

CCP General Terms and Conditions

Colt Japan



These General Terms and Conditions (“GTC”) shall apply to any provision of service (“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. 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 is possible as set out in, and subject to, these GTC and in particular may lead to early termination charges according to clause 9.5. Unless stipulated differently in the Order, the initial term of service shall be 12 months from the earlier of (a) the date that the service is ready for use as communicated by Colt to Customer (“RFU Date”); (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”). Before expiry of the Initial Term, the Order can only be terminated in accordance with clauses 2.1, 6.1, 6.2, 6.3, 9.2, 9.3 or 11.3 of these GTC. On or after expiry of the Initial Term, the Order shall continue in force until it is terminated in accordance with any of clauses 2.4, 9.1, 9.3 or 11.3 of these GTC.

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 and Colt shall notify Customer of any such revision to the charges before the service becomes capable of acceptance. In the case of any increase, the Customer shall either (a) inform Colt that it accepts the increased charges or (b) terminate the Order (or relevant part thereof) by giving Colt notice in compliance with clause 9.4. Following its notice of the increase to the charges, Colt shall not be obliged to carry out any further activity in relation to the Order unless and until Customer exercises option (a).
- 2.2 All charges stated on the Order will be exclusive of sales and other taxes 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 Bank of Japan 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 written 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.
- 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 of its reasonable belief that the service is not ready for use and its reasons for that belief. In such a case Colt shall endeavour to resolve the problem and communicate a replacement RFU Date to the Customer and the service will be deemed accepted only in accordance with the same process as set out in the preceding sentence. However, if the Customer notifies Colt in writing on a second occasion (or on any subsequent occasion) of its reasonable belief that the service is not ready for use then either party may give notice of termination of the

CCP General Terms and Conditions

Order (or relevant part thereof) in accordance with clause 9.4.

- 6.2 Customer shall provide Colt with reasonable co-operation (including all necessary information and access to all sites and associated permissions) without charge and on reasonable terms ("**Delivery Cooperation**") 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 beyond the issue of a "Task Delay Notification" (which is a Colt system generated email notifying Customer of the delay), due to failure on the part of Customer to provide Delivery Cooperation, then Colt may upon the expiry of such 30 day period (regardless of Customer's inability to use the service due to such delay) at its sole discretion either terminate the Order or begin the Initial Term and start invoicing the monthly recurring charges.
- 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 is unable or unwilling to 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) in accordance with clause 9.4 or begin the Initial Term and start invoicing the monthly recurring 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 Order in whole or in part by giving 30 days' written notice to take effect at the end of a calendar month and no earlier than the end of the

Initial Term. Customer shall pay all charges applicable until the date of termination.

- 9.2 Upon Customer's request Colt may at its reasonable discretion agree to terminate (i.e. disconnect) a service before the end of the Initial Term, provided that the charges applicable until the end of the Initial Term shall remain applicable notwithstanding the earlier termination.
- 9.3 Either party may terminate the Order in whole or in part immediately by giving notice in writing: (a) if the other party commits a material breach 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.
- 9.4 Any termination under clauses 2.1, 6.1, 6.2 or 6.3 must be notified by the terminating party to the other party in writing, which shall take effect on the date of the notice unless a later date is specified.
- 9.5 In the event of a termination by either party under any of clauses 6.1, 6.2 or 6.3 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 first twelve (12) months of 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 and after the expiry of such twelve (12) month period) 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.

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, 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

CCP General Terms and Conditions

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. Protection of Personal Information

In dealing with personal information which Colt receives when providing the services for Customers, Colt will comply with Colt Specific Personal Information Handling Rules and Colt Personal Information Handling Rules, both of which are based on the Act of the Protection of Personal Information and other relevant laws and regulations.

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 e-mail).
- 14.2 These GTC may be modified only in writing signed by both parties and are governed by the laws of Japan, and subject to the exclusive jurisdiction of the Tokyo District Court.