



SPECIAL CONDITIONS FOR CONSTRUCTION SERVICES (SCC)

Exyte Germany 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 Löwentorstraße 42, 70376 Stuttgart, Germany („EXYTE“)

1. Subject Matter of the Agreement / Scope

- 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, the General Terms and Conditions (GTCs) of Exyte and the present Special Conditions for Construction Services (hereinafter “SCC”).
- 1.2 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 any and all ancillary services set out in VOB (Part C).
- 1.3 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. Contract Documents

- 2.1 Contract Documents are all regulations, documents, exhibits, ordinances, directives, and rules of law specified in these SCC and/or in the Minutes of Negotiation.

- 2.2 Shall apply the generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) applicable at the time of acceptance, any and all public-law provisions and directives, 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 regulations, the accident prevention regulations, provisions and requirements of the safety and health protection coordinator, public-law regulations and by-laws, to the extent relevant to the realization of the Project and all relevant statutory and regulatory provisions applicable at the location of the Project. 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 generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*), instead of the DIN standard or relevant provisions, the generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) shall apply. The Subcontractor shall notify Exyte without delay about any such deviations.

- 2.3 The VOB (Part C) in the version applicable at the time of signing the contract by the Subcontractor and the provisions of the German Civil Code (BGB) shall apply.

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 documentation required for the registration or approvals of facilities 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. To the extent related to its services, all required regulatory approvals and/or expert reviews shall be initiated by the Subcontractor at its costs.
- 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 manner so as to ensure Exyte has 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 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 Products equivalent to those suggested in the tender documentation shall be recognised if (i) an equivalent product is permitted under the specification; and (ii) the Subcontractor has not specified any product information (regarding manufacturer or type) in its quote. Equivalent products must be approved by Exyte prior to installation. Exyte may refuse its approval for objective reasons. If the Subcontractor selects the product, the product selection shall apply to all further services of this type. Products or materials shall be equivalent only if they are equal in terms of quality, lifetime, maintenance effort and costs, spare parts supply, emissions, operation, functions, and potential uses.

- 3.1.5 The Subcontractor shall be required to keep construction diaries and to provide them to Exyte. Unless stated otherwise, such reports shall include any information which may be of relevance for the performance or invoicing of the Subcontract Works, particularly:

- Name of the Subcontractor's company and of the Site;
- Consecutive numbering;
- Date;
- Temperature (in the morning, noon and in the afternoon), location protected from wind, 1 meter above the ground;
- Weather conditions;
- Number of staff by wage groups;
- Use of machinery;
- Rendered services, indicating location (floor/axes/room numbers) and relating to the relevant process (specifications/title/lot, plan description, component description);
- Special measures and events;
- Instructions by project management and Health & Safety coordinator, labour inspectorate, employer's liability insurance association etc.;
- Signature of the Subcontractor's site manager.

The construction diary shall be updated daily digitally and shall be provided daily to Exyte in pdf format. Unless specified in the individual case, it shall be delivered by email.

- 3.1.6 The Subcontractor shall perform its works in such a way that the subsequent trades can continue to follow the Subcontractor's performance without interruption. To such extent, the Subcontractor shall consult with other contractors, provide other 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.

- 3.1.7 Timely delivery and procurement of all permits required for performing its works and their use, with the exclusion of the building permit, for which Exyte is responsible.

3.2 Generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) / statutory and regulatory provisions

The Subcontractor shall comply with the generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) and any additional statutory, regulatory and other provisions, each applicable at the time of acceptance. If such statutory, regulatory or other provisions, or the generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) relevant for the Subcontract Works change between the time of entering into this Subcontract and the time of acceptance, and if such change requires a corresponding change to the Subcontract Works, the Subcontractor shall be entitled to any additional costs for changed or additional works pursuant to clause 0 of this Subcontract if the change could not have been foreseen by a properly qualified and competent contractor at the time of entering into this Subcontract, the Subcontractor has informed Exyte of the requirement of a Change prior to the execution of the Change and Exyte has agreed to execute the Change.

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. Any approvals by Exyte shall not affect the Subcontractor's responsibility for its de-sign services.

- 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 ensure sufficient time to Exyte for providing them and to avoid any impediments of the construction process, by respecting at the least a period of 10 business days.



4. Performance of Services

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

- 4.1.1 The Subcontractor shall carry out winter construction measures if this is necessary to adhere to the contractual deadlines and the specified dates.
- 4.1.2 Until acceptance, the Subcontractor shall protect the works executed by it and the materials provided to the Subcontractor for execution of the Subcontract Works at its own expense against damage, soiling, theft or winter damage as well as unfavourable weather conditions.
- 4.1.3 The Subcontractor shall limit the impediments caused by the works to the unavoidable minimum to protect the environment, landscape and water bodies. The Subcontractor shall notify Exyte without delay in writing about any regulatory orders or third-party claims due to the effects of the works and shall indemnify Exyte for all resulting claims.
- 4.1.4 Exyte shall provide the Health & Safety Coordinator. The Subcontractor shall comply with the Health & Safety Coordinator's instructions and comply with applicable safety, health and accident prevention regulations. The Subcontractor has the legal duty of care (*Verkehrssicherungspflicht*) for any risks resulting from its works.

