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# ***Independent Practitioner's Reasonable Assurance Report***

Heraeus Deutschland GmbH & Co. KG  
Hanau

Reasonable assurance engagement on the Refiner's Compliance Report  
for Heraeus Deutschland GmbH & Co. KG for the period 1 January to  
31 December 2016

Auftrag: 0.0815128.001





## **Independent Practitioner's Limited Assurance Report**

To Heraeus Deutschland GmbH & Co. KG

We have been engaged by Heraeus Deutschland GmbH & Co. KG, Hanau, (the "Refiner") to perform a reasonable assurance engagement on the Refiner's Compliance Report prepared by the Refiner for the business group "Heraeus Deutschland GmbH & Co. KG " (HDE) as defined in Table 5 of the Compliance Report for the period 1 January to 31 December 2016 (the "Refiner's Compliance Report").

### *Management's Responsibility*

The Management of the Refiner is responsible for the preparation and presentation of the Refiner's Compliance Report in accordance with the LBMA Responsible Gold Guidance (version 6) as of August 14, 2015, as well as the Supplement on Tin, Tantalum and Tungsten of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as of April 2016 (hereafter the "Guidance").

This responsibility includes establishing appropriate risk management and internal controls from which the reported information is derived. The criteria identified by management as relevant for demonstrating compliance with the Guidance are the activities described in the Refiner's Compliance Report. Furthermore, the responsibility includes designing, implementing and maintaining systems and processes relevant for the preparation of the Refiner's Compliance Report, which is free of material misstatements due to intentional or unintentional errors.

### *Audit Firm's Independence and Quality Control*

We have complied with the German professional provisions regarding independence as well as other ethical requirements.

The audit firm applies the national legal requirements and professional standards – in particular the Professional Code for German Public Auditors and German Chartered Auditors ("Berufssatzung für Wirtschaftsprüfer und vereidigte Buchprüfer": "BS WP/vBP") as well as the Institut der Wirtschaftsprüfer ("Institute of Public Auditors in Germany; IDW"): Requirements to quality control for audit firms ("Entwurf eines IdW Qualitätssicherungsstandards 1 „Anforderungen an die Qualitätssicherung in der Wirtschaftsprüferpraxis" (IdW EQS 1)") – and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

In conducting our engagement, we confirm that we satisfy the criteria for assurance providers as set out in the Guidance to carry out the assurance engagement.

### *Practitioner's Responsibility*

Our responsibility is to express an opinion on the Refiner's Compliance Report based on our work performed. Within the scope of our engagement we did not perform an audit on external sources of information or expert opinions, referred to in the Refiner's Compliance Report.

We conducted our work in accordance with the International Standard on Assurance Engagements (ISAE) 3000 (Revised): "Assurance Engagements other than Audits or Reviews of Historical Financial Information" published by IAASB and the supplementary guidance set out in the LBMA Responsible Gold Programme - Third Party Audit Guidance (version 3) as of March 11, 2016 (the "Audit Guidance"). This Audit Guidance requires that we plan and perform the assurance engagement to obtain reasonable assurance that the Refiner's Compliance Report

prepared by the Refiner for the business group Heraeus Deutschland GmbH & Co. KG (HDE) for the period 1 January to 31 December 2016, in all material respects, describes fairly the activities undertaken during the year to demonstrate compliance, and management's overall conclusion contained therein is in accordance with the requirements of the LBMA Responsible Gold Guidance (version 6) as of August 14, 2015, as well as the Supplement on Tin, Tantalum and Tungsten of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as of April 2016.

The procedures selected depend on the practitioner's judgement. This includes the assessment of the risks of material misstatements of the Refiner's Compliance Report with regard to the Guidance. Within the scope of our work we performed amongst others the following procedures:

- Interviews with the compliance officers in charge of the preparation of the Refiner's Compliance Report;
- Interviews with management and employees of departments in charge of recycling, purchasing, material management and trading;
- Inspection of relevant corporate guidelines and documents describing the management systems, due diligence and risk management approach towards a responsible supply chain;
- Review of documentation of requirements on the group-wide processes for collecting, analysing and aggregating data on the supply chain of gold, tin, tantalum and tungsten;
- Performance of site visits at the Refiner's locations in Hanau (Germany) and Hong Kong (China) as part of the inspection of relevant systems, processes and controls; including process walkthroughs from supplier selection to materials receipt and lot processing;
- Evaluation of the consistency of the statements provided in the Refiner's Compliance Report with the findings obtained during our engagement.

#### *Inherent limitations*

Non-financial information, such as that included in the Refiner's Compliance Report, is subject to more inherent limitations than financial information, given the more qualitative characteristics of the subject matter and the methods used for determining such information. The methods used by the Refiner to comply with the Guidance may differ. It is important to read the Refiner's conflict minerals supply chain policy available in the download section on Refiner's website:

<http://herae.us/conflictminerals>

#### *Conclusion*

In our opinion and based on our reasonable assurance procedures performed, as described above, the Refiner's Compliance Report, prepared by Heraeus Deutschland GmbH & Co. KG, Hanau, for the business group Heraeus Deutschland GmbH & Co. KG (HDE) for the period 1 January to 31 December 2016, in all material respects, describes fairly the activities undertaken during the year to demonstrate compliance, and management's overall conclusion contained therein is in accordance with the requirements of the LBMA Responsible Gold Guidance (version 6) as of August 14, 2015, as well as the Supplement on Tin, Tantalum and Tungsten of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as of April 2016.

