

TERMS AND CONDITIONS

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Recital

NEXWAY SASU, having its head office at 19 Avenue Feuchères, 30000 Nîmes, – FRANCE, company with a share capital of 1,814.985,00 €, registered under Number B 440953859 RCS Nîmes, and NEXWAY Inc., having its head office at 235 West Lake Center # 30, DALY CITY, CA 94014, USA, each hereinafter referred to as «**NEXWAY**» or «**We**», are e-commerce companies acting on international scale.

NEXWAY was entrusted with the distribution of dematerialized software and other Products on this Website.

The present Terms and Conditions define the applicable Conditions of Sales of the downloadable products on this Website by NEXWAY. They apply exclusively to Buyers **(*1)** (hereinafter referred to as the « Customer » or « you »).

No Sale will be finalized without the Customer's express consent of these Terms and Conditions. Their acceptance is materialized by the mandatory "ticking" of the validation box stating "By checking this box, I acknowledge having read the Terms and Conditions of Sales and the personal data charter of the online store and I expressly accept them".

These Terms and Conditions can be registered and printed at any time by the Customer. For any purpose, we strongly recommend that you print and save them.

Article 1: Definitions

The terms mentioned below are within the scope of these Terms and Conditions and have the following meanings:

1.1 - The term "**Website**" means any website operated by NEXWAY for the sale of products and services and subject to these Terms and Conditions. Websites operated by Suppliers are expressly excluded from this definition.

1.2 - The term "**Customer**" designates any person (whether natural or legal) with the legal capacity to order products and services from this website. Unless otherwise indicated, the term "Customer" means both consumers and businesses.

1.3 - The term "**Products**" means any decryption or authorization code, serial or authorization number, download link or a similar code or device that provides access to the Customer for first use or continuation using of a software, a service, or any other product (even physical ones).

1.4 - The term "**Services**" refers to all services sold by NEXWAY to the Customer through this Website.

1.5 - The term "**Software**" refers to all computer programs marketed in any form or medium from this Website.

1.6 - The term "**Subscription**" refers to Products and Services covered by recurring payment obligations pursuant to which payments are due at the agreed interval or intervals.

1.7 - The term "**Supplier**" means any natural or legal entity that provides, produces, manufactures or delivers products and services to NEXWAY for resale to Customers.

Article 2: Scope and Purpose

These Terms and Conditions apply to all offers, acceptances, deployments and the provision of services and supplies, by NEXWAY or to the Customer, in connection with the sale of Products and Services from this Website, as previously defined.

Any conflicting terms or divergent conditions applied by a Customer or a third party needs prior written consent of NEXWAY to be included to these Terms and Conditions.

These Terms and Conditions apply even if NEXWAY executes its contractual obligations without reservation and in full knowledge that the conditions of the Customer differ from these Terms and Conditions.

If the sale of Products and Services includes the provision of services or other activities performed by third parties, the special conditions relating to licenses and other special conditions of the third party concerned apply in addition to these Terms and Conditions.

Article 3: Contract Conclusion (offer, confirmation and acceptance)

An order placed by the Customer is considered an offer to purchase Products and/or Services addressed to NEXWAY and in accordance with these Terms and Conditions.

An order requires acceptance of NEXWAY. The Customer's order is accepted at the time of delivery of the Products and Services ordered. The delivery of the product can occur by email or on the Website (either on the confirmation page or in the customer's client account).

NEXWAY may, in its sole discretion, use third parties for the performance of its services.

In order to comply with applicable laws, NEXWAY reserves the right to request supporting documents, in order to verify the accuracy of the information provided by the Customer.

Article 4: Customer commitments and Registration

Only Customers already registered on the Website may place an order.

The registration on the Website is validated after filling the required information.

The Customer certifies that all the information he has given when placing the order (including, but not limited to, personal data and payment data) is current and accurate in all material respects.

The registration carried out for a purchase on this Website is reserved for adults. Any registration made by a minor person under the age of sixteen (16) years old requires the prior authorization of his/her legal representative.

