

### 1. Scope

1.1. These General Terms and Conditions of Delivery and Payment shall apply in their currently valid version, which can be downloaded from [www.exyte-technology.net](http://www.exyte-technology.net), to all delivery contracts with companies within the meaning of § 14 German Civil Code (BGB), legal entities governed by public law and special funds governed by public law concerning deliveries and services provided by Exyte Technology, unless agreed otherwise on an individual basis. These terms shall also apply to all future contracts with the Customer, irrespective of whether Exyte Technology expressly reiterates them or not.

1.2. The validity of any conflicting or supplementary provisions, in particular conflicting or supplementary General Terms and Conditions of the Customer, shall be excluded, unless Exyte Technology has expressly agreed to their validity. Exyte Technology shall not recognize conflicting or deviating terms and conditions regardless of knowledge thereof, even if an order of the Customer is executed by Exyte Technology with no reservations.

### 2. Scope and nature of the services

2.1. Offers made by Exyte Technology are non-binding. An agreement shall only be valid when an order placed by the Customer on the basis of an offer is confirmed by Exyte Technology by letter, in text or through the electronic ordering system of Exyte Technology, or upon execution of the order.

2.2. Concerning the content of the contract, the order confirmation according to Section 2.1 or - if no such confirmation exists - the offer of Exyte Technology shall be binding, i.e. deliveries and services not listed in the order confirmation or in the offer shall not be included in the contents of the delivery.

2.3. Information in the documents pertaining to the offer (such as drafts, figures, specifications of weight, dimensions and perforations, etc.) and terms of delivery shall only be approximate, unless expressly referred to as binding.

2.4. The offer is made on condition that the materials used to operate the plant (water, air, etc.) are suitable for the intended use.

2.5. All ancillary services (e.g. masonry, caulking, plastering, carpentry, excavation, wiring, paintwork) are excluded from the offer unless Exyte Technology undertakes to carry out the installation or unless otherwise specified in the offer. These must be paid separately if they are performed by Exyte Technology.

### 3. Prices and payments

3.1. For deliveries and services which, as per agreement, shall be rendered later than four months after conclusion of the contract, any labour and/or material price increases occurring after submission of the offer may be invoiced with a proportionate surcharge for overhead costs.

3.2. Unless expressly agreed otherwise, the specified rates are EXW Incoterms 2020. The applicable VAT shall be invoiced separately.

3.3. The following payment terms shall apply:

a) Within 30 days after receipt of invoice net, unless agreed otherwise.

b) For orders with a net value of more than EUR 30,000.00, the Customer shall make advance payments of 30% of the order value upon order confirmation and then upon notification of shipment.

3.4. The Customer shall only be entitled to offset such claims or exercise a right of retention against such claims if those claims are undisputed or have been established as indisputable or legally binding.

### 4. Delivery terms - force majeure

4.1. The delivery period shall commence at the earliest upon sending of the order confirmation, not prior to the date on which the customer and Exyte Technology have settled and agreed on all technical details and contractual terms, and not prior to receipt of an agreed advance payment. Should the Customer request subsequent changes, the delivery period shall be extended accordingly.

4.2. The performance of the delivery-related obligations is contingent upon the Customer not being in arrears with payment and performing all necessary cooperative actions required for a contractually compliant delivery in a proper and timely manner. In particular, the Customer shall provide in a timely manner and at his own expense all permits and documents required for the installation and operation of the equipment. Should Exyte Technology assist the Customer in this regard, the Customer shall bear any additional costs incurred.

4.3. Should contractually agreed delivery periods be exceeded, provided there are no commercial transactions a fixed date involving said delivery, a reasonable extension of time shall be granted. Should Exyte Technology be unable to deliver due to the failure of subcontractors to fulfill their contractual obligations, Exyte Technology shall be entitled to withdraw from the contract if reasonable efforts to obtain the delivered products have been made without success.

