

## **R E P O R T**

on the audit of the  
redemption plan concerning  
the redemption of Participation Capital of  
**Erste Group Bank AG**  
as well as on the audit of  
adequateness of the cash compensation  
offered to the holders of  
Participation Capital Securities being subject to redemption  
in accordance with § 102a para 4 BWG together  
with § 2 para 3 UmwG

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1. To the  
Handelsgericht Wien  
Firmenbuch  
  
Marxergasse 1a  
1030 Wien  
  
to FN 33209 m Erste Group Bank AG
2. To the members of the Supervisory Board of Erste Group Bank AG
3. To the members of the Management Board of Erste Group Bank AG

## I. Engagement

- Tz 1 Based on the resolutions issued by the Handelsgericht Wien on July 11, 2011 and June 10, 2013 we were appointed as auditor for the redemption of Participation Capital of Erste Group Bank AG (in the following „Erste Group“) with its registered office in Vienna in accordance with § 102a para 4 BWG together with § 2 para 3 UmwG. We accepted the engagement and performed an audit on the redemption plan issued by the Management Board of Erste Group (see appendix II) as well as on the adequateness of the cash compensation offered to the holders of the Participation Capital Securities being subject to redemption in accordance with § 102a BWG together with § 2 para 3 UmwG and with §§ 220ff AktG. Our partner and public accountant, Mr. Thomas Becker, is responsible for the proper execution of this engagement.
- Tz 2 Scope of this audit is defined as follows:
- Ensuring that the disclosures by the Management Board in the redemption plan are correct and complete and in accordance within analogous application of the regulations pursuant to § 102a para 4 BWG together with § 2 para 3 no 2 UmwG and with § 220 para 2 no 1 to 7 AktG
  - Confirming as to whether the cash compensation offered to the holders of the Participation Capital Securities being subject to the redemption is adequate. The auditor has to explain appropriateness of the cash compensation and highlight special difficulties in connection with the valuation (§ 2 para 3 no 3 UmwG).
- Tz 3 Based on the engagement letter agreed with Erste Group, our engagement is subject to the General Conditions of Contract for the Public Accounting Profession, issued by the Chamber of Public Accountants and Tax Advisers on February 21, 2011 (Appendix IV). These General Conditions of Contract also apply in relation to third parties.

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Tz 4 We based our **audit on the redemption plan** on following documents:

- Agenda and voting of the extraordinary shareholders' meeting of Erste Group held on December 2, 2008
- Basic agreement (*Grundsatzvereinbarung*) entered into between the Republic of Austria (Ministry of Finance) and Erste Group dated February 26, 2009
- Agenda and voting of the ordinary shareholders' meeting of Erste Group held on May 12, 2010
- Articles of Association of Erste Group in the version of the resolution of the Shareholders' Meeting of May 15, 2012
- Basic resolution on the redemption by the Management Board of Erste Group dated June 18, 2013
- Basic resolution on the redemption by the Supervisory Board of Erste Group dated June 24, 2013 (circular resolution)
- Redemption Plan Concerning the Redemption of Participation Capital of Erste Group Bank AG pursuant to § 102a BWG (certified notary public dated June 19, 2013)
- Report by the Management Board on the Redemption of Participation Capital of Erste Group Bank AG pursuant to § 102a BWG dated June 19, 2013

Tz 5 We based our **audit on the adequateness of the cash compensation offered** on following documents:

- Terms and Conditions of the 2009 Issue of up to EUR 2,700,000,000 Bearer Participation Capital Securities of Erste Group Bank
- Financial statements of Erste Group for the financial years 2009 to 2012
- Report on hidden reserves of Erste Group as of end of financial years 2009 to 2012
- Financial statements as of December 31, 2012 of the five largest participations of Erste Group
- The 2013 financial forecasts of the five largest participations of Erste Group
- Budget for the years 2013 to 2017 of the five largest participations of Erste Group
- Several publications on Participation Capital issued by Erste Group

Tz 6 Based on these documents we report on the result of our audit in accordance with § 102a para 4 BWG together with § 220b para 4 AktG as follows.

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## II. Participation Capital being subject to cash compensation

Tz 7 By resolution of the extraordinary shareholders' meeting of Erste Group held on December 2, 2008, the Management Board was authorised, subject to approval by the Supervisory Board, to issue Participation Capital pursuant to § 23 para 4 BWG with no cumulative dividend coupon up to the amount of EUR 2,700,000,000 by means of a rights offer and public offer of Participation Capital Securities.

On March 10, 2009 the Republic of Austria represented by the Ministry of Finance subscribed to the first tranche totalling EUR 1,000,000,000 on the basis of the Financial Market Stabilisation Act ("*Finanzstabilitätsgesetz*") and the Grundsatzvereinbarung entered into between the Ministry of Finance and Erste Group as of February 26, 2009.

The second tranche totalling EUR 539,744,000 was subscribed by private investors on the basis of an offer to shareholders of Erste Group and a public offering in Austria, Germany, the Czech Republic, Romania and Slovakia on May 13, 2009.

Also on May 13, 2009 the Republic of Austria subscribed to the third tranche totalling EUR 224,000,000 on the basis of the Financial Market Stabilisation Act.

All three tranches are subject to identical terms and conditions.

Tz 8 By resolution of the shareholders' meeting of Erste Group held on May 12, 2010, the Management Board was authorised, subject to approval by Supervisory Board, to redeem the entire Participation Capital or the Participation Capital of individual tranches already distinguished upon the issue, also in parts if the equal treatment of the beneficiaries of the Participation Capital is ensured. This authorisation was included as point 8.4 in the Articles of Association of Erste Group as follows:

*„The Management Board shall be authorised until 12 May 2015 to redeem the total Participation Capital or single tranches thereof if already distinguished at the time of issue – and if the equal treatment of the holders of participation capital is safeguarded, also parts thereof – with the consent of the Supervisory Board.“*

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On June 18, 2013 Management Board of Erste Group decided to exercise this authorisation and made a basic resolution to redeem the entire Participation Capital. By executing this basic resolution Management Board issued a redemption plan as well as a report on the redemption of Participation Capital by way of application of § 220a AktG (by analogy).

The Supervisory Board of Erste Group approved such resolution by the Management Board on June 24, 2013 by circular resolution.

Given this, the entire outstanding Participation Capital of Erste Group in the nominal value of EUR 1,763,744,000 is subject to redemption by offering holders of such Participation Capital cash compensation. It goes without saying that Participation Capital held by Erste Group is not subject to cash compensation. The Participation Capital Securities are not listed on any stock exchange or on any multilateral trading facility. The requirements under § 102a para 3, first sentence, BWG are therefore not met and no compulsory offer to exchange Participation Capital into shares of Erste Group in accordance with § 102 BWG needs to be made prior to the offer of cash compensation.

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### III. Audit of redemption plan

Tz 9 On June 19, 2013 the Management Board issued a redemption plan concerning the redemption of Participation Capital of Erste Group Bank AG in accordance with § 102a BWG by certified notary public.

Tz 10 An audit on the disclosures in the redemption plan concerning the redemption of Participation Capital being subject to cash compensation has to be performed in accordance with § 2 para 3 UmwG together with § 220b AktG. The disclosures required by law are outlined in § 2 para 3 no 2 UmwG together with § 220 para 2 no 1 to 7 AktG. The following requirements are addressed in the redemption plan as follows:

1. Name and registered office of the company redeeming the Participation Capital pursuant to § 102a BWG (**§ 220 para 2 no 1 AktG**):

Point 1.6<sup>1</sup>: *„Erste Group is a stock corporation under Austrian law with ist registered office in Vienna and a credit institution pursuant to § 1 sec 1 BWG.“*

2. Description of scope of the Participation Capital being subject to redemption in accordance with § 102a BWG to which the offer of cash compensation refers in the redemption plan (**§ 220 para 2 no 2 AktG (in analogy)**):

Point 2.1: *„On the basis of the Company’s financial statements for the year ended 31 December 2012 as closing balance sheet bearing an unqualified opinion, the redemption under § 102a BWG ist o comprise the entire Erste Participation Capital totalling EUR 1,763,744,000, thus a total of 1,763,744 Participation Capital Securities in the nominal value of EUR 1,000 each, pursuant to the Terms and Conditions of Erste Participation Capital, issued in three tranches.“*

3. Amount of cash compensation offered to holders of Participation Capital being subject to cash compensation (**§ 220 para 2 no 3 AktG together with § 2 para 3 no 2 UmwG**):

Point 3.1: *„In compliance with the laws, beneficiaries of the Participation Capital will be granted adequate cash compensation. In the case at hand, in § 6 (2) of the Terms and Conditions of the Erste Participation Capital, Erste Group Bank, as redeeming*

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<sup>1</sup> Note: References refer to the relevant disclosures in the redemption plan.

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*company, and the holders of the Erste Participation Capital Securities, as beneficiaries of the Participation Capital, fixed a redemption price of 100 % of the nominal value, hence EUR 1,000 per Participation Capital Security, in case of a redemption. Pursuant to such agreement, cash compensation of EUR 1,000 per Erste Participation Capital Security is fixed as adequate cash compensation under § 102a sec 4 BWG in respect of the Participation Capital to be redeemed. For the avoidance of doubt, the Company is not entitled to any cash compensation from its own Erste Participation Capital Securities.”*

4. Disclosure in accordance with analogue application of **§ 220 para 2 no 4 AktG** (point in time from which the newly issued shares are entitled to participate in the balance sheet profit as well as all specialties connected to these claims) are not required given the offer for cash compensation.
  
5. Point in time at which the Participation Capital being subject to cash compensation is considered redeemed (**§ 220 para 2 no 5 AktG** (in analogy)):
 

*Point 3.3: „Upon announcement of the resolution by the management board and the supervisory board on the redemption, probably on 7 August 2013, the entire Erste Participation Capital is considered redeemed pursuant to § 102a sec 5 BWG. The holders of the Participation Capital Securities are therefore exclusively entitled to cash compensation (§ 102a sec 5 BWG).“*
  
6. Special rights granted to specific shareholders or holders of preferred shares, bonds and profit participations by the redeeming company or measures contemplated for these persons (**§ 220 para 1 no 6 AktG**):
 

*Point 5. „Neither shareholders nor holders of bonds and profit participation rights will be granted any special rights or other rights as defined in § 220 sec 2 No 6 AktG. No measures as defined in § 220 sec 2 No 6 in conjunction with § 226 sec 3 AktG will be taken.“*
  
7. Each special benefit granted to members of the Management Board or Supervisory Board, an auditor of the redeeming company or redemption auditor (**§ 220 para 2 no 7 AktG**):
 

*Points 6.1 and 6.2: „Neither members of the management board of Erste Group Bank, nor the members of the supervisory board of Erste Group Bank, nor a balance sheet auditor, a bank auditor, a redemption auditor or any other auditor of Erste Group*

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*Bank, nor any company involved in the redemption will be granted a special benefit pursuant to § 220 sec 2 No 7 AktG. The reasonable fees payable to the redemption auditor for the redemption audit pursuant to § 220b AktG (by analogy) do not constitute a special benefit as defined in § 220 sec 2 No 7 AktG.“*

Tz 11 Based on our audit of the redemption plan in accordance with § 220b para 1 AktG we come to the conclusion that the disclosures in the redemption plan concerning the redemption of the Participation Capital being subject to cash compensation are in compliance with the legal requirements.

#### IV. Audit of adequateness of cash compensation offered

- Tz 12 Pursuant to § 102a para 4 BWG together with § 2 para 3 no 3 UmwG the audit on the redemption of Participation Capital also includes a statement, whether the cash compensation mentioned in the redemption plan is adequate. Special difficulties in connection with the valuation need to be highlighted.
- Tz 13 As mentioned in point 3.1 of the redemption plan, already at the time of issue Erste Group as issuer of the Participation Capital Securities and the holders as beneficiaries of the Participation Capital have agreed in § 6 para (2) of the underlying terms and conditions on a redemption price of 100 % of the nominal value, i.e. EUR 1,000 per Participation Capital Security. Regarding the Republic of Austria as investor in tranches I and III (nominal value EUR 1,224,000,000) this is evidenced by the subscription agreement signed on March 9, 2009 concerning the Participation Capital Securities of Erste Group. The terms and conditions of the Participation Capital Securities are attached to the subscription agreement as appendix 1. The private investors of tranche II (nominal value EUR 539,744,000) subscribed to the Participation Capital on the basis of a prospectus on rights offer of up to EUR 2,700,000,000 Participation Capital Securities and public offer of up to EUR 1,700,000,000 Participation Capital Securities dated April 9, 2009 approved by the Financial Market Authority. The terms and conditions of the 2009 issue of bearer Participation Capital Securities of up to EUR 2,700,000,000 of Erste Group form an integral part of the prospectus and are identical in content with appendix 1 of above mentioned subscription agreement. § 6 para (2) of the terms and conditions of the Participation Capital Securities reads as follows: *„Repayment. The Issuer shall be entitled to repay the Participation Capital Securities in accordance with the statutory requirements as applicable at the time of repayment at any time prior to the liquidation of the Issuer (to the extent permissible, also in tranches or in such parts of the Participation Capital as have been specified by reference to other attributes, but in each case observing the equal treatment of the Participants). Repayment shall not be permissible if the repayment amount would be below 100 % of the nominal amount. Until (and including) the tenth full business year of the Issuer after issue of the Participation Capital Securities the repayment amount shall be 100 % of the nominal value, thereafter 150 % of the nominal value, provided that the enterprise value has increased correspondingly. If distributable*

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*Annual Profits have been retained despite the absence of a statutory obligation or instructions from a supervisory body to such effect, the repayment amount shall be increased by the number of percentage points by which the agreed dividends has been fallen short of.“*

- Tz 14 Point 3.3 of the redemption plan foresees that upon announcement of the resolution by the Management Board and the Supervisory Board the entire Participation Capital is considered redeemed. The announcement is planned in the Amtsblatt zur Wiener Zeitung as of August 7, 2013. Given the fact that the redemption date lies within ten full business years after issue of the Participation Capital, a redemption amount of 100 % of the nominal value is agreed. For the avoidance of doubt it has to be noted that Erste Group's shareholders' meeting made resolutions on the agenda item „resolution on the distribution of balance sheet profit“ with respect to the underlying financial statements of the financial years 2009 to 2012 to the effect that the dividend coupon of the Participation Capital Securities was paid in full to the extent of 8 % of nominal value. An increase in the cash compensation amount resulting from shortfalls on agreed dividends does not apply.
- Tz 15 In accordance with the terms and conditions repayment shall not be permissible if the repayment amount would be below 100 % of the nominal value. The following statements deal with the question whether such reduction in cash compensation amount would be adequate.
- Tz 16 First we need to check compliance with the requirements outlined in § 102a para 7 BWG. Pursuant to this regulation Participation Capital has to be redeemed against balance sheet profit or unappropriated reserves of the annual financial statements. Point 3.5 of the redemption plan foresees that the Participation Capital will be redeemed against unappropriated reserves recognized in the financial statements for the year ended December 31, 2012. On April 9, 2013 Sparkassen-Prüfungsverband (Prüfungsstelle) and Ernst & Young Wirtschaftsprüfungsgesellschaft m.b.H. issued an unqualified audit opinion on the financial statements as of December 31, 2012. These financial statements show EUR 260,000,000 of unappropriated capital reserves and EUR 1,693,085,409.27 of unappropriated profit reserves, i.e. EUR 1,953,085,409.27 of unappropriated reserves in total. Given the redemption amount of EUR 1,763,744,000.00, unappropriated reserves of EUR 189,341,409.27 would remain after redemption of the Participation Capital. With respect to § 102a para 7 BWG no reduction in the redemption amount below 100 % of nominal value is required.

