

Introduction

1. Contractual partners

- (1) The contractual parties to these General Contract Terms and Conditions ("GTC") are diva-e Datacenters GmbH, Kruppstrasse 105, 60388 Frankfurt am Main ("firstcolo") and the contractor or customer.
- (2) Only entrepreneurs within the meaning of section 14 German Civil Code (BGB) may be firstcolo'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 firstcolo has confirmed this in advance in writing (or by fax). This also applies if firstcolo 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.

General basis of contract

3. Conclusion and subject of contract

- (1) As a rule, firstcolo'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 firstcolo's "binding offer" (in writing, by fax or email), but no later than
 - (d) when firstcolo has provided and/or performed the contractual services
 the 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 firstcolo'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 firstcolo.
- (6) Rendering the contractual services requires close cooperation between the customer and firstcolo. 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 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. 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.
- (3) 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.
- (4) Any termination requires written form in all cases.

5. Prices, terms of payment, and default

- (1) Prices and the level of remuneration for the contractual services are provided for in the respective order and its annexes. All prices and remuneration are exclusive of the statutory VAT applicable on the date of invoicing.
- (2) firstcolo'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 firstcolo states another deadline for payment on the invoice. If no objection is made by the customer within 30 days of receipt of the invoice, objections to the amount of the invoice are excluded.
- (3) 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.
- (4) firstcolo 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.
- (5) 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,

firstcolo 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.

6. 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, firstcolo 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 firstcolo 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 firstcolo bears responsibility. In this case, firstcolo 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.
- (6) If and to the extent that the contract concerns the purchase of a used item, this shall take place to the exclusion of any liability for material defects. In this respect, firstcolo shall also not be liable for claims for damages - irrespective of the legal grounds - unless firstcolo, its legal representatives or vicarious agents have breached their obligations with gross negligence or intent (in all other respects, Clause 7 shall apply).

7. Liability

- (1) 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.
- (2) firstcolo, 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 firstcolo'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, firstcolo's li-

ability 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.

- (3) The stipulations referred to above also apply to loss of profit or savings not achieved. Accordingly, firstcolo has no liability above and beyond this for remote consequential losses.
- (4) With respect to the amount, firstcolo'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.
- (5) The limitations on liability above also apply to the personal liability of firstcolo's employees and statutory representatives.
- (6) 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). 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 firstcolo's ability to influence, in cases of arson, vandalism, burglary, sabotage, strike or lawful prevention of entry as well as circumstances comparable to these.

8. Confidentiality

- (1) The parties undertake to treat all information concerning the other party (including affiliated companies, customers, business partners, employees of the respective party) which becomes known to them in the course of the business or contractual relationship as strictly confidential, to use it exclusively for the fulfilment of the contractual relationship and to recognise it as a business secret within the meaning of § 2 of the German Act on the Protection of Business Secrets (GeschGehG).
- (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.

9. Data protection and security

- (1) Each party is responsible for ensuring that its employees and other vicarious agents comply with the relevant statutory provisions, in particular those of the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). The parties undertake to store personal data properly and to take all necessary security measures to protect them from unauthorised use, access, disclosure, modification or destruction.
- (2) If necessary, the contracting parties shall conclude an agreement on commissioned processing in accordance with Article 28 of the GDPR.

10. Payment of guarantee and retention of title

- (1) firstcolo 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) firstcolo 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.

Special terms for the Colocation service profile

11. Subject of contract

- (1) These special contract terms and conditions regulate the "Colocation and Housing" service profile, i.e. temporary provision of IT infrastructure (e.g. spaces for housing, racks and IaaS) in firstcolo's data center.
- (2) The order and the respective description of services show the content, scope and limits of the contractual services, in particular the IT infrastructure provided and the technical components as well as the (support) services to be rendered in this connection and times of handover.
- (3) Unless there is an agreement to the contrary, firstcolo does not owe provision of the customer's internet access or servicing or monitoring the devices provided by the customer.

12. Customer's rights and duties

- (1) The customer is obliged to comply with the house rules of firstcolo in the respective valid version. These are or become part of the contractual relationship.
- (2) The customer shall receive the right to use the infrastructure subject to the contract in data center for the duration of the contractual relationship, in particular to install, operate and service/maintain its own hardware and software.
- (3) Unless otherwise contractually agreed, the customer's facilities shall be installed and set up at its own expense and risk.
- (4) Customer devices must comply with the statutory regulations and the state of the art, be approved for connection by firstcolo, and be in a perfect state at all times such that they do not impair other devices and facilities. The customer is prohibited from undertaking permanent or structural changes to leased spaces for housing and/or to the data center, in particular to raise the floor covering, to drill holes, or to carry out work and changes in the underfloor or on the cable routing.
- (5) The customer undertakes to use firstcolo's services properly. In particular, it is obliged not to misuse firstcolo's services and infrastructure, not to undertake any unlawful or illegal actions, and not to impair firstcolo's technical infrastructure.
- (6) As part of complying with the statutory and contractual rules, the customer is also responsible for third parties acting on its behalf.
- (7) Without undue delay, the customer must give notification of any defects in or damage to firstcolo's infrastructure and its facility that are evident and take all measures that enable the defects or damage and their causes to be pinpointed and which facilitate and accelerate actions to remedy the disruption.

13. Insurance

- (1) The customer shall insure the customer devices for the period of the contract. This includes statutory commercial (electrical) liability insurance of at least three million (3,000,000) euro. The insurance policy shall be submitted to firstcolo upon request.
- (2) The customer shall be liable for all losses for which it bears responsibility arising from impermissible use of access or third party use of the IT infrastructure.