The costs resulting from any inaccurate information submitted by the Customer, or data modified by the Customer after the order has been transmitted, will be borne by the Customer.

If the Customer has a Customer account with NEXWAY, he must manage and update his account information immediately to ensure the accuracy and completeness of such information.

NEXWAY reserves the right to immediately close the Customer's account in the event that information mentioned at the time of its opening proves to be false.

Once registered, the Customer has a login and a password allowing him to connect to his account.

Only the account holder is allowed to log in using the login and password corresponding to that account. The Customer agrees to keep his password strictly confidential.

As such, any connection via the Customer's account is deemed to have been made by the Customer himself or with his authorization, unless the Customer is able to prove otherwise.

The Customer can ask at any time the closure of his account via [this form of contact](#).

Article 5: Availability of Products

The Products available are exclusively distributed in dematerialized form, unless otherwise indicated on this Website.

The offers of Products and prices are valid as long as they are visible on this Website, and within the limits of available stocks.

Therefore, orders are deemed accepted only after checking the inventory status. In the event of unavailability of Product after placing your order, we will notify you by email upon receipt of information provided by the publisher of the Product.

In case of unavailability of Product and if your payment has been accepted, NEXWAY will refund the sums paid within 15 days of such payment being accepted.

Article 6: Order

An email confirming the order is sent to the address entered by the Customer when registering, upon approval of payment.

The confirmation email contains the Product purchased, its price and, for Products sold in box, the delivery time.

In the case of an order for a downloadable product (such as a software activation key), access to the Product is done by clicking on the download link present either directly on the accepted payment return page or later on the confirmation email. The Customer automatically benefits from a period of 21 days from the date of receipt of the confirmation email to download the Product. At the end of these 21 days, the download is no longer available automatically and requires its release by customer service available via [this contact form](#).

An invoice is also sent to the email address entered during the creation of the account or can be downloaded from the Website immediately after the order.

NEXWAY reserves the right to cancel or refuse any order from a Customer following a payment incident involving a previous order or where the information transmitted is manifestly incorrect.

Unless proven otherwise by the Customer, the data recorded by NEXWAY constitute proof of all transactions between him and NEXWAY.

Article 7: Subscription

7.1. Subscription

If you have purchased a Subscription, at the end of the initial period, you agree that your Subscription is automatically renewed for an identical period (1 month or 1 year as the case may be) and at the preferential renewal price (applicable taxes not included). The period of validity of the subscription begins with the confirmation of the order. The price of renewal may change. Additional online offers and discounts may be available upon renewal, but will not apply to your subscription.

Renewals will occur on the anniversary date of purchase on a monthly or annual basis (as per your initial purchase plan). This principle applies by default, with the exception of special promotions at the time of the initial purchase, for which the renewal price or the renewal period may change. These special conditions will be clearly stated during your initial purchase.

In case of annual subscription you will receive at least one email informing you of the imminent automatic renewal of your Subscription. You must ensure that NEXWAY has a valid email address to be able to notify you by sending emails, and that the [nexway.com](#) domain is not blocked by your anti-spam filtering software.

At the end of the initial period and of each successive renewal period, except in the event of termination of your Subscription, you expressly authorize NEXWAY to charge you each renewal by the reuse of the same payment information that you entered at the time of the initial purchase.

NEXWAY will notify you by email without delay of the renewal price, before the expiration of your license and of any price change, so that you can cancel your subscription before the first billing following the price change. You may need to install the latest version of the product for free at the time of renewal.

At any time, you can cancel your Subscription from your Customer account in the "My Account" section.

The cancellation only takes effect from the expiry date of the current subscription period.

NEXWAY may cancel the Subscription under the same conditions that apply to the Customer.