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Tz 17 Further compliance with the regulation of § 23 para 4 no 4 BWG needs to be checked. This regulation requires that Participation Capital participates in losses up to the total amount in the same manner as share capital. In this respect the annual results for the financial years 2009 to 2012 are relevant and show following results:

in T€	2009	2010	2011	2012
Annual result before changes in reserves	515,380	1,093,994	138,284	379,042

Tz 18 Erste Group's annual results are positive in all financial years from 2009 to 2012. The resolutions of the shareholders' meetings following the balance sheet date concerning the distribution of balance sheet profit foresaw payment in full of the Participation Capital dividend coupon (approx. EUR 141,000,000) (see also Tz 14). Except for the year 2011 the resolutions also included dividend payments on the share capital. In the absence of a negative cumulative result in the period under consideration from December 31, 2008 to December, 31, 2012 there are no indications requiring participation in losses of the Participation Capital being subject to cash compensation.

Tz 19 § 6 para (2) of the terms and conditions of the Participation Capital shows an increase in redemption amount from 100 % to 150 % of nominal value for redemptions after the full tenth business years after issue of the Participation Capital, provided that the enterprise value has increased correspondingly. In accordance with this condition and given a redemption amount of 100 % it has to be checked how the enterprise value changed from the date of issue to the date of planned redemption. In the following we used equity shown in the financial statements (excluding Participation Capital, balance sheet profit and untaxed reserves) together with hidden reserves shown in the report on hidden reserves as of December 31, 2008 and December 31, 2012 (being the most recent balance sheet date with respect to issue and planned redemption) as a simplified entity value. With respect to the report on hidden reserves as of December 31, 2012 we have amended the numbers by the results of a desktop-valuation performed by us.

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Tz 20 Erste Group's equity in the audited financial statements (excluding balance sheet profit, untaxed reserves and Participation Capital being subject to cash compensation) shows following numbers in EUR-thousand as of the relevant balance sheet dates:

in T€	31.12.2008	31.12.2012
Equity	7,103,471	10,103,947

At both balance sheet dates the report on hidden reserves shows the largest amounts in connection with non-listed participations. These participations represent Erste Group's investment in bank subsidiaries in Austria and abroad. Based on the relevance of these amounts as part of our audit procedures we performed a desktop-valuation with respect to the five largest bank subsidiaries (in terms of book value). A desktop-valuation differs in scope compared with a full scope valuation performed in accordance with KFS/BW 1 (*Fachgutachten des Fachsenats für Betriebswirtschaft und Organisation zur Unternehmensbewertung*). We did not meet with management of bank subsidiaries involved or Erste Group to discuss the business plans and underlying forecasts. Moreover, no meetings with responsible representatives of the bank subsidiaries were held to verify the basic assumptions of the business plan and underlying forecast. In addition, no detailed sensitivity analysis on the forecasts of the five largest bank subsidiaries was performed.

The desktop-valuation includes the following two valuation methods:

- a) discounted cash flow valuation based on the most recent approved business plan of said bank subsidiaries for the next 5 years and
- b) market approach valuation – guideline listed companies method based on comparable publicly traded banks

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With respect to the simplified entity value as of December 31, 2012 we replaced the amounts shown in the report on hidden reserves with the mid-point result of our desktop-valuation. This mid-point amount was calculated by deleting the lowest and highest result of the valuation methods applied, given an overlap of the enterprise value ranges resulting from the valuation methods applied. In case no overlap in entity value ranges was identified, the mid-point was calculated on the results from discounted cash flow valuation.

Moreover, we tested a non-representative sample of amounts of hidden reserves in connection with listed securities shown in the report on hidden reserves as of December 31, 2012 as second largest source of hidden reserves by using Bloomberg-quotes and found no material differences.

- Tz 21 The simplified enterprise value comprising defined equity together with adopted hidden reserves of Erste Group as of December 31, 2012 shows a moderate increase compared to December 31, 2008. In accordance with of § 6 para (2) of the agreed terms and conditions of the Participation Capital the redemption amount of 100 % of the nominal value is covered by this simplified enterprise value.
- Tz 22 An additional indicator for the change in Erste Group's enterprise value is the share price of Erste Group shares. In this context the effects of the financial and economic crisis in the period under review resulting in extraordinary high volatility in share prices need to be considered. As of December 31, 2008 Erste Group's share price was EUR 16.2 per share, whereas the price was EUR 24.03 as of December 31, 2012. With reference to § 6 para (2) of the terms and conditions of the Participation Capital the redemption amount of 100 % of nominal value is covered by the change in enterprise value based on the share price of Erste Group shares.

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**V. Concluding statement**

Tz 23 Based on our audit we come to the conclusion that the disclosures in the redemption plan concerning the redemption of the Participation Capital being subject to cash compensation (see Appendix II) required by § 102a BWG and § 2 para 3 UmwG and considering the relevant regulations of the Austrian Joint-Stock Companies Act are complete and correct. We identified no special difficulties in the course of our audit of adequateness of the offered cash compensation.

Tz 24 Based on our audit and on the basis of the documents provided we issue following concluding statement pursuant to § 220b para 4 AktG:

„The redemption plan based on § 102a BWG complies with the legal requirements. The disclosures therein are complete and correct in accordance with the regulations of §§ 220ff AktG and § 2 para 3 no 2 UmwG. The cash compensation included in the redemption plan and offered to the holders of the Participation Capital Securities being subject to cash compensation is in agreement with the redemption amount pre-agreed in § 6 para (2) of the terms and conditions of the Participation Capital and adequate.“

Vienna, June 28, 2013

**Deloitte Audit Wirtschaftsprüfungs GmbH**

Mag. Thomas Becker m.p.  
Public Accountant



Dr. Peter Bitzyk m.p.  
Public Accountant

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**Working Translation**

**Report by the Management Board**

**on the Redemption**

**of Participation Capital**

**of Erste Group Bank AG**

**pursuant to § 102a of the Banking Act [*Bankwesengesetz*]**

**"Terms and Conditions of the 2009 Issue of up to EUR 2,700,000,000 Bearer  
Participation Capital Securities of ERSTE GROUP BANK AG", ISIN  
AT0000A0D4T3**

Pursuant to § 102a of the Banking Act [BWG] and (by analogy) § 2 sec 3 of the Reorganisation Act [UmwG] in conjunction with § 220 of the Stock Corporation Act [AktG], the management board of Erste Group Bank AG (hereinafter "*Erste Group Bank*" or the "*Company*"), with its registered office in Vienna and its business address at Graben 21, 1010 Vienna, registered in the commercial register of the Vienna Commercial Court [*Handelsgericht Wien*] under FN 33209m, issues the following

**report on the redemption of participation capital  
pursuant to § 102a of the Banking Act [BWG]**

**1. Subject of the Report and Basic Legal Conditions**

1.1. On the basis of the "Terms and Conditions of the 2009 Issue of up to EUR 2,700,000,000 Bearer Participation Capital Securities of Erste Group Bank AG" (hereinafter "*Terms and Conditions of Erste Participation Capital*"), ISIN AT0000A0D4T3, the Company, in three tranches, issued participation capital totalling EUR 1,763,744,000, hence a total of 1,763,744 Participation Capital Securities (hereinafter "*Erste Participation Capital Securities*") in the nominal value of EUR 1,000 each (hereinafter the "*Erste Participation Capital*"), as follows:

1.1.1. The first tranche of the Erste Participation Capital totalling EUR 1,000,000,000 was subscribed to on 10 March 2009 by the Republic of Austria on the basis of the Financial Market Stabilisation Act [*Finanzstabilitätsgesetz*] (Federal Law Gazette I 136/2008, as amended) and the *Grundsatzvereinbarung*, entered into between the Republic of Austria, represented by the Federal Minister of Finance, and the Company on 26 February 2009 (hereinafter the "*Grundsatzvereinbarung*").

1.1.2. The second tranche of the Erste Participation Capital totalling EUR 539,744,000 was subscribed to on 13 May 2009 by private investors on the basis of (i) an offer to shareholders of the Company and (ii) a public offering in Austria, Germany, the Czech Republic, Romania, and Slovakia.

1.1.3. The third tranche of the Erste Participation Capital totalling EUR 224,000,000 was subscribed to on 13 May 2009 by the Republic of Austria on the basis of the Financial Market Stabilisation Act

(Federal Law Gazette I 136/2008, as amended) and the *Grundsatzvereinbarung*.

- 1.1.4. In addition, by public offering dated October 2009 and April 2013, the Company offered holders of Erste Participation Capital Securities existing own Erste Participation Capital Securities for purchase, i.e. in October 2009 the purchase of three additional Erste Participation Capital Securities per 16 Participation Capital Securities, and in April 2013 the purchase of one additional Erste Participation Capital Security per 21 Participation Capital Securities. The purpose of such issue of existing own Participation Capital Securities was to offset a dilution pursuant to § 9 (2) of the Terms and Conditions of Erste Participation Capital.
  - 1.2. Pursuant to § 102a sec 2, second sentence, BWG, the shareholders' meeting of 12 May 2010 authorised the management board to redeem by 12 May 2015, subject to approval by the supervisory board, the entire Participation Capital or the Participation Capital of individual tranches already distinguished upon the issue, also in parts if the equal treatment of the beneficiaries of the Participation Capital is ensured. Such authorisation was included in Section 8.4 of the Company's articles of association.
  - 1.3. On 18 June 2013, the management board decided to exercise the authorisation pursuant to Section 8.4 of the Company's articles of association and to adopt the redemption of the entire outstanding Erste Participation Capital by way of application of § 102a BWG in conjunction with § 2 sec 3 UmwG (by analogy). The supervisory board approved such resolution by the management board on 24 June 2013 by circular resolution.
  - 1.4. Pursuant to § 102a sec 4 BWG, the Company must grant the beneficiaries of the Participation Capital adequate cash compensation. The provisions of § 2 sec 3 UmwG must be applied by analogy. Pursuant to § 6 (2) of the Terms and Conditions of Erste Participation Capital, the Erste Participation Capital Securities will be repaid at their nominal values.
  - 1.5. Pursuant to § 102a sec 4 BWG, by way of application by analogy of § 2 sec 3 UmwG, the management board must review the redemption of the Erste Participation Capital and issue a written report.
- 2. Report by the Management Board**

The management board explains the terms and conditions of the Redemption Plan as well as the statements included therein in respect of the amount of cash compensation as follows:

## 2.1 General

2.1.1 Erste Group Bank is a stock corporation under Austrian law with its registered office in Vienna and a credit institution pursuant to § 1 sec 1 BWG. Erste Group Bank's shares are listed on the Official Market of the Vienna Stock Exchange and on the Prime Markets of the Prague Stock Exchange and in the RGS1 Segment of the Bucharest Stock Exchange. The Erste Participation Capital Securities are not listed on any stock exchange or on any multilateral trading facility (MTF). The requirements under § 102a sec 3, first sentence, BWG are therefore not met.

2.1.2 Pursuant to § 102a sec 4 BWG, the beneficiaries of the Erste Participation Capital shall receive adequate cash compensation, such compensation being payable on the basis of the Redemption Plan to be issued by the Company's management board. In addition, the redemption must be reported and reviewed by way of application by analogy of § 2 sec 3 UmwG and the provisions of the Stock Corporation Act.

## 2.2 Cash Compensation

2.2.1 The cash compensation depends on the Terms and Conditions of Erste Participation Capital. Such terms of issue provide as follows under "Repayment and Repurchase" and "Dividends Conditional on Profit":

(...)

### **§ 6 Repayment and Repurchase**

*(1) No final maturity date. The Participation Capital Securities have no predetermined final maturity date and may be repaid prior to liquidation of the Issuer only in accordance with this § 6. The Participants hereby waive their ordinary and extraordinary redemption rights pursuant to § 23 sec 4 No 1 of the Banking Act [Bankwesengesetz].*

*(2) Repayment. The Issuer shall be entitled to repay the Participation Capital Securities in accordance with the statutory requirements as applicable at the time of repayment at any time prior to the liquidation of the Issuer (to the extent permissible, also in tranches or in such parts of the Participation Capital as have been specified by reference to other attributes, but in each case observing the equal treatment of the Participants). Repayment shall not be permissible if the repayment amount would be below 100% of the nominal amount. Until (and including) the tenth*

*business year of the Issuer after issue of the Participation Capital Securities the repayment amount shall be 100% of the nominal value, thereafter 150% of the nominal value, provided that the enterprise value has increased correspondingly. If distributable Annual Profits have been retained despite the absence of a statutory obligation or instructions from a supervisory body to such effect, the repayment amount shall be increased by the number of percentage points by which the agreed dividend has been fallen short of.*

(...)

