

Conditions for access

Conditions for getting access to the assurance engagement report of the assurance engagement regarding the appropriateness, implementation and effectiveness of the compliance management system (CMS) of BuyIn Group for the effectiveness period from 1 May to 31 October 2020 for the delineated area of anti- corruption (confirmation date 19 March 2021)

BuyIn GmbH engaged KPMG AG Wirtschaftsprüfungsgesellschaft (KPMG) on behalf of BuyIn Group (i.e. BuyIn SA, BuyIn SAS, BuyIn GmbH and Corporation BuyIn Canada) to perform a reasonable assurance engagement regarding the appropriateness, implementation and effectiveness of the compliance management system of BuyIn Group for the delineated area of anti-corruption. The CMS description, which is the basis of the assurance engagement, is attached to the assurance engagement report (Appendix 1).

The results of the assurance engagement were summarized within an assurance engagement report addressed to BuyIn GmbH. We have carried out our engagement on the basis of the General Engagement Terms for German Public Auditors and Public Audit Firms included in our engagement agreement dated as of January 1, 2017.

[AAB \(PDF, English\) 57 KB](#)

Please note, that the following assurance engagement report was provided in fulfilment of a contractual agreement with BuyIn GmbH and that this version of the assurance engagement report may only be used in a tendering process.

I confirm that I take note of the content of the AAB and that I would like to get access to the following assurance engagement report on that basis.



Assurance engagement regarding appropriateness, implementation and effec- tiveness of the compliance management system

INDEPENDENT ASSURANCE REPORT

BuyIn GmbH
Bonn, Germany

Delineated area of anti-corruption

KPMG AG Wirtschaftsprüfungsgesellschaft

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To BuyIn GmbH, Bonn, Germany

1 Assurance engagement

With the purchase order as of September 7, 2020, BuyIn GmbH, Bonn, Germany engaged us on behalf of

BuyIn Group (i.e. BuyIn SA, BuyIn SAS, BuyIn GmbH and Corporation BuyIn Canada)
– hereafter “BuyIn” or “entity” –

to perform a reasonable assurance engagement on the attached description of the compliance management system (Appendix 1) for the appropriateness, the implementation and the operating effectiveness of the compliance management system (hereafter “CMS”) for the delineated area of anti-corruption during the period of operating effectiveness from May 1 to October 31, 2020.

This assurance report is intended for BuyIn GmbH for informational purposes and may not be used in any other context than to inform BuyIn’s Board of Management or Supervisory Board. In particular, this assurance report may not be disclosed to third parties or used in sales brochures or other similar public documents or media unless our approval is given. We approve the transfer of this document to third parties, provided they acknowledge our limitation of liability in an electronically based counter-confirmation process or similar procedure. Third parties within the meaning of these regulations exclude members of the Supervisory Board. Our independent assurance report references the underlying engagement and terms agreed herein.

We have provided the services described above for BuyIn. We have carried out our engagement on the basis of the General Engagement Terms included in our engagement agreement dated as of January 1, 2017 (Appendix 2). By taking note of and using the information as contained in our assurance report, each recipient confirms to have taken note of the terms and conditions stipulated in the aforementioned General Engagement Terms (including the liability limitations specified in item no. 9 included therein) and acknowledges their validity in relation to us.

2 Definition and delineation of the compliance management system

A compliance management system (CMS) includes the principles and measures of an entity that are intended to ensure compliance of the entity, its employees and any third parties (if applicable), i.e. compliance with specific rules and requirements and/or the prevention of material violations of rules and requirements in clearly defined specific areas (non-compliance).

The overall design of a CMS encompasses specific basic elements that are listed in Assurance Standard 980 issued by the Institute of Public Auditors in Germany (hereafter “AssS. 980”):

- the encouragement of a compliance culture,
- the design of the compliance framework (organizational and operational structure),
- the establishment of compliance objectives,
- the process for determining and analyzing compliance risks by the entity,
- the process of preparing the compliance program,
- the development of the communication process as well as
- the procedures for monitoring and improving the CMS.

