

Sales Terms & Conditions

THIS TERMS & CONDITIONS AGREEMENT (this "Agreement"), between NovaStor Software AG, a Swiss corporation or NovaStor Corporation, a California corporation (under this Agreement, "NovaStor"), and Purchaser (the "Purchaser") will be effective immediately upon purchase of a Software Package by Purchaser.

These terms and conditions of sale are the terms and conditions, which are the basis for all sales. NovaStor will not accept any other terms and conditions of sale, unless Purchaser and NovaStor have executed a separate written Purchase Agreement. A fully executed Purchase Agreement between the Purchaser and NovaStor will supersede and replace these terms and conditions. Acceptance of all purchase orders is expressly made conditional upon Purchaser's *agreement*, expressed or implied, to the terms and conditions set forth herein without modification or addition.

1. Acceptance

Purchaser's acceptance of these terms and conditions shall be indicated by any of the following, whichever first occurs: (a) Purchaser's making of an offer to purchase Product from NovaStor; (b) Purchaser's written acknowledgment hereof; (c) Purchaser's acceptance of any electronic or physical shipment of any part of the items specified for delivery (the "Products"); or (d) any other act or expression of acceptance by Purchaser. NovaStor's acceptance is expressly limited to the terms and conditions hereof in their entirety without addition, modification or exception, and any term, condition or proposals hereafter submitted by Purchaser (whether oral or in writing) which is inconsistent with or in addition to the terms and conditions set forth hereon will not be accepted by NovaStor. NovaStor's silence or failure to respond to any such subsequent or different term, condition or proposal shall not be deemed to be NovaStor's acceptance or approval thereof. By accepting these terms and conditions within this Agreement, Purchaser also accepts the terms laid out in NovaStor's End User License Agreement (EULA) that accompanies each installation of NovaStor products.

2. Delivery

Unless otherwise agreed in writing, all risk of loss or damage with respect to the Product(s) shall pass to Purchaser upon shipment for all transactions. Purchaser shall promptly notify NovaStor, in no event later than five (5) business days after delivery, of any claimed shortages or rejection as to any delivery. Such notice shall be in writing and state the grounds for any such rejection. Failure to give any such notice within such time shall be deemed an acceptance in full of any such delivery. NovaStor shall not be liable for any shipment delays beyond the reasonable control of NovaStor which affect NovaStor or any of NovaStor's suppliers including but not limited to natural disasters, fire, accident, labor dispute, war, insurrection, riot, act of government, act of god, failure of manufacturers or suppliers to provide equipment.

3. Price and Payment

Purchaser shall bear all applicable federal, state, municipal, and other government taxes (such as sales, use, vat and similar taxes), as well as import or customs duties, license fees and similar charges, however designated or levied on the sale of the Products (or the delivery thereof) or measured by the purchase price paid for the Products. NovaStor, at its discretion, may require reasonable advance assurances of payment through irrevocable bank letters of credit or otherwise. Unless otherwise specified, payment will be due upon presentation of invoice. All unpaid invoices may bear interest at the maximum rate allowed to be contracted for by law, commencing upon the date payment is due. Purchaser's failure to make timely payment may result in such action as commencement of proceedings for collection, revocation of credit, stoppage of shipment, delay or cessation of future deliveries, repossession of unpaid delivered goods and termination of (or suspension of performance by NovaStor under) any one or more sales agreements, *discontinuation of support and termination of any lead generation*. Notwithstanding any "net" payment provisions specified on the invoice, NovaStor shall have no continuing obligation to deliver Products on credit, and any credit approval may be withdrawn by NovaStor at any time and without prior notice.

3. Product Return / Refund Policy

As customers have the possibility to download and extensively test the software prior to a purchase. NovaStor does not accept returns or refunds.



4. Defective Products Returns

Return of Products purchased or reimbursement of services which are claimed to be defective, shall be governed by NovaStor Product Return policies in effect on the date of the invoice, or as otherwise provided by NovaStor to Purchaser in writing. NovaStor reserves the right to modify or eliminate such policies at any time. Although NovaStor's policies may permit Purchaser to return Products or services claimed to be defective under certain circumstances, NovaStor makes no representations or warranties of any kind with respect to the Products or services. NovaStor HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NovaStor WILL NOT BE LIABLE FOR ANY DAMAGE, LOSS, COST OR EXPENSE FOR BREACH OF WARRANTY. The right to return defective Products, as previously described, shall constitute NovaStor's sole liability and Purchaser's exclusive remedy in connection with any claim of any kind relating to quality, condition or performance of any Product or service, whether such claim is based upon principles of contract, warranty, negligence or other tort, breach of any statutory duty, principles of indemnity or contribution, the failure of any limited or exclusive remedy to achieve its essential purpose, or otherwise.

5. No Guarantees

Products, licenses, marketing services or any other features or services, separate or bundled are provided to the Purchaser without written, verbal or perceived guarantee of any level of success. Risks associated with any marketing initiative are common and the Purchaser fully understands and accepts that any value or demand demonstrated on the part of the end user of these services are difficult to measure and therefore can not accurately be predicted by NovaStor at any time prior to, during or post sale.

