

CCP General Terms and Conditions

Colt France



These General Terms and Conditions ("GTC") shall apply to any provision of service ("service") and/or sale of equipment by the Colt entity indicated in the Order ("Colt") to customer ("Customer"). Customer's business terms are expressly excluded. Colt and Customer may be referred to collectively as (the "Parties") and individually as a ("Party").

1. Order and Term

- 1.1 This Order ("Order") comprises the Order Confirmation (as defined below), an order form, and any service description, service level agreement, applicable service specific terms and these GTC. In case of conflict between documents, they shall take precedence in the listed order above.
- 1.2 An Order Confirmation means either (a) a notice from Colt confirming that it accepts the relevant Order form, or (b) a notice communicating the expected installation date, or (c) the Order form itself with Colt's counter-signature.
- 1.3 The Order takes effect on the date of Order Confirmation.

Any subsequent cancellation or change is possible as set out in, and subject to, these GTC and in particular may lead to early termination charges according to clause 9.5.

Unless stipulated differently in the Order, the initial term of service shall be 12 months from the earlier of (a) the date that the service is ready for use as communicated by Colt to Customer ("RFU Date") ; (b) the date Customer starts using the service other than for testing purposes; or (c) the date determined by Colt in its sole discretion following a delay in provision of Delivery Cooperation by the Customer pursuant to clause 6.2 or failure to agree the timing of delivery pursuant to clause 6.3 ("Initial Term"). Before expiry of the Initial Term, the Order can only be terminated in accordance with clauses 2.1, 6.1, 6.2, 6.3, 9.2, 9.3 or 11.3 of these GTC. On or after expiry of the Initial Term, the Order shall continue in force until it is terminated in accordance with any of clauses 2.4, 9.1, 9.3 or 11.3 of these GTC .

2. Charges

- 2.1 Charges will be set out in the Order; if not, the current standard charges of Colt apply. If a third party is required for the delivery of a service, the third party costs, which are incorporated in the charges, are subject to survey of the relevant site or review or confirmation by the third party. Such survey, review or confirmation may result in a change to the costs. Any such change will be passed on to Customer in its entirety as part of the charges and Colt shall notify Customer of any such revision to the charges before the service becomes capable of acceptance. In the case of any increase, the Customer shall either (a) inform Colt that it accepts the increased charges or (b) terminate the Order (or relevant part thereof) by giving Colt notice in compliance with clause 9.4. Following its notice of the increase to the charges, Colt shall not be obliged to carry out any further activity in relation to the Order unless and until Customer exercises option (a).
- 2.2 All charges stated on the Order will be exclusive of VAT unless specified otherwise.
- 2.3 Colt may charge Customer interest on overdue sums at the highest of the two following rates: (i) the annual rate of 5% above the base lending rate of the European Central Bank from time to time and (ii) three times the French legal

interest rate, such interest to accrue daily. Customer shall pay Colt a fixed fee as stated in the law and any additional amount incurred by Colt (as evidenced by a receipt) for the recovery of the debt.

- 2.4 Colt may revise the charges for the provision of services agreed in the Order at any time after the expiry of the Initial Term providing Customer with 30 days' notice prior to the revision taking effect. Notwithstanding the provisions of Article 1120 of French Civil Code, Customer shall be deemed to have accepted the revised charges unless, in case of an increase, Customer has terminated the affected Order(s) by giving Colt written notice, to expire at the end of that 30 day period.
- 2.5 Charges may be changed at any time in order to comply with any change of mandatory law or regulations.

3. Payment

- 3.1 Payment shall be due 30 days after the date of invoice.
- 3.2 Colt will send invoices to Customer by email or in an electronic format, unless Colt agrees with Customer to send invoices by post. The format of the invoice shall not affect Customer's obligation to make payment under clause 3.1 or Colt's rights under clauses 2.3 and 5.
- 3.3 Invoices are deemed accepted if not disputed, with detailed evidence of the dispute, within 30 days of the date of the invoice. If disputed, Customer must still pay the undisputed portion of the invoice by the due date.
- 3.4 Application of article 1223 of the French Civil Code (modified version as per Ordonnance n° 2016-131 du 10 February 2016) is expressly excluded.
- 3.5 Colt may from time to time limit how much Customer can, in total, be in debt to Colt ("Credit Limit"). Colt will inform Customer what its Credit Limit is. Colt may change it from time to time. If Colt has not told Customer what its Credit Limit is, it is nil and all charges must be paid in advance.

4. Fraud

Customer shall not use the service for any fraudulent or unlawful purposes, and shall ensure there are adequate safeguards in place to prevent others from doing so, whether arising in connection with Customer's equipment or otherwise. Customer is solely responsible for any fraud that occurs and any charges arising as a result. Colt has no responsibility or liability over the configuration, use or operation of Customer's equipment unless Colt has expressly agreed otherwise in writing.

