

NON-BINDING ENGLISH TRANSLATION OF THE GERMAN ORIGINAL VERSION FOR
CONVENIENCE PURPOSES ONLY

Audit Report

Audit of the Merger Agreement
pursuant to §§ 2 (1) and 60 ff. UmwG

between

Diebold Nixdorf Holding Germany Inc. & Co. KGaA
Paderborn,
as acquiring entity

and
Diebold Nixdorf Aktiengesellschaft
Paderborn,
as transferring entity

ADKL AG
Wirtschaftsprüfungsgesellschaft
Düsseldorf



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Annex 1	Order of the District Court of Dortmund, 18th Civil Division, 4th Commercial Division, on the appointment of the expert auditor pursuant to §§ 62 (5) UmwG as related to § 327c (2), Sentence 3, § 293c (1), Sentence 3 AktG and the court-appointed contract auditor pursuant to §§ 78, 60, 9 and 10 UmwG of 21 November 2018
Annex 2	Notarised Merger Agreement between Diebold Nixdorf Holding Germany Inc. & Co. KGaA as the acquiring company and Diebold Nixdorf Aktiengesellschaft as the transferring company dated 31 January 2019
Annex 3	General Terms and Conditions of Engagement



List of abbreviations

AG	Joint stock corporation
AktG	Corporation Act
Diebold Nixdorf AG	Diebold Nixdorf Aktiengesellschaft, Paderborn
Diebold Nixdorf AG Share	No-par-value bearer share of Diebold Nixdorf AG with a notional value of € 1.00 each in the share capital
Diebold Nixdorf, Inc.	Diebold Nixdorf, Inc., North Canton, Ohio, USA
Diebold Nixdorf KGaA	Diebold Nixdorf Holding Germany Inc. & Co. KGaA, Paderborn
e.V.	Registered association
f.	Next (page)
ff.	Following (Pages)
HFA	Main Expert Committee of the IDW
HGB	Commercial Code
IDW	German Independent Auditors' Institute, Düsseldorf
Minority Shareholders	Minority shareholders in the terms of § 327a AktG
MitbestG	Act on the Co-Determination of Employees (<i>Mitbestimmungsgesetz - MitbestG</i>)
No.	Number
Squeeze-out	Exclusion of minority shareholders
UmwG	Act on the Transformation of Companies
Merger Report	Joint merger report of the Management Board of Diebold Nixdorf AG and the management of Diebold Nixdorf KGaA on the merger of Diebold Nixdorf AG into Diebold Nixdorf KGaA in accordance with § 8 UmwG - 31 January 2019
Merger Agreement	Notarised merger agreement between Diebold Nixdorf KGaA as acquiring company and Diebold Nixdorf AG as transferring company dated [31 January] 2019
Parties	Diebold Nixdorf KGaA and Diebold Nixdorf AG
cf.	conferatur (compare)



A. Engagement and performance of audit

Diebold Nixdorf Holding Germany Inc. & Co. KGaA, Paderborn,¹ and

Diebold Nixdorf Aktiengesellschaft, Paderborn,²

intend to execute a merger pursuant to § 2 (1) UmwG by transferring the assets of Diebold Nixdorf AG as a whole with all rights and duties to Diebold Nixdorf KGaA as well as an exclusion of the remaining shareholders of Diebold Nixdorf AG in addition to Diebold Nixdorf KGaA³ in accordance with § 62 (5), Sentence 1 UmwG as related to § 62 (1) UmwG and §§ 327a ff. AktG (Squeeze-Out Merger).⁴ The Merger Agreement was concluded on this date (31 January 2019) in notarised form. The resolution on the transfer of the shares held by the minority shareholders of Diebold Nixdorf AG is to be adopted at the extraordinary general shareholders' meeting of Diebold Nixdorf AG scheduled for 14 March 2019.

At the joint request of the management of Diebold Nixdorf KGaA and the Management Board of Diebold Nixdorf AG, the District Court⁵ of Dortmund, 18th Civil Division, 4th Commercial Division, selected and appointed us as auditors of the Merger Agreement.⁶ We had previously confirmed to the Court that there were no legal grounds for our exclusion. We can therefore confirm that we have complied with the regulations on independence.⁷

We initiated our audit on 27 November 2018 following the preliminary examination of our independence and impartiality and the subsequent acknowledgement of our court appointment and performed the audit with interruptions until this date (31 January 2019), primarily at our offices in Düsseldorf.

Pursuant to § 9 UmwG, the subject of our audit was the Merger Agreement.

In particular, the following documents were submitted to us for our audit:

- Merger Agreement⁸
- Joint merger report of the Management Board of Diebold Nixdorf AG and the management of Diebold Nixdorf KGaA on the merger of Diebold Nixdorf AG into Diebold Nixdorf KGaA in accordance with § 8 UmwG - 31 January 2019⁹
- Articles of Association (version of 27 November 2018) and Commercial Register excerpt (retrieved on 25 October 2018 with notice of entry dated 7 December 2018) of Diebold Nixdorf
- Articles of Association (version of 23 January 2017) and Commercial Register excerpt (retrieved on 11 December 2018) of Diebold Nixdorf AG

¹ "Diebold Nixdorf KGaA"; also "Main Shareholder".

² "Diebold Nixdorf AG"; also "Company"; together with Diebold Nixdorf KGaA, the "Parties".

³ "Minority Shareholders".

⁴ Also "conversion right".

⁵ the "District Court".

⁶ §§ 60 (9) 1 and 10 UmwG; see Annex 1.

⁷ Analogous application of § 321 (4a) of the Commercial Code.

⁸ Notarial Deed of Dr. Josef Heimann, Notary Public of Paderborn; Annex 2.

⁹ "Merger Report".



In addition, we made use of other publicly available information.

For the performance of our engagement, we have taken into account the opinion of the Main Expert Committee of the German Independent Auditors' Institute in Düsseldorf, HFA 6/1988 "On merger audits in accordance with § 340b (4) AktG" in analogous application.¹⁰

All explanations and documentation requested by us was readily provided.

As of today, the management of Diebold Nixdorf KGaA and the Management Board of Diebold Nixdorf AG have each submitted to us a declaration of general representativeness in compliance with professional standards, confirming in writing that the explanations and information relevant to the audit of the Merger Agreement have been provided completely and accurately.

This Report summarises the results of our audit and explains the individual audit procedures, analyses and considerations on the basis of which we arrived at our audit result.

This Audit Report has been prepared solely for the purposes set out above. These include *inter alia* the provision of the Audit Report in the run up to the extraordinary general shareholders' meeting of Diebold Nixdorf AG¹¹ to resolve on the exclusion of the minority shareholders and the submission of the Report to the competent court.¹²

Our Audit Report may only be passed on in full, with a written declaration of the purpose of the underlying engagement, subject to our express written consent and the restrictions on disclosure and liability conditions underlying the engagement, and then only to third parties provided the respective third party has previously agreed in writing to the General Terms and Conditions of Engagement, supplemented by an individual liability agreement and a binding confidentiality obligation towards us.

The execution of the engagement and our responsibility, also in relation to third parties, shall be governed by the "General Terms and Conditions of Engagement for Independent Auditors and Independent Auditing Companies" as amended on 1 January 2017 and attached as Annex 3. Our responsibility towards the legal entities involved in the merger and their shareholders is governed by § 11 (2) UmwG as related to § 323 HGB.

¹⁰ Opinion HFA 6/1988 was rescinded in 2013, but continues to apply accordingly with respect to the statements contained therein on requirements for the performance and reporting of audits.

¹¹ Including its publication on the websites of Diebold Nixdorf AG and Diebold Nixdorf KGaA and for other publications, outlays and measures in connection with the preparation and conduct of the extraordinary general shareholders' meeting.

¹² Also in court proceedings following the general meeting, for example.



B. Type and scope of audit procedures

I. Subject of the merger audit

The subject of the merger audit was the Merger Agreement.¹³ The completeness and accuracy of the Agreement had to be verified.

