

# CCP General Terms and Conditions

## Colt Germany



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 2.1, 2.4, 2.5, 9 or 11.3.

### 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. Colt will ask Customer to agree to any such change in its entirety as part of the charges. If the Customer does not agree to it, Colt reserves the right to terminate the service at the end of a calendar month by giving 90 days' prior written notice.
- 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 9 percentage points above the base interest rate ("Basiszinssatz") set and published by the Deutsche Bundesbank 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 by agreement between the parties in order to comply with any change of mandatory law or regulations. If the Customer does not agree to a change to the Charges proposed by Colt under this clause, Colt reserves the right to terminate

the service at the end of a calendar month by giving 30 days' prior written notice.

### 3. Payment

- 3.1 Payment shall be due 10 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 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

To the extent Colt provides publicly available telephone services, Colt may, without prejudice to any other right or action it might have, suspend the services in accordance with Section 45k German Telecommunications Act. To the extent Colt provides other services, 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.

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- 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 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.

## 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 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 for good cause by giving notice in writing. Good cause shall in particular exist: (a) if the other party breaches any material term of the Order and it is unreasonable for the terminating party to continue the contractual relationship until the agreed end or until the expiry of a notice period; or (b) if the breach is capable of remedy, the party in breach fails to remedy such breach within 30 calendar days of written notice to do so, or (c) if any form of winding up or insolvency proceedings are brought against the other party or it ceases business, unless such termination is prohibited or regulated by applicable law. In addition to that, good cause for Colt shall exist if Customer is
- i) on two successive dates, in default of payment of the charges or a portion of the charges that is not insignificant; or
- ii) on two or more dates in any period of time, in default of payment of the charges for an amount equal or higher than the amount of the charges payable for a two months' period.

## 10. Limitation of Liability

- 10.1 Nothing in these GTC shall limit or exclude either party's liability:

- 10.1.1 for any damage to the extent it is caused by intent or gross negligence ("Vorsatz" oder "grobe Fahrlässigkeit");
- 10.1.2 for injury to life, body or health;
- 10.1.3 to the extent Colt has assumed a specific guarantee; or
- 10.1.4 that may not otherwise be limited or excluded by law, in particular to liability under the German Product Liability Act (Produkthaftungsgesetz).

- 10.2 Subject to clause 10.1, Colt and its affiliates' annual aggregate liability for all claims, losses, expenses or damages arising from breaches of this Order, 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 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:

- 10.3.1 for any direct or indirect: (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 Both parties will comply with their respective obligations under all applicable national and European data protection and privacy law. Colt will process personal data, as defined in applicable data protection law, as necessary to maintain its business relationship with the Customer and to meet its obligations to the Customer under each Order. Colt is entitled to transfer data or make data accessible to partners (Colt Affiliates, agents and subcontractors) outside the European Eco-

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conomic Area (EEA) for the fulfilment of the Order including providing technical support and assistance.

- 12.2 As far as Colt's Service to the Customer includes data processing in the meaning of the German Data Protection Act (Bundesdatenschutzgesetz – BDSG), the Customer authorises Colt to enter in the name and on behalf of the Customer into a Data Transfer Agreement with each partner outside the EEA according to EU model clauses 2010 adopted by the European Commission. Colt will act as agent in the capacity of a data controller for the Customer vis-à-vis the respective partner. Colt will safeguard and protect the Customer's personal information against unauthorised access, accidental loss, improper use and unlawful disclosure, as required by applicable national and European data protection law.

## 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, ordinary mail, 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 the country or territory where Colt is registered.
- 14.3 Exclusive venue for any and all disputes arising from or in connection with these GTC shall be Frankfurt am Main.
- 14.4 If any provision of these GTC or any agreement concluded on the basis of these GTC is partly or wholly held to be invalid, illegal or unenforceable by a court or competent authority, the remaining provisions shall not be affected or impaired.