
General terms and conditions of sale and delivery

1. Validity

These terms and conditions apply to the entire business relationship between the client and Exista AG. By placing an order, these conditions become an integrated part of the contract. Changes to these terms and conditions or deviating terms and conditions are only effective if confirmed in writing by Exista AG.

2. Conclusion of contract and scope of services

Offers from Exista AG are subject to change. A legally valid contract is only concluded when Exista AG issues a written order confirmation.

For the scope and execution of products and services, the order confirmation or, in the absence thereof, the offer of Exista AG is decisive.

Services which are not expressly warranted, namely documentation, programming, customizing, installation, commissioning, training and application support, are not included in the scope of services.

Changes to the order confirmation by Exista AG are permitted, provided the products have the same functions or the services fulfil the same purposes.

3. Customer's duty to inform

The client must inform Exista AG in a timely manner of special technical requirements as well as legal, official and other regulations at the place of destination, insofar as they are of importance.

4. Documentation

If the documentation is not included in the scope of services, the customer can obtain it in the usual version against compensation.

If the customer requires documentation in special forms or in non-existent languages, this must be agreed separately.

Deviations in the documentation, in particular in descriptions and illustrations, are permissible, provided that the documents fulfil their purpose.

5. Intellectual property

Subject to any licence conditions to the contrary, the customer and his customers shall only have the right to use the software, work results, know-how, data carriers and documentation provided with the corresponding product, but not to sell, distribute, reproduce, expand or modify it independently.

The ownership and the right of further use remain with Exista AG or its licensors, even if the client subsequently changes the software, work results or know-how recordings.

The customer shall take the necessary measures to protect software, work results and documentation from unintentional access or misuse by unauthorized persons.

The customer may make the necessary backup copies. He must mark them accordingly and store them separately and safely.

6. Place of performance and transport

Unless a special place of performance has been agreed upon or is evident from the nature of the business, Exista AG may provide the products and services at its place of business.

If Exista AG delivers products to another location at the request of the customer, the customer bears the risks and costs of transport as well as the costs of packaging and customs clearance, even if Exista AG arranges transport.

If Exista AG provides services at another location at the request of the client, the client will reimburse the travel and accommodation expenses.

7. Packaging, postage and dispatch

Shipment is always at our best discretion and at the risk of the recipient either by post/DHL or carrier. Complaints about damage or loss of the transported goods must be made by the customer himself directly to the relevant transport company before receipt. The packaging is charged together with the postage.

8. Application

The customer is responsible for the installation and the application of the product as well as the combination with other products. He is to take due care and attention as well as conform to manufacturer and supplier guidelines.

For the security of all relevant information, the customer is obliged to pass on such information to the user in a suitable form.

9. Disposal

The customer shall dispose of the delivered products after use at his own expense or transfer this disposal obligation to his customers.

The customer exempts Exista AG from all disposal obligations, namely from any obligation to take back the goods, from disposal costs and from corresponding claims by third parties.

10. Delivery dates

No order confirmations will be sent for deliveries from stock.

If shipment from stock is not possible, the order confirmation will state the expected delivery date in calendar weeks (KW) are given. The order confirmation is decisive for the scope and execution of the delivery. Services that are not included in this are charged separately.

If partial deliveries not agreed upon - caused by EXISTA - are necessary to complete an order, no shipping costs will be charged for subsequent deliveries.

Over- and underdeliveries of up to 10% of the ordered quantity are permissible. Partial deliveries are also permissible.

Only dates that have been confirmed in writing are binding. Such dates are extended accordingly,

a) if Exista AG does not receive the information required for the execution of the order in time, or if the client subsequently changes it;

b) if the customer is in arrears with the work to be carried out by him or with the fulfilment of his contractual obligations, in particular if he does not comply with the terms of payment;

c) if hindrances occur which are beyond the control of Exista AG, such as natural disasters, mobilization, war, riots, epidemics, accidents and illness, considerable operational disturbances, labour conflicts, delayed or defective deliveries as well as official measures.

In case of delays, the client must grant Exista AG a reasonable period of time for subsequent performance. If Exista AG is demonstrably responsible for the delay in delivery, the client is entitled to compensation for the actual damage despite subsequent fulfilment or cancellation of the contract. The compensation is limited to one percent per 2 weeks, at most five percent, measured on the value of the delayed delivery. Further claims from delays in delivery are excluded.

Unless otherwise agreed, we shall adhere to our written offer/quotation for 30 days. After the expiry of the validity of the offer, we reserve the right to change prices, delivery and payment conditions, of the designations and illustrations, even without prior notification.

11. Acceptance

Unless a special acceptance procedure has been agreed upon, the customer shall test all products and services himself.

On receipt of the incoming products, the customer shall immediately control them and pay attention to identity, quantity, damage through transport, and accompanying documentation. The customer shall check for further defects in the product and services as soon as possible.

Products and services are validly accepted if no notice of defects is made within ninety days following delivery, or if the products and services are commercially utilised for more than twenty days.

The customer must give written notice of all defects immediately after their discovery.

12. Warranty

Exista AG warrants that it exercises the necessary care and that its products and services meet the warranted characteristics.

Exista AG is not liable for the results that the client wants to achieve with the products and services.

