



## SPECIAL CONDITIONS FOR DESIGN SERVICES (SCD)

of **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 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 are described in the Minutes of Negotiation (design services), including its annexes, and/or the purchase order, the General Terms and Conditions (GTC) and the present Special Conditions for Design Services ("SCD").

1.2 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.

1.3 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 any and all rules, records, documents, regulations, guidelines, standards, etc. mentioned in these SCD and/or in the Minutes of Negotiation (Design Services) or its appendices.

2.2 Shall also apply, applicable at the time of acceptance: The generally acknowledged rules of technology (*allgemein anerkannte Regeln der Technik*), 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 build-ing 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, regulations, by-laws, to the extent relevant to the realisation of the Project and all relevant statutory and regulatory provisions applicable at the location of the Project.

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 HOAI and the German Civil Code (BGB), as amended from time to time, apply.

### 3. General Obligations of the Subcontractor

3.1 The Subcontractor shall be obliged to check all drawings, documents and information provided by Exyte for completeness, compliance with the applicable and relevant regulations and technical correctness before commencing work. Any discrepancies shall be reported to Exyte in writing without undue delay. The Subcontractor may only provide its services on the basis of plans, drawings and other documents released by Exyte.

3.2 The technical information required for the provision of architectural/engineering services regarding supply and disposal connections of municipal utilities, communication providers and the relevant authorities shall be obtained by the Subcontractor in consultation with the specialist parties involved.

3.3 Insofar as Exyte is required to co-operate, the Subcontractor shall always request this in good time and shall coordinate the services of Exyte or other project participants engaged by it.

3.4 The Subcontractor shall be obliged to safeguard Exyte's rights and interests in the performance of its services; in particular, it shall inform the Client without delay of any circumstances that could give rise to claims against parties involved in the construction work, against itself or against third parties.

3.5 The Subcontractor shall not be permitted to advertise on the construction site, regardless of the type of advertising.

3.6 The Subcontractor shall use the electronic documentation and communication platform specified by Exyte, whereby the Subcontractor shall also oblige its subcontractors to communicate via this documentation and communication platform. The Contractor is obliged to upload the templates, drawings, plans, calculations and other documents created in the course of this contract, in each case in their current version, to the documentation and communication platform provided by Exyte, and to observe the requirements for using the communication platform. The costs incurred by Exyte in providing this communication platform

(instruction and user fees) shall be borne by Exyte. The Subcontractor has no right to insist that documents be provided in paper form.

3.7 If Exyte allocates workplaces to the Subcontractor on the construction site, the Subcontractor shall use only these. The Subcontractor has no right to insist on a particular workplace.

3.8 The Subcontractor is responsible for obtaining and providing in good time all permits that are necessary for the provision of its services and the use thereof.

### 4. Scope of Services

The scope of services provided by the Subcontractor includes:

4.1.1 Delivery of all documents for the registration of systems requiring approval and/or monitoring to the supervisory authorities or approval authorities (such as building inspection, testing institutes such as TÜV or DEKRA, trade supervisory office, public order office) in the required number. The Subcontractor shall arrange for all necessary official acceptance tests at its own expense, insofar as they relate to its services.

4.1.2 Submission of the samples, suitability and quality certificates required under the contract, DIN standards or technical regulations in accordance with the schedule or, if no schedule is agreed, in sufficient time to allow Exyte at least a decision period of 14 calendar days and to allow alternative products to be ordered without delay.

4.1.3 The Subcontractor shall be obliged to ensure that costs are properly determined and monitored. It shall notify Exyte without delay of any cost increases and shall promptly submit proposals for remedial action. The Subcontractor shall determine the costs on the basis of DIN 276 in the 2018 version (DIN 276:2018-12).

4.1.4 The Subcontractor shall provide Exyte with monthly reports in which the current performance status is documented in writing and compared with the planning and monitoring objectives of this contract. Unless otherwise agreed, the reports must contain all information that may be relevant for the execution of the contract or for the invoicing of the services (in particular costs, deadlines, qualities). The Subcontractor shall ensure that deadlines are properly monitored.

4.1.5 The Subcontractor shall hand over to Exyte the plans, documents and records that are usually handed over in accordance with the generally accepted rules of technology and the contractual bases. The documentation guideline with specifications for the designation of documents and plans, as well as the excerpts from the organisation manual handed over to the Subcontractor during the contract negotiations, if applicable, shall be applied in a binding manner. The plans and documents shall be provided in single form in paper and electronic form (as editable original files (e.g. visio, DWG) and PDF files) on a durable medium, unless the documentation guidelines contain different provisions.