*Restriction on Use and Distribution*

We issue this report on the basis of the engagement agreed with the Refiner. The audit has been performed for purposes of the Refiner and is solely intended to inform the Refiner about the results of the audit. The report is not intended for any third parties to base any (financial) decision thereon. We do not assume any responsibility towards third parties.

We refer to the fact that the Refiner's Compliance Report subject to our assurance engagement comprises the Annex "List of countries of origin of mined gold". In accordance with the LBMA Responsible Gold Guidance (version 6) and the treatment of the Refiner this Annex detailing the countries of origin of mined gold has to be submitted to the LBMA Executive only and does not need to be disclosed publicly.

Munich, 15 March 2017

**PricewaterhouseCoopers GmbH**  
**Wirtschaftsprüfungsgesellschaft**

Hendrik Fink  
Wirtschaftsprüfer  
(German Public Auditor)

ppa. Axel Faupel

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## *Appendix*



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General Terms of Engagement: Allgemeine Auftragsbedingungen für Wirtschaftsprüfer  
und Wirtschaftsprüfungs-gesellschaften vom 1. Januar 2002



# Heraeus Compliance Report 2016 for HDE

Table 1: Refiner's details	
Refiner's name	Heraeus Deutschland GmbH & Co. KG - HDE
Entities and locations	Please refer to addendum Table 5 – HDE is creating this Compliance Report also on behalf of the entities and locations listed in this addendum
Reporting year-end	31.12.2016
Date of Report	2017-02-03
Senior Management at HDE responsible for this report:	Rolf Wetzel, CFO of HDE: <a href="mailto:rolf.wetzel@heraeus.com">rolf.wetzel@heraeus.com</a>

Heraeus, the technology group headquartered in Hanau, Germany, is a leading international family-owned company formed in 1851. With expertise, a focus on innovations, operational excellence and an entrepreneurial leadership, we strive to continuously improve the businesses of our customers around the world.

We create high-quality solutions for our customers and strengthen their long-term competitiveness by combining material expertise with technological know-how. Our ideas are focused on important issues such as the environment, energy, health, mobility and industrial applications. Our portfolio ranges from components to coordinated material systems, which are used in a wide variety of industries, including the steel, electronics, chemical, automotive and telecommunications industries.

In the 2015 financial year, Heraeus generated revenues without precious metals of €1.9 bn and a total revenue of €12.9 bn. With approximately 12,500 employees worldwide in more than 100 subsidiaries in 38 countries, Heraeus holds a leading position in its global markets.

In 2016, the Foundation for Family Businesses named Heraeus as one of the “Top 10 Family Businesses” in Germany. More: [www.heraeus.com](http://www.heraeus.com)

Heraeus Deutschland GmbH & Co. KG - HDE is one of the largest Gold refiners globally.

Its Hong Kong based Gold refinery Heraeus Ltd. alone is refining more than 200 tons of Gold annually (2016). Further Heraeus Gold refiners are located in Hanau, Newark and Santa Fee Springs.

This Heraeus Compliance Report covers the selected refining and downstream companies mentioned in the addendum Table 5, that belong to Heraeus.

## Heraeus Evaluation

Table 2: Summary of activities undertaken to demonstrate compliance	
<b>Step 1: Establish strong company management systems</b>	
<b>Compliance Statement with Requirement:</b> We have fully complied with Step 1: Establish strong management systems.	
<b>1. Has the refiner adopted a company policy regarding due diligence for supply chains of Gold, Tin, Tantalum, and Tungsten?</b>	
The Heraeus group has adopted a company-wide policy binding for all entities (including HDE's refinery and downstream entities) regarding due diligence for the supply chain of conflict minerals including Gold, Tin, Tungsten and Tantalum as well as other precious metals.	
<b>Comments and Demonstration of Compliance:</b> Already in 2007 we started formalizing our supply chain policy for Precious Metals, which is based on our Code of Conduct and an integral part of our responsibility-conscious management structure.	

# Heraeus Compliance Report 2016 for HDE

HDE operates strictly in accordance with “LBMA Responsible Gold Guidance and the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas” – Third edition April 2016.

In 2016 we merged our internal “sourcing policy” and “guideline for acceptance of precious metals” into our new “guideline for sustainable sourcing” which further strengthens our corporate efforts to comply with the model set out in the Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. This sets out our responsibility for conducting risk based due diligence, screening and monitoring of all transactions and governance structures in place. The latest supply chain policy can be found on our website in the downloads section:

[www.herae.us/conflictminerals](http://www.herae.us/conflictminerals)

## 2. Has the refiner set up an internal management structure to support supply chain due diligence?

Heraeus Precious Metals has set up an internal management structure to support supply chain due diligence.

### Comments and Demonstration of Compliance:

An internal management system has been set up to define the governance, roles and responsibilities, internal audit, communication and senior management review as per the adopted policy. A compliance officer has been assigned on group level to design, supervise and review the overall process and is supported by local compliance officers of all entities included in this report. The compliance officer has a direct reporting line to the executive committee.

## 3. Has the refiner established a strong internal system of due diligence, controls and transparency over the supply chains of Gold, Tin, Tantalum and Tungsten, including traceability and identification of other supply chain actors?

### Comments and Demonstration of Compliance:

#### Refiner units:

We have a robust ‘lot’ receipts process, and specific documents must be received and transactional details entered before we process any gold-bearing and other conflict materials, including Tin, Tantalum and Tungsten. Each lot received is accurately registered in our transactional system and ensures complete traceability within our production streams. Specific controls regarding received materials are carried out before processing incoming material as outlined in our internal guidelines.

