

Rüter und Partner  
Steuerberatungsgesellschaft mbB

Prielmayerstr. 3  
80335 München

## **ANNUAL FINANCIAL STATEMENTS**

at 31. December 2019

**Versant GmbH**  
**Entwicklung, Support, Vertrieb und Consulting**

Halenreihe 42  
22359 Hamburg

Tax office: Hamburg-Oberalster

Tax No.: 50/766/00394

## BALANCE SHEET

Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

as at

31. December 2019

## ASSETS

## EQUITY AND LIABILITIES

	EUR	Financial year EUR	Previous year EUR		EUR	Financial year EUR	Previous year EUR
<b>A. Fixed assets</b>				<b>A. Equity</b>			
I. Tangible fixed assets				I. Subscribed capital		180.000,00	180.000,00
1. Other equipment, operating and office equipment		45.993,00	93.040,00	II. Capital reserves		1.000.000,00	1.000.000,00
<b>B. Current assets</b>				III. Retained profits brought forward		11.294.256,62	9.388.561,88
I. Receivables and other assets				IV. Net income for the financial year		1.790.143,45	1.905.694,74
1. Trade receivables	670.081,44		623.100,85	<b>B. Provisions</b>			
2. Receivables from other long-term investees and investors	14.308.799,72		9.413.490,73	1. Other provisions		396.461,02	592.091,59
3. Other assets	<u>309.052,98</u>		<u>4.942.753,02</u>	<b>C. Liabilities</b>			
- of which from shareholders EUR 0,00 (EUR 4.635.625,76)		15.287.934,14	<u>14.979.344,60</u>	1. Trade payables	49.324,05		36.339,94
II. Cash-in-hand, central bank balances, bank balances and cheques				- of which due within one year EUR 49.324,05 (EUR 36.339,94)			
<b>C. Prepaid expenses</b>				2. Liabilities to affiliated companies	0,00		1.617.832,38
		435.729,74	693.854,01	- of which due within one year EUR 0,00 (EUR 2.347,18)			
		6.722,49	67.419,19	- of which due after more than one year EUR 0,00 (EUR 1.615.485,20)			
				3. Other liabilities	<u>71.190,27</u>	120.514,32	<u>75.346,07</u>
				- of which taxes EUR 71.190,27 (EUR 75.346,07)			<u>1.729.518,39</u>
Carry forward		15.776.379,37	15.833.657,80	Carry forward			
						14.781.375,41	14.795.866,60

BALANCE SHEET

Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

as at

31. December 2019

ASSETS

EQUITY AND LIABILITIES

	EUR	Financial year EUR	Previous year EUR	Carry forward	EUR	Financial year EUR	Previous year EUR
Carry forward		15.776.379,37	15.833.657,80			14.781.375,41	14.795.866,60
				- of which due within one year EUR 71.190,27 (EUR 75.346,07)			
				<b>D. Deferred income</b>		995.003,96	1.037.791,20
		15.776.379,37	15.833.657,80			15.776.379,37	15.833.657,80

## INCOME STATEMENT from 01.01.2019 to 31.12.2019

Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

	EUR	Financial year EUR	Previous year EUR
1. Sales		<u>7.708.462,44</u>	<u>6.878.992,13</u>
<b>2. Gross revenue for the period</b>		7.708.462,44	6.878.992,13
3. Other operating income			
a) Miscellaneous other operating income		0,00	115.395,29
- of which currency translation gains			
EUR 0,00 (EUR 115.395,29)			
4. Cost of materials			
a) Cost of purchased services		2.466.875,61	1.663.039,39
5. Personnel expenses			
a) Wages and salaries	2.512.727,36		2.430.874,03
b) Social security, post-employment and other employee benefit costs	<u>397.939,44</u>		<u>365.170,37</u>
		2.910.666,80	2.796.044,40
6. Depreciation, amortisation and write-downs			
a) Amortisation and write-downs of intangible fixed assets and depreciation and write downs of tangible fixed assets		61.819,85	123.827,00
7. Other operating expenses			
a) Occupancy costs	207.594,18		206.455,70
b) Insurance premiums, fees and contributions	3.617,91		848,68
c) Cost of third-party repairs and maintenance	139.345,91		114.525,89
d) Advertising and travel expenses	51.402,07		57.243,89
e) Miscellaneous operating costs	324.916,33		298.799,13
f) Miscellaneous other operating expenses	<u>46.466,18</u>		<u>0,00</u>
- of which currency translation losses		773.342,58	677.873,29
EUR 46.466,18 (EUR 0,00)			
8. Other interest and similar income		411.554,85	304.312,95
Carry forward		1.907.312,45	2.037.916,29

