

CCP General Terms and Conditions

Colt Netherlands



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

1. Order and Term

- 1.1 This Order ("Order") comprises the Order Confirmation (as defined below), an order form, 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. Unless stipulated differently in the Order, the initial term of service shall be 12 months from the date that the service is ready for use as communicated by Colt to Customer ("RFU Date") or, if earlier, the date Customer starts using the service other than for testing purposes ("Initial Term"). After expiry of the Initial Term, the Order shall be automatically renewed for additional, successive 12 month periods (each, an "Annual Extension Period") unless terminated in accordance with clauses 9 or 2.4.

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.
- 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 annual rate of 5% above the base lending rate of the European Central Bank from time to time, such interest to accrue daily.
- 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. 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 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 14 days after the date of invoice. Customer's right to set-off is excluded.

- 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. Upon (deemed) acceptance Customer waives any and all rights with respect to such invoice. If disputed, Customer must still pay the undisputed portion of the invoice by the due date.

- 3.4 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

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 Colt reasonably suspects the Service is being used for fraudulent or unlawful purposes.

6. Delivery

- 6.1 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 with reasons explaining why the service is not ready for use.
- 6.2 Customer shall provide Colt with access and reasonable co-operation and/or make sure that third parties provide Colt access to all sites and reasonable co-operation, on reasonable terms in each case, necessary for Colt to provide the services, 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.
- 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.
- 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

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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 Subject to clause 11, 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, the equipment is sold to Customer "as is" (*op eigen bate en schade*) without warranty, guarantee, condition or other terms as to performance, merchantability, fitness for purpose, or otherwise. Clauses 7:17 and 7:21 Dutch Civil Code do not apply. Colt disclaims all further liability in respect of the equipment whether based on contract, tort or otherwise, for visual as well as for hidden defects. In addition to any warranties provided by mandatory law (if any), Colt will endeavour to pass onto Customer the benefit of any warranty (if any) Colt receives from its supplier of the equipment.

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 service without incurring liability for costs or damages by giving 90 days' written notice to take effect at the end of a calendar month, no earlier than the end of the Initial Term or a subsequent Annual Extension Period. Customer shall pay the charges due until the end of the Initial Term or the next Annual Extension Period.
- 9.2 Either party may terminate the service in whole or in part immediately by giving notice in writing: (a) if the other party breaches any material term of the Order (including non-payment of charges by Customer when due) and, if the breach is capable of remedy, fails to remedy the breach within 30 calendar days upon written notice to do so, or (b) if the other party is threatened to become insolvent, becomes insolvent or ceases business.

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;
- 10.1.3 for damage resulting from the wilful misconduct or gross negligence (*opzet of bewuste roekeloosheid*) of Colt or its managerial personnel; or

10.1.4 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, including breach of warranty, statutory breaches, tortious acts 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 vis-à-vis Customer whether based on a claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, these GTC, for any Indirect Damage. "Indirect Damage" means any indirect damage, consequential loss, loss of profits, loss of revenue, loss of anticipated savings, loss due to business interruption, loss of business opportunity, loss as a result of claims from Customer's customers or suppliers, loss in connection with the use of goods, materials, or software provided by parties that Colt is instructed by Customer to obtain, loss relating to the engagement of secondary suppliers by Colt on Customer's instructions, loss of goodwill or injury to reputation, and loss of, damage to or corruption of data.

- 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 as referred to in clause 6:75 Dutch Civil Code, 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 Unless mandatory by law or otherwise agreed in writing by Colt, Colt acts as data processor of the Customer's personal data and not as data controller. Colt shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data (as defined by law) and shall comply with such other applicable data protection legislation as may be in force at the time.

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- 12.2 Colt may use affiliated companies and third parties located outside the European Economic Area ("EEA") to deliver the service for the Order.
- 12.3 Each of Colt and Customer will duly observe their respective obligations under the Dutch Data Protection Act ("*Wet bescherming persoonsgegevens*" or "Wbp") and where relevant the national implementation of the EU Data Protection Directive 95/46/EC (and any amendments thereto) ("Local Data Protection Laws"), whereby parties agree that Colt qualifies as the data processor, and Customer qualifies as the data controller within the meaning of the Wbp. Customer is aware of the technical abilities and physical infrastructure of Colt, and prior to the conclusion of the Order, Customer itself determined such to be adequate for the purpose of compliance with the Wbp or Local Data Protection Laws. Within Colt's technical abilities and physical infrastructure, Colt will comply with any and all reasonable instructions of Customer. To the extent that Customer determines that further measures are required to comply with the Wbp or Local Data Protection Laws beyond Colt's current technical abilities and current physical infrastructure, then such measures will be taken at the cost of Customer. Customer hereby instructs Colt: (a) to process personal data obtained from Customer, and, where applicable, (b) to export such personal data outside the EEA and to sub-contract affiliated companies or third parties located outside the EEA for processing such personal data, in order to fulfil its obligations under the Order. Customer acknowledges that Colt is reliant on the Customer for direction as to the extent to which Colt is entitled to use and process the Personal Data (as defined in the Wbp).

13. Confidentiality

- 13.1 "Information" means any information, prices, data, practical know-how and documentation which receiving party receives from disclosing party 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.
- 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 Any notice given in connection with an Order may be served in writing by hand, normal first class post, fax or electronic transmission (including by email).
- 14.2 These GTC may be modified only in writing signed by both parties, are governed by the law of the country or territory where Colt is registered and subject to the exclusive jurisdiction of the courts of Amsterdam.