

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 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 and any pricing sheet in respect of voice services which the parties agree to include ("**Pricing Sheet**"). 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, (b) a notice communicating the expected installation date, (c) the Order form itself with Colt's counter-signature or (d) Colt's acceptance of the Order Form in accordance with clause 14.6.
- 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. Each Service set out on the Order form ("**Service**") is terminable individually and in its own right, but termination of the whole Order terminates all Services under the Order. Unless stipulated differently in the Order and subject to clause 14.7, the initial term in respect of any Service identified on the Order form shall be 12 months from (a) the date that the Service is ready for use as communicated by Colt to Customer or (if the case of an Online Order) as set out in clause 14.7 ("**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 ("**Service Initial Term**"). The order may be terminated before the expiry of the initial Term in accordance with clauses 2.1, 2.4, 6.1, 6.2, 6.3, 9.2, 11.3 or 15.3. After expiry of the Service Initial Term, the Service shall continue to be in force until it is terminated in accordance with clauses 2.4, 2.5, 9.1, 9.2, 11.3, 14.7 or 15.3.
- 1.4 In this Order, "**Affiliate**" means, in relation to a party, any entity controlling, controlled by, or under common control with that party, where "**control**" means the possession by any person or its nominee(s) directly or indirectly of the power to direct or cause the direction of the management of another person and "**controlled**" and "**controlling**" shall be construed accordingly.
- 1.5 Any of the documents referred to in these GTC may be in either paper or electronic format (unless a specific format is specified).

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 of the Service 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 In the event of a pricing change for voice services imposed on Colt by a subcontractor, Colt may revise any corresponding charges set out on a Pricing Sheet by an equivalent margin to that imposed by the subcontractor. Such revision may not take effect prior to the date on which the pricing change imposed on Colt takes effect, and Colt must provide 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 to monthly recurring charges, Customer has terminated the Order by giving Colt written notice, to expire at the end of that 30 day period. For the avoidance of doubt, Customer shall not have any right to terminate the Order in the case of an increase only to call charges (whether inbound or outbound).
- 2.5 Colt may revise the charges for the provision of Services agreed in the Order at any time after the expiry of the Service 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.
- 2.6 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

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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 or against the Colt Acceptable Use Policy published on Colt's website (currently at <http://www.colt.net/terms-and-conditions/#colt-acceptable-use-policy>), 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 that the Service is being used for fraudulent or unlawful purposes.

6. Delivery

- 6.1 Each Service will be deemed accepted from its 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 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 due to failure on the part of the Customer to provide Delivery Cooperation, Colt may upon the expiry of such 30 day period terminate the Order in accordance with clause 9.1. If Colt does not terminate the Order then the Service 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 Service 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.

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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 Service 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 Service Initial Term, Customer shall pay early termination charges comprising of the following: (a) charges which are equal to the charges that would have been payable for the Service 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 Service 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, (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 or (d) if the Service has been used, or is being used, for fraudulent purposes. 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.

10.6 Customer shall reimburse Colt for all additional costs (including repair costs) that Colt and its Affiliates may incur due to any delay or omission in the fulfilment of Customer's obligations or responsibilities. Colt may invoice the Customer for any such costs provided that Colt provides a record of the relevant failures.

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 accordance with the applicable data protection regulations and, in particular, with the German Data Protection Act (hereinafter, "**BDSG**") and from May 25, 2018, additionally with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter, "**GDPR**") and any applicable local laws, Colt, with its registered office as shown in clause 15.6 of these GTC, hereby informs that it may process the personal data of the Order and/or the signatories of the Order (herein referred to as "**Signatories**") as controller of the mentioned data ("**Personal Data**"). Signatories 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.
- 12.2 For the purposes of clause 12 of these GTC, Personal Data are necessary and will only be held and processed by Colt 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. It may further occur that, during the contractual relationship between Colt and the Customer, the latter will disclose to Colt certain Personal Data of Customer's personnel that may be necessary for Colt to get in touch with for the provision of the Service ("**Contact Persons**"). Contact Persons' Personal Data to be disclosed to Colt may include but not be limited to Contact Persons' name, surname, position and email address. Parties expressly agree that the processing of any Personal Data for purposes other than the foregoing, such as for marketing purposes, shall be covered and governed by a separate annex to these GTC, if applicable. Therefore, the legal basis for the processing of Personal Data shall be the performance of this Order.
- 12.3 Personal Data will be processed for the duration of the contractual relationship with the Customer, notwithstanding the storage that may be necessary after expiry of the contractual relationship for the establishment, exercise or defense of legal claims, and/or as permitted by applicable law.
- 12.4 Colt hereby informs that Personal Data may be transferred to or made accessible to third parties such as Colt Affiliates, agents and subcontractors, within and outside the EU/EEA belonging to the Colt group of companies, and in particular, those indicated in this page: <http://www.colt.net/legal/#colt-group-of-companies>). 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. For invoicing purposes Personal Data may be sent to Colt Technology Services India Private Limited (company number U72900DL2004PTC125537) with corporate address in 103, Ashoka Estate, Barakhamba Road, New Delhi – 11000, India). An Intragroup Data Transfer Agreement based on the European Commission's Standard Contractual Clauses has been signed between all Colt entities.
- 12.5 Where appropriate, the Customer (however restricted to natural persons only) and/or a Signatory and/or a Contact Person (hereinafter altogether referred to as "**Data Subjects**") may exercise their rights of access, rectification, objection and erasure at any time, free of charge by writing to the address as shown in clause 15.6 of these GTC, accompanying a copy of their identity document and identifying the right that they wish to exercise. Under certain circumstances, Data Subjects may also have the right to request the restriction of processing as well as the right to data portability to those third parties indicated by the Data Subjects. In any case, the Data Subjects acknowledge that they are entitled to lodge a complaint with the supervisory authority.
- 12.6 In this respect, the Customer represents and warrants that Customer will, in accordance with the BDSG and, from May 25, 2018, the GDPR and any other applicable local laws, provide Contact Persons with all the information about Colt contained in this clause 12 ("**Colt's Privacy Notice**"). Likewise, Customer represents and warrants that Customer (i) will make available Colt's Privacy Notice to Contact Persons by lawful means and (ii) will obtain legal valid evidence of the provision of Colt's Privacy Notice in the terms set out above. Customer shall keep such evidence and make it available to Colt without undue delay if so requested by the latter at any time.
- 12.7 Customer will inform Colt without undue delay of any exercise of the rights by the relevant Contact Persons within the maximum period of five (5) calendar days after receipt of the corresponding request. Customer undertakes not to provide Colt with any Personal Data in respect of which rights of erasure and/or objection have been exercised by the relevant Contact Persons, nor any Personal Data which is not up-dated in accordance with any potential right of rectification previously exercised by the concerned Data Subjects.
- 12.8 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 as a data processor and shall follow the instructions provided to it under the terms of any relevant data processing agreement ("**DPA**").
- 12.9 More information on the use and processing of Personal Data by Colt, is in the Colt's privacy policy available on Colt's website (currently 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 except that which:

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(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. Online Service Orders

Service Portal

14.1 Any provision of service and/or sale of equipment available for order through any automated online self-service Colt portal contracting platform shall be defined in these GTC as the **"Service Portal"** and the applicable Order placed through the Service Portal shall be defined in these GTC as the **"Online Order"**. This clause 14 applies only where the Order is an Online Order. In case of any conflict with the rest of these GTC, this clause 14 prevails over the rest of these GTC only to the extent of such conflict. For the rest all other clauses of these GTC shall also apply to Online Orders. Any Online Order replaces an Order Form and takes effect when Customer clicks an "I Accept" button or checks a box indicating acceptance of these GTC in the Service Portal.

User Access

14.2 Colt has provided the Customer with a master login account to the Service Portal to allow Customer to manage its Services in the Service Portal. The Service Portal may provide functionality allowing Customer to create sub-accounts for more granular management of Services.

14.3 Customer is responsible for all activities carried out on the Service Portal under login credentials associated with Customer.

14.4 Customer is responsible for ensuring that the persons whose details are inserted in the Service Portal registration form (**"Portal Authorized Users"**) are legally authorised to act on behalf of Customer, to be a user of the Service Portal and that they have the authority to legally bind Customer.

14.5 Customer is responsible for maintaining the confidentiality of the Service Portal account and password and for restricting access to its computer, and it agrees to accept responsibility for all activities that occur under

its account or password. Colt reserves the right to refuse service, terminate accounts, remove or edit content in its sole discretion.

Online Order and Term

14.6 The Order Confirmation is an electronic mail notice from Colt confirming that it accepts the relevant Online Order or any other electronic means that enables Colt to effectively communicate the acceptance of the Online Order to the Customer.

14.7 For any Service described in the Order as "flexible", no Service Initial Term will be applicable, and therefore the applicable Service will end when the Customer terminates the Service by clicking a termination button in the Service Portal, with immediate effect (unless otherwise terminated in accordance with these GTC).

Charges

14.8 Charges for each Service are shown in the Service Portal and the specific pricing for each Order will be shown in the Order Confirmation.

14.9 Charging is either on a per usage basis or for a set billing period. Where a Service commences during a calendar related billing period, charges for that period will be pro-rated or per unit as detailed in the Service description.

15. Miscellaneous

15.1 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).

15.2 Colt may subcontract, assign or novate all or part of any Order (and associated rights and obligations) to a third party and Customer hereby consents to such subcontracting, assignment or novation.

15.3 Customer declares that it is not involved in any activity or has not committed any act that could be considered as a violation of any regulation which goal is to prevent and/or repress bribery, corruption or money laundering and terrorism financing in any jurisdiction in which Customer carries on its activities. Customer has taken and will take at any time any appropriate measures, including the implementation of appropriate control measures, to ensure the respect of legislation and regulations by itself, by each of its members and employees. Failure to comply with these obligations or should Colt receive any complaint for failure to comply with these obligation will entitle Colt to terminate the Order between Colt and the Customer. The termination will be effective immediately upon written notice. 15.4. These GTC may be modified only in writing signed by both parties and are governed by the law of Germany (CISG excluded).

15.5 Exclusive venue for any and all disputes arising from or in connection with these GTC shall be Frankfurt am Main.

15.6 Colt can be contacted in any of the following ways:

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(website) www.colt.net/de
(telephone) +49 (0) 69 56606-0
(fax) +49 (0) 69 56606 1000
(mail) Colt Technology Services GmbH
Gervinusstr. 18-22
60322 Frankfurt a.M., Germany

- 15.7 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.