If shares amounting to at least 90% of the share capital of a transferring stock corporation belong to an acquiring stock corporation, the shareholders in general meeting of the transferring stock corporation may adopt a resolution in accordance with § 327a (1), Sentence 1 AktG within three months of the conclusion of a merger agreement.¹⁴ The provisions applicable to joint stock corporations apply accordingly to mergers involving partnerships limited by shares.¹⁵

Diebold Nixdorf KGaA, as the acquiring company, is a partnership limited by shares and, in accordance with the Merger Agreement, directly holds 28,281,606 shares in Diebold Nixdorf AG¹⁶ as of 24 January 2019.¹⁷ Diebold Nixdorf AG has issued a total of 33,084,988 shares. It indirectly holds 3,268,777 Diebold Nixdorf AG Shares itself as treasury shares via Wincor Nixdorf Facility GmbH, of which it is the sole shareholder. The Company's own shares are to be deducted from the nominal capital and the number of shares when calculating the shareholding percentages.¹⁹ The shares belonging to one company also include the shares belonging to a company controlled by it.²⁰ Wincor Nixdorf Facility GmbH is a dependent company of Diebold Nixdorf AG in the terms of § 17 AktG. Following the deduction of the treasury shares from the total shares issued, 29,816,211 Diebold Nixdorf AG Shares are thus outstanding. The number of Diebold Nixdorf AG Shares held by Diebold Nixdorf KGaA as of 24 January 2019 corresponds to 94.85 % of the outstanding share capital of Diebold Nixdorf AG. Diebold Nixdorf KGaA is thus the main shareholder of Diebold Nixdorf AG in the terms of §§ 78 and 62 (5), Sentence 1 UmwG.

In connection with the merger, an exclusion of the minority shareholders of Diebold Nixdorf AG is to be carried out at the request of the Main Shareholder.²¹ For this purpose, the shareholders in extraordinary general meeting of Diebold Nixdorf AG are to resolve within three months of the conclusion of the Merger Agreement on the transfer of the shares of the minority shareholders of Diebold Nixdorf AG to the Main Shareholder in return for appropriate cash compensation to be paid by Diebold Nixdorf KGaA. The entry of the transfer resolution in the commercial register of the registered office of Diebold Nixdorf AG must be accompanied by the remark that it will first become effective simultaneously with the entry of the merger in the register of the registered office of Diebold Nixdorf KGaA.²²

¹³ § 9 (1) as related to § 60 UmwG.

¹⁴ § 62, Paragraph 5, Sentence 1 and Paragraph 1 UmwG.

¹⁵ § 78, Sentence 1 UmwG.

¹⁶ "Diebold Nixdorf AG Share".

¹⁷ Diebold Nixdorf KGaA and Diebold Nixdorf AG expect that, in the afternoon of the next settlement date (31 January 2019) Diebold Nixdorf KGaA will hold a total of 28,326,977 shares in Diebold Nixdorf AG as a result of the transfer of Diebold Nixdorf AG Shares, which have been tendered to Diebold Nixdorf KGaA by minority shareholders of Diebold Nixdorf AG in accordance with the Domination and Prit and Loss Transfer Agreement concluded between Diebold Nixdorf AG, as the transferring company, and Diebold Nixdorf KGaA, as the surviving company. Taking into account the deduction of treasury shares, this corresponds to approximately 95.01 % of the outstanding nominal capital of Diebold Nixdorf AG.

¹⁹ § 62 (1), Sentence 2 UmwG as related to § 16 (2), Sentence 2 AktG.

²⁰ § 327a (2) as related to § 16 (4), Sentence 1 AktG.

²¹ § 62, Paragraphs 5 and 1 UmwG as related to §§ 327a to 327f AktG.

²² §§ 78 and 62 (5), Sentence 7 UmwG.



Diebold Nixdorf KGaA as the acquiring company will hold all shares in Diebold Nixdorf AG as the transferring company on the effective date of the merger based on the transfer resolution taking effect at the same time. This is ensured by the condition precedent requiring the effectiveness of the Merger Agreement²³ and by the statutory provisions in §§ 78 and 62 (5), Sentence 7 UmwG. Therefore, Diebold Nixdorf KGaA may not increase its share capital pursuant to §§ 78 and 68 (1), Sentence 1, No. 1 UmwG to implement the merger. Shares in Diebold Nixdorf KGaA will therefore not be issued as consideration for the transfer of the assets of Diebold Nixdorf AG.²⁴

Diebold Nixdorf KGaA as the sole shareholder of Diebold Nixdorf AG on the effective date of the merger will declare in the Merger Agreement, as a precautionary measure, the waiver of a cash compensation offer pursuant to §§ 78 and 29 UmwG.²⁵

Since the shareholders of Diebold Nixdorf AG, as the transferring legal entity, are not granted any shares in Diebold Nixdorf KGaA, as the receiving legal entity, neither the methodology nor the calculation of an exchange ratio therefore form part of subject of our merger audit. The merger audit is therefore limited to the completeness and accuracy of the information in the Merger Agreement. We are issuing a separate opinion on this date (31 January 2019) regarding the audit of the adequacy of the cash compensation to be granted pursuant to § 327a (1), Sentence 1 AktG as related to § 62, Paragraphs 1 and 5 UmwG.

It has not been definitively clarified in legally terms whether a squeeze-out merger requires a merger audit in addition to the audit of the adequacy of the cash compensation. As a precautionary measure, such an audit was requested in the present case. We hereby report on this audit.

²³ § 8 (1) of the Merger Agreement.

²⁴ § 3 (2) of the Merger Agreement; cf. § 5 (2) UmwG.

²⁵ § 3 (3) of the Merger Agreement.



II. Scope of the merger audit

The merger auditor must examine the merger agreement or the draft thereof. Since in a squeeze-out merger no exchange ratio has to be determined and audited, the merger audit in the present case is limited to the completeness and accuracy of the information in the Merger Agreement.

In the present case, the Merger Agreement must contain at least the following information:²⁶

- the name and registered office of the legal entities participating in the merger;
- the agreement on the transfer of the assets of each transferring entity as a whole;
- an indication that the minority shareholders of the transferring entity are to be excluded in relation to the merger;
- the date from which the activities of the transferring entity are to be deemed to have been undertaken for the account of the acquiring entity (merger date);
- the rights granted by the acquiring legal entity to individual shareholders of the limited partnership and to holders of special rights, or the measures provided for such persons;
- any special advantage conferred on a member of a representative body or of a supervisory body of the entities participating in the merger, a statutory auditor or a merger auditor;
- the consequences of the merger for employees and their representatives and the measures envisaged in this respect.

The Merger Report, in which the merger as a whole and the Merger Agreement are explained and substantiated in legal and financial terms, is not the subject of the statutory merger audit. Nor does the merger auditor's task include assessing the expediency of the merger. However, to the extent the Merger Report explains the Merger Agreement, we have used it in our audit.

²⁶ § 5 (1) as related to § 5 (2) UmwG and § 62 (5), Sentence 2 UmwG.



C. Audit of the Merger Agreement

The audit of the completeness and accuracy of the Merger Agreement relates to the general information regarding the items listed above.²⁷

Name and registered office of the participating companies (§ 5 (1) 1 UmwG)

The names and registered offices of the companies participating are listed in the Merger Agreement and correspond to the provisions in the Articles of Association of Diebold Nixdorf KGaA and Diebold Nixdorf AG as well as the entries in the commercial registers of the companies maintained at the Local Court of Paderborn.²⁸

Agreement on asset transfer (§ 5 (1) 2 UmwG)

The transfer of the assets of Diebold Nixdorf AG as a whole, with all rights and duties, is to take place by dissolution without wind-up in accordance with §§ 2 (1) and 60 ff. UmwG by way of a merger by absorption into Diebold Nixdorf KGaA. The Merger Agreement accurately names the companies participating in the merger and determines the transfer of assets and liabilities through the merger to Diebold Nixdorf KGaA.²⁹

Squeeze-out of the minority shareholders of the transferring company (§ 62 (5), Sentence 2 UmwG)

The Merger Agreement specifies that the minority shareholders of the transferring company are to be squeezed out in connection with the merger.³⁰ According to the information provided to us, that intention exists. For this purpose, the shareholders of Diebold Nixdorf AG are to resolve in general meeting within three months of the conclusion of the Merger Agreement on the transfer of the shares of the minority shareholders of Diebold Nixdorf AG to Diebold Nixdorf KGaA in return for appropriate cash compensation to be paid by Diebold Nixdorf KGaA. The extraordinary general shareholders' meeting is to be held on 14 March 2019 and thus within the planned three-month period.

