

Report on the examination in the scope of conversion  
according to Art. 37 (6) SE-Regulation  
of

**Deufol Aktiengesellschaft, Hofheim am Taunus  
(Wallau),**

to

**Deufol SE, Hofheim am Taunus (Wallau)**

Convenience  
Translation

<b>Content</b>	<b>Page</b>
<b>A. ASSIGNMENT AND EXECUTION OF ASSIGNMENT</b>	<b>1</b>
1. EXAMINATION ASSIGNMENT	1
2. TYPE AND SCOPE OF THE EXAMINATION	3
<b>B. LEGAL AND ECONOMIC SITUATION</b>	<b>6</b>
<b>C. EQUITY IN ACCORDANCE WITH ART. 37 (6) SE-REGULATION</b>	<b>10</b>
<b>D. DETERMINATION OF THE NET ASSET VALUE</b>	<b>13</b>
1. CORPORATE VALUE ANALYSIS	13
1.1 DISCOUNTED EARNINGS METHOD	13
1.1.1 CORPORATE PLANNING	13
1.1.2 DISCOUNT RATE	15
1.2 LIQUIDATION VALUE	18
1.3 SUBSTANCE VALUE	18
2. MARKET CAPITALIZATION	19
3. BALANCE SHEET ANALYSIS	20
3.1. PRINCIPLES AND METHODS OF VALUATION	20
3.2. PRESENTATION OF MATERIAL ASSETS AND LIABILITIES	21
3.2.1. INTANGIBLE ASSETS AND FIXED ASSETS	21
3.2.2. FINANCIAL ASSETS	22
3.2.3. RECEIVABLES AND OTHER ASSETS	22
3.2.4. DEBTS	23
3.2.5. DEFERRED ITEMS	23
3.3. RESULT ON THE BALANCE SHEET ANALYSIS	23
4. ASSESSMENT OF NET ASSET VALUE	24
<b>E. CERTIFICATE</b>	<b>25</b>

## Appendices

1. List of shareholdings of Deufol AG as of 31 December 2011
2. Documentation of the activity of examination according to person, place, nature and time
3. The General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of 1 January 2002

For computational reasons, rounding differences of +/- one unit (€, T€, % etc.) may arise in the tables.

## Abbreviation List

AG	Stock Corporation
AktG	German Stock Corporation Act
AKU	Working Group Corporate Valuation of IDW
approx.	approximately
Art.	Article
CAPM	Capital Asset Pricing Model
cf.	compare
DCF	Discounted Cash Flow
Deufol and Deufol AG, respectively	Deufol Aktiengesellschaft, Hofheim (Wallau)
€	Euro
EGHGB	Introductory Law to German Commercial Code
e.g.	for example
etc.	et cetera
et seqq.	and the following
FAUB	Expert Committee for Company Valuation and Business Economics of the IDW (formerly: Working Group for Company Valuation (AKU))
FN-IDW	IDW Technical Information
HFA	IDW Expert Committee
HGB	German Commercial Code
HR	Commercial Register
IDW	Institut der Wirtschaftsprüfer in Deutschland e.V., Düsseldorf
IDW RS HFA 10	Application of the principles of the IDW S1 when valuing participations and other corporate stake holdings for the purpose of annual financial statements
IDW S 1 in the version of 2008	IDW Report S 1 in the version as of 2 April 2008 "Principles on the Implementation of Business Valuations"
i.e.	that is
k€	thousand Euro
m.	million(s)
no.	Number
p.	Page
P&L	Profit and loss statement

SE	Societas Europaea (public EU company)
Sect.	section
SE-Regulation	Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

## **A. ASSIGNMENT AND EXECUTION OF ASSIGNMENT**

### **1. EXAMINATION ASSIGNMENT**

Within an ad-hoc-announcement of

**Deufol Aktiengesellschaft,  
Hofheim am Taunus (Wallau),**  
(hereinafter also "Deufol AG", "Deufol" or "Company")

as of 20 April 2012, it was announced that the conversion of the Company to a public European company (Societas Europaea – SE) shall be examined. The ordinary shareholders' meeting of Deufol AG to be held on 4 July 2012 shall decide upon the conversion.

Under Art. 37 (6) SE-Regulation, prior to the shareholders' meeting of the Company, which shall endorse the conversion plan and approve the articles of association of the SE, it must be certified mutatis mutandis under Council Directive 77/91/EEC that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the articles of association. This certificate must be issued by an authorized expert appointed in accordance with the national provision adopted in implementation of Art. 10 of Council Directive 78/855/EEC by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject to.

Upon request of the board of management of Deufol AG, the 5th Chamber of Commercial Matters of the Local Court Frankfurt am Main has appointed us with its decision of 11 May 2012 as the authorized expert for the preparation of a certificate under Art. 37 (6) SE-Regulation.

We have conducted our examination in May 2012 on the premises of Deufol in Hofheim am Taunus (Wallau) and in our office in Düsseldorf.

The following documents have primarily been available to us for the examination:

- Drafts of conversion plan and conversion report of Deufol AG regarding the intended conversion to an SE,
- Draft of the articles of association of Deufol SE dated 15 May 2012,
- Articles of association of Deufol AG,
- Excerpt from the commercial register of Deufol AG,
- Annual report 2011 of Deufol AG,
- Drafts of reports by Warth & Klein Grant Thornton AG Wirtschaftsprüfungsgesellschaft, Wiesbaden, regarding the audit of the consolidated financial statements and the annual financial statements of Deufol AG as of 31 December 2011,
- Reports of Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Stuttgart, regarding the audit of the consolidated financial statements and the annual financial statements of Deufol AG as of 31 December 2010,
- Corporate planning of Deufol AG for the business years 2012 to 2014 dated on 2 March 2012.

Besides the board of management, particularly Mr. Rainer Monetha, Investor Relations, as well as representatives of Warth & Klein Grant Thornton AG Wirtschaftsprüfungsgesellschaft had been available to us as respondents. All requested information has willingly been provided to us.

The board of management of Deufol AG has issued to us a customary Letter of Representation and has therein guaranteed in writing that the explanations and information relevant to our examination have been supplied completely and correctly.

If material changes of planned net assets, financial positions and results of operations or any other bases shall arise between the completion of our examination on 18 May 2012 and the time of resolution of the shareholders' meeting of Deufol AG on 4 July 2012, these changes would have to be taken into account in the assessment of sufficient net asset values as well.

The General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of 1 January 2002, attached as appendix, are decisive for the implementation of our examination and our responsibility, also in relation to third parties. Our liability is determined by no. 9 of the General Engagement Terms. In relation to third parties, no. 1 (2) and no. 9 of the General Engagement Terms are relevant.

