

## **TENDER REGULATION FOR THE SALE OF BUSINESS OF ITALIA WANBAO ACC S.R.L. IN A.S.**

### **RECITALS**

This document (hereinafter referred to as the “Tender Regulation”) aims at providing the rules for the development of the sale procedure authorized by the Italian Ministry of the Economic Development (hereinafter “MED”), by decree dated 20<sup>th</sup> October 2021, regarding the business of Italia Wanbao ACC S.r.l. under Extraordinary Administration (hereinafter also referred to as “Wanbao ACC”), an Italian limited liability company having registered offices at Mel - Borgo Valbelluna (BL), Viale Vasco Salvatelli 4, admitted on 13<sup>th</sup> May 2021 to the procedure of Extraordinary Administration pursuant to Legislative Decree of 8<sup>th</sup> July 1999 no. 270.

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### **Art.1 - PHASE 1: BEGINNING OF THE PROCEDURE, PUBLICATION OF THE CALL FOR EXPRESSIONS OF INTEREST**

In order to perform a survey on the market interest in purchasing the Wanbao ACC Business, or a part thereof (hereinafter referred to as the “Business”), the Extraordinary Commissioner, Mr. Maurizio Castro, has published on the websites of Wanbao ACC and of the Court of Venice, and in the newspapers La Repubblica and La Stampa, an invitation to express interest to the purchase of the Business (hereinafter referred to as “Invitation”), along with this Tender Regulation.

The Invitation provides that the bidders interested in taking part in the call for tenders for the sale of the Business shall submit their formal expression of interest within **20<sup>th</sup> November 2021 at 24.00 CET**, by sending it to the Notary Public Mr. Giorgio Gottardo, by (i) registered letter with return receipt or courier – in either case in a sealed envelope – to the attention of the Extraordinary Commissioner, Mr. Maurizio Castro, at the address: Notaio dott. Giorgio Gottardo - FAG Notai, Via N. Tommaseo, 76/D - 35131 Padova (Italy), anticipated via fax at : (+39) 049 8759505 (the expression of interest shall be deemed as timely sent also in case

only the anticipated version via fax is sent within the above deadline); or (ii) letter to the attention of the Extraordinary Commissioner, Mr. Maurizio Castro, attached to a certified electronic mail (PEC) at the address of the Public Notary Mr. Giorgio Gottardo: [giorgio.gottardo@postacertificata.notariato.it](mailto:giorgio.gottardo@postacertificata.notariato.it).

In both cases, a copy of the expression of interest shall be anticipated to the Company via e-mail at the following addresses: [federica.magnoler@wanbao-acc.it](mailto:federica.magnoler@wanbao-acc.it) (HR and Corporate Affairs Officer) and [flavio.dellajustina@wanbao-acc.it](mailto:flavio.dellajustina@wanbao-acc.it) (Chief Financial Officer).

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## **Art.2 - PHASE 2: PREPARATION OF THE VIRTUAL DATA ROOM**

After the examination of the received expressions of interest, the Extraordinary Commissioner shall assess them and shall send a Letter of Procedure to the admitted bidders, who submitted the expression of interest in compliance with the provisions of the Invitation and the Information Memorandum (hereinafter the “Admitted Bidders”), certifying such admission and forwarding the following documents:

- (i) the Confidentiality Declaration;
- (ii) the Regulation regarding the access to the virtual Data Room and the inspection of the documents contained therein (“Data Room Regulation”), along with the template for the formal request of access to the virtual Data Room with specification of the employees or consultants appointed for such access.

The Admitted Bidders shall be requested to properly read and fully and unconditionally accept the documents attached to the Letter of Procedure and the letter itself; such documents shall be initialed on each page and signed for acceptance at the foot of the final page by the legal representative of the bidder and they shall be returned to Wanbao ACC, to the kind attention of the Extraordinary Commissioner, by ordinary mail or courier, to the address Italia Wanbao-ACC S.r.l. in Amministrazione Straordinaria, Viale V. Salvatelli 4 – 32026 Borgo Valbelluna (BL), anticipated by electronic scan attached by e-mail, to the addresses already provided in the Invitation.

The Admitted Bidders shall also be requested to provide a list of the persons responsible for accessing to the virtual Data Room (“Work Team”) and of the person appointed as Work

Team responsible (“Responsible person”) containing the relevant full names and positions (e.g. employee, legal counsel, financial consultant, etc.).

