transfer of ownership will be paid by each Party as foreseen by the law.

## **11. ANTITRUST**

11.1 The Parties, if so required by the applicable law provisions, will notify, within 7 Working Days from Contract execution, the Quotas transfer of ownership to any competent national or supranational antitrust authority. For this purpose, the Sellers undertake to promptly provide the Buyer and the competent authorities with all necessary information and data (relevant to the Company and in any case under Sellers' responsibility), which will be true, exact and complete.

11.2 Parties' obligation to Quotas transfer the ownership shall be subject to the occurrence of one of the following alternative conditions precedents:

- a. the time foreseen by the applicable law has expired and the competent authority has not informed the Parties of the beginning of the preliminary investigation foreseen by the law; or
- b. the competent authority has informed the Parties that it does not intend to proceed with said preliminary investigation.

11.3 Each Party undertakes to immediately notify to the other Parties every communication received by the competent authorities and to cooperate in order to hand over to said authorities all documentation required.

11.4 Should, notwithstanding the Parties effort, the conditions precedent specified under art. 11.2 have not occurred within 30 Working Days from the date of the notification foreseen in art. 11.1:

- a. the Parties will meet and do their best to overcome any obstacle to the occurrence of the conditions;
- b. in particular, if the competent authority requires the Parties to modify any term or condition of the Contract, the Parties undertake to negotiate in good faith and agree on the required modifications, unless they do not involve a substantial modification of the provisions of the present Contract or a significant cost increase, or significant new risks on one of the Parties or on the Company.

11.5 In case the condition precedent foreseen in the present art. 11 has not occurred within June 30th, 2006, or the competent authority has declared it will authorize the Quotas transfer subject to conditions which are too onerous for the Buyer, the Contract shall be automatically considered as having no more effects, the Parties will be free from any obligations still in force arising therefrom and neither Party will have the right to claim any right towards the other Parties for any reason whatsoever.

## **LEGAL ADDRESSES AND BANKING DETAILS OF THE PARTIES**

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