



GENERAL TERMS AND CONDITIONS FOR DESIGN AND ENGINEERING SERVICES (GTCs DESIGN)

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 (design services), including its annexes, and/or the purchase order, and the present General Terms and Conditions for Design Services ("**GTCs Design**") (altogether the "**Agreement**"). The Subcontractor shall perform all design services required to fulfil the Subcontract Works, in particular the services of coordination and supervision, even if such services are not set out in detail in the Agreement or its annexes.
- 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.

2. General obligations of the Subcontractor

- 2.1 Contract Documents are all regulations, documents, exhibits, ordinances, directives, and rules of law specified in these GTCs Design 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.
- 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.
- The services provided by the Subcontractor shall respect the principles of functionality and cost-effectiveness – including with regard to the future costs of maintenance and operating – and comply with any and all instructions, specifications and suggestions of Exyte.
- 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.
- 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 Design shall take precedence over the quote.

2.5 The Subcontractor shall comply with DIN regulations, EN regulations, the workplace ordinance and workplace regulations as minimum requirements unless further specified in the Agreement.

2.6 If technical standards and codes are being overhauled or in case of ambiguities that may affect the services to be performed, the Subcontractor shall immediately inform Exyte in writing. Notwithstanding this duty to inform, clause 2.2 applies until acceptance. Where the observance of clause 2.2 would lead to major modifications of the concept of the facility, the parties shall seek an agreement on the necessity and the extent of those modifications.

2.7 The Subcontractor shall notify to Exyte immediately any concerns and doubts the Subcontractor may have regarding the services to be provided in comparison to the content of the Agreement and instructions and suggestions by Exyte; the Subcontractor shall substantiate its concerns and doubts. The Subcontractor shall coordinate its services with Exyte and other involved persons prior to finalising the services.

The Subcontractor shall investigate in due course whether its design complies with public law requirements; the Subcontractor shall immediately report to Exyte where public law hindrances or concerns arise.

The Subcontractor shall not be liberated from its duty and responsibility to control, coordinate and supervise by the fact that another person is also in charge of the same duties.

2.8 The Subcontractor shall gather the technical data relating to supply and dispose connections with the municipal utilities, communication provider and other competent public bodies required for the performance of the design and engineering services in coordination with the involved specialists.

If Exyte is required to cooperate with the Subcontractor, the Subcontractor shall request Exyte to cooperate in due course and coordinate the services to be provided by Exyte or other persons the Subcontractor involved.

2.9 The Subcontractor shall be liable for the completeness and accuracy of all documents and calculations provided by it as well as for the fitness of these documents with regard to the realization of the envisaged project.

In case of discrepancies between the plans and calculations of the Subcontractor and documents of other persons involved in the project, the Subcontractor shall be obliged to inform Exyte immediately.

2.10 The services shall be compliant with the local requirements. The Subcontractor has to assess the local requirements, including neighboring and ancillary facilities and constructions.

2.11 The Subcontractor shall inform Exyte about all required authorizations, approvals, exams and acceptances and report immediately if hindrances or disturbances are likely to occur, in particular where such hindrances or disturbances may affect cost or schedule.

2.12 Suggestions and annotations (visa, check) of Exyte do not relieve the Subcontractor from its liability regarding the services to be performed. This also applies express instructions made by Exyte, unless the Subcontractor immediately raises concerns in writing.

2.13 Insofar as Exyte installs its own IT based project communication platform as electronic information exchange system with a common project server, the following applies, it being specified that the Subcontractor is not entitled to claim the installation of such platform:

Five (5) accesses are made available for the Subcontractor. Any additional access will be charged at cost. The Subcontractor shall make known to Exyte the number of required accesses immediately after the effective date of the Agreement.

The Subcontractor shall update the system continuously with all relevant information, maintain it and respect the recognised principles of data protection, in particular:

- Not to use passwords which correspond to the names of family, friends or other close persons,
- Keep passwords confidential and modify (or have modified) passwords which are suspected to be known by unauthorised third parties,



