



GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES (GTCs CONSTRUCTION)

of **Exyte Central Europe GmbH**, a limited liability company having its registered seat in Stuttgart, registered with the Commercial Register of Local Court (*Amtsgericht*) of Stuttgart under HRB 17278, having its principal place of business in Löwentorbogen 9b, 70376 Stuttgart, Germany („EXYTE“)

- 1. Subject Matter of the Agreement**
- 1.1 The type and scope of the services to be performed by the Subcontractor (the “**Subcontract Works**”) are described in the Minutes of Negotiation (construction services), including its annexes, and/or the purchase order, and the present General Terms and Conditions for Construction Services (“**GTCs Construction**”) (altogether the “**Agreement**”). The Subcontractor shall perform all works and services required to fulfil the Subcontract Works, even if such deliveries and/or works are not set out in detail in the Agreement or its annexes, including potential planning services.
- 1.2 Prior to signing this Agreement, the Subcontractor has obtained information on the scope of the required services and the conditions in which they are to be performed that are sufficient capture all circumstances required for pricing.
- 1.3 Unless otherwise agreed, the services shall be performed in accordance with the Incoterms © 2020 DDP (project site).
- 2. Contract Documents**
- 2.1 Contract Documents are all regulations, documents, exhibits, ordinances, directives, and rules of law specified in these GTCs Construction and/or in the Minutes of Negotiation.
- 2.2 Shall apply the technical standards (*Stand der Technik*) applicable at the time of acceptance, any and all public-law provisions and guidelines, including EN regulations and other European standards, DIN regulations, regulations, provisions, and requirements by utilities and waste disposal companies, professional associations, all relevant trade and fire protection provisions, the provisions, recommendations and amendments of the German Committee for Reinforced Concrete, the provisions of the German Gas and Water Industry Association (DVGW), also all TÜV regulations, the VDE, VDI, VdS regulations as well as additional relevant technical regulations and guidelines, such as the technical construction provisions of the German Institute for Construction Engineering introduced by the competent building supervisory authorities, requirements and recommendations by manufacturers and their associations, all public-law regulations regarding environmental protection, the relevant provisions regarding occupational health and safety, the Occupational Health and Safety Act, the workplace ordinance and workplace regulations, the accident prevention regulations, provisions and requirements of the safety and health protection coordinator, ordinances, by-laws, as well as all public-law regulations to the extent relevant to the realization of the Project and all relevant statutory and regulatory provisions applicable at the location of the Project, including if the Project is located outside of Germany. References regarding the preparation of the specifications in part 0 of DIN 18299 et seq. shall not apply.
- If and to the extent that DIN standards or any other of the above-mentioned provisions are not in line with the technical standards (*Stand der Technik*), instead of the DIN standard or relevant provisions, the technical standards (*Stand der Technik*) shall apply. The Subcontractor shall notify Exyte without delay regarding any such deviations.
- Unless otherwise agreed, the German BGB applies.
- 2.3 The Subcontractor’s general terms and conditions shall not apply, even if Exyte does not specifically object in the individual case. The above shall also apply if the Parties refer to a document, which contains or refers to the Subcontractor’s general terms and conditions.
- 2.4 In the event of conflicts, gaps or discrepancies in the above-mentioned Contract Documents or individual contract documents, which cannot be solved by way of general interpretation rules, the following shall apply:
- 2.4.1 Conflicts, gaps or discrepancies shall primarily be solved by interpreting the Contract Documents as a meaningful whole. Such interpretation shall take into account the general rules of interpretation, where later provisions shall precede older ones, and specific provisions shall precede general ones. If interpretation based on the above is not possible, the stipulations in this Agreement shall precede any other Contract Documents. If VOB/B (German Construction Contract Procedures: Part B, General conditions of contract relating to the execution of construction work) is agreed to apply, the rules set out in the Minutes of Negotiation and the GTCs Construction shall take precedence.
- 2.4.2 If conflicts, gaps or discrepancies remain further to 2.4.1, Exyte shall have the right to specify performance in accordance with Sec. 315 BGB.
- 2.4.3 If the quote of Subcontractor is defined to be part of the Contract Documents, the rules set out in the Minutes of Negotiation and the GTCs Construction shall take precedence over the quote.
- 3. Performance of Services**
- 3.1 Scope of Delivery and Services**
- 3.1.1 The Subcontractor shall provide and retain any and all devices, tools and resources required for performing its services. In general, only approved and new materials shall be used.
- 3.1.2 Supply of all required documentation for registering facilities requiring approval and/or monitoring by regulatory bodies or licensing authorities (e.g. building supervision, testing institutes such as TÜV or DEKRA, trade supervision authority, local government office) in the required number of copies. All required regulatory approvals shall be initiated by the Subcontractor to the extent that they relate to its performance.
- 3.1.3 Submission of the samples, suitability and quality certificates required under DIN standards, technical codes or contract according to the schedule or, if not specified in the schedule, in timely fashion so as to give Exyte at least 14 calendar days to make a decision and to order alternative products without any delays.
- Unless stated otherwise, at least the following information or proof shall be furnished for sampling purposes:
- place of installation;
 - catalogue item or sample;
 - construction target/actual description, i.e. quality and performance specifications pursuant to this order, comparing the quality and performance specifications of the samples;
 - confirmation of adherence to costs/deadlines or showing them in case of alter-native sampling;
 - at least three products shall be sampled for selection, meeting the contractual requirements.
- 3.1.4 Upon request by Exyte, the Subcontractor shall be required to participate in discussions with customers/end customers, to advise Exyte with regard to execution details and changes to works, and to provide support with authorities (operating permits, licences etc.). With Exyte’s prior consent, the Subcontractor shall not be entitled to enter into direct contact with the customer.
- 3.1.5 The Subcontractor shall perform its works in such a way that the subsequent trades can seamlessly continue to follow the Subcontractor’s performance. To such extent, the Subcontractor shall consult with the sub-tier contractors, providing sub-tier contractors with any information required to determine the interface and perform their works. The same shall apply to the interface with upstream and concurrent contractors. The required (coordination) services shall be performed by the Subcontractor and shall be included in price and scheduling calculations.
- The Subcontractor shall be required to continuously co-operate with Exyte. Such duty to co-operate shall include, without limitation, close and ongoing coordination with regard to specifying the contract and product-specific content of the works (also by coordination between Exyte and the customer). Such duty to co-operate shall include (i) the duty to provide information regarding the construction process and (ii) the obligation to work and perform the works economically. If the Subcontractor has allowed for buffer times which are not required, they shall profit to Exyte. In case of impediments, the Subcontractor shall be required to alter the construction process in order to meet the specified deadlines. The Subcontractor shall furthermore be re-quired not to take any disproportionate measures, e.g., to withhold works for the purpose of enforcing a relatively minor counterclaim.
- 3.1.6 Timely delivery and procurement of all permits required for performing its works and their use.
- 3.1.7 Exyte is entitled to request the Subcontractor, before Acceptance, to properly perform within a reasonable time period, insofar as the Subcontractor did not, in whole or in part, perform properly (ie, without defects) the contractual works. If the Subcontractor fails to comply with the request within the set time period and does not notify in writing that he will comply with the re-quest at a later point in time after expiry of the set time period, the Subcontractor is deemed to refuse seriously and definitively the defect-free execution of the considered works. If so, Exyte may, at Exyte’s discretionary choice, terminate the contract with regard to the considered works – whether or not the considered works are self-contained portions or autonomously functioning portions of the works -, or request damages instead of performance with regard to the considered



works. If Exyte opts for the payment of damages, Exyte is deemed having waived its right to request performance with regard to the considered works only.

