



**ANNUAL FINANCIAL STATEMENTS BASED  
ON  
INTERNATIONAL FINANCIAL REPORTING  
STANDARDS (IAS/IFRS)  
FOR THE YEAR ENDED  
DECEMBER 31, 2009**

**of the company**

**NordAlu GmbH**

**Oderstrasse 78 - 82**

**24539 Neumünster, 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>31.12.2009</u>	<u>31.12.2008</u>
<b>ASSETS</b>			
	notes		
<b>Non current assets</b>			
Tangible assets	V.1	8.966.119,35	9.823.495,30
Intangible assets	V.2	46.655,00	31.393,00
Deferred tax assets	V.3	1.853.959,03	885.557,00
		<u>10.866.733,38</u>	<u>10.740.445,30</u>
<b>Current assets</b>			
Inventories	V.4	3.068.783,65	3.660.251,60
Trade and other receivables	V.5	1.834.560,04	3.065.445,00
Cash and cash equivalents		3.631,92	338.313,31
		<u>4.906.975,61</u>	<u>7.064.009,91</u>
<b>Total assets</b>		<b><u>15.773.708,99</u></b>	<b><u>17.804.455,21</u></b>
<b>EQUITY</b>			
Share capital	V.6	1.512.500,00	1.512.500,00
Reserves		-2.175.122,27	-911.487,42
Earnings net of tax		-2.665.793,81	-1.263.634,85
<b>Total equity</b>		<b><u>-3.328.416,08</u></b>	<b><u>-662.622,27</u></b>
<b>LIABILITIES</b>			
<b>Non current liabilities</b>			
Loans	V.7	11.289.772,73	12.154.545,46
Deferred tax liabilities	V.8	0,00	137.829,36
		<u>11.289.772,73</u>	<u>12.292.374,82</u>
<b>Current liabilities</b>			
Trade and other liabilities	V.9	3.964.212,19	1.910.174,99
Current income tax liabilities	V.10	0,00	0,00
Loans	V.11	3.043.654,17	3.449.651,71
Provisions	V.12	804.485,98	814.875,96
		<u>7.812.352,34</u>	<u>6.174.702,66</u>
<b>Total liabilities</b>		<b><u>19.102.125,07</u></b>	<b><u>18.467.077,48</u></b>
<b>Total equity and liabilities</b>		<b><u>15.773.708,99</u></b>	<b><u>17.804.455,21</u></b>

## COMPANY INCOME STATEMENT

JANUARY 1 – DECEMBER 31

All amounts in EURO

	notes	<u>2009</u>	<u>2008</u>
Sales	VI.1	33.877.059,16	39.388.380,12
Cost of sales		33.630.503,03	36.552.335,07
<b>Gross profit</b>		<b>246.556,13</b>	<b>2.836.045,05</b>
Other operating income	VI.2	439.394,11	896.136,13
Administrative expenses		2.698.667,02	3.034.702,37
Distribution costs		886.253,45	1.212.197,72
Other operating expenses		262.667,04	495.680,88
<b>Earnings before tax and financial results</b>		<b>-3.161.637,27</b>	<b>-1.010.399,79</b>
Financial income		978,18	8.015,79
Financial expenses		611.397,44	701.845,62
<b>Earnings before tax</b>		<b>-3.772.056,53</b>	<b>-1.704.229,62</b>
Current income tax	VI.5	-31,33	0,00
Deferred tax	VI.5	-1.106.231,39	-440.594,77
<b>Earnings net of tax</b>		<b>-2.665.793,81</b>	<b>-1.263.634,85</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 31/12/2007</b>	1.512.500,00					-911.487,42	601.012,58
<b>01/01/2008-31/12/2008</b>							
Loss carried forward				-911.487,42		911.487,42	0,00
Earnings(losses) per income statement						-1.263.634,85	-1.263.634,85
<b>Balance at 31/12/2008</b>	<b>1.512.500,00</b>			<b>-911.487,42</b>		<b>-1.263.634,85</b>	<b>-662.622,27</b>
<b>01/01/2009-31/12/2009</b>							
Loss carried forward				-1.263.634,85	0,00	1.263.634,85	0,00
Earnings(losses) per income statement						-2.665.793,81	-2.665.793,81
<b>Balance at 31/12/2009</b>	<b>1.512.500,00</b>			<b>-2.175.122,27</b>	<b>0,00</b>	<b>-2.665.793,81</b>	<b>-3.328.416,08</b>