#### Downstream units:

We have a robust ‘lot’ receipts process, and specific documents must be received and transactional details entered before we process any gold-bearing and other conflict materials, including Tin, Tantalum and Tungsten, to ensure, that all raw material used for our products are conflict free.

Specific controls regarding received materials are carried out before processing incoming material as outlined in our internal guidelines.

Regular training of our employees ensures that our guidelines are followed through; any form of non-conformance is unacceptable and reported to the compliance officer and senior management.

No such escalation was necessary during the reporting period.

## 4. Has the refiner strengthened company engagement with Gold, Tin, Tantalum and Tungsten supplying counterparties, and where possible, assist Gold, Tin, Tantalum and Tungsten supplying counterparties in building due diligence capabilities?

### Comments and Demonstration of Compliance:

In 2012 we started the process to further modify our supplier agreements so that they make reference to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas and the latest version of “Code of Conduct for Precious Metal Suppliers of Heraeus” can be found on our website under in the downloads section.

All new suppliers have to sign the latest version of our “Code of Conduct for Precious Metal Suppliers of Heraeus” before we are entering into a new business relationship. We are renewing our due diligence checks for all our suppliers every one, two or three years based on our risk assessment and the results are archived in a database.

We conducted several successful audits of our mining partners to verify they are in line with the requirements set forth in our supply chain guideline, with special focus on Child labor, Human rights and environmental issues.

In the reporting year, we have again engaged in various business organizations like IPA (International Platinum organization), EPMF (European Precious Metals Federation, FVEM (Fachvereinigung Edelmetalle)

# Heraeus Compliance Report 2016 for HDE

and other events organized for Heraeus' customers to promote awareness and due diligence measurements regarding Gold, Tin, Tantalum, and Tungsten and Heraeus commitment in this regard. We were also encouraged in promoting a binding regulation for the currently discussed new EU regulation on conflict minerals through engagement in above mentioned business organizations. We also started discussions with the German "Federal Institute for Geosciences and Natural Resources" to look for opportunities to directly support local mining communities in Africa, Asia or South America.

## 5. Has the refiner established a company-wide communication mechanism to promote broad based employee participation and risk identification to management?

### Comments and Demonstration of Compliance:

Heraeus has developed a mechanism allowing employees to voice concerns over the Gold, Tin, Tantalum and Tungsten supply chain or other identified risks regarding conflict minerals or other compliance issues. A functional mailbox has been established which is reviewed by the compliance officer of the Heraeus group. We implemented in 2013 an external Compliance Hotline, where suspected compliance violations can be reported to the ombudsman by e-mail in any language or by telephone in German and English. That information was widely published throughout our organization. No concerns were raised by employees in the reporting year 2016 with regards to conflict minerals.

## Step 2: Identify and assess risks in the supply chain

### Compliance Statement with Requirement:

We have fully complied with Step 2: Identify and assess risks in the supply chain.

## 1. Does the refiner have a process to identify risks in the supply chain?

Heraeus has processes in place to identify the risks in the supply chain

### Comments and Demonstration of Compliance:

We identify and assess risks in the supply chain. For every supplier we have established a client database and allocated a risk profile according to our risk profile criteria. This process is a formal requirement before entering any business relationship with any Precious Metals counterparty, including but not limited to Gold as well as Tin, Tungsten and Tantalum supplying counterparties. Our due diligence process is carried out on a risk-based approach and follows our requirements as outlined in our "Code of Conduct for Precious Metal Suppliers of Heraeus". We used proper process modelling techniques to map our KYC process – separated for Gold and 3T. We use these process models as a reference, to identify possible risks in our supply chain and ideal training tools.

Process modelling techniques are an integral part of our management system.

We fine-tuned the IT-based workflow in our KYC process to further standardize this process and give system-based guidance on the risk rating.

Besides monitoring government regulations and reports from United Nations, we use various resources to be informed about conflict free minerals issues like newsletter from Business organizations, reports of NGO's and screening the internet on a regular basis. We further formalized this step and have now a list of NGO's we are regularly monitoring. The results of that screening are evaluated and help us further strengthening our risk identifying steps.

Based on this screening we extended our list of high-risk countries in 2016 again to include now in addition El Salvador, Egypt, Lebanon, Turkey and Ukraine. For partners from those country enhanced due diligence measures apply.

These steps are included in our general Risk Management System, which also requires regular review of those documents – at least annually.

## 2. Does the refiner assess risks in light of the standards of their due diligence system?

Heraeus assesses the risk in light of the standards of our due diligence system

### Comments and Demonstration of Compliance:

#### Refiner units:

Supply chain due diligence comprising all measures required by the LBMA is performed before entering into a business relationship with any Gold, Tin, Tantalum and Tungsten supplying counterpart. We performed enhanced due diligence for higher risk categories, which includes all gold-bearing mining material and where Gold potentially originates from or transits via conflict affected areas and areas with human rights abuse, child labor or other high risk factors. In addition, we conduct appropriate scrutiny and monitoring of transactions undertaken through the course of the relationship following a risk based approach.

# Heraeus Compliance Report 2016 for HDE

Downstream units:

For supply of Gold, Tin, Tungsten and Tantalum we acknowledge the certification of LBMA and EICC for conflict free smelters.

