

**ANNUAL FINANCIAL STATEMENTS BASED  
ON  
INTERNATIONAL FINANCIAL REPORTING  
STANDARDS (IFRS)  
FOR THE YEAR ENDED  
DECEMBER 31, 2008**

**of the company**

**Gartner Extrusion GmbH**

**Peterswörther Straße 1a**

**89423 Gundelfingen a.d. Donau, Germany**

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

## COMPANY BALANCE SHEET

All amounts in EURO

		<u>31.12.2008</u>	<u>31.12.2007</u>
<b><u>ASSETS</u></b>			
	notes		
<b>Non current assets</b>			
Tangible assets	V.1	13.667.781,91	14.526.939,41
Intangible assets	V.2	32.185,00	80.919,00
Other assets	V.3	0,00	166.807,20
		<u>13.699.966,91</u>	<u>14.774.665,61</u>
<b>Current assets</b>			
Inventories	V.4	10.142.261,83	10.020.510,09
Trade and other receivables	V.5	6.158.763,77	6.497.609,37
Cash and cash equivalents		2.167,02	755.204,34
		<u>16.303.192,62</u>	<u>17.273.323,80</u>
<b>Total assets</b>		<b><u>30.003.159,53</u></b>	<b><u>32.047.989,41</u></b>
<b><u>EQUITY</u></b>			
Share capital	V.6	5.000.000,00	5.000.000,00
Reserves		3.225.741,86	1.152.926,70
Earnings net of tax		5.193.766,55	5.428.712,42
<b>Total equity</b>		<b><u>13.419.508,41</u></b>	<b><u>11.581.639,12</u></b>
<b><u>LIABILITIES</u></b>			
<b>Non current liabilities</b>			
Loans	V.7	5.030.303,05	6.136.363,65
Deferred tax liabilities	V.8	1.074.382,97	653.310,81
Provisions for staff retirement benefits	V.9	1.843.531,00	1.715.579,00
		<u>7.948.217,02</u>	<u>8.505.253,46</u>
<b>Current liabilities</b>			
Trade and other liabilities	V.10	4.077.015,06	5.675.646,10
Current tax liabilities	V.11	602.978,40	2.106.462,36
Loans	V.12	1.715.579,40	2.053.706,96
Provisions	V.13	2.239.861,24	2.125.281,41
		<u>8.635.434,10</u>	<u>11.961.096,83</u>
<b>Total liabilities</b>		<b><u>16.583.651,12</u></b>	<b><u>20.466.350,29</u></b>
<b>Total equity and liabilities</b>		<b><u>30.003.159,53</u></b>	<b><u>32.047.989,41</u></b>

## COMPANY INCOME STATEMENT

JANUARY 1 – DECEMBER 31

All amounts in EURO

	notes	<u>2008</u>	<u>2007</u>
Sales	VI.1	90.250.492,77	85.062.424,89
Cost of sales		76.064.097,58	70.220.974,79
<b>Gross profit</b>		<b>14.186.395,19</b>	<b>14.841.450,10</b>
Other operating income	VI.2	471.101,59	1.839.387,46
Administrative expenses		5.748.151,87	5.418.833,99
Distribution costs		1.200.977,82	1.104.620,74
Other operating expenses		35.099,96	1.212.839,93
<b>Earnings before tax and financial results</b>		<b>7.673.267,13</b>	<b>8.944.542,90</b>
Financial income		559,87	167.674,59
Financial expenses		521.497,44	488.429,87
<b>Earnings before tax</b>		<b>7.152.329,56</b>	<b>8.623.787,62</b>
Current income tax	VI.6	1.392.479,98	2.747.173,43
Deferred tax	VI.6	566.083,03	447.901,77
<b>Earnings net of tax</b>		<b>5.193.766,55</b>	<b>5.428.712,42</b>

**COMPANY STATEMENT OF CHANGES IN EQUITY**

	Share capital	Paid-in Surplus	Treasury Stocks	Other reserves	Results carried forward	Earnings net of tax	Total Equity
<b>Balance at 31/12/2006</b>	5.000.000,00			-309.216,66	818.251,19	1.610.346,43	7.119.380,96
<b>1/1/2007-31/12/2007</b>							
Profit carried forward				249.143,88	1.361.202,55	-1.610.346,43	0,00
Distribution of profits (dividend paid)					-1.000.000,00		-1.000.000,00
Reduction of deferred taxes				-40.201,90			-40.201,90
Reduction of deferred taxes because of tax rate change				73.747,64			73.747,64
Earnings(losses) per income statement						5.428.712,42	5.428.712,42
<b>Balance at 31/12/2007</b>	<b>5.000.000,00</b>			<b>-26.527,04</b>	<b>1.179.453,74</b>	<b>5.428.712,42</b>	<b>11.581.639,12</b>
<b>1/1/2008-31/12/2008</b>							
Distribution of profit				1.179.453,74	-1.179.453,74		
Profit carried forward				1.928.712,42	3.500.000,00	-5.428.712,42	0,00
Distribution of profits (dividend paid)					-3.500.000,00		-3.500.000,00
Reduction of deferred taxes				144.102,74			144.102,74
Earnings(losses) per income statement						5.193.766,55	5.193.766,55
<b>Balance at 31/12/2008</b>	<b>5.000.000,00</b>			<b>3.225.741,86</b>	<b>0,00</b>	<b>5.193.766,55</b>	<b>13.419.508,41</b>