4.2 Storage and work areas

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

4.3 Sub-tier Contractors

- 4.3.1 The Subcontractor may subcontract parts of the Subcontract 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.
- 4.3.2 The Subcontractor may subcontract works only to Sub-tier Contractors who are competent, capable and reliable. This also includes that they fulfil their legal obligations to pay taxes, the total social security contributions, holiday fund contributions, to pay minimum wages and in-solvency benefits, to register a trade and, if applicable, to be entered in the register of crafts-men.
- 4.3.3 The Subcontractor shall notify Exyte in due time prior to contracting any Sub-tier Contractor about type and scope of the works to be subcontracted, and provide name, address and employer's liability insurance association details (including membership number) of the intended Sub-tier Contractor. Exyte shall be entitled to request evidence of competence, capability and reliability. This includes, in particular, proof of fulfilment of the legal obligations specified in clause 5.6.2. Such evidence, to the extent possible in line with statutory or regulatory requirements, shall be valid for at least three months, regularly renewed and presented to Exyte without further request. 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.
- 4.3.4 The Subcontractor shall comply with all relevant provisions of the Trade and Crafts Code (Ge-wO and HandwO), the Employee Posting Act (AEntG), the Minimum Wage Act (MiLoG), the Temporary Employment Act (AÜG), the Act to Combat Illegal Work (SchwarzArbG), the Social Code (SGB), as well as all other relevant labor and social laws and regulations. The Subcontractor shall especially:

- fulfil existing claims of its employees and temporary workers for payment of the minimum wage (according to AEntG and MiLoG) as well as contribution claims of social insurance carriers (statutory health insurance funds), joint institutions of the parties to the applicable collective agreements (e.g. holiday and wage compensation fund of the construction industry - ULAk, social fund of the painting and scaffolding trades, etc.), and employer's liability insurance association in each case when due;
- keep all necessary evidence and records required in Germany (e.g. in accordance with Sec. 2 AEntG) or upon request by authorities, on the Site, and to make all registrations required (e.g. in accordance with Sec. 3 AEntG) in a timely and proper manner, and
- deploy only employees or temporary workers in the sense of the AÜG who have a valid residence permit, authorization, permission, or tolerated status, as required.

The Subcontractor shall agree with its Sub-tier Contractors or temporary worker agencies on appropriate contractual provisions and controls, to ensure that Sub-tier Contractors or temporary worker agencies engaged by the Subcontractor comply with the aforementioned obligations.

The Subcontractor is aware that, according to applicable law (Sec. 14 AEntG, Sec. 13 MiLoG, Sec. 28e para. 2, 3a to 3f, 4 SGB IV, Sec. 150 para. 3 SGB VII), Exyte is particularly liable for minimum wage, social security contribution, holiday fund contribution and accident insurance contribution obligations of the Subcontractor, a Sub-tier Contractor, or a temporary worker agency by the Subcontractor (including mark-ups for late payment and interest). If the Sub-contractor employs employees or - with or without the authorisation of Exyte - Sub-tier Contractors or hires temporary workers, the Subcontractor shall assume the sole risk of claims against Exyte by the creditors of the Subcontractor, the Sub-tier Contractors or

the temporary worker agencies pursuant to Sec. 14 AentG, 13 MiLoG, 28e para. 2, 3a to 3f, 4 SGB IV, 150 para. 3 SGB VII. If Exyte is held liable by such creditors, the Subcontractor shall indemnify Exyte against these claims and compensate any resulting damages.

Upon conclusion of this Subcontract, the Subcontractor shall provide Exyte with the following up-to-date and valid certificates, not older than three months:

- Clearance certificate from the relevant health insurance funds confirming complete payment of total social security contributions,
- Qualified clearance certificate from the relevant employer's liability insurance association,
- Tax clearance certificate from the relevant tax office.

All certificates must be valid for the entire duration of the Subcontract Works, including any extension periods. If individual authorities/agencies issue only temporary certificates, the Subcontractor shall submit a valid follow-up certificate to Exyte each one month prior to its expiry date without being requested to do so.

The Subcontractor must ensure that all Sub-tier Contractors and the temporary worker agencies also fulfil the obligations and provide corresponding evidence in good time.

If the Subcontractor is in default of fulfilling the aforementioned submission obligations, Exyte is entitled to withhold a reasonable amount from its payments.

4.4 Meeting Procedures

4.4.1 The Subcontractor shall participate in the regular project meetings at least once per week, and more frequently, if required. An authorised and competent representative of the Subcontractor shall participate in the weekly project meetings of Exyte's project management.

4.4.2 At Exyte's request, the Subcontractor shall participate in discussions with the Customer, to advise Exyte with regard to execution details and changes to the Subcontract Works, and to assist with authorities (operating licenses, concessions, etc.). The Subcontractor must not contact the Customer directly without Exyte's prior consent.

