

Milan, 10 January 2013

**FORM S.P.A. UNDER EXTRAORDINARY ADMINISTRATION – SALE OF THE BUSINESS  
ACTIVITIES**

**REGULATION OF THE ORDINARY PROCEDURE**

**SUMMARY: Recitals – The business perimeters subject to the Sale Procedure – Activities pertaining to the Ordinary Procedure and relevant timing – Due diligence process – The Non-Binding Offer – Subjective requirements for the presentation of Non-Binding Offers – Modalities for the presentation of Non-Binding Offers – Content of the Non-Binding Offers – Selection of the Non-Binding Offers – The following phase of the Ordinary Procedure: Phase III-Ord – Reservation of further requests and integrations – General provisions**

**I. Recitals**

The present document describes and sets out the modalities for the implementation of the activities consequent to the presentation of the Expressions of Interest for the acquisition of the business activities held by Form S.p.A. under Extraordinary Administration (**Form**), for parties interested into evaluating the presentation of an indicative non-binding offer relating to such acquisition, following the completion of the analysis of additional informative material made available pursuant to the terms and conditions set out herein (hereinafter, the procedure set forth by such terms and conditions, the **Ordinary Procedure**).

The Ordinary Procedure is part of the activities aimed at transferring the business activities held by Form – company admitted to the extraordinary administration procedure pursuant to the Legislative Decree 8 July 1999, no. 270, as subsequently amended and supplemented (the **EA Law**) – subject to the obtainment by the Ministry of Economic Development (**MED**), heard the Surveillance Committee, of the authorization (a) to the implementation of the transfer plan submitted to the MED by the Extraordinary Commissioner of Form (the **Commissioner**) on 26 September 2012, pursuant to art. 58 of the EA Law, and (b) to the execution of the deed, or deeds, of transfer, pursuant to art. 61, paragraph 1, and art. 42, paragraph 1, letter a) of the EA Law itself (the **Authorization to the Transfer**).

The present document is published on the website of the extraordinary administration of Form ([www.gruppoformamministrazionestraordinaria.com](http://www.gruppoformamministrazionestraordinaria.com), hereinafter, the **Website**) and it is submitted directly by the Commissioner to the parties he admitted to participate to the phase following the presentation of the expressions of interest (hereinafter, **Phase 2**), pursuant to

terms and conditions of the relevant regulation, dated 24 September 2012 and published on the Website (the **Regulation**).

It will be submitted to the same parties, and published on the Website, a separate document describing and setting out the procedure aimed to the direct formulation of an already binding offer, for the purposes of the acquisition of the business activities held by Form, following the completion of the due diligence verifications and of the instrumental activities (the **Fast-Track Procedure**), for the parties interested into it. It will be in any case allowed to all parties admitted to Phase 2 to opt for the Fast-Track Procedure, in accordance with the indications set out therein.

Unless expressly defined herein, capitalized terms and expressions shall have the meaning set out under the Regulation.

## II. The business perimeters subject to the Sale Procedure

The perimeters subject to the Sale Procedure are, preferably, the entire business of Form and, in second instance, the single or couple of the business branches exercised in the three plants in which Form carries out its activity (*i.e.* the plants located in Cormano, Villasanta and Quero). It is possible to exclude from the perimeter of interest the ownership of all or part of the real estate located in Cormano.

It is offered the sale of the entire business of Form or of the single business branches, inclusive of all assets - including the warehouse - and agreements relating to them (excluding the factoring and banking agreements and save for what stated above in relation to the real estate located in Cormano), with the assumption by the purchaser of every overdue and falling due debt arising from the leasing agreement and – supplementing what previously stated – from the conditional agreements with reservation of title pursuant to the so called Law Sabatini of 28 November 1965 n. 1329 (the **Debt Subject to the Transfer**) and excluding (a) any, both commercial and financial, credits whatsoever and available cash prior to the transfer, and (b) any debts whatsoever pertaining to and preceding the transfer, different from the Debt Subject to the Transfer generally accrued on such date (hereinafter, the entire business of Form or the single business branches, as identified above, the **Business Activities**).

## III. Activities pertaining to the Ordinary Procedure and relevant timing

The Ordinary Procedure provides for, as phase following the submission of the Expressions of Interest:

1. the performance of a due diligence activity on the Business Activities, pursuant to terms and conditions set out under paragraph IV;

2. the presentation of an indicative and non-binding offer for the purchase of the Business Activities of interest (the **Non-Binding Offer**), pursuant to terms and conditions set out under paragraph V.