This report is exclusively intended for the executive bodies of Deufol AG for information purposes, for making it available to the shareholders in connection with the framework of the shareholders' meeting of the Company that shall resolve on the conversion, as well as for filing with the commercial register court and the district court. Any further disclosure to third parties is inadmissible without our prior written consent.

## **2. TYPE AND SCOPE OF THE EXAMINATION**

In accordance with professional standards we have restricted our examination to its necessary scope in order to determine whether Deufol AG has net asset values at least in the amount of its share capital plus reserves not to be distributed pursuant to statutory provisions or the articles of association in terms of Art. 37 (6) SE-Regulation.

Under Art. 2 (4) in conjunction with Art. 37 (2) SE-Regulation, the conversion of an AG to an SE does neither result in the dissolution of the company nor the establishment of a new legal person. Rather, the conversion of an existing stock corporation as a whole to a European company (SE) constitutes the subject of the conversion under Art. 37 SE-Regulation. Thereby, the legal entity to be converted and the converted target legal form are legally and economically identical.

Pursuant to Art. 10 (2) of the Second Company Law Directive, the expert report has to refer to the applied valuation methods and to state whether the values of the net assets of the AG to change its legal form either reach the amount of the share capital and the reserves not to be distributed pursuant to statutory provisions or the articles of association or exceed it. According to Lutter/Hommelhoff, SE Commentary, remark no. 58 on Art. 37 SE-Regulation, it is not required to give a detailed description and listing of the valued assets.



Generally, a corporate valuation shall be carried out to determine the value of the net assets. Thereby, the valuation date is the day when the shareholders' meeting resolve.

The value of an enterprise is thus as a rule not determined by the isolated values of the individual parts of the assets and debts but by interaction of all values. When determining the real value, it must be accounted for the entirety of all related divisions of a company, like e.g. procurement and distribution relationships and markets, respectively, research and development, organization, financing and management, as all divisions in terms of an overall assessment jointly contribute to the corporate value. As a result, synergies arise from the interaction of the individual assets and debts as well as the divisions. This added value is regularly reflected as an intangible value contribution within the framework of purchase prices for companies as goodwill.

The legislator does not stipulate a specific method for valuating the business. In business economics, jurisdiction and valuation practice generally accepted valuation basics have been established which are applied to the valuation of businesses. Pursuant to prevailing opinion in Germany, the real value of a company is derived from a business valuation, which – apart from few exceptions (e.g. liquidation) – takes into account a present value for future earnings. This present value for future earnings may either be determined under the discounted earnings method or the discounted cash flow method (DCF).

Based on the code of practice by commercial register, this valuation approach is regularly applied. Where entire companies or divisions are contributed by way of a contribution in kind, the value of the contribution in kind is determined in accordance with the discounted earnings method or the DCF-method.

We also deem it appropriate in the case at hand, where the net asset values are assessed in terms of Art. 37 (6) SE-Regulation, to take into account the present value for future earnings as it will ultimately be available as debt coverage potential, assuming going concern. Accordingly, we have carried out a determination of the discounted earnings method for Deufol AG. In addition, we analyzed the market capitalization of Deufol AG.

The valuation principles and methods to be applied by German public auditors when valuating businesses are determined by the IDW Standard: "Principles for the Performance of Business Valuations" (IDW S 1 in the version of 2008) of the Institut der Wirtschaftsprüfer in

Deutschland e.V. and have been amended by the IDW statement on accounting: "Application of the principles of the IDW S 1 when valuing participations and other corporate stake holdings for the purpose of annual financial statements" (IDW RS HFA 10). In accordance with IDW RS HFA 10, the valuation under commercial law is especially carried out for creditor protection purposes and thus serves the determination of debt coverage potential. In the opinion of the Expert Committee for Company Valuation and Business Economics of the IDW (Fachausschuss für Unternehmensbewertung und Betriebswirtschaft (FAUB)) it is appropriate to consider these principles inter alia within the framework of a contribution in kind.

We subscribe to this opinion and our assessment regarding the amount of the corporate value has taken into account the principle pursuant to IDW S 1 in the version of 2008 in conjunction with IDW RS HFA 10.

The district court Frankfurt am Main explains in its decision on the appointment of the expert that under the examination pursuant to Art. 37 (6) SE-Regulation on issuing the net asset value certificate it shall be assumed that a valuation of the Company as a whole based on the discounted earnings method is not necessarily warranted in this case. It is the purpose of the net asset value certificate to attest that sufficient (net) assets are available, which cover the share capital shown in the articles of association of the SE plus potential statutory voluntary reserves. Accordingly, the fixed and current assets as well as receivables and other assets, which are shown in the balance sheet – not with the recorded book value but with their fair market value –, shall be deemed as the subject of the certificate. Following these requirements, we have carried out a respective balance sheet analysis in addition to our consideration of the corporate value.

We did not perform any own audit activities under § 316 et seqq. HGB.

According to the prerequisites of the appointment decision of the district court Frankfurt am Main, we have included as appendix 2 to this report a journal revealing which person at which place and in what manner and at what time has carried out the examination for the preparation of the certificate.

## **B. LEGAL AND ECONOMIC SITUATION**

Deufol AG with its headquarter in Hofheim am Taunus (Wallau) is registered in the commercial register at the district court Frankfurt am Main under HRB 46331.

Currently, the articles of association are available pursuant to the resolution of the shareholders' meeting of 22 June 2010.

The business year of the Company is the calendar year.

The business objective of the Company is the administration of existing participations and such yet to be acquired as well as acting as a managing holding company, in particular for logistics companies.

The Company may operate any business which is appropriate in serving the business objective either directly or indirectly. It may in particular participate in other companies even though these might have a different business objective, acquire these, establish these, assume management for such companies as well as establish domestic or foreign branches and conclude affiliation agreements.

Deufol AG serves as a holding within Deufol group, it makes strategic decisions for the group, bundles central functions and monitors the business of subsidiaries. Subsidiaries, in which Deufol AG participates either directly or indirectly, are mainly operating in the division packaging and related service activities.

The Company is part of the group of Lion's Place GmbH, Hofheim am Taunus.

The share capital of the Company amounts to € 43,773,655 and is divided in 43,773,655 ordinary bearer shares without par value and each with a proportionate amount in the share capital of € 1.00.

Pursuant to § 5 (3) of the articles of association of Deufol AG, the board of management is authorized, with the consent of the supervisory board, to increase the share capital of the Company, by issuing once or repeatedly bearer shares against a contribution in kind, up to a total of € 20,000,000.00 (authorized capital) until 15 June 2014.

In accordance with § 5 (4) of the articles of association, the share capital of the Company is conditionally increased by € 850,000.00. The contingent capital increase will only be carried out to the extent subscription rights have been issued and the bearers of these make use of their subscription rights.