- Not to use the same password for the access of the project communication platform and for the services provided by third parties on the Intranet; and
 - End each user session of the project communication platform by using the log out function.
- Prior to uploading any data to the project communication platform, the Subcontractor shall check, by appropriate and up-to-date software, whether the data contains elements such as virus, worms, Trojan horses and alike which may influence the integrity of such data and/or computer hardware or software and to upload only such data which is free of any such element.
- 2.14 The Subcontractor shall be obliged to safeguard Exyte's rights; the Subcontractor shall inform Exyte immediately on circumstances which may lead to a claim or right of Exyte against the Subcontractor, other persons involved in the project or third parties.
- 2.15 The Subcontractor shall summarize the services provided in a status report each time a service level (*Leistungsstufe*) or a service level ordered partially (in particular in case of advance construction measures), is completed. The Subcontractor shall make such status report available on the project communication platform – if available –, and hand over electronically and physically to Exyte all collected documents, organized and structured with an index. The Subcontractor shall explain and comment these results in a meeting with Exyte.
- 2.16 The Subcontractor shall document in writing the monthly progress, referencing each construction measure. Upon request of Exyte, the Subcontractor shall at all times immediately inform Exyte with regard to its services and progress.
- Where the information on status or the status report provided by the Subcontractor show a cost overrun or a delay, or demonstrate a likelihood that such overrun or delay occur, Exyte is entitled to request the Subcontractor to immediately establish a programme aiming at remedying and eliminating any such cost overrun or delay that exist or is suspected to occur, including measures such as control measures, acceleration and savings.
- 2.17 The Subcontractor warrants its professional and financial capacity and performance at all times during the performance of the service. The Subcontractor warrants in particular that its office be organized and installed in such a way as to allow the project – with regard to which the Subcontractor warrants have taken all required information – to be delivered in time, non-defective, within the cost limits agreed and according to the agreed quality standards.
- 2.18 The Subcontractor shall be required to assess costs required for the performance of all services under the Agreement on the basis of the **DIN 276:2018-12** subdivided into trades, and to establish a cost forecast. Cost control shall be conducted for each type of cost based on a detailed cost summary (including ancillary construction cost), as updated from time to time. The permanent cost control requires a continued updating progress. This also applies to the subsequent tendering of trades, which presupposes the establishment of a cost estimate and the assessment of the actual cost within the continued cost calculation.
- When it appears that the contractual covenants (*Vertragsziele*) / the agreed cost limits / the construction cost as assessed or forecasted and discussed with Exyte (as the case may be), cannot be reached on the basis of the actual design and engineering process or with the results of a tender process for a particular trade, the Subcontractor shall immediately notify to Exyte the reasons for such deviation, inform in writing about the consequences therefore and present to Exyte action alternatives (in particular savings).
- 2.19 The Subcontractor may not advertise in any form at the construction site.
- 2.20 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 request hard copies of such documents.
- 2.21 The documentation guideline must be complied with. Moreover, any plans, documents and records which are usually provided according to the Technical Standards (*Stand der Technik*) and the Contract Documents shall be provided to Exyte.
- 3. Scope of Services**
- 3.1 The scope of services to be performed by the Subcontractor comprises:
- 3.1.1 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.
- 3.1.2 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 a fashion so as to give Exyte at least 14 calendar days to make a decision and to order alternative products without any delays.
- 3.1.3 Unless stated otherwise, at least the following information or proof shall be furnished for sampling purposes:
- a. place of installation;
 - b. catalogue item or sample;
 - c. construction target/actual description, i.e. quality and performance specifications pursuant to this order, comparing the quality and performance specifications of the samples;
 - d. confirmation of adherence to costs/deadlines or showing them in case of alter-native sampling;
 - e. at least three products shall be sampled for selection, meeting the contractual requirements.
- 3.1.4 Timely submission and procurement of all permits required for performing the Services and their use.
- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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 quotations – 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 agreements with the Subcontractor's subcontractors regarding the remuneration of changed works instructed by Exyte only if Exyte is involved in the negotiations regarding the remuneration for changed works.
- 3.6 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.
- 3.7 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.
- 3.8 The Subcontractor shall conduct all negotiations with other persons involved in the project, such as tenderers, competent authorities in charge of delivering permits or providing authorisations, utility companies and any and all other possible authorities and persons concerned. Prior to doing so, the Subcontractor shall coordinate with Exyte. It shall further inform Exyte on the results by presenting minutes and/or correspondence in a timely and complete fashion. By providing information early, the Subcontractor enables Exyte to participate in all discussions.
- 3.9 The Subcontractor shall be in charge of organizing meetings between all persons involved and shall be obliged to participate in all meetings related to construction, design and coordination matters organized by the Subcontractor himself, Exyte, or other relevant persons involved in the