Diebold Nixdorf KGaA as the acquiring company will hold all shares in Diebold Nixdorf AG as the transferring company on the effective date of the merger based on the transfer resolution taking simultaneous effect.³¹ This is ensured by the condition precedent requiring the effectiveness of this Agreement.³² Therefore, Diebold Nixdorf KGaA may not increase its share capital to execute the merger.³³ Shares in Diebold Nixdorf KGaA will therefore not be granted as consideration for the transfer of the assets of Diebold Nixdorf AG. Diebold Nixdorf KGaA, the sole shareholder of Diebold Nixdorf AG on the effective date of the merger, will declare in the Merger Agreement, as a precautionary measure, that it will waive a cash compensation offer.³⁴

No information on the exchange of shares,³⁵ insofar as it relates to the absorption of Diebold Nixdorf AG, is provided as no shares in Diebold Nixdorf KGaA will be granted to the minority shareholders of Diebold

²⁷ Cf. Section B.II, p. 5.

²⁸ Cf. Recitals to the Merger Agreement.

²⁹ Cf. § 1 (1) of the Merger Agreement.

³⁰ Cf. § 2 (1) of the Merger Agreement.

³¹ Cf. § 3 (1) as related to § 8 (1) of the Merger Agreement.

³² Cf. § 8 (1) of the Merger Agreement and/or §§ 78 and 62 (5), Sentence 7 UmwG.

³³ Cf. §§ 78 and 68 (1), Sentence 1, Nos. 1 and 2 UmwG.

³⁴ Cf. § 3 (3) of the Merger Agreement; § 78 and 29 UmwG.

³⁵ In accordance with § 5 (1), Nos. 2 to 5 UmwG.



Nixdorf AG in the course of the merger. As all shares of Diebold Nixdorf AG will be held by Diebold Nixdorf KGaA on the Merger Date, § 5 (2) UmwG applies at least analogously. In this respect, it is non-prejudicial that Diebold Nixdorf AG will still indirectly hold treasury shares at this point in time. § 5 (2) UmwG only concerns the case of a merger into a company that directly owns 100% of the shares in the subsidiary itself. However, it is not prejudicial if the subsidiary also holds treasury shares because there is no exchange of shares in this respect either.³⁶

The Merger Agreement stipulates that the entry of the transfer shareholder resolution from the extraordinary general meeting into the commercial register of Diebold Nixdorf AG must be accompanied by a remark that it will first become effective simultaneously with the entry of the merger into the commercial register of Diebold Nixdorf KGaA.³⁷ The provision accurately reflects the legislative situation.³⁸

Merger Date (§ 5 (1) 6 UmwG)

Diebold Nixdorf KGaA will acquire the assets of Diebold Nixdorf AG effective after 31 December 2018.³⁹ From the beginning of 1 January 2019⁴⁰ ("Merger Date"), all acts and transactions of Diebold Nixdorf AG will be deemed to have been undertaken for the account of Diebold Nixdorf KGaA.⁴¹ The provision on the the Merger Date is set out in § 7 of the Merger Agreement as a variable cutoff date arrangement.⁴²

The merger will⁴³ be based on the audited balance sheet of Diebold Nixdorf AG as of 31 December 2018 as the closing balance sheet.⁴⁴ The merger date will follow immediately after the date of the closing balance sheet of the transferring Diebold Nixdorf AG as of 31 December 2018, which is the material date.

In the event the merger does not become effective until after 31 January 2020 by entry in the commercial register of Diebold Nixdorf KGaA, the cutoff date of the closing balance sheet of Diebold Nixdorf AG will be 31 December 2019 at variance with § 1 (2) of the Merger Agreement, and the Merger Date will be 1 January 2020 at variance with § 4 of the Merger Agreement. In the event of a further delay in the merger taking effect beyond 31 January 2021, the cutoff dates will be postponed by a further year in each case.⁴⁵ The timing of this provision is consistent with the next stipulated Merger Date.

If the merger has not become effective by the end of 31 December 2022 before the exercise of the right of rescission by entry in the commercial register of the registered office of Diebold Nixdorf KGaA and the occurrence of the condition precedent described in detail in § 8 (1) of the Merger Agreement, either party may rescind the Merger Agreement.⁴⁶

³⁶ Cf. Schröder in Semler/Stengel, *Umwandlungsgesetz*, 4th edition 2017, on § 5 UmwG, Marginal No. 133 with further references.

³⁷ Cf. § 2 (2) of the Merger Agreement.

³⁸ Cf. § 62 (5), Sentence 7 UmwG.

³⁹ 12:00 p.m.

⁴⁰ 00:00 a.m.

⁴¹ § 4 of the Merger Agreement.

⁴² This is generally regarded as permissible; cf. Lutter /Drygala, *Umwandlungsgesetz*, 5th Edition 2014, on § 5, Marginal No. 75 with further references.

⁴³ Subject to § 7 of the Merger Agreement.

⁴⁴ Cf. § 1 (2) of the Merger Agreement.

⁴⁵ Cf. § 7 of the Merger Agreement.

⁴⁶ Cf. § 8 (3) of the Merger Agreement.



Special rights and advantages (§ 5 (1), Nos. 7 and 8 UmwG)

Apart from the provisions provided in § 2 of the Merger Agreement, no rights in the terms of § 5 (1) 7 UmwG will be granted to individual shareholders or holders of special rights, nor are any special measures planned for these persons.⁴⁷ According to the documents and information provided to us, these statements are accurate.

The provisions of § 2 of the Merger Agreement relate to the transfer of the shares of the minority shareholders to Diebold Nixdorf KGaA in exchange for cash compensation.

No special advantages will be granted for any member of the management or supervisory boards or a statutory auditor of any participating company or the merger auditor in the terms of § 5 (1) 8 UmwG, apart from the states of affairs listed in § 5, Paragraphs 3 to 5 of the Merger Agreement.⁴⁸

Upon the effective date of the merger, the positions of the current members of the Management Board of Diebold Nixdorf AG will end, whereby the employment contracts of the Management Board members of Diebold Nixdorf AG will be transferred to Diebold Nixdorf KGaA by way of universal succession.⁴⁹

Pursuant to the provisions of the employment contracts of the Management Board members of Diebold Nixdorf AG, these profit shares were granted as short-term performance-related remuneration components and stock options as remuneration components with a long-term incentive effect. The stock options were replaced in 2017 by performance-based cash incentive awards from Diebold Nixdorf, Inc., North Canton, Ohio, USA.⁵⁰ ⁵¹ Furthermore, the Management Board members participate in the "1991 Amended and Restated Equity Performance Incentive Plan" of Diebold Nixdorf, Inc. and, since 2018, in the "2017 Equity and Performance Incentive Plan" of Diebold Nixdorf, Inc. As part of these compensation components, the Management Board members were allocated performance stock units, restricted stock units and stock options.⁵²

The Management Board member Dr. Ulrich Näher is currently also "Senior Vice President, Systems" at Diebold Nixdorf, Inc. The Management Board member Olaf Heyden is currently also "Senior Vice President, Services" at Diebold Nixdorf, Inc. The Management Board member Keith Twiggs is currently also "Vice President and Controller" at Diebold Nixdorf, Inc. The parties plan for Dr. Ulrich Näher, Olaf Heyden and Keith Twiggs to continue to perform their current functions at Diebold Nixdorf, Inc. even after the merger takes effect.⁵³

No additional special advantages or rights are granted to the Management Board members under the employment contracts or through the aforementioned additional remuneration components or the retention of positions already held as a result of the merger or of the exclusion of minority shareholders under the Merger Agreement.

⁴⁷ Cf. § 5 (1) of the Merger Agreement.

⁴⁸ Cf. § 5 (2) of the Merger Agreement.

⁴⁹ Cf. § 5 (3) of the Merger Agreement.

⁵⁰ Direct parent company of Diebold Nixdorf KGaA and parent company of the entire Group.

⁵¹ Cf. § 5 (3) of the Merger Agreement.

⁵² Cf. § 5 (3) of the Merger Agreement.

⁵³ Cf. § 5 (4) of the Merger Agreement.



The composition of the Supervisory Board of Diebold Nixdorf KGaA after the effective date of the merger will be based on § 7 (1), Sentence 1, No. 1 MitbestG, since Diebold Nixdorf KGaA, as the legal successor of Diebold Nixdorf AG, will employ more than 2,000 but not more than 10,000 employees by way of allocation. Pursuant to §§ 278 (3), 96 (4) and 97 ff. AktG, a “status procedure” is to be conducted in order to enable a change in the composition of the Supervisory Board of Diebold Nixdorf KGaA in conformance with § 7 (1), Sentence 1, No. 1 MitbestG.

The exact composition of the Supervisory Board of Diebold Nixdorf KGaA after the merger takes effect has not yet been determined. However, it is planned for the employee representatives Michael Schild, Elin Dera, Wolfgang Künkler, Reinhard Steinrücke, Daniela Ueberschär and Carmelo Zanghi to be appointed, subject to their consent, as members of the Supervisory Board by court order pursuant to § 104 AktG for the period until elections are held by the employees. No agreement has yet been reached on the remuneration for this activity.⁵⁴

Within the framework of our audit, we found no indications to assume the granting of additional special benefits in the terms of § 5 (1) 8 UmwG.