4.4. Should the delivery not take place within the set extended period of time, the Customer shall be entitled to withdraw from the contract, provided that he has expressly declared that he will refuse to accept the delivery after expiry of the extended term. This shall not apply to the extent and for as long as Exyte Technology is released from its obligation to perform due to force majeure in accordance with the provisions set out below or in the event of a trade transaction for the delivery at a fixed date.

4.5. Neither Exyte Technology nor the Customer shall be liable to the other party if and insofar as they are prevented from performing their contractual obligations due to a Force Majeure Event; thus Exyte Technology shall in particular be released from

its obligation to perform for the period of the impediment plus a reasonable recovery time. This does not entail a dissolution of the contract. The parties are committed to give each other the necessary information and to adjust their obligations in good faith to the changed circumstances. A Force Majeure Event means circumstances which were unforeseeable when the contract was concluded and which are unavoidable or can only be avoided by unreasonable means or similarly serious circumstance, including, but not limited to (i) labour disputes, disturbance, war or terrorist conflicts; (ii) natural disasters, unusually severe weather, floods, seismic activity, such as earthquakes and volcanic eruptions; (iii) explosions or fires from lightning or other causes not attributable to the party invoking the Force Majeure Event; (iv) risk to public health and safety (including, but not limited to those risks posed by epidemic or pandemic events; (v) virus or other external interference with Exyte Technology's IT systems, to the extent that such interference occurs despite the due care and diligence exercised in the implementation of protective measures; (vi) impediments due to German, U.S., other national, EU or international regulations of foreign trade law.

## 5. Shipping and transfer of risk

5.1. Exyte Technology shall be entitled to make partial deliveries. Any objection to partial deliveries shall not release the Customer from the obligation to accept the remaining amount of the ordered delivery in accordance with the agreement.

5.2. The risk associated with the deliveries and services shall pass in accordance with the provisions of EXW Incoterms 2020.

5.3. Should the shipment be delayed due to circumstances beyond the control of Exyte Technology, the delivery shall be considered to have been made upon notification of the readiness of the shipment, which shall give effect to the transfer of risk, the due date for payment and the beginning of the warranty period.

5.4. Should the shipment be postponed at the request of the Customer or should the Customer refuse to accept the delivery, Exyte Technology shall be entitled to warehouse the delivered products at the risk of the Customer and, starting the day following the date of the notification of delivery, to apply a recurring charge of 0.5% of the invoice amount per month for warehousing at its facilities. Without prejudice to further rights, Exyte Technology shall be entitled to dispose of the delivery object and to deliver to the Customer within a reasonably extended period of time if the Customer fails to retrieve the delivery within a period set by Exyte Technology.

## 6. Assembly and additional services

Unless explicitly agreed otherwise, agreed assemblies and additional services shall be performed in accordance with the valid assembly and service conditions and assembly rates of Exyte Technology, which will be sent to the Customer upon request or can be downloaded from [www.exyte-technology.net](http://www.exyte-technology.net).

## 7. Retention of ownership

7.1. Exyte Technology retains title to all delivered products until the purchase price has been paid in full and all claims arising from the commercial relationship with the Customer have been settled. Should there be a current account credit balance, Exyte Technology retains ownership until the balance is settled; in respect of bills of exchange or cheques, until they are cleared in full without any reservation.

7.2. Should the retention of title expire as a result of treatment or processing, combination or merging, Exyte Technology shall become the owner or co-owner of the resulting new item in the proportion of the value of the goods and services to that of the new item. The Customer shall hold the latter in safekeeping for Exyte Technology free of charge. Should any claims arise from the loss of our reserved property or new joint ownership, these are hereby transferred to Exyte Technology.

7.3. In the event that the Customer acts in violation of the contract, in particular if the agreed payment dates are not met, Exyte Technology is entitled to withdraw from the contract after a reasonable extension of the delivery period and the Customer shall be obliged to return the delivered products. Insofar as these have become essential components of a property, the Customer undertakes to allow Exyte Technology to dismantle the items that can be removed without significant impairment of the structure and to transfer the ownership of these items back to Exyte Technology. Should the Customer interfere with the aforementioned rights, he shall be liable to pay damages to Exyte Technology. Disassembly and other costs shall be borne by the Customer.

