

In the event of any deviations resulting from the translation, the formulation set forth in the German version shall prevail.

## 1. Contracting parties

The contracting parties in connection with these contractual terms and conditions are diva-e Datacenters GmbH, Kruppstrasse 105, 60388 Frankfurt am Main, Germany ("firstcolo") and the Customer, jointly referred to as the "contracting parties".

## 2. Purview

- 2.1 These contractual terms and conditions apply without exception. Deviating, conflicting or supplementary terms and conditions of the Customer shall only become part of the contract if and to the extent that firstcolo has expressly agreed to their validity in advance. This requirement of consent shall apply in any case, for example, even if firstcolo carries out deliveries or services to the Customer without reservation in the knowledge of the Customer's General Terms and Conditions.
- 2.2 The Customer shall be a consumer unless the purpose of the required deliveries and services can be predominantly attributed to their commercial or independent professional activity. However, an entrepreneur is any natural or legal person or partnership with legal capacity, that acts in the context of its commercial or independent professional activity when concluding the contract.

## 3. Conclusion of a contract

- 3.1 The Customer may select individual goods from the assortment of the respective online store of firstcolo. By clicking on the button "Yes, I confirm my order", the Customer submits a binding offer to purchase and rent the goods in their shopping cart.
- 3.2 firstcolo shall then send the Customer an automatic email confirming receipt, in which the Customer's order is shown once again and which the Customer can print out using the "Print" function. This automatic confirmation of receipt merely documents that firstcolo has received the Customer's order and does not constitute acceptance of the offer. The actual contract is only concluded upon acceptance by firstcolo, which will be sent with a separate email (order confirmation). In addition, the acceptance of the offer can also be effected by firstcolo delivering the ordered goods to the Customer within five working days or by otherwise confirming the acceptance of the Customer's order in text form within five working days. If the customer has chosen the payment method Stripe, the contract will be concluded at the time of the payment instruction to Stripe.
- 3.3 The technical information on the conclusion of the contract and the individual procedures within the framework of the ordering process in our online stores can be found in our **Customer Information**.

## 4. Contract term and cancellation

- 4.1 If and to the extent that the rental of hardware and software (IT infrastructure) is the subject matter of the contract, the contract shall be concluded at the time specified in the order. In the absence of any other agreement between the parties, a minimum contract term of 24 months shall apply to these contracts.
- 4.2 Unless otherwise agreed between the Parties, the notice period for the contractual relationship shall be twelve (12) weeks to the end of the agreed term. If the contractual relationship is not terminated in due time, it shall be extended by a further twenty-four (24) months, unless otherwise agreed upon.
- 4.3 The right of the parties to terminate the contract for an important reason without notice remains unaffected. An important reason shall exist in the following cases in particular:
  - (a) the Customer is in default with payments due for more than two (2) months;
  - (b) one of the contracting parties violates elementary obligations of the contract again after a prior caution.
- 4.4 All notices of termination must always be in writing.

## 5. Prices and shipping costs

- 5.1 All prices include the statutory value added tax applicable at the time.
- 5.2 Payment claims of firstcolo shall be due immediately upon receipt of the invoice without deduction and shall be settled within fourteen (14) days after the invoice date, unless firstcolo indicates a different payment period on the invoice. If no objection is raised by the Customer within 30 days of receipt of the invoice and if the Customer is a company within the sense of § 14 BGB (German Civil Code), objections to the amount of the invoice shall be excluded.
- 5.3 The corresponding shipping costs will be displayed to the customer before submitting his offer and can also be viewed in the **shipping costs section**.
- 5.4 firstcolo points out that import duties may be applied to orders placed by customers from certain countries (e.g. Switzerland). firstcolo has no influence on the costs incurred in this regard. In this case, please check with the relevant customs authorities about the costs incurred for an order. These costs are only charged when the goods are imported into the respective country. These fees are explicitly not invoiced, collected or checked in advance by firstcolo and are not included in the shipping costs. firstcolo reserves the right to demand reimbursement from the Customer for any customs fees if and to the extent that firstcolo pays such fees to the delivery service.

