



Terms and Conditions for the Evaluation (PoC) of the Exasol Database Software of Exasol Europa Vertriebs GmbH (“Exasol”)

Exasol’s quotes about the evaluation of the Exasol database software including consulting service of Exasol’s presales department shall be governed by the following Terms and Conditions (“T&C”) additionally to the terms and service description in the quote. When and insofar as provisions in the quote deviate from those of the T&C, the provisions in the quote shall take precedence. If Customer accepts Exasol’s quote (“Agreement”), the following T&C become part of the Agreement between Exasol and Customer.

1 Service Description

1.1 For evaluating the Software, Exasol provides the Software for a limited period:

- as a pure software license (Evaluation License); or
- in connection with an Evaluation System (server-cluster – hardware) which can be set up and operated at a location agreed with the Customer (MTC), or which can be accessed by the Customer via remote connection (ETC).

1.2 The PoC will be supported by the Exasol’s department “Presales Consulting”. After the PoC, Customer and Exasol will hold a final meeting discussing (in person or online) process and results of the PoC.

1.3 Requirement for a smooth and efficient execution of the evaluation is a reasonable preparation and planning with a definition of the test dataset including transfer format, objectives of the PoC and test scenarios. Exasol Presales Consulting will support Customer with such preparation.

2 General Terms

2.1 Definitions

“Clients- and Drivers” are the client Exaplus as well as drivers provided by Exasol (e.g. ODBC, JDBC, ADO.NET).

“Documentation” means the documentation that describes how to use the Software, which is available for download by Customer on the homepage of Exasol in English language.

“ETC”, Exasol Trial Cluster, means the Server Cluster located at Exasol’s premises (including premises of subcontractors), which can be accessed by the Customer for evaluation purposes via a remote connection.

“Evaluation License” means the right of use to use the Software according to the restrictions in the quote and the T&C.

“Evaluation System” is the Software in connection with the server cluster as Mobile Trial Cluster (“MTC”) or as Exasol Trial Cluster (“ETC”). In the quote it is indicated, which system the Customer has chosen.

“Exasuite” consists of the Exasol database software as well as a tuned operating system (Exacluster OS).

“Evaluation Period” has the meaning as set out in Section 6.

“License Server” is the dedicated hardware (server), configured by Exasol, which serves as data carrier for the Software and as administration tool for the Evaluation System by administrate the proper use of the Evaluation System, in particular with regard to the RAM-use in the server cluster, rebooting and installing updates and upgrades, etc.

“MTC” means several servers belonging to Exasol, switched in parallel in a rack, a License Server and installed Software, which are made available to the Customer for evaluation purposes.

“PoC” (Proof of Concept) means testing the Software for evaluation purposes.

“Software” means the software stack consisting of Exasuite and clients and drivers provided by Exasol (e.g. ODBC, JDBC, ADO.NET) as well as every modification, bugfix, patch etc. provided by Exasol to Customer in whatever form (please see also overview under <https://www.exasol.com/support/browse/SOL-345>).

2.2 Application of the T&C

For agreements with Exasol and for pre-contractual obligations in connection with a PoC, these T&C of Exasol shall apply exclusively. Customer’s general terms and conditions shall not apply, even if they are attached to requests for an offer, orders, declarations of acceptance, etc., and regardless of whether or not Exasol expressly objects to them in any individual case. The services specified in these T&C form only part of the Agreement if the provision of the respective services is explicitly agreed upon between the parties.

2.3 Confidentiality

- 2.3.1 The parties hereby agree to treat all information, including but not limited to software, documents, presentations, etc. as confidential, of which they became aware or received from the other party prior to the conclusion of or during the term of the contract which are protected by law, or which evidently contain business or company secrets or are marked as confidential, notwithstanding the expiration of the contract, unless such information is publicly known in the absence of a breach of this confidentiality obligation (“Confidential Information”). Parties hereby agree to store and secure all Confidential Information in a manner so as to prevent any misuse by third parties or the parties themselves.
- 2.3.2 Parties will make Confidential Information available only to those employees (including employees of parties’ affiliates) who require access to them in the performance of their job-related duties (“need to know”). Parties shall instruct these persons regarding the confidentiality of the objects and documents in question and have written agreements in place which ensure the observance of this confidentiality obligation. Access to third parties shall not be permitted except with the express written consent of the other party.
- 2.3.3 Customer may not disclose or publish any benchmarking or results of the PoC without Exasol’s prior written consent.