The use of Products and Services sold by NEXWAY may be dependent on Supplier-hosted online platforms, Supplier-processed data, and the Supplier's ability to perform its services. If the Supplier interrupts the offer of the online platform in whole or in part, ceases the data processing or stops performing the Services in question ("Interruption"), NEXWAY may cancel the Subscription as of the date of the Interruption. NEXWAY will reimburse the Customer pro rata for the remainder of the subscription period following the Interruption.

7.2. Subscription preceded by a free trial period

If you register for a subscription with free trial period of thirty (30) days, the purchased Product on subscription will be available to You on a trial basis free of charge until the end of the trial period. After the thirty (30) day free trial, Your free trial will convert to a paid subscription and a regular price for the product on subscription will be charged.

All customers signing up for the free trial will be required to submit payment card details or where applicable any other payment data as part of the process, to allow automatic payments once the free trial period finishes.

By entering your credit card number or any other payment data, you agree that Nexway may store your payment data. After your thirty (30) day's trial period expires, you expressly authorize Nexway to charge you regular subscription fees to be billed during a subscription period. The conditions of your subscription will be clearly indicated during your registration.

We will remind you about the end of your trial and upcoming charge to your credit card or payment method seven (7) days prior to the auto-renewal via email.

To avoid being charged for your free trial, you must cancel the trial at least one day prior to the auto-renewal billing date.

When your trial period has ended and your regular subscription period has started, the above section 7.1 and all other Terms and Conditions will apply to your subscription.

7.3 Billing

Product subscription fees will be billed via your Payment Method on the specific payment date indicated in your reminder email. The length of your billing cycle depends on the type of subscription you have chosen. Sometimes, your payment date may

change, for example, if your Payment Method did not work. If your Payment Method does not allow automatic renewal for reasons beyond NEXWAY's control, for example, including, but not limited to, the issuer of your Payment Method, if you wish to renew your subscription, you may change your Payment Method via your account in accordance with Article 10.1 below, or you may do so on the Site by selecting the product subscription that best suits your needs.

Article 8. Title Retention

NEXWAY reserves the right to own any Product until full payment of all claims arising from the contract, including ancillary claims (for example foreign exchange fees, financing costs, interest, etc.).

Article 9: Granted Rights

The Products are protected by international copyright and intellectual property regulations and treaties. They are the exclusive property of their publishers.

By downloading a Product or purchasing the boxed version of a Product, the Customer acquires a user license directly from the publisher of the Product. The rights of the Customer on the Product are exclusively governed by the provisions mentioned in the aforementioned license agreement.

The Customer acknowledges that the license agreement does not imply the transfer of the rights of reproduction, representation and exploitation relating to the Product. The Product may not be copied, adapted, translated, made available, distributed, modified, disassembled, decompiled or used in combination with any other software, except with the express authorization of the publisher of such Product, unless otherwise required by law.

The Customer is warned that non-observance of the license agreement conditions may be sanctioned by the publisher of the Product and potentially exposes him to legal proceedings.

Article 10: Financial conditions

10.1. Price and payment terms

The sale prices indicated on this Website are in the displayed currency and all taxes are included, unless stated otherwise. As part of a box order, any delivery charges are indicated to the Customer according to his choice of Products and are billed at the end of the order in addition to the price of the selected Products.

The VAT rate applied is that in force in the country where the Customer is domiciled.

Payments must be made prior to delivery, according to the terms and conditions indicated on the Site.

For professionals:

Late payment penalties are payable in the event of payment after the due date indicated on the invoice at the ECB refinancing rate plus 10 points.

In addition, according to the European Directive 2011/7/EU on late payments, any delay in payment automatically entails, in addition to default interest, the debtor's obligation to pay a lump sum indemnity of € 40 for recovery costs.

Upon submission of evidence, additional compensation may be required if the recovery costs incurred exceed the lump sum award.

10.2. Secure payment

The payment for the Products is done exclusively by the means of payment made available on the Website.

The selected payment method is debited upon receipt of the order and subject to the prior authorization of the competent payment service provider. In the absence of authorization, the order will not be processed.

The payment solutions available on this Website are managed by our partners, who provide a secure acquisition of payments over the Internet.

