



TERMS OF SERVICE

1. DEFINITIONS

1. **NovoServe:** a private company with limited liability NovoServe B.V., with its registered office at Gildenbroederslaan 1, 7005 BM, Doetinchem, the Netherlands, user of these Terms of Service, hereinafter referred to as NOVOSERVE.

Client: the counterparty of NOVOSERVE, hereinafter referred to as CLIENT.

Work: the provision of Services, without any relationship of subordination and employment or contracting of work.

Conditions: these Terms of Service ("TOS").

Quote: means any offer, quote, proposal and/or tender bid made by NOVOSERVE. Quotes cease to apply after thirty (30) days from the date of the relevant Quote or any other period stated in the Quote.

Order: upon approval, therefore acceptance, in writing of by email by CLIENT or prospect a Quote shall be deemed an Order.

2. APPLICABILITY OF THE TOS

1. The TOS are applicable to each online order, quotation, offer and Agreement between NOVOSERVE and CLIENT. Meaning, CLIENT unconditionally accepts the applicability of these TOS.
2. The applicability of conditions of CLIENT is explicitly excluded.
3. Any departures from these TOS are only applicable insofar as explicitly agreed upon in writing and only apply to the specific Agreement which the departures relate to.
4. In the event of uncertainties regarding the interpretation of one or more provisions of these TOS, the interpretation must be 'in the spirit' of these provisions.

3. FORMATION OF THE AGREEMENT

1. All offers and quotations are based on the information provided by CLIENT. If the aforesaid information appears to be incorrect or incomplete, CLIENT will be unable to derive any rights from an (accepted) offer or quotation in relation to NOVOSERVE.
2. NOVOSERVE is not obliged to abide by its offers or quotations, if CLIENT can reasonably understand that the offer or quotation, or parts thereof, contains an apparent error or mistake. NOVOSERVE shall be entitled to terminate or refuse an (accepted) Order, by giving written notice to CLIENT, considering a seven (7) day notice period.
3. The Agreement consists of the documents stated below. In the event of inconsistency between the documents, the contents of the document first listed shall have precedence and shall prevail over the documents listed in descending order:
 - a. The Master Service Agreement (if concluded);
 - b. The Change Order Form or Request for Change, related to a Service;
 - c. The Quote/Order;
 - d. Data Processing Agreement (if concluded);

- e. Privacy Statement;
 - f. Confidentiality Agreement (if concluded);
 - g. The Service Level Agreement;
 - h. The Terms of Service;
 - i. The Acceptable Use Policy.
4. CLIENT is not entitled to sell and/or transfer the rights and/or obligations under the Agreement to a third-party without the prior written consent of NOVOSERVE.
 5. NOVOSERVE is entitled to transfer its claims for payment of charges to a third-party.

4. EXECUTION OF THE AGREEMENT

1. All Services are provided on the basis of a best efforts obligation, unless and insofar as NOVOSERVE has explicitly guaranteed a result in the Agreement.
2. If and insofar as required by a proper execution of the Agreement, NOVOSERVE is entitled to have certain work carried out by auxiliary personnel and a third-party. If engaging a third-party, NOVOSERVE will exercise due care.
3. CLIENT will ensure that all information, with regard to which NOVOSERVE indicates that it is required or with regard to which CLIENT can reasonably understand that it is required for the execution of the Agreement, is made available to NOVOSERVE in time. The execution term does not commence until CLIENT has made the information available to NOVOSERVE.
4. CLIENT bears the risk of the selection, use, application and management of the equipment, software, websites, data files and other items and materials in its organization, and of the Services to be provided by NOVOSERVE. CLIENT itself is responsible for the correct installation, and settings of the equipment, software, websites, data files and other items and materials.
5. If computer, data or telecommunications facilities, including the Internet, are used for the execution of the Agreement, CLIENT will be responsible for the correct choice of resources needed to that end and the prompt and full availability thereof, except for those facilities that are under the direct use and management of NOVOSERVE. NOVOSERVE will never be liable for losses or costs due to transmission errors, breakdowns or the non-availability of these facilities, unless CLIENT proves that these losses or costs are the result of intent or gross negligence on the part of NOVOSERVE or its management.
6. All costs to be incurred by NOVOSERVE due to failure by CLIENT to fulfill the obligations as stated in this article, or failure to do so promptly and/or properly, will be at the expense of CLIENT.