The interested parties are required to submit their Non-Binding Offer no later than 18:00 (CET) on 5 February 2013 (the **Term for the NBO**).

#### IV. Due diligence process

The parties admitted to Phase II, that would have opted, or opt, for the Ordinary Procedure (the **Participants to Phase II-Ord**), have the chance to perform a commercial, technical, financial, accounting, fiscal and legal due diligence activity on the Business Activities (the **Due Diligence Activity**), which includes:

1. the access, until 31 January 2013, to the virtual data room (the **VDR**), containing the information memorandum and the additional documentation pertaining to Form and to the Business Activities. The VDR may be supplemented with the documentation, as available, that the Commissioner and his advisors shall deem convenient to made available to the Participants to Phase II-Ord;
2. one or more visits to the Plants, in the period between 10 January 2013 and 31 January 2013 (the **Visits**). During the Visits the Commissioner may allow, at his sole discretion, informative interviews and discussions with the Commissioner himself, the management of Form and the relevant advisors (the **Interviews**).

The Visits and the Interviews will be coordinated by Mr. Martinelli and by Ms. Moro of Vitale & Associati S.p.A., whose contacts are indicated under Paragraph VIII below. Therefore, for such purpose, the interested parties are invited to refer to them.

It is reminded that the information and documents made available for the purposes of or in the context of the Due Diligence Activity, or in any event relating to the Sale Procedure, remain subject to the terms and conditions of the confidentiality undertaking already signed by the interested parties. As set out therein, (a) no – explicit or implicit- representation or warranty is provided by Form (or its employees), the Commissioner or its representatives and/or advisors, in respect of the truthfulness, completeness and accuracy of the Confidential Information (as defined in such confidentiality undertaking) and (b) none of such parties assumes any liability, not even pre-contractual, *vis-à-vis* the participants to the Sale Procedure (or *vis-à-vis* the Authorized Parties, as defined therein), in respect of the contents of such Confidential Information or of the use of them that it will be made and/or of any error or omission relating to them.

#### V. The Non-Binding Offer

## 5.1 Subjective requirements for the presentation of Non-Binding Offers

It is admitted the submission of Non-Binding Offers by Italian or foreign entities or individuals, exercising a commercial undertaking in a collective – and therefore also by way of corporation – or individual form, which:

1. do not act for person to designate or as interposed person on behalf of other parties; and
2. are not, at the date of the relevant submission, subject to liquidation, bankruptcy, recovery or indebtedness restructuring procedures, according to the law possibly applicable to them, nor, in any event, to any sort of procedure, under the Italian or foreign legal systems, which indicates a state of insolvency, crisis, dissolution or cessation of the activities, compulsory or extraordinary administration, or comparable situations.

It is allowed the joint submission of a single Non-Binding Offer by more persons bound by agreements or forms of cooperation in relation to the possible acquisition of the Business Activities, subject to compliance with the requirements above specified by each of such persons.

## 5.2 Modalities for the presentation of the Non-Binding Offers

Interested parties shall have to submit their Non-Binding Offer, and ensure that this is received within the Term for the NBO, by:

1. registered letter with return receipt or courier - in either case in a sealed envelope - at the following address:

via Visconti di Modrone 21, 20122, Milan (Italy), to the attention of the Extraordinary Commissioner, Avv. Alessandro Triscornia, c/o Studio Legale Giliberti Pappalettera Triscornia & Associati (anticipated via fax at +39 02 76028512 or via email at the email address [gptform@gptlex.com](mailto:gptform@gptlex.com));

or

2. letter attached to a certified e-mail (PEC) at the following address:

[alessandro.triscornia@milano.pecavvocati.it](mailto:alessandro.triscornia@milano.pecavvocati.it) (anticipated via fax at +39 02 76028512 or via email at the email address [gptform@gptlex.com](mailto:gptform@gptlex.com)).

The Non-Binding Offer- initialed on each page and signed at the bottom and as inclusive of its annexes - shall have to be drafted in Italian or English language. In case of presentation by way of registered letter or courier, the envelope shall have to bear the following words: "NBO



Form". In case of presentation by way of certified e-mail (PEC), the same words ("NBO Form") shall have to be indicated in the subject matter of the e-mail.

