

Current report no. 102/2012

Date prepared: 25.10.2012

Issuer's abbreviated name:  
POLIMEX-MOSTOSTAL

Topic: Conclusion of material contracts by the Issuer  
Legal basis: Article 56 (1) (2) of the Act on Public Offering

The Management Board of Polimex-Mostostal S.A. (hereinafter referred to as the '**Issuer**') with its registered office in Warsaw at ul. Czackiego 15/17 informs that on 24 October 2012 it concluded with the MARS Fundusz Inwestycyjny Zamknięty with its registered Office in Warsaw, managed and represented by MS Towarzystwo Funduszy Inwestycyjnych S.A. with its registered office in Warsaw (hereinafter referred to as the '**Buyer**') the following contracts:

1. a conditional contract of sale of 437,193 shares of 'Energomontaż-Północ Gdynia' Spółka z ograniczoną odpowiedzialnością with its registered office in Gdynia (hereinafter referred to as '**EP**') of the total nominal value of PLN 21,859,650, which constitute approx. 99.99% of the EP business capital and entitle to approx. 99.99% of voting rights at the Meeting of Partners of EP (hereinafter referred to as the '**Shares Sold**') (hereinafter referred to as the '**EP Contract**').

#### **Conditions precedent:**

Pursuant to the EP Contract, purchase by the Buyer from the Issuer of the Shares Sold on the Closing Date shall depend on joint fulfilment of the following conditions precedent:

- (i) obtainment by the Buyer of a permission for concentration from the Polish Antimonopoly Office,
- (ii) payment of an initial payment by the Buyer to the Issuer,
- (iii) cancellation prior to the Closing Date of any and all powers of attorney within EP,
- (iv) adoption by the Meeting of Partners in EP of resolutions on specific adjustments to the Articles of Association of EP and of resolutions on the changes of the composition of the Supervisory Board of EP.
- (v) fulfilment of all the conditions regarding conclusion by the Issuer and Mars (in accordance with the definition contained hereinunder) or another entity indicated the Buyer of a dispositive contract of sale of Real Properties (in accordance with the definition contained hereinunder),
- (vi) submission to the Buyer, by the Issuer, on the Closing Date, of a written declaration of non-occurrence or occurrence of a material negative change as of the date preceding the Closing Date,
- (vii) submission of a certificate from a competent Head of a Tax Office and by the competent branch office of the Polish Social Insurance Institution of no tax and social insurance contribution arrears on the part of EP, issued not earlier than 30 days prior to the Closing Date.

The foregoing conditions precedent shall be fulfilled not later than within 10 months of the EP Contract Conclusion Date. If the Parties do not agree otherwise, the EP Contract shall be terminated upon expiry of the aforementioned deadline.

The EP Contract shall also be terminated if, within 5 months of the date of conclusion thereof, the permission provided for in (i) hereinabove is not obtained, subject to the option to postpone the deadline in situations provided for in the EP Contract.

#### **Financial conditions:**

Pursuant to the EP Contract, the sale price of the Shares Sold shall amount to PLN 46,369,000 (hereinafter referred to as the '**Sale Price**'). The EP Contract provides for the option to pay the Issuer, prior to the Closing Date, an initial payment in the amount of PLN 11,592,250 which may be increased by the additional amount of PLN 11,592,250. Initial payments shall depend on the fulfilment of multiple conditions, inter alia establishment by the Issuer of the collaterals provided for hereinunder. The remaining part of the Sale Price shall be paid by the Buyer on the following dates:

- (i) first part of the Sale Price in the amount of PLN 11,592,250 (or PLN 23,184,500 in the event of increasing the amount of the initial payment prior to the Closing Date) shall be paid within 10 business days of the Closing Date,
- (ii) second part of the Sale Price in the amount of PLN 11,592,250 PLN shall be paid within 4 months of the Closing Date.

The Sale Price and the amounts of initial payments may be decreased depending on EP financial and operating situation in the event of circumstances provided for in the EP Contract.

### **Contractual penalties:**

The EP Contract provides for the option to charge the Issuer contractual penalties amounting to PLN 10,000,000 in the event of a breach thereby of the provisions of the Contract. Payment of contractual penalties shall not exclude the option to lodge further compensatory claims against the Issuer.

### **Initial payment reimbursement collateral:**

Pursuant to the EP Contract, initial payment as well as due interest and costs of execution proceedings shall be secured with:

- (i) joint contractual mortgage up to the amount of PLN 34,776,750, established on the Real Properties (in accordance with the definition provided for hereinunder);
- (ii) registered pledge on the Shares Sold, up to the amount of PLN 34,776,750;
- (iii) registered pledge on the Stock Sold (in accordance with the definition provided for hereinunder), up to the amount of PLN 34,776,750;
- (iv) Seller's statement on submission to execution up to the amount of PLN 34,776,750, made in accordance with Article 777 of the Code of Civil Procedure.