7.4. The Customer shall be entitled to process and sell the delivered items in the usual course of business. The claims against third parties arising from the further distribution are hereby assigned to Exyte Technology as a preventive measure. Exyte Technology shall accept the assignment.

7.5. As long as the Customer meets his payment obligations, he is authorized to collect the assigned claims on behalf of Exyte Technology. The proceeds shall be transferred to Exyte Technology immediately. The Customer hereby authorizes Exyte Technology to notify the third-party debtor of the assignment.

7.6. The Customer shall not be entitled to pledge or assign by way of security to third parties, in particular financial institutions, the items subject to retention of title without the written consent of Exyte Technology. The Customer shall immediately notify Exyte Technology of any interference by third parties regarding the reserved goods or equipment or the claims obtained through their sale, in particular through pledging. Resale in the event of insolvency shall be inadmissible; the rights arising from § 48 Insolvency Act (InsO) shall remain unaffected.

7.7. All items subject to retention of title shall be insured against fire, flood and theft. All relevant claims against the insurance company are hereby assigned to Exyte Technology. Exyte Technology shall accept the assignment.

## 8. Warranty claims

8.1. The Customer shall comply with his statutory obligations to carry out an inspection and to give notice of defects in accordance with § 377 of the Commercial Code (HGB).

8.2. Normal wear and tear or standard depreciation shall not be covered by the warranty, nor shall damage resulting from incorrect or negligent handling by the Customer or from negligent failure to comply with Exyte Technology's operating and maintenance instructions, unsuitable equipment, defective construction work, force majeure or other reasons for which Exyte Technology is not responsible.

8.3. Should deliveries and services require installation, warranties given by Exyte Technology for the presence of certain properties shall only apply if the installation is carried out by Exyte Technology, or by personnel contracted by Exyte Technology, or if the Customer proves that the installation by a third party did not affect the occurrence of the properties in question.

8.4. The Customer shall initially be entitled to demand only subsequent performance, repair or replacement, at Exyte Technology's discretion. For this purpose, the Customer shall, after agreement with Exyte Technology, allow sufficient amount of time and appropriate resources. This warranty obligation shall be performed in Renningen. Should Exyte, in accordance with Section 439 (3) of the Civil Code be liable for the removal and installation of such goods and services which, in accordance with their nature and intended use, have been installed in or attached to another object, Exyte shall be entitled to choose whether to do so itself or through a representative of Exyte. Should it be possible to remove the deliveries and services in compliance with Section 439 (3) of the Civil Code, the Customer shall remove them at the expense of Exyte Technology and send them to Renningen at his own expense; should it not be possible to remove the deliveries and services, the Customer shall be liable to compensate Exyte Technology for the expenses incurred by Exyte Technology for removing the deliveries and services on site (travel expenses, accommodation, travel allowance, travel time) in accordance with the valid rates of Exyte Technology.

8.5. Any replaced parts become the property of Exyte Technology.

8.6. Exyte Technology's right under Section 439 para. 4 of the Civil Code to refuse subsequent performance requested by the Customer if such subsequent performance is only possible at unreasonable cost shall remain unaffected. Should the subsequent performance prove unsuccessful or be refused, the Customer shall be entitled to reduce the purchase price or withdraw from the agreement at his discretion.

8.7. In deviation from Section 438 para. 1 no. 3 of the Civil Code the general period of limitation for warranty claims shall be one (1) year. In case deliveries and services involve a building or a

thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (building material) the period of limitation shall be five (5) years pursuant to Section 438 para. 1 no. 2 of the Civil Code. The limitation period shall commence on shipment; in case an acceptance has been agreed, on acceptance. Additional statutory special regulations on the period of limitation (including but not limited to Section 438 para. 1 no.1, para. 3, Sections 444, 445b Civil Code) shall remain unaffected as well as statutory periods of limitation for i) claims for damages based on injury of life, body or health caused by a defect for which Exyte Technology is responsible and for ii) defects resulting from a willful or grossly negligent breach of a contractual duty by Exyte Technology. Claims in accordance with the German Product Liability Act (Produkthaftungsgesetz) as well as rules upon expiry suspension, suspension and recommencement of limitation periods shall remain unaffected.