The Non-Binding Offer shall have to be signed:

1. by the legal representative of the interested entity or by the interested individual;
2. in the event of Non-Binding Offer jointly submitted by more persons, by all legal representatives and/or individuals being part of such interested group.

### 5.3 Content of the Non-Binding Offers

The Non-Binding Offer shall have to include, as its content (or it shall have to attach thereto, in accordance with the indications below, or, in the absence of express request of attachment, of the preferences of the signatories):

1. the data of identification of the person submitting the Non-Binding Offer (the **Offeror**), with indication of the intention to purchase the Business Activities of interest directly, through a subsidiary or through a new incorporated vehicle;
2. a list of the shareholders holding the 5% or more of the corporate capital of the Offeror and, whether existing, indication of the (ultimate) entity controlling the Offeror. In case of Non-Binding Offer jointly submitted by more persons, such list and indication, whether existing, of the (ultimate) controlling entity shall be provided with respect to each person participating to the relevant group, together with a description of the group itself, including the complete name of the participating persons and, if applicable, their relevant stakes, the role played by each participant, the reasons behind the incorporation of such group and the stage, whether preliminary or advanced, of the agreements between the participants in relation to the possible acquisition of the Business Activities of interest;
3. the identification of the Business Activities subject to the Non-Binding Offer (hereinafter, the **Perimeter Subject to the Offer**) and a concise description of the reason behind the Non-Binding Offer. The preference for only part, and not all, of the Business Activities shall have to be briefly motivated by industrial considerations related to the undertaking activity already exercised by the interested party as operator of the automotive sector;
4. a preliminary and concise presentation of the more significant elements of the industrial and economic and financial plan of prosecution of the activities included in the Perimeter Subject to the Offer, for at least two-year period, with indication, if already defined even just preliminarily, of the guidelines and strategic industrial

and commercial targets, of the main assumptions and hypothesis behind the plan, including the levels of employment that the Offeror intends to undertake, the actions of management of the staff and of the efficiency of the operative costs and of the plan of the annual investments envisaged in the horizon of the plan;

5. if not yet reflected in the preliminary and concise illustration of the plan set out under previous point 4, the levels of employments that the Offeror intends to undertake and assumed for the purposes of the valorization of the Perimeter Subject to the Offer;
6. the indication – on the basis of the information available and subject to the analysis, but not binding – of the cash purchase price (in Euro) of the Perimeter Subject to the Offer (gross of the Debt Subject to the Transfer), of the relevant evaluation methodologies used and of the main assumptions, of the hypothesis and of the elements of fact behind such indication, and also of the Non-Binding Offer;
7. an indication (a) of the supplemental information pertaining to Form deemed necessary in order to confirm the Non-Binding Offer in a possible Binding Offer, as below defined, (b) of the level of approval that the possible operation of acquisition of the Perimeter Subject to the Offer has received from the bodies able to bind the Offeror;
8. an indication, or confirmation of what already indicated under the Expression of Interest, of the possible requirement to obtain authorizations, consents or permissions by third parties in relation to the acquisition of the Perimeter Subject to the Offer, inclusive of a preliminary assessment – with the assumptions possibly necessary as to information and data relating to Form not yet available – of the requirement to obtain authorizations, consents or permissions by antitrust authorities, with indication of those deemed competent and of a preliminary expectation, even if subject to any necessary thorough analysis, in terms of timing and outcome of the relevant process;
9. if different from those already provided in the Expression of Interest, name / business name, address, telephone number, fax and email of the interested party and of the person by the former possibly delegated and authorized – inclusive of advisors already appointed, if any - to liaise with the Commissioner and his advisors;
10. if not yet indicated under the Expression of Interest, the name and contacts of each external advisor (industrial, financial, accounting, fiscal and/or legal) already appointed or that it is envisaged to appoint, in respect of the operation of acquisition of the Perimeter Subject to the Offer;



11. indication of any other aspect which may be deemed relevant for the Commissioner, or for the assignee of the Business Activities, for the purpose of the assessment of the Non-Binding Offer;
12. an express statement by the persons submitting the Non-Binding Offer in respect of the non-occurrence of any of the circumstances indicated under Paragraph 5.1, points 1 and 2, of the present document, and also a statement of express subjection to what is set out under paragraph 9.1 of the Regulation;
13. for those who do not have submitted an Expression of Interest and who are admitted to submit a Non-Binding Offer by the Commissioner, following the subscription of a confidentiality undertaking in the text that will be transmitted by the advisors of the Commissioner, any other document and information required by the Regulation for the purposes of the presentation of an Expression of Interest, to the extent not yet set out under and required by the present document.