### **§ 5 Dividends conditional on profit**

*(1) Dividend payments. The dividend payable on the Participation Capital Securities amounts to 8% p.a. of their nominal value after taxes which are owed by the Issuer, and applies to business years starting on 1 January 2009, provided that the statutory preconditions are met. Such dividend shall increase in the sixth and seventh business year of the Issuer after issue of the Participation Capital by 50 basis points each year, in the eighth business year by 75 basis points and from the ninth business year on by 100 basis points each year. In total, such dividend shall not exceed the 12-Month-EURIBOR plus 1,000 basis points p.a. The 12-Month-EURIBOR shall be calculated as the arithmetic mean of the 12-Month-EURIBOR rates published daily at 11:00 a.m. Brussels time on Reuters page "Euribor=" between 1 January and 31 December of each year for which a dividend is paid.*

*(2) The Issuer shall be entitled to increase the dividend payable on the Participation Capital Securities without consent of the Participants, provided that the Participants are treated equal. The increase shall be published / notified pursuant to § 11.*

*(3) Dividend payments. Dividends shall be payable in arrear ten Business Days after the shareholders' meeting of the Issuer which resolves on the use of profits for the previous business year (the "Relevant Date"). The Issuer shall be the paying agent.*

*(4) Dividends conditional on profits. The Participation Capital Securities grant a claim for non-cumulative dividend payments which are conditional upon profits pursuant to § 23 sec 4 of the Banking Act (Bankwesengesetz). If the dividend is covered by the annual profits of the previous business year after movement of reserves (the "Annual Profits") (§ 23 sec 4 No 3 of the Banking Act) and provided that a respective resolution of the shareholders' meeting of the Issuer has been adopted, dividend payments are to be made on the Relevant Date. Dividend payments to Participants shall be made prior to distributions of dividends to shareholders*

*of the Issuer.*

*(5) Non-cumulative dividend payments. The Issuer shall not be obliged to repay unpaid dividends (the "Ceased Dividend Payments").*

*(6) Dividend payments in the discretion of the Issuer. Even if distributable profits according to § 5(4) exist, the payment of dividends shall be in the sole discretion of the Issuer.*

(...)

2.2.2 Pursuant to the "Repayment and Repurchase" provisions of the Terms and Conditions of Erste Participation Capital, the cash compensation in the context of the redemption is 100% of the nominal value of an Erste Participation Capital Security as long as the tenth business year after the issue of the Erste Participation Capital is not completed.

2.2.3 Agreed dividends were not fallen short of in the past. For this reason, the repayment amount pursuant to § 6 (2), fourth sentence, of the Terms and Conditions of Erste Participation Capital need not be increased.

2.2.4 The amount of cash compensation for holders of the Erste Participation Capital is therefore EUR 1,000 per nominal amount of EUR 1,000.

2.2.5 The cash compensation is adequate and consistent both with the Terms and Conditions of Erste Participation Capital and the laws.

2.2.6 The Company is not entitled to any cash compensation from its own Erste Participation Capital Securities.

2.2.7 As regards the right to dividends, it must be noted that such right applies for the period from 1 January 2013 until the date of effectiveness of the redemption, provided that the statutory requirements are met and a relevant resolution is adopted at the next ordinary shareholders' meeting.

## **2.3 Explanations pursuant to § 102a sec 7 BWG**

2.3.1 Pursuant to § 102a sec 7 BWG, participation capital must be redeemed against the net profits arising from the annual balance sheet or against an unappropriated reserve, but it may also be redeemed if capital of the same or of a better quality is supplied as substitute. In the case at hand, the following course of action will be applied: The Erste Participation Capital will be

redeemed against an unappropriated reserve recognised in the Company's financial statements for the year ended 31 December 2012.

## **2.4 Redemption Audit**

2.4.1 Pursuant to § 102a BWG, by way of application by analogy of § 2 sec 3 UmwG, the adequacy of cash compensation is to be audited by a court-appointed auditor in the course of the redemption.

2.4.2 By decision of the commercial register, Deloitte Audit Wirtschaftsprüfungs GmbH, 1013 Vienna, Renngasse 1/Freyung, FN 36059d, was appointed redemption auditor pursuant to § 102a sec 4 BWG in conjunction with § 2 sec 3 UmwG.

## **2.5 Further Explanations**

2.5.1 Neither shareholders nor holders of bonds and profit participation rights will be granted any special rights or other rights as defined in § 220 sec 2 No 6 AktG. No measures as defined in § 220 sec 2 No 6 in conjunction with § 226 sec 3 AktG will be taken.

2.5.2 Neither the members of the management board of Erste Group Bank, nor the members of the supervisory board of Erste Group Bank, nor a balance sheet auditor, a bank auditor, a redemption auditor or any other auditor of Erste Group Bank, nor any company involved in the redemption will be granted a special benefit pursuant to § 220 sec 2 No 7 AktG. The reasonable fees payable to the redemption auditor for the redemption audit pursuant to § 220b AktG (by analogy) do not constitute a special benefit as defined in § 220 sec 2 No 7 AktG.

2.5.3 bpv Hügel Rechtsanwälte OG with its registered office in Vienna is to be appointed trustee under § 102a sec 6 BWG in respect of amounts to compensate beneficiaries of the Erste Participation Capital to be redeemed which cannot be credited to an account or in respect of which the beneficiary does not make any arrangement.

2.5.4 Within a period of at least one month to be applied by analogy pursuant to § 102a sec 4 BWG and § 2 sec 3 UmwG in conjunction with § 221a AktG, the management board of Erste Group Bank, prior to its resolution and the resolution by the supervisory board on the redemption, will timely publish the Redemption Plan in the edict file [*Ediktsdatei*] after review by the supervisory board and publish a reference to such publication in the Official Gazette

[*Amtsblatt*] of *Wiener Zeitung* newspaper. In addition, by way of application by analogy of the mentioned provisions, (i) the Redemption Plan, (ii) the report by the management board on the redemption, (iii) the audit report by the court-appointed redemption auditor, (iv) the report by the supervisory board on the review of the redemption, and (v) the financial statements and directors' reports for the last three business years of Erste Group Bank will be available at the Company's registered office for inspection by the shareholders and holders of Participation Capital and made available on the Company's website at ([www.erstegroup.com/de/Investoren/Partizipationskapital](http://www.erstegroup.com/de/Investoren/Partizipationskapital)) during that period.

2.5.5 By way of application by analogy of the provisions of the Reorganisation Act and the Stock Corporation Act, the respective beneficiary of the Erste Participation Capital may initiate a procedure for judicial review of the adequacy of the cash compensation for the Erste Participation Capital to be redeemed. Such procedure will take place by way of application by analogy of §§ 225c et. seq. AktG. The procedure must be initiated with the court having jurisdiction at the registered office of Erste Group Bank, i.e. the Vienna Commercial Court, Marxergasse 1a, 1030 Vienna. The procedure must be conducted by way of application by analogy of § 225e AktG. To safeguard the rights of beneficiaries of the Erste Participation Capital who did not file an application for judicial review of the adequacy of the cash compensation, a joint representative would have to be appointed pursuant to § 225 et. seq. AktG in case such procedure is initiated.

### 3. Final Remarks

The management board of Erste Group Bank finally states that all reports and documents required for the redemption were issued pursuant to the provisions of the Banking Act, by way of application by analogy of the Reorganisation Act and the Stock Corporation Act, and are in compliance with the laws. The Company's financial statements for the year ended 31 December 2012, which form the basis of the redemption under consideration, were drawn up in accordance with the applicable laws.

The shareholders and holders of the Erste Participation Capital will be informed of their rights pertaining to the redemption under consideration, including, without limitation, their right to inspect the redemption documentation and their right to have the amount of cash compensation reviewed by court, in the Official Gazette of *Wiener Zeitung* newspaper and on the Company's website.



Within a period of one month pursuant to § 102a sec 4 BWG in conjunction with § 2 sec 3 UmwG (by analogy), the management board will adopt a resolution on the redemption of the Erste Participation Capital and publish such resolution in the Official Gazette of *Wiener Zeitung* newspaper.

Vienna, this [•]

The Management Board of Erste Group Bank AG

**Working Translation**

**Redemption Plan**

**Concerning the Redemption**

**of Participation Capital**

**of Erste Group Bank AG**

**pursuant to § 102a of the Banking Act [*Bankwesengesetz*]**

**"Terms and Conditions of the 2009 Issue of up to EUR 2,700,000,000 Bearer  
Participation Capital Securities of ERSTE GROUP BANK AG", ISIN AT0000A0D4T3**

Pursuant to § 102a of the Banking Act [BWG] and (by analogy) § 2 sec 3 of the Reorganisation Act [UmwG] in conjunction with § 220 of the Stock Corporation Act [AktG], the management board of Erste Group Bank AG (hereinafter "*Erste Group Bank*" or the "*Company*"), with its registered office in Vienna and its business address at Graben 21, 1010 Vienna, registered in the commercial register of the Vienna Commercial Court [*Handelsgericht Wien*] under FN 33209m, issues the following

## REDEMPTION PLAN

### 1. Contemplated Redemption and Basic Conditions

1.1. On the basis of the "Terms and Conditions of the 2009 Issue of up to EUR 2,700,000,000 Bearer Participation Capital Securities of Erste Group Bank AG" (hereinafter "*Terms and Conditions of Erste Participation Capital*"), ISIN AT0000A0D4T3, the Company, in three tranches, issued participation capital totalling EUR 1,763,744,000, hence a total of 1,763,744 Participation Capital Securities (hereinafter "*Erste Participation Capital Securities*") in the nominal value of EUR 1,000 each (hereinafter the "*Erste Participation Capital*"), as follows:

1.1.1. The first tranche of the Erste Participation Capital totalling EUR 1,000,000,000 was subscribed to on 10 March 2009 by the Republic of Austria on the basis of the Financial Market Stabilisation Act [*Finanzstabilitätsgesetz*] (Federal Law Gazette I 136/2008, as amended) and the *Grundsatzvereinbarung*, entered into between the Republic of Austria, represented by the Federal Minister of Finance, and the Company on 26 February 2009 (hereinafter the "*Grundsatzvereinbarung*").

1.1.2. The second tranche of the Erste Participation Capital totalling EUR 539,744,000 was subscribed to on 13 May 2009 by private investors on the basis of (i) an offer to shareholders of the Company and (ii) a public offering in Austria, Germany, the Czech Republic, Romania, and Slovakia.

1.1.3. The third tranche of the Erste Participation Capital totalling EUR 224,000,000 was subscribed to on 13 May 2009 by the Republic of Austria on the basis of the Financial Market Stabilisation Act (Federal Law Gazette I 136/2008, as amended) and the *Grundsatzvereinbarung*.

1.1.4. For the sake of completeness, it is noted that the Company repurchased Participation Capital Securities of the Erste Participation Capital on the basis of authorisations issued by the shareholders' meeting.

- 1.1.5. In addition, by public offering dated October 2009 and April 2013, the Company offered holders of Erste Participation Capital Securities existing own Erste Participation Capital Securities for purchase, i.e. in October 2009 the purchase of three additional Erste Participation Capital Securities per 16 Erste Participation Capital Securities, and in April 2013 the purchase of one additional Erste Participation Capital Security per 21 Erste Participation Capital Securities. The purpose of such issue of existing own Participation Capital Securities was to offset a dilution pursuant to § 9 (2) of the Terms and Conditions of Erste Participation Capital.
- 1.2. Pursuant to § 102a sec 2, second sentence, BWG, the shareholders' meeting of 12 May 2010 authorised the management board to redeem by 12 May 2015, subject to approval by the supervisory board, the entire Participation Capital or the Participation Capital of individual tranches already distinguished upon the issue, also in parts if the equal treatment of the beneficiaries of the Participation Capital is ensured. Such authorisation was included in Section 8.4 of the Company's articles of association.
- 1.3. On 18 June 2013, the management board decided to exercise the authorisation pursuant to Section 8.4 of the Company's articles of association and to adopt the redemption of the entire outstanding Erste Participation Capital by way of application of § 102a BWG in conjunction with § 2 sec 3 UmwG (by analogy).
- 1.4. By way of the participation capital under § 23 sec 4 BWG subscribed to by the Republic of Austria and by private investors, Erste Group Bank's level of own funds was strengthened in 2009 in times of the global financial crisis. Since the issue of the Erste Participation Capital Erste Group Bank itself has undergone a positive development during the crisis and was able to successfully implement its strategy to strengthen its equity basis. The Company has therefore concluded that the Erste Participation Capital, which has always been seen as a security measure for risks arising from the financial crisis not yet foreseeable, is no longer required. Due to a change in the regulatory framework, in the future it will no longer be possible to fully recognize participation capital as Core Tier 1. The Company has therefore decided to redeem the Participation Capital.
- 1.5. Pursuant to § 102a sec 1, fourth sentence, BWG, approval by the Republic of Austria need not be obtained, because it is intended to redeem the entire Erste Participation Capital.
- 1.6. Erste Group Bank is a stock corporation under Austrian law with its registered office in Vienna and a credit institution pursuant to § 1 sec 1 BWG. Erste Group Bank's shares

are listed on the Official Market of the Vienna Stock Exchange and on the Prime Markets of the Prague Stock Exchange and in the RGS Segment of the Bucharest Stock Exchange. The Erste Participation Capital Securities are not listed on any stock exchange or on any multilateral trading facility (MTF). The requirements under § 102a sec 3, first sentence, BWG are therefore not met.

- 1.7. Pursuant to § 102a sec 4 BWG, the Company must grant the beneficiaries of the Participation Capital adequate cash compensation. The provisions of § 2 sec 3 UmwG must be applied by analogy. Pursuant to § 6 (2) of the Terms and Conditions of Erste Participation Capital, the Erste Participation Capital Securities will be repaid at their nominal values.
- 1.8. The redemption of the Erste Participation Capital is based on the Company's audited financial statements for the year ended 31 December 2012 as closing balance sheet, by way of application by analogy of § 220 sec 3 AktG.

