



# Legal Terms and Conditions of Engagement for Services.

## **Abstract**

This document presents general terms and conditions of engagements for services NOVARIC® provides in Malta and Internationally. It focuses on various aspects of legal obligations of the service provider and clients, as well as the rights to clients' protection and NOVARIC® performance in safeguarding copyrights and data protection.

This document was provided by Legal Department for International Services and Internal Policies Implementation.





This was prepared in accordance with the Laws of Malta which are governed by Acts of Parliament, Regulations, Rules, Orders and Bye-laws, as well as EU Law and International Treaties, which include decisions by the Maltese Constitutional Court and the ECJ are also legally binding.

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## **ABOUT THE EDITOR**

The Legal Department for International Services and Internal Policy provide in-house and external expertise to support NOVARIC® local and international engagement with individuals and/or entities.

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[https://www.novaric.co/general\\_terms-conditions](https://www.novaric.co/general_terms-conditions)

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## General terms and conditions of engagement

(As of: 01.01.2020)

The following "general terms and conditions of engagement" apply to contracts between NOVARIC<sup>®</sup> Ltd. and its clients, as well as to claim of other persons connected to the activities of the consultant the consultancy contract, unless expressly agreed otherwise in writing or mandated by law.

### 1. Scope and performance of the engagement

(1) The engagement which has been issued shall be decisive concerning the scope of the services to be provided by NOVARIC<sup>®</sup> Ltd. The engagement shall be carried out in accordance with the principles of proper professional practice in compliance with the applicable norms and obligations of the profession.

(2) The required documents and clarifications must be provided to NOVARIC<sup>®</sup> Ltd. in full. NOVARIC<sup>®</sup> Ltd. will assume that the facts named by the Client, in particular payment information and the proof and basic records etc are correct. Should it become aware of obvious errors, the checking for correctness, completeness and conformity of the documents is responsibility of the Client.

(3) The engagement does not represent a power of attorney to represent the Client before authorities, courts and other bodies. This must be issued separately. Should it not be possible to reach agreement concerning the use of legal remedies or legal means due to the absence of the Client, NOVARIC<sup>®</sup> Ltd. is entitled and obliged to carry out the necessary actions to meet deadlines in cases of doubt.

### 2. Copyright protection

The regulations relating to the protection of intellectual property apply to the services of NOVARIC<sup>®</sup> Ltd. The Client shall receive the necessary copies of the written work results for the agreed use. Other use, in particular any disclosure to third parties requires the written agreement of NOVARIC<sup>®</sup> Ltd. The consequences in case of breaches are stated in Number 7 Paragraph 5.

### 3. Secrecy obligation and data protection

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**(1)** According to the legal provisions, NOVARIC® Ltd. is obliged to maintain secrecy in relation to all facts of which it comes aware in connection with the performance of the engagement, unless the Client releases it from this obligation in text form. The secrecy obligation shall also continue to apply following termination of the contractual relationship. The secrecy obligation also applies to the employees of NOVARIC® Ltd. to the same extent.

**(2)** The secrecy obligation does not apply, should the disclosure be necessary in order to safeguard legitimate interests of NOVARIC® Ltd., which is also released from the secrecy obligation should the terms and conditions of its professional indemnity insurance require it to provide information

and co-operation.

**(3)** Statutory rights to refuse to provide information and statements in accordance with other legal matters remain unaffected.

**(4)** NOVARIC® Ltd. is entitled to gather personal data of the Client and employees in machine form in the course of the engagements which have been issued and to process this in an automated file or to pass this on to a IT service centre for subsequent order data processing.

**(5)** NOVARIC® Ltd. may only hand reports, assessments and other written statements concerning the results of its work to third parties with the agreement of the Client. In addition, no secrecy obligation exists of NOVARIC® Ltd. and the persons involved in the process have been informed of the secrecy obligation on their part. The Client hereby agrees that its files which are stored and managed by NOVARIC® Ltd. may be viewed by Government Authorities.