5. DELIVERY AND RISK

1. All (delivery) terms and dates given or agreed by NOVOSERVE are, to the best of its knowledge, based on the information known to NOVOSERVE at the time the Agreement was concluded. The interim (delivery) dates given by NOVOSERVE or agreed between Parties are always target dates, do not bind NOVOSERVE and are provided for indicative purposes only.
2. NOVOSERVE will make every reasonable effort to honor the agreed and final (delivery) terms and dates as much as possible. NOVOSERVE is not bound by (delivery) terms and dates, final or otherwise, which can no longer be honored due to circumstances beyond its control.
3. The mere failure to honor a (delivery) term or date, final or otherwise, given by NOVOSERVE or agreed between Parties, does not imply that NOVOSERVE is in default.
4. If nonetheless NOVOSERVE is unable to meet its obligations within an agreed final deadline, NOVOSERVE can only be declared in default in writing, in which case NOVOSERVE will be granted a term of at least seven (7) days to remedy the situation.

6. PRICES AND PAYMENT

1. All prices are exclusive of VAT, and exclusive of third-party (e.g., bank and (online) payment provider) payment (gateway) or transaction fees, and any other taxes or duties to be levied by the government. All prices are at all times stated in Euros and must be paid by CLIENT in that currency, unless otherwise agreed.

2. All cost estimates and budgets by NOVOSERVE are issued for indicative purposes only, unless expressed otherwise by NOVOSERVE in writing. CLIENT can never derive rights or expectations from cost estimates or budgets issued by NOVOSERVE.
3. NOVOSERVE has the right to change the rates charged to CLIENT. CLIENT will be notified of these changes by means of email and/or the website of NOVOSERVE, at least one (1) month before they take effect. CLIENT will be entitled to terminate the Agreement with effect from the day that the change takes effect, provided the price change represents an increase in price.
4. The payment obligation of CLIENT commences on the day the Agreement is concluded. Payments relate to the period that starts on the day on which the Services of NOVOSERVE become actually available (“ready for service date” or “RFS date”).
5. The RFS date is confirmed by NOVOSERVE.
6. Payment must be made within fourteen (14) days of the invoice date, in a manner to be designated by NOVOSERVE.
7. In the event of direct debit payments, CLIENT is obliged to ensure that its account balance holds sufficient funds.
8. In case CLIENT has a complaint with respect to an invoice, CLIENT shall communicate such complaint in writing to NOVOSERVE within the payment term. A complaint with respect to an invoice shall only be taken into consideration in the event that the complaint specifies the relevant invoice(s) and provides proper motivation for the complaint. In such case, Parties will use commercially reasonable efforts to resolve the dispute amicably within fourteen (14) days of NOVOSERVE’s receipt of CLIENT’s complaint. In the event Parties fail to resolve the dispute amicably within fourteen (14) days of NOVOSERVE’s receipt of CLIENT’s complaint, each Party shall be entitled to commence a dispute resolution in accordance with Clause 13.2.
9. If CLIENT fails to pay an invoice in time and/or in full, it will be in default by operation of law. In that case, NOVOSERVE shall, without a warning or notice of default being required, charge CLIENT interest on such sum on a daily basis on the basis of the statutory interest rate plus two (2) percent, without prejudice to NOVOSERVE’s other rights and remedies. The interest on the amount payable is calculated from the moment CLIENT is in default, until the moment that the amount owed has been paid in full.
10. In the event, CLIENT is in default or fails to (timely) fulfill its (payment) obligations, all costs incurred to collect payment and/or to have CLIENT fulfill its obligations under the Agreement, will be at the expense of CLIENT. This includes but is not limited to all extrajudicial and legal expenses made by NOVOSERVE.
11. CLIENT is never entitled to set off any amounts owed to NOVOSERVE. Objections to the amount of the invoice do not suspend the obligation to pay.