On 24 October 2012 the Issuer and the Buyer entered into Registered Pledge on Shares Agreements referred to in items (ii) and (iii) hereinabove, and made a statement on the establishment of joint contractual mortgage provided for in item (i) hereinabove.

2. a conditional contract of sale of 1,225,118 shares of Fabryka Kotłów Sefako S.A. (hereinafter referred to as '**Sefako**') of the nominal value of PLN 10 each, which constitute approx. 95.97% of the Sefako business capital and entitle to approx. 95.97% of voting rights at the Meeting of Partners of the Company (hereinafter referred to as the '**Stock Sold**') (hereinafter referred to as the '**Sefako Contract**').

### **Conditions precedent:**

Pursuant to the Sefako Contract, purchase by the Buyer from the Issuer of the Stock Sold on the Closing Date shall depend on joint fulfilment of the following conditions precedent:

- (i) obtainment by the Buyer of a permission for concentration from the Polish Antimonopoly Office,
- (ii) payment of an initial payment by the Buyer to the Issuer,
- (iii) adoption of a resolution on the appointment to the Management Board of Sefako of a person appointed by the Buyer,
- (iv) cancellation prior to the Closing Date of any and all powers of attorney within Sefako,
- (v) adoption by the General Meeting of Sefako of resolutions on specific adjustments to the Articles of Association of Sefako and of resolutions on the changes of the composition of the Supervisory Board thereof.
- (vi) submission to the Buyer, by the Issuer, on the Closing Date, of a written declaration of non-occurrence or occurrence of a material negative change as of the date preceding the Closing Date,
- (vii) submission of a certificate from a competent Head of a Tax Office and by the competent branch office of the Social Insurance Institution of no tax and social insurance contribution arrears on the part of Sefako, issued not earlier than 30 days prior to the Closing Date,
- (viii) expression by one of the banks – Sefako creditors – consent to disposal by the Issuer to the Buyer of the Stock Sold, or to amendments to the contracts between Sefako and the bank in that way that the disposal of the Stock Sold by the Issuer to the Buyer does not constitute a breach of those contracts and does not require the bank's consent.

The foregoing conditions precedent shall be fulfilled not later than within 8 months of the Sefako Contract Conclusion Date. If the Parties do not agree otherwise, the Sefako Contract shall be terminated upon expiry of the aforementioned deadline.

The Sefako Contract shall also be terminated if, within 4 months of the date of conclusion thereof, the permission provided for in (i) hereinabove is not obtained, subject to the option to postpone the deadline in situations provided for in the Sefako Contract.

### **Financial conditions:**

Pursuant to the Sefako Contract, the sale price of the Stock Sold shall amount to PLN 72,321,000 (hereinafter referred to as the '**Sale Price**'). The Contract provides for the option to pay the Issuer, prior to the Closing Date, an initial payment in the amount of PLN 18,080,250 which may be increased by the additional amount of PLN 18,080,250. Initial payments shall depend on the fulfilment of multiple conditions, inter alia establishment by the Issuer of the collaterals provided for hereinunder. The remaining part of the Sale Price shall be paid by the Buyer on the following dates:

- (i) first part of the Sale Price in the amount of PLN 18,080,250 (or PLN 36,160,500 in the event of increasing the amount of the initial payment prior to the Closing Date) within 10 business days of the Closing Date,
- (ii) second part of the Sale Price in the amount of PLN 18,080,250 PLN shall be paid within 4 months of the Closing Date.

The Sale Price and the amounts of initial payments may be decreased depending on Sefako financial and operating situation in the event of circumstances provided for in the Sefako Contract.

**Contractual penalties:**

The Sefako Contract provides for the option to charge the Issuer contractual penalties amounting to PLN 10,000,000 in the event of a breach thereby of the provisions of the Sefako Contract. Payment of contractual penalties shall not exclude the option to lodge further compensatory claims against the Issuer.

**Initial payment reimbursement collateral:**

Pursuant to the Sefako Contract, initial payment, amounts increasing the initial payment, due interest and costs of execution proceedings shall be secured with:

- (i) joint contractual mortgage up to the amount of PLN 54,000,000, established on the Real Properties (in accordance with the definition provided for hereinunder);
- (ii) registered pledge on the Stock Sold, up to the amount of PLN 54,000,000;
- (iii) registered pledge on 437,193 Stock Sold, up to the amount of PLN 54,000,000;
- (iv) Seller's statement on submission to execution up to the amount of PLN 54,000,000, made in accordance with Article 777 of the Code of Civil Procedure.