4.2 The Subcontractor shall participate in the project meetings and jour fixe appointments, which shall take place regularly, at least once a week, and more often if necessary, and to take minutes. It shall be mandatory for an authorised and expert representative of the Subcontractor to participate in the weekly project meetings with Exyte's project management. The minutes shall be submitted to Exyte without delay.

At the request of Exyte, the Subcontractor shall participate in discussions with customers/end customers, to advise Exyte with regard to execution details and changes in performance, and to provide support in discussions with authorities (operating licences, concessions, etc.). The Subcontractor shall not be entitled to contact the customer directly without the prior consent of Exyte.

4.3 The Subcontractor shall cooperate with Exyte. This duty of cooperation shall, in particular, include the coordination of the content of the services. This duty of cooperation includes not only the provision of information on the construction process, but also the obligation to work and perform in an economically efficient manner. In the event of hindrances, the Subcontractor is obliged to implement changes to the planning and construction process in order to meet the agreed deadlines. The Subcontractor is also obliged not to take any disproportionate measures, such as withholding a high-quality service for the purpose of enforcing a relatively minor counterclaim.

The Subcontractor shall always consult with all parties involved in the project, in particular with other specialist planners, and coordinate his services with those of others. In this context, he is particularly obliged to provide the other specialist parties with the necessary information and documents comprehensively and in good time so that they can properly provide their services. He shall also coordinate the provision of services by his subcontractors in terms of technical expertise and scheduling.

4.4 The Subcontractor is liable for the completeness and factual correctness of all the documents and calculations it produces, and for the suitability of these documents for the implementation of the planned construction project. If contradictions exist



between the plans and calculations of the Subcontractor in the drawings and plans submitted to it by other project participants, the Subcontractor is obliged to notify the Client of these deviations without delay.

4.5 If, in the course of providing the services, the Subcontractor fails to provide the services contractually owed by it, or fails to provide them properly (free of defects), Exyte shall be entitled to request the Subcontractor to properly fulfil these services prior to acceptance. If the Subcontractor does not fulfil the request for fulfilment within the set period, Exyte shall be entitled, at its discretion, to either terminate the contract for these services – regardless of whether the services constitute self-contained or functioning parts or units of services – or to claim damages instead of fulfilment with regard to the services that are the subject of the complaint. If Exyte chooses compensation, this shall simultaneously be deemed to be a waiver of the claim for performance with regard to the rejected service provided by the Subcontractor.

4.6 Plans and documents required by the Subcontractor for the performance of its services shall be requested from Exyte in good time so that there is sufficient time for their procurement and there are no delays in the construction process, but at least 10 working days' notice.

4.7 The Subcontractor shall, within the framework of the agreed services, inform Exyte without delay, either on its own initiative or at Exyte's request, of all circumstances that are material to the performance of its tasks, in particular of any deviations in quality or deadlines, and shall suggest solutions to the Client and point out possible savings. The Subcontractor shall immediately inform Exyte in writing of the necessity to commission further planners. Any such commissioning shall be carried out exclusively by Exyte.

4.8 Approvals and plan updates  
The performance owed by the Subcontractor is determined, as planning progresses, by the planning results agreed between the parties and approved by the client. Such planning updates do not constitute a change in performance. The Subcontractor may only provide its services on the basis of drawings, documents and information released by Exyte. Exyte's approvals shall not affect the Subcontractor's responsibility for all planning and engineering services provided and to be provided by it.

4.9 Generally accepted rules of technology / legal and official provisions  
The Subcontractor is obliged to comply with the generally accepted rules of engineering and with the other statutory, official and other provisions applicable at the time of acceptance. If the statutory, official and other provisions applicable to the Services or the generally accepted rules of engineering change between the time of the conclusion of this contract and the time of formal (partial) acceptance and if this change requires a corresponding change to the Services under this contract, the Subcontractor is entitled to claim for any additional costs, provided that the change was not foreseeable by a conscientious and expert entrepreneur at the time of the conclusion of this contract, the Subcontractor has informed Exyte of the necessity of the service before the change to the service is carried out and Exyte has agreed to the provision of the service.