Furthermore, based on the resolution of the shareholders' meeting dated 16 June 2009 and pursuant to § 5 (5) of the articles of association, the share capital has been conditionally increased by a total of up to € 8,413,296.00, divided in 8,413,296 ordinary bearer shares. The contingent capital increase shall only be carried out to the extent the bearers of conversion or option bonds – including conversion or option rights – of D.Logistics AG, which are issued by the Company based on the authorization granted in the shareholders' meeting on 16 June 2009 until 15 June 2014, will make use of their conversion or option right or will fulfill their conversion obligation like holders of bonds with a conversion obligation.

Governing Bodies of the Company are the board of management, the supervisory board and the shareholders' meeting.

The balance sheet (HGB) of Deufol AG as of 31 December 2011 as well as of 31 December 2010 may be illustrated according to the audited financial statements (HGB), which have been issued with an unqualified auditor's opinion, as follows:

<b>Deufol AG</b>				
<b>Balance Sheet according to HGB</b>	<b>31.12.2011</b>		<b>31.12.2010</b>	
<b>Assets</b>	<b>k€</b>	<b>%</b>	<b>k€</b>	<b>%</b>
Intangibles Assets	165	0.1	209	0.2
Property, Plant and Equipment	6,129	5.1	6,218	5.9
Financial Assets	99,670	82.7	97,282	91.6
<b>Total Fixed Assets</b>	<b>105,964</b>	<b>88.0</b>	<b>103,709</b>	<b>97.7</b>
Trade Accounts Receivable and Other Assets	13,113	10.9	2,419	2.3
Cash and Cash Equivalents	591	0.5	22	0.0
<b>Total Current Assets</b>	<b>13,704</b>	<b>11.4</b>	<b>2,441</b>	<b>2.3</b>
<b>Deferred Items</b>	<b>784</b>	<b>0.7</b>	<b>20</b>	<b>0.0</b>
<b>Total Assets</b>	<b>120,452</b>	<b>100.0</b>	<b>106,170</b>	<b>100.0</b>

  

<b>Deufol AG</b>				
<b>Balance Sheet according to HGB</b>	<b>31.12.2011</b>		<b>31.12.2010</b>	
<b>Equity and liabilities</b>	<b>k€</b>	<b>%</b>	<b>k€</b>	<b>%</b>
Subscribed Capital	43,774	36.3	43,774	41.2
Capital Reserve	28,184	23.4	28,184	26.5
Retained Earnings	46	0.0	46	0.0
Profit Retained	9,411	7.8	6,238	5.9
<b>Equity</b>	<b>81,415</b>	<b>67.6</b>	<b>78,242</b>	<b>73.7</b>
<b>Provisions</b>	<b>925</b>	<b>0.8</b>	<b>727</b>	<b>0.7</b>
Financial Liabilities	26,623	22.1	20,838	19.6
Trade Accounts Payable	659	0.5	353	0.3
Liabilities to affiliated Companies	10,719	8.9	5,871	5.5
Other Liabilities	102	0.1	130	0.1
<b>Liabilities</b>	<b>38,103</b>	<b>31.6</b>	<b>27,192</b>	<b>25.6</b>
<b>Deferred Items</b>	<b>9</b>	<b>0.0</b>	<b>9</b>	<b>0.0</b>
<b>Total Equity and Liabilities</b>	<b>120,452</b>	<b>100.0</b>	<b>106,170</b>	<b>100.0</b>

Financial assets amounting to 82.7 % of total assets represent the major share of assets. This indicates that Deufol AG functions primarily as a holding for the subsidiaries of Deufol group.

The increase in receivables and other assets as of 31 December 2011 is mainly attributed to an increase of receivables from affiliated companies, caused by changes in the financing structure of Deufol group.

Generally, the equity was increased based on the annual surplus generated in the business year 2011, which was offset by dividend distributions in the year 2011 amounting to k€ 1,313. It now amounts to k€ 81,415 (31 December 2010: k€ 78,242), which equals a balance sheet equity ratio of 67.6 % (previous year: 73.7 %).

Due to the centralization of financing within Deufol AG by a senior facility agreement about m€ 45 and deletion of bilateral lines of subsidiaries, on balance the liabilities to banks have increased by k€ 5,785 to k€ 26,623 in comparison to 31 December 2010. The increase of liabilities towards affiliated companies of k€ 5,871 as of 31 December 2010 to k€ 10,719 as of 31 December 2011 is caused by the changes in the financing structure of Deufol group.

### C. EQUITY IN ACCORDANCE WITH ART. 37 (6) SE-REGULATION

The capital in accordance with Art. 37 (6) SE-Regulation includes the share capital plus reserves not to be distributed pursuant to statutory provisions or the articles of association.

The equity recorded in the balance sheet of Deufol AG as of 31 December 2011 is composed as follows:

<b>Deufol AG</b>	<b>31.12.2011</b>	
<b>Equity according to Balance Sheet</b>	<b>k€</b>	
Share Capital		43,774
Capital Reserve		
- according to para. 272 (2) No. 1-3 HGB	6,184	
- according to para. 272 (2) No. 4 HGB	22,000	28,184
Retained Earnings		46
Profit Retained		9,411
<b>Equity</b>		<b>81,415</b>

The statutory share capital amounts to € 43,774,655.00.

Deufol AG does not hold any own shares.

As of 31 December 2011, the capital reserve under § 272 (2) no. 4 HGB amounts to k€ 22,000. Unlike capital reserves pursuant to § 272(2) no. 1 to 3 HGB, which may be applied to a stock corporation only under certain prerequisites (§ 150 AktG), the Company is free to dispose of a reserve pursuant to § 272 (2) no. 4 HGB. The character of such reserves pursuant to § 272 (2) no. 4 HGB is described in literature as voluntary payments, which shareholders render without the granting of benefits on the part of the corporation, like e.g. grants as cash benefits or payments in kind (Beckscher Balance Sheet Commentary, 8th edition, remark no. 195 on § 272 HGB). The delimitation of reserves pursuant to § 272 HGB among themselves becomes very obvious compared to the subject matter of § 150 AktG. The provisions in § 150 AktG on reserves under § 272 (2) no. 1 to 3 HGB explicitly serve the purpose of capital conservation and therefore of creditor protection, as much as restricted assets are created through reserves which are set aside to serve as a buffer zone for the assets necessary to cover the share capital (Hüffer, Stock Corporation Act, 10th edition, remark no. 1 on § 150 AktG).

The special character of voluntary contributions which are, pursuant to the will of the legislative, recorded as capital reserve under § 272 (2) no. 4 HGB separately from other capital reserves becomes then in particular evident with regard to withdrawal possibilities. While the reserves under § 272 (2) no. 1 to 3 HGB serving creditor protection may only be employed preserving § 150 AktG and within of the preparation of the financial statements, it may be disposed of the reserves pursuant to § 272 (2) no. 4 HGB at any time (Beckscher Balance Sheet Commentary, 8th edition, remark no. 205 on § 272 HGB).