## INCOME STATEMENT from 01.01.2019 to 31.12.2019

Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

	EUR	Financial year EUR	Previous year EUR
Carry forward		1.907.312,45	2.037.916,29
9. Interest and similar expenses		0,00	277,55
10. Taxes on income		<u>117.169,00</u>	<u>131.944,00</u>
<b>11. Net income/net loss after tax</b>		<u>1.790.143,45</u>	<u>1.905.694,74</u>
<b>12. Net income for the financial year</b>		<u><u>1.790.143,45</u></u>	<u><u>1.905.694,74</u></u>

**BALANCE SHEET ACCOUNTS** as at 31.12.2019**Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg****ASSETS**

Account	Description	EUR	Financial year EUR	Previous year EUR
	<b>Other equipment, operating and office equipment</b>			
400	Operating equipment	245,00		408,00
451	Computer Software	1.074,00		0,00
452	Computer Hardware	<u>44.674,00</u>		<u>92.632,00</u>
			45.993,00	93.040,00
	<b>Trade receivables</b>			
1410	Trade receivables	648.185,19		599.798,35
1411	Trade receivables	<u>21.896,25</u>		<u>23.302,50</u>
			670.081,44	623.100,85
	<b>Receivables from other long-term investees and investors</b>			
1597	Intercompany Versant US	8.162.203,05		3.391.313,32
1598	Intercompany Actian US	<u>6.146.596,67</u>		<u>6.022.177,41</u>
			14.308.799,72	9.413.490,73
	<b>Other assets</b>			
1507	Intercompany POET	0,00		4.635.625,76
1531	Rcvbls employees due w/in 1 year	8.299,72		5.804,00
1540	Receivables from trade tax overpaymts	222.592,30		200.766,00
1541	Receivables from corporate tax overpay	<u>78.160,96</u>		<u>100.557,26</u>
			309.052,98	4.942.753,02
	<b>of which from shareholders EUR 0,00 (EUR 4.635.625,76)</b>			
1507	Intercompany POET			
	<b>Cash-in-hand, central bank balances, bank balances and cheques</b>			
1000	Cash-in-hand	536,80		313,76
1210	Bank account EURO	171.046,47		691.820,76
1295	Bank account USD	<u>264.146,47</u>		<u>1.719,49</u>
			435.729,74	693.854,01
	<b>Prepaid expenses</b>			
980	Prepaid expenses		6.722,49	67.419,19
	<b>Total assets</b>		<u>15.776.379,37</u>	<u>15.833.657,80</u>

**BALANCE SHEET ACCOUNTS** as at 31.12.2019**Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg****EQUITY AND LIABILITIES**

Account	Description	EUR	Financial year EUR	Previous year EUR
	<b>Subscribed capital</b>			
800	Subscribed capital		180.000,00	180.000,00
	<b>Capital reserves</b>			
840	Capital reserves		1.000.000,00	1.000.000,00
	<b>Retained profits brought forward</b>			
860	Retained profits		11.294.256,62	9.388.561,88
	<b>Net income for the financial year</b>			
	Net income for the financial year		1.790.143,45	1.905.694,74
	<b>Other provisions</b>			
970	Other provisions	0,00		1.100,00
971	Accruals for outstanding invoices	28.728,91		34.571,90
973	Accrual for jubilee	40.679,00		36.399,00
977	Audit accruals	10.000,00		35.000,00
978	Bonus, Commission accrual	256.000,84		434.857,39
979	Vacation accrual	<u>61.052,27</u>		<u>50.163,30</u>
			396.461,02	592.091,59
	<b>Trade payables</b>			
1610	Trade payables, no sep. rec./payables accounting		49.324,05	36.339,94
	<b>of which due within one year EUR 49.324,05 (EUR 36.339,94)</b>			
1610	Trade payables, no sep. rec./payables accounting			
	<b>Liabilities to affiliated companies</b>			
1595	Receivables affiliated company due w/in 1 y	0,00		2.347,18
1596	Receivables affiliated company due > 1 y	<u>0,00</u>		<u>1.615.485,20</u>
			0,00	1.617.832,38
	<b>of which due within one year EUR 0,00 (EUR 2.347,18)</b>			
1595	Receivables affiliated company due w/in 1 y			
	<b>of which due after more than one year EUR 0,00 (EUR 1.615.485,20)</b>			
1596	Receivables affiliated company due > 1 y			
	<b>Other liabilities</b>			
1741	Wage and church tax payables	43.108,45		42.602,99
		<hr/>	<hr/>	<hr/>
				42.602,99
Carry forward		43.108,45	14.710.185,14	14.763.123,52