BuyIn established its compliance program based on the frameworks set out in AssS. 980.

A CMS is appropriate when it is suitable for both identifying in due time with reasonable assurance the risks of material non-compliance and for preventing such non-compliance. An appropriate CMS also ensures that incidences of non-compliance that have already occurred are reported promptly to the responsible unit in the entity so that the necessary actions for improving the CMS can be determined.

The CMS is considered to be effective when the affected parties acknowledge and comply with the principles and measures in the ongoing business processes in accordance with their responsibility.

Even a CMS that has been appropriately designed and effectively implemented cannot absolutely ensure that the regulations of the delineated area will always be followed or that non-compliance will be prevented, detected and sanctioned by the system. These inherent limitations of such systems result from the possibility that human judgment may lead to erroneous decision-making processes, that management may decide not to implement measures when costs exceed benefits, that disruptions solely due to simple human errors or mistakes may occur, or that controls may be circumvented or overridden by two or more persons in collusion.

3 Performance of the engagement

3.1 Subject of the engagement

The subject of our assurance engagement were the assertions contained in the CMS description in Appendix 1 regarding the appropriateness, implementation and operating effectiveness of the CMS of BuyIn for the delineated area of anti-corruption.

The legal representatives established the compliance program based on the frameworks set out in IDW AssS 980. In accordance with our engagement letter, our engagement and reporting are limited to the rules of the CMS related to the delineated area of anti-corruption as described in the CMS description (Appendix 1):

“BuyIn has implemented group-wide compliance structures and procedures to encourage and monitor the respect of the laws and internal regulations in force in all countries where it operates. BuyIn is not only the procurement joint venture of its shareholders, but is allowed to serve other telecommunication companies as strategic procurement partner after having received all required regulatory clearances. For BuyIn as a procurement company corruption risks have a high relevance. Therefore, BuyIn puts a significant focus on identifying corruption risks, to minimize these risks by taking appropriate measures and thus to protect the company, its employees and partners from incurring fines, reputational damage and / or liability-related costs. For this reason, BuyIn has established a dedicated Compliance Management System (CMS) in the risk area relevant for anti-corruption law. This particular CMS is designed to enable all employees to obtain legal advice and guidance on practical courses of action from the Compliance Officer and its unit.”

The entity’s legal representatives are responsible for the CMS, including the CMS documentation and contents of the CMS description as well as the development and implementation of the associated principles and measures.

Our responsibility is to express an assurance opinion on the assertions made by the legal representatives in the CMS description (Appendix 1) about the appropriateness, implementation and effectiveness of the CMS for the delineated area of anti-corruption on the basis of our engagement work. As a systems-related engagement, the objective of the assurance engagement is not to identify individual incidences of non-compliance. Therefore, it is not directed towards obtaining assurance about the actual compliance with regulations and requirements.

3.2 Nature and scope of the assurance engagement

We performed our assurance engagement based on the professional duties set forth for public auditors as prescribed by the Assurance Standard 980: Principles for the Proper Performance of Reasonable Assurance Engagements Relating to Compliance Management Systems (AssS. 980). This standard requires that we plan and perform the assurance engagement so that we can, with reasonable assurance, assess

- that the assertions contained in the CMS description regarding the principles and measures of the CMS are appropriately presented in all material respects,
- that the assertions contained in the CMS description about the CMS principles and measures are, in accordance with the applied CMS principles, suitable for both identifying in due time and with reasonable assurance risks of material non-compliance with corruption regulations and for preventing such non-compliance and
- that the principles and measures were implemented as of May 1, 2020 and were effective during the period from May 1 to October 31, 2020.

An adequate presentation includes statements covering all basic elements of a CMS and statements that do not contain any false information, inappropriate generalizations or unbalanced or biased presentations which may have the effect of misleading the addressees of the report.