As a consequence from the delimitation of reserves intended by the legislator and especially due the free availability of "contributions from other payments" according to § 272 (2) no. 4 HGB, these are not included in the scope of reserves under Art. 37 (6) SE-Regulation. It states there explicitly that only "reserves not to be distributed pursuant to statutory provisions or the articles of association" shall be taken into account. However, if parts of the capital reserves are subject to a disposal by the bodies of the Company at any time, these cannot serve the (adequate) creditor protection.

The earnings reserve is a statutory reserve under § 272 (3) HGB in conjunction with § 150 AktG.

With the exception of the capital reserve pursuant to § 272 (2) no. 4 HGB, the reserves in the balance sheet as of 31 December 2011 are subject to certain restrictions on disposition stipulated in the German Stock Corporation Act as well as the German Commercial Code.

The equity under Art. 37 (6) SE-Regulation refers to the equity of the Company after conversion (SE). As neither Deufol AG's share capital nor the reserves not to be distributed pursuant to statutory provisions or the articles of association are modified by the conversion, the equity of Deufol AG may be taken into account.



The equity to be confirmed pursuant to Art. 37 (6) SE-Regulation consists of the share capital (subscribed capital) plus the reserves not to be distributed pursuant to statutory provisions or the articles of association. In case of Deufol AG the equity under Art. 37 (6) SE-Regulation is determined as follows:

<b>Deufol AG</b>	<b>31.12.2011</b>	
<b>Equity according to art. 37 (6) SE-Regulation</b>	<b>k€</b>	
Subscribed Capital		43,774
Capital Reserve	28,184	
Net of Capital Reserve according to para. 272 (2) No. 4 HGB	22,000	6,184
Profit Reserve		46
<b>Equity according to Art. 37 (6) SE-Regulation</b>		<b>50,004</b>

According to the board of management and to the best of our knowledge, no changes in the equity under Art. 37 (6) SE-Regulation have occurred between balance sheet date as of 31 December 2011 and the date of our certificate.

## **D. DETERMINATION OF THE NET ASSET VALUE**

### **1. CORPORATE VALUE ANALYSIS**

#### **1.1 DISCOUNTED EARNINGS METHOD**

The enterprise value determined by the discounted earnings method derives as the present value of the expected net flow of funds to shareholders discounted on the valuation date by using a discount rate.

The present value determined pursuant to the discounted earnings method considers the expected values of financial surpluses predicted in the future, which are derived from the operating assets of the valuation object. Any non-operating assets shall be considered separately within the valuation and include any assets which could be freely sold without affecting the actual purpose of the enterprise.

We carried out a calculation of the discounted earnings value to the date of the shareholders' meeting, i.e. 4 July 2012, where the conversion of the Company to an SE shall be resolved. As a result, a range of the net asset value of Deufol AG may be derived which exceeds the amount of the capital pursuant to Art. 37 (6) SE-Regulation.

For a summary of the corporate planning on which the calculation of the discounted earnings value was based as well as the employed valuation parameters, please refer to the following sections 1.1.1. as well as 1.1.2.

##### **1.1.1 CORPORATE PLANNING**

Within our activities we critically evaluated the corporate planning of Deufol AG with regard to its plausibility based on an analysis of historical data and under consideration of the market and competitive environment as well as the material planning premises and discussed these with the employees of the Company nominated by the management of Deufol AG.

For the valuation of Deufol AG, the determination of the discounted earnings value was based on three planning stages.

For the first so-called detailed planning stage, the valuation is based on an integrated P&L- and balance sheet planning prepared under IFRS principles for Deufol group for the business years 2012 to 2014.

The group planning is based on the planning of the P&Ls of all fully consolidated group companies, which are subsequently consolidated and amended by balance sheet and financial planning at group level. In order to determine the share to be allocated to Deufol AG, the shares of third-party minority shareholders have been eliminated from the planning results.

In the second stage, the last detailed planning year has been extended for valuation purposes under consideration of the growth rate until 2018 to consider that the financial planning at the end of 2014 has not yet reached a steady state.

In the third stage beginning in the year 2019 the terminal value is based on a forward projection of financial surpluses of the year 2018. These have been increased by the expected sustainable growth rate.

The Company has significant tax losses carry-forward. Where usability has been assumed, the value contribution of tax losses carry-forward was considered as a special value. For this purpose, the expected tax savings from the projected profits before taxes at the level of individual companies as well as the projected income tax rates for Germany and the USA have been determined under consideration of loss account possibilities, which are periodically restricted as regards their amount due to applicable tax law. Periodic tax savings thus calculated have been discounted over a longer time period on the valuation date using the same discounting factors as for the determination of the discounted earnings method.

## **1.1.2 DISCOUNT RATE**

### **PRELIMINARY REMARKS**

The interest rate, thus, reflects the return on investment of an alternative investment for the owner of the subject of the valuation which is considered equivalent to the subject of the valuation with regard to the timing, the risk and the taxation of its financial surpluses

In valuation theory and practice the required alternative return on investment is generally calculated from the return of a quasi risk-free alternative investment (base interest rate), which is adjusted for a specific risk premium aligned to the cash flow to be evaluated.

### **BASE INTEREST RATE**

The determination of the base interest rate is oriented under the predominant view on the expected returns on investment for fixed interest securities issued by the government. When determining a virtually risk-free alternative investment, it must also be taken into account that this investment has an equivalent term to a perpetual investment in the enterprise. Since such bonds with perpetual terms do not exist in the German capital market, an estimate of the base interest rate on the basis of current yield curve data can be derived from the yield curve observable on the effective date of the valuation in accordance with the recommendations of the FAUB (formerly the AKU) (84th meeting, FN-IDW no. 1-2/2005, p. 70)

In accordance with this recommendation, we have determined a present value-equivalent base interest rate (prior to personal income taxes) based on a three-month-period as of 18 May 2012 being the date of signing the report by using the data of the German Federal Bank. Taking into account the professional rule on rounding to  $\frac{1}{4}$  percentage points, this results in a base interest rate of 2.50 % results thereof.

### **RISK PREMIUM**

Within the framework of business valuations it is customary to refer to capital market models in order to assess the risk premium. The market based determination of the risk premi-

um occurs in theory and the practice of valuations and in accordance with the IDW S 1 in the version of 2008 by normally using the Capital Asset Pricing Model (CAPM). The CAPM is based on a comparison of the returns on investments for shares in the specific enterprise and the returns on investment for a market portfolio. Accordingly, the specific risk premium for the enterprise is calculated as a product of the so-called market risk premium and the level of risk specific to the enterprise.

The market risk premium corresponds to the difference between the return on investment for a market portfolio and a risk free investment in securities and in effect represents the higher return on investment which is granted by the market for investing in securities involving risk compared to risk-free bonds.