14. Access

- (1) firstcolo must be provided with the names of the persons with access rights and informed without undue delay when there are changes to the persons with access authorisation.
- (2) The customer is obliged to keep the access rights and passwords received from firstcolo strictly secret and protect them from unauthorised third-party use. The customer shall inform firstcolo without undue delay as soon as it obtains knowledge that unauthorised third parties have become aware of these access rights (e.g. passwords).

15. Maintenance and servicing

- (1) Disruption to the IT infrastructure lying within firstcolo's sphere of responsibility shall be remedied as soon as possible within the framework of existing technical and operational means, if possible, at a time which is convenient for the customer, such as at night. In all other respects, the provisions of the SLA shall apply to the corresponding service profile.
- (2) firstcolo shall inform the customer of planned maintenance and repair work at an early stage so as to keep disruption to a minimum. If and to the extent the measures referred to above result in downtimes, these will not be taken into account when calculating availability periods etc. pursuant to the SLA's provisions.
- (3) firstcolo has the right to enter the leased and/or provided infrastructure and take all measures to reduce and remedy any risk to life and/or third-party property. The duty to inform the customer without undue delay remains unaffected.

16. Consequences of ending the contract

- (1) When the contract expires, the customer shall dismantle and remove its facility within one (1) week at its own expense and return items belonging to firstcolo and provided to the customer without undue delay at the customer's risk and expense. In addition, the infrastructure shall be returned in a clean state and in the condition in which it was provided to the customer. All access rights shall be transferred to firstcolo without undue delay. A record of return shall be completed and signed by the parties. firstcolo is also entitled to discontinue all services upon expiry of the contract without further notice or the customer's right to object. firstcolo shall not be liable for any resulting damage such as loss of sales or loss of data.
- (2) firstcolo reserves a lien on custom devices brought onto firstcolo's premises. Exempted from this are personal data and data carriers on which personal data are stored.

Special terms for the Hosting service profile and Managed Service profile

17. Subject of contract

- (1) These special contract terms and conditions regulate the Hosting and managed service profile, i.e. temporary provision of a hosted and/or decentral IT environment for the customer at firstcolo's data centers and rendering services connected with this.
- (2) The regulations in the order and the respective description of services shall govern the content and scope of the IT environment provided at the data center, its technical components, and the services to be rendered in this respect. In the absence of a contractual agreement to the contrary
 - (a) the installation;
 - (b) customisation
 - (c) instruction, training, and other advisory and maintenance

services are not part of the contractual object owed within the scope of this service profile. Instead, they shall be agreed separately.

18. Customer's general rights and duties

- (1) The customer is obliged not to misuse the IT environment or associated services, not to upload, use or store data or content in breach of legal regulations, and not to infringe third-party IP rights or copyrights or any other third-party rights.
- (2) firstcolo shall be indemnified against any third-party claims derived from unlawful use of the IT environment, including but not limited to the Hosting environment by the customer or with its consent. These include thirdparty claims under data protection or copyright law that are connected to the use. If it is or should be evident to the customer that such breach is imminent, it has a duty to cease and remedy the breach and/or, if necessary, to inform firstcolo of this without undue delay.
- (3) The customer is obliged to treat the login details (in particular usernames and passwords) as confidential vis-à-vis unauthorised third parties and to keep them secret. The customer shall take suitable internal measures to ensure that the login details are not passed on to unauthorised third parties.
- (4) Where is sufficient suspicion that there has been a breach of the customer's duties under the paragraphs referred to above, and if there is imminent danger, firstcolo may temporarily block the service affected (e.g. the websites affected) and/or secure the data affected until the matter has been clarified. firstcolo has no duty to check whether customer content is unlawful. In any event, and to the extent technically possible and reasonable, the block shall be limited to the possibly unlawful content and services. The customer shall be informed of the block without undue delay, stating grounds, and requested to remove the possibly unlawful content, to set out actions to secure and document the content and/or set out its lawfulness vis-à-vis the holders of the rights or public authorities, and if necessary to provide proof thereof itself.
- (5) Blocking the service shall not deprive firstcolo of its claim to remuneration.
- (6) Where the customer administers, organises or distributes software usage rights (licences) itself on the servers and/or in the hosting environment, it shall be exclusively obliged to undertake the licencing in a correct manner.

19. Usage rights

- (1) The granting of any rights to use the IT infrastructure or its (software) components shall, in the absence of any agreement to the contrary, be made by the respective manufacturer to the customer in accordance with the licensing conditions.
- (2) Unless an agreement has been made to the contrary, where provision of licensed software is needed to render the contractual services, firstcolo shall grant the customer a limited, simple (non-exclusive) and non-sublicensable right to use the firstcolo and external software provided, restricted to the contract's term and subject to complete and timely payment of the remuneration agreed on.
- (3) Unless an agreement has been made to the contrary, making copies, reproducing, selling, forwarding and transferring and/or sublicensing is only permissible with firstcolo's prior consent. Continued use after the contract ends is not permitted; the customer shall delete copies of software provided after the contract ends.
- (4) If and to the extent that open source software (OSS) is used, the respective valid licence provisions of the software provider also apply. Upon request, firstcolo will provide these to the customer unless there is a duty to do so in any case due to

the licence provisions.

Final provisions

20. Ancillary agreements, reference and place of jurisdiction

- (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) firstcolo has the right to name the customer as a reference until revoked by the customer.
- (3) These GTC and the documents referring to it are governed by German law.
- (4) The place of jurisdiction shall be Frankfurt am Main.

21. Severability clause

- (1) 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.
- (2) 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 conditions including its integral parts prove to be invalid or infeasible, this shall not affect the validity of these GTCs' remaining provisions.