## **2. Participation Capital Affected by the Redemption**

- 2.1 On the basis of the Company's financial statements for the year ended 31 December 2012 as closing balance sheet bearing an unqualified audit opinion, the redemption under § 102a BWG is to comprise the entire Erste Participation Capital totalling EUR 1,763,744,000, thus a total of 1,763,744 Participation Capital Securities in the nominal value of EUR 1,000 each, pursuant to the Terms and Conditions of Erste Participation Capital, issued in three tranches.
- 2.2 The Company has not issued any other participation capital in addition to the Erste Participation Capital.
- 2.3 The entire Erste Participation Capital is to be redeemed and adequately compensated. The principle of equal treatment under § 102a sec 1 BWG is therefore fully complied with.

## **3. Cash Compensation and Consequences of Redemption**

- 3.1 In compliance with the laws, the beneficiaries of the Participation Capital will be granted adequate cash compensation. In the case at hand, in § 6 (2) of the Terms and Conditions of Erste Participation Capital, Erste Group Bank, as redeeming company, and the holders of the Erste Participation Capital Securities, as beneficiaries of the Participation Capital, fixed a redemption price of 100 % of the nominal value, hence EUR 1,000 per Participation Capital Security, in case of a redemption. Pursuant to such agreement, cash compensation of EUR 1,000 per Erste Participation Capital Security is fixed as adequate cash compensation under § 102a

sec 4 BWG in respect of the Participation Capital to be redeemed. For the avoidance of doubt, the Company is not entitled to any cash compensation from its own Erste Participation Capital Securities.

- 3.2 As regards the right to dividends, it must be noted that such right applies for the period from 1 January 2013 until the date of effectiveness of the redemption (see Section 7.2) provided that the statutory requirements are met and a relevant resolution is adopted at the next ordinary shareholders' meeting.
- 3.3 Upon announcement of the resolution by the management board and the supervisory board on the redemption, probably on 7 August 2013, the entire Erste Participation Capital is considered redeemed pursuant to § 102a sec 5 BWG. The holders of the Participation Capital Securities are therefore exclusively entitled to cash compensation (§ 102a sec 5 BWG).
- 3.4 The cash compensation for the Erste Participation Capital is to be paid as of the value date of 8 August 2013, and the announcement pursuant to Section 3.3 hereof is to be made on 7 August 2013. Any change of the mentioned dates will be published.
- 3.5 Pursuant to § 102a sec 7 BWG, the Participation Capital must be redeemed against the net profits arising from the annual balance sheet or against an unappropriated reserve, but it may also be redeemed if capital of the same or of a better quality is supplied as substitute. In the case at hand, the following course of action will be applied: The Erste Participation Capital will be redeemed against unappropriated reserves recognised in the Company's financial statements for the year ended 31 December 2012.

#### **4. Trustee**

bpv Hügel Rechtsanwälte OG with its registered office in Vienna is to be appointed trustee under § 102a sec 6 BWG in respect of amounts to compensate beneficiaries of the Erste Participation Capital to be redeemed which cannot be credited to an account or in respect of which the beneficiary does not make any arrangement.

#### **5. Special rights (§ 220 sec 2 No 6 AktG)**

Neither shareholders nor holders of bonds and profit participation rights will be granted any special rights or other rights as defined in § 220 sec 2 No 6 AktG. No measures as defined in § 220 sec 2 No 6 in conjunction with § 226 sec 3 AktG will be taken.

#### **6. Special benefits (§ 220 sec 2 No 7 AktG)**

- 6.1 Neither the members of the management board of Erste Group Bank, nor the members of the supervisory board of Erste Group Bank, nor a balance sheet auditor, a bank auditor, a redemption auditor or any other auditor of Erste Group Bank, nor any company involved in the redemption will be granted a special benefit pursuant to § 220 sec 2 No 7 AktG.
- 6.2 The reasonable fees payable to the redemption auditor for the redemption audit pursuant to § 220b AktG (by analogy) do not constitute a special benefit as defined in § 220 sec 2 No 7 AktG.

## **7. Judicial Review of Adequacy of Cash Compensation**

- 7.1 Within a period of at least one month to be applied by analogy pursuant to § 102a sec 4 BWG and § 2 sec 3 UmwG in conjunction with § 221a AktG, the management board of Erste Group Bank, prior to its resolution and the resolution by the supervisory board on the redemption (probably on 6 August 2013), will timely publish the Redemption Plan in the edict file [*Ediktsdatei*] after review by the supervisory board and publish a reference to such publication in the Official Gazette [*Amtsblatt*] of *Wiener Zeitung* newspaper. In addition, by way of application by analogy of the mentioned provisions, (i) the Redemption Plan, (ii) the report by the management board on the redemption, (iii) the audit report by the court-appointed redemption auditor, (iv) the report by the supervisory board on the review of the redemption, and (v) the financial statements and directors' reports for the last three business years of Erste Group Bank will be available at the Company's registered office for inspection by the shareholders and holders of Participation Capital and made available on the Company's website at ([www.erstegroup.com/de/Investoren/Partizipationskapital](http://www.erstegroup.com/de/Investoren/Partizipationskapital)) during that period.
- 7.2 The final resolution by the management board and the supervisory board on the basis of the authorisation by the shareholders' meeting pursuant to Section 8.4 of the articles of association will be published in the Official Gazette of *Wiener Zeitung* newspaper pursuant to § 102a sec 5 BWG in accordance with the articles of association and the Terms and Conditions of Erste Participation Capital. Upon announcement of said resolution, the Erste Participation Capital is considered redeemed pursuant to § 102a sec 5 BWG.
- 7.3 To safeguard their respective right to adequate cash compensation, the beneficiaries of the Erste Participation Capital may have reviewed by court, within one month of announcement of the resolution by the management board and the supervisory board (see Section 7.2 of the Redemption Plan), the adequacy of the cash compensation for the Participation Capital to be redeemed.

7.4 By way of application by analogy of the provisions of the Reorganisation Act and the Stock Corporation Act, the respective beneficiary of the Erste Participation Capital may initiate a procedure for judicial review of the adequacy of the cash compensation for the Erste Participation Capital to be redeemed. Such procedure will take place by way of application by analogy of §§ 225c et. seq. AktG. The procedure must be initiated with the court having jurisdiction at the registered office of Erste Group Bank, i.e. the Vienna Commercial Court, Marxergasse 1a, 1030 Vienna. The procedure must be conducted by way of application by analogy of § 225e AktG. To safeguard the rights of beneficiaries of the Erste Participation Capital who did not file an application for judicial review of the adequacy of the cash compensation, a joint representative would have to be appointed pursuant to § 225 et. seq. AktG in case such procedure is initiated.

**8. Costs**

All costs in relation to the redemption of the Erste Participation Capital will be borne by the Company.

Vienna, this [•]

**Erste Group Bank AG**

The Management Board

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## Terms and Conditions of the Participation Capital Securities

*Die deutschsprachige Version der Bedingungen ist die allein rechtlich verbindliche Version.*

*The German version of the Terms and Conditions is the only legally binding version.*

*Die Emittentin ist für die englische Übersetzung allein verantwortlich.*

*The Issuer assumes sole responsibility for the English translation.*

**Bedingungen  
der auf Inhaber lautenden bis zu  
EUR 2.700.000.000  
Partizipationsschein-Emission 2009  
der  
Erste Group Bank AG**

**Terms and Conditions  
of the up to EUR 2,700,000,000  
Bearer Participation Capital  
Securities Issue 2009 of  
Erste Group Bank AG**

ISIN: AT0000A0D4T3

ISIN: AT0000A0D4T3

### § 1 Form, Nennbetrag, Stückelung

### § 1 Form, Nominal Amount, Denomination

Die Erste Group Bank AG, Firmenbuchnummer FN 33209m, mit Sitz in Wien und der Geschäftsanschrift in 1010 Wien, Graben 21 (die "**Emittentin**"), begibt ab dem 10.3.2009 bis zum 20.5.2009 in mehreren Tranchen eine Emission von Partizipationskapital ohne Nachzahlungsverpflichtung gemäß § 23 Abs 4 BWG (das "**Partizipationskapital**"). Der Gesamtnennbetrag in Höhe von bis zu EUR 2.700.000.000 (in Worten: Euro zwei Milliarden siebenhundert Millionen) ist aufgeteilt in bis zu 2.700.000 (in Worten: zwei Millionen siebenhunderttausend) Stück auf den Inhaber lautende Partizipationsscheine (die "**Partizipationsscheine**") mit einem Nennbetrag von je EUR 1.000 (in Worten: Euro eintausend).

Erste Group Bank AG, commercial register number FN 33209m, with its seat in Vienna and the business address in 1010 Vienna, Graben 21 (the "**Issuer**") issues from 10 March 2009 until 20 May 2009 in several tranches one issue of non-cumulative participation capital pursuant to § 23 sec 4 of the Austrian Banking Act (*Bankwesengesetz*) (the "**Participation Capital**"). The aggregate nominal amount of up to EUR 2,700,000,000 (in words: Euro two billion seven hundred million) is divided into up to 2,700,000 (in words: two million seven hundred thousand) bearer participation capital securities (the "**Participation Capital Securities**") with a denomination of EUR 1,000 (in words: Euro one thousand) each.

## § 2 Ausgabekurs

Der Ausgabekurs der Partizipationsscheine beträgt 100 % am jeweiligen Valutatag.

## § 2 Issue Price

The issue price of the Participation Capital Securities amounts to 100% on the respective value date.

## § 3 Verbriefung, Übertragung

(1) *Verbriefung.* Die Partizipationsscheine sind durch (i) eine Teilsammelurkunde über einen Gesamtnennbetrag von EUR 1.000.000.000 (in Worten: Euro eine Milliarde) (Tranche 1), (ii) eine Teilsammelurkunde über einen Gesamtnennbetrag von bis zu EUR 1.700.000.000 (in Worten: Euro eine Milliarde siebenhundert Millionen) (Tranche 2), und (iii) eine Teilsammelurkunde über einen Gesamtnennbetrag von bis zu EUR 890.000.000 (in Worten: Euro achthundertneunzig Millionen) (Tranche 3) (jeweils eine "**Teilsammelurkunde**") ohne Dividendenscheine verbrieft, wobei der Gesamtnennbetrag der durch die Teilsammelurkunden insgesamt verbrieften Partizipationsscheine EUR 2.700.000.000 (in Worten: Euro zwei Milliarden siebenhundert Millionen) nicht überschreiten darf. Jede Teilsammelurkunde trägt die eigenhändigen Unterschriften zweier ordnungsgemäß bevollmächtigter Vertreter der Emittentin. Einzelkunden und Dividendenscheine werden nicht ausgegeben.

(2) *Wertpapier-Sammelbank.* Die Teilsammelurkunden werden voraussichtlich bei der Oesterreichischen Kontrollbank AG, Am Hof 4, 1010 Wien, als Wertpapier-Sammelbank eingeliefert und solange verwahrt, bis sämtliche Verpflichtungen der Emittentin aus den Partizipationsscheinen erfüllt sind.

(3) *Übertragbarkeit.* Den Inhabern der Partizipationsscheine (die "**Partizipanten**") stehen Miteigentumsanteile oder -rechte an den Teilsammelurkunden zu, die nach Maßgabe des anwendbaren Rechts und der jeweils geltenden Regelwerke der Wertpapier-Sammelbank übertragen werden.

## § 3 Form, Transfer

(1) *Form.* The Participation Capital Securities are represented by (i) a partial global security representing a total nominal amount of EUR 1,000,000,000 (in words: Euro one billion) (Tranche 1), (ii) a partial global security representing a total nominal amount of up to EUR 1,700,000,000 (in words: Euro one billion seven million) (Tranche 2), and (iii) a partial global security representing a total nominal amount of up to EUR 890,000,000 (in words: Euro eight hundred ninety million) (Tranche 3) (each a "**Partial Global Security**") without dividend coupons, provided that the aggregate nominal amount of the Participation Capital Securities represented by the Partial Global Securities must not exceed EUR 2,700,000,000 (in words: Euro two billion seven hundred million). Each Partial Global Security shall be signed manually by two authorised signatories of the Issuer. Definitive Participation Capital Securities and dividend coupons will not be issued.

(2) *Central Securities Depository.* The Partial Global Securities are expected to be delivered to the Austrian Control Bank ("Oesterreichische Kontrollbank AG"), Am Hof 4, 1010 Vienna, in its function as Central Securities Depository and will be kept in custody until all obligations of the Issuer under the Participation Capital Securities have been satisfied.

(3) *Transferability.* The bearers of the Participation Capital Securities (the "**Participants**") will receive co-ownership participations or rights in the Partial Global Securities which are transferable in accordance with applicable law and applicable rules of the Central Securities Depository.

#### § 4 Rechtsform, Rang

(1) *Rechtsform.* Die Partizipationsscheine stellen eingezahltes Partizipationskapital gemäß § 23 Abs 4 BWG dar.

(2) *Rang.* Die Partizipationsscheine begründen direkte, nicht besicherte Verbindlichkeiten der Emittentin, die untereinander im Rang gleich stehen und im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines der Abwendung der Insolvenz der Emittentin dienenden Verfahrens (a) allen gegenwärtigen oder zukünftigen nicht-nachrangigen und nachrangigen Verbindlichkeiten der Emittentin im Rang nachgehen, und (b) untereinander und mit **Gleichrangigem Kapital** gleichrangig sind, soweit zwingende gesetzliche Bestimmungen nichts anderes vorschreiben. Im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines der Abwendung der Insolvenz der Emittentin dienenden Verfahrens erfolgen allfällige Zahlungen auf die Partizipationsscheine solange nicht, bis die Ansprüche aller nicht-nachrangigen und nachrangigen Gläubiger gegen die Emittentin vollständig erfüllt oder sichergestellt sind. Die Partizipanten sind nicht berechtigt, Forderungen aus den Partizipationsscheinen gegen mögliche Forderungen der Emittentin gegen sie aufzurechnen. Die Emittentin ist nicht berechtigt, Forderungen gegenüber Partizipanten gegen Verpflichtungen aus den Partizipationsscheinen aufzurechnen. Für die Rechte der Partizipanten aus den Partizipationsscheinen ist diesen keine Sicherheit durch die Emittentin oder durch Dritte gestellt; eine solche Sicherheit wird auch zu keinem Zeitpunkt gestellt werden.