Empirical examinations in the capital market in the past show that the expected value for differences in returns on investment between virtually risk free fixed interest governmental securities and investments in a market portfolio of stocks lie in a range between 3 % and 7 % when extreme fluctuations are not considered. The majority of these capital market examinations has looked at returns on investment before taxes and do not take into account especially potential effects under the half income procedure applicable since 2001 and the corporate tax reform 2008.

On 3 December 2009, FAUB has published notes on the impacts of the crisis on the financial markets and the economic crisis on corporate valuations (FN-IDW 12/2009, p. 696 et seqq.). Regarding this, it stated that since the introduction of withholding tax by means of the German Corporate Tax Reform Act 2008 a market risk premium of 4.5 % to 5.5 % before personal income taxes is deemed as appropriate. In light of the above we regard the application of a market risk premium prior to personal income taxes in the amount of 5.0 %, i.e. the median of the defined range, as appropriate.

The estimated market risk premium for a total market portfolio must be adjusted for the specific risk structure of the enterprise being valued in accordance with CAPM. The relationship between the general market risk and the enterprise specific risk is expressed in the so-called beta.

The beta observable in the capital market initially reflects both the operational risk of the enterprise as well as the respective capital structure risk. In order to isolate the operational

risk, the beta factors observable in the market must be adjusted for the respective capital structure risk (unlevern).

The unlevered beta derived for the individual company exclusively reflects the operational business risks. Subsequently, it is again relevered to the future capital structure of the valuation object to illustrate its financial risk in order to derive the relevered beta.

Based on capital market data (source: Bloomberg), we determined an own beta for Deufol AG, which shows statistical significance. Subsequently, we carried out a peer group analysis. Accordingly, a higher beta results compared with the beta of Deufol AG. According to Deufol AG's board of management, the performance of the share price may possibly has limited relevance (see sect. D.2); therefore, we applied the higher beta of the peer group analysis as regards the assessment. Thereby, as a tendency a lower corporate value results compared with the application of the own beta. In light of the valuation purpose, we deem this approach as appropriate in the interest of verifying the minimum value.

The capital structure risk of Deufol AG has been recorded by adjusting the unlevered beta in each case periodically by the risk effect resulting from the varying debt-equity ratio of the company to be evaluated. To calculate the relevered beta, we regarded the capital requirements of the Company based on the integrated corporate planning.

## **GROWTH DISCOUNT**

By definition, a quasi risk-free alternative investment will generate future profits which nominal amount is almost certainly determined and which remains also steady upon change in the real cash value. In contrast, the investment in a company provides the opportunity of a nominal increase of the future profits despite reduction of real cash value whereas inflation can be shifted to prices per unit.

Besides price effects, volume and structural effects as well as profit accumulations and their reinvestment may influence surplus growth.

The surplus growth perspective will be directly considered in the detailed budgeting period as regards the assessment of the earnings and expenses projection. In the stage of per-

petual annuity (2019 et seqq.), the consideration of growth consisting of price, volume and structural effect will arithmetically be carried out using a discount on interest (growth discount).

Deufol AG's board of management assumes in the long term a growth rate of 1.0 % to 2.0 %. Within calculating the discounted earnings method of the Company, we took into account a discount on the discount rate of 1.0 %, hence at the floor of the range expected by the board of management. Seen from the point of view of the board of management and in light of the valuation purpose as well as the growth already projected for the detailed budgeting period, we deem this rather conservative value as an appropriate parameter.

## **DISCOUNT RATE**

Considering the valuation parameters explained above, a discount rate prior to personal income taxes and prior to a growth discount results in a range from 7.8 % to 9.5 %, which we regarded within the framework of the calculation of the discounted earnings value.

## **1.2 LIQUIDATION VALUE**

The liquidation value results by discounting the financial surpluses resulting in the context of a liquidation of the subject of the valuation. The liquidation value can be considered to be the lowest value for the valuation of the enterprise under IDW S 1 in the version of 2008 if it exceeds the value of future success.

According to the information provided to us, there are no liquidation intentions. In the case at hand we have therefore refrained from determining a liquidation value of Deufol AG due to the considerable profit potential and the planned going concern.

## **1.3 SUBSTANCE VALUE**

The substance value results from the reconstruction or replacement value of all assets and debt contained in the enterprise. Due to the difficulties in determining especially intangible

assets in an enterprise which cannot be entered in the accounts, a substance value in the form of a (net) partial reconstruction value is normally determined. Since the substance value generally does not have the direct relationship to future financial surpluses, the substance value has no independent importance when determining the enterprise value.

Therefore, we did not determine a substance value of Deufol AG.

## **2. MARKET CAPITALIZATION**

In order to evaluate the amount of the net asset value pursuant to Art. 37 (6) SE-Regulation, we additionally took into account the market capitalization resulting from the stock market prices of Deufol AG. It is calculated as a product from the number of outstanding shares of Deufol AG and the stock market price.

As of 18 May 2012, i.e. directly prior to signing our report, based on a stock market price of € 0.92 per share the market capitalization of Deufol AG amounted to approx. € 40.3 m.

For the period comprising 12 months prior to 18 May 2012, based on the data of the information service provider Bloomberg an average stock market price of 1.13 € per share results and, correspondingly, a market capitalization of € 49.5 m.

Deufol AG's board of management explains the market capitalization, which is considerably below the discounted earnings value, with the published ad-hoc-announcements on the change of management within Deufol group and the different governance topics which have had adversely affected the stock market price of Deufol AG during the last months. Furthermore, the decreased liquidity and the manageable number of shares held in free float have had a negative impact on the stock market price as it was transparent during the last half year that the respective offers for buy orders have been placed quickly and thus the stock market price has been kept low.



### **3. BALANCE SHEET ANALYSIS**

Based on the audited financial statements of Deufol AG as of 31 December 2011, in the following we will report on the explanations on the accounting and valuation principles as well as the material assets and debts. Based on the audited book values and the accounting and valuation principles applied in this regard, we have lead over to material hidden reserves or charges and thus to the fair values of assets and debts that possibly deviate from the book values. Latest information on the Company regarding the development of assets and debts in the current business year as well as in particular an interim financial statement for the first quarter 2012 had not been available until the conclusion of our activities. However, according to the information provided by the board of management neither material changes in the applied valuation methods nor a reduction in assets has occurred.

#### **3.1. PRINCIPLES AND METHODS OF VALUATION**

The preparation of the financial statements as of 31 December 2011 has been carried out considering the regulations of HGB and AktG.

Intangible assets acquired for consideration have been capitalized at acquisition cost and amortized over a useful life of three to eight years on a straight-line basis.

Fixed assets have been recorded at acquisition costs and are depreciated straight line according to the useful life expectancy.