**COMPANY CASH-FLOW STATEMENT**

**JANUARY 1 – DECEMBER 31**

	<b>2009</b>	<b>2008</b>
Loss before tax	-3.772.056,53	-1.704.229,62
<b>Adjustments for:</b>		
Depreciation and amortisation	2.431.389,93	2.074.942,23
Decrease / (increase) in provisions	-10.389,98	325.618,31
(Gain) or Loss from investing activities		
Decrease / (increase) in inventories	591.467,95	429.737,07
Decrease / (increase) in receivables	1.230.884,96	-457.950,76
Decrease / (increase) in payables (except banks)	2.054.037,20	-386.704,41
Tax paid	31,33	0,00
<b><u>Net cash from operating activities (a)</u></b>	<b>2.525.364,86</b>	<b>281.412,82</b>
<b>Cash Flows from investing activities</b>		
Acquisition of subsidiary	0,00	0,00
Purchase of intangible assets, property, plant and equipment	-1.604.654,80	-2.307.670,89
Proceeds of sale equipment	15.378,82	332.145,14
<b><u>Net cash used in investing activities (b)</u></b>	<b>-1.589.275,98</b>	<b>-1.975.525,75</b>
<b>Cash Flows from financing activities</b>		
Proceeds from increase of capital stock	0,00	0,00
Proceeds from borrowings	0,00	1.590.434,28
Repayments of borrowings	-1.270.770,27	0,00
Dividend paid	0,00	0,00
<b><u>Net cash used in / from financing activities (c)</u></b>	<b>-1.270.770,27</b>	<b>1.590.434,28</b>
<b><u>Net increase / (decrease) in and cash equivalents (a)+(b)+(c)</u></b>	<b>-334.681,39</b>	<b>-103.678,65</b>
<b>Cash and cash equivalents in beginning of period</b>	<b>338.313,31</b>	<b>441.991,96</b>
<b>Cash and cash equivalents at end of period</b>	<b>3.631,92</b>	<b>338.313,31</b>

## NOTES

### I. General information about the company

The NordAlu GmbH is a private limited company in the sense of German law (GmbHG).

The company is domiciled in Neumünster, Oderstraße 78 - 82, 24539 Neumünster.

The company is listed as NordAlu GmbH in the following register in Germany:  
'Handelsregister des Amtsgerichts Kiel, Abteilung B 8802'

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, 2009 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 NordAlu GmbH.

Balance sheet day is December 31, 2009.

The income statement covers the period from January 1, 2009 to December 31, 2009.

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 NordAlu GmbH for the accounting period January 1 to December 31, 2009 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 36	Impairment of assets
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.

#### **Recently adopted accounting pronouncements:**

- The IASB issued a revision of IAS 1, Presentation of Financial Statements, in September 2007. IAS 1 revised replaces IAS 1, Presentation of Financial Statements as amended in 2005. IAS 1 sets overall requirements for the presentation and structure of financial statements as well as setting out a minimum requirements for their content.
- In March 2009 the IASB issued amendments to IFRS 7 Financial instruments: Disclosures. These amendments enhance disclosures about fair value measurements of financial instruments and liquidity risks.

The application of these revised standards does not have any material effects on the company's financial statements.

#### **Recent accounting pronouncements, not adopted:**

In January 2008, the IASB issued an amendment to IFRS 2 Share-based Payment, Vesting Conditions and Cancellations and also in January 2008 the revised standards IFRS 3 Business Combinations and IAS 27 Consolidated and Separate Financial Statements.

The pronouncements are not applicable.

