

CCP General Terms and Conditions

Colt Japan



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 The 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, or (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 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. 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 set out 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 twelve (12) months from the earlier of (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”) (b) the date Customer starts using the Service other than for testing purposes (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”). Before expiry of the Service Initial Term, the Service can only be terminated in accordance with clauses 2.1, 2.4, 6.1, 6.2, 6.3, 9.2, 9.3, 11.3 or 15.3 of these GTC. On or after expiry of the Service Initial Term, the Service shall continue in force until it is terminated in accordance with any of clauses 2.4, 2.5, 9.1, 9.3, 11.3, or 15.3 of these GTC.
- 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. 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 9.5. 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 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 a Services agreed in the Order at any time after the expiry of the Service Initial Term by 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.
- 2.6 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 or against the Colt Acceptable Use Policy published on Colt’s website (currently at <http://www.colt.net/terms-and-conditions/#colt->

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[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

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 (or any other service provided by Colt or any Colt Affiliate to the Customer under another order) is being used for fraudulent or unlawful purposes.

6. Delivery

- 6.1 Each 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 Order (or relevant part thereof) in accordance with clause 9.5.
- 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 Service in accordance with clause 9.5 or begin the Service 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 9.5 or begin the Service 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 Service 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 Service Initial Term, provided that the charges applicable until the end of the Service 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, (b) if the other party is threatened to become insolvent, becomes insolvent or ceases business; or (c) in the case of any of the circumstances described in clause 9.4; or (d) if there is an action by the authorities including but not limited to an order, instruction or recommendation.
- 9.4 The circumstances referred to in clause 9.3 are (a) that any Service has been used, or is being used, for fraudulent purposes; (b) that any other service provided by Colt to Customer or any of its Affiliates under any other order has been used, or is being used, for fraudulent purposes; (c) that Colt reasonably suspects that any other service provided by Colt to Customer or any of its Affiliates under any other order has been used, or is being used, for fraudulent purposes.
- 9.5 Any termination under clauses 2.1, 6.1, 6.2, 6.3 or 11.3 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.
- 9.6 In the event of a termination by either party under any of clauses 6.2, 6.3 or 11.3 Customer shall pay early

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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 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 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

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, acts of 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 (except for Customer's obligations to pay the charges, if any) 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 ninety (90) days either party shall be entitled to terminate the Order immediately.

12. Protection of Personal Information

The handling of personal information which is obtained by the Company in providing the Services shall be in compliance with relevant laws and regulations and shall be in accordance with any separate rules of the Company.

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. 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. This Online Order takes effect when Customer clicks an "I Accept" button or checks a box indicating acceptance of these GTC in the Portal or, if earlier, when Customer uses any of the Services and will be in force for the duration of the Order, as described in clause 14.7.

User Access

14.2 Colt has provided the Customer with a master login account to the Portal to allow Customer to manage its Services in the Portal. The 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 Portal under login credentials associated with Customer.

14.4 Customer is responsible for ensuring that the persons

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whose details are inserted in the Portal Registration Form ("Portal Authorized Users") are legally authorised to act on behalf of Customer, to be a user of the Portal and that they have the authority to legally bind Customer.

- 14.5 Customer is responsible for maintaining the confidentiality of the 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 The Online Order takes effect on the date of Order Confirmation. Unless stipulated differently in the Online Order, the Service Initial Term will be the one described in the Order Confirmation, starting from the RFU Date (being some minutes after the Order Confirmation). 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 Portal, with immediate effect (unless otherwise terminated in accordance with these GTC).

Charges

- 14.8 Charges for each Service are shown in the 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.

14. Miscellaneous

- 15.1 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).
- 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 notice.
- 15.4 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.