Consequences of the merger for the employees and their representatives (§ 5 (1) 9 UmwG)

With regard to the consequences of the merger for the employees and their representatives as well as the measures envisaged in this respect, we refer to the explanations in § 6 of the Merger Agreement. Within the framework of the merger audit, we did not become aware of any indications that would speak against the accuracy and completeness of the information provided there.

Audit result

The Merger Agreement accurately contains all the information prescribed by law. The Agreement thus complies with the provisions of law. Within the framework of the merger audit, we also did not become aware of anything that would speak against the accuracy of the optional information in the Merger Agreement.

⁵⁴ Cf. for all the above § 5 (5) of the Merger Agreement.



D. Final declaration

As court-appointed auditor, we audited the Merger Agreement pursuant to § 9 UmwG. Based on the squeeze-out merger in accordance with § 62, Paragraphs 1 and 5 UmwG, the indication of the exchange ratio (§ 5 (2) UmwG) is omitted from the Merger Agreement. The minority shareholders will receive appropriate cash compensation pursuant to § 327a AktG. The adequacy of the cash compensation must be reviewed by one or more expert auditors pursuant to § 327c (2), Sentence 2 AktG within the framework of the squeeze-out.

We issue the following final declaration on our merger audit in analogous application of § 12 UmwG:

“The minimum information contained in the Merger Agreement as prescribed by law is complete and accurate; the optional information contained therein is also accurate.”

Düsseldorf, 31 January 2019

ADKL AG
Wirtschaftsprüfungsgesellschaft

Wolfram Wagner
Auditor

p.p. Ulrich Kühnen
Auditor

Certified copy

18 O 78/18 AktE



DISTRICT COURT OF DORTMUND

ORDER

In the proceedings

1. for the appointment of an expert auditor in accordance with § 62(5) UmwG, § 327c(2), Sentence 3 and § 293c(1), Sentence 3 AktG

concerning

Diebold Nixdorf AG in Paderborn, Local Court of Paderborn under Commercial Register No. B 6846

and the main shareholder thereof,

Diebold Nixdorf Holding Germany Inc. & Co. KGaA in Paderborn, Local Court of Paderborn under Commercial Register No. B 13066,

2. to appoint a contract auditor pursuant to §§ 78, 60, 9 and 10 UmwG with regard to the planned conclusion of a merger agreement

between

Diebold Nixdorf AG in Paderborn, Local Court of Paderborn under Commercial Register No. B 6846

and

Diebold Nixdorf Holding Germany Inc. & Co. KGaA in Paderborn, Local Court of Paderborn under Commercial Register No. B 13066

for both proceedings, with regard to Procedure 1 at the request of the main shareholder dated 14 November 2018 and with regard to Procedure 2 at the joint request of both companies dated 14 November 2018,

ADKL AG
Wirtschaftsprüfungsgesellschaft
Breite Straße 29-31 40213 Düsseldorf

is hereby appointed as expert auditor and court-appointed contract auditor.

According to the declaration made to the Court on 9 November 2018, the company fulfils the conditions of §§ 293c and 293d AktG and §§ 78, 60 and 11 UmwG and in particular is not excluded from auditing activities in accordance with §§ 319, 319a and 319b HGB.

In order to increase the transparency and acceptance of the audit, the expert auditor/contract auditor is required to comment and provide explanations on the following points in its audit report:

1.

At what place, in what manner and at what time its audit took place. If a (meaningful) journal, etc., has been kept about the work of the employees involved in the audit, it is sufficient for photocopies to be attached to the audit report.

2.

If a parallel audit has taken place: In what points did the opinion of the expert auditor diverge from that of the preparer of the valuation opinion? If the independent auditing company commissioned by the company or companies does not agree with the opinion of the expert auditor, it must be stated why the opinion of the expert auditor is preferable.

3.

The sources from which the expert auditor has derived the parameters used for the calculation of the earnings value (base interest rate, growth discount, surplus returns, BETA factor, composition of a peer group, etc.) must be listed and it must be explained why these indices and/or periods of time are preferable to other, likewise relevant parameters. If the company's own BETA, if any, is not considered meaningful, it must be explained why the company's own BETA is not valid (statistical standards, liquidity). If there is a price distortion in the share of the joint stock corporation, this must be substantiated and presented in concrete terms.

If the intention is to set the market risk premium higher than before the crisis in view of the effects of the financial market crisis, the assumptions on which such an assessment is based should, if possible, be supported by figures; in particular, the development of the figures in question in the period between September 2012 and the valuation date should also be discussed.

4.

If past results are adjusted for certain extraordinary expenses and income, these must be explicitly listed and reasons given for this.

5.

The sources from which any business plans have been assumed must also be indicated.

6.

The expert auditor is instructed to submit a copy of its audit report to the Court.

7.

As a precautionary measure, the Court points out to the expert auditor that the auditor will have to explain and, if necessary, supplement its expert opinion in any judicial review proceedings about the exclusion of minority shareholders [*Spruchverfahren*].

8.

For purposes of clarification, it is noted that the appointment of an expert auditor and/or contract auditor does not establish any claims against the State Comptroller.

Dortmund, 21 November 2018

District Court, 18th Civil Division, 4th Commercial Division

The Presiding Judge

Pachur

Presiding District Court Judge

Certified

Clerk of the District Court of Dortmund

Notarial deed by Dr. Josef Heimann,
Paderborn, as of January 31, 2019
– UR [●]/2019 –

NON-BINDING ENGLISH CONVENIENCE TRANSLATION

MERGER AGREEMENT

BETWEEN

**DIEBOLD NIXDORF HOLDING
GERMANY INC. & CO. KGAA**

AND

DIEBOLD NIXDORF AKTIENGESELLSCHAFT

Merger Agreement

between

Diebold Nixdorf Holding Germany Inc. & Co. KGaA,

Heinz-Nixdorf-Ring 1, 33106 Paderborn,

– hereinafter also referred to as “**DN KGaA**” or

the “**Acquiring Company**” –

and

Diebold Nixdorf Aktiengesellschaft,

Heinz-Nixdorf-Ring 1, 33106 Paderborn,

– hereinafter also referred to as “**DN AG**” or

the “**Transferring Company**” –

– Acquiring Company and Transferring Company also referred to as “**Parties**”

or individually referred to as a “**Party**” –

Preliminary Remarks

- I.** DN KGaA is a partnership limited by shares (*Kommanditgesellschaft auf Aktien*), incorporated under the laws of Germany and registered with the commercial register of the local court of Paderborn under HRB 13066, having its registered office in Paderborn, whose shares are neither admitted to trading on the regulated market segments of a stock exchange nor traded on an over-the-counter market of a stock exchange. The nominal capital of DN KGaA registered with the commercial register amounts to € 50,000. It is divided into 50,000 registered shares with no par value, each having a notional value of € 1.00. The fiscal year of DN KGaA is the calendar year. Diebold Nixdorf, Incorporated, a corporation established under the laws of the State of Ohio with corporate seat at 5995 Mayfair Road, North Canton, Ohio 44720 United States of America (“**DNI**”), is the sole limited partner (*Kommanditaktionär*) and is the sole general partner (*Komplementärin*) of DN KGaA. DNI shares are admitted to trading on the New York Stock Exchange (NYSE) and on the regulated market segment (*regulierter Markt*) of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*) (*Prime Standard*).
- II.** DN AG is a listed stock corporation (*Aktiengesellschaft*) incorporated under the laws of Germany and registered with the commercial register of the local court of Paderborn under HRB 6846, having its registered office in Paderborn, whose shares are admitted to trading on the regulated market segment (*regulierter Markt*) of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*) (*General Standard*), where they are traded in the electronic trading system XETRA (DN AG together with its subsidiaries and affiliated companies, the “**DN AG Group**”). Further, DN AG shares are listed on the regulated market segments (*regulierter Markt*) of the stock exchanges in Berlin, Munich, and Stuttgart as well as on the Tradegate Exchange. The nominal capital of DN AG registered with the commercial register amounts to € 33,084,988.00 and is divided into 33,084,988 bearer shares with no par value, each representing a proportionate interest in the nominal capital of € 1.00 (“**DN Shares**”). As of this date, WINCOR NIXDORF Facility GmbH, a limited liability company under the laws of Germany and registered with the commercial register of Paderborn under HRB 3505, having its registered office in Paderborn, an indirect fully-

owned subsidiary of DN AG, owns 3,268,777 treasury shares of DN AG. The fiscal year of DN AG is the calendar year.