3.1.8 The Subcontractor shall respect and apply the principle of efficiency. This includes that where Exyte instructs changed or additional works, the Subcontractor shall seek for alternative quota-tions – if the construction schedule so allows – prior to instructing the Subcontractor's subcontractors to carry out any changed or additional works. The Subcontractor may enter into agree-ments with the Subcontractor's subcontractors and suppliers regarding the remuneration of changed works instructed by Exyte only if Exyte is involved in the negotiations regarding the remuneration for changed works.

3.2 Technical standards (*Stand der Technik*) / statutory and regulatory provisions

The Subcontractor shall comply with the technical standards (*Stand der Technik*) and compliance with any additional statutory, regulatory, and other provisions, each at the time of acceptance.

3.3 Execution Documents

3.3.1 The Subcontractor shall be required prior to commencement of works, to check all drawings, documents and information from Exyte for completeness, compliance with the valid and applicable provisions as well as technical accuracy. Exyte shall be notified without delay in writing about any discrepancies. The Subcontractor may perform its services only on the basis of plans, drawings or documents approved by Exyte.

3.3.2 Plans and documents from Exyte required by the Subcontractor for performing its services shall be requested in due course so as to leave sufficient time to Exyte to provide them and to avoid any impediments of the construction process, by respecting at the least a period of 10 working days.

4. Winter construction, protective measures, environmental protection, Health & Safety Coordinator/ duty of care

4.1 The Subcontractor shall carry out winter construction measures if this is necessary to adhere to the contractual deadlines and the specified dates as long as there are no events of force majeure.

4.2 Until formal acceptance, the Subcontractor shall protect the works executed by it and the objects furnished to it for execution at its own expense against damage, soiling, theft or winter damage as well as unfavourable weather conditions.

4.3 Exyte shall provide the Health & Safety Coordinator. The Subcontractor shall comply with the Health & Safety Coordinator's specifications and comply with applicable safety, health and accident prevention regulations.

4.4 The Subcontractor has a duty of care for any risks resulting from its works.

4.5 Storage and work areas

The Subcontractor shall use the storage and work sites specifically assigned to it by Exyte only.

4.6 Sub-tier Contractors

4.6.1 The Subcontractor may subcontract parts of the works only upon prior written approval by Exyte to sub-tier contractors, service providers or suppliers (hereinafter jointly referred to as "Sub-tier Contractors"). The works must not be contracted completely to Sub-tier Contractors. The Subcontractor undertakes to prohibit any Sub-tier Contractors from using any further (sub-) sub-tier contractors without the prior written approval of Exyte.

4.6.2 Exyte shall be entitled to reject Sub-tier Contractors for good cause. Such good cause shall include, without limitation, cases where Exyte is aware of any improper performance by the Sub-tier Contractor on other projects, where the Sub-tier Contractor did not pay taxes, minimum wage and social security contributions or where the Sub-tier Contractor failed to comply with statutory obligations regarding moonlighting.

4.6.3 The Subcontractor's original qualified clearance certificate (*Unbedenklichkeitsbescheinigung*) by BG BAU and by the collecting agency according to Sec. 28e para. 3f SGB IV (German Social Insurance Code, book IV) shall be presented to Exyte. The Subcontractor shall also provide for a corresponding obligation for its Sub-tier Contractors.

4.7 Meeting Procedures

An authorised and competent representative of the Subcontractor shall be required to participate in the project meetings of Exyte's project management and jour fixe meetings at least once a week, or more frequently, if required.

4.8 Project Documentation

The Subcontractor shall comply with the documentation guideline provided by Exyte. Any documents and records which are usually provided

according to the Technical Standards (*Stand der Technik*) and the Contract Documents shall be provided to Exyte.

4.9 Project Communication

The Subcontractor shall use the electronic documentation and communication platform specified by Exyte, whereby the Subcontractor shall also require its Sub-tier Contractors to communicate using such documentation and communication platform

The Subcontractor shall not be entitled to be provided with hard copies of such documents.

4.10 Tidy Construction Site

4.10.1 The Subcontractor shall be required to collect any building rubble, packaging materials, waste or other contamination caused by it or by its Sub-tier Contractors and, un-less it is permitted to use the recycling centre at the Site, to clean or dispose of the above without delay at its own expense. The same shall also apply to any debris off the Site.

4.10.2 If the Subcontractor fails to meet said obligation without delay, Exyte shall be entitled to serve a notice setting a final time period for performance at the end of which Exyte may contract a third party for the removal of any rubble, waste, debris and any further pollution at the Subcontractor's expense. The Subcontractor shall bear the burden of proof that the building rubble and waste does not originate from the Subcontractor.

4.11 Company Signs

The Subcontractor may not advertise in any form at the construction site.

5. Remuneration

5.1 Exyte shall pay to the Subcontractor the Remuneration for all Works as agreed under the Agreement (in short: "**Net Contract Value**") plus VAT in the respective applicable statutory amount.

5.2 To the extent that sales tax according to Sec. 13 b UStG (German Sales Tax Act) shall be paid to the fiscal authorities, the Subcontractor shall not be entitled to have value-added tax paid out. In such case, the tax shall be paid directly by Exyte to the tax authority.

5.3 If a lump sum price is agreed, the lump sum shall be fixed and shall not change, even if the executed quantities change.

5.4 The stipulated payment shall cover all deliveries and works owed under this Agreement and its Annexes, which are necessary for the complete, functional, reliable, proper production, construction, execution, performance, delivery and commissioning in compliance with all permits, of the works owed by the Subcontractor. No indexation clauses for the costs of labour, material, devices, and supplies have been specified.

6. Invoicing

6.1 Unless provided for differently, the invoicing shall depend on the construction progress, based on the payment schedule. The payment schedule shall be exclusively performance-related, even if referencing the calendar.

6.2 The collection of local findings required for invoicing shall be carried out jointly. The sur-vey/review of the performance level shall be conducted prior to invoicing, together with Exyte's project management. The survey or verified quantity survey/performance survey confirmed by Exyte's project management shall be attached to the respective invoice in a separate annex.

6.3 Invoices must at least contain the following items:

- Order number, date, project number, system, system number, type of invoice (partial invoice, instalment invoice, final invoice);
- Type of invoiced works;
- Reference to the already invoiced and paid amounts, indicating invoice numbers and dates;
- The legally required invoice details (tax number, invoice number, performance period etc.);
- Information about the place of performance with regard to VAT and the person liable to pay the VAT, each with reference to the relevant text of Value Added Tax Act.

Moreover, invoices shall be structured according to the specifications by Exyte. Exyte may specify further requirements regarding invoicing and payment, which shall be complied with by the Subcontractor - if adequate and reasonable.

6.4 If separate orders based on hourly rates were issued, they shall be settled without delay and indicated separately, but in any event no later than four weeks from the performance of works. A copy of the time sheets signed by Exyte's project management shall be attached to the invoice.

6.5 The Subcontractor shall provide Exyte in due time prior to the due date of the first invoice with a valid exemption certificate by the respective tax office (Sec. 48b EStG (German Income Tax Act)). Exyte shall be notified without delay about any changes made by the tax office. In the absence



of a valid exemption certificate, the Subcontractor shall be required to notify Exyte without delay about the respective tax office and its bank details. The Subcontractor is aware that in the absence of the exemption certificate, Exyte will be required to pay a fixed tax deduction in the amount of 15% of the respective invoice amount to the respective tax office. In this case, the Subcontractor's claim to payment of monies shall be reduced by the amount payable to the tax office.