**BALANCE SHEET ACCOUNTS** as at 31.12.2019**Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg**

## EQUITY AND LIABILITIES

Account Description	EUR	Financial year EUR	Previous year EUR
Carry forward	43.108,45	14.710.185,14	14.763.123,52 42.602,99
1780 VAT prepayments	<u>28.081,82</u>	71.190,27	<u>32.743,08</u> 75.346,07
<b>of which taxes EUR 71.190,27 (EUR 75.346,07)</b>			
1741 Wage and church tax payables			
1780 VAT prepayments			
<b>of which due within one year EUR 71.190,27 (EUR 75.346,07)</b>			
1741 Wage and church tax payables			
1780 VAT prepayments			
<b>Deferred income</b>			
990 Deferred income		995.003,96	1.037.791,20
Total equity and liabilities		<u>15.776.379,37</u>	<u>15.833.657,80</u>



## Income statement ACCOUNTS from 01.01.2019 to 31.12.2019

## Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

Account	Description	EUR	Financial year EUR	Previous year EUR
<b>Sales</b>				
8200	Revenue	4.912.401,30		3.905.921,15
8252	I/C R&D	<u>2.796.061,14</u>		<u>2.973.070,98</u>
			7.708.462,44	6.878.992,13
<b>Miscellaneous other operating income</b>				
2660	Currency translation gains		0,00	115.395,29
<b>of which currency translation gains EUR 0,00 (EUR 115.395,29)</b>				
2660	Currency translation gains			
<b>Cost of purchased services</b>				
3100	Purchased services	19.007,57-		18.628,42-
3102	Intercompany Royalties	1.336.917,14-		755.226,71-
3103	Intercompany Expenses	<u>1.110.950,90-</u>		<u>889.184,26-</u>
			2.466.875,61-	1.663.039,39-
<b>Wages and salaries</b>				
4102	Salaries on vacation	10.888,97-		10.867,52-
4116	Grant Jobticket	21.046,56-		21.371,72-
4120	Salaries	1.917.041,84-		1.850.216,22-
4124	Commissions	561.829,12-		532.249,57-
4146	Volunt. n-c bnft marg. part-t workers	<u>1.920,87-</u>		<u>16.169,00-</u>
			2.512.727,36-	2.430.874,03-
<b>Social security, post-employment and other employee benefit costs</b>				
4130	Statutory social security expenses	367.141,19-		334.343,41-
4138	Contrib. to occup. health/safety agency	7.425,42-		7.294,16-
4169	Employee benefit expenses	<u>23.372,83-</u>		<u>23.532,80-</u>
			397.939,44-	365.170,37-
<b>Depreciation, amortisation and write-downs</b>				
<b>Amortisation and write-downs of intangible fixed assets and depreciation and write downs of tangible fixed assets</b>				
4830	Depreciation of tangible fixed assets		61.819,85-	123.827,00-
<b>Occupancy costs</b>				
4210	Rent (immovable property)	167.182,20-		162.550,41-
4230	Heating	40.411,98-		41.388,47-
4240	Gas, electricity, water	<u>0,00</u>		<u>2.516,82-</u>
			207.594,18-	206.455,70-
<b>Insurance premiums, fees and contributions</b>				
4390	Other levies		3.617,91-	848,68-
Carry forward			2.057.888,09	2.204.172,25