- design phase. The Subcontractor shall integrate the results of such meetings – insofar as required – in its plans and drawings. The Subcontractor shall inform Exyte on meetings organized by other persons involved in the project and, if so requested by Exyte, prepare and provide to Exyte without delay meeting minutes thereof that are appropriate in terms of content, detail and form.
- 3.10 The Subcontractor assists Exyte in the analysis and the negotiation of supplementary quotes and the quotes of additional contractors. The Subcontractor shall inform Exyte where an increase in mass or other circumstances lead to changes in cost or where changes or improvements may lead to savings.
- 3.11 As part of its duty to protect the rights and interests of Exyte, the Subcontractor shall inform Exyte immediately on circumstances in which claims or rights of any kind against the contractors in charge of execution of the construction works or other persons involved in the project may arise.
- 3.12 The Subcontractor shall make available to the relevant persons involved, in particular the authorities, the inspecting structural engineer and the specialist engineers all documents and data to be inspected as early as to allow the required inspection to be conducted without delay and the required inspection copy to be presented in due course. The Subcontractor shall provide all required data and documents to the other persons involved as timely as to allow them to perform their services in due course.
- The Subcontractor is in charge of the coordination of the structural inspection and the integration of the inspection results of the persons involved in the project in its services and work results. The Subcontractor shall take on conditions and inscriptions made by the other persons involved.
- 3.13 In case of disagreement between the Subcontractor and the other persons involved in the course of the project, the Subcontractor shall immediately seek in writing from Exyte a decision of the matter.
- 3.14 The Subcontractor must not, and is not entitled or empowered to, represent Exyte. Despite the foregoing, the Subcontractor is entitled to issue instructions that are required to ensure the good performance of the services of other persons involved in the project and the orderly project progress (without having negative consequences in terms of quality, schedule and cost for Exyte. This also applies to declarations and statements that are objectively required for the coordination and supervision of the construction activities. The Subcontractor may engage cost at the expense of Exyte only (i) in order to avert imminent and manifest danger where the consent of Exyte cannot be sought in time, and (ii) where Exyte so instructs the Subcontractor in writing in advance. The Subcontractor is not empowered to enter into, modify or add to agreements or to consent to new or modified prices.
- 3.15 In its quality as custodian of Exyte, the Subcontractor must not represent the interests of contractors or suppliers.
- 4 Collaboration between Exyte and the Subcontractor**
- The Subcontractor shall perform its service in close collaboration with Exyte and the other persons involved in the project, in particular the project direction, the external project management and the external project control. Prior to execution of the works, Exyte appoints representatives and their substitutes. The Subcontractor shall exclusively accept directives and instructions from the representatives of Exyte named in the Agreement. Other persons involved in the project or persons presenting themselves as being representatives of Exyte may issue directives and instructions only if so empowered in advance and in writing (power of attorney).
- 5 Sub-tier Contractors**
- 5.1 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.
- 5.2 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.
- 6. Remuneration**
- 6.1 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.
- 6.2 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.
- 6.3 The stipulated payment shall cover all 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.
- 7 Services at hourly rates**
- If the Parties agreed a remuneration based on the time spent and agreed hourly rates, the Subcontractor shall submit daily time sheets in two copies to the project direction of Exyte. Unless otherwise agreed, the sheets shall set out the site, date, name and profession of labour forces, the hours spent for each labour force including the breaks and the services performed. Failure by Exyte to return the time sheets in due time cannot result in an acknowledgement of the content of the time sheets.
- 8 Deadlines and Dates**
- 8.1 The Subcontractor shall commence, promote and accomplish the performance of its services in a timely way such that Exyte is in a position to use the services in accordance with the Agreement. For the determination of the time of performance of its services related to detailed engineering, procurement and supervision, the Subcontractor shall take guidance by the principle following which the planning accompanies the construction. The Subcontractor shall perform its services required for further planning and execution of the works in a timely fashion such that the respect of the completion dates agreed between Exyte, on the one hand, and the construction companies and other persons involved in the project, on the other hand, be not endangered for reasons that lie (also) in the sphere of influence and responsibility of the Subcontractor.
- 8.2 Where deadlines (incl. deadlines not related to contractual dates and contractual deadlines) are missed for reasons the Subcontractor is totally or partially responsible for, Exyte is entitled to contract third parties, at the expense of the Subcontractor, to perform the services the deadlines of which were missed. Delay with regard to deadlines which are not express contractual deadlines requires an appropriate deadline set by Exyte and Exyte's express specification that the Subcontractor will be in delay when the deadline is missed. Claims for actual damage by Exyte are reserved.
- If the Subcontractor misses deadlines repeatedly, Exyte shall set an appropriate additional deadline; if the Subcontractor misses that additional deadline as well, Exyte shall be entitled to rescind the agreement or to immediately terminate the agreement for cause and to contract third parties for the performance of all services of the Subcontractor at the Subcontractor's expense and to claim damages in lieu of the services (*Schadensersatz statt der Leistung*).
- 8.3 If the Subcontractor was not informed in due course or where it was hindered in its performance by circumstances for which it is not responsible (within the meaning of § 276 BGB), the Subcontractor is entitled to an extension of time taking into account any delay caused by those hindrances.
- 8.4 The Subcontractor shall immediately inform EXYTE about any hindrances regarding the performance of its services. If the Subcontractor fails to provide such notification although such notification would have been possible taking into account the circumstances, the Subcontractor's entitlement shall be restricted to those hindrances which EXYTE was aware of, or which EXYTE was not aware of for being grossly negligent.
- 8.5 The Subcontractor is required to keep track of the date of issuance of documents prepared by the Subcontractor to the other persons involved in the project. The Subcontractor shall in particular establish a list of all drawings, showing the incoming and outgoing dates, as well as progress and the distribution of the drawings. The documentation shall be made via the project platform as provided for by Exyte, as the case may be.
- 8.6 The Subcontractor is required to provide the documents and indications required for the different tests and inspections to these relevant persons involved in the project, to the authorities and to the inspecting structural engineer in a timely manner to ensure that the respective inspection can be conducted according to schedule.
- 8.7 A schedule for optional services is not binding; such schedule shows the prognosticated progress only. Exyte reserves the right to amend that schedule from time to time in accordance with the overall progress of the project. Exyte may amend dates and the order of execution/performance of the (individual) construction services and sections, including amendments thereof. Consequently, the Subcontractor cannot derive any right from the amendment or modification of the schedule. The schedule merely indicates the minimum requirements for the progress of the Subcontractor's services.
- The Subcontractor is entitled to an appropriate extension of time where EXYTE, in accordance with the above, shortened a period of time in such a way as to render the performance of the services within that period of time economically unreasonable for the Subcontractor, taking into account the entire business capacity of the Subcontractor and of a supplier equivalent in terms of manpower at the effective date.