We applied professional judgment in determining our audit procedures during the assurance engagement and considered our knowledge of the legal and economic environment and the compliance requirements of BuyIn. We assessed the principles and measures set forth in the CMS description and the evidence presented to us primarily on a test basis. We believe that our engagement provides a reasonable basis for our assurance opinion.

To assess the appropriateness, implementation and effectiveness of the CMS of BuyIn for the delineated area of anti-corruption, we performed the following audit procedures:

- Analysis of business activities in order to determine the resulting risks with respect to violation of anti-corruption regulations,
- Review of the CMS description,
- Review of fundamental CMS documentation e.g. process manuals and policies related to anti-corruption,
- Review of documents regarding the design as well as the performance of the Compliance Risk Assessment in order to assess and validate the performed risk assessment with regard to corruption risks,
- Review of documentation regarding organizational and operational structure of the compliance department of BuyIn,
- Review of documentation regarding the compliance communication, in particular compliance related communication by management (“tone from the top”) and compliance communication on the intranet of the entity,

- Review and assessing of training materials used to perform classroom trainings with a focus on anti-corruption,
- Inspection of IT-tools and portals, e. g. case management and contract management tool,
- Review of documentation regarding the handling of compliance tip-offs,
- Review of the design and performance of relevant ICS controls in Procurement,
- Performance of random sample testing of the operating effectiveness of classroom trainings and the documentation of the participation in classroom trainings as well as
- Performance of random sample testing of the design and operating effectiveness of compliance-relevant measures and controls in the Sourcing process.

Furthermore, we performed interviews with the following representatives:

- Compliance Officer and employees of the compliance department,
- Employees of other business areas, in particular Sourcing and ICS, as well as
- Member of the BuyIn management board with overall compliance responsibility.

We performed the assurance engagement (with interruptions) from September 2020 to March 19, 2021.

We were provided with all the information and evidence we had requested. Legal representatives have provided a written representation on the completeness and accuracy of the CMS description and the explanations and evidence provided to us related to the appropriateness, implementation and effectiveness of the CMS.

4 Assurance opinion

Our assurance opinion exclusively encompasses the CMS description of the delineated area of anti-corruption of BuyIn. Any extrapolation or transfer of this assurance opinion to other compliance matters not covered by this delineated CMS area could lead to false conclusions being drawn.

Based on the insights of our reasonable assurance engagement we conclude that

- the assertions contained in the CMS description about the CMS principles and measures are appropriately presented in all material respects,
- the assertions contained in the CMS description about the CMS principles and measures are, in accordance with the applied CMS principles, suitable for both identifying in due time and with reasonable assurance risks of material non-compliance with corruption regulations and for preventing such non-compliance and
- the principles and measures were implemented as of May 1, 2020 and were effective during the period from May 1 to October 31, 2020.

The CMS description for the delineated area of anti-corruption at the entity was completed as of October 31, 2020; the explanations of the assurance procedures for assessing the appropriateness, implementation and effectiveness of specific principles and measures cover the period from May 1 to October 31, 2020. Any extrapolation of this information to a future date could lead to false conclusions being drawn if the CMS has been changed in the interim.

Even an otherwise effective CMS is subject to inherent limitations of a system, which means that incidents of material non-compliance may occur that are not prevented or detected by the system. The objective of this assurance engagement is to obtain assurance on the system, not identifying any incidences of non-compliance. It is therefore not intended to obtain audit assurance on actual compliance with rules and regulations.

Düsseldorf, March 19, 2021

KPMG AG
Wirtschaftsprüfungsgesellschaft



Stauder
Wirtschaftsprüfer
[German Public Auditor]



Quade
Steuerberaterin
[Certified Tax Consultant]

Appendices

Appendix 1

Description of the Compliance Management System of BuyIn

Description of the Compliance Management System of BuyIn Area of anti-corruption law

Introduction

BuyIn Group¹ (“BuyIn”) believes that legal and ethical conduct is key to its business success. It has therefore established internal regulations and policies as a framework for guiding the behavior of all BuyIn employees. Accordingly, BuyIn has implemented group-wide compliance structures and procedures to encourage and monitor the respect of the laws and internal regulations in force in all countries where it operates.

