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# ***Report***

of the joint contract auditor

on the audit of the profit and loss transfer agreement ("profit-pooling contract") between TUI AG, Berlin and Hannover, as parent company and Leibniz-Service GmbH, Hannover, as subsidiary

**Convenience translation - the German text is authoritative**

Assignment: 0.0745180.001





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## A. Engagement and performance of the engagement

1. in its resolution of 1 December 2014, Hannover District Court appointed us, PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, as joint expert auditor (**contract auditor**) for the profit and loss transfer agreement due to be completed between

**TUI AG, Berlin und Hannover,**  
(hereinafter also referred to as “AG”)

as parent company and

**Leibniz-Service GmbH, Hannover,**  
(hereinafter also referred to as “GmbH”)

as subsidiary

(the agreement is described by the parties as a ‘profit-pooling contract’, hereinafter also referred to as the ‘PPC’) (Section 293c AktG). Following this resolution, the AG’s management board and the management of the GmbH jointly engaged us to perform an audit of the PPC (hereinafter also referred to as the “contract audit” or simply the “audit”).

2. We conducted our audit in December 2014 at our offices in Hannover.
3. We consulted the following main documents to audit the **proper, typical contents of the PPC**:
  - Initialled draft **PPC** between the AG and the GmbH of 9 December 2014 (attached as Annex I);
  - **Extract from the commercial register** for the AG and the GmbH of 22 December 2014;
  - List of shareholders for the GmbH of 13 September 2007;
  - Documents for the purchase of a 100% interest in TT plc by the AG;
  - **Joint report on the draft PPC** from the management board of the AG and the management of the GmbH) of 15 December 2014;
4. We received all documents, details, explanations and information that we requested from the AG’s management board and the GmbH’s management, and from the relevant employees appointed by them. They provided us with a **written letter of representation** in accordance with German professional requirements.

5. The companies concluding the contract are responsible for the content of the draft PPC.
6. This contract audit report is for the information of the AG's management board and that of the management of the GmbH and is for display at the general meeting or shareholders' meeting and is for reporting the entry of the PPC in the commercial register at the GmbH's registered office.
7. We observed the **regulations governing independence** during our contract audit (Section 293d (1) AktG).

Our **responsibility** for the contract audit towards the AG and its shareholders and towards the GmbH and its shareholders, including in respect of third parties, is governed by Section 293d (2) AktG in conjunction with Section 323 HGB. The "General order conditions for auditors and auditing firms" as of January 1, 2002, attached to this audit report, have also been agreed, including in respect of third parties. This report is exclusively subject to German law, to the exclusion of international civil law. The courts in Frankfurt am Main are the sole place of jurisdiction for claims arising from, or relating to, this report.

## B. Subject and scope of the audit

Pursuant to the wording of the first clause of Section 293b (1) AktG, the **object** of the contract audit is the “affiliation agreement”, in this case the draft of the PPC due to be concluded between the management board of the AG and the GmbH.