- 8.8 The agreed schedule and the dates and deadlines as agreed in the Minutes of Negotiation apply.
- 8.9 The Subcontractor shall, within 21 calendar days from the last signature of the Agreement, prepare a comprehensive, logically linked 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 time periods for verification and approval of design as set out in the Client Contract are taken into account for the preparation of the detailed schedule;
 - 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 re-viewed 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.
- 8.10 The Detailed Schedule shall be regularly updated, taking into consideration the plan-ning and construction progress of the Subcontractor. Updates shall be submitted to Exyte for approval and signing and shall thereupon replace the previous Detailed Schedule. The Detailed Schedule shall be updated notwithstanding 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. 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.
- ## 9. Changes
- 9.1 In accordance with Sec. 650b para. 1 BGB, Exyte shall be entitled to instruct changes to the agreed work outcome, as well as changes of the services which are necessary for the agreed work outcome to be achieved (hereinafter a "Change"). Changes to works shall also include the complete or partial removal of individual works from the contractually stipulated scope of works. All instructions regarding changes described here are also called "Change Orders". In accordance with Sec. 650b para. 1 No. 1 BGB, the Subcontractor shall be required to complete a Change Order, unless the completion thereof is unacceptable to the Subcontractor. The completion of the Change Order is deemed acceptable, unless the Subcontractor shows that the completion is not acceptable.
- The time limit set out in Sec. 650b para. 2 BGB also commences if and when the Subcontractor notifies to Exyte that, from his point of view but without prejudice regarding the basis and the amount of Subcontractor's entitlement to payment, Changes have to be carried out.
- Insofar as Exyte issues a Change Order, the Subcontractor shall be obliged to complete the Change Order - even before the expiry of the time period set out in Sec. 650b para. 2 BGB regarding the agreement on Payment - if:
- a. the Change is urgent (urgency requirement); or
 - b. Exyte notifies bindingly and irrevocably in the Change Order that Exyte wishes to have this Change in any event, including in the event that no agreement can be reached regarding Payment within the 30 day period set out in Sec. 650b para. 2 BGB; or
 - c. a Party notifies to the other Party before the expiry of the 30 days period of Sec. 650b para. 2 BGB that the attempt to find an agreement on Payment failed and Exyte nevertheless wishes that the Change be completed.
- The urgency requirement set out above in a. exists each time when (i) the time schedule would be modified by the exhaustion of the 30 day period of Sec. 650b para. 2 BGB, (ii) Exyte's client can request the immediate carrying out of the Changes, or (iii) in the presence of an immediate danger.
- Any Change Orders must be issued in text form to be valid.
- 9.2 The Subcontractor shall be required to notify Exyte about any claim to special payment and resulting delays before executing any Change. 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 remuneration. 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.
- 9.3 Where EXYTE instructs a Change, the Subcontractor shall be entitled to an additional remuneration only if (i) the Subcontractor is not responsible for the necessity of the Change, (ii) the Change do not merely encompass
- extrapolations or optimisations, and (iii) the Change requires more than sixteen hours of time and effort.
- The basis of invoicing for the Changes is the proven additional (or reduced) cost in accordance with the Agreement, the hourly rate cards or the indicated or agreed hourly rates (as the case may be), unless the Parties agreed on a different type of remuneration (eg, lump sum assessed on the basis of the estimated time and effort, or a maximum price or a fixed price). An agreement on the amount of the additional remuneration shall be entered into prior to performance of the services.
- 9.4 Where substantial repetition or multiplication of services (in the latter case where time and effort is in excess of 16 hours) are required after the end of the design phase or after the end of autonomous parts of the design and were not caused by the Subcontractor, due to the extension of the space allocation plan or the functional programme or any other modification of the design objective or the object of the Agreement, the additional remuneration shall be calculated as a "remuneration for repeated services" (*Wiederholungshonorar*) on the basis of proven time spent in accordance with the Agreement, the hourly rate cards or the indicated or agreed hourly rates (as the case may be), unless the Parties agreed on a different type of remuneration (eg, lump sum assessed on the basis of the estimated time and effort, or a maximum price or a fixed price). If possible, the Parties shall agree on the percentage of scope extension on the basis of the Agreement, or the HOAI, or as a lump sum (based on the estimated time spent).
- 9.5 If the Parties fail to agree on the amount of the remuneration for a Change, or whether the Subcontractor is at all entitled to any remuneration for such Change, the Subcontractor must perform the Change where EXYTE requires the Subcontractor in writing to do so. The remuneration for the Change will be assessed on the basis of this Agreement. The Subcontractor does not have the right to refuse or retain performance.
- 9.6 If the Parties fail to agree on the remuneration of the Change, the Subcontractor shall provide EXYTE with an advance payment security for the sums requested in accordance with § 650 c Abs. 3 BGB prior to payment by EXYTE. The security shall be issued 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. Such guarantee shall be irrevocable, unlimited, absolute, unconditional and not upon first request, and shall expire upon return of the guarantee form.
 - b. The guarantee shall be issued waiving the defense of failure to pursue remedies (Sec. 771 BGB).
 - c. 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 defense of set-off, unless the counterclaim is undisputed or final;
 - d. In commercial transactions, venue for any disputes arising under the guarantee shall be Stuttgart.
 - e. The laws of the Federal Republic of Germany shall apply, to the exclusion of its rules on conflict of laws and CISG.
- Exyte shall make the Advance Payment when due in accordance with the contractual provisions upon presentation of the due invoice and the advance payment guarantee with the above-specified configuration/contents. The advance payment guarantee shall be returned to the Subcontractor upon offsetting or (if drawn) upon Exyte's irrevocable receipt of the repayment of the Advance Payment made to the Subcontractor.
- ## 10. Liquidated damages for delay
- 10.1 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.
- 10.2 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.
- 10.3 A claim to damages shall remain unaffected. In such case, the liquidated damages shall constitute the minimum amount of the claim to damages.
- 10.4 Liquidated damages, once incurred, are not cancelled simply because new deadlines are subsequently agreed upon.
- 10.5 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, the provisions of this provision do not cease to apply. 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 ex-tended 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.