### **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.

On December 31, 2009 equity is negative with -3.328.416,08 € according to IFRS. According to German Commercial Law (HGB) the equity amounts to -2.383.875,02 €.

The difference is mainly due to a cancellation of debt subject to restoration in the amount of net 1.102.028,36 € acceded to by the related entity Gartner Extrusion GmbH.

In order to avoid accounting insolvency according to § 19 Insolvenzordnung the company drew up a positive continuation prognosis which is reflected by a slightly positive result in 2010 according to a draft of planning. This includes also measures of restructuring especially

- Intensification of distribution by support of the other companies in the group
- Increase of productivity by means of consistent product controlling
- Increase of technical know-how by additional technical skilled labour

For the countermeasures taken the going concern assumption is appropriate.

#### **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.

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

The NordAlu 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 majority-owned 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**

The functional currency is EURO. The company sells goods where the price is denominated in a foreign currency (USD).

At time of initial recognition the foreign currency transaction is recorded by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of transaction.

At balance sheet date the foreign currency monetary items are translated using the closing rate.

Exchange differences are recognised in profit or loss in the period in which they arise.

## 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:

- |   |              |
|---|--------------|
| • 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.

The bank loans of 12.500.000,00 € are secured by transfer of ownership for the tangible assets as of April 01, 2007.

The carrying amount of a tangible asset is derecognised on disposal. Gains or losses are included in 'other operating income' and 'other operating expenses'.

	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 01.01.2008</b>	6.825.374,00	136.820,00	1.794.608,00	1.183.549,78	9.940.351,78
<b>Cost 01.01.2008</b>	7.677.705,10	160.964,00	2.454.743,88	1.183.549,78	11.476.962,76
Additions	26.805,33	8.574,00	1.164.154,85	1.101.152,31	2.300.686,49
Disposals	3.128,00	0,00	36.386,07	324.646,14	364.160,21
Transfer	828.741,51	0,00	853.888,66	-1.699.456,65	-16.826,48*)
<b>Cost 31.12.2008</b>	8.530.123,94	169.538,00	4.436.401,32	260.599,30	13.396.662,56
<b>Accumulated Depreciation 01.01.2008</b>	852.331,10	24.144,00	660.135,88	0,00	1.536.610,98
Additions	1.179.964,84	32.371,00	856.235,51		2.068.571,35
Disposals	178,00	0,00	31.837,07	0,00	32.015,07
Transfer	0,00	0,00	0,00	0,00	0,00
<b>Accumulated Depreciation 31.12.2008</b>	2.032.117,94	56.515,00	1.484.534,32	0,00	3.573.167,26
<b>Book value 31.12.2008</b>	<b>6.498.006,00</b>	<b>113.023,00</b>	<b>2.951.867,00</b>	<b>260.599,30</b>	<b>9.823.495,30</b>
<b>Book value 01.01.2009</b>	6.498.006,00	113.023,00	2.951.867,00	260.599,30	9.823.495,30
<b>Cost 01.01.2009</b>	8.530.123,94	169.538,00	4.436.401,32	260.599,30	13.396.662,56
Additions	7.500,00	0,00	1.277.068,71	318.149,75	1.602.718,46
Disposals	15.320,00	0,00	58,82	0,00	15.378,82
Transfer	64.102,95	0,00	363.256,03	-454.054,70	-26.695,72*)
<b>Cost 31.12.2009</b>	8.586.406,89	169.538,00	6.076.667,24	124.694,35	14.957.306,48
<b>Accumulated Depreciation 01.01.2009</b>	2.032.117,94	56.515,00	1.484.534,32	0,00	3.573.167,26
Additions	1.202.533,95	33.264,00	1.182.221,92	0,00	2.418.019,87
Disposals	0,00	0,00	0,00	0,00	0,00
Transfer	0,00	0,00	0,00	0,00	0,00
<b>Accumulated Depreciation 31.12.2009</b>	3.234.651,89	89.779,00	2.666.756,24	0,00	5.991.187,13
<b>Book value 31.12.2009</b>	<b>5.351.755,00</b>	<b>79.759,00</b>	<b>3.409.911,00</b>	<b>124.694,35</b>	<b>8.966.119,35</b>

\*) The amount of -26.695,72 € (2008: -16.826,48 €) has been transferred on the asset account 'intangible assets' (cf. V.2.).