8. The **scope** of the audit of a PPC is not explicitly defined in Sections 291 et seq. AktG.
9. According to the prevailing literature (see e.g. Hüffer, AktG, 11<sup>th</sup> Edition, Section 293b margin no. 6), the concluding declaration set out in Section 293e (1) AktG means that for a PPC, the **proportionality of compensation** (Section 304 AktG) and **of the settlement** (Section 305 AktG) for the subsidiary’s external shareholders each form the main focus of the audit.
10. The PPC being audited here does not provide for such compensation and settlement. The reason for this is that on 11 December 2014, the AG became the GmbH's direct sole shareholder following the purchase of the additional interests in TT plc, so that currently no “external shareholders” have interests in the GmbH under Sections 304 and 305 AktG. Our **audit** therefore exclusively extends to whether the non-acceptance of compensation and a settlement in the draft PPC is appropriate.
11. It is not possible to audit the completeness and correctness of the content of the draft PPC because the German Stock Corporation Act (Aktiengesetz) does not explicitly set down the minimum contents of a PPC. Nevertheless, the profit and loss transfer agreement is described in abstract terms in Section 291(1) AktG and its typical contents are defined by Sections 301, 302, 304, and 305 AktG. We therefore **checked whether** the draft PPC includes appropriate **typical provisions** for a profit and loss transfer agreement within the meaning of Section 291 (1) Sentence 1 AktG (in relation to the audit scope see Emmerich in Emmerich/Habersack, Aktien- und GmbH-Konzernrecht, 7<sup>th</sup> Edition, Section 293b Margin no. 19 with further references; also Veil in Spindler/Stilz, AktG, 2<sup>nd</sup> Edition, Section 293b Margin no. 4 et seq. with further references).
12. Finally, the professional literature on German stock corporation law does not agree on whether, and, to what extent, the contract audit should also extend to the (joint) **report on the affiliation agreement** under Section 293a AktG (see e.g. for Hüffer, AktG, 11<sup>th</sup> Edition, Section 293b Margin no. 3 with further references). We have **audited** the “Joint report of the management board of TUI AG and the management of Leibniz-Service GmbH on the conclusion of a profit and loss transfer agreement” of 15 December 2014 for obvious errors, as it contains details with a bearing on the content of our audit described above, including Section V. “**Commentary on the profit and loss transfer agreement**” (on these audit contents see Emmerich in Emmerich/Habersack, Aktien- und GmbH-Konzernrecht, 7<sup>th</sup> Edition, Section 293b Margin no. 15a).

13. Finally, it should be pointed out that the contract auditor's audit does **not** cover the **usefulness, cost effectiveness** and **recognition for tax purposes** of the draft PPC.
14. We performed our **audit** in accordance with the International Standard on Assurance Engagements 3000 (ISAE 3000) from the International Federation of Accountants (IFAC). Accordingly, we must perform our duties and plan and conduct our audit in line with the principle of materiality in such a way that we can issue our finding with **sufficient assurance**. The selection of audit activities was at our discretion as duty-bound auditor.
15. We report on the **audit** in writing as follows, pursuant to Section 293e AktG:

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## C. Audit findings

### I. Classification as a profit and loss transfer agreement pursuant to Section 291 (1) AktG/typical contents

16. The draft contract described as a 'profit-pooling contract' by the management board of the AG and the management of the GmbH is a profit and loss transfer agreement within the meaning of Section 291 (1) Sentence 1 last clause AktG.
17. The draft PPC includes the typical elements for this type of affiliation agreement. There are no obvious objections under German stock corporation law to the typical contents. The following main points are noteworthy:
  1. **Contracting parties**
  18. **The trading name and registered office** of the AG concluding the contract – appropriately described as the controlling company – and the GmbH – appropriately called the subsidiary company – are named in the draft PPC and correspond to the entries in the relevant commercial register.
  2. **Profit transfer (Section 301 AktG)**
  19. The GmbH's obligation to transfer its "entire profits" to the AG, pursuant to the applicable version of Section 301 AktG, is defined as one of the two typical elements of a profit and loss transfer agreement in **Section 1 (1) Sentence 1 Draft PPC. Section 1 (1) Sentence 2 Draft PPC** clarifies that the profits being transferred may not exceed the amount set out in Section 301 AktG.
  20. The agreement in **Section 1 (1) Sentence 2 Draft PPC** whereby the GmbH, with the approval of the AG, can only post from net income to **revenue reserves under Section 272 (3) HGB** if this is permissible under commercial law and financially justified based on prudent business judgment, has not met any objections.
  21. The agreement in **Section 1 (3) Draft PPC** whereby **other revenue reserves formed during the term of the contract** are to be dissolved at the controlling company's request and used to balance a net loss for the year or transferred as profit corresponds to Section 301 Sentence 2 and Section 302 (1) second clause AktG.
  22. The provision contained in **Section 1 (4) PPC** suitably reflects the fact that **other revenue reserves other than those mentioned in Section 1 (3) Draft PPC** may neither be transferred as a profit under Section 301 AktG nor used to balance a net loss for the year for the GmbH.

23. There are no objections to the agreement in **Section 1 (5) Draft PPC** on the transfer obligation for the GmbH's entire fiscal year in which the PPC takes effect at the GmbH's registered office following entry in the commercial register (**retroactive effect of the profit and loss transfer obligation**).