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### **Art.3 - PHASE 3: ACCESS TO THE DATA ROOM AND PERFORMANCE OF THE DUE DILIGENCE**

Once delivered to Wanbao ACC the documents mentioned at Article 2 above, the Admitted Bidders shall be admitted to the virtual Data Room, already set up during the previous tender process which ended on 5 October 2021 and re-opened for the purposes of this tender. The access to the virtual Data Room and the performance of the due diligence shall terminate on **30<sup>th</sup> January 2022 at 15:00 CET**.

In order to access to the virtual Data Room the Admitted Bidders will be supplied with usernames and password.

The Admitted Bidders, upon request, may agree with the Extraordinary Commissioner the terms and conditions for a visit to the production sites of the Business, in accordance with the production needs of Wanbao ACC and the emergency measures adopted by the Italian Government and the Veneto Region for the containment of the SARS-Cov-2 virus spread.

During the activity of due diligence and until **17<sup>th</sup> January 2022 at 24:00 CET**, all the Admitted Bidders may forward in writing a request for information, clarifications and/or further documents to the people appointed for that purpose by the Extraordinary Commissioner, pursuant to the terms and conditions set out in the Data Room Regulation.

The Extraordinary Commissioner reserves the right to determine the terms and conditions to meet the potential requests for information, any clarification and/or further documents. Meetings may be arranged, physically or by videoconference, with the interested Admitted Bidders for the purposes of providing answers to the requests for information and clarification.

Any request made during the activity of due diligence may be anonymously forwarded by the Extraordinary Commissioner to all the other Admitted Bidders, where possible, together with the relevant answer, if any.

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#### **Art.4 - PHASE 4: BINDING OFFERS AND EVALUATION BY THE EXTRAORDINARY COMMISSIONER**

After the expiration of the mandatory deadline for the access to the virtual Data Room and the performance of the due diligence, the Admitted Bidders shall send their binding and definitive offers within the term of **31<sup>st</sup> January 2022 at 24:00 CET**.

The offers, with all the relative annexes, shall be drafted in Italian or English, initialed on each page and duly signed at the foot of the final page by the legal representative of the bidder, and forwarded through registered mail with return receipt, or courier, to the kind attention of the Extraordinary Commissioner Mr. Maurizio Castro, in either case in a sealed envelope, with the name of the Admitted Bidder and the specification in the outer side of the envelope: “Confidential – Wanbao ACC binding offer”, at the following address:

**Notaio dott. Giorgio Gottardo**

FAG Notai

Via N. Tommaseo, 76/D

35131 Padova

Italia

anticipated via fax at nr. (+39) 049 8759505 or via certified electronic mail (PEC) at the address [giorgio.gottardo@postacertificata.notariato.it](mailto:giorgio.gottardo@postacertificata.notariato.it)

The binding offers shall be deemed as timely received **within the deadline of 31<sup>st</sup> January 2022 at 24:00 CET** provided that they are anticipated within the above deadline via fax or e-mail at the number or addresses above, together with the receipt of shipment of the original envelope via registered mail or courier.

Any offer for the purchase of the Business (hereinafter the “Binding Offer”) shall be deemed as binding and irrevocable until the termination of the sale procedure, and shall contain at least the following data:

1) the price offered for the purchase of the Business which shall be determined taking into account the value resulting out of the appraisal requested by the Extraordinary Commissioner pursuant to article 62 par. 3 of Legislative Decree no. 270/99, available in the Data Room;

2) a potential request for rent of the Business, preliminary to the sale; in such a case, the Binding Offer shall provide for the obligation to purchase the Business at the expiration of the rent period, being understood that the Business transfer shall take place no later than the annual term set forth at article 27 par. 2 of Legislative Decree no. 270/99;

3) a declaration of the Admitted Bidder that the Business shall be purchased by the Admitted Bidder itself or by a Newco fully owned by himself;

4) an industrial plan, including:

a) a *business plan* containing (i) the main strategies that are intended to be pursued; (ii) the operating and development programmes and the economic-financial budget for the two-year period following the transfer of the Business; (iii) the minimum investments envisaged and the timeframe for their implementation (iv) the number of employees of the Business, divided by category and organisational structure, for whom the employment relationship is to be assumed and the Bidder's commitment to maintain such levels for at least two years following the Effective Date of transfer of the Business (subject to the completion of the procedure provided for under article 47 L. no. 428/1990); (v) an explanation of the reasons underlying the interest in the purchase of the Business subject to the Binding Offer and of the business purpose of such purchase, as well as (vi) any other information useful to prove the industrial, economic and financial capacity of the bidder;

b) a *financial plan* which shall also contain (i) indications of the financial resources that the bidder intends to use for the acquisition of the Business to continue operations, to maintain the agreed employment levels and for the investments in the Business envisaged in the plan, accompanied by the types of financing sources that are intended to be used (broken down into debt and equity); (ii) a description of the methods and timing required to obtain the availability of the aforementioned financial resources.