**COMPANY CASH-FLOW STATEMENT**
**JANUARY 1 – DECEMBER 31**

	<b>2008</b>	<b>2007</b>
Profit before tax	7.152.329,56	8.623.787,62
<b>Adjustments for:</b>		
Depreciation and amortisation	5.226.431,87	4.608.971,73
Provisions	242.531,83	84.012,14
(Gain) or Loss from investing activities		
Decrease / (increase) in inventories	-121.751,74	-2.024.843,74
Decrease / (increase) in receivables	505.652,80	-372.590,81
Decrease / (increase) in payables (except banks)	-1.535.892,43	676.433,21
Tax paid	-2.959.610,68	-1.813.409,86
<b>Net cash from operating activities (a)</b>	<b>8.509.691,21</b>	<b>9.782.360,29</b>
<b>Cash Flows from investing activities</b>		
Acquisition of subsidiary		
Purchase of intangible assets, property, plant and equipment	-4.319.040,37	-6.256.918,39
Proceeds of sale equipment	500,00	576.615,30
Income for financial assets		
<b>Net cash used in investing activities (b)</b>	<b>-4.318.540,37</b>	<b>-5.680.303,09</b>
<b>Cash Flows from financing activities</b>		
Proceeds from increase of capital stock		
Proceeds from borrowings		4.064.304,01
Repayments of borrowings	-1.444.188,16	-6.606.060,60
Dividend paid	-3.500.000,00	-1.000.000,00
<b>Net cash used in financing activities (c)</b>	<b>-4.944.188,16</b>	<b>-3.541.756,59</b>
<b><u>Net increase / (decrease) in and cash equivalents (a)+(b)+(c)</u></b>	<b>-753.037,32</b>	<b>560.300,61</b>
<b>Cash and cash equivalents in beginning of period</b>	<b>755.204,34</b>	<b>194.903,73</b>
<b>Cash and cash equivalents at end of period</b>	<b>2.167,02</b>	<b>755.204,34</b>



## **I. General information about the company**

The **Gartner Extrusion GmbH** – called Gartner - is a private limited company in the sense of German law (GmbHG).

The company is domiciled in Peterswörther Straße 1a, 89423 Gundelfingen a.d. Donau.

The company is listed as Gartner Extrusion GmbH in the following register in Germany: 'Handelsregister des Amtsgerichts Augsburg, Abteilung B 20387'

The subject of the enterprise is the production of aluminium profiles as well as their subsequent treatment by surface refinement or mechanical treatment up to the assembly of building groups or systems.

## **II. General information about the financial statements**

### **1. General information**

The financial statements on December 31, 2008 have been prepared in accordance with the requirements of IFRS.

Each component of the financial statements can be identified clearly.

The financial statements cover the individual entity Gartner Extrusion GmbH.

Balance sheet day is December 31, 2008.

The presentation currency is EURO.

The balance sheet is drawn up using a current/non-current classification.

The income statement classifies expenses by function (cost-of-sales method).

The cash-flow from operating activities is determined using the indirect method.



## 2. Application of the IAS/IFRS

The annual financial statements of Gartner Extrusion GmbH for the 2008 accounting period have been prepared based on the historical cost principle, amended for the purpose of adapting the specific assets and liabilities to current prices, and the going concern principle and moreover, they are in line with the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) and the relevant interpretations provided by the IASB standards interpretation committee IFRIC.

The following standards are taken into account in preparing the company's financial statements.

IAS 1	Presentation of financial statements
IAS 2	Inventories
IAS 7	Cash Flow statements
IAS 8	Accounting policies, changes in accounting estimates and errors
IAS 10:	Events after the balance sheet date
IAS 12	Income taxes
IAS 16	Property, plant and equipment
IAS 17	Leases
IAS 18	Revenue
IAS 19	Employee benefits
IAS 21	The effects of changes in foreign exchange rates
IAS 23	Borrowing costs
IAS 24	Related party disclosures
IAS 27	Consolidated and separate financial statements
IAS 32	Financial instruments: presentation
IAS 37	Provisions, contingent liabilities and contingent assets
IAS 38	Intangible assets
IAS 39	Financial instruments: recognition and measurement
IFRS 7	Financial instruments: disclosures

The policies referred to below have been consistently applied to all financial statements from the date on which the IFRS were introduced and thereafter.