## 5. Sub-tier Contractors

5.1 The Subcontractor may subcontract parts of the Subcontract Works only upon prior written approval by Exyte to sub-tier contractors or service providers (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 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, to pay minimum wages and insolvency benefits, to register a trade and, if applicable, fulfil any professional requirements.

5.3 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 and address 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 section 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.

5.4 The Subcontractor shall comply with all relevant provisions of the Trade Code (GewO), the Em-ployee 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 re-quired (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 res-idence 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.

5.5 The contractor 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.

5.6 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.

5.7 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.

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

## 6. Remuneration

6.1 The Subcontractor shall receive for the Subcontract Works a lump sum (in short: "Net Contract Value") plus VAT in the respective applicable statutory amount (the "Lump Sum Fee").

6.2 The Lump Sum Fee shall cover all deliveries and works, as well as ancillary costs, to be provided under the Subcontract. 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 additional payment or change to the contractual prices. No indexation clauses for the costs of labour, material, devices, and supplies have been agreed.

6.3 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.

## 7. Work at hourly rates

Work at actual expense shall be paid only if instructed in writing by Exyte prior to commencement. The Subcontractor shall provide verifiable evidence of these services in writing on each working day and have the evidence confirmed by the project management. Unless otherwise agreed, the evidence must include the construction site, date, names, occupation, wage or salary group of employees, hours worked per employee and a precise description of the content of the service.

By signing the proofs, 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).

## 8. Contractual Dates

8.1 The Subcontractor shall comply with the binding contractual dates and milestones as agreed in the Minutes of Negotiation.

8.2 The Subcontractor shall provide the Subcontract Works in such a way that the dates and Exyte's objectives with regard to the time sequence are met. The Subcontractor is obliged to provide all the services necessary for the other planning and for the execution of the construction project in such a timely manner that the completion dates agreed between Exyte and the construction companies and the other project participants are not jeopardised or delayed for reasons that lie (also) within the Subcontractor's sphere of influence or responsibility.

8.3 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 (Annex [...]), meet the requirements of critical path planning, and must be prepared upon specifications by Exyte, using either PRIMAVERA or MS-Project software.

8.4 The Detailed Schedule shall be regularly updated, taking into consideration the design and 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.

## 9. Hindrances

9.1 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. The Subcontractor shall furthermore notify Exyte without delay when a notified hindrance ceases or ends.

9.2 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.

9.3 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. Changes to Subcontract Works

10.1 Right to give instructions

In accordance with Sec. 650b para. 1 BGB, Exyte shall be entitled to instruct changes to the agreed work results, as well as changes of the services which are necessary to achieve the agreed work results (hereinafter a "Change"). Changes shall also include the complete or partial removal of individual works from the Subcontract 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 additional or changed works have to be carried out, but without prejudice regarding the basis and the amount of Subcontractor's entitlement to payment,

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 re-garding 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 remuneration 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 the remuneration failed and Exyte nevertheless wishes the Change to be completed.

The urgency requirement set out above in lit a. is met in any case when (i) the time schedule would be impacted by the exhaustion of the 30 day period of Sec. 650b para. 2, (ii) Customer can request the immediate carrying out of the Changes, or (iii) in the presence of an imminent danger.

10.2 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.

10.3 Determination of additional cost and expenses

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 send-ing 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.

10.4 Execution of Changes

Changes 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 on additional remuneration.

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

10.5 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 agree if and to what extent the design and construction process changes.

In the absence of such notification, Exyte may rely on the fact that the Change do not cause any delays; in such case, the contractually specified execution period shall remain unchanged.

10.6 Effects of Changes on Remuneration

The remuneration for the Change, in particular for the additional or reduced expenditure incurred as a result of the Change, shall be agreed between the parties in text form (e.g. lump sum, reimbursement of actual cost). The hourly rates pursuant to clause 7 (work at hourly rates) shall be binding.

The Subcontractor shall not be entitled to claim remuneration for planning optimisations.

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.

## 11. Liquidated damages for delay

11.1 If the interim milestones are exceeded due to the Subcontractor's fault, unless otherwise provided for in the Minutes of Negotiation, the Subcontractor shall pay for each Business Day of delay liquidated damages in the amount of 0.1% of the objectively correct net final invoice amount of the part of the Subcontract Works in delay. The total liquidated damages per Milestone shall be limited to 5% of the objectively correct net final invoice amount of the Subcontract Works that ought to be carried out by the Milestone.