4.5 Project Documentation

The documentation guideline, including requirements of designation of documents and plans, as well as the excerpts from the organisational manual which may have been provided to the Subcontractor in the context of contract negotiations, must be applied. Any documents and records which are usually provided according to the generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*) and the Contract Documents set forth in 3.1 shall also be provided to Exyte. The documentation shall be handed over to Exyte in digital form (as an editable original file (e.g. visio, DWG) and PDF files) on the dates specified in the contractual documents referred to in clause 3.1 or, if these do not specify any dates, four weeks before (partial) acceptance and, at the latest when the (partial) final invoice is submitted, simply in paper form and on a permanent data carrier, unless the documentation guidelines contain any provisions to the contrary.

4.6 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 use such documentation and communication platform. The Subcontractor shall enter the latest versions of the templates, drawings, plans, calculations and other documents prepared in connection with the Subcontract Works in the communication and document platform provided by Exyte, and shall comply with the specifications regarding the use of such platform. The costs incurred by Exyte through provision of said communication and document platform (instruction and user fees) shall be borne by Exyte. The Subcontractor shall not be entitled to be provided with hard copies of such documents.

4.7 Tidy Construction Site

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

4.7.2 If the Subcontractor fails to meet said obligation without delay, Exyte shall after giving a notice setting a final time period for performance be entitled to contract a third party for the removal of building rubble, packaging materials, waste or other contamination at the Subcontractor's expense. The Subcontractor shall bear the burden of proof that the building rubble, packaging materials, waste or other contamination does not originate from the Subcontractor.

4.8 Company Signs

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

4.9 Exyte right to request performance and remedying of defects

If Subcontractor before acceptance does not, in whole or in part, perform properly (i.e. without defects) the Subcontract Works, Exyte shall be entitled to request the Subcontractor, to properly perform within a reasonable time period. If the Subcontractor fails to comply with the request within the set time period 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 Subcontract 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.

4.10 Duty to co-operate

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 Subcontract Works economically. In case of impediments, the Subcontractor shall be required to alter the construction process in order to meet the specified deadlines.

4.11 Performance status report

The Subcontractor shall provide Exyte with a performance status report for the current month by the 25th of each month.

5. Remuneration

5.1 Exyte shall pay to the Subcontractor the Remuneration as agreed:

5.1.1 Unit Price Contract:

The Subcontractor shall be remunerated on the basis of the unit prices and the works and quantities actually performed and documented by measurement / the quantities according to the final work and assembly drawings. The Subcontractor is entitled to be paid the remuneration agreed upon (Net Contract Sum*), plus VAT in the applicable statutory amount. The agreed unit prices are fixed prices and include the special and general business and over-head costs, risk and profit as well as the remuneration for ancillary services which are necessary for the complete, functional, permit-compliant, defect-free, operationally safe and proper manufacture, construction, execution, performance, delivery and commissioning of the Sub-contract Works.

5.1.2 Lump Sum Contract:

The Subcontractor is entitled to be paid the remuneration agreed upon plus VAT in the applicable statutory amount ("Lump Sum Fee"). The Lump Sum Fee shall be fixed and shall not change, even if the executed quantities change. The Lump Sum Fee shall cover all deliveries and works to be provided under the Subcontract, which are necessary for the complete, functional, permit-compliant, defect-free, operationally safe and proper production, construction, execution, performance, delivery and commissioning of the Subcontract Works.

5.2 Any changes to the calculation basis after conclusion of the Subcontract, including without limitation, wages, material prices, levies, public charges, statutes and fees shall not give rise to any claim to special payment or change to the contractual prices. No indexation clauses for the costs of labour, material, devices, and supplies have been agreed.

5.3 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. 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 local findings required for invoicing shall be carried out jointly. The measurement/review of the executed works shall be conducted prior to invoicing, together with Exyte's project management. The measurement/performance survey confirmed by Exyte's project management shall be attached to the respective invoice in a separate annex.

6.3 All invoices shall indicate the partial works in the order of the relevant items, using the terms specified within this Subcontract; the terms may be abbreviated. In so doing, the works shall be listed separately according to this Subcontract, changes to the works and hourly rates services, if any. Invoices shall at least include the following information:

- a) Order number, date, project number, system, system number, type of invoice (partial invoice, instalment invoice, final invoice);
- b) Type of invoiced works;
- c) Reference to the already invoiced and paid amounts, indicating invoice numbers and dates;
- d) The legally required invoice details (tax number, invoice number, performance period etc.);
- e) 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.

6.4 If separate orders based on hourly rates were issued, they shall be invoiced with the next instalment invoice. 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 Exyte shall provide the Subcontractor in due time prior to the due date of the first invoice with a valid USt 1 TG certificate by the respective tax office (Sec. 13b para. 5 phr. 2 in connection with (2) No. 4 German Value Added Tax Act). The Subcontractor shall be notified without delay about any changes made by the tax office. If the so called "Construction work" ("Bauleistungen"); Sec. 13b para. 2 No. 4 German Value Added Tax Act) is performed in Germany by a Sub-contractor based in Germany there is a reversal of tax liability to Exyte and the Subcontractor shall issue the invoice without reporting German VAT and with a note to the reverse-charge-mechanism.