Preparation of the financial statements in line with IFRS requires use of estimates and the exercise of judgement in implementing company accounting policies. Major assumptions made by management in applying the company's accounting methods are pointed out where this is considered necessary.

### **3. Significant accounting policies and estimates**

Estimates and judgements are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

The company makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial years are discussed below:

The company makes estimates to consider potential risks concerning provisions and the estimated useful lives of assets.

The financial statements are prepared on going concern basis.

### **4. Financial risk management**

As a result of its international activities the company is exposed to certain financial risks, i.e. market risk (included price risk for raw material and general price risk), credit risk, cash-flow-risk and interest risk. The company's overall risk management programme focuses to minimise potential adverse effects on the company's financial performance.

Risk management is carried out by the controlling department which identifies and evaluates financial risks in cooperation with the company's operating units. The Board of Directors provides principles and guidance for overall risk management.

The company has no significant concentration of credit risk. Policies are in place to ensure that sales are only made to customers with appropriate credit rating. Furthermore there are credit insurances to cover the risk of credit loss.

Liquidity risk is kept at a low level as the company maintains sufficient cash and credit lines available.

Risks arising from changes in interest rates are covered by an interest swap.



### **III. Exemption from consolidation**

The Gartner Extrusion GmbH is a majority-owned subsidiary of the HERMANN GUTMANN WERKE AG, Nürnberger Straße 57 – 81, 91781 Weißenburg, Germany.

The HERMANN GUTMANN WERKE AG itself is a subsidiary of ALCO HELLAS S.A. who presents the consolidated financial statements.

ALCO HELLAS S.A. draws up consolidated financial statements according to IFRS. The consolidated financial statements of ALCO HELLAS S.A. are obtainable for public use in their sites ([www.alco.gr](http://www.alco.gr)).

### **IV. Currency**

Foreign currency translation is not necessary as EURO is the functional currency.

## V. Notes to the balance sheet

### 1. Tangible Assets

Tangible assets are measured at cost which comprises its' purchase price plus any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Subsequent depreciation is deducted.

Subsequent costs such as repairs and maintenances are recognised as an expense as incurred.

The depreciable amount of the assets is allocated over its useful life using the straight-line method. The useful lives are estimated with:

- |   |              |
|---|--------------|
| • Buildings and technical works                                     | 33 years     |
| • Machinery, technical installations and other mechanical equipment | 5 – 15 years |
| • Transportation equipment  | 3 – 8 years  |
| • Furniture and fixture   | 2 – 14 years |
| • Extrusion dies  | 2 years      |

Payments on account and tangible assets in course of construction are rebooked and capitalised as an tangible asset at the moment when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.

One bank loan of 5 Mio € has been secured by transfer of ownership for the new extrusion line.

Another bank loan of 2.5 Mio. € has been secured by transfer of ownership for the new melting furnace.



	Land and buildings	Machinery, technical installations and mechanical equipment	Transportation equipment	Furniture and fixtures	Payments on account and tangible assets in course of construction	Total
<b>Book value 01.01.2007</b>		9.148.154,00	10.816,00	3.477.275,00	756.179,05	13.392.424,05
<b>Cost 01.01.2007</b>		13.199.280,11	14.764,46	9.406.832,71	756.179,05	23.377.056,33
Additions		528.188,17	18.330,00	2.914.110,64	2.784.842,91	6.245.471,72
Disposals		0,00	0,00	39.865,28	576.615,30	616.480,58
Transfer		2.776.334,61	0,00	188.072,05	-2.964.406,66	0,00
<b>Cost 31.12.2007</b>		16.503.802,89	33.094,46	12.469.150,12	0,00	29.006.047,47
<b>Accumulated Depreciation 01.01.2007</b>		4.051.126,11	3.948,46	5.929.557,71	0,00	9.984.632,28
Additions		1.805.659,78	4.364,00	2.724.317,28	0,00	4.534.341,06
Disposals		0,00	0,00	39.865,28	0,00	39.865,28
Transfer					0,00	0,00
<b>Accumulated Depreciation 31.12.2007</b>		5.856.785,89	8.312,46	8.614.009,71	0,00	14.479.108,06
<b>Book value 31.12.2007</b>		10.647.017,00	24.782,00	3.855.140,41	0,00	14.526.939,41
<b>Book value 01.01.2008</b>	0,00	10.647.017,00	24.782,00	3.855.140,41	0,00	14.526.939,41
<b>Cost 01.01.2008</b>	0,00	16.503.802,89	33.094,46	12.469.150,12	0,00	29.006.047,47
Additions	47.294,00	73.002,39	0,00	3.430.390,33	762.538,65	4.313.325,37
Disposals	0,00	0,00	0,00	58.509,89	0,00	58.509,89
Transfer	0,00	0,00	0,00	76.541,15	-76.541,15	0,00
<b>Cost 31.12.2008</b>	47.294,00	16.576.805,28	33.094,46	15.917.571,71	685.997,50	33.260.862,95
<b>Accumulated Depreciation 01.01.2008</b>	0,00	5.856.785,89	8.312,46	8.614.009,71	0,00	14.479.108,06
Additions	1.589,00	2.118.284,39	5.595,00	3.046.514,48	0,00	5.171.982,87
Disposals	0,00	0,00	0,00	58.009,89	0,00	58.009,89
Transfer	0,00				0,00	0,00
<b>Accumulated Depreciation 31.12.2008</b>	1.589,00	7.975.070,28	13.907,46	11.602.514,30	0,00	19.593.081,04
<b>Book value 31.12.2008</b>	45.805,00	8.601.735,00	19.187,00	4.315.057,41	685.997,50	13.667.781,91