6.6 Partial invoices shall include a cumulative statement of all works rendered until invoicing and any partial invoices already issued shall be deducted, regardless of their payment by Exyte. In addition, any payments already made shall be shown.

6.7 Any agreed and paid advance payments shall be accounted for and deducted in the invoice in accordance with the specified agreements.

6.8 All invoices shall be issued in duplicate and one copy shall be presented for review by the body specified by Exyte. Exyte shall receive the original.

6.9 The final invoice shall be issued once all works have been completed and the formal acceptance has been granted, and shall be provided to Exyte in a verifiable form within the meaning of Sec. 650g para. 4 phr. 2 BGB, together with all necessary supporting documentation/information in accordance with Paragraphs 7.2 to 7.11. The individual invoice items shall be divided into main contract, addenda, and orders based on hourly rates. The final invoice shall again specify all instalment invoices and payments already made. Exyte reserves the right to specify additional requirements of the structure of instalment and final invoices if adequate and reasonable. Objections regarding the verifiable form of the invoices shall be raised by Exyte within 30 days.

7. Payments

7.1 Instalment payments

The instalments shall be due and payable pursuant to the payment schedule, as amended, under the following conditions:

- verifiable evidence of the level of the performed works;
- due invoicing in accordance with this Agreement;
- submission of an advance payment guarantee (if owed);
- submission of a security for timely contract performance, payment of all social and accident insurance premiums, and performance of the obligations under the Posted Workers Act and the Minimum Wages Act, contractual release, overpayment and termination;
- submission of evidence of insurance under this Agreement.

Payments shall be due 30 calendar days from receipt of a verifiable and due invoice.

7.2 Final payment

The final payment shall be due within 30 calendar days from receipt of the due and verifiable final invoice.

7.3 Sec. 641 para. 4 BGB (interest payable from due date) is herewith excluded.

7.4 If the Subcontractor's works are defective, Exyte may withhold up to twice the amount of the expected defect remedial costs, unless a higher amount is can be withheld in accordance with Sec. 641 para. 3 BGB.

7.5 Down/advance payment

Unless stated otherwise, down or advance payments shall be offset against the initial works and hence with the initial instalment payment(s). The advance payment may be claimed back and/or offset if the contractually owed -works were not performed at all or not performed properly.

7.6 Upon payment of the invoice, any claims on the part of Subcontractor for work completed up to the respective invoicing date shall be paid, unless the Subcontractor has explicitly retained the right to charge for additional works.

7.7 The payment of invoices by Exyte without reserves shall not be considered acceptance, partial acceptance, or acknowledgement. Invoice verifications and payments may be adjusted subsequently.

7.8 If and to the extent that Exyte fails to pay the amount due to the Subcontractor under this Sub-contract, the default interest rate shall be 4% p.a.

8. Changes to Works

8.1 Right to give instructions

Exyte shall be entitled at any time to instruct changes to the Works and/or additional Works or other measures such as acceleration ("Change") via written instructions ("Change Orders"). Change Orders must be issued in text form to be valid.

8.2 Requirements of the Subcontractor's claim to payment AN

The Subcontractor is required to notify to Exyte, prior to carrying out any changed and/or additional works, its claim to special payment and delays resulting from the execution of the changed and/or additional works. Such announcement shall be made without delay.

The timely announcement of additional costs shall be a prerequisite for any claim on the part of the Subcontractor for additional payment. The timely announcement shall not be a requirement for a claim only if a danger is imminent, Exyte upon instructing a Change assumed that it would be made against payment or that it had to assume so or if the Subcontractor has failed to make the relevant announcement without any fault on its part.

8.3 Supplementary quote

In case of Change Orders or where the Subcontractor notifies to Exyte that, from his point of view, Changes have to be carried out, the Subcontractor shall provide Exyte - without delay and no later than five calendar days after receiving the Change Order or sending his notification (that, from his point of view, Changes are required) - with an estimate of the expenses and the additional cost and, within further five calendar days at the latest, with a written determination of the expenses and additional cost in verifiable form ("Supplementary quote"). Therein the Subcontractor shall explain whether and to what extent there are differences between the changed works and the initial works. Where the Subcontractor refers to a written Change Order, such Change Order shall be added to the determination of the expenses and additional cost.

If the complexity of the Changes requested by Exyte does not allow for submitting a satisfactory determination of the expenses and additional cost within such period of time, the Subcontractor shall indicate this without delay and shall in any case submit an estimate of the expenses and the additional cost in as much detail as possible. In such case, the determination of the expenses and additional cost shall be provided to Exyte without delay. If Exyte fails to respond to a quote by the Subcontractor within 30 calendar days from receipt of the determination of the expenses and additional cost, this shall be deemed a rejection of the quote. The de-termination of the expenses and additional cost shall be prepared at no cost for Exyte.

8.4 Execution of Changes to Works

Changes to Works may be acknowledged if:

- (a) Exyte and the Subcontractor have first reached a written agreement regarding type, scope, and costs; or
- (b) Exyte has instructed the Subcontractor to execute the works in spite of the absence of a payment agreement. Such instruction must also be made in text form.

If neither (a) nor (b) applies, the Subcontractor shall not be entitled to payment for additional or changed works.

8.5 Effects of Changes to Works on the schedule

If Changes to Works have any direct or indirect effect on the construction process, the Subcontractor shall notify Exyte without delay, and in any event upon submission of the Supplementary quote, or if such is not yet available, no later than upon commencement of the Change to Works. Such notice must be given in writing and indicate the expected duration of the delay as precisely as possible. The Parties shall then agree if and to what extent the construction process changes.

In the absence of any advice compliant to procedure and deadline requirements, Exyte may rely on Changes to Works not causing any delays in time; in such case, the contractually specified execution period shall remain unchanged.

9. Work at hourly rates

If Work at hourly rates are agreed or instructed, the Subcontractor shall submit daily time sheets for work at hourly rates in duplicate to Exyte's project management and have them confirmed. Unless stipulated otherwise, such time sheets must also state the site, date, names, occupation, wage or salary group of employees, hours worked per employee, indicating breaks, type of work and device parameters; in case of haul-age services, also the type of vehicle and payload.

Failure by Exyte to return the time sheets in due time cannot result in an acknowledgement of the content of the time sheets.

10. Deadlines and dates

10.1 The schedule, the deadlines and dates shall apply as agreed (eg, in the Minutes of Negotiation).

10.2 Based on the schedule, the Subcontractor shall, within 21 calendar days from the last signature of the Agreement, prepare a detailed schedule. The detailed schedule shall meet the requirements of the schedule pursuant to this Agreement. It shall furthermore be required that:



- all stated contractual dates/deadlines are taken into account and can be adhered to;
- all essential dates and times at which Exyte is required to make decisions and/or to cooperate, are indicated; and
- all planning lead-times are included.

The Detailed Schedule shall constitute part of the Agreement, once Exyte has reviewed and accepted it in writing. The individual deadlines and dates specified therein are contractual and binding. If the deadlines or dates specified in the Detailed Schedule are exceeded due to Subcontractor's fault or negligence, the Subcontractor shall be in delay upon reminder.

10.3 The Detailed Schedule shall be regularly updated and submitted to Exyte for approval. Any claims on the part of Exyte due to exceeding or failure to adhere to the specified binding deadlines, including without limitation, the Completion Date are reserved. Approval of the updated Detailed Schedule shall not constitute consent, approval or acknowledgement by Exyte with regard to postponement or any other claims on the part of the Subcontractor.