- III.** As of January 24, 2019, DN KGaA directly owned 28,281,606 of the total of 33,084,988 DN Shares. Taking into account the deduction of 3,268,777 treasury shares of DN AG held by WINCOR NIXDORF Facility GmbH, an indirect fully-owned subsidiary of DN AG, pursuant to Sec. 62 para. 1 sentence 2 of the German Transformation Act (*Umwandlungsgesetz*), this corresponds to approximately 94.85% of the nominal capital of DN AG. A domination and profit-and-loss transfer agreement was concluded between DN AG as the controlled company and DN KGaA as the controlling company on September 26, 2016 and registered with the commercial register of DN AG on February 14, 2017 (“**DPLTA**”). Under the DPLTA, the remaining shareholders of DN AG besides DN KGaA (“**Minority Shareholders**”) are entitled to, *inter alia*, a right to tender their respective DN AG Shares against a cash compensation in the amount of € 55.02 per DN AG Share to DN KGaA. According to information of January 25, 2019 from Deutsche Bank AG in its capacity as settlement agent under the DPLTA, such right to tender DN AG Shares has been exercised with respect to 45,371 additional DN AG Shares. Therefore, DN AG and DN KGaA expect that, in the afternoon of the next settlement date (January 31, 2019), DN KGaA will acquire title in these additionally tendered DN AG Shares and will then hold a total of 28,326,977 DN AG Shares. Taking into account the deduction of treasury shares pursuant to Sec. 16 para. 2 of the German Stock Corporation Act, this corresponds to approximately 95.01% of the nominal capital of DN AG.
- IV.** Because of its shareholding in DN AG of at least 90%, DN KGaA is the majority shareholder of DN AG within the meaning of Sec. 62 para. 5 sentence 1 of the German Transformation Act. DN KGaA and DN AG intend to transfer the entire assets of DN AG through a merger by way of absorption to DN KGaA. In connection with the merger, there shall be a squeeze-out with regard to the Minority Shareholders. For this purpose, the general meeting of DN AG shall resolve on the transfer of the shares of the Minority Shareholders to DN KGaA against adequate cash compensation within three months of the execution of this merger agreement.

- V. The merger shall only take effect if the squeeze-out of the Minority Shareholders and thus the transfer of all shares of the Minority Shareholders to DN KGaA as the majority shareholder comes into effect, which is ensured by a condition precedent with respect to the effectiveness of this merger agreement. In turn, the squeeze-out of Minority Shareholders and thus the transfer of the shares of the Minority Shareholders to DN KGaA as the majority shareholder pursuant to Sections 78, 62 para. 5 sentence 7 of the German Transformation Act shall only take effect simultaneously with the registration of the merger with the commercial register at the registered office of DN KGaA. Since DN KGaA will consequently be the sole shareholder of DN AG when the merger becomes effective, no shares in DN KGaA will be granted to the shareholders of the Transferring Company. No capital increase of DN KGaA will be effected to implement the merger.

Now, therefore, DN KGaA and DN AG agree as follows:

§ 1

Transfer of Assets, Closing Balance

1. DN AG transfers all of its assets, including all rights and obligations, by way of dissolution without liquidation pursuant to Sections 2 no. 1, 78, 60 *et seq.* of the German Transformation Act and in accordance with the provisions of this merger agreement (merger by absorption). Upon the entry of the merger with the commercial register at the registered office of the Acquiring Company, all obligations of DN AG are transferred to DN KGaA (Sec. 20 para. 1 no. 1 of the German Transformation Act).
2. The merger will be based on – subject to the provisions of § 7 of this merger agreement – the balance sheet of the Transferring Company as of December 31, 2018 (“**Closing Balance**”) (also the tax transfer date), audited by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin (Bielefeld branch).

§ 2

Squeeze-out of Transferring Company’s Minority Shareholders

1. A squeeze-out of the Minority Shareholders pursuant to Sec. 62 para. 5 of the German Transformation Act in conjunction with Sections 327a to 327f of the German Stock

Corporation Act (*Aktiengesetz*) shall take place in connection with the merger of DN AG into DN KGaA. As stated in the deposit confirmation issued by Deutsche Bank AG attached hereto as **Annex 1**, as of January 24, 2019, DN KGaA directly owned 28,281,606 of a total of 33,084,988 DN Shares. This corresponds – deducting 3,268,777 treasury shares of DN AG owned by WINCOR NIXDORF Facility GmbH, an indirect fully-owned subsidiary of DN AG, (see the deposit confirmation issued by Deutsche Bank AG attached hereto as **Annex 2**) pursuant to Sec. 62 para. 5 of the German Transformation Act – to approximately 94.85% of DN AG’s nominal capital. DN AG and DN KGaA expect that, in the afternoon of the next settlement date (January 31, 2019), DN KGaA will acquire title in 45,371 DN AG Shares which have already been tendered and will then hold a total of 28,326,977 DN AG Shares, which, taking into account the deduction of treasury shares, corresponds to approximately 95.01% of the nominal capital of DN AG (see also Preliminary Remark III above).

2. It is intended that DN AG’s general meeting adopts a resolution within three months following the execution of this merger agreement pursuant to Sec. 62 para. 5 sentence 1 of the German Transformation Act in conjunction with Sec. 327a para. 1 sentence 1 of the German Stock Corporation Act (“**Transfer Resolution**“) with respect to the transfer of DN Shares of the Minority Shareholders onto DN KGaA as majority shareholder against an adequate cash compensation by DN KGaA in the amount stated in the Transfer Resolution. The entry of the Transfer Resolution in the commercial register at the Transferring Company’s registered office must contain that such resolution only becomes effective simultaneously with the entry of the merger in the commercial register at the Acquiring Company’s registered office (Sec. 62 para. 5 sentence 7 of the German Transformation Act).

§ 3

No Consideration

1. DN KGaA as the Acquiring Company will hold all shares in DN AG upon the merger coming into effect. This is ensured by the condition precedent for the effectiveness of this

merger agreement set out in § 8.1 of this merger agreement and the statutory provisions pursuant to Sections 78, 62 para. 5 sentence 7 of the German Transformation Act.

2. Therefore, pursuant to Sec. 20 para. 1 no. 3 sentence 1 half-sentence 2 of the German Transformation Act, no shares in DN KGaA will be offered in return to the shareholders of DN AG in the course of the merger. Pursuant to Sections 78, 68 para. 1 sentence 1 no. 1 of the German Transformation Act, DN KGaA, being the Acquiring Company, may not increase its nominal capital for the execution of the merger.
3. Furthermore, pursuant to Sec. 5 para. 2 of the German Transformation Act, all information generally required under Sec. 5 para. 1 no. 2 to 5 of the German Transformation Act is not required. The Acquiring Company, as sole shareholder of the Transferring Company after the merger becomes effective, declares, as a precaution, a waiver regarding a cash compensation in the merger agreement (Sections 78, 29 of the German Transformation Act).

§ 4

Merger Effective Date

The transfer of the assets of the Transferring Company to the Acquiring Company will occur as between the Parties – subject to the condition precedent of § 7 of this merger agreement – upon the expiry of December 31, 2018. Starting January 1, 2019 (“**Merger Effective Date**“), all operations and transactions involving the Transferring Company will be conducted for the account of the Acquiring Company.

§ 5

Special Rights and Advantages

1. Subject to the facts and circumstances set forth in § 2 of this merger agreement, no rights within the meaning of Sec. 5 para. 1 no. 7 of the German Transformation Act shall be granted to individual shareholders or to holders of certain rights. No other measures within the meaning of the above-mentioned provisions are intended.

