

A. General Contract Terms and Conditions

1. Contractual partners

- (1) The contractual parties to these General Contract Terms and Conditions ("GTC") are First Colo GmbH, Hanauer Landstrasse 291b, 60314 Frankfurt am Main ("First Colo") and the contractor or customer.
- (2) Only entrepreneurs within the meaning of section 14 German Civil Code (BGB) may be First Colo's customer and contractual partner.

2. Validity of contract terms and conditions

- (1) Provisions or terms and conditions in derogation of these GTC shall only become the subject of contractual agreement if First Colo has confirmed this in advance in writing (or by fax). This also applies if First Colo does not expressly reject the customer's terms and conditions which are in derogation of these GTC, even if these are attached to requests for offers, orders or declarations by the customer.
- (2) These GTC further apply to all future orders, contracts and other agreements between the parties, even if they have not been expressly agreed upon again or no further reference has been made to them again, unless the parties agree otherwise in writing.

3. Conclusion and subject of contract

- (1) As a rule, First Colo's offers are non-binding and without obligation. The only exception to this is where they expressly contain a commitment period or deadline for acceptance or the corresponding letter is expressly marked as "binding offer".
- (2) Unless the parties agree otherwise in writing, the contract shall come into existence
 - (a) when the customer receives the order confirmation or
 - (b) at the time when the contract begins as specified on the contract ("order confirmation")
 - (c) when the customer accepts First Colo's "binding offer" (in writing, by fax or email), but no later than
 - (d) when First Colo has provided and/or performed the contractual servicesthe earlier of these times being the time at which the contract comes into existence.
- (3) The order, its annexes and the description of services show the content, scope and limits of the contractual services.
- (4) The technical data, specifications or performance parameters contained in these GTC, the order or First Colo's description of services are to be understood solely as details of quality within the meaning of section 434(1) sentence 1 German Civil Code and do not constitute (independent) guarantees of quality concerning a condition.
- (5) Unless there is an agreement to the contrary, the customer must at its own responsibility check whether the respective service profiles and contractual services meet its individual technical, economic and operating needs and requirements before it accepts an offer or orders a service from First Colo.
- (6) Rendering the contractual services requires close cooperation between the customer and First Colo. For this

reason, the parties shall inform each other with regard to all technical circumstances within their sphere that may impact the contractual services or the contractual parties' due and proper operation.

4. Contractual term and termination

- (1) The term of the respective contractual relationships shall be provided for in the order. Unless otherwise agreed (in writing, by fax or email) between the parties, a minimum contractual term of 24 hours applies to all contracts and service profiles.
- (2) Unless otherwise agreed upon between the parties, the notice period for the contractual relationship or the respective service profile shall be twelve (12) weeks to take effect at the end of the term agreed upon. Where there is any doubt, any termination shall only take effect with regard to the contractual relationship or service profile referred to.
- (3) If the contractual relationship is not terminated within the due period, it shall be extended by a further twenty-four (24) months unless there is an agreement to the contrary.
- (4) The right of parties to terminate the contract for cause, without observing a notice period, remains unaffected. Cause is given in cases including but not limited to the following:
 - (a) the customer is in default of due payments for more than two (2) months;
 - (b) one of the contractual parties breaches basic duties under the contract for a second time after having been warned.
- (5) Any termination requires written form in all cases.

5. Prices and terms of payment

- (1) Prices and the level of remuneration for the contractual services are provided for in the respective order and its annexes.
- (2) All prices and remuneration are exclusive of the statutory VAT applicable on the date of invoicing.
- (3) First Colo's demands for payment are due immediately after the invoice is received without deduction and shall be settled within fourteen (14) days of the invoice date, unless First Colo states another deadline for payment on the invoice.
- (4) Fixed remuneration shall be invoiced in advance on a monthly basis, remuneration based on consumption at the start of the following month. Should monthly remuneration be payable for only a part of a calendar month on a non-consumption-dependent basis (i.e. on a fixed basis), this remuneration shall be calculated as 1/30 of the monthly remuneration for each day.
- (5) First Colo is entitled to increase prices and remuneration for all service profiles twelve (12) months after the contract is concluded at the earliest. Further increases may be asserted after a further twelve (12) months have elapsed at the earliest. The customer must be notified of any increase giving notice of three (3) months (in writing, by fax or email) and such increase shall not take effect until the notice period has expired. The increase must be reasonable and standard on the market and not exceed five (5)% of the prices and remuneration applicable to the respective service profile at the time the increase

