

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. Any subsequent cancellation or change as set out in, and subject to, these GTC may lead to early termination charges according to clause 9.1. Unless stipulated differently in the Order, the initial term of service shall be 12 months from (a) the date that the service is ready for use as communicated by Colt to Customer ("RFU Date") or, if earlier, (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"). The order may be terminated before the expiry of the initial Term in accordance with clauses 2.1, 6.1, 6.2, 6.3, 9.2 or 11.3. After expiry of the Initial Term, the Order shall continue to be in force until it is terminated in accordance with clauses 2.4, 2.5, 9.2 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 shall ask Customer to agree to any such change in its entirety as part of the charges. If the Customer does not agree to it in writing within 5 working days, Colt reserves the right to terminate the Order..
- 2.2 All charges stated on the Order will be exclusive of VAT unless specified otherwise and shall be invoiced monthly as of the beginning or the Initial Term.
- 2.3 Colt may charge Customer interest on overdue sums at the annual rate of 9 percentage points above the base interest rate ("Basiszinssatz").
- 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 Order at the end of a calendar month by giving 30 days' prior written notice.

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 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. Colt shall investigate the problem in order to remedy the fault or to provide a subsequent delivery Colt and communicate a replacement RFU Date to the Customer. The service will be deemed accepted only in accordance with the same process as set out in the preceding sentence. If Colt fails to remedy

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the fault or to provide a subsequent delivery on the second or any subsequent replacement RFU Date then either party may terminate the Order by giving written notice.

- 6.2 Customer shall provide Colt with reasonable co-operation including all necessary information and access to all sites and associated permissions ("**Delivery Cooperation**") free of charge 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 Colt may upon the expiry of such 30 day period terminate the Order. If Colt does not terminate the Order then the Initial Term shall be deemed to have started upon the expiry of the 30 days period and Colt shall start invoicing the charges (regardless of the Customer's inability to use the service due to such delay).
- 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 does not 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) on immediate written notice subject to payment of the installation and service charges (including those referred to in clause 2.1) applicable up to the date of termination as well as the value of any other third party costs which Colt has already incurred or committed to as at the date of termination. Otherwise Colt may begin the Initial Term and start invoicing the 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.

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. Customer shall pay the charges due until the date the termination is effective. In the event Colt terminates the Order according to clauses 6.2 or 6.3 prior the end of the Initial Term, 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 Initial Term had the order not been terminated (not including any charges already validly invoiced prior to termination which shall remain payable in their own right); 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) 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.
- 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 commits a material breach 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 without undue delay, but no later than 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

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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 laws. Colt will process personal data as data controller, 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 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 Order including providing technical support and assistance.

- 12.2 As far as Colt's Service to Customer includes data processing on behalf of Customer (data processor), Colt shall process and/or use such personal data only in accordance with the data processing agreement available at request. In addition, Customer hereby authorises Colt to enter into a data processing agreement with each partner outside the EEA in the name and on behalf of Customer. Such data processing agreement shall be based on the EU model clauses adopted by the European Commission for data processors outside the EEA. In such case, Colt shall act as agent of Customer vis-à-vis the respective partner.

- 12.3 To the extent Customer is processing personal data as data processor for a third party (e.g. for its customers, its affiliates, business partners or contractors) and as far as Colt's Service to Customer includes processing

of the respective personal data on behalf of the third party, Colt shall process such personal data as sub-processor in accordance with the data processing agreement available at request. In such case, Customer shall ensure that Colt will only receive instructions regarding the processing of personal data from Customer (on behalf of the respective third party).

- 12.4 In case changes to applicable law require changes to the agreed upon data processing agreements, Colt and Customer shall each have a right to request an amendment to the extent the requested amendment is required under (then) applicable 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 Germany (CISG excluded).

- 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.