## 2. Intangible assets

Acquired intangible assets are recognised at cost. These costs are amortised over the estimated definite useful lives using the straight-line method.

The useful lives are estimated with 4 years.

Costs for research and development are recognised as an expense when they are incurred.

<b>Book value 01.01.2007</b>	144.103,00
<b>Cost 01.01.2007</b>	266.731,26
Additions	11.446,67
Disposals	0,00
<b>Cost 31.12.2007</b>	278.177,93
<b>Accumulated Depreciation 01.01.2007</b>	122.628,26
Additions	74.630,67
Disposals	0,00
<b>Accumulated Depreciation 31.12.2007</b>	197.258,93
<b>Book value 31.12.2007</b>	80.919,00
<b>Book value 01.01.2008</b>	80.919,00
<b>Cost 01.01.2008</b>	278.177,93
Additions	5.715,00
Disposals	0,00
<b>Cost 31.12.2008</b>	283.892,93
<b>Accumulated Depreciation 01.01.2008</b>	197.258,93
Additions	54.449,00
Disposals	0,00
<b>Accumulated Depreciation 31.12.2008</b>	251.707,93
<b>Book value 31.12.2008</b>	32.185,00



### 3. Other assets

#### Other long term receivables

<b>Book value 01.01.2007</b>	0,00
<b>Cost 01.01.2007</b>	0,00
Additions	166.807,20
Disposals	0,00
Revaluation	0,00
<b>Cost 31.12.2007</b>	166.807,20
<b>Book value 31.12.2007</b>	166.807,20
<b>Book value 01.01.2008</b>	166.807,20
<b>Cost 01.01.2008</b>	0,00
Additions	0,00
Disposals	0,00
Revaluation	166.807,20
<b>Cost 31.12.2008</b>	0,00
<b>Book value 31.12.2008</b>	0,00

### 4. Inventories

Inventories are valued at acquisition cost or net realisable value whichever is lower.

Concerning the recognition of raw materials and consumables cost comprises all expenses of purchase. For supplies of aluminium cost is determined by using the first in first out method (FIFO) and the average price method. The lower of cost or LME-price is reported.

Cost of conversion for semi-finished and finished products includes direct labour, raw materials, all directly attributable expenses as well as proportionally attributable fixed and variable overheads and depreciation. General administrative overheads and selling costs are not included. Interest on borrowed capital relating to manufacture is not reported as an asset.

	31.12.2008	31.12.2007
Finished and semi-finished goods	5.181.323,92	5.032.802,14
Raw and auxiliary materials	4.960.937,91	4.987.707,95
Payments on account	0,00	0,00
<b>Total</b>	<b>10.142.261,83</b>	<b>10.020.510,09</b>



## 5. Trade and other receivables

Trade and other receivables are classified in accordance with IAS 39 as 'loans and receivables' granted by the company.

Trade debtors are recorded at nominal value. Provisions for impairment have been made by means of value adjustments on the basis of past empirical values.

Uncollectible debtors are written off as an expense.

The amount due to uncollectibility is recorded as other operating expenses (0,00 €).

Other receivables include reimbursement rights of energy and sales tax.

	31.12.2008	31.12.2007
Trade debtors	5.112.352,80	6.171.775,53
Less provisions	174.000,00	187.000,00
Trade debtors net	4.938.352,80	5.984.775,53
Of it against affiliated undertakings	164.507,83	154.123,99
Other receivables	1.212.807,77	489.883,84
Of it against affiliated undertakings	0,00	0,00
Prepaid expenses	7.603,20	22.950,00
Of it to be recovered after more than 12 months	0,00	0,00
<b>Total</b>	<b>6.158.763,77</b>	<b>6.497.609,37</b>

## 6. Share capital

The share capital is completely paid up and recorded at nominal value.

## 7. Loans

Loans according to IAS 39.45 are recognised at cost.