BuyIn is not only the procurement joint venture of its shareholders, but is allowed to serve other telecommunication companies as strategic procurement partner after having received all required regulatory clearances. For BuyIn as a procurement company, corruption risks have a high relevance. Therefore, BuyIn puts a significant focus on identifying corruption risks, to minimize these risks by taking appropriate measures and thus to protect the company, its employees and partners from incurring fines, reputational damage and / or liability-related costs.

For this reason, BuyIn has established a dedicated Compliance Management System (CMS) in the risk area relevant for anti-corruption law. This particular CMS is designed to enable all employees to obtain legal advice and guidance on practical courses of action from the Compliance Officer and its unit. As part of and in combination with BuyIn’s Compliance Management System, the anti-corruption compliance program constitutes a comprehensive system and possesses the seven basic components necessary for an effective CMS in accordance with the Assurance Standard 980 issued by the Institute of Public Auditors in Germany (IDW PS 980).

¹ BuyIn Group in this document refers to all BuyIn entities, i.e. BuyIn SA, BuyIn SAS, BuyIn GmbH and Corporation BuyIn Canada Inc

These components are:

1. Compliance culture

The compliance culture is essential for the sustainable success of BuyIn and is taken seriously by the top management. It is shaped by the management's attitudes and behavior and by the role of the supervisory bodies ("tone from / at the top"). The compliance culture influences the significance BuyIn's employees attach to be compliant with external and internal rules and thus their willingness to comply.

At BuyIn the guiding framework of the compliance culture and the company values in general are set out and described first and foremost in the companies' Ethics Code of Conduct. The Ethics Code of Conduct is BuyIn's cultural mission statement and hence the framework for all employees. It links the standard of respecting laws and regulations with the special requirements regarding ethical behavior and the company's core set of values. In the Ethics Code of Conduct, BuyIn also acknowledges the respect of anti-corruption law and describes the binding management commitment to act in a reliable way and therefore, refrain from engaging in any forms of corruption or even actions that could potentially be misleading.

BuyIn employees are not allowed to offer, promise or grant illegal benefit to decision makers in order to achieve preferential treatment for, or to influence a decision in their favor. Business decisions are only made in the interest of BuyIn. BuyIn gives the commitment to consistently observe the rules set up in the "Anti-Corruption Guideline" in cases where advantages or benefits are offered, promised or granted. In particular, BuyIn's top management as well as representatives of the shareholders in the Board of Directors (BoD) regularly demonstrate their commitment to these values ("tone from the top").

2. Compliance objectives

Based on a strong and lasting relationship with its shareholders, other partners, employees and suppliers, BuyIn aims at creating value for its partners, fostering good cooperation and providing excellent services. It is therefore of utmost importance for BuyIn to be perceived as a reliable partner and to continuously ensure its integrity. Based on these general corporate objectives and weighing the necessary requirements that are needed to attain these goals, BuyIn has defined its compliance objectives.

This entails the objective to avoid compliance breaches and improper business decisions by integrating compliance into business processes at an early stage and in a sustainable manner. Additionally, this also includes the definition of the relevant areas and the requirements to be complied with in these areas. The area of anti-corruption law is one of the top priorities due to the significant inherent risk of BuyIn's business and legal structure. BuyIn's Know How, and information on data/benchmarks are highly sensitive and need to be protected. These compliance objectives form the basis for assessing compliance risks.

3. Compliance risks

BuyIn Compliance has established a procedure for systematic risk identification and reporting has been implemented for this purpose ("Compliance Risk Assessment, CRA"). The identified risks are analyzed in terms of their probability of occurrence and possible consequences by considering the assessments of relevant stakeholders from an operational point of view. These are addressed by the compliance program.