5) the expressed undertaking of the prospective purchaser to continue the business activities and to maintain the employment levels established in the sale agreement for at least two calendar years since the date of the purchase;

6) a declaration of existence any authorization, permit, consent, approval from any public or private authority that may be necessary for the purchase of the Business by the Admitted Bidder and the estimated timing for obtaining such authorization, permit, consent, approval;

7) a preliminary assessment concerning the necessity of any antitrust approval for the purchase of the Business of Wanbao ACC, together with the indication of any antitrust authorities involved;

8) the expressed acceptance of the standard draft preliminary contract for the sale of the Business provided in the virtual Data Room, that shall be initialized on each page and duly signed at the foot of the final page, for its full acceptance, together with this Tender Regulation, that shall also be initialized on each page and duly signed at the foot of the final page. Such acceptances shall be provided by the named legal representative of the Admitted Bidder, having due powers still in force and not revoked at the relevant time;

9) a declaration that the bidder has carried out adequate Due Diligence and verification of the Business, that it is satisfied with the same and that the Binding Offer is made without any reservation whatsoever; in the event that the bidder has not carried out Due Diligence and verification of the Business, a declaration expressly acknowledging that the Binding Offer is made without any reservation is however required;

10) the expressed obligation of the prospective purchaser to pay, upon signing the preliminary purchase agreement, a down payment equal to 15% of the purchase price and to provide an adequate bank or insurance guarantee, consistent with the obligations undertaken with the binding offer, concerning the payment of the balance of the purchase price and the obligation of the prospective purchaser to continue the business activities and to maintain the employment levels, as stated in the draft preliminary agreement for the sale of the Business.

11) express statement that the Binding Offer shall remain firm and irrevocable for a period of 120 (one hundred and twenty) days from the expiry of the time limit for submitting the Binding Offer set out above.

A bank or insurance guarantee at first request, issued by an Italian or foreign leading bank or insurance company, to be reasonably appreciated by the Extraordinary Commissioner, in favour of Italia Wanbao-ACC S.r.l. in Amministrazione Straordinaria, must be annexed to the Binding Offer for its validity. Such guarantee at first request must cover the fulfillment of the obligations of the Admitted Bidders stated in the Binding Offer (including the obligations to enter into the preliminary agreement for the sale of the Business) for an amount of € 350.000,00 and be valid until 31 March 2022, safe the undertaking of the Admitted Bidder

to renew the guarantee in case at the above date the tender has not been awarded yet. The guarantee will be returned to the Admitted Bidders who will be not awarded as the winner of the tender. At the signature of the preliminary agreement for the sale of the Business, the guarantee shall be replaced by the winner with the bank or insurance guarantee described in the above mentioned point no. 11.

The Extraordinary Commissioner reserves the right, at any stage of the procedure for the sale of the Business, to suspend such procedure and: a) make any amendments and additions to the above mentioned sale procedure that may be necessary and/or simply opportune; b) publish invitations to submit bids and admit any third party to the above mentioned procedure, even for the phases that may have already been carried out, subject to acceptance of the necessary tender documentation; c) amend the list of assets and relationships forming part of the Business to be sold; d) receive binding offers by entities not admitted to the tender, when deemed interesting, inviting the Admitted Bidders to submit better offers within the deadline for the submission of the binding offers as above specified.

Any of the above circumstances shall be notified to the Admitted Bidders adequately in advance.

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#### **Art.5 – PHASE 5: ASSESSMENT OF THE BINDING OFFERS**

In compliance with the provisions of Article 63 of Legislative Decree no. 270/1999, the Extraordinary Commissioner reserves the right to evaluate the appropriateness of the offers received taking into account, "*in addition to the price offered, the reliability of the bidder and the plan for the continuation of the business activities, also with regard to the maintenance of the employment levels*", also the guarantees offered by the perspective purchaser for the preservation of the integrity and homogeneity of the activity for sale, as well as the planned investments and the existing operational and commercial synergies.