## Income statement ACCOUNTS from 01.01.2019 to 31.12.2019

## Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg

Account Description	EUR	Financial year EUR	Previous year EUR
Carry forward		2.057.888,09	2.204.172,25
<b>Cost of third-party repairs and maintenance</b>			
4805 Repairs/maintenance operat/office equipm	31.210,83-		2.296,51-
4806 Hardware / software maintenance expenses	<u>108.135,08-</u>		<u>112.229,38-</u>
		139.345,91-	114.525,89-
<b>Advertising and travel expenses</b>			
4600 Advertising costs	0,00		473,35-
4605 Trade Shows	0,00		408,86-
4612 Meetings	10.801,64-		2.795,54-
4646 Employee Morale	7.484,67-		6.412,42-
4650 Entertainment expenses	868,07-		2.162,74-
4654 Non-deductible entertainm. expenses	372,02-		926,88-
4660 Employee travel expenses	4.513,00-		6.432,85-
4661 Travel Expenses - Air travel	19.722,21-		28.002,48-
4663 Employee travel expnses, cost of travel	528,67-		731,81-
4666 Employee trav. expn, accommodation costs	<u>7.111,79-</u>		<u>8.896,96-</u>
		51.402,07-	57.243,89-
<b>Miscellaneous operating costs</b>			
4900 Other operating expenses	1.473,39-		0,00
4910 Postage	1.882,37-		1.432,05-
4920 Telephone	134.266,34-		78.862,72-
4930 Office supplies	6.725,83-		9.033,28-
4931 Computer Supplies	22.556,55-		4.666,22-
4950 Legal and consulting costs	77.018,88-		105.750,74-
4955 Bookkeeping costs	67.836,80-		67.454,80-
4960 Rent fixtures/fittings (movable assets)	3.242,28-		3.458,16-
4961 Leases (movable assets)	0,00		13.832,21-
4970 Incidental monetary transaction costs	7.308,92-		14.308,95-
4985 Tools and minor equipment	1.214,97-		0,00
4986 Software Purchases under \$1.000	<u>1.390,00-</u>		<u>0,00</u>
		324.916,33-	298.799,13-
<b>Miscellaneous other operating expenses</b>			
2150 Currency translation losses		46.466,18-	0,00
<b>of which currency translation losses EUR 46.466,18- (EUR 0,00)</b>			
2150 Currency translation losses			
<b>Other interest and similar income</b>			
2650 Other interest and similar income	672,00		287.827,95
2653 Int.incm.s.233a AO, s4(5b) EStG, tx-xmpt	<u>410.882,85</u>		<u>16.485,00</u>
		411.554,85	304.312,95
Carry forward		1.907.312,45	2.037.916,29

**Income statement** ACCOUNTS from 01.01.2019 to 31.12.2019**Versant GmbH Entwicklung, Support, Vertrieb und Consulting, Hamburg**

Account	Description	EUR	Financial year EUR	Previous year EUR
Carry forward			1.907.312,45	2.037.916,29
	<b>Interest and similar expenses</b>			
2100	Interest and similar expenses		0,00	277,55-
	<b>Taxes on income</b>			
2200	Corporate income tax	54.460,00-		61.324,00-
2208	Solidarity surcharge	2.995,00-		3.372,00-
4320	Trade tax	<u>59.714,00-</u>		<u>67.248,00-</u>
			117.169,00-	131.944,00-
	<b>Net income for the financial year</b>			
	Net income for the financial year		<u>1.790.143,45</u>	<u>1.905.694,74</u>

## **Versant GmbH, Hamburg**

### **Notes for the period end report January, 01 2019 to December 31, 2019**

#### **I. General statements**

- 1) The company was started up with the article of incorporation dated May 19th, 1993. The article of incorporation is considered to the version from October 14th, 2013. The company is recorded in the trade register at the register court Hamburg under HRB 54723.
- 2) The seat of the company is Hamburg.
- 3) The subject of the company is the development, production, sales and distribution of software, especially of object-oriented data base systems.
- 4) The financial statements of Versant GmbH have been prepared according to the German commercial code.
- 5) In addition to these instructions, the regulations of the Limited Liability Companies Act were followed.
- 6) "The company is concerning ""HGB § 267 Abs. 1 i. V. m. Abs. 4"" a small" capital company. The preparation facilities according to § 266 Abs. 1 HGB and § 288 HGB were used.
- 7) The company did not set up a management report according to § 264 Abs. 1 Satz 3 HGB.
- 8) This financial year of the company is the calendar year.
- 9) The profit and loss statement was prepared by using the nature of expense method.