was announced. In the event that the increase is more than 5%, the customer is entitled to terminate the respective service profile with effect of the time at which the price increase comes into force.

6. Default

- (1) Should the customer not pay within fourteen (14) days of the date shown on the invoice or by the deadline for payment shown on the invoice or if no direct debit is possible, the customer shall be in default without a further warning having been issued.
- (2) Where the customer is in arrears of payment for an invoice
 - (a) for more than one (1) month after the invoice became due and
 - (b) continues to be in arrears after a warning has been given without success, such warning setting a grace period of at least fourteen (14) more days,

First Colo shall be entitled to withhold performance of the contractual services owed, to cease such performance wholly or partially, or to block access until payment has been made in full, informing the customer of these legal consequences.

7. Rights in case of defects

- (1) If the contractually owed service is defective, the statutory provisions as determined by the following stipulations, and taking into account any agreements on performance, stability and availability ("Service Level Agreement" or "SLA"), shall apply.
- (2) In the event that the customer does not comply with its duties to cooperate or does so only insufficiently, First Colo shall be released from the duty to render the contractual services and comply with the respective service level, deadlines and milestones. Extra expense incurred because the customer did not duly cooperate, or did so in a delayed manner, may be claimed by First Colo as part of reasonable remuneration or according to hourly rates agreed upon.
- (3) A defect or impairment to functioning resulting from environmental conditions, incorrect operation or from the customer or its vicarious agents failing to follow instructions for use or technical or operational requirements does not constitute a defect for which First Colo bears responsibility. In this case, First Colo retains the right to invoice the customer for costs of error analysis and error recovery where the customer did not realise that the defect originated from its sphere. The same applies where the defect was caused by the customer itself.
- (4) Liability for damages irrespective of fault (section 536a German Civil Code) for defects existing when the contract was concluded is excluded.
- (5) Claims for material defects shall become statute-barred after 12 months. With the exception of claims due to conduct with intent or gross negligence, as well as claims based on injury to life, limb and health, claims to material defects shall likewise become statute-barred after 12 months. Claims under the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected by this provision.

8. Liability

- (1) The contractual partners shall be liable to each other

under the general statutory provisions unless otherwise provided for below. These stipulations apply to all claims for damages and for compensation of futile expenses, irrespective of the legal grounds, unless otherwise regulated in writing.

- (2) In all cases, the parties are liable to each other
 - (a) for loss caused by themselves or their statutory representatives or vicarious agents with intent or through gross negligence, as well as
 - (b) under the Product Liability Act and
 - (c) in cases of injury to life, limb or health for which a party, its statutory representatives or vicarious agents bear responsibility.
- (3) First Colo, its statutory representatives and vicarious agents are not liable in cases of slight negligence. The only exception to this is where there is a culpable breach of material contractual duties. Material contractual duties are First Colo's duties whose performance enables the respective contract to be duly executed in the first place and compliance with which the customer may generally rely on within the framework of the respective contractual service being rendered, i.e. duties the violation of which would jeopardise the achievement of the contractual objective. In this case, however, First Colo's liability is limited to losses typical and predictable for the respective contract. Unless there is a written agreement to the contrary, however, the aggregate sum of the claim to damages per claim shall be limited to the annual net contract value of the respective service profile.
- (4) The stipulations referred to above also apply to loss of profit or savings not achieved. Accordingly, First Colo has no liability above and beyond this for remote consequential losses.
- (5) With respect to the amount, First Colo's liability in case of loss of data or data recovery is limited to the losses that would have occurred if the customer had regularly and properly secured the data.
- (6) The limitations on liability above also apply to the personal liability of First Colo's employees and statutory representatives.