5. Suspension of Delivery

- 5.1 Colt may, without prejudice to any other right or action it might have, suspend the services: (a) on giving 7 days' prior notice (or longer if required by law) if Customer does not pay an invoice when due or is in breach of any other term of the Order, or (b) immediately if Customer's Credit Limit is exceeded or (c) immediately if Colt reasonably suspects the service is being used for fraudulent or unlawful purposes.
- 5.2 Except for the provisions of clause 5.1 c) above and notwithstanding the provisions of Article 1220 of the French Civil Code, no Party may suspend its obligations under this GTC without evidencing the other Party previous breach of its contract obligations.

6. Delivery

- 6.1 Notwithstanding the provisions of Article 1120 of French Civil Code, the service will be deemed accepted from the RFU Date or, if earlier, the date Customer starts using the service other than for testing purposes, unless Customer notifies Colt in writing within 5 working days of the RFU Date of its reasonable belief that the service is not ready for use and its reasons for that belief .

In such a case Colt shall endeavour to resolve the problem and communicate a replacement RFU Date to the Customer and the service will be deemed accepted only in accordance with the same process as set out in the preceding sentence. However, if the Customer notifies Colt in writing on a second occasion (or on any subsequent occasion) of its reasonable belief that the service is not ready for use then either party may give notice of termination of the Order (or relevant part thereof) in accordance with clause 9.4.

- 6.2 Customer shall provide Colt with reasonable co-operation (including all necessary information and access to all sites and associated permissions) without charge and on reasonable terms ("Delivery Cooperation") and/or make sure that third parties provide Colt with the Delivery Cooperation, necessary for Colt to provide the services and meet any promised delivery date ("Colt Promised Date" or "CPD") including to install any of Colt's or Customer's equipment. Colt may require Customer to provide written evidence of its right to access such sites. If the RFU Date is delayed by more than 30 days beyond the issue of a "Task Delay Notification" (which is a Colt system generated email notifying the Customer of the delay), due to failure on the part of the Customer to provide Delivery Cooperation, then Colt may upon the expiry of such 30 day period (regardless of the Customer's inability to use the service due to such delay) at its sole discretion either terminate the Order or begin the Initial Term and start invoicing the monthly recurring charges.
- 6.3 If Colt accepts within its sole discretion to defer the delivery of service upon Customer's request, there shall be no change in the installation and service charges being incurred from the RFU Date. However if Colt is unable or unwilling to comply with such a request, it will promptly notify the Customer and if agreement is not reached within 5 calendar days of such notification on the timing of delivery and any changes to the charges, then Colt may in its sole discretion terminate the Order (or relevant part thereof) in accordance with clause 9.4 or begin the Initial Term and start invoicing the monthly recurring charges. .
- 6.4 Property and title to Colt's equipment installed at Customer's or third party's site for the provision of service remain with Colt and Customer shall apply, and shall ensure any such third parties apply, reasonable care and comply with any reasonable instructions which Colt may issue in relation to it.
- 6.5 Where equipment is sold, risk shall pass to Customer on delivery. Colt retains property and title until it receives full payment of the due purchase price.

7. Warranty and Service Levels

- 7.1 Colt warrants that the service shall be provided in accordance with the Order using reasonable skill and care.

- 7.2 In case of the service not fulfilling the contractually agreed requirements: (a) Colt shall remedy the service for the future in accordance with the SLA or, in the absence of a SLA, within a reasonable period, and (b) Customer may claim service credits in accordance with the SLA.

- 7.3 Where equipment is sold, Colt will endeavour to pass onto Customer the benefit of any warranty (if any) Colt receives from its supplier of the equipment.

- 7.4 Customer acknowledges that it has been informed and been given the necessary information and recommendations from Colt regarding the performance, quality and the delivery of the Services and therefore correspond to its needs.

8. Intellectual Property

Customer is not granted any intellectual property rights unless otherwise expressly agreed in writing by Colt.