10.4 Hindrances

10.4.1 If the Subcontractor considers that he is hindered in the performance of its service(s), or in case of any impact on the construction process (e.g. delays) due to any other reasons, the Subcontractor shall notify Exyte in writing without delay, justify the hindrance and take note in the construction diary. The notice shall include suggestions as how to compensate threatening or already occurred delays and as how to mitigate their consequences.

Notices of delay shall be made in writing even if the hindrance is obvious. The Subcontractor shall furthermore notify Exyte without delay when a notified hindrance ceases or ends.

10.4.2 Weather conditions shall constitute an event of force majeure only if they were not foreseeable at the time of submitting the quote. In any event, the Subcontractor shall take into account weather conditions which have occurred at the site within the last ten years.

10.4.3 If it becomes likely that the deadlines specified in the schedule cannot be met, Exyte shall have the right to instruct modifications regarding the planning process and/or execution of the construction works, in particular acceleration. The Subcontractor shall carry out the instructions; section 8 hereof applies as a reference to the legal conditions (*Rechtsgrundverweisung*) to the extent the Subcontractor is not responsible for the hindrance. To the extent the Subcontractor is responsible for the hindrance, the Subcontractor shall take all necessary measures to mitigate any existing delay and to avoid possible future delays. If the required expediting measures are not implemented within a reasonable period of time, Exyte shall be entitled to contract third parties for the implementation of such measures or for the assistance in implementing such measures.

11. Liquidated damages for delay

11.1 Liquidated damages incurred as a result of exceeding the deadlines stated in this Agreement shall be taken into account for the calculation of liquidated damages for exceeding subsequent deadlines or the Completion Date; i.e., liquidated damages for different deadlines shall not be added up. Liquidated damages for delay regarding a deadline shall be cancelled if the Subcontractor subsequently mitigates the delay and meets the subsequent deadlines or the Completion Date.

11.2 Exyte shall be entitled to claim liquidated damages even after acceptance, until the final payment or a statement equivalent to a final payment. Any substitute performance without reserve or any denial of acceptance does not exclude liquidated damages. Even in such cases, a reservation may be declared until the final payment or statement equivalent to a final payment.

11.3 A claim to damages shall remain unaffected. In such case, the liquidated damages shall constitute the minimum amount of the claim to damages.

11.4 Liquidated damages, once incurred, are not cancelled simply because new deadlines are subsequently agreed upon.

11.5 If the schedule changes for reasons the Subcontractor is not responsible for and if it is therefore not possible to meet the specified delivery dates, Exyte's entitlement to liquidated damages does not cease. The Parties shall agree upon new delivery dates (duty to co-operate). The provisions regarding liquidated damages shall apply accordingly to the new delivery dates, unless liquidated damages are explicitly excluded for the new delivery dates or unless applying liquidated damages would be unfair for the Subcontractor given the particular circumstances of the individual case.

If the Parties do not explicitly agree on new delivery dates, the dates initially specified are extended by the additional delivery period that is required due to reasons the Subcontractor is not responsible for, it being specified that for the calculation of said period, it shall be given due regard to the Subcontractor making best efforts to facilitate continuation and/or acceleration of the works (duty to co-operate). The provisions

regarding liquidated damages shall apply accordingly to these extended dates, unless applying liquidated damages would be unfair for the Subcontractor given the particular circumstances of the individual case.

12. Acceptance/Transfer of Title

12.1 Acceptance

12.1.1 Acceptance can be done formally only and requires the establishment of an acceptance protocol in two copies. Acceptance shall not be replaced by use or commissioning or by the Subcontractor's completion notification. Sec. 640 para. 2 BGB only applies if the Subcontractor requests acceptance from Exyte and - simultaneously - informs Exyte of the consequences of (i) not granting acceptance or (ii) refusing acceptance without indicating any defects; the information must be in text form.

12.1.2 The Subcontractor shall request acceptance in writing, no less than 14 calendar days in advance.

12.1.3 Exyte shall be entitled to request technical checks of individual parts of the works package. The Subcontractor shall remedy any defects detected upon a technical check within a reasonable period of time set by Exyte. If defects are detected during a technical test, Exyte shall be entitled to also charge the Subcontractor for the costs incurred by Exyte for the additional technical check. Technical checks shall neither constitute partial acceptance nor shall it have the effect of acknowledging the works to be defect free or in compliance with the Agreement. Similarly, the review or approval of drawings, product data, samples, or materials by Exyte prior to acceptance shall not constitute acknowledgement in respect of freedom from defect or recognition as in compliance with the Agreement.

12.1.4 Any defects detected upon acceptance shall be remedied and any outstanding works detected upon acceptance shall be performed by the Subcontractor without delay, and in any event by the deadlines specified in the acceptance certificate. Any and all works as well as defect remedial work rendered after (partial) acceptance shall require further formal acceptance (subsequent acceptance), which the Subcontractor shall explicitly request in writing. The deadline for any subsequent acceptance shall in any case be twelve working days, unless Exyte sets or accepts shorter periods. The Subcontractor shall bear any costs incurred by Exyte for any subsequent acceptance.

12.1.5 Exyte may refuse acceptance for material defects. Exyte may not refuse acceptance for minor defects or minor outstanding residual works. However, acceptance may be refused because of a large number of minor defects or a large number of minor outstanding residual works if they are in sum equivalent to a material defect. Acceptance may furthermore be refused if the provided documentation is defective.

If Exyte refuses to grant acceptance, the Subcontractor may request that a joint determination of the status quo of the works be carried out (sec. 650g para. 1 BGB). The request must be served in writing at least two weeks prior to the envisaged appointment. For factual reasons, the appointment may be put off by Exyte.

If Exyte refuses to participate in the joint termination without any reason, the Subcontractor is entitled to have the performance status determined by a third party expert. The Subcontractor shall enable Exyte to participate in the expert's visit. Exyte shall be informed in due course of the appointment of the expert's visit.

12.2 Transfer of title

Title to all works by the Subcontractor shall be transferred according to statutory provisions.

The Subcontractor shall be required to fully pay any existing retentions of title on the part of its Sub-tier Contractors or suppliers prior to delivery to the construction area. Upon request, it shall provide Exyte with relevant evidence.

13. Warranty Claims, Limitation

13.1 Unless otherwise agreed, the period of limitation for warranty claims shall commence upon overall acceptance of all of the Subcontractor's works and ends after 5 years and 3 months (regular limitation period).

13.2 The Subcontractor shall bear any and all costs of defect remedy, in particular also any incurred transport and ancillary costs (such as installation and removal costs). The Subcontractor shall reimburse Exyte for the costs for the necessary cooperation in defect remedy as well as for measures serving the purpose of keeping any impediment to the customer to a minimum.

13.3 The remedy of defects shall be conducted, taking into account the operational needs of the customer, user, operator or third party. If required, this shall be outside of normal working hours and, if required, at a later point in time. To the extent possible, the Subcontractor shall provide at its own expense transitional solutions until the final remedy of defects, ensuring the unrestricted and risk-free use of the works until the defect has been remedied (damage reduction).

13.4 If Exyte reports a defect prior to expiry of the limitation period, requesting remedy, the Subcontractor shall be required to remedy the defect even



after expiry of the limitation period. The claim to remedy in such case shall lapse not before two years, starting from receipt of the written defect notification, and in no event prior to expiry of the limitation period applicable to the considered defect specified in this Agreement.