7. TERM AND TERMINATION OF AGREEMENTS

1. The Agreement is entered into for a fixed period of time, unless the nature or essence of the instruction given dictates an indefinite period of time.
2. At the end of the Term, the Agreement shall be renewed for successive terms equal to the initial Term, unless either Party notifies the other in writing that it does not agree to a renewal of the Agreement, considering a notice period of at least:
 - a. One (1) business day, in the event of a Term of one (1) month or longer;
 - b. One (1) calendar month, in the event of a Term of twelve (12) months or longer.
3. A fixed-term Agreement cannot be terminated prematurely, unless in the event of urgent cause, as a result of which CLIENT or NOVOSERVE can no longer be reasonably required to continue to perform the Agreement or carry out the instruction. The other Party must be notified of this in writing, supported by reasons.
4. The above is without prejudice to the obligation of CLIENT to pay to NOVOSERVE, in full, the agreed-on fee. If CLIENT, prematurely, has fully or partially terminated the Agreement in accordance with the clause above and with mutual approval from Parties.
5. NOVOSERVE is entitled to (partially) suspend fulfillment of its obligations or to dissolve the Agreement, if:
 - CLIENT fails to fulfill its obligations under the Agreement, or fails to do so in full or in time;
 - after conclusion of the Agreement, NOVOSERVE, on the basis of information it has become aware of, has good reason to fear that CLIENT will not be able to fulfill its obligations;
 - due to delays on the part of CLIENT, NOVOSERVE can no longer be required to perform the Agreement under the conditions agreed initially.

6. In the event NOVOSERVE has suspended the fulfillment of its obligations under the Agreement due to CLIENT failing to pay an invoice on time or in full, NOVOSERVE is entitled to levy a fee of 15% of the total outstanding invoice amount in addition to the total outstanding invoice amount and the statutory interest due in order to reactivate its obligations under the Agreement. Reactivation will take place following payment by CLIENT of the additional fee and the total outstanding invoice amount and the statutory interest due.
7. If the progress in the execution or completion of the work is delayed due to default by CLIENT or force majeure on its part, NOVOSERVE will be entitled to charge the agreed amount in full, without prejudice to its right to demand further compensation of costs, damages and interests.
8. Upon termination of the Agreement:
 - a. NOVOSERVE shall cease to provide all Services;
 - b. NOVOSERVE shall, subject to NOVOSERVE's Privacy Statement, be entitled to erase and delete all data of CLIENT – and any and all data of CLIENT's end-users – from NOVOSERVE's equipment;
 - c. NOVOSERVE shall be entitled to make the equipment available for use by other CLIENTs;
 - d. Any claims NOVOSERVE has against CLIENT become immediately due and payable upon termination of the Agreement
 - e. CLIENT is not eligible to any form of refund for paid.

8. LIABILITY

1. In the event of an irregularity due to CLIENT providing incorrect or incomplete information, NOVOSERVE will not be liable for any damage or losses arising from it.
2. In the event of liability, NOVOSERVE can only be held liable for direct damage. NOVOSERVE will not be liable for direct, indirect and/or consequential damage or losses (including, but not limited to, lost profits, losses due to business interruptions, loss of relations due to delays and otherwise, loss of data and goodwill, late deliveries and/or defects), other than the direct financial loss incurred by the NOVOSERVE.
3. NOVOSERVE cannot be held liable for costs and/or damages as a result of corruption, destruction or loss of files and data of CLIENT. CLIENT is responsible for making readable backups and the permanent storage thereof.
4. The liability of NOVOSERVE on account of attributable failure to perform an Agreement arises only in a situation where CLIENT has given NOVOSERVE immediate and proper notice of default, allowing for a reasonable period to remedy the breach.
5. CLIENT is obliged to notify NOVOSERVE, in writing, within one (1) month of CLIENT having identified an irregularity in the execution of the Agreement and the possible risk of damage. If the notification referred to in the previous clause is not sent or sent too late, NOVOSERVE will not be obliged to reimburse CLIENT for any damages incurred in any way.