## 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.

Depreciation of intangible assets is shown in profit and loss account as 'cost of sales'.

<b>Book value 01.01.2008</b>	13.953,00
<b>Cost 01.01.2008</b>	15.654,33
Additions	6.984,40
Disposals	0,00
Transfer	16.826,48
<b>Cost 31.12.2008</b>	39.465,21
<b>Accumulated Depreciation 01.01.2008</b>	1.701,33
Additions	6.370,88
Disposals	0,00
<b>Accumulated Depreciation 31.12.2008</b>	8.072,21
<b>Book value 31.12.2008</b>	<b>31.393,00</b>
<b>Book value 01.01.2009</b>	31.393,00
<b>Cost 01.01.2009</b>	39.465,21
Additions	1.936,34
Disposals	0,00
Transfer	26.695,72
<b>Cost 31.12.2009</b>	68.097,27
<b>Accumulated Depreciation 01.01.2009</b>	8.072,21
Additions	13.370,06
Disposals	0,00
<b>Accumulated Depreciation 31.12.2009</b>	21.442,27
<b>Book value 31.12.2009</b>	<b>46.655,00</b>

### 3. Deferred tax assets

The deferred tax asset in the amount of 1.546.212,00 € has been recognised for the carry forward of unused taxable losses as the company supposes that future taxable profit will be available against which the unused taxable losses can be utilised.

The remaining amount is due to temporary differences arising between the tax bases of assets and liabilities and their carrying amount after adjustment to the regulations of IFRS.

	Taxable losses	Other assets	Total
<b>01.01.2008</b>	376.720,00	0,00	376.720,00
Charged to income statement	508.837,00	0,00	508.837,00
Charged to equity	0,00	0,00	0,00
<b>31.12.2008</b>	885.557,00	0,00	885.557,00
<b>01.01.2009</b>	885.557,00	0,00	885.557,00
Charged to income statement	660.655,00	307.747,03	968.402,03
Charged to equity	0,00	0,00	0,00
<b>31.12.2009</b>	1.546.212,00	307.747,03	1.853.959,03

### 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.

	31.12.2009	31.12.2008
Finished and semi-finished goods	1.111.052,34	1.806.224,60
Raw and auxiliary materials	1.957.731,31	1.854.027,00
<b>Total</b>	<b>3.068.783,65</b>	<b>3.660.251,60</b>



## 5. Trade and other receivables

Trade and other receivables are classified in accordance with IAS 39.9 as 'loans and receivables' granted by the company. These include non-derivative assets with fixed or determined payments that are not quoted in an active market. The company has no intention to sell these assets.

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' (126.804,41 €).

Other receivables include reimbursement rights of energy and sales tax.

	<u>31.12.2009</u>	<u>31.12.2008</u>
Trade debtors	1.717.596,83	2.830.065,94
Less provisions	41.000,00	107.595,01
Trade debtors net	1.676.596,83	2.722.470,93
Of it against affiliated undertakings	0,00	4.383,46
Other receivables	157.963,21	303.465,21
Of it against affiliated undertakings	0,00	0,00
Prepaid expenses	0,00	39.508,86
Of it to be recovered after more than 12 months	0,00	0,00
<b>Total</b>	<b>1.834.560,04</b>	<b>3.065.445,00</b>

## 6. Share capital

The nominal value of the share capital is 3.000.000 €. The actual paid up portion is 1.512.500 €. The outstanding amount has been called by the management.

## 7. Loans

Loans according to IAS 39.45 are recognised at cost.