6. Disclaimer of Warranty

DISCLAIMER OF WARRANTY. NovaStor licenses the Software to you on an "AS IS" basis. NovaStor makes no representation as to the adequacy of the Software for any particular purpose or to produce any particular result. NovaStor shall not be liable for loss or damage arising out of this Agreement or from the distribution or use of the Software or any other materials. NOVASTOR AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE, EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, NOVASTOR AND ITS SUPPLIERS MAKE NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU MAY HAVE ADDITIONAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. The provisions of Sections 6 shall survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

7. NovaStor Proprietary Software

If any Product being sold includes or contains software proprietary to NovaStor, then the following provisions will apply. The NovaStor proprietary software is not being sold by NovaStor to the Purchaser. NovaStor hereby grants to Purchaser a perpetual, worldwide, royalty free, non-exclusive license to use such software solely in connection with the use of the related Equipment or services in which the software is included or with which the software is provided. Purchaser is not licensed to use such software in connection with any other application for any purpose, for which it was not intended. Such software contains intellectual property and proprietary information of NovaStor. No ownership interest in any intellectual property rights shall pass from NovaStor to Purchaser. NovaStor shall have and retain all intellectual property rights in any developments or improvements to such software. Purchaser shall not use such software or permit others to use it, for the purpose of reverse engineering NovaStor's technology. Purchaser also agrees not to sell or otherwise provide the software, either directly or as part of the related equipment, to any person who does not agree to comply with the forgoing.

8. Bundled Product

Licenses or Seed Licenses for NovaStor products, services or solutions provided may only be distributed by Purchaser as part of a bundled product offering. All components are provided as part of a bundle and may not be separated from the bundle and distributed as standalone applications. Failure to comply will be considered a breach of this Agreement and will result in the immediate termination of this Agreement and the Purchaser's rights to participate in the Strategic Growth Package program. No refunds full or in part will be owed to Purchaser for such breach. Furthermore, Reseller will be responsible for any loss or damages suffered by NovaStor as a result of this breach.



9. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY, OR ITS DIRECTORS, OFFICERS OR EMPLOYEES, HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO PROPERTY, INJURY TO PERSONS, LOST PROFITS, OR DELAYS OR INCONVENIENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOVASTOR'S LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY PURCHASER TO NovaStor FOR THE PARTICULAR PRODUCT WITH RESPECT TO WHICH SUCH CLAIM ARISES AND PURCHASER'S LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR TO BE PAID BY PURCHASER TO NOVASTOR FOR THE PARTICULAR PRODUCT WITH RESPECT TO WHICH SUCH CLAIM ARISES.

10. Services

NovaStor installation services may be provided in connection with the purchase by Purchaser of products, to the extent set forth on the NovaStor quote referenced in Purchaser's purchase order. Any other technical support, professional or consulting services by NovaStor may require an additional services agreement. Any such additional services agreement, unless expressly providing otherwise, shall be construed in conjunction with these Terms and Conditions.

11. Maintenance/Upgrade Protection Term/Termination

The minimum maturity of a Maintenance/Upgrade Protection contract is 12 months (if not specifically stated starting with the date of invoice). At the end of the Initial Term this contract shall automatically renew for additional one (1) year term unless one Party notifies the other Party in writing of its intention to not renew the contract within 3 month prior to the renewal day.

12. Indemnification

You agree to defend, indemnify and hold harmless NovaStor, its vendors, and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of your use of the NovaStor Products. NovaStor reserves the right, at its own expense and in its sole discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. In that event, and only in such event, shall you have no further obligation to provide indemnification for NovaStor in that matter.

13. Trademarks

All trademarks appearing on the NovaStor Products are the property of their respective owners, including without limitation Nova-Stor. Purchaser has the right to use such trademarks, but only with NovaStor's approval and written consent.

14. General

These terms and conditions shall constitute the final, complete and exclusive agreement of the parties with respect to all sales by NovaStor to Purchaser and shall supersede all prior offers, negotiations, understandings and agreements. No additional or different terms and conditions, whether material or immaterial, shall become a part of any sales agreement unless expressly accepted in writing by an authorized officer of NovaStor. No additional or different terms and conditions included in any purchase order of Purchaser otherwise accepted by NovaStor shall be effective. Any waiver by NovaStor of one or more of these terms and conditions or any defaults hereunder shall not constitute a waiver of the remaining terms and conditions or of any future defaults hereunder. No failure or delay by either party in exercising or enforcing any right hereunder shall operate as a waiver thereof or preclude any other exercise of enforcement of rights hereunder.

a) Business relationship with NovaStor Software AG

Any provision of these terms and conditions that is prohibited or unenforceable under the laws of Switzerland shall be ineffective to the extent of such prohibition or unenforceability, without impairing or invalidating the remaining provisions of these terms and conditions. All sales agreements shall be deemed made in, and shall be governed by, the laws of Switzerland, without regard to principles of conflict of laws that would cause the application of the laws of another jurisdiction.

b) Business relationship with NovaStor Corporation

Any provision of these terms and conditions that is prohibited or unenforceable under the laws of California shall be ineffective to the extent of such prohibition or unenforceability, without impairing or invalidating the remaining provisions of these terms and conditions. All sales agreements shall be deemed made in, and shall be governed by, the laws of California, without regard to principles of conflict of laws that would cause the application of the laws of another jurisdiction.