Low-value assets with acquisition costs of up to € 150 have been fully written off in the year of acquisition. Low-value assets with acquisition costs of more than € 150 and up to € 1,000 are booked as a collective item and written off over a period of five years using the straight-line method.

Financial assets have been recorded either at acquisition costs or at the lower fair value. Depreciation on the lower fair value is only carried out when a permanent impairment of value is expected.

In principle, receivables and other assets are considered at nominal value. The valuation of non-interest bearing long-term receivables is based on present value. Adequate specific provisions are allowed for all items that carry risks.

Other provisions include provisions for contingencies assessed at the amount which is required to be paid according to a reasonable commercial judgement.

Liabilities are recorded at the amount which is required to be paid.

Receivables and liabilities in foreign currency were converted at the mean spot exchange rate as of the balance sheet date in accordance with the regulation of § 256a HGB.

## 3.2. PRESENTATION OF MATERIAL ASSETS AND LIABILITIES

### 3.2.1. INTANGIBLE ASSETS AND FIXED ASSETS

<b>Deufol AG</b>		
<b>Intangible Assets and Fixed Assets</b>	<b>31.12.2011</b>	<b>31.12.2010</b>
	<b>k€</b>	<b>k€</b>
Acquired Concessions, Industrial Property Rights and similar rights and assets, as well as Licences in such rights and assets	165	209
<b>Intangible Assets</b>	<b>165</b>	<b>209</b>
1. Land, Land Rights and Buildings including Buildings on third party land	5,847	5,978
2. Other Property, Plant and Equipment	282	240
<b>Fixed Assets</b>	<b>6,129</b>	<b>6,218</b>

Fixed assets are exclusively used for operational purposes. According to the Company, no hidden charges in connection with the fixed assets exist.

### 3.2.2. FINANCIAL ASSETS

<b>Deufol AG</b>	<b>31.12.2011</b>	<b>31.12.2010</b>
<b>Financial Assets</b>	<b>k€</b>	<b>k€</b>
1. Shares in affiliated companies	95,607	94,369
2. Loans to affiliated companies	4,063	2,913
<b>Financial Assets</b>	<b>99,670</b>	<b>97,282</b>

Deufol AG, as the holding company of Deufol group, holds either directly or indirectly shares in a number of domestic and foreign companies. An overview of material shareholdings is attached to this report as appendix 1.

Affiliated companies are represented in the consolidated financial statements of Deufol AG including their assets and debts and, in addition, extensive goodwill in the amount of k€ 67,979 as of 31 December 2011. This goodwill was subject to an annual impairment test within the audit of the (consolidated) financial statements of Deufol AG. The Goodwill is an indicator for an estimation of hidden reserves within Deufol AG's financial statements. Accordingly, the book values of the shares held in affiliated companies include hidden reserves amounting to k€ 67,979.

The Company provided to us planning documents which were used for the impairment tests. Based on these documents as well as the explanations made by the Company's board of management, no need for impairment could be detected.

### 3.2.3. RECEIVABLES AND OTHER ASSETS

Among receivables and other assets in the amount of k€ 13,113, liabilities towards affiliated companies of k€ 10,894 are shown. These include trade receivables amounting to k€ 644. Other intra-group receivables represent balances of group clearing accounts, which are influenced by current intercompany clearings, short-term loans as well as profit transfers.

Adequate specific provisions are allowed for all items that carry risks.

#### **3.2.4. DEBTS**

Provisions amounting to k€ 925 mainly include amounts for financial statements and tax returns, royalties and outstanding invoices. Significant items, which are subject to actuarial measurement using suitable estimate parameters and thus constitute a starting point for hidden reserves or liabilities, do not exist.

Liabilities amounting to k€ 38,103 include liabilities to banks of k€ 26,623 and liabilities to affiliated companies amounting to k€ 10,719. Generally, they constitute liabilities within cash pooling, short-term loans as well as current intercompany clearing.

#### **3.2.5. DEFERRED ITEMS**

Deferred items amounting in total to k€ 775 include mainly a disagio of k€ 770, which will be dissolved over the maturity of the respective loan.

### **3.3. RESULT ON THE BALANCE SHEET ANALYSIS**

No evidence that the principles and methods of evaluation illustrated under sect. D.3.1 had not been applied, results from the review of the financial statements as of 31 December 2011 of Deufol AG, which have been issued with an unqualified auditor's opinion by Warth & Klein Grant Thornton AG, as well as the available draft of the auditor's report regarding the financial statements 2011.

As of this balance sheet date, the Company shows equity amounting to k€ 81,415 in its balance sheet (HGB).

Except for financial assets, we have discovered no indication for significant hidden reserves or charges which might result in a deviation between book values and fair values of assets and debts.

Accordingly, on the basis of a balance sheet analysis and under consideration of hidden reserves and charges it is established that, by applying the fair values of the individual as-

sets and debts, sufficient net assets are available which exceed the share capital due to the articles of association and the reserves not to be distributed pursuant to statutory provisions or the articles of association.

#### **4. ASSESSMENT OF NET ASSET VALUE**

The capital within the meaning of Art. 37 (6) SE-Regulation to be compared with the net asset value amounts to approx. **k€ 50,004** (cf. sect. C. of this report).

Based on the calculated discounted earnings value that takes into account the corporate planning illustrated in sect. 1.1.1. as well as the parameters presented in sect. 1.1.2., a range of the net asset value of Deufol AG may be derived which exceeds the amount of the capital pursuant to Art. 37 (6) SE-Regulation. The determined discounted earnings value is also above the equity including the capital reserve pursuant to § 272 (2) no. 4 HGB (cf. sect. C).

Within a scenario analysis, we varied the valuation parameters of the discount rate. Also under consideration of a market risk premium before taxes at the upper limit of the reasonable range currently discussed within the profession as well as a beta increased by 25 %, a discounted earnings value still results above the net asset value.

To validate the plausibility of the calculation of the discounted earnings value, we analyzed the market capitalization of the Company. The discounted earnings value is above the market capitalization of Deufol AG. In light of valuation theory and the statement made by the board of management of Deufol AG regarding the market capitalization, we deem it appropriate focusing on the discounted earnings value for the present analysis.

Following the appointment decision of the district court Frankfurt am Main, we additionally carried out a balance sheet analysis. Accordingly, it also results that Deufol AG has net asset values at least in the amount of its share capital plus reserves not to be distributed pursuant to statutory provisions or the articles of association.

## **E. CERTIFICATE**

In accordance with the final results of our examination under Art. 37 (6) SE-Regulation and after review of the provided documents, accounts, books and writings as well as the information and evidence provided to us, we have issued the following certificate:

"According to our findings, Deufol AG, Hofheim (Wallau), has net asset values at least in the amount of its share capital plus reserves not to be distributed pursuant to statutory provisions or the articles of association."