**(6)** When sending papers, documents, work results etc in paper or electronic form, NOVARIC® Ltd. must comply with the secrecy obligation. For its part, the Client shall ensure that it as the recipient takes the necessary security measures to ensure that the papers or files sent to it are only received by the intended recipient. This applies to correspondence by fax and email in particular. In order to protect the documents and files which have been handed over, the relevant technical and organisational measures must be taken. In particular, should precautions which go beyond the usual extent need to be taken, a corresponding agreement in text form concerning compliance with additional security relevant measures must be concluded, in particular as to whether end to end encryption must take place in case of correspondence by email.

**(7)** NOVARIC® Ltd. shall comply with the respectively applicable provisions under data protection laws and take measures in accordance with Article 32 Paragraph 4 GDPR in order to ensure that the personal data which they have been provided with is only processed in accordance with the instructions of the controller.

**(8)** Should the Client process personal data and send this to NOVARIC® Ltd., it hereby provides an undertaking that it is entitled to do so under the applicable provisions, in particular those under data protection laws. In case of a breach, the Client shall release NOVARIC® Ltd.

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from third party claims. Should the entitlement arise from consent issued by the data subject, the Client shall provide NOVARIC® Ltd. with proof of the consent on request.

**(9)** Should the requirements for order processing under Article 28 GDPR be present, the Parties shall conclude a separate order processing contract.

#### **4. Third party assistance**

**(1)** NOVARIC® Ltd. is entitled to engage employees, third party experts and data processing companies when performing the engagement. When engaging third party experts and data processing companies, NOVARIC® Ltd. must ensure that these undertake to maintain secrecy in accordance with Number 3 Paragraph 1.

**(2)** NOVARIC® Ltd. is entitled to allow general representatives and practice trustees access to the files in case they are appointed in accordance with the Maltese Data Protection Act.

**(3)** NOVARIC® Ltd. shall be entitled to appoint a data protection officer in order to fulfil its obligations under the Maltese Data Protection Act. Should the data protection officer not yet be subject to the secrecy obligation under Number 3 Paragraph 1 Sentence 3, the Maltese Data Protection Act must ensure that the data protection officer undertakes to maintain data secrecy at the time of starting work.

#### **5. Correction of defects**

**(1)** The Client is entitled to have any defects corrected. NOVARIC® Ltd. shall be provided with the opportunity to carry out improvements. The improvement claim must be asserted immediately after becoming aware. The defect correction can only be requested within a reasonable deadline.

Should the defect have been caused by the Client, NOVARIC® Ltd. shall be entitled to charge the costs for the correction of the defect to a reasonable extent.

**(2)** Should NOVARIC® Ltd. does not correct the defect which has been claimed with a reasonable deadline or should it reject the defect correction in an unjustified manner, the Client can choose between requesting a reduction in the remuneration or rescission of the contract. Should NOVARIC® Ltd. have already provided a partial service, the Client can only request rescission of the contract as a whole if it has no interest in the partial service.

The rescission of the contract shall be excluded, should the defects being claimed be of a minor nature or should the Client be solely or primarily responsible for the defectiveness.

**(3)** Obvious mistakes (for example typing or grammatical errors) can be corrected by NOVARIC® Ltd. at any time, also in relation to third parties. Other defects can be corrected by





NOVARIC® Ltd. in relation to third parties with the consent of the Client. Consent is not necessary should legitimate interests of NOVARIC® Ltd. outweigh the interests of the Client.

## **6. Liability**

**(1)** NOVARIC® Ltd. shall incur liability for fault on its part, as well as on the part of its vicarious agents.

**(2)** The claim of the Client against NOVARIC® Ltd. to reimbursement of losses which are caused negligently under Paragraph 1 is limited up to 1,000.00EUR. An individual loss event is defined as the sum of the damages claims of all claimants which arise from one and the same action which are brought by the same claimant from various actions against NOVARIC® Ltd. or its employees, should a legal or economic connection be present.

**(3)** Should it be intended to deviate from the above provision in an individual case, in particular should the sum named in Paragraph 2 be set at a lower limit, a separate written agreement is necessary.

**(4)** The limit of liability shall apply retrospectively from the start of the client relationship and shall also extend to cases where the scope of the engagement is subsequently altered or extended.

**(5)** Unless damages claim of the Client is subject to a shorter limitation period by law, it shall be time barred

- in two years from the time when the claim arose, and the Client becomes aware of the circumstances which give rise to the claim and the person of the debtor or should have become aware without gross negligence being present.
- in five years from the time the claim occurred without taking knowledge or lack of knowledge due to gross negligence into account, the later date is decisive.