6.7 If an invoice is incorrect, in particular if an incorrect Value Added Tax amount is stated, the Subcontractor shall immediately correct the invoice, reimburse the unduly received Value Add-ed Tax to Exyte and provide Exyte with a corrected invoice.

6.8 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.

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

6.10 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 individual invoice items shall be divided into main contract, Change Orders and orders based on hourly rates. The final invoice shall again specify all instalment invoices and payments already made.

7. Payments

7.1 Instalment invoices, instalment payments

- 7.1.1 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 executed works;
 - due invoicing in accordance with this Subcontract;
 - submission of an advance payment bond (if due);
 - submission of a performance bond
 - submission of evidence of insurance under this Agreement.

Payments shall be due 60 calendar days from receipt of a verifiable and proper invoice.

7.1.2 The Subcontractor's claim to instalment payments shall be subject to the condition subsequent that Exyte receives a request for security from the Subcontractor in accordance with Sec. 650f BGB. Thereafter, the Subcontractor shall only be entitled to demand instalment payments in accordance with Sec. 632a BGB.

7.2 Final payment

7.2.1 The final payment shall be due within 60 calendar days from receipt of the proper and verifiable final invoice. Exyte shall be entitled to deduct an amount of 5% of the net invoice amount from the final payment, as security for warranty claims. The Subcontractor may replace the de-posit by providing a security for warranty claims pursuant to this Subcontract.

7.2.2 Exyte shall be entitled to withhold from the final payment the amount justified in accordance with Sec. 641 para. 3 BGB depending on which amount is higher until delivery of the complete documentation pursuant to the documentation guidelines and other Contract Documents (so-called final documentation).

7.2.3 If the invoiced Subcontract Works are defective, Exyte may withhold payment in accordance with Sec. 641 para. 3 BGB.

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

7.3 Unless stated otherwise, down or advance payments shall be offset against the initial works and hence with the initial instalment payment(s).

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

7.5 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.

7.6 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 additional remuneration

The Subcontractor is required to notify Exyte, prior to carrying out any Change, on its claim to additional remuneration and delays resulting from the execution of the Change. Such announcement shall be made without delay.

The timely notification on additional costs shall be a prerequisite for any claim by the Subcontractor for additional remuneration. The timely notification 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 demands for a Change 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 demand for the Change or sending his notification (that, from his point of view, Changes are required) - with an estimate of the additional cost and expenses and, within further five calendar days at the latest, with a written determination of the additional cost and expenses in verifiable form ("Change Order Quote"). Therein the Subcontractor shall explain whether and to what extent there are differences between the changed works and the initial works.

If the complexity of the Changes demanded by Exyte does not allow for submitting a satisfactory determination of the additional cost and expenses within such period of time, the Subcontractor shall indicate this without delay and shall in any case submit an estimate of the additional cost and expenses in as much detail as possible. In such case, the determination of the additional cost and expenses shall be provided to Exyte without delay. The determination of the additional cost and expenses shall be prepared at no cost for Exyte.

8.4 Execution of Changes to Works

Changes to Works shall be executed only if:

- (a) Exyte and the Subcontractor have reached an agreement in text form regarding type, scope, and costs; or
- (b) Exyte has instructed the Subcontractor in text form to execute the works in spite of the absence of a mutual agreement.

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

8.5 Effects of Changes on the schedule

If Changes 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 Change Order Quote, or if such is not yet available, no later than upon commencement of the Change. 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 such notification, Exyte may rely on the fact that the Change does not cause any delays; in such case, the contractually specified execution period shall remain unchanged.

8.6 Effects of Changes on Remuneration

8.6.1 If unit prices have been agreed, the additional remuneration or reduced remuneration in the event of a Change shall be calculated based on the unit prices. An appropriate mark-up for general business and overhead costs as well as risk and profit is included in the unit prices.

8.6.2 If unit prices have not been agreed or if the additional or reduced remuneration cannot be calculated on the basis of the unit prices, the following shall apply:

The additional (or reduced) remuneration resulting from a Change is calculated on the basis of the actual additional (or reduced) costs, plus a reasonable mark up for general business costs as well as risk and profit. The Subcontractor shall demonstrate and prove these. Only additional costs that were directly caused by the Change can be remunerated.

The additional (or reduced) costs shall be calculated on the basis of the actual costs required; any discounts granted upon conclusion of this Subcontract shall be taken into account.

Exyte shall have the right to prove that the costs submitted by the Subcontractor do not correspond to the actual costs. Exyte can do so by presenting two third party quotes. The remuneration of the Changes includes the cost for extension of time and acceleration measures, as the case may be.

The mark up for general business costs, risk and profit in the amount of 5% is reasonable and is hereby agreed upon.

8.6.3 The Subcontractor may only request down payments for Changes in accordance with Sec. 650c para. 3 BGB if the Subcontractor is not responsible for the fact that no agreement was reached regarding the amount of his claim to additional costs.