#### **II. Information concerning balance sheet and valuation**

- 1) The intangible assets acquired were recognized as purchase costs and, as far as they were subject to abrasion, reduced by the systematic depreciation.
- 2) The production costs include the directly attributable costs, necessary expenses, and depreciations caused by the production.
- 3) The systematic depreciations were carried out either linear or non-linear according to the expected useful life of the assets and to the fiscal regulations.
- 4) The inventories were recognized at the purchase and production costs. If the daily values were lower at the balance sheet date, these values were recognized.
- 5) Debtors and other property subjects are set on with the nominal value.
- 6) The accruals consider all recognizable risks and uncertain obligations with the amount of their prospective claim.
- 7) Liabilities were set at their repayment value.
- 8) The company has no liabilities which are not recognized in the balance sheet according to Section 251 of the German Commercial Code (HGB).
- 9) The company has other unrecognized financial obligations beside the liabilities shown on the balance sheet with a total amount of Euro 202.855,32.

### III. Year on year differences in accounting and valuation methods

- 1) The accounting and valuation methods in the financial statements were essentially taken over.
- 2) A fundamental change of accounting policies compared to the previous year did not occur.

### IV. Other information

- 1) The average number of employees

The average number of employees employed by the Company during the financial year was 25.

- 2) Appropriation of net income (result)

The period end report as of December 31, 2019 shows a profit for the year of EUR 1.790.143,45. This is expected to be carried forward onto new account.

- 3) Manager

Lewis Black, businessman, Monte Sereno, California, USA

Marc Monahan, businessman, Mapleton, Utah, USA

Dante Giannini, businessman, Fremont, California, USA

- 4) Corporate affiliation

The annual financial statements as of December 31, 2019 were part of the consolidated financial statements of Actian Corporation in Palo Alto, California, USA.

March 31, 2020

Place, Date



Managing Director

# General terms and conditions for German tax advisors (*Steuerberater*, *Steuerbevollmächtigte*) and firms of tax advisors (*Steuerberatungsgesellschaften*)

as of July 2018

These "general terms and conditions" shall govern contracts between German qualified tax advisors (*Steuerberater*, *Steuerbevollmächtigte*) as well as firms of tax advisors (*Steuerberatungsgesellschaften*) (hereinafter collectively referred to as the 'Tax Advisors', and each of them a 'Tax Advisor') and their clients (*Auftraggeber*), unless otherwise expressly agreed in text form (*Textform*) or prescribed by law.

## 1. Scope and execution of the engagement

- (1) The scope of the services to be rendered by the Tax Advisor shall be governed by the specific engagement. The engagement shall be executed in accordance with the principles of proper professional practice and in compliance with the relevant rules of professional conduct and professional obligations (cf. German Act Regulating the Profession of Tax Advisors [*Steuerberatungsgesetz — StBerG*] [hereinafter "**StBerG**"], German Professional Code of Conduct for Tax Advisors [*Berufsordnung der Steuerberater- BOSTB*]).
- (2) Foreign law shall only be taken into account if this has been expressly agreed in text form.
- (3) In the event that the legal position changes after a matter has been conclusively completed, the Tax Advisor shall not be under any obligation to alert the client to such change or the resulting implications.
- (4) The review of the documents and figures provided to the Tax Advisor, in particular the accounts and balance sheet, with regard to accuracy, completeness and conformity with applicable rules shall not form part of the engagement unless otherwise expressly agreed in text form. The Tax Advisor will assume that the information provided by the client, in particular the figures, is correct and will use it as a basis for his/her work. To the extent that he/she detects any evident inaccuracies, the Tax Advisor shall be obliged to point them out.
- (5) The engagement shall not be deemed to constitute an authorization to represent the client before public authorities, courts and other bodies. Such authorization would need to be granted separately. Where, owing to the client's absence, it proves impossible to coordinate with him/her as to the filing of legal remedies, the Tax Advisor shall be deemed, in case of doubt, to be both authorized and obliged to take action with a view to meeting a deadline.