### 3. Transfer of losses (Section 302 AktG)

24. In **Section 2 (1) Draft PPC** an additional typical component of a profit and loss transfer agreement is the AG's **loss compensation obligation** with reference to the applicable version of Section 302 AktG. There are no objections to the retrospective effect provided in **Section 2 (2) Draft PPC** to the beginning of the financial year in which the PPC takes effect following entry in the GmbH's commercial register.
25. The agreement in **Section 2 (3) Draft PPC** on the point in time that a legal entitlement to loss compensation arises and its settlement date corresponds to Section 302 (1) AktG and conforms to the latest supreme court rulings.

### 4. Compensation and settlement (Section 304 and Section 305 AktG)

26. The draft PPC does not contain any agreement on a compensation payment under Section 304 AktG and does not contain a settlement offer under Section 305 AktG. Such content is required under these provisions if "external" shareholders, as defined in the provisions, are participating in the consolidated company. Since 11 December 2014 the AG indirectly holds all interests in the GmbH (= 100% interest) due to its acquisition of full interests in TT plc (= 100% interest).

Since no "external" shareholders have therefore had interests in the GmbH since 11 December 2014 – and, based on the information available, nor will any such shareholders have any interests at the time that the contract is concluded – the draft PPC does not need to provide for any compensation or settlement.

### 5. Entry into force (Section 294 AktG)

27. There is no objection to the **retroactive effect** provided in **Section 1 (5) and Section 2 (2) Draft PPC** for the profit transfer and loss transfer obligation to the beginning of the GmbH's financial year in which the PPC takes effect at its registered office following entry into the commercial register.

## II. Joint contract report

28. We have examined the “Commentary on the profit and loss transfer agreement” in Section V. of the joint report of the AG’s management board and the management of the GmbH under Section 293a AktG on the conclusion of the profit and loss transfer agreement between the AG and the GmbH of 15 December 2014 for obvious errors.
29. We found nothing to give rise to any objections. In particular, the report suitably reflects the content of the draft PPC.

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## D. Audit findings

On 9 December a draft **profit and loss transfer agreement** within the meaning of Section 291 (1) AktG was initialled between TUI AG, which has its registered offices in Berlin and Hannover, as controlling company, and its indirect wholly-owned subsidiary, Leibniz-Service GmbH, which has its registered office in Hannover.

As judicially appointed joint contract auditors we were jointly engaged by the management board of TUI AG and by the management of Leibniz-Service GmbH to audit the profit and loss transfer agreement under Sections 293b, and 293e AktG.

As the concluding **findings of our contract audit** we confirm the following, based on the explanations and evidence furnished to us as well as the details, commentary and information provided to us:

- (a) The draft contract described by the parties as a “profit-pooling contract” is a profit and loss transfer agreement under Section 291 (1) Sentence 1 AktG. It includes the typical elements for this type of affiliation agreement.
- (b) The typical contents of the draft profit and loss transfer agreement do not give rise to any objections.
- (c) The draft profit and loss transfer agreement does not make provision for compensation pursuant to Section 304 AktG and a settlement pursuant to Section 305 AktG. This content is not required at the time of completing our contract audit because Leibniz-Service GmbH does not have an “external” shareholder within the meaning of Sections 304 and 305 AktG.

Hanover, 23 December 2014

PricewaterhouseCoopers  
Aktiengesellschaft  
Wirtschaftsprüfungsgesellschaft

Thomas Stieve  
German Public Auditor

Prof. Dr. Mathias Schellhorn  
German Public Auditor



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## ***Annexes***

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**Annexes****Page**

I Initialled draft PPC between the AG and the GmbH of 9 December 2014..... 1

General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften as of 1 January 2002

*Convenience translation - the German text is authoritative*



## GEWINNABFÜHRUNGSVERTRAG (ORGANSCHAFTSVERTRAG)

Zwischen

- (1) **TUI AG** mit Sitz in Berlin, eingetragen in das Handelsregister des Amtsgerichts Berlin-Charlottenburg unter HRB 321, und mit Sitz in Hannover, eingetragen in das Handelsregister des Amtsgerichts Hannover unter HRB 6580 („**TUI AG**“)