	31.12.2008	31.12.2007
<b>Long-term debt</b>		
Bank loans	5.030.303,05	6.136.363,65
Of it to be recovered after more than 12 months	3.924.242,44	5.030.303,05



## 8. Deferred tax liabilities

Deferred taxes are accounted on temporary differences arising between the tax bases of assets and liabilities and their carrying amount after adjustment to the regulations of IFRS.

Deferred income tax is determined using tax rates and laws that have been enacted or substantially enacted by the balance sheet date and are expected to apply when the related deferred income tax asset is realised.

	Total
<b>01.01.2007</b>	243.071,97
Charged to equity	410.238,84*)
<b>31.12.2007</b>	653.310,81
<b>01.01.2008</b>	653.310,81
Charged to income statement	566.083,03
Charged to equity	145.010,87
<b>31.12.2008</b>	1.074.382,97

\*) The amount is due to the reduction of tax rate from in sum 38,5% to 27,7% and has been recorded directly in equity (IAS 12.61).

## 9. Provisions for staff retirement benefits

Current obligations towards the company's staff are recognised directly as an expense as soon as they accrue.

The company also has defined contribution plans where fixed contributions are paid into a separate entity on a mandatory, contractual or voluntary basis. Once the contributions have been paid, the company has no further payment obligations. The contributions to these separate entities are recorded in salaries as an expense when they are due.

Post-employment benefits are granted as follows:

The company has committed itself to defined benefit plans. The amount of pension that employees will receive on retirement depends on several factors such as age and years of service.

The calculation on December 31, 2008 was made by an independent, qualified actuary based on IAS 19. The report's date is December 30, 2008.

The projected unit credit method was used.

Actuarial gains and losses are recognised as income or expense if the 'corridor' is exceeded.

The following assumptions have been made for December 31, 2008:

- Discount Rate 5,75 %
- Cost-of-living adjustments of pensions in payment: (as far as committed) 2,00 %
- Probability of disability and death according to Heubeck Tables 2005 G
- Turnover (depending on years of service) 0 – 50 %

The provision recognised in the balance sheet in respect of defined pension plans is the present value of the defined benefit obligation at the balance sheet date.

In the following tables the reconciliation of opening and closing balances of the present value of the defined benefit obligation as well as the total expense recognised in the income statement are presented for the year 2008.



Reconciliation of the present value of the defined benefit obligation (IAS 19.120A(c)) to the assets and liabilities recognised in the balance sheet:

	<b>31.12.2008</b>
DBO on 01.01.	1.720.029,00
./. not realised actuarial gains	<u>- 4.450,00</u>
Provision 01.01.	1.715.579,00
+ total expense recognised in income statement (IAS 19.120A(g))	156.112,00
./. benefits paid	<u>- 28.160,00</u>
Provision 31.12.	1.843.531,00

Total expense recognised in profit and loss (IAS 19.120A(g)):

	<b>2008</b>
Current service cost	66.550,00
+ interest cost	89.562,00
./. expected return on plan asset	0,00
+ actuarial gains and losses	<u>0,00</u>
	156.112,00

The total expense is included in the position 'administrative expenses' of income statement.



## 10. Trade and other liabilities

Trade and other liabilities are classified in accordance with IAS 39 as 'loans and receivables'.

Trade and other liabilities are shown in the balance sheet at the amounts repayable.

Debts are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet day.

Other creditors include an interest swap which is classified according to IAS 39 as held for trading and therefore recorded at fair value (5.802,82 €). The market value is verified by bank confirmation. The interest swap expires on December 31, 2013.

	31.12.2008	31.12.2007
Suppliers	2.591.619,08	4.410.603,28
Advances from trade debtors	201.308,02	16.527,53
Social securities	0,00	8.242,59
Dividends payable	0,00	0,00
Amounts owed to affiliated undertakings	0,00	0,00
Salaries and wages	608.771,60	562.028,79
Sales tax	503.421,24	635.256,35
Other creditors	171.895,12	42.987,56
<b>Total</b>	<b>4.077.015,06</b>	<b>5.675.646,10</b>

## 11. Current tax liabilities

Current tax liabilities include present obligations for real tax expenses concerning financial income of the current year (cf. VI.6) and tax on wages.

	31.12.2008	31.12.2007
Current tax liabilities	602.978,40	2.106.462,36

## 12. Loans

Loans according to IAS 39.45 are recognised at cost.

Total of loans with 1.715.579,40 € is due to be settled within 12 months after the balance sheet date.

	31.12.2008	31.12.2007
Banks	1.715.579,40	2.053.706,96



### 13. Provisions

Provisions are recognised when the company has a present obligation as a result of a past event, when it is more likely than not that an outflow of resources will be required to settle the obligation and when the amount can be reliably estimated.

Provisions have not been discounted as the effect was not material.