11. Acceptance

11.1 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.

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

11.3 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.

11.4 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.

11.5 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.

11.6 The application of § 650s BGB is excluded.

12. Invoicing

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

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

12.7 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.

12.8 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. 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 60 days.

13. Liability

13.1 The Subcontractor's liability for the accuracy and the completeness of its services, and respectively Exyte's (warranty) rights, shall not be limited by recognition, consent or taking over of work results by Exyte. The legal effects of acceptance are reserved.

13.2 The Subcontractor shall repair any and all damage suffered by EXYTE as a result of delay or another violation of the Agreement for which the Subcontractor is responsible. Statutory provisions on liability and those of § 631 et seq. apply. The Subcontractor's liability is not modified by recognition, approval or consent with regard to services by Exyte.

13.3 The supervision services are defect if the building itself was not constructed in accordance with the Agreement and such defect is (also) caused by the faulty /omitted supervision or coordination by the Subcontractor. Where the building was constructed in accordance with the Agreement, a defect of the Subcontractor's services might result from the incomplete performance of agreed or required services by which a partial conventional objective was not achieved.

14. Termination

14.1 Exyte shall be entitled to terminate this Agreement, as a whole or in part, for convenience at any time. The Subcontractor may terminate for cause only. The termination notice must always be served in writing (sec. 650h BGB).

14.2 In addition to the causes set out at § 648a para. 1 BGB, causes entitling Exyte to terminate for cause fully or partly the Agreement shall be, without limitation, where:

- 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;
- 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;
- the Subcontractor's right to compensation for works against Exyte for rendered works is seized or pledged as a whole or in part;
- the Subcontractor interrupts its works without justification and fails to resume even after reminder and setting a deadline by Exyte;
- the Subcontractor is in delay with works beyond a contractual deadline or a date in the schedule or the Detailed Schedule provided by the Sub-contractor, and if Exyte has set a reasonable deadline to the Subcontractor, including a threat of termination, without success;
- 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;
- the Subcontractor fails to perform an essential obligation of this Agreement despite an additional period of time set to do so (eg, the obligation to taking out adequate insurance policies).
- Exyte abandons the project partly or entirely - for whatever reasons -, in particular if funds or subsidies are not granted or