9. Force majeure

- (1) In cases where it is not possible or reasonable for a contractual partner to render a contractual service, cooperate or provide goods and services owing to force majeure, the other contractual partner shall have no claims to damages or other claims (including rights to structure the contract, objections or defences).
- (2) Force majeure shall be any event for which neither contractual partner bears responsibility, which could not have been averted by even the most extreme care to be reasonably expected, and which wholly or partially prevents the respective contractual partner affected from duly rendering the contractual services, cooperating or providing goods and services, in particular, natural events, loss of power or other utility supplies outside First Colo's ability to influence, in cases of arson, vandalism, burglary, sabotage, strike or lawful prevention of entry as well as circumstances comparable to these.

10. Confidentiality

- (1) At all times and without restriction in terms of time, the

contractual partners shall treat as confidential all confidential information and business secrets of the other partner of which they obtain knowledge in the contractual relationship or when the contract is being initiated and only use this information for the purpose of performing the respective contract.

- (2) The contractual partners shall also impose these obligations on their employees and any third parties involved in the work and ensure that the contractual services are accessible only to employees and third parties to the extent that this is necessary for the contractual use.
- (3) First Colo has the right to name the customer as a reference until the customer revokes this right.

11. Compliance

- (1) The contractual parties undertake to act only within the framework of the respective laws applicable and in particular to respect the rules of fair competition. The parties expressly undertake and shall ensure that neither they nor their employees or other persons instructed by them commit prohibited acts or incite third parties to such acts or act as accessories hereto.
- (2) These prohibited acts include but are not limited to offering, granting, demanding or accepting payments, benefits or other advantages for such persons themselves or for a third party, as well as disclosing business secrets (section 18 et seq. German Unfair Competition Act (UWG)).
- (3) The parties affirm that they meet the necessary requirements under laws on professional and skilled trades and that they comply with their obligations to collecting agencies (statutory health insurance schemes), institutions for statutory accident insurance and prevention, tax offices, as well as pursuant to the stipulations of the German Posted Workers Act (*Arbeitnehmerentsendegesetz*) and German Minimum Wage Act (*Mindestlohngesetz*).

12. Data protection and security

- (1) With regards to the protection of personal data, the parties are obliged to comply with the stipulations of the data protection laws and to oblige their employees tasked

in connection with this contract and its performance to comply with data secrecy under section 5 Federal Data Protection Act.

- (2) The parties are obliged to take the requisite security precautions to protect personal data from unauthorised access and misuse.
- (3) If required, the parties shall separately conclude the customer's necessary agreements on commissioned data processing and attach the contractual documents as an annex.

13. Payment of guarantee and retention of title

- (1) First Colo has the right to require that the customer provide a guarantee (e.g. in the form of an absolute bank guarantee from a German bank).
- (2) In this case, the bank guarantee must cover at least the regularly recurring or expected one-off receivables for a period of two months. Should the receivables change over the current contractual relationship, the contractual parties may require that the bank guarantee be adjusted.
- (3) First Colo retains ownership of the items sold until the entire remuneration agreed on has been received. Until ownership transfers, the customer is obliged to treat the contractual items properly and with due care.

14. Final provisions

- (1) Any ancillary agreement, amendments of and additions to this contract must be made in writing in order to be valid (fax suffices). The written form requirement may only be cancelled by written agreement.
- (2) These GTC and the documents referring to it are governed by German law.
- (3) The place of jurisdiction shall be Munich.
- (4) Should individual provisions in these contract terms and conditions including its integral parts prove to be invalid or infeasible, this shall not affect the validity of these GTCs' remaining provisions. In such case, the invalid or infeasible provision shall be replaced by a new provision corresponding to the purpose intended and applying from the time when the invalidity commenced.