2.4 Expenses, Fees, Payment

- 2.4.1 The mere provision of the Evaluation System / Evaluation License is free of charge. For the expenses associated with the provision of the Evaluation System / Evaluation License, in particular the service of guidance through the PoC, and - where applicable - further agreed services, Customer has to pay fees as stated in the quote.
- 2.4.2 Unless otherwise agreed between the parties, all kind of payment obligations are due in full 14 days after Customer's receipt of invoice. If Customer delays acceptance without cause, the expenses and fees are still due and payable. Unless otherwise agreed between the parties, expenses and fees have to be paid up front.
- 2.4.3 Prices quoted by Exasol are to be understood as exclusive of any relevant taxes or duties applicable at the time of shipping and/or delivery.
- 2.4.4 Only claims which are undisputed by Exasol or have become final and legally binding may be offset by Customer. Except for claims in connection with § 354a HGB (German Commercial Code), Customer may not assign, delegate or otherwise transfer any of its rights or obligations under this contract without the prior written consent of Exasol. Customer shall only have a right of retention or the right to claim non-performance of the contract within this contractual relationship.

2.5 Liability

- 2.5.1 Exasol is only liable for compensation and reimbursement for expenses (including, without limitation, lost profits, lost expenses, etc.) irrespective of the legal basis (e.g., pre-contractual, contractual and similar obligations, product liability, violation of duty or tort) to the following extent:
- a) Liability based on intent or guarantees given by Exasol shall be without limitation.
 - b) In the event of gross negligence, Exasol shall be liable for typical, and upon the conclusion of the contract foreseeable damage.
 - c) In case of a breach of cardinal duties (such as default) that endangers the purpose of the contract and which does not constitute gross negligence, Exasol shall be held liable only for such damage which is typical for this kind of business and was foreseeable upon the execution of this Agreement, but to the maximum amount of 50% of the agreed fee per claim and 100% of the agreed fee for all claims from and in connection with the contract overall.
- 2.5.2 Exasol is entitled to claim contributory negligence of Customer. In particular, Customer has the responsibility for data protection and blocking of malware in accordance with the latest technical standards.
- 2.5.3 In case of injuries to life, body and health and for claims under the German Product Liability Act, the statutory provisions shall apply.

2.6 Miscellaneous

- 2.6.1 Exasol is entitled to perform services due under the terms of the Agreement by employees of associated companies as defined in Section 15 of the German Companies Act ("Aktiengesetz"). However, in such case, Exasol remains responsible for the performance towards the Customer. If the services will be rendered by other subcontractors, Customer will be informed beforehand.
- 2.6.2 The laws of the Federal Republic of Germany shall apply without regard to the Convention on the International Sale of Goods (CISG). The place of performance and legal venue for any dispute in connection with Agreement is Nuremberg, Germany.
- 2.6.3 Amendments and additions to the Agreement must be made in writing, including amendments to or a waiver of this written form requirement shall be made in writing.
- 2.6.4 In the event that one or more provisions of the Agreement should be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be replaced with such legally permissible provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision.

3 Extent of Use

- 3.1 With payment of the expenses Customer is granted a non-exclusive, non-transferable, non-sublicensable right, limited by time and place, to use for test purposes
- a) the Evaluation System either on the location agreed upon with Exasol or via remote connection. Customer is responsible for the establishment and security of the remote connection; or
 - b) Exasuite on one or several, dedicated servers ("Cluster") and to use Exasol Clients and Drivers ("Evaluation License").

This right of use is, inter alia, limited to the agreed RAM-usage indicated in the quote.

- 3.2 During the Evaluation Period, the Customer gets access to the Exasol user portal, where drivers, clients and updated can be downloaded. The Customer shall observe at all times the correct use of the aforementioned portal.