Our global procurement team requests all our 3T suppliers to use only certified “conflict-free” smelters as defined by the CFSI – [www.conflictreesourcing.org/](http://www.conflictreesourcing.org/)

In case our due diligence assessment leaves any doubts we request additional documentations from our partners. We might suspend our business relationship with existing partners or refuse to open a relationship with new partners. To enforce our supply chain policy in the reporting year, we refused to enter into new business relationships with a notable number of potential partners, especially in the case of Gold supply.

**3. Does the refiner report risk assessment to the designated manager?**

**Comments and Demonstration of Compliance:**

The compliance officers and their teams assess the potential risks in-line with Heraeus internal guidelines as well as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas as set out in the Annex II. If high risks are identified with new or existing business partners the Compliance Officer will deny acceptance of new business partner or cancel business with existing partners.

Only if the business disagrees with the assessment of the compliance officer, the issue will be escalated to the CEO or CFO for final decision; no such escalation was necessary during the reporting period.

Senior management retains the ultimate control and responsibility for the supply chain of Gold, Tin, Tungsten and Tantalum.

**Step 3: Design and implement a management system to respond to identified risks**

**Compliance Statement with Requirement:**

We have fully complied with Step 3: Design and implement a management system to respond to identified risks.

**1. Has the refiner devised a strategy for risk management of an identified risk by either (i) mitigation of the risk while continuing to trade; (ii) mitigation of the risk while suspending trade or (iii) disengagement from the risk**

Heraeus has devised a strategy for risk management of an identified risk by either (i) mitigation of the risk while continuing to trade; (ii) mitigation of the risk while suspending trade or (iii) disengagement from the risk.

**Comments and Demonstration of Compliance:**

Heraeus has set-up an automated and ongoing screening of all business partners for identifying risks in the supply chain. In addition and based on the risk assessment a regular re-assessment of all business partners and transactions is established. In addition any ad-hoc identified risk brought up by any stakeholder will be carefully assessed by the compliance officer and his team and necessary actions/measures decided.

Based on our risk management we had to reject again a notable number of potential partners and to suspended dealing with existing ones, especially in the case of our Gold supply chain. Depending on the additional documentation provided, we could either reopen the account again or kept it blocked

**2. Where a management strategy of risk mitigation is undertaken, it should include measureable steps to be taken and achieved, monitoring of performance, periodic reassessment of risk, and regular reporting to designated senior management.**

**Comments and Demonstration of Compliance:**

Corresponding procedures are in place and are –if necessary – applied accordingly. In case our risk assessment identifies medium or high risks, we actively approach our suppliers to receive further information like proof of origin. If we cannot mitigate our risk assessment to at least medium risk level, we will terminate our supply agreement.

In the reporting period, we request further documentation from two of our major 3T supplier before continuing our relationship.

**Step 4: Arrange for an independent third-party audit of the supply chain due diligence**

**Compliance Statement with Requirement:**

We have fully complied with Step 4: Arrange for an independent third-party audit of the supply chain due diligence.

# Heraeus Compliance Report 2016 for HDE

## Comments and Demonstration of Compliance:

Heraeus has successfully passed the audits without instances of non-compliance for 2012-2015 and we again engaged the services of assurance provider PwC Germany for a reasonable assurance audit in 2016; these reports can be viewed in the download section:

[www.herae.us/conflictminerals](http://www.herae.us/conflictminerals)

## Step 5: Report on supply chain due diligence

### Compliance Statement with Requirement:

We have fully complied with Step 5: Report on supply chain due diligence.

### Comments

Further information and details of how Heraeus' systems, procedures, processes and controls have been implemented to align to the specific requirements in the *LBMA Responsible Gold Guidance* as well as the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas" – Third edition April 2016 have been set out in our supply chain policy which is available on our company website's download sections:

[www.herae.us/conflictminerals](http://www.herae.us/conflictminerals)

## Heraeus overall conclusion

Table 3: Management conclusion	
<b>Is the refiner in compliance with the requirements of the LBMA Responsible Gold Guidance and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas for the reporting period?</b>	
<b>YES</b>	In conclusion, Heraeus implemented effective management systems, procedures, processes and practices to conform to the requirements of the LBMA Responsible Gold Guidance as well as the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas" – Third edition April 2016 - as explained above in Table 2, for the reporting year ending 31 <sup>st</sup> of December 2016. Heraeus strives to continuously improve, and any corrective actions identified will be implemented and monitored internally on a regular basis by its compliance and responsibility team.

## Other details

Table 4: Other report comments
If readers of this report wish to provide any feedback to Heraeus please contact the HDE compliance officer at: <a href="mailto:juergen.mueller@heraeus.com">juergen.mueller@heraeus.com</a> .