**"Gleichrangiges Kapital"** meint das Partizipationskapital und das Aktienkapital der Emittentin.

#### § 5 Gewinnabhängige Dividendenzahlungen

(1) *Dividendenausschüttung.* Die bei Vorliegen der gesetzlichen Bedingungen zu leistende Dividende auf die Partizipationsscheine beträgt bezogen auf ihren Nennbetrag 8 % p.a. nach Steuern, deren Schuldnerin die Emittentin ist, und bezieht sich auf Geschäftsjahre ab dem 1.1.2009. Im sechsten und siebenten vollen

#### § 4 Status, Ranking

(1) *Status.* The Participation Capital Securities constitute paid-in participation capital (*Partizipationskapital*) within the meaning of § 23 sec 4 of the Austrian Banking Act (*Bankwesengesetz*).

(2) *Ranking.* The Participation Capital Securities constitute direct, unsecured obligations of the Issuer, which rank *pari passu* among each other and in the event of liquidation, dissolution or insolvency of the Issuer or proceedings for the avoidance of insolvency of the Issuer (a) junior to all present or future unsubordinated and subordinated debt obligations of the Issuer, and (b) *pari passu* among each other and with **Parity Capital**, except as otherwise required by mandatory provisions of law. In the event of liquidation, dissolution or insolvency of the Issuer or proceedings for the avoidance of insolvency of the Issuer, payments, if any, shall only be made in respect of the Participation Capital Securities after the claims of all unsubordinated and subordinated creditors of the Issuer have been paid or secured. The Participants may not set off any claims arising under the Participation Capital Securities against any claims that the Issuer may have against them. The Issuer may not set off any claims it may have against any Participant against any claims of such Participant under the Participation Capital Securities. No security is, or shall at any time be, provided by the Issuer or any other person securing rights of the Participants under the Participation Capital Securities.

**"Parity Capital"** means the Participation Capital and the share capital of the Issuer.

#### § 5 Dividends conditional on profit

(1) *Dividend payments.* The dividend payable on the Participation Capital Securities amounts to 8% p.a. of their nominal value after taxes which are owed by the Issuer, and applies to business years starting on 1 January 2009, provided that the statutory preconditions are met. Such

Geschäftsjahr der Emittentin nach Begebung des Partizipationskapitals erhöht sich diese Dividende jeweils um 50 Basispunkte, im achten vollen Geschäftsjahr um 75 Basispunkte und ab dem neunten vollen Geschäftsjahr in jedem Geschäftsjahr jeweils um 100 Basispunkte. Insgesamt ist diese Dividende jedoch mit dem Maximalwert iHd 12-Monats-EURIBOR zuzüglich 1000 Basispunkte p.a. begrenzt. Für den 12-Monats-EURIBOR ist das arithmetische Mittel der auf der Reuters Seite "Euribor=" täglich um 11.00 Uhr Brüsseler Zeit zwischen 1.1. und 31.12. jenes Jahres verlautbarten 12-Monats-EURIBOR-Werte heranzuziehen, für das die Dividende bezahlt wird.

dividend shall increase in the sixth and seventh full business year of the Issuer after issue of the Participation Capital by 50 basis points each year, in the eight full business year by 75 basis points and from the ninth business year on by 100 basis points each year. In total, such dividend shall not exceed the 12-Month-EURIBOR plus 1,000 basis points p.a. The 12-Month-EURIBOR shall be calculated as the arithmetic mean of the 12-Month-EURIBOR rates published daily at 11:00 a.m. Brussels time on Reuters page "Euribor=" between 1 January and 31 December of each year for which a dividend is paid.

(2) Die Emittentin kann die Dividende ohne Zustimmung, jedoch unter Gleichbehandlung aller Partizipanten dieser Emission erhöhen. Die Erhöhung ist nach § 11 bekanntzumachen bzw. mitzuteilen.

(2) The Issuer shall be entitled to increase the dividend payable on the Participation Capital Securities without consent of the Participants, provided that the Participants are treated equal. The increase shall be published / notified pursuant to § 11.

(3) *Dividendenzahlung.* Die Zahlung der Dividenden erfolgt zehn Geschäftstage nach der Hauptversammlung der Emittentin, die über die Gewinnverwendung für das vorangegangene Geschäftsjahr beschließt (der "Stichtag") im Nachhinein. Zahlstelle ist die Emittentin.

(2) *Dividend payments.* Dividends shall be payable in arrear ten Business Days after the shareholders' meeting of the Issuer which resolves on the use of profits for the previous business year (the "**Relevant Date**"). The Issuer shall be the paying agent.

(4) *Gewinnabhängigkeit der Dividendenzahlungen.* Die Partizipationsscheine gewähren einen Anspruch auf gewinnabhängige Erträge als Partizipationskapital gemäß § 23 Abs. 4 BWG ohne Dividendennachzahlungsverpflichtung. Wenn die Dividende im Jahresgewinn des unmittelbar vorhergehenden Geschäftsjahres nach Rücklagenbewegung (der "Jahresgewinn") Deckung findet (§ 23 Abs. 4 Z 3 BWG) und ein entsprechender Hauptversammlungsbeschluss der Emittentin vorliegt, hat eine Ausschüttung der Dividende am Stichtag stattzufinden. Ausschüttungen von Dividenden an den Partizipanten erfolgen vorrangig zu Ausschüttungen von Dividenden an Aktionäre der Emittentin.

(4) *Dividends conditional on profits.* The Participation Capital Securities grant a claim for non-cumulative dividend payments which are conditional upon profits pursuant to § 23 sec 4 of the Banking Act (*Bankwesengesetz*). If the dividend is covered by the annual profits of the previous business year after movement of reserves (the "**Annual Profit**") (§ 23 sec 4 No 3 of the Banking Act) and provided that a respective resolution of the shareholders' meeting of the Issuer has been adopted, dividend payments are to be made on the Relevant Date. Dividend payments to Participants shall be made prior to distributions of dividends to shareholders of the Issuer.

(5) *Keine Dividendennachzahlung.* Die Emittentin trifft keine Verpflichtung zur Nachzahlung von Dividenden (die "ausgefallenen Dividendenzahlungen").

(5) *Non-cumulative dividend payments.* The Issuer shall not be obliged to repay unpaid dividends (the "**Ceased Dividend Payments**").

(6) *Dividendenzahlungen im Ermessen der*

(6) *Dividend payments in the discretion of*

*Emittentin.* Selbst wenn ein verteilungsfähiger Gewinn im Sinne des § 5(4) vorhanden ist, liegt die Auszahlung der Dividende im alleinigen Ermessen der Emittentin.

#### **§ 6 Rückzahlung und Rückkauf**

(1) *Keine vorgegebene Laufzeit.* Die Partizipationsscheine haben kein Endfälligkeitsdatum und können vor Ende der Unternehmensdauer nur gemäß den Bestimmungen dieses § 6 zurückgezahlt werden. Die Partizipanten verzichten gemäß § 23 Abs. 4 Z 1 BWG auf ihr ordentliches und außerordentliches Kündigungsrecht.

(2) *Rückzahlung.* Die Emittentin kann die Partizipationsscheine unter Wahrung der zum jeweiligen Rückzahlungszeitpunkt anwendbaren gesetzlichen Voraussetzungen jederzeit (soweit gesetzlich zulässig, auch in Tranchen oder durch andere Merkmale bestimmte Teile des Partizipationskapitals unter jeweiliger Wahrung der Gleichbehandlung der Partizipanten) vor Ende der Unternehmensdauer zurückzahlen. Die Rückzahlung ist ausgeschlossen, wenn der Rückzahlungsbetrag unter 100% des Nennbetrages sinken würde. Bis (einschließlich) zum zehnten vollen Geschäftsjahr der Emittentin nach Begebung des Partizipationskapitals beträgt der Rückzahlungsbetrag 100% des Nennwertes, danach 150% des Nennwertes, sofern entsprechende Deckung in der Steigerung des Unternehmenswertes gegeben ist. Der Rückzahlungsbetrag erhöht sich um jene Prozentpunkte, um die die zugesagte Dividende unterschritten wurde, sofern ausschüttungsfähige Jahresgewinne thesauriert wurden und hierfür keine gesetzliche Verpflichtung oder aufsichtsbehördliche Anordnung bestanden hat.

*the Issuer.* Even if distributable profits according to § 5(4) exist, the payment of dividends shall be in the sole discretion of the Issuer.

#### **§ 6 Repayment and Repurchase**

(1) *No final maturity date.* The Participation Capital Securities have no predetermined final maturity date and may be repaid prior to liquidation of the Issuer only in accordance with this § 6. The Participants hereby waive their ordinary and extraordinary redemption rights pursuant to § 23 sec 4 No 1 of the Banking Act (*Bankwesengesetz*)

(2) *Repayment.* The Issuer shall be entitled to repay the Participation Capital Securities in accordance with the statutory requirements as applicable at the time of repayment at any time prior to the liquidation of the Issuer (to the extent permissible, also in tranches or in such parts of the Participation Capital as have been specified by reference to other attributes, but in each case observing the equal treatment of the Participants). Repayment shall not be permissible if the repayment amount would be below 100% of the nominal amount. Until (and including) the tenth full business year of the Issuer after issue of the Participation Capital Securities the repayment amount shall be 100% of the nominal value, thereafter 150% of the nominal value, provided that the enterprise value has increased correspondingly. If distributable Annual Profits have been retained despite the absence of a statutory obligation or instructions from a supervisory body to such effect, the repayment amount shall be increased by the number of percentage points by which the agreed dividend has been fallen short of.

#### **§ 7 Teilnahme am Verlust**

Im Falle einer nominellen Kapitalherabsetzung nehmen die Partizipationsscheine im selben Ausmaß wie Aktienkapital bis zur vollen Höhe am unternehmensrechtlichen Verlust teil.

#### **§ 7 Loss participation**

In the case of a nominal capital reduction, the Participation Capital Securities shall participate in losses of the Issuer pro-rata with share capital up to their full nominal amount.

#### **§ 8 Teilnahme am Liquidationserlös**

Im Falle der Liquidation der Emittentin sind die Partizipationsscheine mit dem Recht auf Beteiligung am Liquidationserlös verbunden und dürfen erst nach Befriedigung oder Sicherstellung aller anderen Gläubiger zurückgezahlt werden (§ 23 Abs. 4 Z 5 BWG). Im Falle der Liquidation der Emittentin sind die Partizipanten am Liquidationserlös gleichrangig wie die Inhaber Gleichrangigen Kapitals beteiligt. Sofern der Liquidationserlös zur Befriedigung der Liquidationsansprüche der Inhaber von Partizipationskapital und Gleichrangigem Kapital nicht ausreicht, nimmt das Partizipationskapital im gleichen anteiligen Ausmaß zum Nennbetrag am Differenzbetrag teil, wie das Gleichrangige Kapital. Zahlungen im Falle der Liquidation erfolgen nur nach vollständiger Befriedigung oder Sicherstellung aller Gläubiger, einschließlich Gläubigern aus nachrangigen Verbindlichkeiten, die den Partizipationsscheinen im Rang vorgehen (aber ausgenommen gleichrangige Verbindlichkeiten).

#### **§ 8 Participation in liquidation proceeds**

In case of a liquidation of the Issuer, the Participation Capital Securities shall be entitled to participate in the liquidation proceeds and may only be repaid after the claims of all other creditors have been repaid or secured (§ 23 sec 4 No 5 of the Banking Act (*Bankwesengesetz*)). In case of a liquidation of the Issuer, the Participants shall participate in liquidation proceeds *pari passu* with holders of Parity Capital. To the extent the liquidation proceeds are insufficient to discharge the liquidation proceeds claims of the holders of Participation Capital and of Parity Capital, the Participation Capital shall with its nominal amount participate in the shortfall in the same proportion as Parity Capital. Payments in case of a liquidation shall only be made after all claims of holders of unsubordinated and subordinated debt obligations which are senior to the Participation Capital Securities (but excluding obligations that rank *pari passu* with the Participation Capital Securities) have been fully discharged or secured.

#### **§ 9 Rechte der Partizipanten**

(1) *Teilnahme- und Auskunftsrecht.* Soweit § 23 Abs. 5 BWG oder eine andere Bestimmung, die an die Stelle von § 23 Abs. 5. BWG tritt, dies vorsieht, haben Partizipanten das Recht, an der Hauptversammlung der Emittentin teilzunehmen und Auskünfte im Sinne des § 112 AktG zu begehren. Solange die Partizipanten gemäß den Bestimmungen des BWG das Recht zur Teilnahme an Hauptversammlungen haben, sind die Partizipanten rechtzeitig zu Hauptversammlungen der Emittentin durch Bekanntmachung gemäß § 11 einzuladen.

#### **§ 9 Rights of the Participants**

(1) *Right to participate and obtain information.* To the extent § 23 sec 5 of the Banking Act (*Bankwesengesetz*) or any other provision replacing § 23 sec 5 of the Banking Act so provide, Participants shall have the right to participate in the shareholders' meeting of the Issuer and to receive information pursuant to § 112 of the Austrian Stock Corporation Act (*Aktiengesetz*). As long as the Participants have the right under the Austrian Banking Act (*Bankwesengesetz*) to participate in the shareholders' meeting, the Participants shall timely be invited to the shareholders' meetings of the Issuer by way of publication pursuant to § 11.

(2) *Verwässerungsschutz.* Soweit § 23

(2) *Dilution protection.* In case of measures

Abs 5. BWG oder eine andere Bestimmung, die an die Stelle von § 23 Abs. 5 BWG tritt, dies vorsieht, wird für den Fall, dass durch eine Maßnahme der Emittentin das Verhältnis zwischen den Vermögensrechten der Partizipanten und den mit den Eigenmitteln der Emittentin gemäß § 23 Abs. 1 BWG verbundenen Vermögensrechten geändert wird, diese Veränderung angemessen ausgeglichen.