- partly only, if the building permit is not granted or granted with conditions that are unacceptable for Exyte in terms of economic efficiency of the project or parts thereof.
- i. the relationship of trust with the Subcontractor is severely impaired by the occurrence of circumstances that arose after the conclusion of this Agreement, in particular in cases where the Subcontractor did not diligently defend the interests of Exyte or where the Subcontractor violated its contractual obligations – despite granting of additional periods of time - repeatedly.
 - j. continuing the relationship with the Subcontractor cannot reasonably be expected from Exyte for reasons that occurred after entering into the Agreement which are not attributable to Exyte.
 - k. the Subcontractor, or Exyte or another creditor file a petition for insolvency proceedings or similar legal proceedings against the Subcontractor, where such proceedings are initiated or where such proceedings are rejected for lack of assets,
 - l. the Subcontractor or its vicarious agents violate the duty of neutrality and confidentiality.
- 14.3 Regarding defects, default and delay, termination for cause requires the prior setting of an initial appropriate period of time and a setting of an additional period of time accompanied by the threat of termination, which must be elapsed without success. The threat of termination by Exyte is not required when the Subcontractor, after the setting of the initial period of time, refuses to perform the contract or the considered services, or claims that, prior to performing the services, Exyte must provide to the Subcontractor a quid pro quo that is not in accordance with the Agreement.
- 14.4 Exyte may limit the termination to certain services, certain project sections, certain (partial) services of a certain service level (*Leistungsstufe*) or a certain scope of performance (*Leistungsbild*) (partial termination). In case of partial termination, the following provisions shall apply to the terminated services mutatis mutandis. Except for those terminated services, the remainder of the Agreement shall remain valid and must be performed.
- 14.5 Where Exyte terminated for cause, for the occurrence of which the Subcontractor is responsible, or where the Subcontractor terminated for a cause for which Exyte is not responsible, the Subcontractor is entitled to remuneration for the services performed in accordance with the Agreement until the termination comes into effect, as proven, and only to the extent the services performed are useful for Exyte.
- Where Exyte terminated for cause, Exyte is entitled to damages. In particular, Exyte shall have the right to claim additional cost caused by the termination, in particular contracting a third party, or by delay; Exyte may offset such amounts against the remuneration claimed by the Subcontractor.
- If the Subcontractor terminates without cause, Exyte is entitled to liquidated damages in the amount of 5% of the agreed net remuneration (sum to be reduced from the additional costs caused by the termination) which shall, in any event, fall due for payment and setoff.
- 14.6 In all other cases, in particular where Exyte terminate without cause or where the Subcontractor (partially) terminate for a cause, for the occurrence of which Exyte is responsible, the Subcontractor is paid the lump sum remuneration as agreed after deduction of saved expenditures which are determined by both Parties in a common agreement to amount to 95% (determination done in the interest of both Parties for the avoidance of disputes and difficulties regarding the settlement of costs, and – in the interest of the Subcontractor in particular – for the avoidance of problems to substantiate cost on the basis of internal calculations). Consequently, the Subcontractor is entitled to claim a lump sum remuneration for the terminated services in the amount of 5% of the remuneration initially agreed for those services. The aforementioned lump sum remuneration is reduced by the remuneration the Subcontractor generates (or – *mala fide* - omits to generate) by providing services to other customers in the relevant time period (replacement services). This applies without consideration of the equal footing between the terminated services and the replacement services (also with regard to the remuneration).
- 14.7 When the Agreement is terminated or otherwise ends, the Subcontractor shall complete its services in a way such that Exyte can take the services over immediately and contract a third party with a view to complete the services. The Subcontractor shall provide the complete progress status until reception of the termination notice within 5 calendar days thereof by presenting all prepared documents and a final status report.