The Subcontractor's responsibility is assumed (but can be rebutted by him) if the costs of the Change do not correspond to the requirement of this Subcontract and therefore doubts arise as to the amount of the additional costs required in fact and thus as to the costs submitted.

8.6.4 To the extent the down payments made by Exyte in accordance with Sec. 650c para. 3 BGB exceed the additional remuneration due, the exceeding portion of the down payments shall be returned to Exyte including interests in the rate of 4% above the legal base rate as from the day the down payments were received by the Subcontractor.

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. By signing the time sheets, Exyte merely acknowledges the number of the hours of presence on site. Exyte shall retain the right to verify if and to what extent the works were duly performed, the principle of economic management was observed and whether they constituted work payable at hourly rates or works that were already contractually due (e.g. remedy of defects).

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 pursuant to Annex [...], the Subcontractor shall, within 21 calendar days after conclusion of this Subcontract, prepare a comprehensive, logically linked detailed schedule (hereinafter referred to as "Detailed Schedule"). The Detailed Schedule shall meet the requirements for schedules according to the Subcontract. It shall furthermore be required that:

- all 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.

This Detailed Schedule must take into account the dates, execution periods and deadlines of the schedule, meet the requirements of critical path planning, and must be prepared upon specifications by Exyte, using either PRIMAVERA or MS-Project software.

10.3 The Detailed Schedule shall be regularly updated, taking into consideration the construction progress. 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 of Exyte due to the Subcontractor's failure to meet any deadline. Approval of the updated Detailed Schedule shall not constitute consent, approval or acknowledgement by Exyte of any claims for extension of time on the part of the Subcontractor.

10.4 Hindrances

10.4.1 If the Subcontractor considers that he is hindered in the performance of the Subcontract Works, or in case of any impact on the construction process (e.g. delays) due to any other reasons (e.g. Changes), the Subcontractor shall notify Exyte in text form without delay and justify the hindrance. In such notice of obstruction, the Subcontractor shall identify the works being hindered, when the works should have been executed according to the construction process but could not be executed at all or not as planned. In addition, the Subcontractor shall name, as the case may be, the breach of duty or obligation by Exyte or the impeding facts underlying the hindrance. The notice shall include suggestions on possible measures to mitigate delays and its consequences.

Notices of obstruction shall be made in text form even if the hindrance is obvious. Any hindrances must be noted in the construction diary. However, an entry in the construction diary shall not replace the notice of obstruction required under this Subcontract. The Subcontractor shall furthermore notify Exyte without delay when a notified hindrance ceases or ends.

10.4.2 If it becomes likely that the deadlines specified in the schedule cannot be met, the Subcontractor shall, to the extent reasonably possible, make optimisations and changes and take any other measures in order to meet such deadlines.

10.4.3 If the Subcontractor is responsible for the hindrance/the delay, it 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 at the Subcontractor's expense.

10.4.4 Exyte shall have the right to instruct modifications regarding the planning process and/or execution of the construction works, in particular acceleration. Exyte may only do so for good cause. A good cause exists where, in case of delay of the planning or the entire Site or parts thereof, (i) the contractual performance periods and/or dead-lines for planning or construction that are found on the critical path are exceeded, or are about to be exceeded and (ii) by the modification of the planning process, the contractual performance periods and/or deadlines can be met, or the exceedance thereof can be reduced. Such instructions are called "Construction Time Orders". Construction Time Orders have