## Addendum

Table 5: Relevant for the audit are the following Heraeus companies:		
Business Group: <b>Heraeus Deutschland - HDE</b>	<b>Value Chain Step</b>	<b>Locations:</b>
Heraeus Deutschland GmbH & Co. KG	Refiner (LBMA GD Status)	Hanau, Germany
Heraeus Ltd.	Refiner (LBMA GD Status)	Hong Kong; People's Republic of China
Heraeus Metals Germany GmbH and Co. KG	Downstream	Hanau, Germany

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Heraeus Sensor Technology GmbH	Downstream	Kleinostheim, Germany
Heraeus Metals Hong Kong Ltd.	Downstream	Hong Kong; People's Republic of China
Heraeus Metals Shanghai Ltd.	Downstream	Shanghai; People's Republic of China
Heraeus Metals New York LLC	Downstream	New York, USA
Heraeus Precious Metals North America Conshohocken LLC	Downstream	Conshohocken, USA
Heraeus Precious Metals North America LLC	Refiner (COMEX listed for Au, Pd and Pt)	Newark, NJ, & Santa Fee Springs, CA; USA
Heraeus Medical Components, LLC	Downstream	St. Paul, MN; USA
Heraeus Medical Components Caribe, Inc.	Downstream	Dorado; Puerto Rico
Heraeus Materials Singapore Pte. Ltd.	Downstream	Singapore
Heraeus Materials Malaysia Sdn Bhd	Downstream	Malaysia
Heraeus Materials S.A.	Downstream	Yverdon; Switzerland
Heraeus South Africa (Pty.) Ltd.	Downstream	Port Elizabeth; South Africa
Heraeus Materials Technology Shanghai Ltd.	Downstream	Shanghai; People's Republic of China
Heraeus Zhaoyuan Changshu Electronic Materials Co., Ltd.	Downstream	Changshu; People's Republic of China
Heraeus Zhaoyuan Precious Metal Materials Co. Ltd.	Downstream	Zhaoyuan; People's Republic of China
Heraeus Materials Technology Taiwan Ltd	Downstream	Taipei; Taiwan
Heraeus Romania S.r.l. (RO)	Downstream	Chisoda; Romania
Heraeus Tokmak A.S.	Downstream	Izmir; Turkey
Heraeus Oriental HiTec Co., Ltd.	Downstream	Incheon; South Korea

Hanau, February 3rd 2017

i.V. Dr. Juergen Mueller-Schaefer

## Heraeus Compliance Report 2016 for HDE

Annex 1	List of countries of origin of mined Gold:
	<b>Philippines</b>
	<b>Thailand</b>
	<b>USA</b>
	<b>Canada</b>
	<b>Europe (Finland, Sweden)</b>
	<b>South Africa</b>



# Allgemeine Auftragsbedingungen

## für

### Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften

vom 1. Januar 2002

#### 1. Geltungsbereich

(1) Die Auftragsbedingungen gelten für die Verträge zwischen Wirtschaftsprüfern oder Wirtschaftsprüfungsgesellschaften (im nachstehenden zusammenfassend „Wirtschaftsprüfer“ genannt) und ihren Auftraggebern über Prüfungen, Beratungen und sonstige Aufträge, soweit nicht etwas anderes ausdrücklich schriftlich vereinbart oder gesetzlich zwingend vorgeschrieben ist.

(2) Werden im Einzelfall ausnahmsweise vertragliche Beziehungen auch zwischen dem Wirtschaftsprüfer und anderen Personen als dem Auftraggeber begründet, so gelten auch gegenüber solchen Dritten die Bestimmungen der nachstehenden Nr. 9.

#### 2. Umfang und Ausführung des Auftrages

(1) Gegenstand des Auftrages ist die vereinbarte Leistung, nicht ein bestimmter wirtschaftlicher Erfolg. Der Auftrag wird nach den Grundsätzen ordnungsmäßiger Berufsausübung ausgeführt. Der Wirtschaftsprüfer ist berechtigt, sich zur Durchführung des Auftrages sachverständiger Personen zu bedienen.

(2) Die Berücksichtigung ausländischen Rechts bedarf – außer bei betriebswirtschaftlichen Prüfungen – der ausdrücklichen schriftlichen Vereinbarung.

(3) Der Auftrag erstreckt sich, soweit er nicht darauf gerichtet ist, nicht auf die Prüfung der Frage, ob die Vorschriften des Steuerrechts oder Sondervorschriften, wie z.B. die Vorschriften des Preis-, Wettbewerbsbeschränkungs- und Bewirtschaftungsrechts beachtet sind; das gleiche gilt für die Feststellung, ob Subventionen, Zulagen oder sonstige Vergünstigungen in Anspruch genommen werden können. Die Ausführung eines Auftrages umfaßt nur dann Prüfungshandlungen, die gezielt auf die Aufdeckung von Buchfälschungen und sonstigen Unregelmäßigkeiten gerichtet sind, wenn sich bei der Durchführung von Prüfungen dazu ein Anlaß ergibt oder dies ausdrücklich schriftlich vereinbart ist.

(4) Ändert sich die Rechtslage nach Abgabe der abschließenden beruflichen Äußerung, so ist der Wirtschaftsprüfer nicht verpflichtet, den Auftraggeber auf Änderungen oder sich daraus ergebende Folgerungen hinzuweisen.

#### 3. Aufklärungspflicht des Auftraggebers

(1) Der Auftraggeber hat dafür zu sorgen, daß dem Wirtschaftsprüfer auch ohne dessen besondere Aufforderung alle für die Ausführung des Auftrages notwendigen Unterlagen rechtzeitig vorgelegt werden und ihm von allen Vorgängen und Umständen Kenntnis gegeben wird, die für die Ausführung des Auftrages von Bedeutung sein können. Dies gilt auch für die Unterlagen, Vorgänge und Umstände, die erst während der Tätigkeit des Wirtschaftsprüfers bekannt werden.

(2) Auf Verlangen des Wirtschaftsprüfers hat der Auftraggeber die Vollständigkeit der vorgelegten Unterlagen und der gegebenen Auskünfte und Erklärungen in einer vom Wirtschaftsprüfer formulierten schriftlichen Erklärung zu bestätigen.