(**Organträgerin**)

und

- (2) **Leibniz-Service GmbH** mit Sitz in Hannover, eingetragen in das Handelsregister des Amtsgerichts Hannover unter HRB 6100 („**LSG**“)

(**Organgesellschaft**)

(Die Organträgerin und die Organgesellschaft jede eine **Partei** und gemeinsam die **Parteien**)

### PRÄAMBEL

- (A) Die Organträgerin hält sämtliche Anteile an der Organgesellschaft, nachdem diese von der TUI Travel PLC auf die TUI AG wirksam übergegangen sind.
- (B) Zwischen der Organträgerin und der Organgesellschaft soll mit Wirkung zum Beginn des Geschäftsjahres der Organgesellschaft, das am 30. September endet, ein steuerliches Organschaftsverhältnis wirksam werden.

Dies vorausgeschickt, vereinbaren die Parteien folgendes:

### § 1 GEWINNABFÜHRUNG

- (1) Die Organgesellschaft verpflichtet sich während der Vertragsdauer, erstmals jedoch für das laufende Geschäftsjahr, ihren ganzen Gewinn unter entsprechender Beachtung des § 301 AktG in seiner jeweils gültigen Fassung an die Organträgerin abzuführen. Dabei darf die Gewinnabführung den entsprechend § 301 AktG in seiner jeweils gültigen Fassung zu berechnenden Betrag nicht überschreiten.
- (2) Die Organgesellschaft kann mit Zustimmung der Organträgerin aus dem Jahresüberschuss Beträge in Gewinnrücklagen (§ 272 Abs. 3 HGB) nur insoweit einstellen, als dies handelsrechtlich zulässig und bei vernünftiger kaufmännischer Beurteilung wirtschaftlich begründet ist.
- (3) Während der Dauer dieses Vertrages gebildete andere Gewinnrücklagen sind - soweit rechtlich zulässig - auf Verlangen der Organträgerin aufzulösen und zum Ausgleich eines Jahresfehlbetrages zu verwenden oder als Gewinn abzuführen.
- (4) Andere als die in Absatz 3 genannten Gewinnrücklagen, insbesondere vor Beginn dieses Vertrages gebildete Gewinnrücklagen, dürfen weder als Gewinn abgeführt noch zum Ausgleich eines Jahresfehlbetrages der Organgesellschaft verwendet werden. Das gleiche gilt für einen in vorvertraglicher Zeit entstandenen Gewinnvortrag sowie für andere Rücklagen.

10.12.14  
11.12.14

- (5) Die Verpflichtung zur Gewinnabführung gilt erstmals für das gesamte Geschäftsjahr der Organgesellschaft, in dem dieser Vertrag wirksam wird. Der Anspruch auf Gewinnabführung entsteht jeweils am Schluss eines Geschäftsjahres der Organgesellschaft und wird zu diesem Zeitpunkt fällig.

## **§ 2 VERLUSTÜBERNAHME**

- (1) Die Regelungen des § 302 AktG in seiner jeweils gültigen Fassung gelten entsprechend.
- (2) Die Verpflichtung zur Verlustübernahme gilt erstmals für das gesamte Geschäftsjahr der Organgesellschaft, in dem dieser Vertrag wirksam wird.
- (3) Soweit nicht nach Abs. 1 abweichend vorgesehen, entsteht der Anspruch auf Verlustübernahme jeweils am Schluss eines Geschäftsjahres der Organgesellschaft und wird zu diesem Zeitpunkt fällig.

## **§ 3 ZUSTIMMUNGSERFORDERNIS; WIRKSAMWERDEN**

- (1) Der Vertrag bedarf der Zustimmung der Gesellschafterversammlungen der Organgesellschaft und der Organträgerin. Zum Zeitpunkt des Abschlusses dieses Vertrages liegt die Zustimmung der Hauptversammlung der TUI AG bereits vor.
- (2) Dieser Vertrag wird mit der Eintragung in das Handelsregister des Sitzes der Organgesellschaft wirksam. § 1 Abs. 5 und § 2 Abs. 2 dieses Vertrages bleiben unberührt.