#### 5.4 Selection of the Non-Binding Offers

Following the expiry of the Term for the NBO, the Commissioner shall proceed to scrutinize the Non-Binding Offers possibly received, shall assess their compliance with the relevant requirements and shall invite all or only part - at his absolute discretion and without obligation to motivate his decision, as per Paragraph 8.7 of the Regulation - of the Offerors to present, following the grant of a term for the completion of the Due Diligence Activity and the offer of additional informative interviews and discussions with the Commissioner himself, the management of Form and the relevant advisors, a formal, binding and irrevocable offer for the acquisition of the Perimeter Subject to the Offer (the **Binding Offer**). The relevant terms, conditions and forms will be set out in a further notice which will be published on the Website and transmitted to those offerors admitted to participate to such subsequent phase (the **Phase III-Ord**) via email, to the names and addresses indicated in the relevant Non-Binding Offers or, should they not be indicated, to those indicated in the Expressions of Interest.

In the event of formal irregularities and deficiencies and/or non-substantial irregularities, the Commissioner shall invite the relevant Offeror, through a specific notice, to regularize the documents and/or to provide the appropriate clarifications.

#### VI. The following phase of the Ordinary Procedure: Phase III-Ord

The possible notice of admission to Phase III-Ord shall set out the modalities and terms for the presentation of the Binding Offer, the relevant formal and substantial requirements that it shall fulfill, the modalities to define the sale and purchase agreement which shall be made available in the VDR, *vis-à-vis* with those admitted to Phase III-Ord, and also the criteria of selection of the Binding Offers and the rules of the competitive bidding, including the terms and conditions of the award and completion of the sale of the Business Activities (even with regard to the union consultation procedure pursuant to art. 47 of the Law 29 December 1990, n. 428, as



subsequently amended and supplemented, for the purposes set out under art. 63 of the EA Law). It is understood that any final resolution in respect of the outcome of the Sale Procedure and of the consequent execution of the sale and purchase agreement shall remain subject to the power of authorization of the MED, heard the Surveillance Committee.

It is anticipated as of now that those possibly admitted to participate to the Phase III-Ord shall, *inter alia*, and pursuant to forms and terms that shall be described and set out more specifically in the notice relating to such phase:

1. present, jointly with its own Binding Offer, the industrial and economic and financial plan of prosecution of the business activities exercised through the Business Activities of interest, pursuant to art. 63, paragraph 3, of the EA Law, with indication of the levels of employment that the purchaser intends to undertake and to preserve for at least a subsequent two-year period, pursuant to art. 63, paragraph 2, of the EA Law;
2. undertake, through its own Binding Offer, which shall be expressly declared irrevocable for the period that will be specified in the abovementioned notice, to present - following the obtainment of the Authorization to the Transfer and of the acceptance of the Binding Offer by the Commissioner - at the time of the execution of the sale and purchase agreement (or prior to such moment) (a) an autonomous bank security, containing the obligation for the guarantor to pay on first demand, without possibility to raise exceptions and to claim for the previous enforceability the main debtor, issued by a primary bank operating in Italy and approved by the Commissioner (the **First Demand Bank Guarantee**), to guarantee the payment obligation of the purchase price of the Business Activities of interest, and (b) any other security that may be required and agreed with respect to the obligations which will be undertaken as a result of the execution of the sale and purchase agreement, such as, for example, the obligations of prosecution of the business activities and of preservation of the levels of employment set out under the sale and purchase agreement itself;
3. create, together with the submission of its own Binding Offer, a security deposit in favor of Form for an amount of Euro 250.000,00 (hereinafter, the **Deposit**), to guarantee (a) the obligation to execute the sale and purchase agreement, whether the Authorization to the Transfer is obtained and the Binding Offer is accepted by the Commissioner, and (b) the obligation to present or to issue the guarantees in accordance with the indications set forth under previous point 2 of the present Paragraph VI (hereinafter, jointly referred to as the **Secured Obligations**), which shall be:
  - a. returned (x) in case of notice of non-award of the Business Activities or of exclusion from, or definitive interruption of, the Sale Procedure, or (y) in the absence of non-fulfillments of the Secured Obligations by the relevant offeror, at

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the execution of the sale and purchase agreement of the Business Activities, following the obtainment of the Authorization to the Transfer and of the acceptance of the Binding Offer by the Commissioner; or

- b. acquired as a penalty (and save for the additional damage), in case of non-fulfillment of the Secured Obligations by the offeror.