## 9. Claims for damages made by the Customer

9.1. Exyte Technology shall be liable - regardless of the legal basis - within the scope of strict liability for intent and gross negligence.

9.2. In case of slight negligence, Exyte Technology shall only be liable for damages caused by i) material breaches of contractual obligations which endanger the performance of the agreement or ii) the breach of material contractual obligations (obligations the performance of which is essential for the proper execution of the agreement and on the observance of which the Customer generally relies or may rely ["Material obligations"]), subject to the statutory limitations of liability (e.g., due diligence in own affairs), but only to the extent that such damages could be reasonably foreseen within the scope of the agreement.

9.3. The damage that could be reasonably foreseen within the scope of the agreement shall be identified in the contractual documents and shall be evaluated with due consideration of the risks inherent to the agreement.

9.4. Unless agreed otherwise in these general terms and conditions, any liability of Exyte Technology shall be excluded. In particular, Exyte Technology shall not be liable for collateral and consecutive damages, such as loss of profit, downtime, production shutdown, etc.

9.5. The foregoing limitations of liability shall not apply to any liability of Exyte Technology under mandatory statutory provisions (e.g., under the Product Liability Act), in the event that Exyte Technology has fraudulently concealed a defect, assumed a guarantee for the quality of the goods and services, and in the event of injury to life, physical injury or damage to health.

9.6. Exyte Technology shall only be liable for the loss of data or programs to the extent that their loss would have been unavoidable even if the Customer had taken reasonable precautions against such loss (in particular by making backup copies of all programs and data at least daily) and only to a limited extent with respect to the costs of restoring the data. Furthermore, any liability of

Exyte Technology for loss of data is subject to the other disclaimers of Section 9 of this Agreement.

entitled to take legal action at the general place of jurisdiction of the Customer.

9.7. The above limitations of liability shall apply accordingly in the event of any claims for damages by the Customer against legal representatives, employees or agents of Exyte Technology.

9.8. The aforementioned provisions do not imply a transfer of the burden of proof to the disadvantage of the Customer.

## **10. Property rights**

10.1. Exyte Technology reserves all rights (including copy-rights, the right to apply for industrial property rights [patents, utility models, topography protection rights, designs, trademarks, etc.]) and ownership of the items contained in the documents provided (in printed form, on CD/DVD/USB drives, etc.) in respect of all Exyte Technology documents, such as specifications, blueprints, notes, instructions, technical communications and other technical data, both in paper and electronic form. These must not be made available to third parties without the prior express written consent of Exyte Technology.

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10.2. To the extent that Exyte Technology has produced goods and services in accordance with designs, models, samples, or other specifications provided by the Customer, the Customer shall indemnify Exyte Technology that the industrial property rights of third parties are not infringed by such goods and services. The Customer indemnifies Exyte Technology from all claims, costs, and other damages (including attorneys' fees) upon first written request on behalf of Exyte Technology resulting from a violation of the provisions of this provision within the scope of liability of the Customer.

## **11. Confidentiality**

11.1. The parties to this Agreement shall be obliged to treat all information and documents which become known to them directly or indirectly from the other party during the course of the business relationship as confidential, not to make them accessible to third parties and to use them only for the purposes of performance of this Agreement.

11.2. This confidentiality obligation shall not apply to such information which (i) was already known to a party before the establishment of the business relationship, (ii) is made available to a party by third parties without violation of confidentiality agreements, (iii) is publicly known or (iv) must be disclosed by a party due to a legal obligation or court order.

## **12. Place of performance, applicable law and place of jurisdiction**

12.1. Place of performance is Renningen, Germany.

12.2. German law shall be exclusively applicable (excluding any references to other legal systems). The UN Convention on the International Sale of Goods (CISG) shall be excluded.

12.3. Exclusive place of jurisdiction for all disputes arising from or in connection with the contract is Stuttgart. This shall not apply to the order for payment procedure. Exyte shall also be