Düsseldorf, 18 May 2012

Rölfs RP AG  
Wirtschaftsprüfungsgesellschaft

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Markus Kurzhals  
- Public Auditor -

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Jochen Breithaupt  
- Public Auditor -

# APPENDICES

No.	Name and headquarter of the company	Country	Share of the Capital (in %)	Equity in k €	Profit / Loss in 2011 in k €
1	Aircon Airfreight Container Maintenance GmbH, Mörfelden-Walldorf	Germany	56,72	228	18
2	Baumann Technologie GmbH, Oberhausen	Germany	56,00	849	160
3	Deufol Services & IT GmbH, Hofheim	Germany	100,00	-239	-342
4	D.Services Immobilien GmbH & Co. KG i. L., Hofheim	Germany	94,78	112	-20
5	Deufol Nürnberg GmbH, ehem. Deufol Tailleur GmbH, Nürnberg*	Germany	100,00	17.198	0
6	Deufol Mitte GmbH, Hofheim	Germany	100,00	-3.807	-1.650
7	Dualogis GmbH, Erlenbach	Germany	51,00	953	247
8	Abresch Industrieverpackung GmbH, Viernheim	Germany	50,00	2.045	938
9	Deufol Hamburg GmbH, Hamburg	Germany	100,00	194	-108
10	Deufol Frankfurt GmbH, Frankfurt*	Germany	100,00	35	0
11	BVU Bayerisches Verpackungsunternehmen GmbH i. L., ehem. BVU Bayerisches Verpackungsunternehmen GmbH, München **	Germany	100,00	363	-874
12	Deufol West GmbH, Oberhausen*	Germany	100,00	2.177	0
13	Deufol Nord GmbH, Peine	Germany	100,00	1.037	-126
14	Deufol Securitas Int. GmbH, Hamburg**	Germany	50,00	84	-4
15	Deutsche Tailleur Bielefeld GmbH & Co. KG, Bielefeld	Germany	30,00	260	338
16	Deutsche Tailleur Bielefeld Beteiligungs GmbH, Bielefeld	Germany	30,00	57	3
17	Deufol Süd GmbH, Neutraubling*	Germany	100,00	138	0
18	Deufol Produktionsgesellschaft mbH, Hofheim	Germany	100,00	10	-1
19	Deufol Bochum GmbH, Bochum	Germany	100,00	1.143	-271
20	DTG Verpackungslogistik GmbH, Fellbach	Germany	51,02	518	465
21	Fischer Kisten GmbH, Mühlhausen	Germany	100,00	390	64
22	GGZ Gefahrgutzentrum Frankenthal GmbH, Frankenthal	Germany	100,00	-177	-189
23	Deufol Berlin GmbH, Berlin*	Germany	100,00	256	0

\* result after profit transfer

\*\* information as of 31. Dezember 2009



No.	Name and headquarter of the company	Country	Share of the Capital (in %)	Equity in k €	Profit / Loss in 2011 in k €
24	Deufol Remscheid GmbH, Remscheid, ehem. Günter Baumann Transport + Verpackung GmbH, Oberhausen*	Germany	100,00	330	0
25	Horst Lange GmbH, Hamburg	Germany	56,67	223	185
26	IAD Industrieanlagen-Dienst GmbH, München*	Germany	100,00	111	0
27	Deufol München GmbH, München	Germany	100,00	-46	-123
28	SIV Siegerländer Industrieverpackungs GmbH, Kreuztal-Buschhütten	Germany	50,00	337	203
29	Deufol Südwest GmbH, Walldorf, ehem. Walpa Gesellschaft für Übersee und Spezialverpackung mbH, Walldorf	Germany	100,00	2.885	337
30	Deufol Packaging Tienen N. V., Tienen	Belgium	100,00	880	454
31	Deufol Logistics Tienen N. V., Tienen	Belgium	100,00	589	137
32	Deufol België N. V., Tienen	Belgium	100,00	8.436	2.595
33	Arcus Installation B. V. B. A., Houthalen	Belgium	100,00	312	29
34	AT + S N. V., Houthalen	Belgium	100,00	560	35
35	Deufol Wareme S. A., Wareme	Belgium	98,75	4.322	1.922
36	Deufol Charlotte LLC, Charlotte, North Carolina	USA	100,00	9	9
37	Deufol North America Inc., Sunman, Indiana	USA	100,00	-10.196	-987
38	Deufol Sunman Inc., Sunman, Indiana	USA	100,00	2.220	-3.210
39	Deufol (Suzhou) Packaging Co. LTD, Suzhou	China	100,00	37	-22
40	Deufol Italia S. p. A., Fagnano Olona	Italy	100,00	2.308	528
41	Deufol Packaging Italy S. R. L. i. L., Fagnano Olona	Italy	100,00	0	0
42	Deufol St. Nabord SAS, Saint Nabord, ehem. D.Logistics France SAS	France	24,00	66	170
43	Deufol Austria GmbH, Bruck a. d. Leitha, ehem. Logis Industriedienstleistung GmbH, Tulln a. d. Donau	Austria	100,00	-256	-186
44	Deufol Česká republika a. s., ehem. Logis průmyslové obaly a. s., Ivancice	Czech Republic	100,00	1.322	410
45	Deufol Slovensko s. r. o., Krušovce	Slovakia	100,00	1.580	188