	<u>31.12.2009</u>	<u>31.12.2008</u>
Long-term bank loans	11.289.772,73	12.154.545,46
Of it to be recovered after more than 12 months	9.790.909,09	11.289.772,73

## 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>01.01.2008</b>	69.587,13
Charged to income statement	68.242,23
Charged to equity	0,00
<b>31.12.2008</b>	<b>137.829,36</b>
<b>01.01.2009</b>	137.829,36
Charged to income statement	-137.829,36
Charged to equity	0,00
<b>31.12.2009</b>	<b>0,00</b>

## 9. Trade and other liabilities

Trade and other liabilities are classified in accordance with IAS 39.9 as 'loans and receivables' and 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.

	<u>31.12.2009</u>	<u>31.12.2008</u>
Suppliers	3.490.247,30	1.468.263,69
Advances from trade debtors	13.750,49	31.632,22
Social securities		
Salaries and wages	300	59,93
Taxes on wages	129.544,11	113.300,78
Sales tax	-4.650,55	295.241,81
Investment anodizing	163.680,00	0,00
Transitional company	66.384,00	0,00
Other creditors	104.946,84	1.676,56
Of it against affiliated undertakings	1.957,17	3.240,44
<b>Total</b>	<b>3.964.212,19</b>	<b>1.910.174,99</b>

## 10. Current income tax liabilities

	<u>31.12.2009</u>	<u>31.12.2008</u>
Current income tax liabilities	0,00	0,00

The amount of taxes on wages for the year 2009 and the comparative period 2008 have been reclassified from 'current tax liabilities' to 'trade and other liabilities'.

## 11. Loans

Loans according to IAS 39.45 are recognised at cost.

Total of loans with 3.043.654,17 € is due to be settled within 12 months after the balance sheet date.

	<b>31.12.2008</b>	<b>31.12.2008</b>
Short-term bank loans	3.043.654,17	3.449.651,71

## 12. 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>01.01.2008</b>	<b>97.100,00</b>	<b>283.957,65</b>	<b>108.200,00</b>	<b>489.257,65</b>
Liquidation of provision	7.900,00	15.809,15	4.113,97	27.823,12
Use of provision	27.600,00	268.148,50	104.086,03	399.834,53
Set up of provision	33.600,00	675.275,96	44.400,00	753.275,96
<b>31.12.2008</b>	<b>95.200,00</b>	<b>675.275,96</b>	<b>44.400,00</b>	<b>814.875,96</b>
Of it to due after more than 12 months		248.301,01		248.301,01
<b>01.01.2009</b>	<b>95.200,00</b>	<b>675.275,96</b>	<b>44.400,00</b>	<b>814.875,96</b>
Liquidation of provision	8.800,00	15.632,77	0,00	24.432,77
Use of provision	0,00	432.953,46	44.400,00	477.353,46
Set up of provision	30.000,00	328.996,25	132.400,00	491.396,25
<b>31.12.2009</b>	<b>116.400,00</b>	<b>555.685,98</b>	<b>132.400,00</b>	<b>804.485,98</b>
Of it to due after more than 12 months		183.070,21		183.070,21

### 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-retirement and overtime payments. The portion for the pre-retirement is due within a maximum period of six years.

### Other:

Other provisions include mainly expenses for tax declaration and preparing the balance sheet.

## 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

	2009	2008
Sales of produced goods	31.008.592,84	35.611.204,59
Sales of scrap and other	2.868.466,32	3.777.175,53
<b>Total</b>	<b>33.877.059,16</b>	<b>39.388.380,12</b>

### 2. Other operating income

	2009	2008
Capitalised manufacturing cost	36.460,06	55.360,64
Refund of energy tax	146.284,39	141.604,74
Sales of equipment	15.378,82	402.497,00
Liquidation of provisions	24.432,77	27.823,12
Foreign currency transactions	114.026,47	185.401,41
Other income	102.811,60	111.272,34
<b>Total</b>	<b>439.394,11</b>	<b>896.136,13</b>