- 3.3 Customer may not: (i) use the Evaluation System / Software in a way not agreed upon with Exasol, or (ii) use Evaluation System / Software for productive purposes or lend, rent, lease or otherwise place Evaluation System / Software at the disposal of third parties, or (iii) copy or change, reverse engineer, decompile, integrate into another software program or otherwise change the Software other than foreseen in the documentation except as permitted by law (e.g. designated use within the meaning of Sec. 69 d, e German Copyright Act).
- 3.4 Certain Software components are subject to the GNU General Public License and comparable license terms (short "GPL components"). Regarding such GPL components and only in regard to them, the terms of their respective license takes precedence over the license terms of this Agreement. The aforementioned license terms are in each case listed in the Exasuite software part concerned (Software + Driver + Clients etc.). At Customer's request, Exasol will send such list in digital form to the Customer prior to the conclusion of the contract.
- 3.5 Additional Terms of Use for Evaluation Systems
- 3.5.1 Customer shall take all reasonable and adequate precautions against the unauthorized use of the Evaluation System or interference with the Evaluation System by third parties. Customer is responsible for the legal harmlessness of the data inserted into the Evaluation System and may not insert any data violating data protection laws or criminal law. Customer shall ensure that his employees, representatives, agents, etc., who are authorized to use Evaluation System will strictly observe the terms and conditions in these T&C.
- 3.5.2 Customer acknowledges that (i) he may only use the Evaluation System as MTC in conjunction with a License Server configured by Exasol, and (ii) any change or manipulation of License Server will be deemed a violation of Exasol's intellectual property rights, and (iii) without the prior written approval by Exasol he is not entitled to separate License Server from the MTC and use Software without the License Server.
- 3.5.3 All rights to data loaded into the Evaluation System shall remain with the Customer. Unless otherwise agreed between the parties, the data loaded on the hard disks of the Evaluation System will be stored unencrypted.
- 4. Provision of the Evaluation System / Evaluation Software**
- 4.1 Shipment of the MTC: Unless otherwise provided in the quote, the MTC will be shipped at the expense of Customer. In addition, Customer bears the cost of any customs duties, taxes and other governmental charges. The risk will be transferred to the Customer as soon as the Evaluation System is handed over to the person in charge of its transportation.
- 4.2 Evaluation License: The transfer of the Software to Customer will be executed according to a separate agreement of the parties, by mailing of the license key which authorizes the use of the Software, by installation by Exasol on Customer's premises or via provision of a license server used for the operation of Exasuite in the Cluster. If a license server is supplied, Customer shall pay the amount that has been agreed in the quote. Customer agrees not to install any other software on the Cluster other than the licensed Software.
- 4.3 The Software is only provided in machine code (binary license), not in source code.
- 5 Error Correction, Communication**
- 5.1 Customer shall report any errors in Evaluation System / Software as quickly as possible and, if necessary and possible, support Exasol in correcting the reported error.
- 5.2 Exasol will correct reported errors in the Evaluation System / Software at its discretion within reasonable time. As the mere provision of the Evaluation System / Software is free of charge, there is no entitlement of Customer for any error correction or maintenance of the Evaluation System / Software.

5.3 During the Evaluation Period, Customer will be supported by Exasol's department "Presales Consulting" which shall be the exclusive relevant department at Exasol regarding any communication related to the PoC including error reports, support queries, etc.

6 Consulting

6.1 If nothing stating otherwise was explicitly agreed upon, Exasol is not required to provide a certain result within the scope of consulting and does not have any obligation concerning the achievement of any objectives, which the Customer may be pursuing. The local presence at Customer's premises is not required to provide the Consulting Service, the Service can be provided remotely.

6.2 Unless expressly agreed otherwise, prices quoted by Exasol are to be understood plus VAT and any travel costs and expenses incurred.

6.3 One man-day consists of 8 hours on average. Man-days which were provided to a lesser or higher extent of 8 hours, will be invoiced proportionately per hours or minutes.

6.4 Unless expressly agreed otherwise, the information provided in the quote about the time required, represents a non-binding time estimate only. Fees will be invoiced according to actual man-days and consulting hours provided at the rates specified in the quote. If Exasol notices during the provision of services that the time estimated in the quote will be presumably exceeded, Customer will be informed. Customer shall then decide without delay on further proceedings and inform Exasol in written form.

6.5 Work results: If nothing was otherwise agreed upon, the Customer receives a simple, non-exclusive, non-transferable right to use work results. Subject to agreements to the contrary, the Customer is not entitled to use the work results for non-internal use or – as far as that is not part of the intended use – make them available to third parties.

7 Evaluation Period and Termination

7.1 Except as otherwise agreed between the parties, the Evaluation Period is limited to a maximum of 4 weeks. The Evaluation Period starts from the moment the Evaluation System / Software is provided. If an indefinite period was agreed between the parties - respectively after expiry of a minimum term agreed - the Agreement can be terminated by both parties by giving written notice within one month to the end of a month.

7.2 The right of both parties to terminate for cause remains unaffected. The termination shall require the written form in order to become effective.

7.3 Evaluation System: Before the termination of the Evaluation Period, Customer shall be responsible for an orderly removal or deletion of the test data. If Customer fails to remove or delete the data, Exasol will send Customer one reminder. If Customer does not react to the reminder within 5 working days, Exasol shall be entitled to delete the data by standard tools for the deletion of data.

7.4 Evaluation License: Upon termination of the Agreement Customer has to return the license server (if received), any data carriers and created back-up copies. In addition, Customer has to uninstall the Software and to delete irreversibly any remaining pieces of the Software from his IT-system. Upon request of Exasol, Customer has to confirm in writing the performance of the aforementioned obligations.