#### 4. Sicherung der Unabhängigkeit

Der Auftraggeber steht dafür ein, daß alles unterlassen wird, was die Unabhängigkeit der Mitarbeiter des Wirtschaftsprüfers gefährden könnte. Dies gilt insbesondere für Angebote auf Anstellung und für Angebote, Aufträge auf eigene Rechnung zu übernehmen.

#### 5. Berichterstattung und mündliche Auskünfte

Hat der Wirtschaftsprüfer die Ergebnisse seiner Tätigkeit schriftlich darzustellen, so ist nur die schriftliche Darstellung maßgebend. Bei Prüfungsaufträgen wird der Bericht, soweit nichts anderes vereinbart ist, schriftlich erstattet. Mündliche Erklärungen und Auskünfte von Mitarbeitern des Wirtschaftsprüfers außerhalb des erteilten Auftrages sind stets unverbindlich.

#### 6. Schutz des geistigen Eigentums des Wirtschaftsprüfers

Der Auftraggeber steht dafür ein, daß die im Rahmen des Auftrages vom Wirtschaftsprüfer gefertigten Gutachten, Organisationspläne, Entwürfe, Zeichnungen, Aufstellungen und Berechnungen, insbesondere Massen- und Kostenberechnungen, nur für seine eigenen Zwecke verwendet werden.

#### 7. Weitergabe einer beruflichen Äußerung des Wirtschaftsprüfers

(1) Die Weitergabe beruflicher Äußerungen des Wirtschaftsprüfers (Berichte, Gutachten und dgl.) an einen Dritten bedarf der schriftlichen Zustimmung des Wirtschaftsprüfers, soweit sich nicht bereits aus dem Auftragsinhalt die Einwilligung zur Weitergabe an einen bestimmten Dritten ergibt.

Gegenüber einem Dritten haftet der Wirtschaftsprüfer (im Rahmen von Nr. 9) nur, wenn die Voraussetzungen des Satzes 1 gegeben sind.

(2) Die Verwendung beruflicher Äußerungen des Wirtschaftsprüfers zu Werbezwecken ist unzulässig; ein Verstoß berechtigt den Wirtschaftsprüfer zur fristlosen Kündigung aller noch nicht durchgeführten Aufträge des Auftraggebers.

#### 8. Mängelbeseitigung

(1) Bei etwaigen Mängeln hat der Auftraggeber Anspruch auf Nacherfüllung durch den Wirtschaftsprüfer. Nur bei Fehlschlägen der Nacherfüllung kann er auch Herabsetzung der Vergütung oder Rückgängigmachung des Vertrages verlangen; ist der Auftrag von einem Kaufmann im Rahmen seines Handelsgewerbes, einer juristischen Person des öffentlichen Rechts oder von einem öffentlich-rechtlichen Sondervermögen erteilt worden, so kann der Auftraggeber die Rückgängigmachung des Vertrages nur verlangen, wenn die erbrachte Leistung wegen Fehlschlagens der Nacherfüllung für ihn ohne Interesse ist. Soweit darüber hinaus Schadensersatzansprüche bestehen, gilt Nr. 9.

(2) Der Anspruch auf Beseitigung von Mängeln muß vom Auftraggeber unverzüglich schriftlich geltend gemacht werden. Ansprüche nach Abs. 1, die nicht auf einer vorsätzlichen Handlung beruhen, verjähren nach Ablauf eines Jahres ab dem gesetzlichen Verjährungsbeginn.

(3) Offenbare Unrichtigkeiten, wie z.B. Schreibfehler, Rechenfehler und formelle Mängel, die in einer beruflichen Äußerung (Bericht, Gutachten und dgl.) des Wirtschaftsprüfers enthalten sind, können jederzeit vom Wirtschaftsprüfer auch Dritten gegenüber berichtigt werden. Unrichtigkeiten, die geeignet sind, in der beruflichen Äußerung des Wirtschaftsprüfers enthaltene Ergebnisse in Frage zu stellen, berechtigen diesen, die Äußerung auch Dritten gegenüber zurückzunehmen. In den vorgenannten Fällen ist der Auftraggeber vom Wirtschaftsprüfer tunlichst vorher zu hören.

#### 9. Haftung

(1) Für gesetzlich vorgeschriebene Prüfungen gilt die Haftungsbeschränkung des § 323 Abs. 2 HGB.

(2) Haftung bei Fahrlässigkeit, Einzelner Schadensfall

Falls weder Abs. 1 eingreift noch eine Regelung im Einzelfall besteht, ist die Haftung des Wirtschaftsprüfers für Schadensersatzansprüche jeder Art, mit Ausnahme von Schäden aus der Verletzung von Leben, Körper und Gesundheit, bei einem fahrlässig verursachten einzelnen Schadensfall gem. § 54 a Abs. 1 Nr. 2 WPO auf 4 Mio. € beschränkt; dies gilt auch dann, wenn eine Haftung gegenüber einer anderen Person als dem Auftraggeber begründet sein sollte. Ein einzelner Schadensfall ist auch bezüglich eines aus mehreren Pflichtverletzungen stammenden einheitlichen Schadens gegeben. Der einzelne Schadensfall umfaßt sämtliche Folgen einer Pflichtverletzung ohne Rücksicht darauf, ob Schäden in einem oder in mehreren aufeinanderfolgenden Jahren entstanden sind. Dabei gilt mehrfaches auf gleicher oder gleichartiger Fehlerquelle beruhendes Tun oder Unterlassen als einheitliche Pflichtverletzung, wenn die betreffenden Angelegenheiten miteinander in rechtlichem oder wirtschaftlichem Zusammenhang stehen. In diesem Fall kann der Wirtschaftsprüfer nur bis zur Höhe von 5 Mio. € in Anspruch genommen werden. Die Begrenzung auf das Fünffache der Mindestversicherungssumme gilt nicht bei gesetzlich vorgeschriebenen Pflichtprüfungen.