11.2 Liquidated damages incurred as a result of exceeding interim Milestones shall be offset against liquidated damages for subsequent Milestones or the Completion Date; i.e., liquidated damages for different Milestones shall not be added up. Liquidated damages for delay of an interim Milestones shall not apply if the Subcontractor subsequently mitigates the delay and meets the subsequent Milestones or the Completion Date.

11.3 If the Completion Date is exceeded due to the Subcontractor's fault, the Subcontractor shall pay for each Business Day of delay liquidated damages in the amount of 0.1% of the objectively correct net final invoice amount. The amount of all liquidated damages under this Sub-contract shall be limited to a maximum of 5% of the objectively correct net final invoice amount.

11.4 As long as the objectively correct net final invoice amount has not been determined by mutual agreement or established by a legally binding judgment, Exyte shall be entitled to claim liquidated damages on the basis of the Net Contract Value. In the case of liquidated damages under clause 12.1, this shall apply in each case in relation to the part of the Subcontract Works in delay. Any overpayments shall be refunded to the Subcontractor by Exyte after agreement or determination of the correct net final invoice amount.



11.5 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 reservation or any denial of acceptance does not exclude Exyte's right to claim liquidated damages. In such cases, a reservation may be declared until the final payment or statement equivalent to a final payment.

11.6 Any claims for damages remain unaffected. In such case, the liquidated damages shall constitute the minimum amount of the claim for damages.

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

11.8 If the schedule changes for reasons the Subcontractor is not responsible for and if it is therefore not possible to meet the Milestones, Exyte's entitlement to liquidated damages does not cease. The Parties shall agree upon new Milestones (duty to co-operate). The provisions regarding liquidated damages shall apply accordingly to the new Milestones, unless liquidated damages are explicitly excluded for the new Milestones.

If the Parties do not explicitly agree on new Milestones, the dates initially specified are extended by the additional time period that is required due to reasons the Subcontractor is not responsible for, taking into account that Subcontractor shall use 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

12.1.1 Acceptance Procedure  
Acceptance shall only take place formally with the preparation of an acceptance report in duplicate. Sec. 640 para. 2 shall be excluded. Acceptance shall not be replaced by the use of the Subcontract Works or by the Subcontractor's notification of completion.

12.1.2 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 subsequent acceptances shall be borne by the Subcontractor.

12.1.3 Beyond Sec. 650s BGB 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.

12.2 Refusal of acceptance/Determination of status quo in the event of refusal  
Exyte may refuse (partial) acceptance for material defects. Exyte may not refuse (partial) acceptance for minor defects or minor outstanding residual works. However, (partial) 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. (Partial) acceptance may furthermore be refused if the provided documentation is not complete or defective.

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.

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.

## 13. Invoicing

13.1 Invoicing shall depend on the proofed progress of the Subcontract Works, based on the payment schedule. The payment schedule shall be exclusively performance-related, even if referencing the calendar.

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

13.3 All invoices shall indicate the partial works, 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:

- 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.

13.4 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.

13.5 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.

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

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

13.8 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 in accordance with this para. 13. 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.

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

## 14. Warranty Claims, Limitation

14.1 Warranty claims shall be time-barred after 5 years and 3 months (regular limitation period).

14.2 The warranty period shall start with overall acceptance of the Subcontract Works or the partial acceptance according to Sec. 650s BGB.

14.3 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.

14.4 Otherwise, warranty rights shall be governed by the BGB.

## 15. Insurance

15.1 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 design and extended environmental liability. The minimum coverage amounts in the event of damage shall be as follows:

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, processing damage, environmental damage and for extended product liability damage.

The annual aggregate for such minimum coverage amounts shall be deemed maximized twice.

In the event of higher contract values, the amounts insured shall be adjusted accordingly to ensure insurance cover appropriate to the subject matter of this Subcontract.

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.

15.2 If the Subcontractor, despite a reasonable additional time to do so, fails to provide evidence of adequate insurance coverage pursuant to 15.1, Exyte shall be entitled to take out corresponding insurance at the Subcontractor's expense or terminate this Subcontract 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.

15.3 The Subcontractor shall immediately perform any of its duties under such insurance contracts, including without limitation, notification obligations.

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

## 16. Securities



16.1 Advance Payment Bond  
If a down or advance payment ("Advance Payment") is agreed, the Subcontractor shall provide the following security:

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

- a) Scope of security, 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.

Exyte shall make the advance payment when due in accordance with the contractual provisions upon submission of a proper invoice and the advance payment bond in accordance with above content. The advance payment bond shall be returned to the Subcontractor upon off-setting or in the event of utilisation, upon irrevocable receipt by Exyte of the repayment of the advance payment.