9. FORCE MAJEURE

1. There will be no imputable faults ascribed to NOVOSERVE in case of Force Majeure.
2. NOVOSERVE is not obliged to fulfil its obligations under the Agreement if doing so has become impossible on account of force majeure. In that instance the Agreement will be terminated.
3. During the time that the force majeure period continues, NOVOSERVE will be entitled to suspend any obligations under the Agreement. If this period exceeds a term of two (2) months, either Party is entitled to terminate the agreement without further obligation whatsoever.

10. COMPLAINTS

1. Any complaints, either in respect of Services provided and/or work completed and/or matters such as invoice amounts must be submitted, in writing or by email, to NOVOSERVE within seven (7) days providing an accurate breakdown of the facts which, the complaint relates to.
2. Complaints that have been submitted but which do not meet the above conditions are not processed and CLIENT will be deemed to have approved and accepted the service delivery.
3. Submitting a complaint does not give CLIENT the right to suspend the fulfilment of its obligations towards NOVOSERVE.

4. NOVOSERVE will only be obliged to process complaints, if the relevant CLIENT, at the time of submitting its complaint, has fulfilled all its obligations towards NOVOSERVE, arising from any commitment between CLIENT and NOVOSERVE.

11. CONFIDENTIALITY AND PERSONNEL

1. Parties acknowledge that, in connection with this Agreement, each Party (the "Receiving Party") may obtain Confidential Information of the other Party (the "Disclosing Party"). Such Confidential Information will not be used or disclosed by the Receiving Party except as specifically authorized in writing, or as necessary to perform the Services.
2. Confidential Information will by all means be considered confidential if any one of the Parties indicates it as such.
3. In no event shall CLIENT use NOVOSERVE's Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the Services of NOVOSERVE.
4. The foregoing obligations shall survive any termination or expiration of this Agreement.
5. During the term of the Agreement, as well as up to one (1) year after termination thereof, neither Parties will not hire or employ personnel from the other Party, unless the other Party has granted its prior written approval.

12. INTELLECTUAL PROPERTY

1. Subject to Clause 12.3 below, CLIENT will continue to own all rights to designs, programs, documentation and other material developed and/or used for the preparation or implementation of the Agreement that were in existence and owned by CLIENT before the Effective Date.
2. Subject to Clause 12.4 below, NOVOSERVE will continue to own all rights to products and/or services, designs, programs, documentation and other material developed and/or used for the preparation or implementation of the Agreement that: (a) were in existence and owned by NOVOSERVE before the Effective Date; or (b) were made or discovered by NOVOSERVE after the Effective Date.
3. CLIENT hereby grants to NOVOSERVE a non-exclusive, royalty free, unlimited license, during the term of the Agreement, to use CLIENT property, as referred to in Clause 12.1, as necessary for performing the Services under this Agreement.
4. Violation of the provisions of Articles 11 and 12 of the TOS will result in CLIENT being liable to pay a penalty of € 5,000 (five thousand Euros) for each offence and/or for each day or parts thereof that CLIENT remains in default, without prejudice to the remaining rights that NOVOSERVE may exercise.

13. GOVERNING LAW

1. The laws of the Netherlands govern the Agreement and all matters arising therefrom or connected therewith.
2. The competent courts of the Netherlands shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement or other agreements or other legal relationships resulting therefrom.
3. NOVOSERVE is entitled to unilaterally amend (part of) the Agreement and its supporting documentation. Such amendment also applies to existing Services, unless NOVOSERVE stated otherwise. The amendment comes into effect with an announcement or on a later date stated in the announcement.
4. The most recently filed version of these Conditions will apply or, as the case may be, the version applicable when the legal relationship with NOVOSERVE was entered into applies.

14. CONTACT NOVOSERVE

To make sure that the mutual commitment will result in a sustainable relationship, NOVOSERVE will do its utmost to be as transparent as possible. Contact NOVOSERVE should any questions arise after reading this document. NOVOSERVE's address is: NovoServe B.V., Gildenbroederslaan 1, 7005 BM, Doetinchem, the Netherlands. Email: sales@novoserve.com. Telephone: +31 (0) 88 668 62 53. To learn more about NOVOSERVE, please visit <https://www.novoserve.com/>.