(3) Ausschlussfristen

Ein Schadensersatzanspruch kann nur innerhalb einer Ausschlussfrist von einem Jahr geltend gemacht werden, nachdem der Anspruchsberechtigte von dem Schaden und von dem anspruchsbegründenden Ereignis Kenntnis erlangt hat, spätestens aber innerhalb von 5 Jahren nach dem anspruchsbegründenden Ereignis. Der Anspruch erlischt, wenn nicht innerhalb einer Frist von sechs Monaten seit der schriftlichen Ablehnung der Ersatzleistung Klage erhoben wird und der Auftraggeber auf diese Folge hingewiesen wurde.

Das Recht, die Einrede der Verjährung geltend zu machen, bleibt unberührt. Die Sätze 1 bis 3 gelten auch bei gesetzlich vorgeschriebenen Prüfungen mit gesetzlicher Haftungsbeschränkung.



## 10. Ergänzende Bestimmungen für Prüfungsaufträge

(1) Eine nachträgliche Änderung oder Kürzung des durch den Wirtschaftsprüfer geprüften und mit einem Bestätigungsvermerk versehenen Abschlusses oder Lageberichts bedarf, auch wenn eine Veröffentlichung nicht stattfindet, der schriftlichen Einwilligung des Wirtschaftsprüfers. Hat der Wirtschaftsprüfer einen Bestätigungsvermerk nicht erteilt, so ist ein Hinweis auf die durch den Wirtschaftsprüfer durchgeführte Prüfung im Lagebericht oder an anderer für die Öffentlichkeit bestimmter Stelle nur mit schriftlicher Einwilligung des Wirtschaftsprüfers und mit dem von ihm genehmigten Wortlaut zulässig.

(2) Widerruft der Wirtschaftsprüfer den Bestätigungsvermerk, so darf der Bestätigungsvermerk nicht weiterverwendet werden. Hat der Auftraggeber den Bestätigungsvermerk bereits verwendet, so hat er auf Verlangen des Wirtschaftsprüfers den Widerruf bekanntzugeben.

(3) Der Auftraggeber hat Anspruch auf fünf Berichtsausfertigungen. Weitere Ausfertigungen werden besonders in Rechnung gestellt.

## 11. Ergänzende Bestimmungen für Hilfeleistung in Steuersachen

(1) Der Wirtschaftsprüfer ist berechtigt, sowohl bei der Beratung in steuerlichen Einzelfragen als auch im Falle der Dauerberatung die vom Auftraggeber genannten Tatsachen, insbesondere Zahlenangaben, als richtig und vollständig zugrunde zu legen; dies gilt auch für Buchführungsaufträge. Er hat jedoch den Auftraggeber auf von ihm festgestellte Unrichtigkeiten hinzuweisen.

(2) Der Steuerberatungsauftrag umfaßt nicht die zur Wahrung von Fristen erforderlichen Handlungen, es sei denn, daß der Wirtschaftsprüfer hierzu ausdrücklich den Auftrag übernommen hat. In diesem Falle hat der Auftraggeber dem Wirtschaftsprüfer alle für die Wahrung von Fristen wesentlichen Unterlagen, insbesondere Steuerbescheide, so rechtzeitig vorzulegen, daß dem Wirtschaftsprüfer eine angemessene Bearbeitungszeit zur Verfügung steht.

(3) Mangels einer anderweitigen schriftlichen Vereinbarung umfaßt die laufende Steuerberatung folgende, in die Vertragsdauer fallenden Tätigkeiten:

- a) Ausarbeitung der Jahressteuererklärungen für die Einkommensteuer, Körperschaftsteuer und Gewerbesteuer sowie der Vermögensteuererklärungen, und zwar auf Grund der vom Auftraggeber vorzulegenden Jahresabschlüsse und sonstiger, für die Besteuerung erforderlicher Aufstellungen und Nachweise
- b) Nachprüfung von Steuerbescheiden zu den unter a) genannten Steuern
- c) Verhandlungen mit den Finanzbehörden im Zusammenhang mit den unter a) und b) genannten Erklärungen und Bescheiden
- d) Mitwirkung bei Betriebsprüfungen und Auswertung der Ergebnisse von Betriebsprüfungen hinsichtlich der unter a) genannten Steuern
- e) Mitwirkung in Einspruchs- und Beschwerdeverfahren hinsichtlich der unter a) genannten Steuern.

Der Wirtschaftsprüfer berücksichtigt bei den vorgenannten Aufgaben die wesentliche veröffentlichte Rechtsprechung und Verwaltungsauffassung.

(4) Erhält der Wirtschaftsprüfer für die laufende Steuerberatung ein Pauschalhonorar, so sind mangels anderweitiger schriftlicher Vereinbarungen die unter Abs. 3 d) und e) genannten Tätigkeiten gesondert zu honorieren.