13.5 The limitation period for warranty claims shall be suspended upon written notice of defect by Exyte. Suspension shall commence upon reception of the notice of defect by the Subcontractor. Suspension shall end, once the defect remedial measure has been accepted by Exyte, acceptance of defect remedial works is refused by Exyte without good cause or the Subcontractor finally and seriously refuses to remedy the defect.

13.6 To the extent that sales law applies, Exyte shall within a reasonable period of time examine the delivered goods, materials, and components with regard to obvious deviations in terms of quantity and quality. Obvious defects may be notified within three working days from the end of the reasonable inspection period. Any defects, which cannot easily be detected, may be notified within 14 days from detection. Payment of the goods or signing bills of delivery shall not constitute acceptance as in compliance with the Agreement, if it is stated that the goods are free from defects. No further notification and investigation obligations shall apply to Exyte.

If the requirements of Sec. 280 para. 3 and Sec. 281 BGB are met, Exyte may request an advance according to Sec. 637 para. 3 BGB.

13.7 With regards to the defect remedial claims, the contractually specified warranty period shall start again upon remedying of a defect.

13.8 The Subcontractor shall be liable for defective deliveries by its suppliers, unless the defective delivery is based on specifications by Exyte and the Subcontractor has met its obligation to report concerns. The Subcontractor's suppliers shall be vicarious agents of the Subcontractor.

13.9 In addition to the foregoing, warranty rights shall be governed by VOB/B (to the extent agreed) and the BGB. Statutory rescission rights apply in accordance with sec. 636 BGB notwithstanding the agreed application of VOB/B.

14. Liability

14.1 The Parties' liability shall be based on the statutory provisions, unless stated otherwise in this Agreement.

14.2 If Exyte is held liable by third parties (including social insurance carriers and Employer's Liability Insurance Associations) due to a violation of statutory or contractual provisions for which the Subcontractor is responsible, the Subcontractor shall indemnify Exyte for such claims upon first request. However, this shall apply only if Exyte is directly liable towards such third parties.

14.3 The Subcontractor shall be responsible and liable without any restrictions for its actions and omissions, compliance with any and all statutory and regulatory provisions and for actions or omissions by its personnel, agents, suppliers, Sub-tier Contractors or any other agents (including vicarious agents). Such liability shall in particular include any damage caused by the Sub-contractor or by its agents or assistants.

The Subcontractor shall indemnify Exyte for any third-party damage claims in connection with the project, which the Subcontractor or any third parties contracted by the Subcontractor caused.

14.4 The Subcontractor may not rely on the defence that it applied due care when selecting and supervising its assistants.

15. Insurance

15.1 Unless agreed to the contrary, the Subcontractor shall be required to take out at its own expense contractor's all risk/assembly insurance coverage (CAR/EAR) for its construction/project activities and to provide Exyte within 14 days from contract conclusion by way of an insurance certificate with evidence of such coverage for the duration of its project activities. Exyte shall be notified without delay about early termination/early cancellation of the CAR/EAR insurance.

15.2 The Subcontractor shall be required to take out at its own expense business liability insurance adequate for the project in terms of scope and amount of coverage, including the risks of extended product liability, environmental liability, and environmental damage. The minimum coverage amounts in the event of damage shall be as follows: The annual aggregate for such minimum coverage amounts shall be deemed maximized twice.

EUR 5.0 million for personal injury and
EUR 5.0 million for property damage, and
EUR 2.5 million for other damage, including without limitation, financial loss resulting from property damage, activity/processing damage, environmental damage and for extended product liability damage.

The Subcontractor shall be required to maintain such liability insurance until the end of the limitation period for warranty claims and to provide Exyte within 14 days from contract conclusion with evidence of such cover by way of an insurance certificate.

15.3 If the Subcontractor performs planning services, the Subcontractor shall be required to take out the business liability insurance described in clause 15.2 and the planning liability insurance. Moreover, the provisions of clause 15.2 shall apply accordingly.

15.4 If the Subcontractor, despite a reasonable additional time to do so, fails to provide evidence of adequate insurance coverage pursuant to 15.1., 15.2 and 15.3, Exyte shall be entitled to take out corresponding insurance at the Subcontractor's expense or terminate this Agreement extraordinarily in accordance with clause 21.2.1.7. The costs incurred by Exyte for taking out the insurance in lieu of the Subcontractor are deducted from the next due payments.

15.5 The Subcontractor undertakes to immediately perform any of its duties as insured party under such insurance contracts, including without limitation, notification obligations.

15.6 The Subcontractor's insurance contracts shall precede the insurance contracts of Exyte ("primary"). The Subcontractor's insurance contracts shall exclude any recourse against Exyte.

16. Security

16.1 Advance Payment Security

In the event of any agreement of down or advance payments (hereinafter referred to as "**Advance Payment**") by Exyte, the Subcontractor shall provide the following security:

The Subcontractor shall charge the Advance Payment in accordance with the provisions of this Agreement. Prior to the due date of such invoice, the Subcontractor shall submit an advance payment guarantee by a credit institution or credit insurer from within the European Community, Switzerland or the U.S.A., each with seat in Germany, in the amount of the Advance Payment (net) with the following configuration/contents:

- a) Scope of security, collateral purpose: The guarantee shall secure repayment claims by Exyte under the effected Advance Payment to the Subcontractor until repayment of the Advance Payment by way of offsetting against due interest.
- b) Such guarantee shall be irrevocable, unlimited, absolute, unconditional and not upon first request, and shall expire upon return of the guarantee form.
- c) The guarantee shall be issued waiving the defence of failure to pursue remedies (Sec. 771 BGB).
- d) Exemption by way of depositing the guarantee amount shall be excluded in the guarantee, any claims under the guarantee may also be made regarding the payment of money. The guarantor shall waive the defence of set-off, unless the counterclaim is undisputed or final;
- e) In commercial transactions, venue for any disputes arising under the guarantee shall be Stuttgart.
- f) The laws of the Federal Republic of Germany shall apply, to the exclusion of UN Sales Law.

The advance payment guarantee shall be returned to the Sub-contractor upon offsetting or if drawn upon Exyte's irrevocable receipt of the repayment of the Advance Payment made to the Subcontractor.

16.2 Security for performance and associated rights

To secure Exyte's rights with regard to the contractual and timely execution of the works, termination, Subcontractor's failure to make payments of overall social insurance contributions or accident insurance premiums, compliance with regulations under the Posted Workers Act and the Minimum Wages Act, as well as contractual indemnification by the Subcontractor, the Sub-contractor shall provide security (security for timely performance of the Agreement, overpayment, termination, payment of overall social insurance contributions or accident insurance premiums as well as fulfilment of obligations under the Posted Workers Act and the Minimum Wages Act, contractual indemnification) in the agreed amount. Such security shall cover fulfilment of the Subcontractor's following obligations under this Agreement and the following claims of Exyte:

- contractual execution of all works by the Subcontractor, i.e. claims by Exyte to delivery, fulfilment of work, warranty claims, including claims to cost advances and claims to reimbursement of the costs of substitute work, claims to damages as well as any other claims associated with the execution of the Agreement in accordance with Sec. 241, 280 BGB and termination-related claims prior to and until including the contractual acceptance (including the defects and residual works reserved upon acceptance) against the Subcontractor;
- timely execution of the works by the Subcontractor, i.e., claims by Exyte due to delay, default and contractual penalty;
- claims from the invoicing of contractual works, i.e., repayment claims by Exyte due to overpayments, including interest;
- recourse, compensation, indemnification claims and claims to damages in cases of liability on the part of Exyte for third-party claims against the Subcontractor or its additional Sub-tier Contractors and employees working in the sub-contractor chain due to the failure to pay overall social insurance contributions (Sec. 28e,



para. 3a, 3e SGB IV), accident insurance premiums, (Sec. 150, para. SGB VII), due to claims under the Posted Workers Act (Sec. 14 AEntG) and/or under the Minimum Wages Act (Sec. 13 MiLoG);