2. Subject to the facts and circumstances set forth in § 5.3 through § 5.5 of this merger agreement, no special advantages within the meaning of Sec. 5 para. 1 no. 8 of the German Transformation Act shall be granted to (i) any member of a representative body (*Vertretungsorgan*) or supervising body (*Aufsichtsorgan*) of an entity involved in the merger, (ii) any general partner (*geschäftsführender Gesellschafter*), (iii) any auditor, or (iv) any other person mentioned in that provision.
3. Upon effectiveness of the merger, the members of the management board of DN AG (the “**Management Board Members**”) will cease to be members of the management board or of any other corporate body of DN AG. The service agreements between the Management Board Members and DN AG will be transferred to DN KGaA by way of universal succession. DN KGaA is considering to appoint the Management Board Members as authorized representatives (*Prokuristen*) of DN KGaA after the merger has become effective. In accordance with the provisions of their service agreements, the Management Board Members have been granted (i) a variable compensation (bonus) as a short-term performance-based component and (ii) stock options as a long-term incentive component. In 2017, the stock options mentioned under (ii) above were replaced with “performance-based cash incentive awards” by DNI. Furthermore, the Management Board Members also participate in the “1991 Amended and Restated Equity Performance Incentive Plan“ by DNI (“**1991 Plan**“) and, since 2018, in the “2017 Equity and Performance Incentive Plan“ by DNI (“**2017 Plan**“). Under the 1991 Plan and the 2017 Plan, the Management Board Members have been granted performance stock units, restricted stock units, and stock options as a long-term incentive component. Neither under their service agreements, the 1991 Plan, nor the 2017 Plan, will the Management Board Members be granted any additional awards or other rights as a consequence of the squeeze-out of the Minority Shareholders or the merger according to this merger agreement.
4. The following Management Board Members currently also serve as executives of DNI: Dr. Ulrich Näher serves as Senior Vice President, Systems; Olaf Heyden serves as Senior Vice President, Services; and Keith A. Twiggs serves as Vice President and Corporate Controller. The Parties have the intention that the aforementioned Management Board

Members will continue to serve in their current functions at DNI following the effectiveness of the merger.

5. Following the effectiveness of the merger, the composition of the supervisory board of DN KGaA will be governed by Sec. 7 para. 1 sentence 1 no. 1 of the German Codetermination Act, as DN KGaA as the legal successor of DN AG will, by way of attribution, employ more than 2,000 but not more than 10,000 employees. Pursuant to Sections 278 para. 3, 96 para. 4, 97 *et seq.* of the German Stock Corporation Act, so-called “status proceedings” are to be carried out in order to allow for a change of the composition of the supervisory board of DN KGaA in accordance with Sec. 7 para. 1 sentence 1 no. 1 of the German Codetermination Act (also refer to § 6.12 of this merger agreement). The exact composition of the supervisory board of DN KGaA following the effectiveness of the merger is not yet determined. However, it is intended to have the employee representatives Michael Schild, Elin Dera, Wolfgang Künkler, Reinhard Steinrücke, Daniela Ueberschär and Carmelo Zanghi, subject to their approval, in accordance with Sec. 104 of the German Stock Corporation Act appointed by court order as members of the supervisory board for the period until employee representative elections are held. An agreement on the remuneration of such position does currently not exist.

§ 6

Consequences of the Merger for Employees and Their Representative Bodies

1. DN KGaA directly employs two employees at the Merger Effective Date. Furthermore, a multi-company works council (*Gemeinschaftsbetriebsrat*) of DN KGaA and WINCOR NIXDORF International GmbH, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Paderborn under HRB 3507, having its registered office in Paderborn, Germany (“**WN International**”) (also refer to § 6.8 of this merger agreement) has been established as of January 1, 2019. The merger has no consequences for the employees of DN KGaA and their representatives.
2. At the Merger Effective Date, DN AG has employees. The merger and related transfer of management power over the businesses of DN AG constitute a transfer of business, with the result that all employment relationships existing at that time with DN AG are

transferred to DN KGaA pursuant to Sec. 324 of the German Transformation Act in connection with Sec. 613a of the German Civil Code (*Bürgerliches Gesetzbuch*). Upon effectiveness of the merger, DN KGaA, as new employer, enters into all rights and obligations arising from employment relationships of DN AG, recognizing the period of the employment with DN AG and continuing the employment relationship. The legal status at the time of the effectiveness of the merger is relevant with respect to the content of the transferred employment relationships. The termination of employment relationships which are transferred at the time of the effectiveness of the merger due to the transfer of business is invalid pursuant to Sec. 324 of the German Transformation Act in connection with Sec. 613a para. 4 sentence 1 of the German Civil Code. The right to terminate the employment relationship for other reasons remains unaffected pursuant to Sec. 324 of the German Transformations Act in connection with Sec. 613a para. 4 sentence 2 of the German Civil Code.

3. The contractually agreed working conditions of the transferred employees remain unaffected, including any company practices (*betriebliche Übungen*) and commitments (*Gesamtzusagen und Einheitsregelungen*). This also applies to the place of work and any direction rights of the employer. All rights and obligations arising out of the length of service continue at DN KGaA. This applies, in particular, to the calculation of the notice period for terminations and the entitlement for anniversary payments of the transferred employees.
4. Upon effectiveness of the merger, all rights and obligations arising from pension commitments (including ongoing commitments towards pensioners and vested pension entitlements of former employees of DN AG) transfer to DN KGaA. Insofar as the duration of employment is relevant for the right to receive, and the amount of, any commitments, the employment periods reached at or recognized by DN AG are also taken into account. Future adjustments to current benefits due to pension commitments pursuant to Sec. 16 para. 1 of the German Occupational Retirement Pensions Improvement Act (*Betriebsrentengesetz*) shall take into account the economic situation of DN KGaA.

5. As DN AG ceases to exist upon effectiveness of the merger according to Sec. 20 para. 1 no. 2 of the German Transformation Act, pursuant to Sec. 613a para. 3 of the German Civil Code, an additional joint and several liability of DN AG within the meaning of Sec. 613a para. 2 of the German Civil Code lapses.
6. The employees affected by the transfer shall be notified in accordance with Sec. 613a para. 5 of the German Civil Code prior to effectiveness of the transfer. Pursuant to the case law of the German Federal Labor Court (*Bundesarbeitsgericht*), the employees have no right to object to the transfer in accordance with Sec. 613a of the German Civil Code because DN AG, as their previous employer, ceases to exist and accordingly, employment relationships with DN AG cannot be continued. However, pursuant to the case law of the Federal Labor Court, employees may have extraordinary termination rights due to the merger.
7. The merger as such does not lead to any change to the current operational structure (*betriebliche Struktur*) of DN AG, which will persist with DN KGaA following the effectiveness of the merger. No change of the business within the meaning of Sec. 111 of the German Works Constitution Act (*Betriebsverfassungsgesetz*) is effected by the merger and the transfer of business connected thereto. The head office with regard to the previous activities of DN AG will continue to be located in Paderborn. Regarding the so-called “DN Now” program of DN AG, an agreement between WN International and the works council (*Betriebsrat*) of WN International about a reconciliation of interests and a social plan was reached on January 9, 2019. Upon effectiveness of the merger, the aforementioned agreement continues to be in effect.
8. DN KGaA has established a multi-company works council (*Gemeinschaftsbetriebsrat*) with WN International as of January 1, 2019. **Annex 3** contains a list of the works councils (*Betriebsräte*) and the companies within the DN AG Group in which such works councils are established. Upon effectiveness of the Merger, the existing business operations (*Betrieb*) of DN AG will continue unchanged within DN KGaA. With regards to the structures under works constitution law (*Betriebsverfassungsrecht*), it is agreed with the works constitution law bodies (*betriebsverfassungsrechtliche Gremien*) that the joint

business operations (*Gemeinschaftsbetrieb*) between the business operations of Wincor Nixdorf International GmbH in Paderborn, Germany, and the business operations of DN KGaA will continue, and that the group works council (*Konzernbetriebsrat*) will be formed at the level of DN KGaA.