\* result after profit transfer

\*\* information as of 31. Dezember 2009

Name	Qualification	Location	Date	Time (Hours)	Type of job
Kurzhals,Markus	Auditor	Düsseldorf	03.05.2012	10,00	Internal kick-off ; project organization
Ebert,Jan	Assistant	Düsseldorf	03.05.2012	10,00	Internal kick-off; preparation of a requirement list of information
Horstmeier, Tim	Auditor	Düsseldorf	03.05.2012	10,00	Induction, internal kick-off, preparation of a checklist for Deufol
Tübben,Sabrina	Senior	Düsseldorf	03.05.2012	5,00	Internal kick-off; requirement list; review of planning + Annual Report 2011 for identification of valuation-relevant facts
Kurzhals,Markus	Auditor	Düsseldorf	04.05.2012	10,00	Examination of individual companies and affiliated group-planning
Ebert,Jan	Assistant	Düsseldorf	04.05.2012	10,00	Examination of individual companies and affiliated group-planning. Preparation individual-planning for analysis
Horstmeier, Tim	Auditor	Düsseldorf	04.05.2012	10,00	Examination of received documents, Preparation of the valuation tool
Trautmann,Tina	Auditor	Office Frankfurt	04.05.2012	3,00	Preparation for a meeting
Tübben,Sabrina	Senior	Düsseldorf	04.05.2012	10,00	Preparation for a meeting on 07.05.2012, valuation-tool with THO, preparing plausibility check of plannings
Kurzhals,Markus	Auditor	Wallau	07.05.2012	10,00	Client meeting for project and plausibility check of plannings
Ebert,Jan	Assistant	Wallau	07.05.2012	10,00	Client meeting for project and plausibility check of plannings
Horstmeier, Tim	Auditor	Wallau	07.05.2012	2,50	Client meeting; Travel time: Düsseldorf - Wallau
Horstmeier, Tim	Auditor	Düsseldorf	07.05.2012	2,00	Client meeting; Travel time: Düsseldorf - Wallau
Horstmeier, Tim	Auditor	Wallau	07.05.2012	5,00	Client meeting Deufol for project and plausibility check of plannings
Trautmann,Tina	Auditor	Office Frankfurt/Wallau	07.05.2012	8,00	Preparation for a meeting, Meeting in Wallau
Tübben,Sabrina	Senior	Wallau	07.05.2012	4,50	Client meeting; Travel time: Düsseldorf - Wallau - Düsseldorf
Tübben,Sabrina	Senior	Wallau	07.05.2012	5,50	Client meeting in Wallau for project and plausibility check of plannings
Kurzhals,Markus	Auditor	Düsseldorf	08.05.2012	10,00	plausibility check of plannings
Ebert,Jan	Assistant	Düsseldorf	08.05.2012	10,00	plausibility check of plannings
Horstmeier, Tim	Auditor	Düsseldorf	08.05.2012	10,00	Valuation-tool , solving the question concerning retained reserve
Trautmann,Tina	Auditor	Frankfurt	08.05.2012	7,00	plausibility check of plannings
Tübben,Sabrina	Senior	Düsseldorf	08.05.2012	10,00	Internal meeting, review of received documents, Valuation (partly THO)
Kurzhals,Markus	Auditor	Düsseldorf	09.05.2012	10,00	Analysis results of valuation
Breithaupt, Jochen	Auditor	Düsseldorf	09.05.2012	5,00	Analysis of relevant reserves; Teammeeting Projectorganization
Ebert,Jan	Assistant	Düsseldorf	09.05.2012	10,00	plausibility check of plannings; Teammeeting
Horstmeier, Tim	Auditor	Düsseldorf	09.05.2012	5,00	Valuation tool; Teammeeting
Trautmann,Tina	Auditor	Düsseldorf	09.05.2012	10,00	plausibility check of plannings; Teammeeting
Tübben,Sabrina	Senior	Düsseldorf	09.05.2012	10,00	Valuation (partly THO), internal meeting, internal discussion peer group and beta with Mr. Monetha
Kurzhals,Markus	Auditor	Düsseldorf	10.05.2012	10,00	Meeting for further projectsteps; Analysis valuation results; discussion stock market price
Breithaupt, Jochen	Auditor	Düsseldorf	10.05.2012	10,00	Valuation tool review; reporting

Name	Qualification	Location	Date	Time (Hours)	Type of job
Ebert,Jan	Assistant	Düsseldorf	10.05.2012	10,00	plausibility check of plannings
Horstmeier, Tim	Auditor	Düsseldorf	10.05.2012	5,00	Valuation review and revision
Trautmann, Tina	Auditor	Düsseldorf	10.05.2012	10,00	plausibility check of plannings
Tübben, Sabrina	Senior	Düsseldorf	10.05.2012	10,00	plausibility check of plannings
Kurzhals, Markus	Auditor	Düsseldorf	11.05.2012	10,00	plausibility check of plannings
Breithaupt, Jochen	Auditor	Düsseldorf	11.05.2012	10,00	Valuation tool review; Discussion valuation parameters and assumptions with THO; adaption report according to valuation tool; preparation balance sheet review
Ebert, Jan	Assistant	Düsseldorf	11.05.2012	10,00	plausibility check of plannings
Horstmeier, Tim	Auditor	Düsseldorf	11.05.2012	5,50	Valuation tool; Meeting JBR
Trautmann, Tina	Auditor	Office Frankfurt/Wallau	11.05.2012	7,00	plausibility check of plannings and meeting in Wallau
Tübben, Sabrina	Senior	Wallau	11.05.2012	5,00	plausibility check of plannings in Wallau with Warth & Klein; travel time: Düsseldorf - Wallau - Düsseldorf
Tübben, Sabrina	Senior	Wallau	11.05.2012	5,00	Meeting in Wallau: Discussion planning with Warth & Klein
Kurzhals, Markus	Auditor		14.05.2012	10,00	Review balance-sheet - analysis financial statements
Trautmann, Tina	Auditor	Office Frankfurt	14.05.2012	8,00	plausibility check of plannings
Horstmeier, Tim	Auditor	Düsseldorf	14.05.2012	8,00	Report of balance-sheet review
Breithaupt, Jochen	Auditor	Düsseldorf	14.05.2012	5,00	Balance-sheet review; Reporting; solving questions concerning decision
Ebert, Jan	Assistant	Düsseldorf	14.05.2012	10,00	plausibility check of plannings; Review committee-report
Tübben, Sabrina	Senior	Düsseldorf	14.05.2012	10,00	Valuation tool, plausibility check of plannings; Determination of multiples for testing value
Kurzhals, Markus	Auditor		15.05.2012	10,00	Analysis balance-sheet
Trautmann, Tina	Auditor	Office Frankfurt/Wallau	15.05.2012	8,00	plausibility check of plannings
Horstmeier, Tim	Auditor	Düsseldorf	15.05.2012	10,00	Valuation-scenario calculation; solving questions concerning balance-sheet review; Additional reporting
Breithaupt, Jochen	Auditor	Düsseldorf	15.05.2012	10,00	Induction report critique; valuation tool - review
Ebert, Jan	Assistant	Düsseldorf	15.05.2012	10,00	plausibility check of plannings
Tübben, Sabrina	Senior	Düsseldorf	15.05.2012	10,00	Conference call Deufol for plausibility check of plannings; Documents valuation tool; modelling special valuation tax loss carryforwards; induction distribution-premise company
Kurzhals, Markus	Auditor		16.05.2012	10,00	Review documents
Horstmeier, Tim	Auditor	Düsseldorf	16.05.2012	2,00	Documentation planning-premise
Ebert, Jan	Assistant	Düsseldorf	16.05.2012	8,00	Documentation planning-premise
Tübben, Sabrina	Senior	Düsseldorf	16.05.2012	10,00	Reprting review and final adjustment of the valuation tool
Kurzhals, Markus	Auditor		18.05.2012	10,00	Review documents
Ebert, Jan	Assistant	Düsseldorf	18.05.2012	5,00	Documents-reporting
Tübben, Sabrina	Senior	Düsseldorf	18.05.2012	10,00	Final report and outstanding documents

# 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 berichtet 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. § 54a 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 sieben 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.