### 3. Depreciation

	2009	2008
Cost of sales	2.379.278,35	2.031.987,97
Administrative expenses	26.222,64	17.608,88
Distribution costs	25.888,94	25.345,38
<b>Total</b>	<b>2.431.389,93</b>	<b>2.074.942,23</b>

#### 4. Additional disclosure

	2009	2008
Raw materials and consumables used	20.547.401,28	24.200.825,80
Salaries and social securities	9.293.623,08	10.690.595,99
of it for Directors	862.087,49	900.123,66

#### 5. Leases

The total of lease payments is:

• within 2010	22.272,00 €
• later than 2010 and not later than 2014	88.103,00 €
• later than 2014	8.264,67 €

The lease payment is for 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 2009 the lease payments recognised as an expense amount to 14.007,33 €.

#### 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. In addition trade income tax has to be paid. The different taxes are calculated on different tax basis according to German Tax law. Because of losses no taxes have to be paid.

	income statement	of it paid in 2009	provisions for tax balance sheet	included in deferred tax balance sheet
other deferred taxes (only under IFRS)	-1.106.231,39	0,00	0,00	-1.106.231,39

## 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 2010 – 2012 1.163 T€
- payable after 2012 1.629 T€

### 3. Staff

	<u>Average 2009</u>	<u>Average 2008</u>
Employees	38	44
Workers	157	176
Trainees	6	6
<b>Total number of staff</b>	<b>201</b>	<b>226</b>

The company has not committed itself to defined benefit plans.

#### 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 2009</b>					
sales	104.435,22			2.790.380,43	2.894.815,65
purchase	279.235,88			5.341.188,23	5.620.424,11
interest income	0,00				0,00
interest expense	0,00				0,00
receivables	0,00			195.911,57	195.911,57
liabilities	1.957,17			2.725.552,82	2.727.509,99
loans received				100.000,00	100.000,00
interest rate					
contingent	15.500.000,00				15.500.000,00
liabilities					
<b>Year 2008</b>					
sales	68.649,52			3.660.320,24	3.728.969,76
purchase	76.109,95			3.580.044,03	3.656.153,98
interest income	0,00				0,00
interest expense	0,00				0,00
receivables	4.383,46			246.064,88	250.448,34
liabilities	3.240,44			177.984,14	181.224,58
loans received					
interest rate					
contingent	22.500.000,00				22.500.000,00
liabilities					



## 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).

In 2009 there was a negative result, both according to HGB and IFRS.  
The loss is carried forward.

## 6. Events after the balance sheet date

There are no significant events after the balance sheet date.

Neumünster, March 1, 2010



Dr. Harald Westheide

- CEO -

## **Report on the situation of the NordAlu GmbH over the financial year 2009**

### **I. Preliminary note**

Subject of the company is the production of aluminium profiles, as well as their further processing by machining and / or surface coating. The sales area is mainly Germany and other European countries, but also to the United States profiles are delivered. The export share is about 14%.

### **II. Business process**

Like almost all sectors of the German industrial production the aluminium industry was also affected in 2009 by the worldwide economic crisis and its resulting economic downturn. The companies in the German aluminium industry in 2009 experienced an overall decline in market volume for extruded products of about 23%. Production fell by 25% below the previous year. In the 3rd and 4th quarter the situation has improved, but the orders are significantly below last year's figures.

#### Development of society

The impact of the economic crisis hit the NordAlu GmbH particularly hard.

Orders from a main customer of the vehicles area collapsed totally. Another automotive customer ordered only very scarce due to his bankruptcy. The profiles for both clients were associated with a very high value, so that just the mechanical processing was strongly under-utilized.

Orders from a customer in the solar industry brought utilization at the main press, but could not offset the revenue decline of the two above mentioned customers.

Also, the producers of shower rooms appointed because of the crisis between 10 to 20% less.

#### Sales

Sales revenue decreased in financial year 2009 to € 33.9 million (previous year: € 39.4 million), which is a decrease of 14%.

#### Production

The net production capacity of the extrusion plant increased by 5.8% to 7,742 tons (previous year: 7,320 tons). In the surface area 1,052 tm<sup>2</sup> were coated (previous year: 1,207 tm<sup>2</sup>).