Each offeror will be allowed to present, alternatively to the Deposit, a First Demand Bank Guarantee, in respect of the same Secured Obligations.

The Binding Offer and the sale and purchase agreement of the Business Activities shall not have to be subject to, *inter alia*, the performance of any further Due Diligence Activity, the obtainment of the financial resources necessary for the purposes of the acquisition of the Business Activities of interest, other events or consents, authorizations and/or internal approvals or approvals of third parties, save for the obtainment of the necessary authorizations required by law (inclusive of the antitrust clearance, if required) and, in case, the achievement of an union agreement in the context of the union consultation procedure set out under art. 47 of the Law 29 December 1990, n. 428, as subsequently amended and supplemented.

#### VII. Reservation of further requests and integrations

The Commissioner, also by means of his advisors, reserves his right to request any other relevant information or documentation – by way of example and without limitations, even by supplementing the requirements set out herein and/or verifying at any time the compliance with the requirements set out under the Regulation or under the present document, or by requesting clarifications and/or further details and guarantees in respect of the representations already made or to be made by interested parties – that the Commissioner or his advisors deem necessary or convenient, either before or following the submission of the Non-Binding Offer, or during any phase possibly subsequent, to all interested parties, or to one or more of them.

#### VIII. General provisions

Unless otherwise set out under the present document, all notices set out under or required pursuant to, or in any event relating to, the present document (inclusive of possible request of clarifications), or pertaining to the activities set out herein, shall have to be formulated to the Commissioner and his advisors, indicated below:

Avv. Alessandro  
Triscornia

Giliberti  
Pappalettera

Dott. Riccardo Martinelli  
*Partner*

Vitale & Associati S.p.A.

Dott.sa Mariacristina  
Moro

*Vice President*  
Vitale & Associati S.p.A.

Avv.ti Ilaria  
Zingali, Marco  
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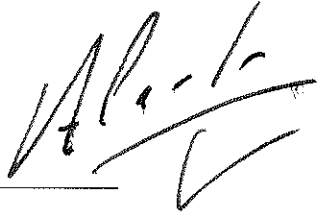
*e-mail* of the  
working team  
(which includes  
between the  
recipients the  
Commissioner):  
[gptform@gptlex.com](mailto:gptform@gptlex.com)

The present document and the activities set out herein, without any prejudice, are subject to the terms and conditions of the Regulation and, in particular, to what set out therein under Paragraphs 8 and 9.

In the exercise of the rights set out therein, the Commissioner may, *inter alia*, by way of example (i) suspend or interrupt, temporarily or permanently, the Sale Procedure *vis-à-vis* one or more of, or all the participants, whatever the stage and level of progress may be, (ii) amend at any time the terms and conditions of the Sale Procedure, as inclusive of the term to perform the Due Diligence Activity, or the Term for the NBO, and the perimeters subject to the Sale Procedure, (iii) initiate or proceed at any time with private negotiations with one or more participants to the Ordinary Procedure or to the Fast-Track Procedure, for the purposes to complete – following the obtainment of the necessary authorizations required by law – the sale of the Business Activities and/or (iv) admit to the Sale Procedure, or consent to the aggregation of persons participating to the Phase 2, of new persons, at his absolute discretion.

In accordance with the indications set out under the abovementioned Paragraph 8 of the Regulation, (a) the present document and the activities set out therein do not entail for the Commissioner any obligation or undertaking to proceed with the sale of the Business Activities *vis-à-vis* the persons admitted to participate to the Sale Procedure, or, for such persons, the right to any performance whatsoever by Form, the Commissioner or their advisors and (b) any costs, expenses and burdens in any manner related, consequent and/or connected to the participation

to the Sale Procedure, inclusive of costs of their own representatives and advisors, shall be exclusively borne by the relevant participants.

A handwritten signature in black ink, appearing to read 'A. Triscòrnia', is written over a horizontal line. The signature is stylized and cursive.

**The Extraordinary Commissioner of Form S.p.A. in A.S.,  
Avv. Alessandro Triscòrnia**