9. No works agreements (*Betriebsvereinbarungen*) currently exist at DN KGaA. Upon effectiveness of the merger, under collective bargaining law, the existing works agreements of DN AG, which were concluded between DN AG and the employee representatives bodies, will continue at DN KGaA, because the merger does not change the identity of the business operations.
10. The merger does not affect the application of collective bargaining agreements declared to be universally applicable; if and to the extent such collective bargaining agreements are applicable to DN AG, they shall persist under collective bargaining law.
11. DN AG currently has a supervisory board composed in accordance with the provisions of the German Codetermination Act, consisting of twelve members, six of whom are representatives of the shareholders and six of whom are representatives of the employees. Upon the effectiveness of the merger, the supervisory board members will cease to be members of the supervisory board or of any other corporate body of DN AG.
12. DN KGaA currently has a supervisory board consisting of three members, all of whom are elected by the general meeting. The supervisory board of a partnership limited by shares has less competences than the supervisory board of a stock corporation. In particular, it cannot appoint or elect the management, i.e., neither the general partner nor the members of the general partner's representative body. Furthermore, the supervisory board of a partnership limited by shares cannot define a catalogue of measures of the management which require the supervisory board's approval. Upon effectiveness of the merger, DN KGaA will form a supervisory board subject to parity codetermination in accordance with the German Codetermination Act because DN KGaA, as successor of DN AG, will directly or by way of attribution employ more than 2,000 employees in Germany. At the latest, immediately following the effectiveness of the merger, the general partner of DN KGaA will carry out so-called "status proceedings" pursuant to Sec. 278 para. 3 in

connection with Sec. 97 *et seq.* of the German Stock Corporation Act. The Parties assume that DN KGaA will usually not employ more than 10,000 employees in Germany; thus, pursuant to Sec. 7 para. 1 sentence 1 no. 1 of the German Codetermination Act, the supervisory board will consist of twelve members, six of whom are representatives of the shareholders and six of whom are representatives of the employees. Prior to the effectiveness of the merger, the supervisory board representatives of the shareholders will be elected by the general meeting of DN KGaA, thus by its sole shareholder DNI. The election of these members is subject to the condition precedent of the merger becoming effective and of the completion of the status proceedings. The supervisory board representatives of the employees will initially be appointed by court. With respect to the proposed composition of the supervisory board of DN KGaA following the effectiveness of the merger, reference is made to § 5.5 of this merger agreement. The employees of DN AG who are employed in Germany, will have active and passive voting rights for the election of the employees' representatives in the supervisory board of DN KGaA upon effectiveness of the merger.

13. The merger does not directly affect the subsidiaries and affiliated companies of DN AG. The service agreements of the employees of the subsidiaries and affiliated companies are not affected by the merger. The merger neither leads to changes with regard to the employees' representative bodies nor with regard to works agreements or with regard to agreements with the representative body for executive employees, which were concluded with each existing employees' representative body of the subsidiaries or affiliated companies of DN AG. In addition, the merger does not affect the application of collective bargaining agreements on subsidiaries or affiliated companies.

§ 7

Change in the Merger Effective Date

If the merger does not become effective by the end of January 31, 2020 by way of registration with the commercial register at the registered office of the Acquiring Company, the merger, notwithstanding § 1.2 of this merger agreement, will be based on the balance sheet of DN AG dated December 31, 2019 as the Closing Balance and the merger effective date will be changed,

notwithstanding § 4 of this merger agreement, to January 1, 2020. If the effectiveness of the merger is delayed beyond January 31, 2021, the effective date shall be delayed by one year respectively in line with the provisions detailed above.

§ 8

Condition Precedent, Effectiveness, Reservation of Right of Withdrawal

1. The effectiveness of this merger agreement is subject to the condition precedent that the resolution of the general meeting of DN AG pursuant to Sec. 62 para. 5 sentence 1 of the German Transformation Act in connection with Sec. 327a para. 1 sentence 1 of the German Stock Corporation Act with respect to the transfer of the shares of the Minority Shareholders to DN KGaA as the majority shareholder is registered with the commercial register at the registered office of DN AG with the note pursuant to Sec. 62 para. 5 sentence 7 of the German Transformation Act, according to which the transfer resolution becomes effective at the same time as the merger is registered with the commercial register at the registered office of DN KGaA.
2. The merger will become effective upon its registration with the commercial register at the registered office of DN KGaA. Pursuant to Sec. 62 para. 4 sentences 1 and 2 of the German Transformation Act, an approval of the general meeting of DN AG to this merger agreement is not required for the effectiveness of the merger because, pursuant to § 8.1 of this merger agreement, the effectiveness of this merger agreement is subject to the condition precedent that the general meeting of DN AG as the Transferring Company resolves upon a resolution pursuant to Sec. 62 para. 5 sentence 1 of the German Transformation Act in connection with Sec. 327a para. 1 sentence 1 of the German Stock Corporation Act and such resolution is registered with the commercial register at the registered office of DN AG with a note pursuant to Sec. 62 para. 5 sentence 7 of the German Transformation Act. In general, the merger resolution by the general meeting of the acquiring partnership limited by shares requires the approval of its general partner pursuant to Sec. 78 sentence 3 of the German Transformation Act. However, pursuant to Sections 78, 62 para. 1 in connection with para. 2 sentence 1 of the German Transformation Act, a merger resolution by the general meeting of DN KGaA is only

required if the shareholders of DN KGaA whose holdings in aggregate equal or exceed 5% of the nominal capital of DN KGaA request the convocation of a general meeting resolving on the approval of the merger. The sole shareholder of DN KGaA, DNI, has declared to DN KGaA that it will not exercise such right of convocation. Therefore, DNI in its capacity as sole general partner of DN KGaA approves the merger of DN AG into DN KGaA and the execution of this merger agreement only as a precautionary measure in Sec. II of this notarial deed.

3. Each Party may withdraw from this merger agreement if the merger does not come into effect by the end of December 31, 2022 and if the merger does not come into effect prior to the exercise of the right of withdrawal by its registration with the commercial register at the registered office of DN KGaA and the fulfillment of the condition precedents set forth in § 8.1 of this merger agreement. The withdrawal shall be declared via registered mail. Each Party may waive its right of withdrawal by expressly declaring its waiver in writing.

§ 9

Final Provisions

1. DNI as the sole shareholder and sole general partner of DN KGaA has declared to DN KGaA that it shares the views of the Parties expressed in § 5.3 through § 5.5, and § 6.12 of this merger agreement.
2. The Parties will make all declarations, issue all documents and perform all other actions that may be required or appropriate in connection with the transfer of assets of DN AG at the time the merger with and into DN KGaA comes into effect or in connection with the correction of public registers or other directories. In the event any assets of DN AG can, for whatever reason, not be transferred to DN KGaA by way of universal succession in connection with this merger agreement, DN AG will make all declarations, issue all documents and perform all other actions that may be required or appropriate to effect the transfer of such assets to DN KGaA. DN AG grants DN KGaA power of attorney to the fullest extent legally permissible, and exempted from the limitations of Sec. 181 of the German Civil Code, to make any declarations that are necessary or helpful for fulfilling

the obligations under this § 9.2. This power of attorney will stay valid beyond the effectiveness of the merger.

3. The costs and, unless otherwise provided for by statutory law, taxes related to the notarization of this merger agreement will be incurred by DN KGaA. The same shall apply to the costs and taxes incurred in connection with the execution of this merger agreement. Apart from that, each Party will bear its own costs, subject to other agreements. This shall also apply in case the merger is voided due to a withdrawal by one Party or otherwise.
4. This merger agreement shall remain in force even in the case one or more provisions of this merger agreement are or become void or unenforceable. The Parties undertake to replace an invalid or unenforceable provision with a provision that is valid, practicable and in the legally permissible manner closest to what the Parties have intended with the void or unenforceable provision or would have intended if they had been aware of the invalidity or unenforceability of the provision. The same applies in the event the agreement is incomplete.

* * *

Annex 1 to Merger Agreement

Deposit Confirmation issued by Deutsche Bank AG regarding the shares of Diebold Nixdorf Aktiengesellschaft owned by Diebold Nixdorf Holding Germany Inc. & Co. KGaA

Deutsche Bank



Martin Gross-Langenhoff
Sullivan & Cromwell LLP
Neue Mainzer Strasse 5
60311 Frankfurt am Main,

Nicolas Castagnet

Client Service Officer

Deutsche Bank AG

COO CIB Technology and Operations

Alfred-Herrhausen-Allee 16-24, 65760 Eschborn,

Germany

phone: +49 69 910-64075

fax: +49 69 910-69817

25. Januar 2019

Holding confirmation per 24.01.2019
DIEBOLD NIXDORF AG INHABER-AKTIEN O.N. – ISIN DE000A0CAYB2

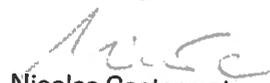
Dear Mr. Gross-Langenhoff,

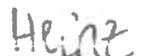
As follow we confirm that as of 24.01.2019 (evening)
for your security account Nr. 338 5191010 00, under the name

Diebold Nixdorf Holding Germany Inc. & Co. KGaA
Heinz-Nixdorf-Ring 1
33106 Paderborn

28.281.606,00 Shares DIEBOLD NIXDORF AG INHABER-AKTIEN O.N.
With ISIN DE000A0CAYB2 are booked in our records.