### § 10 Zahlungen

(1) *Zahlungen auf die Partizipationsscheine.* Die Emittentin verpflichtet sich, Zahlungen auf die Partizipationsscheine bei Fälligkeit in Euro zu zahlen. Derartige Zahlungen erfolgen an die Zahlstelle zur Weiterleitung an die Wertpapier-Sammelbank oder an deren Order zur Gutschrift für die jeweiligen Kontoinhaber. Die Zahlung an die Wertpapier-Sammelbank oder an deren Order, vorausgesetzt, die Partizipationsscheine werden noch durch die Wertpapier-Sammelbank gehalten, befreit die Emittentin in Höhe der geleisteten Zahlung von ihren entsprechenden Verbindlichkeiten aus den Partizipationsscheinen.

(2) *Fälligkeitstag kein Geschäftstag.* Sollte eine Zahlung im Zusammenhang mit den Partizipationsscheinen auf einen Termin fallen, der kein Geschäftstag ist, verschiebt sich der Zahlungstermin auf den unmittelbar folgenden Geschäftstag. Partizipanten sind nicht berechtigt, Zinsen oder sonstige Zahlungen aufgrund dieser Verschiebung zu verlangen.

**"Geschäftstag"** bezeichnet jeden Tag, an dem (i) das Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET2) oder dessen Nachfolger zum Betrieb geöffnet ist, und (ii) die Emittentin zum Geschäftsbetrieb geöffnet ist.

(3) *Steuern.* Sämtliche Zahlungen in Bezug auf die Partizipationsscheine werden ohne Einbehalt oder Abzug von Steuern, Abgaben, Festsetzungen oder behördlicher Gebühren jedweder Art geleistet, die von der Republik Österreich oder einer ihrer Gebietskörperschaften oder Behörden mit der Befugnis zur Erhebung von Steuern auferlegt, erhoben, eingezogen, einbehalten oder festgesetzt werden, es sei denn, ein solcher

of the Issuer by which the proportion between the rights of the Participants and the rights connected with the own funds of the Issuer pursuant to § 23 sec 1 of the Banking Act (*Bankwesengesetz*) are changed, such change shall be adequately compensated for, to the extent § 23 sec 5 of the Banking Act (*Bankwesengesetz*) or any other provision replacing § 23 sec 5 of the Banking Act so provide.

### § 10 Payments

(1) *Payments on the Participation Capital Securities.* The Issuer undertakes to make payments on the Participation Capital Securities in Euro when due. Such payments shall be made to the paying agent for on-payment to the Central Securities Depository or to its order for credit to the respective account holders. Payments to the Central Securities Depository or to its order shall, to the extent amounts so paid and provided the Participation Capital Securities are still held by the Central Securities Depository, constitute a valid discharge of the Issuer from its corresponding obligations under the Participation Capital Securities.

(2) *Due date not a Business Day.* If the due date for any payment in connection with the Participation Capital Securities is not a Business Day, payment shall be made on the next following Business Day. Participants shall have no right to claim payment of interest or other indemnity in respect of such delay in payment.

**"Business Day"** means any day on which (i) the Trans-European Automated Real-Time Gross Settlement Express Transfer settlement system (TARGET 2) or its successor is operating, and (ii) the Issuer is open for business.

(3) *Taxes.* All payments in respect of the Participation Capital Securities shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by the Republic of Austria or any of its political subdivisions or authorities that has power to tax, unless such withholding or deduction is

Einbehalt oder Abzug ist gesetzlich vorgeschrieben. required by law.

#### **§ 11 Bekanntmachungen**

Alle Bekanntmachungen, welche die Partizipationsscheine betreffen, erfolgen rechtsgültig im "Amtsblatt der Wiener Zeitung" sowie durch Veröffentlichung auf der Homepage der Emittentin ([www.erstegroup.com](http://www.erstegroup.com)). Jede Mitteilung gilt mit dem Tag der im zweiten Medium erfolgten Veröffentlichung als bekannt gemacht. Sollte die "Wiener Zeitung" ihr Erscheinen einstellen, tritt an ihre Stelle das für amtliche Bekanntmachungen dienende Medium.

#### **§ 12 Salvatorische Klausel**

Sollte eine Bestimmung dieser Bedingungen unwirksam oder undurchführbar sein, so wird die Wirksamkeit der übrigen Bestimmungen nicht berührt. An die Stelle der unwirksamen oder undurchführbaren Bestimmung tritt eine Bestimmung, die dem wirtschaftlichen Ergebnis der unwirksamen oder undurchführbaren Bestimmung möglichst nahe kommt.

#### **§ 13 Verjährung**

Zahlungsansprüche hinsichtlich des Kapitals der Partizipationsscheine verjähren, wenn sie nicht innerhalb von zehn Jahren nach Fälligkeit geltend gemacht werden; Ansprüche auf die Auszahlung von Zinsen verjähren drei Jahre nach Fälligkeit.

#### **§ 14 Anwendbares Recht, Erfüllungsort, Gerichtsstand**

(1) *Anwendbares Recht.* Form und Inhalt der Partizipationsscheine sowie die Rechte und Pflichten der Partizipanten und der Emittentin unterliegen ausschließlich österreichischem Recht unter Ausschluss der Verweisungsnormen, soweit dadurch ein anderes als österreichisches Recht anwendbar wäre.

(2) *Erfüllungsort.* Erfüllungsort ist Wien, Innere Stadt, Republik Österreich.

(3) *Gerichtsstand.* Der nicht-ausschließliche

#### **§ 11 Publications**

All notices concerning the Participation Capital Securities shall be validly made in the "Amtsblatt zur Wiener Zeitung" and by way of publication on the homepage of the Issuer ([www.erstegroup.com](http://www.erstegroup.com)). Any such notice shall be deemed to have been given on the date of publication in the second medium. Should the "Wiener Zeitung" cease to be published, it shall be replaced by the medium used for official publications.

#### **§ 12 Severability**

Should a provision of these terms and conditions be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision which corresponds as much as possible to the economic effect of the invalid or unenforceable provision.

#### **§ 13 Limitation**

Payment claims relating to principal of the Participation Capital Securities shall be prescribed if they are not enforced within ten years after their due date; payment claims relating to dividends shall be prescribed three years after their due date.

#### **§ 14 Governing law, Place of performance, Jurisdiction**

(1) *Governing law.* The form and contents of the Participation Capital Securities and the rights and obligations of the Participants and the Issuer shall be governed exclusively by, and construed in accordance with Austrian law, excluding its conflict of law provisions insofar as their application would result in the applicability of any other than Austrian law.

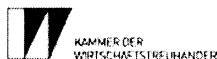
(2) *Place of Performance.* Place of performance is Vienna, First District, Republic of Austria.

(3) *Jurisdiction.* The non-exclusive place of



Gerichtsstand für alle Klagen, Verfahren oder Rechtsstreitigkeiten gegen die Emittentin, die aus oder im Zusammenhang mit den Partizipationsscheinen entstehen, ist das für Handelssachen in Wien, Innere Stadt, sachlich und örtlich zuständige Gericht.

jurisdiction for all actions, proceedings and disputes against the Issuer which arise out of or in connection with the Participation Capital Securities shall be the court competent for commercial matters for Vienna, Inner City.



# General Conditions of Contract for the Public Accounting Professions (AAB 2011)

Laid down by the Working Group for Fees and Conditions of Contract of the Chamber of Public Accountants and Tax Advisors, recommended for use by the Board of the Chamber of Public Accountants and Tax Advisors in its decision of March 8, 2000, and revised by the Working Group for Fees and Conditions of Contract on May 23, 2002, on October 21, 2004, on December 18, 2006, on August 31, 2007, on February 26, 2008, on June 30, 2009, on March 22, 2010, as well as on February 21, 2011

## Preamble and General Points

(1) The General Conditions of Contract for the professions in the field of public accounting are divided into four sections: Section I deals with contracts for services, excluding contracts concerning bookkeeping, payroll accounting and administration and assessment of payroll-related taxes and contributions; Section II deals with contracts for rendering services in the field of bookkeeping, payroll accounting and administration and assessment of taxes and contributions; Section III covers contracts not regarded as contracts for the rendering of services, while Section IV is devoted to consumer business covered by the Austrian Consumer Act.

(2) In the event that individual provisions of these General Conditions of Contract are void, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision that is as close as possible to the desired objective.

(3) The person entitled to exercise profession in the field of public accounting shall be obliged to render the services negotiated in accordance with the principles of due professional care and conduct. He/she shall have the right to engage suitable staff for the execution of the contract. This shall apply to all sections of The General Conditions of Contract.

(4) Finally, foreign law shall only be taken into account by the person entitled to exercise the profession, if this has been explicitly agreed upon in writing. This shall apply to all sections of the General Conditions of Contract.

(5) The work prepared in the offices of the person entitled to exercise the profession may, at the discretion of the person entitled to exercise the profession, be carried out with or without using electronic data processing. In case electronic data processing is used, the client – not the person entitled to exercise the profession – is obliged to effect the registrations or notifications required under the relevant provisions of the Data Protection Act.

(6) The client undertakes not to employ staff of the person entitled to exercise the profession during and within one year after termination of the contractual relationship, either in his/her company or in an associated company, failing which he/she shall be obliged to pay the person entitled to exercise the profession the amount of the annual salary of the employee taken over.

## SECTION I

### 1. Scope

(1) The General Conditions of Contract in Section I shall apply to contracts concerning (statutory and voluntary) audits with or without auditor's certificate, expert opinions, court expert opinions, preparation of annual financial statements and other financial statements, tax consultancy and other services to be rendered within the framework of a contract for the rendering of services, excluding bookkeeping, payroll accounting and the administration and assessment of payroll-related taxes and contributions.

(2) The General Conditions of Contract shall apply, if their use has been explicitly or tacitly agreed upon. Furthermore, in the absence of another agreement, they shall be used for reference to facilitate interpretation.

(3) Point 8 shall also apply to third parties whose services, in certain cases, may be enlisted by the contractor for the execution of the contract.  
2. Scope and Execution of Contract

(1) Reference shall be made to Items 3 and 4 of the Preamble.

(2) Should the legal situation change subsequent to delivering a final professional statement passed on by the client orally or in writing, the person entitled to exercise the profession shall not be obliged to inform the client of changes or of the consequences thereof. This shall also apply to the completed parts of a contract.

(3) An application submitted by the person entitled to exercise the profession to an authority (e.g. tax office, social security institution) by electronic means, shall be regarded as neither signed by the person entitled to exercise the profession nor by the person authorized to submit such an application.

### 3. Client's Obligation to Provide Information and Submit Complete Set of Documents

(1) The client shall make sure that all documents required for the execution of the contract be placed in good time and without special request at the disposal of the person entitled to exercise the profession and that he/she be informed of all events and circumstances which may be of significance for the execution of the contract. This shall also apply to documents, events and circumstances which become known only after the person entitled to exercise the profession has commenced his/her work.

(2) The client shall confirm in writing that all documents submitted, all information provided and explanations given in the context of audits, expert opinions and expert services are complete. This statement may be made on the forms specifically designed for this purpose.

(3) If the client fails to disclose considerable risks in connection with the preparation of annual financial statements and other statements, the contractor shall not be obliged to render any compensation in this respect.

### 4. Maintenance of Independence

(1) The client shall be obliged to take all measures to make sure that the independence of the employees of the person entitled to exercise the profession be maintained and shall refrain from jeopardizing their independence in any way. In particular, this shall apply to offers of employment and to offers to accept contracts on their own account.

**(2) The client consents that their personal details, meaning their name and the type and scope of the services, including the performance period, agreed between the professional practitioner and the client (both audit and non-audit services), shall be handled within the information network (network), to which the professional practitioner belongs, and for this purpose transferred to the other members of the information network (network) including abroad (a list of all recipients of communications shall be sent to the client at their request by the commissioned professional practitioner) for the purpose of examination of the existence of grounds of bias or grounds for exclusion within the meaning of Sections 271 et seq. of the Company Code (UGB). For this purpose the client expressly releases the professional practitioner in accordance with the Data Protection Act and in accordance with Section 91 Subsection 4 Clause 2 of the Auditing, Tax Advising and Related Professions Act (WTBG) from their obligation to maintain secrecy. Moreover, the client acknowledges in this regard that in states which are not EU members a lower level of data protection than in the EU may prevail. The client can revoke this consent at any time in writing to the professional practitioner.**

### 5. Reporting Requirements

(1) In the absence of an agreement to the contrary, a written report shall be drawn up in the case of audits and expert opinions.

(2) All information and opinions of the person entitled to exercise the profession and his employees shall only be binding provided they are set down or confirmed in writing. Written opinions shall only be those on which there is a company signature. Written opinions shall in no circumstances be information sent electronically, specifically not via e-mail.

(3) Transmission errors cannot be excluded when information and data is transmitted electronically. The person entitled to exercise the profession and his employees shall not be liable for losses which arise as a result of electronic transmission. Electronic transmission shall be exclusively at the client's risk. The client is aware that confidentiality is not guaranteed when the Internet is used. Furthermore, amendments or supplements to documents transmitted shall only be permissible subject to explicit approval.

(4) Receipt and forwarding of information to the person entitled to exercise the profession and his employees are not always guaranteed when the telephone is used, in particular in conjunction with automatic telephone answering systems, fax, e-mail and other electronic means of communication. As a result, instructions and important information shall only be deemed to have been received by the person entitled to exercise the profession provided they are also received in writing, unless explicit confirmation of receipt is provided in individual instances. Automatic confirmation that items have been transmitted and read shall not as such constitute explicit confirmations of receipt. This shall apply in particular to the transmission of decisions and other information relating to deadlines. As a result, critical and important notifications must be sent to the person entitled to exercise the profession by post or courier. Delivery of documents to employees outside the firm's offices shall not count as delivery.

(5) The client agrees to being sent recurrent general tax law and general commercial law information by the person entitled to exercise the profession via electronic means. This shall not apply to unsolicited information in accordance with § 107 of the Austrian Telecommunications Act (TKG).