(5) Die Bearbeitung besonderer Einzelfragen der Einkommensteuer, Körperschaftsteuer, Gewerbesteuer, Einheitsbewertung und Vermögensteuer sowie aller Fragen der Umsatzsteuer, Lohnsteuer, sonstigen Steuern und Abgaben erfolgt auf Grund eines besonderen Auftrages. Dies gilt auch für

- a) die Bearbeitung einmalig anfallender Steuerangelegenheiten, z. B. auf dem Gebiet der Erbschaftsteuer, Kapitalverkehrsteuer, Grunderwerbsteuer,
- b) die Mitwirkung und Vertretung in Verfahren vor den Gerichten der Finanz- und der Verwaltungsgerichtsbarkeit sowie in Steuerstrafsachen und
- c) die beratende und gutachtliche Tätigkeit im Zusammenhang mit Umwandlung, Verschmelzung, Kapitalerhöhung und -herabsetzung, Sanierung, Eintritt und Ausscheiden eines Gesellschafters, Betriebsveräußerung, Liquidation und dergleichen.

(6) Soweit auch die Ausarbeitung der Umsatzsteuerjahreserklärung als zusätzliche Tätigkeit übernommen wird, gehört dazu nicht die Überprüfung etwaiger besonderer buchmäßiger Voraussetzungen sowie die Frage, ob alle in Betracht kommenden umsatzsteuerrechtlichen Vergünstigungen wahrgenommen worden sind. Eine Gewähr für die vollständige Erfassung der Unterlagen zur Geltendmachung des Vorsteuerabzuges wird nicht übernommen.

## 12. Schweigepflicht gegenüber Dritten, Datenschutz

(1) Der Wirtschaftsprüfer ist nach Maßgabe der Gesetze verpflichtet, über alle Tatsachen, die ihm im Zusammenhang mit seiner Tätigkeit für den Auftraggeber bekannt werden, Stillschweigen zu bewahren, gleichviel, ob es sich dabei um den Auftraggeber selbst oder dessen Geschäftsverbindungen handelt, es sei denn, daß der Auftraggeber ihn von dieser Schweigepflicht entbindet.

(2) Der Wirtschaftsprüfer darf Berichte, Gutachten und sonstige schriftliche Äußerungen über die Ergebnisse seiner Tätigkeit Dritten nur mit Einwilligung des Auftraggebers aushändigen.

(3) Der Wirtschaftsprüfer ist befugt, ihm anvertraute personenbezogene Daten im Rahmen der Zweckbestimmung des Auftraggebers zu verarbeiten oder durch Dritte verarbeiten zu lassen.

## 13. Annahmeverzug und unterlassene Mitwirkung des Auftraggebers

Kommt der Auftraggeber mit der Annahme der vom Wirtschaftsprüfer angebotenen Leistung in Verzug oder unterläßt der Auftraggeber eine ihm nach Nr. 3 oder sonstwie obliegende Mitwirkung, so ist der Wirtschaftsprüfer zur fristlosen Kündigung des Vertrages berechtigt. Unberührt bleibt der Anspruch des Wirtschaftsprüfers auf Ersatz der ihm durch den Verzug oder die unterlassene Mitwirkung des Auftraggebers entstandenen Mehraufwendungen sowie des verursachten Schadens, und zwar auch dann, wenn der Wirtschaftsprüfer von dem Kündigungsrecht keinen Gebrauch macht.

## 14. Vergütung

(1) Der Wirtschaftsprüfer hat neben seiner Gebühren- oder Honorarforderung Anspruch auf Erstattung seiner Auslagen; die Umsatzsteuer wird zusätzlich berechnet. Er kann angemessene Vorschüsse auf Vergütung und Auslagenersatz verlangen und die Auslieferung seiner Leistung von der vollen Befriedigung seiner Ansprüche abhängig machen. Mehrere Auftraggeber haften als Gesamtschuldner.

(2) Eine Aufrechnung gegen Forderungen des Wirtschaftsprüfers auf Vergütung und Auslagenersatz ist nur mit unbestrittenen oder rechtskräftig festgestellten Forderungen zulässig.

## 15. Aufbewahrung und Herausgabe von Unterlagen

(1) Der Wirtschaftsprüfer bewahrt die im Zusammenhang mit der Erledigung eines Auftrages ihm übergebenen und von ihm selbst angefertigten Unterlagen sowie den über den Auftrag geführten Schriftwechsel zehn Jahre auf.

(2) Nach Befriedigung seiner Ansprüche aus dem Auftrag hat der Wirtschaftsprüfer auf Verlangen des Auftraggebers alle Unterlagen herauszugeben, die er aus Anlaß seiner Tätigkeit für den Auftrag von diesem oder für diesen erhalten hat. Dies gilt jedoch nicht für den Schriftwechsel zwischen dem Wirtschaftsprüfer und seinem Auftraggeber und für die Schriftstücke, die dieser bereits in Urschrift oder Abschrift besitzt. Der Wirtschaftsprüfer kann von Unterlagen, die er an den Auftraggeber zurückgibt, Abschriften oder Fotokopien anfertigen und zurückbehalten.

## 16. Anzuwendendes Recht

Für den Auftrag, seine Durchführung und die sich hieraus ergebenden Ansprüche gilt nur deutsches Recht.

# General Engagement Terms

for

## Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]  
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

### 1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

### 2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

### 3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

### 4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

### 5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

### 6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

### 7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

### 8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

### 9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

## 10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

## 11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

## 12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

## 13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

## 14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

## 15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

## 16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.