More generally, preference will be given to the offer offering the best balance between (i) industrial and employment prospects and (ii) creditors' satisfaction prospects.

The Extraordinary Commissioner will also take into consideration the reliability of the bidder, with particular regard to its financial soundness and its ability to raise the necessary financial resources, as well as the content and sustainability of the industrial plan, with particular reference to the employment commitments, the commercial strategy and the investments contemplated therein.

The guarantees provided in addition to those requested and, more in general, any further element that positively qualifies the Binding Offer for the purposes of the Extraordinary Administration shall be taken into due consideration.

The price offered shall be compared with the value resulting from the appraisal of the Business requested by the Extraordinary Commissioner pursuant to Article 62, par. 3, of Legislative Decree No. 270/99.

The Extraordinary Commissioner reserves the right to proceed with further negotiations with one or more of the bidders, aimed at obtaining improvements to the Binding Offers received.

Binding Offers limited to a part of the Business of Wanbao ACC may be taken into consideration if they meet the above requirements.

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#### **Art. 6 - PHASE 6: POSSIBLE PRICE BIDS**

In the event that more than one Binding Offer is submitted, the Extraordinary Commissioner reserves the right to launch a call for tenders among the bidders and to initiate a bidding phase.

The terms and conditions of the tender shall be detailed in a specific communication sent to the parties admitted to the bidding phase.

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#### **ART. 7 - PHASE 7: TENDER AWARD - SIGNATURE OF THE SALE AGREEMENT OF THE BUSINESS – TERMINATION OF THE SALE PROCEDURE**



Once the Phase 5 (or Phase 6, if applicable) is completed, the Extraordinary Commissioner submit the proposal for award to the MISE, which is responsible for any final decision on the sale of the business to be sold, pursuant to Article 42 of the Legislative Decree 270/1999, after hearing the opinion of the Supervisory Committee.

Once authorized by the Ministry, the Extraordinary Commissioner shall initiate the formal trade-union consultation procedure provided for by Article 47 of L. no. 428/1009 and afterwards shall sign the preliminary sale agreement for the Business with the winning bidder.

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## **Art.8 - FINAL PROVISIONS**

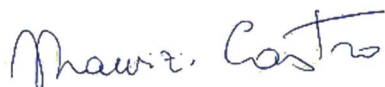
a) This Tender Regulation and the admission to the Data Room are not intended, nor shall be deemed, to establish any contractual or non-contractual obligations whatsoever upon Wanbao ACC, the Extraordinary Commissioner and the Admitted Bidders including, without limitations, in respect of the sale of the Business contemplated under this document, the beginning of the relevant sale procedure, its subsequent termination or revocation of previously Admitted Bidders thereto. The Extraordinary Commissioner reserves the right to withdraw at any time the negotiations for the sale, during any phase whatsoever thereof, and to suspend or interrupt the sale procedure, without any right for the interested bidders submitting interest declarations or Binding Offers to claim any damages.

b) By accepting this Tender Regulation, the signing entity fully accepts the Italian Law as the applicable law and the Court of Venice having exclusive jurisdiction to settle any dispute arising out of, in relation to, or otherwise connected with, this Tender Regulation and/or the other attached documents to the Letter of Procedure and in general on the sale procedure of the Business of Wanbao ACC.

c) It is expressly acknowledged that the official language of this Tender Regulation and of the standard draft preliminary contract for the sale of the Business and of the definitive contract for the sale of the Business is Italian; therefore a mere translation in English of the

said documents will be provided. In case of any discrepancies between the two versions (Italian and English), the Italian version shall prevail.

Borgo Valbelluna (BL), 22<sup>nd</sup> October 2021



The Extraordinary Commissioner

Dott. Maurizio Castro

In sign of acceptance

\_\_\_\_\_ (signature and stamp)

Pursuant to articles 1341 and 1342 of the Italian Civil Code, the Admitted Bidders confirm that they have read, understood and accepted the clauses of these Tender Regulation, and expressly accept, after further examination and analytical evaluation, the following articles specifically: 4 (content of the binding offer), 5 (assessment of the binding offers); 6 (possible price increases); 8 (final clauses, exclusive jurisdiction).

\_\_\_\_\_ (signature and stamp)