

*English translation of the Allgemeine Auftragsbedingungen für  
Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften*

**General Terms of Engagement  
for  
German Public Auditors and Auditing Firms  
Effective from 1<sup>st</sup> January 2002**

**1. Applicability**

(1) These terms of engagement are applicable to contracts between German public auditors or auditing firms (hereinafter collectively referred to as the "Auditor") and their clients relating to audits, consultancy and other engagements insofar as nothing to the contrary is agreed in writing or has mandatory application by virtue of statute.

(2) If, in an individual case, contractual relations have, exceptionally, also been constituted between the Auditor 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) The subject matter of the engagement is the performance of agreed services, not a particular economic outcome. The engagement shall be carried out in accordance with the principles of proper professional practice. The Auditor is entitled to use suitably qualified persons to execute the engagement.

(2) Other than in the case of operational audits, if regard is to be given to foreign law, express written agreement is required.

(3) The engagement does not extend to an examination of whether the requirements of tax law or special provisions such as, for example, provisions of the laws on price controls, restrictive practices and the regulation of business were observed unless this is the purpose of the engagement; the same applies in relation to determining whether subsidies, allowances or other benefits can be claimed. Execution of an engagement will only include auditing procedures aimed at detecting falsification of accounts and other irregularities if grounds for this arise during the carrying of the audit or if this has been expressly agreed in writing.

(4) If the legal position alters after the Auditor has issued his final professional statement, he is not obliged to inform the client of changes or of any resulting implications.

**3. Client's duty to give information**

(1) The client must ensure that the Auditor is provided with all documents necessary for the conduct of the engagement in good time without the Auditor having to make a special request and must ensure that all events and circumstances which could be of significance for the conduct of the engagement are brought to the Auditor's attention. This also applies in respect of documents, events and circumstances which only become known in the course of the Auditor's work.

(2) At the Auditor's request the client must confirm in a written declaration drafted by the Auditor that the documents provided and the information and declarations given are complete.

**4. Safeguarding the Auditor's independence**

The client warrants that it will refrain from doing anything which could endanger the independence of the Auditor's staff. This applies in particular to offers of employment and to offers to undertake engagements for their own account.

**5. Reporting and verbal information**

If the Auditor is required to present the results of his work in writing, only the written statement is authoritative. In relation to auditing engagements, insofar as nothing to the contrary is agreed, the Auditor's Report shall be made in writing. Verbal statements and information provided by employees of the Auditor outside the engagement awarded are never binding.

**6. Protection of the Auditor's intellectual property**

The client warrants that expert opinions, organisational charts, drafts, drawings, lists and calculations, in particular calculations of quantities and costs, prepared by the Auditor within the scope of his engagement will only be used for its own purposes.

## 7. Disclosure of the Auditor's professional statements

(1) Disclosure of professional statements made by the Auditor (reports, opinions etc.) to third parties requires the written consent of the Auditor insofar as authorisation to make disclosure to a particular third party does not already result from the terms of engagement.

The Auditor is liable (within the scope of No. 9) towards third parties only if the requirements of sentence 1 are fulfilled.

(2) The use of the Auditor's professional statements for promotional purposes is not permitted; an infringement entitles the Auditor to terminate all engagements awarded by the client which have not yet been carried out without notice.

## 8. Correction of faults

(1) In the case of any faults, the client has a claim to subsequent performance by the Auditor. Only in the event of the failure of the subsequent performance can the client demand a reduction in the fee or rescission of the contract; if the engagement was awarded by a businessman within the scope of his trading activity, a legal entity under public law or a special fund under public law, the client can only demand the rescission of the contract if the performance provided is of no interest to it on account of the failure of the subsequent performance. To the extent that there are claims for damages beyond this, No. 9 is applicable.

(2) The client must assert its claim for the correction of faults in writing without delay. Claims in accordance with paragraph (1) above which are not based on an intentional act become time barred one year after commencement of the statutory limitation period.

(3) Obvious inaccuracies such as, for example, typing and arithmetic errors, and defects in form contained in an Auditor's professional statement (report, opinions and the like) can be corrected by the Auditor at any time, including vis-à-vis third parties. Inaccuracies which are capable of calling into question the conclusions contained in the Auditor's professional statement entitle the Auditor to withdraw the statement, including vis-à-vis third parties. In such cases the Auditor should hear the client's views first, if possible.

## 9. Liability

(1) *The limitation on liability contained in Article 323 (2) of the German Commercial Code [Handelsgesetzbuch: HGB] is applicable in respect of audits prescribed by law.*

## (2) *Liability in the case of negligence; individual case of damage*

If (1) is not applicable and no regulation exists in an individual case, the liability of the Auditor for damages claims of any kind, with the exception of loss or damage resulting from death or injury to body or health, is limited pursuant to Article 54a (1) No. 2 of the Auditors' Regulations [*Wirtschaftsprüferordnung: WPO*] in respect of an individual case of loss or damage caused through negligence to €4 million; this also applies if liability should be established towards a person other than the client. There is also an individual case of loss or damage where there is a unitary loss resulting from a number of breaches of duty. The individual case of loss or damage encompasses all consequences of a breach of duty regardless of whether the losses occurred in one year or in a number of successive years. In this regard multiple acts or omissions based on the same or a similar source of error are deemed to be a unitary breach of duty if the matters concerned are legally or economically connected with each other. In this event the claim against the Auditor is limited to €5 million. The limit of five times the minimum sum insured does not apply in relation to mandatory audits prescribed by statute.