- 14.8 The basis for invoicing the services actually performed until reception of the termination notice by the Subcontractor is the set of presented documents. In case of dispute or doubt, Exyte has the right to determine the status discretionary in a fair judgement (sec. 315 BGB) and to establish the invoice. In doing so, Exyte shall take guidance in the advance payment invoices submitted prior to termination and the results of their examination by Exyte.
- 14.9 The Parties are in agreement that the essential objectives of engineering and supervision within the meaning of sec. 650r BGB are herewith agreed. Despite the foregoing, to the extent the parties have the right to terminate extraordinarily ("*Sonderkündigungsrecht*") in accordance with sec. 650r BGB after the submission of the design documents and the cost estimate in accordance with sec. 650p para 2 BGB, the following applies:
- 14.9.1 The right to terminate extraordinarily ("*Sonderkündigungsrecht*") of Exyte shall expire within 4 weeks of the reception of the design documents and the cost estimate in accordance with sec. 650p para 2 BGB.
- 14.9.2 The extraordinary termination right of the Subcontractor (Sec. 650r para. 2 BGB) requires that the Subcontractor, when presenting the design documentation, including a cost estimate within the meaning of Sec. 650p para. 2 BGB, set an adequate time period for Exyte to provide its consent (within the meaning of Sec. 650r para. 2 phr. 1 BGB). An adequate time period is in general 4 weeks.
- The Subcontractor is entitled to terminate the Agreement in accordance with Sec. 650r para. 2 phr. 2 BGB, if Exyte refuses in writing to grant its consent to the design documentation, including the cost estimate, or if Exyte does not provide its consent within the adequate time period set by the Subcontractor when presenting the design documentation, including a cost estimate. The time period commences to run when the setting of the time period is received by Exyte in text form.
- There shall be short time between (i) the end of the adequate time period, or Exyte's written refusal to grant its consent, as the case may be, and (ii) the reception by Exyte of the Subcontractor's termination notice. Such short time is given where the termination notice is received by Exyte within 3 business days of the end of the adequate time period, or Exyte's written refusal to grant its consent.
- 14.10 Upon termination of this Agreement – notwithstanding the reason for such termination –, the Sub-contractor shall immediately deliver to Exyte all documents that are required for the pursuit of the design and construction works such as the entire design documentation in an editable standard format, permits and licenses, administrative decisions or acts, and any plans of any kind. Unless the documents are delivered in due time, Exyte shall be entitled to retain the remaining Fee in the amount of the costs of the substitute performance. This shall in particular also relate to any plans, 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), is excluded.
- 14.11 Immediately upon reception of the termination notification, both Parties shall meet to determine together the status of the performed works by the Subcontractor. The de-termination of the performance status includes the establishment of a protocol setting out the works performed and the works not performed. 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 de-faulting 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 informed and invited did not participate in the expert's visit.
- 14.12 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 two 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 Exyte 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.
- 14.13 The statutory right to rescind the Agreement and the statutory termination rights apply.
- 15. Duty to hand over/return documents, retention right**
- 15.1 The Subcontractor shall hand over to Exyte any and all (original) documents (drawings, plans, schedules, sketches etc.) prepared under this Agreement, clearly arranged and complete, and to upload onto the communication platform (if set up).
- 15.2 The Subcontractor shall return to Exyte Exyte's documents at the latest at acceptance, ie, when the Subcontractor does not need the documents for the purpose of this Agreement any longer.
- The Subcontractor is entitled to destroy the documents prepared under this Agreement – except for the documents related to invoicing – when the limitation period for defect claims elapses, provided the Subcontractor offered Exyte to hand over the documents and Exyte refuses to take the documents or Exyte fails to reply, or to take delivery, within the period of time set by the Subcontractor.
- 16. IP Rights/Rights to use**
- 16.1 The Subcontractor transfers to Exyte all rights to use and modify the results of the services and any and all documents pertaining thereto. Exyte may use and modify the services without any further contribution by