	Warranty	Employee	Other	Total
<b>01.01.2007</b>	<b>120.000,00</b>	<b>1.660.253,32</b>	<b>142.054,95</b>	<b>1.922.308,27</b>
Liquidation of provision	0,00	48.083,10	1.816,50	49.899,60
Use of provision	0,00	1.612.170,23	92.338,45	1.704.508,68
Set up of provision	104.000,00	1.659.381,42	194.000,00	1.957.381,42
<b>31.12.2007</b>	<b>224.000,00</b>	<b>1.659.381,41</b>	<b>241.900,00</b>	<b>2.125.281,41</b>
Of it due after more than 12 months		114.204,50		<b>114.204,50</b>
<b>01.01.2008</b>	<b>224.000,00</b>	<b>1.659.381,41</b>	<b>241.900,00</b>	<b>2.125.281,41</b>
Liquidation of provision	6.000,00	30.876,88	15.400,70	52.277,58
Use of provision	0,00	1.589.316,39	173.599,30	1.762.915,69
Set up of provision	0,00	1.871.773,10	58.000,00	1.929.773,10
<b>31.12.2008</b>	<b>218.000,00</b>	<b>1.910.961,24</b>	<b>110.900,00</b>	<b>2.239.861,24</b>
Of it due after more than 12 months		127.997,14		<b>127.997,14</b>

#### Warranty:

The company accrues for product warranties at the time the products are sold based on historical claims experience.

#### Employee:

Pursuant to collective or individual agreements the company is required to make bonus payments and short term benefits to employees such as holiday entitlements, pre-retirements and overtime payments. The portion for the pre-retirements is due within a maximum period of six years.

#### Other:

Other provisions include mainly bonus obligations.

## VI. Notes to the income statement

The company classifies expenses by function.

Revenue from sales is recognised when products are delivered to the customer, the customer has accepted the product and when the collectibility of the related receivables is reasonably assured.

Credit interest and similar charges are included in the period which they are paid for according to the agreement.

Borrowing costs are recognised as an expense in the period in which they are incurred.

### 1. Sales

	<b>2008</b>	<b>2007</b>
Sales of produced goods	79.024.678,78	79.941.103,85
Sales of purchased goods	5.988.152,38	3.537.078,26
Sales of scrap and other	5.237.661,61	1.584.242,78
<b>Net turnover sales</b>	<b>90.250.492,77</b>	<b>85.062.424,89</b>

### 2. Other operating income

	<b>2008</b>	<b>2007</b>
Refund of energy tax	294.674,14	600.809,02
Recover of guarantee insurance	0,00	381.500,00
Other income	176.427,45	857.078,44
	<b>471.101,59</b>	<b>1.839.387,46</b>

### 3. Depreciation

	<b>2008</b>	<b>2007</b>
Cost of sales	5.096.535,76	4.462.606,22
Administrative expenses	84.660,88	122.426,17
Distribution costs	45.235,23	23.939,34
	<b>5.226.431,87</b>	<b>4.608.971,73</b>



#### 4. Additional disclosure

	2008	2007
Raw materials and consumables used	56.239.212,17	51.917.895,30
Salaries and social securities	14.862.264,18	13.813.052,45
of it for Directors	1.246.947,01	955.411,97

#### 5. Leases

The total of lease payments is:

- Not later than one year 137.548,48 €
- Later than one year and not later than five years 231.843,23 €
- Later than five years 6.051,92 €

The lease payment is mostly for cars and forklifters.

Leases of machinery, technical installations, transportation equipment, furniture and fixtures where the lessor retains all the risks and rewards incidental to the ownership are classified by the company as operating leases.

Lease payments are recognised as an expense on a straight-line basis over the lease term. In 2008 the lease payments recognised as an expense amount to 139.913,22 €.

## 6. Tax

The ordinary rate of the corporate income tax is 15 % based on the taxable income and the rate of the solidarity surcharge is 5,5 % based on the corporate income tax.

	income statement	of it paid in 2008	provisions for tax balance sheet	included in deferred tax balance sheet
trade income tax 2008	608.093,00	608.093,00	0,00	0,00
trade income tax prior year	561.379,00	561.379,00	-567.122,00	0,00
corporate income tax 2008	782.312,00	782.312,00	0,00	0,00
corporate income tax prior year	-33.471,84	916.024,92	-949.496,76	0,00
solidarity surcharge 2008	43.026,29	43.026,29	0,00	0,00
solidarity surcharge prior year	-1.904,73	48.607,21	-50.511,94	0,00
capital returns tax 2008	159,54	159,54	0,00	0,00
solidarity surcharge 2008	8,72	8,72	0,00	0,00
deferred taxes (stock valuation)	241.562,13	0,00	0,00	241.562,13
other deferred taxes (only under IFRS)	324.520,90	0,00	0,00	324.520,90
	<b>1.958.563,01</b>	<b>2.959.610,68</b>	<b>-1.567.130,70</b>	<b>566.083,03</b>

## VII. Other notes

### 1. Segment reporting

According to IFRS 8.2 only companies listed at stock exchange or those that are in progress of issuing shares in public markets have to present segment information.