## 2. Duty of confidentiality

- (1) In accordance with the law, the Tax Advisor shall be under a duty to maintain confidentiality with regard to all facts that have come to his/her attention in connection with the execution of the engagement unless the client releases him/her from this duty. The duty of confidentiality shall continue even beyond a termination of the contractual relationship. The duty of confidentiality shall apply, to the same extent, to the Tax Advisor's staff.
- (2) The duty of confidentiality shall not apply to the extent that a disclosure is necessary in order to protect the Tax Advisor's legitimate interests. Furthermore, the Tax Advisor is hereby released from the duty of confidentiality to the extent that, under the terms and conditions of his/her professional liability insurance, he/ she has a duty to provide information and cooperate.
- (3) The foregoing shall not affect any statutory rights to refuse to provide information or to refuse to testify under sect. 102 German General Tax Code (*Abgabenordnung — AO*), sect. 53 German Code of Criminal Procedure (*Strafprozessordnung — StPO*) and sect. 383 German Code of Civil Procedure (*Zivilprozessordnung — ZPO*).
- (4) The Tax Advisor is hereby released from the duty of confidentiality to the extent that (i) this is necessary for purposes of carrying out a certification audit in the Tax Advisor's firm and (ii) the individuals who are acting in this regard, for their part, have been instructed as to their duty of confidentiality. The client hereby agrees that the person carrying out the certification/audit may inspect the client file which was created and is being maintained by the Tax Advisor.

## 3. Involvement of third parties

The Tax Advisor shall be entitled to involve staff and, subject to the prerequisites of sect. 62a StBerG, also external service providers (in particular data-processing companies) for purposes of carrying out the engagement. The bringing-in of third-party experts (e.g. other Tax Advisors, auditors, German qualified attorneys (*Rechtsanwälte*)) shall require consent and instruction on the part of the client. Without having been instructed by the client, the Tax Advisor shall be neither entitled nor obliged to bring in such third parties.

### 3a. Electronic communication, data protection <sup>1)</sup>

- (1) In the context of the engagements, the Tax Advisor shall be entitled to electronically collect personal data of the client and to process such data in an automated file or to transmit such data to a service computer center for further processing of the data related to the engagement.
- (2) In order to satisfy his/her obligations under the EU General Data Protection Regulation (hereinafter "**GDPR**") and the German Federal Data Protection Act (*Bundesdatenschutzgesetz — BDSG*), the Tax Advisor shall be entitled to appoint a data-protection officer. Unless this data-protection officer is already subject to a duty of confidentiality under clause 2(1) sent. 3 above, the Tax Advisor shall ensure that the data-protection officer, upon taking up his/her activity, shall undertake to maintain data secrecy.
- (3) To the extent that the client wants to communicate with the Tax Advisor via a fax line or an e-mail address, the client must share in the costs for setting up and maintaining the use of signature procedures and encryption procedures of the Tax Advisor (e.g. for acquiring and setting up any necessary software and/or hardware).

## 4. Remedying of deficiencies

- (1) The client shall have a right to demand that any deficiencies be remedied. The Tax Advisor must be afforded an opportunity to take remedial action. If and to the extent that the engagement constitutes a contract for services (*Dienstvertrag*) within the meaning of sects. 611, 675 German Civil Code (*Bürgerliches Gesetzbuch — BGB*) (hereinafter "**BGB**"), the client may refuse any remedial action by the Tax Advisor if the engagement is terminated by the client and the deficiency is detected only after the engagement has been validly terminated.
- (2) Should the Tax Advisor fail to remedy the asserted deficiencies within a reasonable period or refuse to remedy the deficiencies, then the client may, at the Tax Advisor's expense, have the deficiencies remedied by another Tax Advisor and/or — at the client's choice — demand a reduction of the fees or rescission of the contract.
- (3) The Tax Advisor may at any time, also vis-à-vis third parties, correct obvious inaccuracies (e.g. clerical errors, or errors in calculation). Other deficiencies may be corrected by the Tax Advisor vis-à-vis third parties subject to the client's consent. Such consent shall not be required where the Tax Advisor's legitimate interests take precedence over the client's interests.