- to be complied with immediately, even if an agreement regarding remuneration thereof has not been agreed yet. To the extent the Subcontractor is not responsible for the issuance of the Construction Time Order, the Subcontractor is entitled to the additional costs required in fact to carry out the Construction Time Order. The Subcontractor shall prove all additional costs on the basis of additional (or reduced) costs; clause 9.6 of this Subcontract applies mutatis mutandis regarding the calculation of the additional (or reduced) costs. Any dispute on the amount of the remuneration does not allow the Subcontractor to suspend the works or withhold performance.
- 10.4.5 The Subcontractor shall tolerate the presence of contractors of subsequent trades on site prior to acceptance and shall as far as possible facilitate preliminary works by such contractors. Such preliminary works shall not constitute hindrances.
- 11. Liquidated damages for delay**
- 11.1 Liquidated damages incurred as a result of exceeding interim milestones stated in this Agreement shall be taken into account for the calculation of liquidated damages for exceeding subsequent interim milestones or the Completion Date; i.e., liquidated damages for different milestones shall not be added up. Liquidated damages for delay regarding a milestone shall be cancelled if the Subcontractor subsequently mitigates the delay and meets the subsequent milestones 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 Procedure**
- 12.1.1 Acceptance shall only take place formally with the preparation of an acceptance report in duplicate. Acceptance shall not be replaced by the use of the Subcontract Works or by commissioning or by the Subcontractor's notification of completion. Sec. 640 para. 2 shall be excluded.
- 12.1.2 The Subcontractor shall request acceptance in writing, not less than 14 calendar days in advance. The acceptance inspections shall be conducted according to an acceptance schedule to be agreed upon by the Parties. Upon request by Exyte, representatives of the Customer as well as other persons nominated by Exyte may also participate in the acceptance inspections. Upon completion of the acceptance inspections and fulfilment of the acceptance requirements, the formal acceptance shall take place and the acceptance certificate shall be prepared. The Subcontractor shall allow for sufficient time for acceptance inspections in its schedule.
- 12.1.3 The Subcontractor shall remedy or perform any defects identified during acceptance or any remaining Subcontract Works immediately, at the latest within the deadlines specified in the acceptance certificate. All works to be performed after acceptance, as well as the remedy of defects, require a further formal acceptance, which the Sub-contractor shall expressly request in text form. The costs incurred by Exyte for sub-sequent acceptances shall be borne by the Subcontractor.
- 12.1.4 Exyte shall have the right, but not the duty, to request partial acceptance if it is possible to separate the considered works from other works, even if the considered works do not constitute a self-contained part of the Subcontract Works.
- 12.1.5 Exyte shall be entitled to request technical checks of individual parts of the Subcontract Works. 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 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 free of defects or in compliance with the Subcontract. Similarly, the review or approval of drawings, product data, samples, or materials by Exyte prior to acceptance shall not constitute acknowledgement that the works are free from defects or otherwise comply with requirements in the Subcontract.
- 12.2 Refusal of acceptance/Determination of status quo in the event of refusal**
- 12.2.1 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 not complete or defective.
- 12.2.2 If Exyte refuses acceptance, the Subcontractor may request that a joint determination of the status quo of the works is carried out (Sec. 650g para. 1 BGB). The request must be served in text form at least two weeks prior to the envisaged appointment. For factual reasons, the appointment may be postponed by Exyte.
- 12.2.3 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.
- 12.3 Determination of status quo**
- For partial works, which will not be available for subsequent checks due to the progress of construction works, the Subcontractor shall request Exyte's project management in due time to conduct a quality control of the building status. In order to do so, documentary evidence shall be submitted completely and in due time by the date the quality control takes place. Such quality control shall not trigger any legal consequences. In particular, there shall be no transfer of risk, no start of warranty periods, no reversal of the burden of proof and no acknowledgement that the works are free from defects or otherwise in compliance with the requirements in this Subcontract.
- 12.4 Transfer of title**
- Title to all Subcontract Works shall be transferred according to statutory provisions, unless otherwise agreed upon in this Subcontract.
- Title to all delivered parts, such as materials etc. shall be transferred to Exyte upon delivery to the construction area at the site. The Subcontractor offers the transfer of title in accordance with this provision with the respective delivery to the construction area at the site. Exyte hereby declares acceptance.
- 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 Warranty claims shall be time-barred after 5 years and 3 months (regular limitation period). If part of the Subcontract Works, the limitation period for the roof, facade, and waterproof concrete basement shall be 10 years and 3 months.
- 13.2 The warranty period shall start with overall acceptance of the Subcontract Works.
- 13.3 When remedying defects, the Subcontractor shall take into account the operational needs of the Customer, user, operator or third party. If required, this shall be done 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 interim solutions until the final remedy of defects, ensuring the unrestricted and risk-free use of the works until the defect has been remedied (damage mitigation).
- 13.4 If Exyte reports a defect prior to expiry of the limitation period and requests remedy, the Sub-contractor shall 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 defect notification, and in no event prior to expiry of the limitation period applicable to the considered defect specified in this Subcontract.
- 13.5 The limitation period for warranty claims shall be suspended upon written notice of a defect by Exyte. Suspension shall commence upon receipt of the notice of defect by the Subcontractor. Suspension shall end, once the remedy works have been accepted by Exyte, acceptance of remedy works is refused by Exyte without cause or the Subcontractor finally and seriously refuses to remedy the defect, Sec. 204 para. 2 BGB applies respectively.
- 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 Business Days from the end of the reasonable inspection period. Any defects, which cannot easily be detected, may be notified within 14 calendar days from detection. Payment of the goods or signing bills of delivery shall not constitute acknowledgement that the delivered goods are compliance with the Sub-contract, even if it is stated in these documents 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 payment according to Sec. 637 para. 3 BGB.



- 13.7 The Subcontractor represents and warrants that spare parts shall be stocked and available for a period of not less than ten (10) years from acceptance.
- 13.8 The Subcontractor's documentation shall, amongst others, comprise a spare parts list, including information such as type, brand, item number, performance data, dimensions and price of the components which might be considered as spare parts for repairs. This spare parts list, as well as an associated quote for such spare parts, must be attached to the documentation.
- 13.9 Exyte and the Customer shall at all times have access to the locations where the Subcontract Works are performed in order to (i) determine progress and execution of the works or (ii) to verify material, resources, quality and production methods. The same shall also apply to any Sub-contract Works which are not performed at the site. The Subcontractor shall ensure that Exyte shall have such access also for the Sub-tier Contractors employed by it.
- 13.10 If the Subcontractor agrees with its Sub-tier Contractor on warranty periods beyond the warranty period agreed in this Subcontract, the Subcontractor shall herewith assign such rights to Exyte. The assignment shall become effective upon expiration of the warranty period specified in this Subcontract. Exyte accepts this assignment.
- 13.11 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 notify Exyte on any concerns. The Subcontractor's suppliers shall be vicarious agents of the Subcontractor.
- 13.12 Otherwise, warranty rights shall be governed by the BGB.