### 2. Contingent liabilities

The company has contingent liabilities in respect of long-term hire contracts. The contingent liabilities amount to:

- payable 2009 – 2011 2.058 T€
- payable after 2011 1.340 T€





### 3. Staff

	Average 2008	Average 2007
Employees	70	69
Workers	232	229
Trainees	13	8
<b>Total number of staff</b>	<b>315</b>	<b>306</b>

### 4. Related party disclosures

The following are related party transactions and outstanding balances within the Hermann Gutmann Group and are therefore disclosed in the financial statement:

	affiliated undertakings	Associates, other undertakings	members of the board of directors	parents and other related entities	Total
<b>Year 2008</b>					
sales	5.648.511,86			3.140.300,49	8.788.812,35
purchase	14.820.386,07			3.661.316,54	18.481.702,61
receivables	164.507,83			177.984,14	342.491,97
liabilities	497.386,57			246.064,88	743.451,45
contingent liabilities	22.500.000,00				22.500.000,00
<b>Year 2007</b>					
sales	5.532.209,64			55.238,44	5.587.448,08
purchase	13.203.826,38			834.974,68	14.038.801,06
interest expense	132.316,44				132.316,44
receivables	154.123,39				154.123,39
liabilities	507.218,10			129.581,85	636.799,95
contingent liabilities	28.500.000,00				28.500.000,00



## 5. Distribution of profit

The assessment basis for cash dividend payable is - corresponding to the articles of association - the balance result which is recorded according to the regulations of German Commercial Law (HGB).

The Board of Directors proposes the earnings of 4.346.731,88 € according to HGB to be used as follows:

Distribution to the shareholders	2.500.000,00 €
Addition to special reserves (retained earnings)	<u>1.846.731,88 €</u>
	4.346.731,88 €

Therefore earnings net of tax in sum of 5.193.766,55 € according to IFRS are used as follows:

Distribution to shareholders	2.500.000,00 €
Addition to other reserves	<u>2.693.766,55 €</u>
	5.193.766,55 €

## 6. Events after the balance sheet date

There are no significant events after the balance sheet date.

Gundelfingen, February 25, 2009

## Gartner Extrusion GmbH

A handwritten signature in black ink, appearing to read 'H. Westheide'.

Dr. Harald Westheide  
- CEO -



## **Report on the situation of the Gartner Extrusion GmbH over the financial year 2008**

### **I. Preliminary note**

The subject of the enterprise is the production of aluminium profiles as well as their subsequent treatment by surface coating or cutting treatment up to the assembly of building groups from profiles. The sales area is essentially Germany, Austria and Switzerland, in addition, to Italy, France, Sweden profiles are supplied. The export portion amounts to approx. 19%.

### **II. Business process 2008**

#### Economic and industry situation

The companies in the German aluminium industry in 2008 showed an overall decline in orders of around 7%. The deliveries were around 3.5% below the previous year. The biggest slump in business activity was in the 4th Quarter in the automotive industry, automobiles and trucks were affected above average.

#### Development of the society

The downturn in the key markets of the company, building objects and engineering, was not as rapid as in other markets. Therefore the extent of utilization was relatively stable until October. Then the capacities had to be reduced due to the situation concerning orders.

#### Sales

The sales profits increased in the financial year 2008 to 90.3 millions € (prior year 85.1 millions €), that is an increase of 6.1%.

#### Production

The net output of the presses rose by 1.3% to 16,812 tons (prior year 16,594 tons). In the field surface 1,798 tm<sup>2</sup> (prior year 1,777 tm<sup>2</sup>) were coated.

#### Investment

The total investment in tangible assets amounted to 4.3 million €.

The machining of profiles will be further expanded; in this field an additional CNC machine brings more capacity.



#### Personal

During the year it was a slight increase in staff in accordance to the planning. To reinforce the team for the horizontal anodising workers have been engaged for a limited period and leased labourers were dismantled. The average number of employees was 315.

#### Other

As a support for the parent company, which is listed at the ASE and has the obligation to provide their financial statement following international accounting standards, for 2008 a year-end closing under this standards will be prepared.

### **III. Situation of the society**

#### Financial position

Non - current assets decreased to 13.7 million € (previous year 14.8 million €) and amounts to 45.7% of total assets.

The equity of 13.4 million € (previous year 11.6 million €) increased by 1.8 million €. The equity capital ratio is 44.7% (previous year 36.1%).

#### Financial situation

The financing of the Gartner Extrusion GmbH took place mostly from the cash flow of the society.

#### Earnings

The earnings net of tax decreased to 5.2 million € (previous year 5.4 million €). The result is slightly above the plan.

### **IV. Procedures of special importance**

Procedures of special importance did not occur after the conclusion of the financial year.