## 6. Delivery

- 6.1 Delivery times indicated by firstcolo are calculated from the time of the order confirmation. If there is no indication of a delivery time or no deviating delivery time for the respective goods in our online store, the delivery time is approximately seven (7) working days.
- 6.2 If at the time of the Customer's order, no copies of the selected product are available, firstcolo shall immediately inform the Customer of this in the order confirmation. If the product is permanently unavailable, firstcolo shall refrain from issuing a declaration of acceptance. In this case, a contract does not come about.
- 6.3 If the product specified by the Customer in the order is only temporarily unavailable, firstcolo shall also inform the Customer of this immediately in the order confirmation.
- 6.4 The following delivery restrictions apply: firstcolo shall only deliver to Customers who have their habitual residence (invoice address) in one of the following countries and who can specify a delivery address in the same country: Germany, Austria, Switzerland.

## 7. Warranty for material deficiencies

- 7.1 firstcolo shall be liable for material deficiencies in accordance with the applicable statutory provisions. With respect to businesses, the warranty period for items delivered by firstcolo shall be 12 months.
- 7.2 An additional warranty shall only exist for goods delivered by firstcolo if such warranty was expressly provided in the order confirmation for the respective item.
- 7.3 If the defect is due to the fact that the Customer alters the products and goods improperly, uses them improperly or does not use them professionally, the rights in respect of defects shall be excluded. The same applies if the product is not used or installed according to the guidelines and specifications of the respective manufacturer.
- 7.4 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 - regardless of the legal basis - unless firstcolo, its legal representatives or vicarious agents have violated their obligations through gross negligence or intentionally (in all other instances Section 8 shall apply).

## 8. Liability

- 8.1 Claims for damages of the customer are not accepted. Excluded from this shall be claims for damages of the Customer arising from injury to life, body, health or from the violation of essential contractual obligations as well as the liability for other damages based on an intentional or grossly negligent breach of duty by firstcolo, its legal representatives or vicarious agents. Essential contractual obligations are those whose fulfillment is necessary to achieve the objective of the contract.

- 8.2 In the event of a breach of essential contractual obligations, firstcolo shall only be liable for the foreseeable damage typical for the contract if such damage was caused by simple negligence, unless the Customer's claims for damages are based on injury to life, body or health. The limitations in Sections 7.1 and 7.2 shall also apply in favor of firstcolo's legal representatives and vicarious agents if claims are asserted directly against them.
- 8.3 The limitations of liability resulting from Sections 7.1 and 7.2 shall not apply if firstcolo has fraudulently concealed the defect or has assumed a guarantee for the quality of the item. The same shall apply if firstcolo and the Customer have reached an agreement on the quality of the item. The provisions of the Product Liability Act shall remain unaffected.

## 9. Collateral and reservation of ownership

- 9.1 firstcolo shall have the right to require the Customer to provide a collateral (e.g. in the form of a directly enforceable bank guarantee from a German bank) in the event that IT infrastructure is provided on a lease basis. In this case, the guarantee must cover at least the regularly recurring or expected one-off receivables for a period of two months. Should the claims change during the current contractual relationship, the contracting parties may demand an adjustment of the security deposit.
- 9.2 firstcolo reserves the right of ownership of the sold goods until receipt of the agreed total remuneration. Until the transfer of ownership, the Customer shall be obliged to handle the contractual items properly and with care.

## 10. Power of revocation

In principle, consumers have a legal right of revocation when concluding a distance selling transaction. Details can be found in our [cancellation policy](#).

## 11. Data protection

Details on the processing of your personal data in connection with the use of the website as well as the online store can be found in our [privacy policy](#).

## 12. Final provisions

- 12.1 The European Commission provides a platform for online dispute resolution, which can be found here <http://ec.europa.eu/consumers/odr/>. Consumers have the possibility to use this platform for the settlement of their disputes. We would like to inform you that we do not participate in dispute resolution proceedings before a consumer arbitration board and are not obliged to do so.
- 12.2 Contracts between firstcolo and the Customers shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods. The statutory provisions restricting the choice of law and the applicability of mandatory provisions, in particular of the state in which the Customer as a consumer has his habitual residence, shall remain unaffected.
- 12.3 If the Customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from contractual relationships between the Customer and the Provider shall be the registered office of firstcolo.
- 12.4 The remaining parts of the contract shall remain binding even if individual points are legally ineffective. In place of the ineffective points, the statutory provisions shall apply, if any. However, if this would constitute an unreasonable hardship for one of the contracting parties, the contract as a whole shall become invalid.