- recourse, compensation, indemnification claims and claims to damages on the part of Exyte due to third-party claims in connection with the rendering of works by the Sub-contractor, to the extent that the Subcontractor is required to indemnify Exyte under this Agreement;
- Changes to Work within the meaning of this Agreement shall be covered by the security until such Changes increase the Net Contract Value by more than 10%;
- Changes to Work which do not change the Net Contract Value shall also be covered by the security;;
- Changes to Work within the meaning of clause 9 of this Agreement, which result in a reduction of the Net Contract Value according to 6.1 of this Agreement, shall always be covered by the security;
- Construction Time Orders within the meaning of clause 11.3.6 of the Subcontract Agreement are included in the security until the Net Contract Value set out in clause 6.1 is increased up to 10%.

The Subcontractor shall furnish such security within 14 days from signing this Agreement by presenting a guarantee (guarantee for timely contract performance, payment of all social and accident insurance premiums, and performance of the obligations under the Posted Workers Act and the Minimum Wages Act, contractual release, overpayment and termination) by a credit institution or credit insurer in the European Community, Switzerland or the U.S.A., having a seat in Germany, with the following configuration/contents:

- a) Scope of security, collateral purpose: As stated above in this Agreement, in clause 18.2, sentence 1 and sentence 2 with bullet points.
- b) Such guarantee shall be irrevocable, unlimited, absolute, unconditional and not upon first request, and shall expire upon return of the guarantee form;
- c) The guarantee shall be issued waiving the defence of failure to pursue remedies (Sec. 771 BGB);
- d) Exemption by way of depositing the guarantee amount shall be excluded in the guarantee, any claims under the guarantee may also be made regarding the payment of money. The guarantor shall waive the defence of set-off, unless the counterclaim is undisputed or final;
- e) To the extent that it has not been utilised, the guarantee shall be returned without de-lay following contractual acceptance, unless the claims of Exyte covered by the col-lateral purpose which are not covered by the security for warranty claims pursuant to clause 18.3 of this Agreement, have not yet been satisfied. In this case, Exyte may retain part of the security corresponding to such secured claims, whereby any withholdings made due to defects or residual works shall be taken into account to avoid any duplicate security;
- f) In commercial transactions, venue for any disputes arising under the guarantee shall be Stuttgart;
- g) The laws of the Federal Republic of Germany shall apply, to the exclusion of UN Sales Law.

If the Subcontractor fails to furnish the guarantee in due time, in case of default on the part of the Subcontractor, Exyte shall have the rights according to Sec. 281 BGB, i.e. Exyte may set an adequate deadline for the Subcontractor to furnish the guarantee and upon unsuccessful expiry shall demand damages instead of performance. In the alternative, Exyte shall be entitled - maintaining the Agreement - to retain payments until the guarantee amount is reached.

If Changes to Work or Construction Time Orders result in an increase in the Net Contract Value by more than 10%, the Subcontractor shall be required to increase the specified security accordingly, unless Exyte explicitly dispenses with this in the individual case. Until the increased security (security for the increased amount) or an additional guarantee is furnished, the security may be increased by way of withholding a corresponding cash amount from the instalment invoices.

The unused withheld amount shall be paid out in accordance with the above provision in clause 16.2 e) of this Agreement.

16.3 Security for warranty rights

In order to secure fulfilment of Exyte's warranty rights, damages and any and all other associated rights according to Sec. 241, 280 BGB, the Subcontractor shall, upon contractual acceptance, provide security (security for warranty defects) in the agreed amount, including the Changes to Work by the Subcontractor acc. If the objectively correct final net invoice amount has yet to be determined by mutual agreement or by final judgement, the final invoice amount requested from the Subcontractor shall be decisive; if the final invoice has not been issued, the Net Contract Value according to clause 6.1 of this Agreement plus agreed variations - without any construction time-related claims - minus agreed work reductions, shall be taken as a basis. Such security shall cover fulfilment of the Subcontractor's following obligations under this Agreement and the following claims of Exyte:

- fulfilment of all warranty claims by the Subcontractor, including damages as well as all associated claims according to Sec. 241, 280 BGB following contractual acceptance of the Subcontract Works by Exyte. Only claims due to defects, damage or breach of duty which are notified for the first time after contractual acceptance shall be covered;
- the security shall also cover Changes to Work.

The Subcontractor shall furnish such security following contractual acceptance by presenting a guarantee (guarantee for warranty claims) by a credit institution or credit insurer in the European Community, Switzerland or in the U.S.A., having a seat in Germany, with the following configuration/contents:

- a) Scope of security, collateral purpose: As stated above in this Agreement, in clause 16.1, sentence 1 and 3 with bullet points.
- b) Such guarantee shall be irrevocable, unlimited, absolute, unconditional and not upon first request, and shall expire upon return of the guarantee form;
- c) The guarantee shall be issued waiving the defence of failure to pursue remedies (Sec. 771 BGB);
- d) Exemption by way of depositing the guarantee amount shall be excluded in the guarantee, any claims under the guarantee may also be made regarding the payment of money. The guarantor shall waive the defence of set-off, unless the counterclaim is undisputed or final;
- e) Any claims under the guarantee shall lapse 5 years and 6 months from the contractual acceptance of the contracted works. The limitation period of the main obligation shall not be affected by the above;
- f) Upon expiry of the specified limitation period for warranty claims, the guarantee shall be returned to the extent that it has not yet been utilised or drawn, taking into account any facts causing suspension or interruption. To this extent, the Subcontractor shall have a claim to (partial) release/reduction of the guarantee, except in case of enforce-able secured claims by Exyte;
- g) In commercial transactions, venue for any disputes arising under the guarantee shall be Stuttgart;
- h) The laws of the Federal Republic of Germany shall apply, to the exclusion of conflict of laws and to the exclusion of UN Sales Law.

Until delivery of the guarantee, a corresponding cash retention shall be specified in the amount of the security collateral, which may be redeemed by the guarantee. In the alternative, upon the Subcontractor's request, the security may be furnished by depositing money in the form that the amount is paid into a blocked account with a bank yet to be agreed, which the Parties may operate only jointly ("joint" account). The unused withheld or deposited amount shall be paid out upon expiry of the specified limitation periods for warranty claims - taking into account any facts causing suspension or interruption. To such extent, the Subcontractor shall have a claim to (partial) disbursement, unless there are any claims on the part of Exyte, which have to be secured thereafter.

16.4 Exyte shall be entitled to assign the above-specified securities to its client or to the owner or financing institutions.

16.5 The guarantees may be drafted using the suggested wording attached to this Subcontract Agreement or provided to the Subcontractor. This is not mandatory; other wordings may also be chosen. To the extent that the suggested wording attached to this Agreement differs from the content of the required securities specified herein, the specifications in this Agreement shall prevail. If the issued guarantees differ from the content specified in this Agreement, were accepted by Exyte and not objected to by Exyte within a period of 4 weeks, the furnished guarantees shall be deemed agreed and the security purpose agreement shall be amended accordingly.