## (3) *Preclusive periods*

A claim for damages can only be asserted within a preclusive period of one year after the person entitled to assert the claim has become aware of the loss or damage and of the event forming the basis of the claim, but at the latest, within five years of the occurrence of the event forming the basis of the claim. The claim expires if legal proceedings are not instituted within a time limit of six months following written refusal to pay compensation and the client was notified of this consequence. This is without prejudice to the right to assert the defence that the claim is time barred. Sentences 1 to 3 also apply in relation to audits prescribed by statute with statutory limitations on liability.

## 10. Supplementary provisions in respect of audits

(1) A subsequent amendment or abridgement of the financial statements or management report examined by the Auditor and provided with an audit certificate requires the written permission of the Auditor, even if publication does not take place. If the Auditor has not issued an audit certificate, a reference to the audit carried out by the Auditor in the management report or in another place intended for the public is only permissible with the written consent of the Auditor, using the wording authorised by him.

(2) If the Auditor withdraws the audit certificate, it can no longer be used. If the client has already used the audit certificate, at the Auditor's request it must publicise the withdrawal of the audit certificate.

(3) The client has the right to receive five copies of the report. A separate charge will be made for additional copies.

#### **11. Supplementary provisions in respect of assistance with tax matters**

(1) The Auditor is entitled when advising on individual tax issues and also when it provides ongoing advice to assume that the facts given by the client, in particular numerical data, are accurate and complete; this applies also to bookkeeping engagements. He must, however, point out any inaccuracies ascertained by him to the client.

(2) Engagement to provide tax advice does not include the procedures required for compliance with deadlines unless the Auditor expressly undertook this task. In this case the client must provide the Auditor with all documents of material importance for compliance with deadlines, in particular tax assessment notices, in good time so that the Auditor has adequate preparation time available to him.

(3) In the absence of written agreement to the contrary, routine tax advice comprises the following activities falling within the period of the contract:

- a) preparation of the annual tax returns in respect of income tax, corporation tax and trade tax, as well as net worth tax returns, on the basis of the annual financial statements and other schedules and supporting documents required for taxation purposes to be produced by the client
- b) examination of tax assessments relating to the taxes specified in a)
- c) negotiations with the tax authorities in connection with the returns and assessments specified in a) and b)
- d) participation in tax audits and evaluation of the results of tax audits in relation to the taxes specified in a)
- e) participation in opposition and appeal procedures in relation to the taxes specified in a).

The Auditor shall take account of material, published court rulings and administrative interpretation in relation to the above-mentioned activities.

(4) If the Auditor receives a fixed fee for routine tax advice, in the absence of written agreement to the contrary, the activities specified in (3) d) and e) above shall be charged separately.

(5) Particular individual questions relating to income tax, corporation tax, trade tax, valuation of economic units and net worth tax, as well as all questions relating to turnover tax, salary tax and other taxes and levies are handled on the basis of a separate instruction. This also applies in respect of

- a) work in relation to one-off tax matters, e.g. in the area of inheritance tax, capital transfer tax, property transfer tax;
- b) participation and representation in proceedings before the courts with fiscal and administrative jurisdiction and in criminal proceedings relating to fiscal matters;
- c) advisory and expert work provided in connection with transformations, mergers, capital increases or reductions, reorganisations, accessions and withdrawals of partners or shareholders, sale of businesses, liquidations and the like.

(6) If preparation of the turnover tax return is undertaken as an additional activity, this does not include verification of any special accounting requirements, nor the issue of whether all turnover tax reliefs and allowances which may be available have been claimed. No responsibility is assumed for the completeness of the documentation for claiming the input tax deduction.

#### **12. Duty of confidentiality in relation to third parties; data protection**

(1) The Auditor is obliged in accordance with the law to treat all facts which become known to him in connection with his activities on behalf of the client as confidential, irrespective of whether they relate to the client itself or its business connections, unless the client releases the Auditor from this duty of confidentiality.

(2) The Auditor may hand over reports, expert opinions and other written statements relating to the results of his activities to third parties only with the client's permission.

(3) The Auditor is authorised within the scope of the purpose specified by the

client to process personal data entrusted to him or to have this processed by third parties.

### **13. Default in acceptance of performance and failure of client to cooperate**

If the client defaults in accepting the services offered by the Auditor or fails to provide the cooperation incumbent upon it in accordance with No. 3 or otherwise, the Auditor is entitled to terminate the contract without notice. This is without prejudice to the Auditor's right to compensation for the additional expenditure incurred by him and for loss or damage caused by the default or failure to cooperate, even if the Auditor does not exercise his right of termination.

### **14. Remuneration**

(1) In addition to his claim for professional fees or charges, the Auditor has a right to reimbursement of his outlays; the turnover tax is charged separately. The Auditor may request reasonable payments on account towards fees and reimbursement of outlays and may make delivery of the work he performs dependent upon full satisfaction of his claims. Where an engagement is awarded by multiple clients, they have joint and several liability.

(2) Set off against the Auditor's claims to remuneration and reimbursement of outlays is only permissible in the case of undisputed claims or finally determined, non-appealable claims.

### **15. Preservation and return of documents**

(1) The Auditor will keep the documents handed over to him in connection with the execution of the engagement and those he has prepared himself, and also the correspondence undertaken in relation to the engagement, for a period of seven years.

(2) After satisfaction of his claims arising out of the engagement, at the client's request the Auditor shall return all documents that he obtained from or for the client for the purpose of the work carried out by him in connection with the engagement. This does not, however, apply in relation to the correspondence between the Auditor and his client, nor to papers which the client already has in the original or of which it has a copy. The Auditor can make and retain copies or photocopies of documents which he returns to the client.

### **16. Applicable law**

German law has exclusive application in relation to the engagement, its execution and any claims arising thereunder.

**In case of translation differences between the english and the german version of the general terms of engagement the german version is legally relevant.**