

CCP General Terms and Conditions Colt France



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. 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. 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 extended 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 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 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. Application of article 1223 of the French Civil Code (modified version as per Ordonnance n° 2016-131 du 10 February 2016) is expressly excluded.
- 3.4 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

- 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 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

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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.
- 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 service by giving 90 days' written notice, by a registered letter with acknowledgement of receipt. Termination shall 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 by a registered letter with acknowledgement of receipt: (a) if the other party breaches any material term of the Order (including non-payment 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.
- 9.3 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).
- 9.4 By derogation to the provisions of sub-section 4 "Termination" of French Civil Code (modified version as per Ordonnance n° 2016-131 du 10 February 2016), the

Parties agreed that this "Termination" clause 9 exclusively applies to contractual termination of an Order.

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 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 The Parties shall comply with its obligations under all applicable national and European data protection and privacy laws. 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 under each Order. Colt is entitled to transfer

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data or make data accessible to partners (Colt Affiliates, agents and subcontractors) within and outside the European Economic Area (EEA) for the fulfilment of the Services including providing technical support and assistance.

- 12.2 As far as Colt's Service to Customer includes data processing on behalf of Customer (i.e. as Customer's data processor), Colt shall process and/or use such personal data only in accordance with the data processing agreement to be signed between Colt and the Customer and provided to Customer upon request.
- 12.3 In addition, Customer hereby authorises Colt to transfer personal data to its Affiliates as listed on <http://www.colt.net/legal/> some of them located outside the EEA with the aim of maintaining and managing the contractual relationship. Colt and Customer will sign the Standard Contractual Clauses or adequate contractual safeguards requested by the Data Protection Regulation for the transfer of data to processors established in third countries as published by the European Commission pursuant to European Directive 95/46/EC.
- 12.4 In particular Colt hereby informs the Customer and the Customer accepts the need to transfer Personal Data to Colt Technology Services India Private Limited (company number U72900DL2004PTC125537) with registered address at 103, Ashoka Estate, Barakhamba Road, New Delhi - 110001, India with the aim of maintaining and managing the contractual relationship and billing with the Customer. An Intragroup Data Transfer agreement based on the European Commission's Standard Contractual Clauses has been signed between COLT Technology Services and COLT INDIA.

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.
- 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 the country or territory where Colt is registered 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, or sub-contract, all or any of its rights and obligations hereunder to any of its affiliate(s). 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.