#### 6. Protection of Intellectual Property of the Person Entitled to Exercise the Profession

(1) The client shall be obliged to ensure that reports, expert opinions, organizational plans, drafts, drawings, calculations and the like, issued by the person entitled to exercise the profession, be used only for the purpose specified in the contract (e.g. pursuant to Section 44 Para. 3 Austrian Income Tax Act 1988). Furthermore, professional statements passed on by the client orally or in writing made by the person entitled to exercise the profession may be passed on to a third party for use only with the written consent of the person entitled to exercise the profession.

(2) The use of professional statements passed on by the client orally or in writing made by the person entitled to exercise the profession for promotional purposes shall not be permitted; a violation of this provision shall give the person entitled to exercise the profession the right to terminate without notice to the client all contracts not yet executed.

(3) The person entitled to exercise the profession shall retain the copyright on his/her work. Permission to use the work shall be subject to the written consent by the person entitled to exercise the profession.

#### 7. Correction of Errors

(1) The person entitled to exercise the profession shall have the right and shall be obliged to correct all errors and inaccuracies in his/her professional statement passed on by the client orally or in writing which subsequently come to light and shall be obliged to inform the client thereof without delay. He/she shall also have the right to inform a third party acquainted with the original statement of the change.

(2) The client has the right to have all errors corrected free of charge, if the contractor can be held responsible for them; this right will expire six months after completion of the services rendered by the person entitled to exercise the profession and/or – in cases where a written statement has not been delivered – six months after the person entitled to exercise the profession has completed the work that gives cause to complaint.

(3) If the contractor fails to correct errors which have come to light, the client shall have the right to demand a reduction in price. The extent to which additional claims for damages can be asserted is stipulated under Point 8.

#### 8. Liability

(1) The person entitled to exercise the profession shall only be liable for violating intentionally or by gross negligence the contractual duties and obligations entered into.

(2) In cases of gross negligence, the maximum liability for damages due from the appointed person entitled to exercise the profession is tenfold the minimum insurance sum of the professional liability insurance according to Section 11 of the Act on Professions in the Field of Public Accounting (WTBG) in the currently valid version.

(3) Any action for damages may only be brought within six months after those entitled to assert a claim have gained knowledge of the damage, but not later than three years after the occurrence of the (primary) loss following the incident upon which the claim is based, unless other statutory limitation periods are laid down in other legal provisions.

(4) Should Section 275 of the Austrian Business Enterprise Code (Commercial Code, UGB) be mandatorily applicable, the liability provisions pursuant to Section 275 shall apply where these represent mandatory law, even in cases where several persons have participated in the execution of the contract or where several activities requiring compensation have taken place, irrespective of whether other participants have acted with intent.

(5) In cases where a formal audit certificate is issued, the applicable limitation period shall commence at the latest at the time of issue of said audit certificate.

(6) If activities are carried out by enlisting the services of a third party, e.g. a data-processing company, and the client is informed thereof, any warranty claims and claims for damages which arise against the third party according to law and in accordance with the conditions of the third party, shall be deemed as having been passed on to the client. The person entitled to exercise the profession shall only be liable for fault in choosing the third party.

(7) The person entitled to exercise the profession shall not be liable to a third party, if his/her professional statements are passed on by the client orally or in writing without the approval or knowledge of the person entitled to exercise the profession.

(8) The above provisions shall apply not only vis-à-vis the client but also vis-à-vis third parties, if the person entitled to exercise the profession, in exceptional cases, should be liable for his/her work. In any case, a third party cannot raise any claims that go beyond any claim raised by the client. The maximum sum of liability shall be valid only once for all parties injured, including the compensation claims of the client, even if several persons (the client and a third party or several third parties) have been wronged; the claims of the aggrieved parties shall be satisfied in the order in which the claims have been raised.

#### 9. Secrecy, Data Protection

(1) According to Section 91 WTBG the person entitled to exercise the profession shall be obliged to maintain secrecy in all matters that become known to him/her in connection with his work for the client, unless the client releases him/her from this duty or he/she is bound by law to deliver a statement.

(2) The person entitled to exercise the profession shall be permitted to hand on reports, expert opinions and other written statements pertaining to the results of his/her services to third parties only with the permission of the client, unless he/she is required to do so by law.

(3) The person entitled to exercise the profession is authorized to process personal data entrusted to him/her within the framework of the purpose of the contract or to have them processed by a third party according to Point 8 Item 6. The person entitled to exercise the profession shall guarantee that according to Section 15 of the Data Protection Act secrecy be maintained. According to Section 11 of the Data Protection Act the material made available to the person entitled to exercise the profession (data carrier, data, control numbers, analyses and programs) as well as all results obtained as a result of the work provided shall be returned to the client, unless the client has requested in writing that the material and/or results be transferred to a third party. The person entitled to exercise the profession shall be obliged to take measures to ensure that the client can meet his/her obligation to provide information according to Section 26 of the Data Protection Act. The client's instructions required for this purpose shall be given in writing to the person entitled to exercise the profession. Unless a fee has been negotiated for providing such information, the client shall be charged only the actual efforts undertaken. The client shall meet his/her obligation to provide information to those concerned and/or to register in the data processing register, unless the contrary has been explicitly agreed in writing.

#### 10. Termination

(1) Unless otherwise agreed in writing or stipulated by force of law, either contractual partner shall have the right to terminate the contract at

any time with immediate effect. The fee shall be calculated according to Point 12.

(2) However, a continuing agreement (even with a flat fee)– always to be presumed in case of doubt –may, without good reason (cf. Section 88 Item 4 WTBG), only be terminated at the end of the calendar month by observing a period of notice of three months, unless otherwise agreed in writing.

(3) Except for cases listed in Item 5, in case of termination of a continuing agreement only those tasks shall be part of the list of jobs to be completed and finished that can be completed fully or to the largest part within the period of notice, with financial statements and annual income tax returns being deemed to be subject to successful completion within two months calculated from the balance sheet date. In this case the above-mentioned jobs actually have to be completed within a reasonable period of time, if all documents and records required are provided without delay and if no good reason within the meaning of Section 88 Paragraph 4 WTBG is cited.

(4) In case of a termination according to Item 2 the client shall be informed in writing within one month which assignments at the time of termination are considered to be part of the work to be completed.

(5) If the client is not informed within this period about the assignments still to be carried out, the continuing agreement shall be deemed terminated upon completion of the tasks under way at the date when the notice of termination is served.

(6) Should it happen that in case of a continuing agreement as defined under Items 2 and 3 – for whatever reason – more than two similar jobs which are usually completed only once a year (e.g. financial statements or annual tax returns etc.) are to be completed, any such jobs exceeding this number shall be regarded as assignments to be completed only with the client's explicit consent. If applicable, the client shall be informed of this explicitly in the statement pursuant to Item 4.

#### 11. Default in Acceptance and Failure to Cooperate on the part of the Client

If the client defaults on acceptance of the services rendered by the person entitled to exercise the profession or fails to carry out a task incumbent on him/her either according to Point 3 or imposed on him/her in another way, the person entitled to exercise the profession shall have the right to terminate the contract without prior notice. His/her fees shall be calculated according to Point 12. Default in acceptance or failure to cooperate on the part of the client shall also justify a claim for compensation made by the person entitled to exercise the profession for the extra time and labor hereby expended as well as for the damage caused, if the person entitled to exercise the profession does not invoke his/her right to terminate the contract.

#### 12. Entitlement to Fee

(1) If the contract fails to be executed (e.g. due to termination), the person entitled to exercise the profession shall be entitled to the negotiated fee, provided he/she was prepared to render the services and was prevented from so doing by circumstances caused by the client (Section 1168 of the Civil Code (ABGB)); in this case the person entitled to exercise the profession need not deduct the amount he/she obtained or could have obtained through alternative use of his/her own professional services or those of his/her employees.

(2) If the client fails to cooperate and the assignment cannot be carried out because of lack of cooperation, person entitled to exercise the profession shall also have the right to set a reasonable grace period on the understanding that, if this grace period expires without results, the contract shall be deemed cancelled and the consequences indicated in Item 1) shall apply.

(3) If the person entitled to exercise the profession terminates the contract without good reason and at an inopportune moment, he/she shall compensate the client for the damage caused according to Point 8.

(4) If the client – having been made aware of the legal situation – agrees that the person entitled to exercise the profession duly completes the task, the work shall be completed accordingly.

#### 13. Fee

(1) Unless the parties agreed that the services would be rendered free of charge or unless explicitly stipulated otherwise, an appropriate remuneration in accordance with Sections 1004 and 1152 of the Austrian Civil Code (ABGB) is due. Unless a different agreement has demonstrably been reached, payments by the client shall in all cases be credited against the oldest debt. The claim for remuneration by the person entitled to exercise the profession is based upon an agreement concluded between him/her and the principal involved.

(2) Proper understanding between the person entitled to exercise the profession and their principals is most effectively achieved by clearly expressed remuneration agreements.

(3) The smallest service unit which may be charged is a quarter of an hour.

(4) Travel time to the extent required is also charged in most cases.

(5) Study of documents which, in terms of their nature and extent, may prove necessary for preparation of the person entitled to exercise the profession in his/her own office may also be charged as a special item

(6) Should a remuneration already agreed upon prove inadequate as a result of the subsequent occurrence of special circumstances or special requirements of the principal, additional negotiations for the agreement of a more suitable remuneration are usual. This also usually applies where inadequate fixed sum remunerations are concerned.

(7) Persons entitled to exercise the profession also include charges for supplementary costs and value-added (turnover) tax in addition to the above.

(8) Supplementary costs also include documented or flatrate cash expenses, travelling expenses (first class for train journeys, sleeping car (wagon lits) if necessary, dietary requirements, mileage allowance, photocopy costs and similar supplementary costs.

(9) Should particular third party liabilities be involved, the necessary insurance premiums also count as supplementary costs.

(10) Personnel and material expenses for the preparation of reports, expertises and similar documents are also viewed as supplementary costs.

(11) For the execution of a commission wherein mutual conclusion involves several persons entitled to exercise the profession, each of the latter will charge his/her own remuneration.

(12) Remunerations and advance payments required are due immediately after receipt of their written claim should no other agreements exist. Where payments of remuneration are made later than 14 days after the due date, default interest may be charged. Where mutual business transactions are concerned, a default interest rate of 8% above the base rate is agreed upon (Cf. Section 352 of the Austrian Business Enterprise Code (Commercial Code, UGB)).

(13) Time limitation is in accordance with Section 1486 of the Austrian Civil Code (ABGB), starting at the time of conclusion of the service involved or a later rendering of accounts after an appropriate time-limit.

(14) An objection may be raised in writing against bills presented by the appointed trustee up to 4 weeks after the date of presentation. Otherwise the bill is considered as accepted. Filing of a bill in the accounting system of the recipient is also considered as acceptance.

(15) Application of § 934 ABGB (Austrian Civil Code) within the meaning of § 351 Austrian Business Enterprise Code (Commercial Code, UGB), i.e. rescission for *laesio enormis* (lesion beyond moiety) among entrepreneurs, is hereby renounced.

#### 14. Other Provisions

(1) In addition to the reasonable rate or fee charged, the person entitled to exercise the profession shall have the right to claim reimbursement of expenses. He/she can ask for advance payments and can make delivery of the results of his/her (continued) work dependent on satisfactory fulfillment of his/her demands. In this context reference shall be made to the legal right of retention (Section 471 of the Civil Code (ABGB), Section 369 of the Austrian Business Enterprise Code (Commercial Code, UGB)). If the right of retention is wrongfully exercised, the person entitled to exercise the profession shall be liable only in case of gross negligence up to the outstanding amount of his/her fee. As regards standing orders, the provision of further services may be denied until payment of previous services has been effected. This shall analogously apply if services are rendered in installments and fee installments are outstanding.

(2) After all the data to be archived, which has been prepared by the public accountant and tax advisor, has been delivered to the client or to the succeeding public accountant and tax advisor, the person entitled to exercise the profession shall be entitled to delete the data in question.

(3) With the exception of obvious essential errors, a complaint concerning the work of the person entitled to exercise the profession shall not justify the retention of remuneration owed in accordance with Item 1.

(4) Offsetting the remuneration claims made by the person entitled to exercise the profession in accordance with Item 1 shall only be permitted, if the demands are uncontested and legally valid.

(5) At the request and expense of the client, the person entitled to exercise the profession shall hand over all documents received from the client within the scope of his/her activities. However, this shall not apply to correspondence between the person entitled to exercise the profession and his/her client, to original documents in his/her possession or to documents which have to be kept in accordance with the directive on money laundering. The person entitled to exercise the profession may make or retain copies or duplicates of the documents to be returned to the client. The client shall be obliged to bear these expenses in so far as these copies or duplicates may be required as a proof of the orderly execution of all professional duties by the person entitled to exercise the profession.

(6) In the event of termination of the contract, the contractor shall be entitled to charge an appropriate fee for further queries after termination of the contract and for granting access to the relevant information about the audited company.

(7) The client shall fetch the documents handed over to the person entitled to exercise the profession within three months after the work has been completed. If the client fails to do so, the person entitled to exercise the profession shall have the right to return them to the client at the cost of the client or to charge safe custody charges, if the person entitled to exercise the profession can prove that he/she has asked the client twice to pick up the documents handed over.

(8) The person entitled to exercise the profession shall have the right to compensation of any fees that are due by use of any available deposited funds, clearing balances, trust funds or other liquid resources at his/her disposal even if these funds are explicitly intended for safe keeping, if the client had to reckon with a counterclaim of the person entitled to exercise the profession.

(9) To safeguard an existing or future fee payable, the person entitled to exercise the profession shall have the right to transfer a balance held by the client with the tax office or another balance held by the client in connection with charges and contributions, to a trust account. In this case the client shall be informed about the transfer. Subsequently, the amount secured may be collected either after agreement has been reached with the client or after enforceability by execution has been declared.

#### 15. Applicable Law, Place of Performance, Jurisdiction

(1) The contract, its execution and the claims resulting from it shall be exclusively governed by Austrian law.

(2) The place of performance shall be the place of business of the person entitled to exercise the profession.

(3) In case of disputes, the court of the place of performance shall be the competent court.