## **§ 4 LAUFZEIT; KÜNDIGUNG**

- (1) Dieser Vertrag wird für die Zeit bis zum Ablauf von fünf (5) Zeitjahren, gerechnet ab Beginn des Geschäftsjahres der Organgesellschaft, für das die Verpflichtung zur Gewinnabführung (§ 1) bzw. zur Verlustübernahme (§ 2) erstmals gilt, fest vereinbart. Während dieses Zeitraums kann er nur aus wichtigem Grund gekündigt werden.
- (2) Fällt das Ende der fünf (5) Zeitjahre (z.B. wegen der Bildung eines Rumpfgeschäftsjahres) auf einen Zeitpunkt innerhalb des laufenden Geschäftsjahres der Organgesellschaft, so endet der Vertrag frühestens mit Ablauf dieses Geschäftsjahres.
- (3) Dieser Vertrag verlängert sich um jeweils ein (1) Jahr, wenn er nicht unter Einhaltung einer Kündigungsfrist von einem Monat zum Ablauf des Geschäftsjahres gekündigt wird (ordentliche Kündigung), erstmals jedoch zum Ablauf des Geschäftsjahres, nach dessen Ablauf die durch den Vertrag begründete körperschaftsteuerliche Organschaft ihre steuerliche Mindestlaufzeit erfüllt hat. Für die Einhaltung dieser Frist kommt es auf den Zeitpunkt des Zugangs des Kündigungsschreibens bei der jeweils anderen Vertragspartei an.
- (4) Eine vorzeitige Kündigung des Vertrages ist möglich, wenn ein wichtiger Grund vorliegt. Als wichtiger Grund im Sinne dieser Vorschrift gelten insbesondere die vollständige oder teilweise Beendigung der mittelbaren oder einer unmittelbaren Beteiligung der Organträgerin an der Organgesellschaft durch die Organträgerin sowie die Veräußerung der Beteiligung an der LSG durch die TUI AG oder Umwandlungsmaßnahmen wie z.B. die Einbringung der Beteiligung an der LSG oder deren Formwechsel in eine Personengesellschaft bzw. die Verschmelzung, Spaltung einer der beiden Parteien oder die Liquidation einer der beiden Parteien.

## **§ 5 SCHLUSSBESTIMMUNGEN**

- (1) Die Gesellschafter der Organgesellschaft können in Abweichung von § 307 AktG unter Einschluss der neu hinzugekommenen Gesellschafter einstimmig die Fortsetzung dieses Vertrages beschließen.

In diesem Fall wird die Laufzeit des Vertrages nach § 4 dieses Vertrags nicht unterbrochen.

- (2) Änderungen und Ergänzungen dieses Vertrages bedürfen zu ihrer Wirksamkeit der Schriftform. Dies gilt auch für diese Schriftformklausel. Im Übrigen gilt § 295 AktG.
- (3) Sollte eine Bestimmung dieses Vertrages unwirksam oder undurchführbar sein oder werden oder sollte der Vertrag eine Lücke enthalten, wird hierdurch die Gültigkeit der übrigen Bestimmungen dieses Vertrages nicht berührt. An die Stelle der unwirksamen oder undurchführbaren Bestimmung oder zu Ausfüllung der Lücke soll eine wirksame und durchführbare Regelung treten, die im Rahmen des rechtlich möglichen dem rechtlichen und wirtschaftlichen Gehalt der unwirksamen oder undurchführbaren Bestimmung am nächsten kommt. Im übrigen haben die Parteien anstelle der unwirksamen oder undurchführbaren Bestimmung zu vereinbaren, die dem wirtschaftlichen und rechtlichen Gehalt der zu ersetzenden Bestimmung am nächsten kommt.
- (4) Erfüllungsort für die beiderseitigen Verpflichtungen und ausschließlicher Gerichtsstand, auch für die Frage der Wirksamkeit dieses Vertrages, ist Hannover.

✓ 09.12.14  
Hj 9.12.14

Hannover, den

**TUI AG**

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**LSG**

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# 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.