#### Investment

The total investment in fixed assets amounted to € 1.6 million. In essence this have been necessary replacement investments or minor optimization measures and dies.

#### Personal

Earlier this year the supplementary collective agreement with the IG Metall, had been cancelled, which provided a working time of 37.5 hours per week at 35 hours per week payment in exchange for job security. Over the year time balances were shut down and short-time working was introduced. In negotiations with the IG Metall, a new supplementary agreement was reached that contents the following key: Separation of 37 employees through retirement contracts, severance pay or transfer to a transfer company (20 employees), postponement of the tariff increase, new rules of working and paying in 2010.

#### 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 2009 a year-end closing under this standards will be prepared.

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

#### Financial position

Tangible assets decreased to € 9.0 million (previous year: € 9.8 million) and amount to 56.8% of total assets.

#### Financial situation

Because of the negative net income, the financial position did not improve, despite the reduced current assets and reduced tangible assets.

#### Earnings

The net profit amounted to € -2.7 million (previous year: € -1.3 million). The result is well below the planned income of € 0.1 million. Included is the special effect as a result of downsizing the staff in the amount of € 1,1 million.

#### 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

The economic indicators of the main economic institutes indicate a slow recovery of the German economy and also the extrusion industry in 2010. For 2010, an increase in the production of aluminium profiles by about 7% is forecasted.

##### Risks of future development

The NordAlu GmbH pursues a strategy that is built on three pillars: Automotive, high-quality products and surface profiles with mechanical processing. Re-backs from the market in these areas would jeopardize the plan. All the economic data we currently have, first indicate a slow growth than a new crisis.

Internal restructuring measures have been launched to streamline and optimize the processes and procedures. These include a strengthening of sales through support from the group, increasing productivity by controlling production and additional technical know-how through a new technical manager.

The metal price for planning was based on a currently foreseeable level.

##### Orders and sales expectations

The order backlog as of 31.12.2009 amounted to € 4.3 million. This corresponds to a production capacity of nearby 1.5 months.

For financial year 2010 a turnover of € 34.4 million and a small result of € 0.1 million is planned.

The continuing pressure of competition was reflected in the scheduled rates

Neumünster, in February 2010



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 **NordAlu GmbH** for the business year from January 1 to December 31, 2009. 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 10, 2010



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. § 54 a Abs. 1 Nr. 2 WPO auf 4 Mio. € beschränkt; dies gilt auch dann, wenn eine Haftung gegenüber einer anderen Person als dem Auftraggeber begründet sein sollte. Ein einzelner Schadensfall ist auch bezüglich eines aus mehreren Pflichtverletzungen stammenden einheitlichen Schadens gegeben. Der einzelne Schadensfall umfaßt sämtliche Folgen einer Pflichtverletzung ohne Rücksicht darauf, ob Schäden in einem oder in mehreren aufeinanderfolgenden Jahren entstanden sind. Dabei gilt mehrfaches auf gleicher oder gleichartiger Fehlerquelle beruhendes Tun oder Unterlassen als einheitliche Pflichtverletzung, wenn die betreffenden Angelegenheiten miteinander in rechtlichem oder wirtschaftlichem Zusammenhang stehen. In diesem Fall kann der Wirtschaftsprüfer nur bis zur Höhe von 5 Mio. € in Anspruch genommen werden. Die Begrenzung auf das Fünffache der Mindestversicherungssumme gilt nicht bei gesetzlich vorgeschriebenen Prüfungen.

(3) Ausschlussfristen

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

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

## 10. Ergänzende Bestimmungen für Prüfungsaufträge

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

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

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

## 11. Ergänzende Bestimmungen für Hilfeleistung in Steuersachen

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

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

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

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

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

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

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

- a) die Bearbeitung einmalig anfallender Steuerangelegenheiten, z. B. auf dem Gebiet der Erbschaftsteuer, Kapitalverkehrssteuer, 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.