- the Subcontractor. Exyte will simply inform the Subcontractor in case of essential modifications insofar as the services of the Subcontractor are protected by IP rights. Exyte is entitled to transfer all rights to use and modify to third parties.
- 16.2 The Subcontractor requires the prior written authorisation of Exyte for publishing the results of its services, it being specified that Exyte may withhold its consent for important (serious) reasons only.
- 16.3 The provisions of this section also apply in case of a premature end of the contractual relationship or where Exyte decides not to order further levels of services (*Leistungsstufen*) or parts thereof.
- 16.4 The agreed remuneration shall cover the transfer of any and all rights of use, modification and utilisation under copyright law.
- 16.5 Amendments of and/or additions to (the above-mentioned) documents transmitted to Subcontractor by Exyte or a third party are forbidden. The Subcontractor must not make use of the documents transmitted by Exyte or a third party for other (construction) projects.
- 17. Insurance**
- 17.1 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.
- 17.2 If the Subcontractor, despite a reasonable additional time to do so, fails to provide evidence of adequate insurance coverage, Exyte shall be entitled to take out corresponding insurance at the Subcontractor's expense or terminate this Agreement extraordinarily in accordance with clause 14.2. The costs incurred by Exyte for taking out the insurance in lieu of the Subcontractor are deducted from the next due payments.
- 17.3 The Subcontractor undertakes to immediately perform any of its duties as insured party under such insurance contracts, including without limitation, notification obligations.
- 17.4 The Subcontractor's insurance contracts shall precede the insurance contracts of Exyte ("primary"). The Subcontractor's insurance contracts shall exclude any recourse against Exyte.
- 18. Security**
- 18.1 **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.
- 18.2 **Security for performance**
- The Subcontractor shall provide a security in the agreed amount to secure Exyte's rights with regard to any and all performance claims, warranty claims, and damages claims as well as claims for which the Subcontractor has no insurance coverage (eg, exceeding of costs and time) or for which insurance coverage is excluded (eg, violation of secondary duties, wilful intent). Such security shall cover fulfilment of the Subcontractor's following obligations under this Agreement and the following claims of Exyte:
- contractual performance of all services 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;
 - defect-free, timely and cost-efficient execution of the services by the Subcontractor, i.e., claims by Exyte due to delay, default and contractual penalty;
 - any and all other claims from Exyte for which an insurance coverage in favour of the Subcontractor is not available (omission of duties, wilful intent).
- The Subcontractor shall furnish such security within 14 days from signing this Agreement by presenting a guarantee 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 delay following contractual (partial) acceptance, unless the claims covered by the collateral purpose 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.
- The unused withheld amount shall be paid out in accordance with the above provision in clause 18.2 e) of this Agreement.
- 18.3 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.
- 18.4 Exyte shall be entitled to assign the above-specified securities to its client or to the owner or financing institutions.
- 18.5 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.



19. 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.

20. Data Protection/Compliance

20.1 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.

20.2 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:

20.2.1 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.

20.2.2 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.

20.2.3 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>

20.2.4 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.

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

The Subcontractor shall be required to render its services 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.

22. Assignment, Off-set, Retention

22.1 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.

22.2 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.

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.

23. Venue/ Applicable Law

23.1 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.

23.2 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.

23.3 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.

23.4 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.

24. Final Provisions

24.1 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.

24.2 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.

24.3 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.

24.4 If Annexes are attached to this Agreement, which are not explicitly 24 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.