Excluded from the warranty are errors and malfunctions for which Exista AG is not responsible, such as natural wear and tear, acts of god, inappropriate handling, encroachment by the customer or a third party, undue demands, unsuitable means of production, disruptions caused by other machines and equipment, instable electrical supply, particular climatic conditions, or unusual environmental influences.

The customer shall not assert any claims due to an insignificant defect. In particular, defects are irrelevant if they do not impair the use of products and services.

In the case of significant defects, the customer must grant Exista AG a reasonable period of grace for repair (rectification or replacement). For this purpose, Exista AG must be granted free access to the premises. Disassembly and assembly, transport, packaging, travel and accommodation costs shall be borne by the customer. Replaced parts become the property of Exista AG.

The warranty periods are 12 months. They shall not be interrupted upon recognition or confirmation of a defect.

If the remedy of defects fails, the customer is entitled to a reasonable price reduction. He can only declare the contract cancelled if the acceptance of the products or services is unreasonable.

If Exista AG is demonstrably responsible for the defect, the client is entitled to partial compensation for the damage, however, limited to a maximum of ten percent of the value of the defective delivery, despite the elimination of the defect, price reduction or cancellation of the contract. Further claims are excluded.

Compensation for indirect damages, such as loss of profit and other financial losses, is completely excluded.

13. Further liability

Exista AG is liable within the scope of its liability insurance taken out at the time of the damage event for personal injury and damage to property, which can be proven to have been caused by Exista AG. Further claims, especially for the behaviour of auxiliary persons, are excluded.

14. Call orders / blanket orders

The customer is obliged to accept the ordered goods.

If the parties have fixed a period of time for the delivery dates within which the customer can call up the goods, the customer must purchase the products by the last day at the latest. If the necessary information for the calculation of the period is missing, the date of conclusion of the contract shall be taken as the starting point.

If the client does not call off the products in time, Exista AG may set a reasonable deadline for this. If no call is made within this period, Exista AG may deliver the products to the client unsolicited and claim damages in addition to the price.

15. Returns / Right of return

Material returns can only be taken back after prior consultation. Furthermore, only standard products in standard voltages can be taken back without any modifications or alterations requested by the customer. Excluded from the right of return are also specially purchased non-stock items. In addition, the following conditions apply to the return:

- a) All material must be returned in mint condition and in perfect original packaging.
- b) Everything must be complete and functional.

If these conditions are not met, either a corresponding deduction will be made or the returned shipment will not be accepted at all.

16. Repairs

Repairs must be returned with a completed RMA slip. To be requested under service@exista.ch If a control report is created for repairs which:

- a) Are outside of the guarantee
 - b) The error due to incorrect handling
 - c) If no fault can be found, we charge a contribution towards expenses of CHF 50 per device.
- This is independent of any repair or replacement of the device.

[Click here to get to the fillable consignment note.](#)

17. Prices and terms of payment

Unless otherwise stated, prices are in Swiss francs excluding value-added tax, duties, customs, transport, packaging, insurance, permits, certifications, installation, commissioning, training and application support. They are due for payment net within 30 days of the invoice date.

If the client causes delays in the processing of the contract, Exista AG may adjust the prices accordingly.

The client may only offset counterclaims with the written consent of Exista AG.

If the customer fails to meet the payment deadline, he shall pay interest on arrears at a rate of five percent per annum from the due date without reminder.

In the case of late payment, Exista AG is entitled to claim compensation,

- a) to declare that all claims arising from the business relationship with the customer, even if they do not originate from the same legal relationship, are due immediately;
- b) to grant the customer a reasonable grace period for all payments due and, if the customer does not pay the full amount due within this period, to declare the termination of the contracts and to reclaim the delivered products and services;

c) make the further performance of services (including rectification of defects), even if they do not originate from the same legal relationship, dependent on suitable securities of the customer, including prepayment.

18. Transfer of benefit and risk

Benefit and risk shall pass to the customer at the latest when the goods are ready for collection or dispatch, even if the delivery is made carriage paid, DDP, DAP, FCA, FOB or on the basis of a similar clause or if the transport is organised and managed by us. If dispatch is delayed or made impossible for reasons beyond our control, the delivery will be stored at the customer's expense and risk.

19. Data protection

Personal data, in particular data about companies, customers and employees, may be processed as far as it is necessary for the business transaction. Both parties shall observe the rules of data protection and take the appropriate organisational and technical precautions for this purpose.

Each party is responsible for a reliable backup of its own data as well as of data required for the provision of services. The client will back up all data in due time before an employee of Exista AG can access his IT system.

20. Confidentiality

Both parties and their employees undertake not to disclose to third parties any information from the business area of the other party which is neither generally accessible nor generally known, and to make every effort to prevent third parties from accessing this information. However, in their traditional activities, each party may continue to use knowledge acquired in the course of business.

21. Export

The customer is responsible for compliance with all relevant domestic and foreign export regulations.

22. Choice of law and place of jurisdiction

This legal relationship is subject to Swiss substantive law, excluding the conflict of laws and the Vienna Sales Convention.

The place of jurisdiction is the location of Exista AG.

Exista AG is also entitled to appeal to the court at the client's place of business.