



**Declaration of conformity by the Executive Board and the Supervisory Board of JENOPTIK AG in fiscal year 2011 concerning the Corporate Governance Code pursuant to §161 of the German Stock Corporation Act (AktG).**

Under § 161, Paragraph 1, Sentence 1 of the German Stock Corporation Act (AktG) the Executive Board and the Supervisory Board of a stock-listed company are required to issue a declaration once a year that the recommendations of the “Government Commission on the German Corporate Governance Code” as published by the Federal Ministry of Justice in the official section of the Federal Gazette (Bundesanzeiger) have been and are complied with or to advise which recommendations have not been or are not applied and why not.

The JENOPTIK AG Executive Board and Supervisory Board support the recommendations of the “Government Commission on the German Corporate Governance Code” and state that pursuant to § 161 Paragraph 1 Sentence 1 of the German Stock Corporation Act:

I. The recommendations of the “Government Commission on the German Corporate Governance Code” in the version dated May 26, 2010 have been followed from September 15, 2011 and will be followed with the following exception regarding the contract with the Chairman of the Executive Board.

In accordance with Point 4.2.3. Paragraph 4 of the Code care shall be taken in concluding Executive Board contracts to ensure that payments made to an Executive Board member on premature termination of his contract without serious cause do not exceed the value of two years’ compensation (severance pay cap) and compensate no more than the remaining term of the contract. The severance payment cap shall be calculated on the basis of the total compensation for the past full fiscal year and if appropriate also the expected total compensation for the current fiscal year.

II. In the period between the last declaration of conformity as of December 2010 and December 31, 2010 the recommendations of the “Government Commission on the

German Corporate Governance Code” in the version dated May 26, 2010 were followed with the following exception:

A deductible for D&O insurance for members of the Supervisory Boards is waived (Point 3.8 Paragraph 3 of the German Corporate Governance Code).

The recommendations of the “Government Commission on the German Corporate Governance Code” in the version dated May 26, 2010 were followed in full from January 1, 2011 until September 14, 2011.

#### **Justification of the deviation regarding Point I.**

There is a view that such rules on severance payments contradict the principle of concluding the contracts with members of the Executive Board regularly for the full term of their office which has been applied by Jenoptik in accordance with the German Stock Corporation Act (Aktiengesetz). A premature termination of a contract thus always requires a serious cause. In addition, the company would find a contractual severance pay cap difficult to enforce in the case of a termination of the contract by mutual agreement; it could also not be ensured that the specific circumstances for the premature termination would be sufficiently taken into account. The thinking behind the regulation of Point 4.2.3 Paragraph 4 of the Code will be taken into account by ensuring that the compensation will be reasonable in the event of a premature termination of the contract by mutual agreement. Therefore, the Chairman of the Supervisory Board applied a grandfathering clause when extending the contract with the Chairman of the Executive Board.

The compliance with the recommendation of Point 4.2.3 Paragraph 4 of the Code until September 14, 2011 was a result of the short remaining term of the contracts with the Executive Board members up to June 30, 2012.

#### **Justification of the deviation regarding Point II.**

The Supervisory Board was of the opinion that the motivation and responsibility of the Supervisory Board members would not be improved through the introduction of a deductible. After discussing this topic once again the Supervisory Board decided in the meeting on June 8, 2010 that the Supervisory Board will have a deductible in

accordance with Point 3.8 Paragraph 3 of the German Corporate Governance Code with effect from January 1, 2011.

### **Background information from the preamble to the Code.**

On September 6, 2001, the "Government Commission on the German Corporate Governance Code" was appointed to develop internationally and nationally recognized principles for correct and responsible corporate governance. As stated in the Code's preamble, "The Code aims at making the German Corporate Governance system transparent and understandable. Its purpose is to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of listed German stock corporations." The Commission presented the German Corporate Governance Code to the general public on February 26, 2002 and amended it most recently on May 26, 2010. The Code provides "regulations" that describe the legal norm currently valid in Germany, in addition to further "recommendations" and "suggestions." The "recommendations" are indicated by the use of the word "shall" in the Code. Companies that deviate from one or more recommendations must disclose this fact in an annual declaration of conformity in accordance with § 161 of the German Stock Corporation Act. The Code thereby "enables companies to reflect sector and enterprise-specific requirements." "Suggestions" are indicated in the Code by the use of the words "should" or "can" and can be deviated from without disclosure.

### **Code strengthens confidence into German enterprises.**

JENOPTIK AG welcomes the German Corporate Governance Code, which is in the economic interests of Germany and of the companies, and which will contribute towards increasing the trust of investors in the German economy in Germany and abroad. JENOPTIK AG is aware of the significance of investor trust and has maintained an open and transparent corporate style from the very beginning. JENOPTIK AG also welcomes the Code's deliberate flexibility concerning further national and international corporate governance developments. The Code indeed reflects the fact that corporate governance is to be treated as a continual process, and not merely a set of regulations fixed in print, but rather a continuing process. For individual companies, this is a matter of earning the trust of investors, customers, employees and the general public - all of which goes without saying for Jenoptik.