## 5. Liability

- (1) The liability of the Tax Advisor and his/her 'persons employed in performing a contractual obligation for whom the Tax Advisor is vicariously liable' [*Erfüllungsgehilfen*] [hereinafter the 'Vicarious Agents'] for any loss/damage resulting from one breach of duty or — in the context of a uniform injurious effect (*einheitliche Schadensfolge*) — from several breaches of duty on the occasion of executing an engagement shall be capped at EUR 4.000.000,00 <sup>2)</sup> (in words: four million euros). The limitation of liability shall apply in relation to negligence only; liability for intent shall not be subject to such limitation. Liability claims in relation to any loss/damage arising from



injuries to life, body or health shall be excluded from this limitation of liability. The limitation of liability shall apply to the Tax Advisor's entire activity for the client, i.e. also, in particular, to an extension to the scope of the engagement; in this regard, there shall be no need for agreeing the limitation of liability again. The limitation of liability shall also apply in the case of the establishment of a joint practice (*Sozietät*) / partnership company (*Partnerschaft*) and assumption of the engagement by the joint practice / partnership company as well as for partners who join the joint practice / partnership company.

(2) Furthermore, the limitation of liability shall also apply vis-à-vis third parties to the extent that these fall within the scope of protection of the engagement; in this regard, sect. 334 BGB is expressly not waived. Any agreements, contained in individual contracts, providing for a limitation of liability shall take precedence over this provision but — unless otherwise expressly stipulated — shall not affect the validity of this provision.

(3) Provided there was a sufficiently high insurance cover in place, the limitation of liability shall apply retroactively from the beginning of the engagement or, as the case may be, from the point of taking out higher insurance cover. If the scope of the engagement is subsequently modified or expanded, then the limitation of liability shall also extend to these cases.

#### **6. Duties on the part of the client; client's failure to cooperate and client's default of acceptance**

(1) The client shall be obliged to cooperate to the extent that this is necessary in order for the engagement to be duly executed. In particular, he/she shall submit to the Tax Advisor, unprompted, a complete set of all documents necessary in order to execute the engagement; such submission shall occur in such a timely manner as to afford the Tax Advisor a reasonable processing time. The same shall apply with regard to briefings about all events and circumstances which may be of importance for purposes of executing the engagement. The client shall be obliged to take note of all written and oral communications issued by the Tax Advisor and to consult him/her when in doubt.

(2) The client shall refrain from anything that may prejudice the independence of the Tax Advisor or the Tax Advisor's Vicarious Agents.

(3) The client hereby undertakes to pass on the results of the Tax Advisor's work only with the Tax Advisor's consent unless the consent to such results being passed on to a specific third party already flows from the content of the engagement.

(4) Should the Tax Advisor employ data-processing programs at the client's premises, then the client shall be obliged to comply with the instructions by the Tax Advisor with regard to installation and application of such programs. In addition, the client shall be obliged to only use the programs within the scope prescribed by the Tax Advisor, which shall also be the scope of use to which the client is entitled. The client must not disseminate the programs. The Tax Advisor shall remain the owner of the rights of use. The client shall refrain from anything which constitutes an obstacle to the exercise by the Tax Advisor of the rights of use with regard to the programs.

(5) Should the client fail to comply with a duty to cooperate incumbent on him/her under clause 6(1)— (4) or as provided for elsewhere or be in default of acceptance in relation to the services tendered by the Tax Advisor, then the Tax Advisor shall have the right to terminate the contract without notice (cf. clause 9(3)). This shall not affect the Tax Advisor's claim to be compensated for the additional expenses incurred by him/her owing to the client's default or failure to cooperate as well as for any loss/damage caused, even in the event that the Tax Advisor opts not to exercise his/her right of termination.

#### **7. Copyright protection**

The services rendered by the Tax Advisor constitute his/her intellectual property. They are protected by copyright. Beyond their intended use, work results may be passed on only upon prior written consent by the Tax Advisor.

#### **8. Fees, advance payment and offsetting**

(1) The Tax Advisor's fees (professional fees and reimbursement of out-of-pocket expenses) for his/her professional activity in accordance with sect. 33 StBerG shall be determined pursuant to the German Regulation on Tax Advisors' Fees (*Steuerberatervergütungsverordnung — StBVV*) (hereinafter "*StBVV*"). Fees above or below the statutory fees may be agreed in text form. Agreeing fees below the statutory fees is permissible in out-of-court matters only. Such lower fees must bear an adequate relation to the services, responsibility and liability risk of the Tax Advisor (sect. 4(3) StBVV).

(2) For activities not dealt with in the Regulation on Fees (e.g. sect. 57(3) nos. 2 and 3 StBerG), the applicable fees shall be those agreed; otherwise, the fees determined by statute for such activity; or else the customary fees (sects. 612(2) and 632(2) BGB).