9. Termination

- 9.1 Either party may terminate the Order in whole or in part by giving 90 days' written notice, by a registered letter with acknowledgement of receipt to take effect at the end of the notice period. Customer shall pay all charges applicable until the end of the Initial Term.
- 9.2 Upon Customer's request Colt may at its reasonable discretion agree to terminate (i.e. disconnect) a service before the end of the Initial Term, provided that the charges applicable until the end of the Initial Term shall be paid notwithstanding the earlier termination.
- 9.3 Either Party may terminate the Order in whole or in part immediately by giving notice by a registered letter with acknowledgement of receipt: (a) if the other Party breaches any material term of the Order (including nonpayment of charges by Customer when due) and, fails to remedy the breach within 30 calendar days following the receipt of the formal notice to do so by a registered letter with acknowledgement of receipt, or (b) subject to and within the limits authorized by French law, including article L622-13 of the French Commercial Code, if the other Party is threatened to become insolvent, becomes insolvent or ceases business.
- 9.4 Any termination under clauses 2.1, 6.1, 6.2 or 6.3 must be notified by the terminating party to the other Party in writing by a registered letter with acknowledgement of receipt, which shall take effect on the date specified in the termination letter unless a later date is specified.
- 9.5 In the event of a termination by either Party under any of clauses 6.1, 6.2 or 6.3 Customer shall pay early termination charges comprising of the following: (a) charges which are equal to the fixed charges that would have been payable for the first twelve (12) months of the Initial Term had the order not been terminated (not including any charges already validly invoiced prior to termination which shall remain payable); and (b) the value of any other third party costs (to the extent that they relate to services to be provided within the Initial Term and after the expiry of such twelve (12) month period) which Colt has already incurred or committed to as at the date of termination. For the avoidance of doubt, these payment obligations are without prejudice to any claims for damages that either Party may have against the other.

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- 9.6 Termination or expiry of part or all of an Order, howsoever caused, will end the Order for the future (no retroactive effect shall be given to termination unless otherwise agreed by both Parties).
- 9.7 The Order can be terminated only based on the provisions of clause 9 here above.

10. Limitation of Liability

- 10.1 Nothing in these GTC shall limit or exclude either Party's liability:
- 10.1.1 for any loss to the extent it is caused by fraud;
 - 10.1.2 for death or personal injury caused by its (or its agents') negligence; or
 - 10.1.3 that may not otherwise be limited or excluded by law.
- 10.2 Colt and its affiliates' annual aggregate liability for all claims, losses, expenses or damages arising from breaches of this Order, statutory breaches or otherwise, in a Contractual Year (as defined below) shall be limited to 100% of the charges actually paid to Colt under this Order in that Contractual Year. Contractual Year means the period of time starting from the date of the Order Confirmation or its anniversary and ending 12 months later (or, if earlier, on the date of expiry or termination of the Order).
- 10.3 Colt and its affiliates shall not be liable whether based on a claim in contract, under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, these GTC,
- 10.3.1 for any (i) loss of profits; (ii) loss of revenue; (iii) loss of anticipated savings; (iv) loss of business opportunity; (v) loss of goodwill or injury to reputation; (vi) or loss of, damage to or corruption of data ; or
 - 10.3.2 for any indirect and consequential loss.
- 10.4 Service credits shall be Customer's sole remedy for a breach of the SLA.
- 10.5 The limitations and exclusions in this clause 10 shall apply regardless of whether Colt and its affiliates had been made aware of the possibility of the relevant loss.

11. Force Majeure

- 11.1 Neither Party shall be liable for any event beyond its reasonable control such as, but not limited to, fire, flood, unusually severe weather, war, warlike circumstances, civil or military authority, strikes, lockouts, general network outage, government action, or any other event considered force majeure under law ("Force Majeure").
- 11.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Order by a Force Majeure event, such obligation will be suspended while the Force Majeure event continues and neither Party will be deemed to be in breach of such obligations.
- 11.3 If the Force Majeure event lasts longer than 30 days either Party shall be entitled to terminate the Order immediately.

12. Data Protection

12.1 In this Paragraph 12:

- 12.1.1 **"Data Controller"** (or simply Controller) and **"Data Processor"** (or simply Processor) and Data Subject have the meanings given to those terms under the Data Protection Laws.

12.1.2 **"Data Protection Laws"** means:

the *General Data Protection Regulation* (EU 2016/679) (GDPR) and any other applicable law, in particular Act no. 78-17 of January 6, 1978, as subsequently amended, its implementation decrees, and any deliberations adopted by the CNIL and the CNIL's practices (the "CNIL", the French Data Protection Authority).

12.1.3 **"Personal Data"** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

12.1.3 Capitalised terms not defined in this clause 12 shall have the meaning as defined in Data Protection Law.

12.2 Unless otherwise agreed in writing, any Personal Data processed by either party in connection with this Agreement, such as the Personal Data of the signatories of the Order Form and any contact persons or other Personal Data provided by the Customer and Colt to execute the Order shall be treated as Personal Data. The parties will respectively each be a Data Controller in respect of such processing. Colt Technology Services SAS RCS Nanterre 402 628 838, therefore hereby informs that it may process the Personal Data of the signatories of the Order Form and any contact persons or other Personal Data provided by the Customer as controller of the mentioned data.

12.3 Each party shall comply with the requirements of Data Protection Laws applicable to Data Controllers in respect of the provision of the Services and otherwise in connection with these GTC (including without limitation, by implementing and maintaining at all times all appropriate security measures in relation to the processing of Personal Data and by maintaining a record of all processing activities carried out under the Order) and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other party of Data Protection Laws.