16.2 Performance Bond  
To secure Exyte's rights with regard to the proper and timely execution of the works, termination, Subcontractor's failure to make payments of overall social insurance contributions or employer's liability insurance association premiums, compliance with regulations under the Posted Workers Act and the Minimum Wages Act, as well as contractual indemnification obligations, the Subcontractor shall provide security (the "Performance Security") in the amount of 10% of the Net Contract Value.

The Subcontractor shall provide such security within 14 calendar days from signing this Subcontract by presenting a bond by a credit institution or credit insurer in the European Community, Switzerland or the U.S.A., each having seat in Germany, with the following configuration/contents:

- a) Scope of security, purpose: proper and timely execution of the works, termination, Subcontractor's failure to make payments of overall social insurance contributions or employer's liability insurance association premiums, compliance with regulations under the Posted Workers Act and the Minimum Wages Act, as well as contractual indemnification obligations;
- 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.

The bond shall be returned immediately after acceptance 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 then 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, Construction Time Orders and/or other changes result in an increase in the Net Contract Value a 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 Warranty Bond  
In order to secure fulfilment of Exyte's warranty rights including its right to claim damages and any and all other associated rights according to Sec. 241, 280 BGB, the Subcontractor shall, upon acceptance, provide security in the amount of 5% of the objectively correct final net invoice amount, including Change Orders, Construction Time Orders and/or other changes. 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 plus / minus agreed Change Orders, Construction Time Orders and other changes, shall be taken as a basis.

The Subcontractor shall provide such security following acceptance by presenting a bond by a credit institution or credit insurer in the European Community, Switzerland or in the U.S.A., each having a seat in Germany, in accordance with the following configuration/contents:

- a) Scope of security, purpose: Exyte's warranty rights including its right to claim damages and any and all other associated rights according to Sec. 241, 280 BGB;
- 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.

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 Subcontract as a whole or partly at any time.

17.2 Termination for good cause

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

17.2.1 Such good cause within the meaning of Sec. 648a para. 1 BGB on the part of Exyte shall exist including but limited,

- 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;
- 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;
- 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;
- if the Subcontractor interrupts its works without good reason and fails to resume even after reminder and setting a deadline by Exyte;
- 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;
- 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; or
- 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 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 Special right for termination

The Parties agree that the essential planning and monitoring objectives pursuant to Sec. 650r BGB have been agreed upon conclusion of this Subcontract.

Insofar as the Parties are nevertheless entitled to a special right of termination in accordance with Sec. 650r BGB in the case of essential planning and monitoring objectives that have not yet been agreed, the following shall apply:

17.3.1 Exyte's special right of termination shall expire 4 weeks after receipt of the planning documents including a cost estimate in accordance with Section 650p (2) BGB.

17.3.2 The Subcontractor's special right of termination shall apply only if the Subcontractor set Exyte a reasonable deadline for approval within the meaning of Section 650r (2) sentence 1 BGB upon submission of the planning basis including a cost estimate in accordance with Section 650p (2) BGB. As a rule, a period of 4 weeks shall be reasonable.



- 17.4 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.
- 17.5 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.
- 17.6 The statutory right of termination remains unaffected.
- 17.7 Process after termination  
I n 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). 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.
- 17.8 Determination of performance status/ Acceptance/ Invoicing  
17.8.1 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. 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.
- 17.8.2 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.
- 18. Hand over of documents**
- 18.1 At Exyte's request, the Subcontractor shall hand over to Exyte all planning documents and other documents (e.g. tender documents) depending on the progress of the design.
- 18.2 After termination of this Subcontract - for whatever reason - the Subcontractor shall immediately hand over to Exyte the documents required to continue the design and construction work, such as all design documents in editable format, official authorisations, notifications and all 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 which are only available in part, as a working document or in a preliminary version or in any other form. The Subcontractor's right of retention or other right to refuse performance with regard to the documents and records (including plans) is excluded.
- 18.3 The Subcontractor shall return to Exyte all documents handed over to it by Exyte at the latest upon termination of the Subcontract - for whatever reason - but otherwise when it no longer requires them. Amendments and/or additions by the Subcontractor to the aforementioned documents provided by Exyte or third parties shall not be permitted. The Subcontractor may not use the documents provided to it by Exyte or third parties for other projects.