**(6)** The provisions concluded in Paragraphs 1 to 5 also apply in relation to persons other than the Client, should these be included in the area of the protection of the contract between the Client and NOVARIC® Ltd. in an individual case.

**(7)** Liability claims connected to injury to life, body or health are excluded from the limitations of liability.

**(8)** Liability of NOVARIC® Ltd. due to violation of or non-compliance with foreign law and/or foreign legislation or administrative opinions is excluded. The exclusion does not apply in the case of an expressly assumed engagement where the application of the foreign law is necessary in order to perform it and the liability of the Contractor has also been extended in text form to losses due to violation of or non-compliance with foreign law.





## **7. Obligations of the Client**

(1) The Client shall be obliged to co-operate, should this be necessary to properly carry out the engagement. In particular, the Client must provide NOVARIC<sup>®</sup> Ltd. with the necessary documents for the performance of the engagement in full and in such a timely manner that NOVARIC<sup>®</sup> Ltd. has a reasonable period of time for processing available, without the need for a request to be issued. The same applies to the notification of all procedures and circumstances which could be significant to the performance of the engagement. The Client shall be obliged to take all written and oral notifications of NOVARIC<sup>®</sup> Ltd. on board and to follow up any queries.

(2) The Client must refrain from all actions which could impair the impartiality of NOVARIC<sup>®</sup> Ltd. or its vicarious agents.

(3) The Client shall be obliged only to pass on work results of NOVARIC<sup>®</sup> Ltd. with the written agreement of the latter, unless the content of the order provides consent for disclosure to a specified third party.

(4) Should NOVARIC<sup>®</sup> Ltd. use data processing programs at the premises of the Client, the Client shall be obliged to comply with the instructions of NOVARIC<sup>®</sup> Ltd. concerning the installation and use of the programs. In addition, the Client is obliged and entitled to only use the programs to the extent specified by NOVARIC<sup>®</sup> Ltd. The Client may not distribute the programs. NOVARIC<sup>®</sup> Ltd. remains the holder of the rights of use. The Client must refrain from all actions which prevent the exercising of the rights of use in relation to the programs by NOVARIC<sup>®</sup> Ltd.

(5) Should the Client fail to provide the co-operation required under Number 7 Paragraphs 1 to 4 or other co-operation actions or should it enter default in the acceptance of the service provided by NOVARIC<sup>®</sup> Ltd., which shall be entitled to set a reasonable deadline with the declaration that it will refuse to continue the performance of the contract, once the said deadline has expired. Following the fruitless expiry of the deadline, NOVARIC<sup>®</sup> Ltd. can terminate the contract without notice (see Number 9 Paragraph 2). The claim of NOVARIC<sup>®</sup> Ltd. to the reimbursement of the additional expenses incurred due to the delay or failure to provide co-operation by the Principal, as well as the loss incurred shall remain unaffected, even if NOVARIC<sup>®</sup> Ltd. does not claim the right of termination.

## **8. Setting of remuneration, advance payment**

(1) The remuneration (fees and reimbursement of expenses) of NOVARIC<sup>®</sup> Ltd. for its professional work in accordance with the remuneration ordinance for consultancy companies, unless a separate remuneration agreement which deviates from this ordinance is concluded





(for example higher remuneration, fixed fee). In matters outside of court, a lower fee than the statutory remuneration can be agreed, should this reasonable reflect the performance, responsibility and liability risk of NOVARIC® Ltd.

**(2)** For activities which do not come under the remuneration ordinance, the agreed remuneration shall apply, otherwise the statutory remuneration provided for these activities, otherwise the standard remuneration.

**(3)** It is only permitted to set off against the remuneration claim of NOVARIC® Ltd. with claims which are undisputed or have been recognised by a court.

**(4)** NOVARIC® Ltd. can request an advance payment for fees and expenses which have already been incurred and which are expected to arise. Should the requested advance payment not be made, NOVARIC® Ltd. can suspend its work for the Client by prior notice until the advance payment is received. NOVARIC® Ltd. shall be obliged to notify the Client of its intention to suspend the work in good time, should this have the potential to lead to negative consequences on the part of the Client.