16.6 The claim according to Sec. 650e BGB may be asserted by the Subcontractor only unless the Subcontractor has received a written, irrevocable and unlimited guarantee from Exyte within 12 banking days from receipt of a verifiable request for security in the amount of 110% of its payment claim, which is capable of a priority notice according to Sec. 650e BGB, as well as any expenses of a credit institution authorised to conduct business in Germany, which are not included in the payment. Sec. 650f para. 3 BGB shall apply accordingly.

17. Confidentiality

The Subcontractor shall be obliged to keep confidential and not to disclose to third parties any and all information in connection with this Agreement, received from Exyte or from third parties. In addition, to the extent attached to or referenced in this Agreement, the Parties shall be bound by the non-disclosure agreement. The Subcontractor shall be required to enter into equivalent non-disclosure agreements; with its employees and Sub-tier Contractors.

18. Data Protection/Compliance

18.1 The Parties mutually agree that the respective other party may process and store personal data using data processing systems for the purpose of property management and order processing.

18.2 The group policies of Exyte require strict compliance with applicable law and the respective business standards. Exyte shall conduct its business in



compliance with the highest moral and ethical principles. In particular, a zero-tolerance policy relating to corruption applies. Exyte shall apply the same standards to the selection of its business partners and shall not tolerate any un-lawful, immoral or unethical conduct by its business partners. Now therefore, the Parties have agreed as follows:

- 18.2.1 Corruption: The Subcontractor undertakes not to take any actions which might be considered violations of (i) the United States Foreign Corrupt Practices Act, (ii) the U.K. Bribery Act, (iii) Sec. 299 et seqq. and Sec. 330 et seqq. of the German Criminal Code (StGB), (iv) the United Nations Convention against Corruption (UNCAC), (v) the OECD Convention on Combating Bribery of Foreign Public Officials, or similar laws and regulations regarding corruption and bribery. The Subcontractor shall not, either by itself or through third parties, either covertly or openly, indirectly or directly promise, offer, grant or otherwise provide money or benefits in kind to government officials and their assistants, company representatives, business partners or any other third parties, which may be suitable to influence the actions and decisions of said persons, to urge them to breach their duties or exercise their influence over third parties, in order to attain business or benefits for itself or for third parties in this way.
- 18.2.2 Compliance with applicable law: The Subcontractor shall at all times comply with applicable law. If the Subcontractor is uncertain about contents and limits in the context of the contractual relationship, it shall consult Exyte before taking any further action.
- 18.2.3 Code of Conduct: The Subcontractor undertakes to observe and comply with the Code of Conduct applicable to all Exyte companies. The Code of Conduct is available at: <https://www.exyte.net/en/Exyte/code-of-conduct>
- 18.2.4 Information obligations, indemnification: The Subcontractor shall notify Exyte without delay if it becomes aware of any actual or potential breach of the above provisions regarding the contractual relationship with Exyte or an affiliate. The Subcontractor shall take all required measures to avoid any breach of the above provisions. If the Subcontractor nonetheless is in breach of any of the above obligations, it shall indemnify Exyte, including its legal representatives, workers and employees for any and all claims, damage and costs (including the costs of litigation) which authorities or third party may assert against Exyte because of the breach.

19. Property Rights, IP Rights, and Third-party Rights

The Subcontractor shall be required to render its works free from any third-party rights. If claims are asserted against Exyte because of infringements of industrial property rights or copyrights relating to the Subject of Agreement, the Subcontractor shall indemnify Exyte for such claims upon first demand.

In such case, the Subcontractor shall be required to facilitate Exyte's lawful use of the Works, and machines and facilities covered by the Agreement by obtaining rights of use or by way of licence payments to the rights holder. If it is not possible to obtain a licence, the Subcontractor shall be required upon request by Exyte to exchange the machines, facilities and components or to modify the Works in such a way that no property rights are infringed.

If the aforementioned measures are impossible, Exyte shall have the right to rescind this Agreement or to terminate the Agreement partially or totally. The Subcontractor is then required to repair any prejudice suffered thereof by Exyte.

The remuneration agreed encompasses any and all transfers of all rights to use, modify or exploit.

20. Assignment, Off-set, Retention

- 20.1 By way of security, the Subcontractor hereby assigns any and all warranty claims and rights as well as overpayment claims against its Sub-tier Contractors, suppliers and service providers to Exyte, who accepts such assignment. Until waived by Exyte, the Subcontractor shall be required to secure and exercise such claims and rights.
- 20.2 The assignment of rights and claims of the Subcontractor against Exyte shall be excluded. However, Exyte shall be entitled to assign performance and warranty claims, including securities of the Subcontractor to third parties, including without limitation, to the banks financing the project (if applicable) and the customer.
- 20.3 22.3 The Subcontractor shall not be entitled to offset any claims on the part of Exyte against counterclaims, unless the respective counterclaim or its respective right of retention is undisputed or final.

21. Termination

21.1 Termination for convenience

- 21.1.1 Exyte shall be entitled to terminate this Agreement at any time as a whole or in part.
- 23.1.2 The Subcontractor shall be compensated for any works duly rendered until such time to the extent that verifiable proof is provided for them and they are invoiced. Any works not rendered shall be billed by the Subcontractor in accordance with Sec. 648 sentence 2 BGB, whereby the saved expenses shall be taken into account based on actual savings if exceeding the

calculated estimates. Sec. 648 sentence 3 BGB shall apply subject to the proviso that it shall be assumed that the contractor shall be due 2 out of 100 of the specified payment attributable to the not yet completed part of the works. The same shall apply in the event of partial termination of the Agreement by Exyte.

21.2 Extraordinary termination

Both Parties shall be entitled to terminate the Agreement for good cause in accordance with Sec. 648a BGB. The termination notice must be served in writing (sec. 650h BGB).

- 21.2.1 Such good cause within the meaning of sec. 648a para. 1 BGB on the part of Exyte shall exist without limitation:
- 21.2.1.1 if the Subcontractor discontinues payments, is over-indebted or insolvent, or if the Subcontractor's net assets, financial position and results of operations deteriorate significantly with the effect that it can no longer be assumed that the Agreement will be duly fulfilled;
- 21.2.1.2 if the Subcontractor offers, promises or grants benefits to persons involved in executing the Agreement on the part of Exyte, or offers, promises or grants such benefits to their related persons or is otherwise in breach of the secrecy or data protection/compliance obligations;
- 21.2.1.3 if the Subcontractor's right to compensation for works against Exyte for rendered works is seized or pledged as a whole or in part;
- 21.2.1.4 if the Subcontractor interrupts its works without justification and fails to resume even after reminder and setting a deadline by Exyte;
- 21.2.1.5 if the Subcontractor is in delay with works beyond a contractual deadline or a date in the schedule or the Detailed Schedule provided by the Subcontractor, and if Exyte has set a reasonable deadline to the Subcontractor, including a threat of termination, without success;
- 21.2.1.6 if the Subcontractor performs its works with major defects and Exyte has requested remedy of such defects, and if the Subcontractor, in spite of the set deadline and threat of termination, has failed to remedy such defects by the specified deadline, whereby the right of termination shall exist already before acceptance. The above shall not affect Sec. 634 BGB and clause 3.1.7 of this Agreement;
- 21.2.1.7 in case of reasonable suspicion of misconduct on the part of the Subcontractor pursuant to the German Act against Moonlighting (SchwarzArbG). Reasonable suspicion shall mean in particular that the Subcontractor has failed to meet its obligations to furnish information and to render accounts within 14 days from receipt of a written request by Exyte; or
- 21.2.1.8 in case the Subcontractor fails to perform an essential obligation of this Agreement despite an additional period of time set to do so (eg, the obligation set out in clause 15 related to taking out adequate insurance policies).
- 21.2.2 In case of termination for good cause, Exyte shall be entitled to have any uncompleted parts of the works executed by a third party at the Subcontractor's expense. Any claims to further damages shall not be affected by the above.
- 21.2.3 To continue works, Exyte may utilise machinery, scaffolding, equipment available at the construction site as well as provided supplies and components against reasonable compensation.