14. Liability

- 14.1 The Parties' liability shall be based on the statutory provisions, unless agreed otherwise in this Subcontract.
- 14.2 If Exyte is held liable by third parties due to a breach of statutory or contractual provisions by the Subcontractor, 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.

If it is not possible for the Subcontractor to take over Exyte's position for formal reasons, the Parties shall jointly coordinate their means of legal defence. Exyte may choose either to take all necessary defensive measures itself or to authorize the Subcontractor to take all necessary defensive measures. The Subcontractor shall indemnify Exyte for all legal defence and litigation costs.

- 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 Subcontractor or by its agents or assistants.
- The Subcontractor shall indemnify Exyte for any third-party damage claims in connection with the Project, which have been caused by the Subcontractor or by any third parties contracted by it. The above shall also apply to damage to neighbouring properties and structures, adjacent trades, facilities or to public roadways. The Subcontractor shall coordinate necessary securing measures with the affected neighbours and third parties and perform them at its own expense.
- 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 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 calendar days from conclusion of this Subcontract by way of an insurance certificate with evidence of such coverage for the duration of the Subcontract Works. Exyte shall be notified without delay about early termination/early cancellation of the CAR/EAR insurance. The Subcontractor shall take out a coverage that is appropriate with regard to the risk-related circumstances of the Project, in particular by
- insuring against damages caused by fire, lightning and explosion;
 - insuring against damages caused by unusual and extra-ordinary flood;
 - insuring against damages to items located in the danger zone, in particular to existing installations;
 - insuring against secondary cost incurred at the occurrence of an insured event, such as cost of ascertainment of damage.
- The insurance amounts and sub-limits shall cover the overall risk of the Subcontractor. The insurance shall contain a follow-up liability for insolvency, closing of business and takeover.
- 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 calendar days from contract conclusion with evidence of such cover by way of an insurance certificate.

The Subcontractor undertakes to include its contracted Sub-tier Contractors in the insurance coverage to be provided by the Subcontractor.

- 15.3 If the Subcontractor, or third parties on behalf of the Subcontractor, also render(s) planning services, the Subcontractor shall be required to take out the business liability insurance set out in Clause 15.2 and a planning liability insurance. Clause 15.2 shall apply *mutatis mutandis*.
- 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 Sub-contract for good cause. 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 shall immediately perform any of its duties 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. The insurance amounts shall be available for each insured event and in each year maximized twice.

16. Securities

16.1 Advance Payment Security

In the event of any agreement of down or advance payments 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:

- 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.
- Such guarantee shall be irrevocable, unlimited, absolute, unconditional and not upon first request, and shall expire upon return of the guarantee form.
- The guarantee shall be issued waiving the defence of failure to pursue remedies (Sec. 771 BGB).
- 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;

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.

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 calendar 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 clause 16.2;
- 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.

To the extent that it has not yet been used, unless claims of Exyte covered by the purpose of the bond have not yet been fulfilled, Exyte may retain a corresponding part of the security for these secured claims, taking into account that there is no double security.

If the Subcontractor fails to provide the bond in due time, Exyte shall be entitled - maintaining the Subcontract - to withhold payments until the bond amount is reached or the bond is provided. The provisions for the bond apply mutatis mutandis to the security deposit.

If Change Orders within the meaning of clause 9 of this Subcontract, Construction Time Orders within the meaning of clause 11.3.6 of this Subcontract, and/or other changes result in an in-increase in the Net Contract Value according to clause 6.1 of this Subcontract by more than 10%, the Subcontractor shall be required to increase the specified security accordingly, unless Exyte explicitly waives its right in the individual case. Until the increased security or an additional bond has been provided, the security may be increased by way of withholding a corresponding cash amount from the instalment invoices. The provisions for the bond apply mutatis mutandis to the security deposit.

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 elapse 5 years and 6 months from the contractual acceptance of the contracted works, unless the Parties

agreed on a different limitation period. The limitation period of the main obligation shall not be affected by the above.

The guarantee shall be returned to the extent that it has not yet been used after expiry of the agreed warranty period - taking into account any suspension and interruption of the warranty period. The Subcontractor shall be entitled to (partial) release/reduction of the bond to the extent that Exyte no longer has any enforceable secured claims.

Until bond is provided Exyte is entitled to retain payments until the bond amount is reached. The provisions for the bond apply mutatis mutandis to the security deposit.

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

16.5 If the issued bonds differ from the content specified in this Subcontract and the Annexes but were accepted by Exyte and not objected to by Exyte within a period of 4 weeks, the content of the issued bonds shall be deemed agreed and the security purpose agreement shall be amended accordingly.