#### 16. Supplementary Provisions for Audits

(1) For statutory audits of financial statements which are carried out in order to issue a formal audit certificate (e.g. Section 268 and the following sections of the Company Code), the purpose of the contract, unless otherwise agreed to in writing, shall not be to investigate whether regulations concerning tax laws or specific regulations, e.g. price fixing, restriction of competition and foreign exchange regulations have been adhered to. Neither shall the purpose of the statutory audit of financial statements be to investigate whether the business is run in an economical, efficient and expedient manner. Within the framework of a statutory audit of a financial statement there shall be no obligation to detect the falsification of accounts or other irregularities.

(2) When a qualified or unqualified audit certificate is issued within the scope of a statutory audit of the annual financial statement, the audit certificate issued shall be appropriate for the respective type of business organization.

(3) If financial statements are published together with the audit certificate, they shall only be published in the form confirmed or explicitly permitted by the auditor.

(4) If the auditor revokes his/her audit certificate, the further use thereof shall no longer be permitted. If the financial statements have been published with the audit certificate, the revocation thereof shall also be published.

(5) For other statutory and voluntary audits of financial statements as well as for other audits, the above principles shall apply accordingly.

#### 17. Supplementary Provisions concerning the Preparation of Annual Financial Statements and Other Financial Statements, Consultation and Other Services to be Provided within the Framework of a Contract for the Rendering of Services

(1) The person entitled to exercise the profession, when performing the aforementioned activities, shall be justified in accepting information provided by the client, in particular figures, as correct. However, he/she is obliged to inform the client of any errors identified by him/her. The client shall present the person entitled to exercise the profession with all important documents required for keeping deadlines, in particular tax assessment notices, in good time so as to ensure that the person entitled to exercise the profession has a reasonable amount of time, but not less than one week, to process the information.

(2) In the absence of written agreements to the contrary, consultation shall consist of the following activities:

- a) preparing annual tax returns for income tax and corporate tax as well as value-added tax (VAT) on the basis of the financial statements and other documents and papers required for taxation purposes and to be submitted by the client or prepared by the contractor.
- b) examining the tax assessment notices for the tax returns mentioned under a).
- c) negotiating with the fiscal authorities in connection with the tax returns and notices mentioned under a) and b).
- d) participating in external tax audits and assessing the results of external tax audits with regard to the taxes mentioned under a).
- e) participating in appeal procedures with regard to the taxes mentioned under a). If the person entitled to exercise the profession receives a flat fee for regular tax consultation, in the absence of written agreements to the contrary, the activities mentioned under d) and e) shall be invoiced separately.

(3) Particular matters pertaining to income tax, corporate tax and ratable value tax return as well as all matters relating to value-added tax, withholding tax on salaries and wages and other taxes and duties shall only be prepared on the basis of a specific contract. This shall also apply to

- a) processing non-recurring matters pertaining to tax, e.g. inheritance tax, capital transfer tax, land transfer tax.
- b) the defense and consultation in penal procedures relating to the taxes mentioned.
- c) providing consultation and expert opinions in matters pertaining to the foundation, restructuring, merger, capital increase and decrease, and reorganization of a company, entry and retirement of a shareholder or partner, sale of a business, winding up, management consultancy and other activities according to Sections 3 to 5 of the Act on Professions in the Field of Public Accounting (WTBG).
- d) the preparation of applications to the Register of Companies in connection with annual financial statements, including the keeping of records required.

(4) Provided the preparation of the annual value added tax return is part of the contract accepted, this shall not include the examination of any particular accounting conditions nor the examination of whether all relevant value added tax concessions have been utilized, unless the person entitled to exercise the profession can prove that he/she has been commissioned accordingly.

(5) The aforementioned paragraphs shall not apply to services requiring particular expertise provided by an expert.

#### SECTION II 18. Scope

The General Conditions of Contract in Section II shall apply to contracts for the rendering of services in the field of bookkeeping, payroll accounting and the administration and assessment of payroll-related taxes and contributions.

#### 19. Scope and Execution of Contract

(1) Reference shall be made to Items 3 and 4 of the Preamble.

(2) The person entitled to exercise the profession shall be justified in regarding information and documents presented to him/her by the client, in particular figures, as correct and complete and in using them as a basis for accounting. The person entitled to exercise the profession shall not be obliged to identify errors, unless he/she has been specifically

instructed to do so in writing. However, if errors are identified, he/she shall inform the client thereof.

(3) If a flat fee has been negotiated for the activities mentioned in Point 18, in the absence of written agreements to the contrary, representation in matters concerning all types of tax audits and audits of payroll-related taxes and social security contributions including settlements concerning tax assessments and the basis for contributions, preparation of reports, appeals and the like shall be invoiced separately.

(4) Particular individual services in connection with the services mentioned in Point 18, in particular ascertaining whether the requirements for statutory social security contributions are met, shall be dealt with only on the basis of a specific contract and shall be treated according to Section I or Section III of the General Conditions of Contract.

(5) Any application submitted to authorities (e.g. tax office, social insurance institution) electronically, shall be regarded as neither signed by the person entitled to exercise the profession nor by the person authorized to transmit the application.

#### 20. Client's Duty to Cooperate

The client shall make sure that all information and documents required for bookkeeping, payroll accounting and administration and assessment of payroll-related taxes and contributions be placed at the disposal of the person entitled to exercise the profession on an agreed date without his/her specific request.

#### 21. Termination

(1) Unless otherwise agreed to in writing, either contractual partner may terminate the contract at the end of each month with three months' notice without giving a particular reason.

(2) If the client repeatedly fails to fulfill his/her duties according to Point 20, the person entitled to exercise the profession shall have the right to terminate the contract immediately without prior notice.

(3) If the person entitled to exercise the profession delays in rendering services due to reasons for which he/she is solely responsible, the client shall have the right to terminate the contract immediately without prior notice.

(4) In case of a termination of the contractual relationship only those assignments shall be considered part of the contract which the contractor is already working on or major parts of which can be completed within the period of notice and which are notified to the client within one month.

#### 22. Fee and Entitlement to Fee

(1) Unless otherwise agreed to in writing, the fee shall be considered agreed upon for one year at a time.

(2) If the contract is terminated pursuant to Point 21 Item 2 the person entitled to exercise the profession shall have the right to the full fee negotiated for three months. This shall also apply if the client fails to observe the period of notice.

(3) If the contract is terminated pursuant to Point 21 Item 3, the person entitled to exercise the profession shall only have the right to the fee corresponding to the services rendered up to this point, provided they are of value to the client.

(4) If a flat fee has not been negotiated, the fee shall be calculated pursuant to Item 2 according to the monthly average of the current year of contract until termination.

(5) Unless the parties agreed that the services would be rendered free of charge or unless explicitly stipulated otherwise, an appropriate remuneration in accordance with Sections 1004 and 1152 of the Austrian Civil Code (ABGB) is due. Unless a different agreement has demonstrably been reached, payments by the client shall in all cases be credited against the oldest debt. The claim for remuneration by the person entitled to exercise the profession is based upon an agreement concluded between him/her and the principal involved. Furthermore, the basics standardized under section 13 apply.

(6) Application of § 934 ABGB (Austrian Civil Code) within the meaning of § 351 Austrian Business Enterprise Code (Commercial Code, UGB), i.e. rescission for *laesio enormis* (lesion beyond moiety) among entrepreneurs, is hereby renounced.

#### 23. Other Provisions

In all other cases, the provisions of Section I of the General Conditions of Contract shall apply accordingly.

### SECTION III

#### 24. Scope

(1) The General Conditions of Contract in Section III shall apply to all contracts not mentioned in the previous sections, which are not to be regarded as contracts for rendering services and are not related to the contracts mentioned in the previous sections.

(2) In particular, Section III of the General Conditions of Contract shall apply to contracts concerning the non-recurring participation in negotiations, to services as an agent in matters pertaining to insolvency, to contracts concerning non-recurring interventions and the handling of the individual matters mentioned in Point 17 Item 3 in the absence of a continuing agreement.

#### 25. Scope and Execution of Contract

(1) Reference shall be made to Items 3 and 4 of the Preamble.

(2) The person entitled to exercise the profession shall be justified in regarding and obliged to regard information and documents presented to him/her by the client, in particular figures, as correct and complete. In case of penal procedures he/she shall protect the rights of the client.

(3) The person entitled to exercise the profession shall not be obliged to identify errors, unless he/she has been specifically instructed to do so in writing. However, if he/she identifies errors, the client shall be informed accordingly.

#### 26. Client's Duty to Cooperate

The client shall make sure that all the necessary information and documents be placed at the disposal of the person entitled to exercise the profession in good time and without his/her special request.

#### 27. Termination

Unless otherwise agreed to in writing or stipulated by force of law, either contractual party shall have the right to terminate the contract at any time with immediate effect (Section 1020 of the Civil Code (ABGB)).

#### 28. Fee and Entitlement to Fee

(1) Unless the parties agreed that the services would be rendered free of charge or unless explicitly stipulated otherwise, an appropriate remuneration in accordance with Sections 1004 and 1152 of the Austrian Civil Code (ABGB) is due. Unless a different agreement has demonstrably been reached, payments by the client shall in all cases be credited against the oldest debt. The claim for remuneration by the person entitled to exercise the profession is based upon an agreement concluded between him/her and the principal involved. Furthermore, the basics standardized under section 13 apply.

(2) In the event of termination the fee shall be calculated according to the services rendered up to this point, provided they are of value to the client.

(3) Application of § 934 ABGB (Austrian Civil Code) within the meaning of § 351 Austrian Business Enterprise Code (Commercial Code, UGB), i.e. rescission for *laesio enormis* (lesion beyond moiety) among entrepreneurs, is hereby renounced.

#### 29. Other Provisions

The reference in Point 23 to provisions in Section I shall apply accordingly.

### SECTION IV

#### 30. Scope

The Conditions of Contract of Section IV shall only apply to consumer business in accordance with the Consumer Act (Federal Law of March 8, 1979/Federal Law Gazette No. 140 as amended).

#### 31. Supplementary Provisions for Consumer Transactions

(1) Contracts between persons entitled to exercise the profession and consumers shall fall under the obligatory provisions of the Consumer Act.

(2) The person entitled to exercise the profession shall only be liable for the deliberate and gross negligent violation of the obligations assumed.

(3) Contrary to the limitation laid down in Point 8 Item 2 of the General Conditions of Contract, the duty to compensate on the part of the person

entitled to exercise the profession shall not be limited in case of gross negligence.

(4) Point 8 Item 3 of the General Conditions of Contract (asserting claims for damages within a certain period) shall not apply.

(5) Right of Withdrawal according to Section 3 of the Consumer Protection Act

If the consumer has not made his/her contract statement in the office usually used by the person entitled to exercise his/her profession, he/she may withdraw from the contract application or the contract proper. This withdrawal may be declared until the contract has been concluded or within one week after its conclusion; the period commences as soon as a document has been handed over to the consumer which contains at least the name and the address of the person entitled to exercise the profession as well as instructions on the right to revoke the contract, but no earlier than the conclusion of the contract.

The consumer shall not have the right to withdraw from the contract,

1. if the consumer himself/herself established the business relationship concerning the conclusion of this contract with the person entitled to exercise the profession or his/her agent,

2. if the conclusion of the contract has not been preceded by any talks between the parties involved or their agents or

3. in case of contracts where the mutual services have to be provided immediately, if the contracts are usually concluded outside the offices of the persons entitled to exercise the profession, and the fee agreed upon does not exceed €15.

In order to become legally effective, the revocation shall be declared in writing. It is sufficient if the consumer returns a document that contains his/her contract declaration or that of the person entitled to exercise the profession to the person entitled to exercise the profession with a note which reveals that the consumer rejects the conclusion or the maintenance of the contract. It is sufficient if this declaration is dispatched within a week.

If the consumer withdraws from the contract according to Section 3 of the Consumer Act,

1. the person entitled to exercise the profession shall return all benefits received, including all statutory interest, calculated from the day of receipt, and to compensate the consumer for all necessary and useful expenses incurred in this matter,

2. the consumer shall pay for the value of the services rendered by the person entitled to exercise the profession as far as they are of a clear and predominant benefit to him/her.

According to Section 4 Paragraph 3 of the Consumer Act claims for damages shall remain unaffected.

(6) Cost Estimates according to Section 5 of the Consumer Act

The consumer shall pay for the preparation of a cost estimate in accordance with Section 1170a of the Austrian Civil Code by the person entitled to exercise the profession only, if this payment obligation has been notified to the consumer beforehand.

If the contract is based on a cost estimate prepared by the person entitled to exercise the profession, its correctness shall be deemed warranted as long as the opposite has not been explicitly declared.

(7) Correction of Errors: Supplement to Point 7

If the person entitled to exercise the profession is obliged according to Section 932 of the Austrian Civil Code to improve or complement his/her services, he/she shall execute this duty at the place where the matter was transferred to him/her. If it is in the interest of the consumer to have the work and the documents returned by the person entitled to exercise the profession, the consumer may carry out this transfer at his/her own risk and expense.

(8) Jurisdiction: Instead of Point 15 Item 3:

If the domicile or the usual residence of the consumer is within the country or if he/she is employed within the country, in case of an action against him/her according to Sections 88, 89, 93 Paragraph 2 and 104 Paragraph 1 JN the jurisdiction of a court shall depend on the district where the consumer has his domicile, usual residence or place of employment.

(9) Contracts on Recurring Services

(a) Contracts which oblige the person entitled to exercise the profession to render services and the consumer to effect repeated payments and which have been concluded for an indefinite period or a period exceeding one year, may be terminated by the consumer at the end of the first year, and after the first year at the end of every six months, by adhering to a two-month period of notice.

(b) If the total work is regarded as a service that cannot be divided on account of its character, the extent and price of which is determined already at the conclusion of the contract, the first date of termination may be postponed until the second year has expired. In case of such contracts the period of notice may be extended to a maximum of six months.

(c) If the execution of a certain contract indicated in lit.a) 1 requires considerable expenses on the part of the person entitled to exercise the profession and if he/she informed the consumer about this not later than when the contract was concluded, reasonable dates of termination and periods of notice which deviate from lit.a) and b) and which fit the respective circumstances may be agreed.

(d) If the consumer terminates the contract without complying with the period of notice, the termination shall become effective at the next termination date which follows the expiry of the period of notice.