Following the CRA, corruption risks are particularly relevant for BuyIn as a procurement alliance. A violation of anti-corruption requirements could not only lead to significant fines, reputational damage or claims for damages, but could also put the existence of the joint venture in question. Therefore, anti-corruption violations are considered to be even one of the main compliance risks for BuyIn. BuyIn Compliance is responsible for identifying and addressing risks by embedding appropriate measures in the BuyIn's compliance program.

4. Compliance program

On the basis of identified compliance risks, policies and procedures have been designed to mitigate these compliance risks identified and thus to prevent non-compliance. BuyIn's compliance program is established to function independently of specific individuals.

Main rules on anti-corruption are laid down in the Ethics Code of Conduct and BuyIn's Anti-Corruption Guideline.

In this regard, rules for accepting and granting of benefits are defined in a clear manner allowing employees to find information easily. Benefits may come in various forms and in the Anti-Corruption Guideline for the three main types of benefits, - gifts, meals and events - general rules are defined. In addition, requirements to avoid individual conflict of interests are described to keep personal interests separate from those of BuyIn.

All employees receive a mandatory face-to-face anti-corruption training when joining BuyIn. To strengthen the level of awareness refresher trainings are provided on a regular basis.

The whistleblowing and case management process serve to also identify anti-corruption violations. Any identified breach of compliance rules is documented and reported to the management and relevant stakeholders.

For the onboarding of Third Partners, it is ensured that antitrust and general compliance requirements are observed. Therefore, the relevant documents and processes are in place.

5. Compliance organization

The roles and responsibilities as well as the structures and procedures of the Compliance organization are defined in the “Master Agreement” of the parent companies. The Master Agreement explicitly stipulates that the Compliance organization needs to “ensure full compliance of all staff” of BuyIn “with the terms of all applicable laws and regulation” including anti-corruption law. Thus, the Master Agreement establishes a Compliance organization to implement the CMS and requires that the resources necessary for an effective CMS are made available.

BuyIn’s statutes set out the respective tasks and responsibilities of the Compliance unit. Based on this business mandate, the Compliance department covers the area of anti-corruption law in order to meet the compliance objectives and thus to reduce anti-corruption risks by

- 1) setting objectives and missions of the Compliance team in its quarterly CMS Planning & Reporting and its yearly BoD Report;
- 2) monitoring the handling of benefits, especially checking regularly if all invitations to meals and work related events are documented properly and all compliance rules are observed;
- 3) taking measures to prevent risks by providing advice on anti-corruption matters in the daily business, and in all forms of cooperation’s with suppliers and potential partners.

BuyIn’s Compliance Officer reports directly to the General Secretary and shall at all times be allowed to directly report to the CEO and the Board of Directors at his own discretion. The Compliance Officer is able to escalate critical topics promptly and effectively in order to minimize anti-corruption risks. There is a clear allocation of topics and responsibilities for supporting the domains and service functions in the Compliance department.

To improve the compliance knowledge within the Compliance department all members of the Compliance team regularly participate in specific compliance trainings.

6. Compliance communication

BuyIn compliance uses a broad range of communication measures (e.g. E-Mail communication, BuyIn intranet; brochures, postcards, personal meetings) to continuously inform all BuyIn employees as well as employees of the parent companies and future partners about the Compliance Management System and the defined roles and responsibilities. Thus, every party involved understands its function in the compliance system and carries it out properly.

Every new BuyIn employee, irrespectively whether hired on the basis of a temporary or permanent employment contract, has to undergo a face-to-face training. This training entails the basic information and requirements to comply with all rules, in particular with anti-corruption law. The training provides guidance how to apply the compliance rules in daily business. Compliance also runs refresher trainings on a regular basis to maintain the awareness of the employees.

Of course, all BuyIn employees and stakeholders have the possibility to contact the Compliance department for proper advice.