17. Termination

17.1 Termination for convenience

Exyte shall be entitled to terminate this Agreement at any time as a whole or in part.

17.2 Termination for cause

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

17.2.1 Such cause within the meaning of Sec. 648a para. 1 BGB on the part of Exyte shall exist without limitation:

17.2.1.1 if the Subcontractor ceases making payments, if insolvency proceedings (Sec. 14 and 15 of the Insolvency Regulation/InsO) or a comparable legal procedure has been permissibly filed for by Exyte or another creditor, if such a procedure has been opened or if the opening of such a procedure is rejected due to insufficient assets;

17.2.1.2 if the Subcontractor offers, promises or grants benefits to persons involved in executing the Subcontract on the part of Exyte, or offers, promises or grants such benefits to their related persons or is otherwise in breach of the confidentiality or data protection/compliance obligations;

17.2.1.3 if the Subcontractor's right to claim remuneration for the Sub-contract Works against Exyte is seized or pledged as a whole or in part;

17.2.1.4 if the Subcontractor interrupts its works without good reason and fails to resume even after reminder and setting a deadline by Exyte;

17.2.1.5 if the Subcontractor is in delay with 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;

17.2.1.6 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;

17.2.1.7 in case of reasonable suspicion of a breach of the Act to Combat Illegal Work (SchwarzArbG) by the Subcontractor; reasonable suspicion shall mean in particular that the Subcontractor has failed to meet its obligations to furnish information within 14 calendar days from receipt of a written request by Exyte; or

17.2.1.8 in case the Subcontractor fails to perform an essential obligation of this Subcontract despite an additional period of time set to do so (e.g. the obligation set out in clause 16 related to taking out adequate insurance policies).

17.2.2 In case of termination for good cause, Exyte shall be entitled to have any uncompleted parts of the Subcontract Works executed by a third party at the Subcontractor's expense. Any claims to further damages shall remain unaffected.

17.2.3 To continue works, Exyte may utilise machinery, scaffolding, equipment and material available at the Site against reasonable compensation.

17.2.4 In the event of termination for good cause by Exyte, the Subcontractor shall only receive remuneration for the Subcontract Works rendered up to the time of termination and only to the extent that the Subcontract Works can be used by Exyte. Exyte's claims for damages shall remain unaffected.

17.3 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract due to late payment only if Exyte is in delay with a justified payment of at least 20% of the contract value for a period of 6 weeks and if the Subcontractor without success has set a reasonable deadline to Exyte, including a threat of termination.

17.4 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.

17.5 The statutory right of termination remains unaffected.



17.6 Process after termination

In the event of any termination for convenience or cause by Exyte or the Subcontractor, the Subcontractor shall complete and document the Subcontract Works as soon as possible in a manner to allow for the Subcontract Works to be transferred to and continued by a third party without any unreasonable difficulties. Within seven (7) calendar days from the date of termination, the Subcontractor shall provide Exyte with evidence regarding the complete performance level by presenting all works already completed (including without limitation, planning documents). The Subcontractor shall immediately hand over to Exyte the documents required to continue the Subcontract Works, such as all planning documents in editable format, official authorisations, notifications and official plans of any kind. If the documents are not handed over in due time, Exyte shall be entitled to withhold the outstanding remuneration in the amount of the costs for the substitute performance. This shall also apply in particular to plans that are only available in part, as a working document or in a preliminary version or in any other form. The Subcontractor shall have no right of retention. In all other respects, both parties shall promote the termination of the Subcontract as far as possible, in particular to take into account the interest of one party in any necessary preservation of evidence and to provide the necessary information. The Subcontractor shall clear the Site immediately after termination of the Subcontract. Furthermore, the Subcontractor shall leave the materials, construction tools etc. specially manufactured for this Project and not yet permanently installed on the Site despite clearing the site and shall offer and hand them over to Exyte for the purpose of taking them over in order to continue the Subcontract Works quickly against appropriate remuneration.

17.7 Determination of performance status/ Acceptance/ Invoicing

17.7.1 Determination of performance status/ Acceptance

Immediately upon receipt of the termination notice, both Parties shall meet to determine together the status of the executed Subcontract Works. The determination of the performance status includes the establishment of a protocol describing the works performed and the works not performed as well as a photo documentation. The joint determination serves as a basis for invoicing the executed Subcontract Works. 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. The defaulting Party shall be informed in due course of the date of the expert's visit. The result of the determination of the performance status is binding for both Parties, in such a way that it shall be presumed that (i) the actual progress of performance corresponds to the progress stated in the determination of the performance status and (ii) an obvious defect not mentioned in the determination of the performance status has occurred after the assessment.

17.7.2 Invoicing

After the termination and the determination of the performance status, the Subcontractor shall invoice the executed Subcontract Works latest within 2 months after receipt of the report of the joint determination or the determination prepared by the expert. 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 with no success, Exyte is entitled to prepare itself, or by having a third party do so, a verifiable invoice at the expense of the Subcontractor.