(3) Only claims that are undisputed or have been determined with final and absolute effect (*rechtskräftig*) may be set off against a fee claim of the Tax Advisor.

(4) The Tax Advisor shall be entitled to request an advance payment for professional fees and out-of-pocket expenses already incurred or expected to be incurred. In the event that the requested advance payment is not made, the Tax Advisor may, upon prior notice, cease working for the client until the advance payment is received. Where a cessation of work may adversely affect the client, the Tax Advisor shall be obliged to notify the client, in a timely manner, of the Tax Advisor's intention to cease working.

#### **9. Termination of the contract**

(1) The contract shall terminate upon completion of the services, upon expiry of the agreed term, or by giving notice. The contract shall not terminate upon the client's death or upon the client becoming legally incapacitated or, in the case of a company, upon the company's dissolution.

(2) If and to the extent that the contract constitutes a contract for services within the meaning of sects. 611, 675 BGS, either party may terminate the contract for cause (*außerordentlich*) except in the case of a service relationship with fixed earnings (*Dienstverhältnis mit festen Bezügen*), sect. 627(1) BGB; notice must be given in text form. Any deviation from the foregoing in individual cases shall require an agreement to be negotiated between the Tax Advisor and the client.

(3) In order to prevent legal disadvantages for the client, upon termination of the contract by the Tax Advisor the Tax Advisor must, in any event, still take those actions which may reasonably be expected of him/her and which ought not to be postponed (e.g. application for the extension of a deadline which is about to expire).

(4) The Tax Advisor shall be obliged to hand over to the client anything the Tax Advisor receives or has received for purposes of executing the engagement and anything the Tax Advisor obtains in the context of the management of the affairs of another (*Geschäftsbesorgung*). In addition, the Tax Advisor shall be obliged, upon request, to provide the client with a progress report and to render account for the Tax Advisor's activities.

(5) Upon termination of the contract, the client must promptly hand over to the Tax Advisor the data-processing programs employed at the client's office for purposes of executing the engagement, including any copies created, as well as any other program documents, and/or delete them from the hard drive.

(6) Upon termination of the engagement, the documents must be collected from the Tax Advisor.

(7) In the event that the engagement terminates before it has been completed, the Tax Advisor's fee claim shall be governed by statute. Any deviation from the foregoing in individual cases shall require a separate agreement in text form.

#### **10. Storage, delivery and right of retention with regard to work results and documents**

(1) The Tax Advisor must store the client files for a period of ten years after the engagement has terminated. However, this obligation shall expire before the above period has elapsed if the Tax Advisor has asked the client to take receipt of the client files and the client has failed to comply with such request within six months of having received it.

(2) 'Client files' within the meaning of para. 1 shall only include such documents as have been obtained by the Tax Advisor, on the occasion of his/her professional activity, from or for the client; by contrast, they shall not include the correspondence between the Tax Advisor and his/her client and the documents which the client has already received in the original or as a copy as well as the working papers produced for internal purposes (sect. 66(3) StBerG).

- (3) At the request of the client, but no later than after termination of the engagement, the Tax Advisor shall hand over the client files to the client within a reasonable period. The Tax Advisor may create and retain copies or photocopies of documents which he/she returns to the client.
- (4) The Tax Advisor may refuse to hand over the client files until his/her fees and out-of-pocket expenses have been settled. This shall not apply to the extent that withholding the client files and the individual documents would be unreasonable under the circumstances (sect. 66(2) sent. 2 StBerG).

**11. Miscellaneous**

The engagement, its execution and the claims resulting therefrom shall be exclusively governed by German law. The place of performance shall be the client's place of residence unless he/she is a merchant (Kaufmann), legal person under public law, or special fund (*Sondervermögen*) under public law; otherwise, the place of performance shall be the professional establishment of the Tax Advisor. The Tax Advisor is — not — prepared to participate in dispute-resolution proceedings before a consumer conciliation body (sects. 36, 37 German Act on Alternative Dispute Resolution in Consumer Matters [Gesetz über die alternative Streitbeilegung in Verbrauchersachen — VSBG]).<sup>3)</sup>

**12. Validity in the event of partial nullity**

Should individual provisions of these terms and conditions of engagement be or become invalid, then this shall not affect the validity of the remaining provisions.