Sincerely yours,


Nicolas Castagnet


Sina Heinz

Deutsche Bank AG

Annex 2 to Merger Agreement

**Deposit Confirmation issued by Deutsche Bank AG regarding the treasury shares of
Diebold Nixdorf Aktiengesellschaft owned by WINCOR NIXDORF Facility GmbH**

NON-BINDING ENGLISH CONVENIENCE TRANSLATION

– Convenience Translation of the original German-language version
issued by Deutsche Bank AG –

Annual Securities Deposit Statement as of December 31, 2018

Deposit Holder: WINCOR NIXDORF
Facility GmbH
Gebäude D-LOB SSP H. Schäfers

Branch No. **Deposit No.** Shareholdings' Deposit
338 5228002 01 see blocking note (*Sperrvermerk*)

Par Value or Units of Shares		Type of Security & Maturity			Share Price	Market Value in EUR
		ISIN	WKN	Risk Category		
Units	400,000	DIEBOLD NIXDORF AG INHABER-AKTIEN O.N. DE000A0CAYB2	A0CAYB	5	EUR 57.20	22,880,000.00
No earnings- or capital repayment Depository: collective custody special stock (<i>Girosammel-Sonderbestand</i>)						
Items	1	Total Market Value in EUR				22,880,000.00
Shares		Stocks (<i>Aktien</i>)				22,880,000.00

If no depository is indicated, the securities are held in collective custody.

NON-BINDING ENGLISH CONVENIENCE TRANSLATION

– Convenience Translation of the original German-language version
issued by Deutsche Bank AG –

Annual Securities Deposit Statement as of December 31, 2018

Deposit Holder: WINCOR NIXDORF
Facility GmbH
Gebäude D-LOB SSP H. Schäfers

Branch No. **Deposit No.** Shareholdings' Deposit
338 5228002 02 see blocking note (*Sperrvermerk*)

Par Value or Units of Shares		Type of Security & Maturity			Share Price	Market Value in EUR
		ISIN	WKN	Risk Category		
Units	1,737,569	DIEBOLD NIXDORF AG INHABER-AKTIEN O.N. DE000A0CAYB2	A0CAYB	5	EUR 57.20	99,388,946.80
No earnings- or capital repayment Depository: collective custody special stock (<i>Girosammel-Sonderbestand</i>)						
Items	1	Total Market Value in EUR				99,388,946.80
Shares		Stocks (<i>Aktien</i>)				99,388,946.80

If no depository is indicated, the securities are held in collective custody.

NON-BINDING ENGLISH CONVENIENCE TRANSLATION

– Convenience Translation of the original German-language version
issued by Deutsche Bank AG –

Annual Securities Deposit Statement as of December 31, 2018

Deposit Holder: WINCOR NIXDORF
Facility GmbH
Gebäude D-LOB SSP H. Schäfers

Branch No. **Deposit No.** Shareholdings' Deposit
338 5228002 00 see blocking note (*Sperrvermerk*)

Par Value or Units of Shares		Type of Security & Maturity			Share Price	Market Value in EUR
		ISIN	WKN	Risk Category		
Units	1,131,208	DIEBOLD NIXDORF AG INHABER-AKTIEN O.N. DE000A0CAYB2	A0CAYB	5	EUR 57.20	64,705,097.60
No earnings- or capital repayment Depository: collective custody special stock (<i>Girosammel-Sonderbestand</i>)						
Items	1	Total Market Value in EUR				64,705,097.60
Shares		Stocks (<i>Aktien</i>)				64,705,097.60

If no depository is indicated, the securities are held in collective custody.

Annex 3 to Merger Agreement**List of the works councils within the Diebold Nixdorf Aktiengesellschaft Group and the companies within the Diebold Nixdorf Aktiengesellschaft Group in which works councils are established**

	Committee
<i>Group Works Council (Konzernbetriebsrat)</i>	
1.	Group Works Council of Diebold Nixdorf Aktiengesellschaft
<i>Joint Works Councils (Gesamtbetriebsräte)</i>	
2.	Joint Works Council of Diebold Nixdorf Deutschland GmbH
3.	Joint Works Council of Wincor Nixdorf International GmbH
4.	Joint Works Council of Diebold Nixdorf Systems GmbH
5.	Joint Works Council of Diebold Nixdorf Services GmbH
<i>Regional Works Councils (Betriebsräte)</i>	
6.	Works Council of Diebold Nixdorf Banking Consulting GmbH
7.	Works Council of Diebold Nixdorf Business Administration Center GmbH
8.	Works Council of Diebold Nixdorf Customer Care GmbH
9.	Works Council of Diebold Nixdorf Facility Services GmbH
10.	Works Council of Diebold Nixdorf Global IT Operations GmbH
11.	Works Council of Wincor Nixdorf International GmbH - Paderborn
12.	Works Council of Wincor Nixdorf International GmbH Neu-Isenburg
13.	Works Council of Wincor Nixdorf International GmbH - Dornach
14.	Works Council of Wincor-Nixdorf International GmbH Leipzig
15.	Works Council of Wincor Nixdorf International GmbH Berlin
16.	Works Council of Wincor Nixdorf International (WNI) GmbH Hilden
17.	Works Council of Wincor Nixdorf International GmbH Hamburg
18.	Works Council of Diebold Nixdorf Deutschland GmbH Stuttgart
19.	Works Council of Diebold Nixdorf Deutschland GmbH Berlin
20.	Works Council of Diebold Nixdorf Deutschland GmbH Neu-Isenburg
21.	Works Council of Diebold Nixdorf Global Logistics GmbH
22.	Works Council of Diebold Nixdorf Systems GmbH Paderborn
23.	Works Council of Diebold Nixdorf Systems GmbH Berlin
24.	Works Council of Diebold Nixdorf Portavis GmbH
25.	Works Council of Diebold Nixdorf Retail Services GmbH
26.	Works Council of Diebold Nixdorf Security GmbH
27.	Works Council of Diebold Nixdorf Services GmbH - Region West
28.	Works Council of Diebold Nixdorf Services GmbH - Region Süd
29.	Works Council of Diebold Nixdorf Services GmbH - Region Südwest
30.	Works Council of Diebold Nixdorf Services GmbH - Region Nord
31.	Works Council of Diebold Nixdorf Services GmbH - Region Ost
32.	Works Council of Diebold Nixdorf Services GmbH - Region Mitte
33.	Works Council of Diebold Nixdorf Technology GmbH

34.	Works Council of Prosystems IT GmbH
35.	Works Council of Diebold Nixdorf Fuel and Convenience Solutions GmbH Köln
<i>Multi-company Works Councils (Gemeinschaftsbetriebsräte)</i>	
36.	Multi-company Works Council of Wincor Nixdorf International GmbH – Paderborn, Aevi International GmbH, Diebold Nixdorf Aktiengesellschaft, Diebold Nixdorf Deutschland GmbH
37.	Multi-company Works Council of Wincor Nixdorf International (WNI) GmbH Hilden, Retail Consulting (RCON) GmbH Hilden, transitional mandate for Diebold Nixdorf Deutschland (DND) GmbH Hilden (until 3/31/2019)
38.	Multi-company Works Council of Wincor Nixdorf International GmbH Hamburg
39.	Multi-company Works Council of Wincor Nixdorf International GmbH and Diebold Nixdorf Holding Germany Inc. & Co. KGaA

SECTION II

Zustimmung der persönlich haftenden Gesellschafterin der Diebold Nixdorf Holding Germany Inc. & Co. KGaA **Approval of the sole general partner of Diebold Nixdorf Holding Germany Inc. & Co. KGaA**

Hiermit stimmt die Diebold Nixdorf, Incorporated, mit eingetragener Geschäftsadresse 5995 Mayfair Road, North Canton, Ohio 44720, Vereinigte Staaten von Amerika, in ihrer Eigenschaft als persönlich haftende Gesellschafterin der Diebold Nixdorf Holding Germany Inc. & Co. KGaA der Verschmelzung der Diebold Nixdorf Aktiengesellschaft als übertragende Gesellschaft auf die Diebold Nixdorf Holding Germany Inc. & Co. KGaA als übernehmende Gesellschaft und dem Abschluss des entsprechenden Verschmelzungsvertrags gemäß Abschnitt I dieser Urkunde zu.

Diebold Nixdorf, Incorporated, with corporate seat at 5995 Mayfair Road, North Canton, Ohio 44720, United States of America, as the sole general partner of Diebold Nixdorf Holding Germany Inc. & Co. KGaA, hereby approves of the merger of Diebold Nixdorf Aktiengesellschaft, as the transferring company, into Diebold Nixdorf Holding Germany Inc. & Co. KGaA, as the acquiring company, and the execution of the corresponding merger agreement as included in Sec. I of this notarial deed.

* * *

[Translator's notes are in square brackets]

General Engagement Terms

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

DokID:

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.

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(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.