21.3 Termination by the Subcontractor

- 21.3.1 The Subcontractor may terminate the Agreement due to missing payment only if Exyte is in delay with a justified payment of at least 20% of the contract value for a period of twelve weeks and if the Subcontractor without success has set a reasonable deadline for Exyte, including the threat of termination.
- 21.3.2 In such case, the previous services shall be invoiced in accordance with this Agreement. Moreover, the Subcontractor shall be entitled to reasonable compensation in accordance with Sec. 642 BGB; any additional claims on the part of the Subcontractor shall be excluded.
- 21.4 Partial terminations by Exyte shall be permitted both in case of ordinary termination and in case of termination for good cause, provided that the terminated works can be distinguished from the remaining works, even if the terminated works do not constitute a self-contained part of the contractual works. A distinguishable work within this sense is a work that, according to customary usage, can be performed and invoiced separately (with regard to the place, the matter and the distance of said performance) from other works.
- 21.5 In the event of termination, the Subcontractor shall complete and document its works as soon as possible, so as to allow for the works to be transferred to and continued by a third party without any unreasonable difficulties.
- 21.6 In case of termination, the Subcontractor shall hand over any and all work documents and contact data, independently of the existence of IP rights. Unless the documents are furnished in due time, Exyte shall be entitled to retain the remaining payment in the amount of the costs of the substitute performance. This shall in particular also relate to any planning, which is available only in parts, as working document or in draft or other form. The assertion of a right of retention or other right to refuse performance by the Subcontractor in respect of the documents, records (including plans), and material, tools and instruments is excluded.

21.7 Consequences of termination for cause



- 21.7.1 If Exyte terminates the Agreement for cause in the cases mentioned in clause 21.2 of this Agreement, the Subcontractor is entitled to Payment up to the works performed until the termination comes into effect and only to the extent the works performed are useful for Exyte. If the Subcontractor is responsible for the good cause, Exyte has the right to claim damages.
- 21.7.2 If the Subcontractor terminates the Agreement for a good cause Exyte is responsible for, the Parties agree that the Subcontractor is entitled to a lump sum payment of 5% of the invoicing value of the remaining works as liquidated damages. This lump sum payment covers and settles any and all claims in relation to the termination the Sub-contractor has or will have. Each Party shall have the right to demonstrate higher or lower damages in relation to the consequences of the termination.
- 21.8 Notwithstanding clause 21.2.3 of this Agreement, the Subcontractor shall clear the site immediately after termination; the Subcontractor shall hand over to Exyte any and all documents that are required for the continuation of the design and construction works, such as the entire design documentation in an editable standard format, permits and licences, administrative decisions or acts, and any plans of any kind. The Subcontractor does not have a retention right. The Sub-contractor shall further leave on site any and all parts and components, material and tools etc. that were especially designed and prepared for the project and that are not yet installed, and offer Exyte to take over those items against payment of an appropriate compensation in view of a swift continuation of the works. Unless the documents are furnished in due time, Exyte shall be entitled to retain the remaining payment in the amount of the costs of the substitute performance. This shall in particular also relate to any planning, which is available only in parts, as working document or in draft or other form. The assertion of a right of retention or other right to refuse performance by the Subcontractor in respect of the documents, records (including plans), and material, tools and instruments is excluded.
- 21.9 Immediately upon reception of the termination notification, both Parties shall meet to determine together the status of the performed works by the Subcontractor. The determination of the performance status includes the establishment of a protocol setting out the works performed and the works not performed as well as a photo documentation. The joint determination serves as a basis for invoicing the works performed by the Subcontractor. If a Party refuses to participate in the determination of the performance status without any reason, the other Party may have the performance status determined by a third party expert at the expense of the defaulting Party. The Party shall enable the defaulting Party to participate in the expert's visit provided the expert deems such visit to be required. The defaulting Party shall be informed in due course of the appointment of the expert's visit. The result of the determination of the performance status is binding for both Parties, even though one Party that were duly in-formed and invited did not participate in the expert's visit.
- 21.10 After the termination and the determination of the performance status, the Subcontractor shall invoice the works performed until the coming into effect of the termination within 2 months after reception of the joint determination or the determination prepared by the expert, as the case may be, in accordance with this Agreement. If the Subcontractor does not hand in a verifiable invoice within this time period and if Ex-te set an additional reasonable time period for invoicing to no avail, Exyte is entitled to establish itself, or by having a third party do so, a verifiable invoice at the expense of the Subcontractor.
- 21.11 The statutory right to rescind the Agreement and the statutory termination rights apply.
- 22. Venue/ Applicable Law**
- 22.1 If the Parties are merchants and in the absence of conflicting statutory provisions, Exyte shall be entitled to select the Regional Court of Stuttgart or the place of fulfilment of the contractual performance as venue for all disputes under the Agreement before ordinary courts of law.
- 22.2 The laws of the Federal Republic of Germany shall apply, to the exclusion of conflict of laws and to the exclusion of UN Sales Law.
- 22.3 If Exyte has specified arbitration proceedings with its client or third companies, the Subcontractor shall submit to any findings and/or decisions made in such arbitration as long as the Sub-contractor was given the opportunity to assert any prosecution or defence and if they have been introduced into the arbitration by Exyte.
- 22.4 In such case, the Subcontractor shall not be entitled to assert a right to refuse performance if it is unreasonable in relation to the effects.
- 23. Final Provisions**
- 23.1 If provisions of this Agreement or any provision included in the future are invalid or unenforceable as a whole or in part or subsequently lose their validity or enforceability, this shall not affect the validity of the remaining provisions of this Agreement. The same shall apply in the event of any gaps in the Agreement. Instead of the invalid or unenforceable provisions, or to close the gap, a reasonable provision shall apply which, to the extent permitted by law, comes nearest to what the Parties had intended or would have intended in light of purpose and intent of the agreement, had they considered this issue upon conclusion of the Agreement or subsequent inclusion of a provision. The above shall also apply if the invalidity of a provision is based on a measure of performance or time (deadline or date) specified in this Agreement; in such case, a legal measure of the performance or time (deadline or date) shall be deemed agreed, which comes nearest to what had been intended.
- 23.2 Amendments or supplements to this Agreement shall be made in writing. The same shall apply to any changes to this written form requirement. No oral ancillary agreements have been made.
- 23.3 For the duration of this Agreement as well as for a further 12 months from cancellation or termination of this Agreement, the Subcontractor undertakes not to entice away or hire any employees of Exyte. In case of a breach of the above obligation, the Subcontractor shall be required to pay a contractual penalty to Exyte in the amount of half an annual salary of the employee enticed or hired. The Subcontractor shall provide information to such extent. However, the amount of all contractual penalties under this Agreement shall be limited to 5% of the final net invoice amount.
- 23.4 If Annexes are attached to this Agreement, which are not explicitly referenced in the wording of the Agreement, they shall nonetheless be taken into account in rendering the performances of execution of this Agreement. If the Agreement specified Annexes which are not attached to the Agreement, the Parties shall prepare them in good faith and attach them to the Agreement.