## V. Prospective development and risks

### General market development

For 2009, the economic outlook for the aluminium industry is bad. The German economy is in recession. Major consumer markets of the aluminium industry are struggling with order cuts of 20-30%. This also has implications for the utilization of the company. In the first quarter an unused capacity in the above mentioned percentage is assumed. Leased workers and working hours were cut and positive time - accounts are consistently driven down. If this is not enough, the instrument of short-working will be set.

The effect of the economic packages decided by the federal government gives hope that there will be a revival in the 2nd and 3rd quarter.

### Risks of future development

The Gartner Extrusion GmbH pursues the strategy of specialisation and niche insurance policy. The strategy has been established in 2007 for the next 3 years, the focus lies on precision profiles, further processing and a special energy-saving project.

The metal prices have been considered in planning on the currently foreseeable level.

The long-term behaviour of investors of new buildings will be affected by the financial crisis. The company is trusting on the existing know-how and experience in this segment.

### Order books, conversion and sales expectation

The order backlog as per 31.12.2008 was 12.2 million €. This corresponds roughly to a capacity utilisation of 1.5 months.

For fiscal year 2009 a turnover of 88.0 million € is planned. This corresponds to the level of the previous year. There are, however, cyclical risks.

In the long-term deliveries to the engineering and the mechanical processing of profiles will be extended. Due to the sharp stock remedying by a large customer in 2009 sales decreases in engineering are expected.

Due to the decreasing orders in the aluminium industry, the competitive pressure rise. This was recognized in the prices taken into account for planning.

Gundelfingen, in February 2009

Dr. Harald Westheide  
CEO

## **B. Auditor's report**

I have audited the annual financial statements, comprising the balance sheet, the income statement, statement of changes in equity, cash flow statement and the notes to the financial statements, together with the bookkeeping system, and the management report of the **Gartner Extrusion GmbH** for the business year from January 1 to December 31, 2008. The maintenance of the books and records and the preparation of the annual financial statements and management report in accordance with International Financial Reporting Standards (IFRS) as adopted by the EU, and supplementary provisions of the articles of incorporation are the responsibility of the Company's management. My responsibility is to express an opinion on the annual financial statements, together with the bookkeeping system, and the management report based on my audit.

I conducted my audit of the annual financial statements in accordance with § 317 German Commercial Code (HGB) and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (IDW - Institute of Public Auditors in Germany). Those standards require that I plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the annual financial statements in accordance with the applicable financial reporting framework and in the management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Company and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the books and records, the annual financial statements and the management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the annual financial statements and management report. I believe that my audit provides a reasonable basis for my opinion.

My audit has not led to any reservations.

In my opinion, based on the findings of my audit, the annual financial statements comply with IFRS as adopted by the EU, the legal requirements and supplementary provisions of the articles of incorporation and full IFRS and give a true and fair view of the net assets, financial position and results of operations of the Company in accordance with these requirements. The management report is consistent with the annual financial statements and as a whole provides a suitable view of the Company's position and suitably presents the opportunities and risks of future development.

Kronach, March 26, 2009



A handwritten signature in black ink, appearing to read 'W. Bijok'.

.....  
Dipl.-Kfm. Wolfgang Bijok  
- Wirtschaftsprüfer -  
- German Public Auditor -

# 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.

# Allgemeine Auftragsbedingungen

## für

### Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften

vom 1. Januar 2002

#### 1. Geltungsbereich

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

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

#### 2. Umfang und Ausführung des Auftrages

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

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

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

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

#### 3. Aufklärungspflicht des Auftraggebers

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

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

#### 4. Sicherung der Unabhängigkeit

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

#### 5. Berichterstattung und mündliche Auskünfte

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

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

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

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

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

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

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

#### 8. Mängelbeseitigung

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

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

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

#### 9. Haftung

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

(2) Haftung bei Fahrlässigkeit, Einzelner Schadensfall

Falls weder Abs. 1 eingreift noch eine Regelung im Einzelfall besteht, ist die Haftung des Wirtschaftsprüfers für Schadensersatzansprüche jeder Art, mit Ausnahme von Schäden aus der Verletzung von Leben, Körper und Gesundheit, bei einem fahrlässig verursachten einzelnen Schadensfall gem. § 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 Prüfungen.

(3) Ausschußfristen

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

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

## 10. Ergänzende Bestimmungen für Prüfungsaufträge

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

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

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

## 11. Ergänzende Bestimmungen für Hilfeleistung in Steuersachen

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

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

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

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

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

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

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

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

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

## 12. Schweigepflicht gegenüber Dritten, Datenschutz

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

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

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

## 13. Annahmeverzug und unterlassene Mitwirkung des Auftraggebers

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

## 14. Vergütung

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

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

## 15. Aufbewahrung und Herausgabe von Unterlagen

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

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

## 16. Anzuwendendes Recht

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