12.4 The legal basis for processing Personal Data shall be the performance of these GTCs. Colt as Data Controller will hold and process Personal Data for the purposes of maintaining and managing the contractual relationship with the Customer, including the performance of quality controls and the provision of training where appropriate. Colt may transfer Personal Data or make Personal Data accessible to third parties such as Colt Affiliates, agents and subcontractors, within and outside the European Economic Area (EEA) as listed (<https://www.colt.net/legal/>). This transfer shall be made for the fulfilment of the services, including providing technical support and assistance and for a coordinated management of Customer including customer invoicing. Customer's Contact Details for invoicing purposes will be sent to Colt Technology Services India Private Limited (company number U72900DL2004PTC125537) with corporate address in 103, Ashoka Estate, Barakhamba Road, New Delhi – 11000. An Intragroup Data Transfer agreement based on the European Commission's

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Standard Contractual Clauses has been signed between all Colt's affiliates.

12.5. Personal Data will be processed for the duration of the contractual relationship with the Customer, and in particular for the duration of the Order, notwithstanding the storage that may be necessary after expiry of the contractual relationship for the establishment, exercise or defence of legal claims and/or as permitted by applicable law.

12.6 Data Subjects may exercise their rights of access, rectification, opposition, cancellation, restriction under certain conditions, and data portability at any time, free of charge, as well as the right determine the rules governing the fate of Personal Data after their death; in writing via email to gdpr@colt.net, with a copy of a document of identification, and outlining the right which they wish to exercise. In addition, Data Subjects can refer to Colt's Data Protection Officer at dpo@colt.net for any query related to the processing of the referred Personal Data by Colt.

12.7 In the event that Colt has access to Personal Data of third parties related to the Customer, the Customer undertakes to have informed and obtained the consent of those third parties to have their data used by Colt for the purposes set out above and to inform them of their ability to exercise their rights.

12.8 Data Subjects may also lodge a complaint with the relevant Supervisory Authority.

12.9 In the event that Colt's provision of Services to Customer requires it to process Customer's Personal Data on behalf of Customer and as instructed by the Customer regarding the purpose and the means of such processing, Colt will be considered Data Processor. Colt and the Customer agree to regulate the access to and processing of the Personal Data pursuant to the applicable law and, particularly, the Customer and Colt shall sign a Data Processor Agreement ("DPA") which will be an Annex and inseparable part of these GTC.

12.10 For more information on the use and processing of Personal Data by Colt, please contact Colt's privacy policy at <https://www.colt.net/data-privacy-statement/>.

13. Confidentiality

13.1 "Information" means any information, prices, data, practical know-how and documentation which receiving party receives from disclosing party (including during pre-contractual negotiations) except that which: (a) is in the public domain, and/or (b) was contained in documents rightfully known to receiving party prior to receiving same from disclosing party, and/or (c) receiving party lawfully received from a third party without that third party's breach of agreement.

13.2 Receiving party shall not disclose, or permit access to, any portion of the Information to any person except: (a) if such person is an agent, sub-contractor, affiliate, auditor, professional advisor of receiving party and has a reasonable need to know the Information and such person is legally bound by similar confidentiality provisions to those contained in these GTC, or (b) if necessary to comply with legal or regulatory obligations.

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13.3 This clause 13 shall continue to apply for a period of 5 years after expiry or termination of the Order.

14. Miscellaneous

- 14.1 Except for the provisions of clause 9, any notice given in connection with an Order shall be served in writing, either by hand, or normal letter or registered letter with acknowledgement of receipt, or fax or electronic transmission (including by e-mail).
- 14.2 These GTC may be modified only in writing signed by both Parties and are governed by the law of France and subject to the exclusive jurisdiction of the courts of Paris.
- 14.3 Notwithstanding the provisions of article 1222 of the French Civil Code, If one of the Parties (the "Defaulting Party") fails to fulfil its contractual obligations for any reason whatsoever (including force majeure), the other Party shall not enforce such obligation by any third party without the prior and express consent of the Defaulting Party. No reimbursement of expenses or advances may be requested from the Defaulting Party in this capacity without its prior written consent.
- 14.4 Application of article 1195 of the French Civil Code (modified version as per Ordonnance n° 2016-131 du 10 February 2016) is expressly excluded.
- 14.5 Customer authorizes Colt to assign all or any of its rights and obligations under an Order. Notwithstanding the provisions of article 1216-1 of the French Civil Code (modified version as per Ordonnance n° 2016-131 du 10 February 2016), from the assignment date Colt shall not be held jointly and severally liable for the performance of the Services by the assignee.
- 14.6 Customer authorizes Colt to sub-contract to any Colt Group affiliate(s) and/or to third parties, all or part of the Services, for the purpose of the execution of the Order. It being understood that Colt can rely on other third party operator for the purpose of the delivery of the Services.