On 24 October 2012 the Issuer and the Buyer entered into Registered Pledge on Shares Agreements referred to in items (ii) and (iii) hereinabove, and made a statement on the establishment of joint contractual mortgage provided for in item (i) hereinabove.

Moreover, on 24 October 2012 the Issuer concluded with the Mars Finance 1 Limited Liability Company with its registered office in Warsaw (hereinafter referred to as '**Mars**'), a 100% subsidiary company of the Buyer, a preliminary contract of sale of the following real properties (hereinafter referred to as the '**Mars Contract**') located in Gdynia:

- (i) 3,333/10,000 of the perpetual usufruct right to the property located within the sea port in Gdynia, inclusive of an interest in the proprietary right to structures and equipment (hereinafter referred to as '**Real Property 1**');
- (ii) 847/10,000 of the perpetual usufruct right to the property located within the sea port in Gdynia, inclusive of an interest in the proprietary right to buildings, structures and equipment (hereinafter referred to as '**Real Property 2**');
- (iii) perpetual usufruct right to the property located within the sea port in Gdynia, inclusive of the proprietary right to buildings, structures and equipment (hereinafter referred to as '**Real Property 3**');

Real Property 1, Real Property 2 and Real Property 3 shall be hereinafter collectively referred to as the **Real Properties**.

In the Preliminary Contract the Issuer undertook to enter into a conditional contract of sale of the Real Properties (hereinafter referred to as the '**Promised Contract**') pursuant whereunto the Issuer shall sell the Real Properties to Mars subject to the conditions precedent provided for hereinunder.

**Conditions precedent of the conclusion of the Promised Contract:**

The Promised Contract shall be concluded by the Parties following fulfilment of the following conditions precedent:

- (i) obtainment consent to the sale of the Real Properties from the minister competent in the State Treasury, issued in coordination with the minister competent in marine economy;
- (ii) payment by Mars to the Issuer of an initial payment against the price of the Real Properties;
- (iii) obtainment of consent from the President of the Polish Office of Competition and Consumer Protection to the acquisition of the Shares Sold by the Buyer from the Issuer.

The Promised Contract shall be concluded within 14 days of the date of fulfilment of the last of the foregoing conditions precedent, not later however than by 30 June 2013.

**Dispositive Contract conclusion conditions:**

The Contract of Sale of the Real Properties (hereinafter referred to as the '**Dispositive Contract**') shall be concluded by the Parties following fulfilment of the following conditions precedent:

- (i) the Management Board of Port Gdynia Spółka Akcyjna with its registered office in Gdynia not exercising the pre-emptive/preferential right regarding the sale of the Real Properties;
- (ii) the State Treasury not exercising the pre-emptive/preferential right regarding the sale of the Real Properties;
- (iii) Pomorska Specjalna Strefa Ekonomiczna sp. z o.o. with its registered office in Sopot not exercising the pre-emptive/preferential right regarding the sale of the Real Properties;
- (iv) acquisition of the Stock Sold by the Buyer.

**Sale Price payment:**

The Real Properties Sale Price provided for in the Preliminary Contract shall be PLN 43,330,000.

The Preliminary Contract provides for the option to pay the Issuer, prior to the Closing Date, an initial payment in the amount of PLN 13,307,500 which may be increased by the additional amount of PLN 13,307,500. Initial payments shall depend on the fulfilment of multiple conditions, inter alia establishment by the Issuer of the collaterals provided for hereinunder. The remaining part of the Sale Price shall be paid by Mars within 3 business days of the date of conclusion of the Dispositive Contract.

**Collaterals:**

To secure reimbursement of initial payments (inclusive of interest and costs of execution proceedings), on 24 October 2012 the Issuer:

- (i) made a statement on establishing joint contractual mortgage on the Real Properties up to the amount of PLN 39,922,500,
- (ii) concluded with Mars, acting in the capacity of a Pledge Holder, Registered Pledge on Shares Agreements for the maximum amount of collateral of PLN 39,922,500, applicable to the Shares Sold and to the Stock Sold.
- (iii) Issuer's statement on submission to execution pursuant to Article 777 of the Code of Civil Procedure, up to the amount of PLN 39,922,500.

**Contractual penalties:**

The Preliminary Contract provides for the option to charge the Issuer contractual penalties amounting to PLN 5,100,000 in the event of a sell by the Issuer of the Real Properties to Mars, inclusive of the charge provided for in the Preliminary Contract. The Preliminary Contract does not stipulate the option to claim in the following circumstances compensation exceeding the contractual penalty.

The Issuer, the Management Board and the Supervisory Board thereof, are neither related to the Buyer nor to Mars.

The aforementioned contracts have been deemed material due to the fact that the total value thereof exceeds 10% of the Issuer's equity capital.

Signatures of persons representing the Company:

Przemysław Milczarek – Managing Director