**(5)** Invoices are due immediately. As an alternative, the Client can issue NOVARIC® Ltd. with a SEPA basic mandate or a SEPA business mandate. The direct debit will be taken 10 days after the date of the invoice, whereby a pre-notification period of at least 5 days will be complied with. The Client shall ensure sufficient coverage in its bank account. Costs which are incurred to due to the rejection of the direct debit shall be borne by the Client, should this have been caused by it.

## **9. Termination of the contract**

**(1)** The contract shall come to an end by means of fulfilment of the agreed services, expiry of the agreed term or termination. The contract shall not come to an end due to death or legal incapacity of the Client or dissolution, should the Client be a company.

**(2)** Should a contract be a service contract and be concluded indefinitely, it can be terminated by each Contracting Party. Termination must take place in text form. Should it be intended to deviate from the above in an individual case, this shall require a written agreement to be drawn up separately and handed to the Client together with these general terms and conditions of engagement at the time of concluding the contract.

**(3)** In case of termination of the contract by NOVARIC® Ltd., then in order to avoid legal losses on the part of the Client, those actions which are reasonable and cannot be postponed must be carried out (for example deadline extension in case of threatened deadline expiry).

**(4)** NOVARIC® Ltd. shall be obliged to surrender all items to the Client which it received in connection with the performance of the engagement under the business relationship. In





addition, NOVARIC® Ltd. shall be obliged to provide the Client with information concerning the state of the matter and render account on request.

(5) At the time of termination of the contract, the Client must return all data processing programs used at its premises to perform the engagement, including any copies and other program documents immediately and must delete these from the hard drive.

(6) Following termination of the mandate, the documents must be collected from the premises of NOVARIC® Ltd.

## **10. Remuneration claim in case of premature termination of the contract**

(1) Should the engagement come to an end prematurely, the remuneration claims of NOVARIC® Ltd. shall be determined by the legal provisions.

Should it be intended to deviate from the above in an individual case, this shall require a written agreement to be drawn up separately and handed to the Client together with these general terms and conditions of engagement at the time of concluding the contract.

(2) Should the engagement be terminated prematurely for reasons for which the Client is responsible, NOVARIC® Ltd. shall have a claim to at least 75% of the remuneration to which it is entitled for the performance of the whole engagement.

(3) Further damages claim of NOVARIC® Ltd. shall remain unaffected.

## **11. Storage, surrender and right of retention in relation to work results and documents**

(1) NOVARIC® Ltd. shall retain the files for ten years following completion of the engagement. However, this obligation shall come to an end prematurely if NOVARIC® Ltd. has requested the Client in writing to collect the files and the Client has not complied with this request within six months of receipt.

(2) Files in this section are defined as all written documents which NOVARIC® Ltd. has received from or for the Client in connection with its professional activities. However this does not apply to the letters between NOVARIC® Ltd. and its Client and to the written documents which it has already received as transcripts or copies, as well as to work papers created for internal purposes.

(3) Following a request by the Client, at the latest following completion of the engagement, NOVARIC® Ltd. must hand the files over to the Client within a reasonable deadline. NOVARIC® Ltd. can make transcripts or photocopies of documents which it returns to the Client and is permitted to retain these.





(4) NOVARIC<sup>®</sup> Ltd. can refuse to hand over its work results and files until its fees and expenses have been settled. This does not apply if the retention would breach good faith according to the circumstances, in particular if the sums owed are of a negligible amount. Until the correction of defects which have been claimed by the Client in a timely manner, the Client is entitled to retain a reasonable part of the remuneration.

## **12. Miscellaneous:**

Maltese law shall apply to the engagement, its performance and the resulting claims in an exclusive manner. The place of performance shall be the professional place of business or other office of NOVARIC<sup>®</sup> Ltd., unless otherwise agreed. NOVARIC<sup>®</sup> Ltd. is not prepared to take place in dispute resolution proceedings before a consumer arbitration body.

## **13. Severability clause, amendments and additions**

Should any individual provisions of these terms and conditions of engagements be or become ineffective, the effectiveness of the remaining clauses shall not be affected thereby. The ineffective provision shall be replaced by a valid clause which comes as close as possible to the intended purpose.

Amendments and additions to these terms and conditions of engagement require written form.