In the yearly Compliance Report to the BoD (BoD-report) Compliance gives an overview of the development of each Compliance topic. This includes main activities and achievements, an overview of the results of the yearly CRA and all “whistleblower” cases or incidents. The BoD-report gives also an outlook on the topics on the year to come.

7. Compliance monitoring and improvement

BuyIn Compliance continuously monitors the implementation of the CMS and adapts its approach to new developments that might occur. A sufficient documentation of the CMS is provided on a regular basis as well as in an incident-related manner. Improvement measures identified – for instance in the CRA – are implemented.

Any weakness or non-compliance identified during the monitoring process is reported to the Compliance department and to the management if necessary. BuyIn Compliance ensures that the CMS is enforced and continuously improved.

BuyIn uses the following elements to monitor and improve its CMS:

- BuyIn Compliance is monitoring Benefit List and elements described in the “Compliance Program”. In its quarterly CMS Planning & Reporting, the Compliance department controls the status of the missions and objectives of the Compliance team and identifies possible weaknesses.
- The parent companies run Joint audits of BuyIn’s CMS as well as of the internal control system. The auditors control the functioning and effectiveness of the measures and set out requirements for improvements, which have to be met within a specified period of time.
- By giving an overview of the past development of each Compliance topic and an outlook on possible improvements as described under “Compliance Communication”, the yearly BoD-report serves the management as a tool to monitor the functioning of the CMS.

Bonn, 31st of October 2020



Sven Büschgens
BuyIn Compliance Officer

Appendix 2

General Engagement Terms

General Engagement Terms

for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of January 1, 2017

1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (*Wirtschaftsprüfer*) or German Public Audit Firms (*Wirtschaftsprüfungsgesellschaften*) – hereinafter collectively referred to as "German Public Auditors" – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties.

2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Proper Professional Conduct (*Grundsätze ordnungsmäßiger Berufsausübung*). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (*betriebswirtschaftliche Prüfungen*), the consideration of foreign law requires an express written agreement.

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obligated to refer the engaging party to changes or any consequences resulting therefrom.

3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor's work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by the German Public Auditor.

4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor's staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Were the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Drafts are non-binding. Except as otherwise agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing. Statements and information of the German Public Auditor outside of the engagement are always non-binding.

6. Distribution of a German Public Auditor's professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor's written consent, unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor's professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (*Textform*) [Translators Note: The German term "*Textform*" means in written form, but without requiring a signature] without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor's professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor's professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ [Article] 323 Abs 1 [paragraph 1] HGB [German Commercial Code: *Handelsgesetzbuch*], § 43 WPO [German Law regulating the Profession of Wirtschaftsprüfer: *Wirtschaftsprüferordnung*], § 203 StGB [German Criminal Code: *Strafgesetzbuch*]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, the liability of the German Public Auditor for claims for damages of any other kind, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: *Produkthaftungsgesetz*], for an individual case of damages caused by negligence is limited to € 4 million pursuant to § 54 a Abs. 1 Nr. 2 WPO.

(3) The German Public Auditor is entitled to invoke demurs and defenses based on the contractual relationship with the engaging party also towards third parties.

(4) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor's negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(5) An individual case of damages within the meaning of paragraph 2 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 regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(6) A claim for damages expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor's report, he may no longer use this auditor's report.

If the German Public Auditor has not issued an auditor's report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor's written consent and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor's report, it may no longer be used. If the engaging party has already made use of the auditor's report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing, ongoing tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party
- b) examination of tax assessments in relation to the taxes referred to in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)
- e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing.

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (*Steuerberatungsvergütungsverordnung*) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (*Textform*).

(6) Work relating to special individual issues for income tax, corporate tax, business tax, valuation assessments for property units, wealth tax, as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

- a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;
- b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;
- c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and
- d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (*Textform*) accordingly.

13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (*Verbraucherschlichtungsstelle*) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (*Verbraucherstreitbeilegungsgesetz*).

15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.