The integrity of the data exchanged is ensured by the procedure of exchange and sealing of the messages by the use of SSL and SET technologies.

Article 11: Withdrawal Right

The Customer can exercise his right of withdrawal **(*2)** as follows:

- **For Products sold on physical media** (Backup DVD, CD Boxes), the Customer has a period of thirty (30) calendar days after receiving the Product to exercise his right of withdrawal. The Customer informs NEXWAY by email (customer@nexway.com) or by post (Nexway Customer Support, 19 avenue Feuchères 30000 Nîmes FRANCE or Nexway Customer Support,

4804 Mission Street #208 – San Francisco, CA 94112, USA) of his decision of withdrawal by completing this withdrawal form (or any other document with equivalent indications) before the expiry of the aforementioned period.

The Customer will then receive, on the email address entered at the time of opening of his account, an acknowledgment of receipt of his request.

The Product must be returned in mint condition, complete and in its sealed original packaging within fourteen (14) calendar days following the sending of the withdrawal at the following address:
NEXWAY SASU, 19 Avenue Feuchères, 30000 Nîmes, FRANCE.

If the Customer returns the Product in a simple letter which is lost because of the carrier, the Product will be deemed not to have been returned.

NEXWAY will refund the Customer [all amounts paid/the purchase price of the Product], [including delivery charges], within fifteen (15) calendar days of NEXWAY's receipt of the relevant Product(s). However, NEXWAY is not obliged to refund additional costs if the Customer has chosen a more expensive mode of delivery than the standard delivery method used at the time of the initial delivery of the relevant by NEXWAY to the Customer.

- **For download Products or software activation keys**, for which the Customer has previously and expressly agreed to waive the exercise of his right of withdrawal (*3):

The waiver of your right of withdrawal is materialized by the mandatory "ticking", prior to sale's closing, of the Tick Box stating "I have read and I accept the Terms and Conditions of Sales. When proceeding to download or by receiving a software activation key I want to immediately access purchased content, and I therefore waive the exercise of my right of withdrawal".

If the Customer did not have to waive the exercise of his right of withdrawal to access the product or the service, he has a period of thirty (30) calendar days from the date of the order to exercise his right of withdrawal. The Customer shall inform NEXWAY by email (customer@nexway.com) or by post (Nexway Customer Support, 19 avenue Feuchères 30000 Nîmes FRANCE or Nexway Customer Support, 4804 Mission Street #208 – San Francisco, CA 94112, USA) of his decision of withdrawal by completing this withdrawal form (or any other document with equivalent indications) before the expiry of the aforementioned period. The Customer will then receive, on the email address entered at the time of opening of his account, an acknowledgment of receipt of his request.

In any case, the exercise of the right of withdrawal is free and does not have to be justified.

Article 12: Liability, legal warranty and liability/warranty limitations

12.1 Liability, Legal Warranty and Warranty/Liability limitation

NEXWAY is liable for any lack of conformity of the Product according to articles L. 211-4 et seq. of the French Consumer Code and for hidden defects according to articles 1641 et seq. Of the French Civil Code.

The Customer who acts upon legal warranty of conformity:

- has a period of two years from the date of download or delivery of the Product to act.
- may choose between repair or replacement of the Product, subject to the cost conditions provided for in Article L. 211-9 of the French Consumer Code.
- is exempted from showing proof of the lack of conformity of the good during twenty-four (24) months following the download or the delivery of the Product.

The legal warranty of conformity applies regardless of the commercial guarantee that may be granted.

In the event of the implementation of the guarantee on latent defects, the Customer can choose between the cancellation of the sale or a reduction of the selling price in accordance with Article 1644 of the French Civil Code.

NEXWAY shall not be held liable for the consequences resulting from the misuse of the Products sold on the Website.

If in doubt about the use of the Product, the Customer may contact at the following email address: customer@nexway.com.

By no means shall NEXWAY be liable for non-performance or improper performance of its obligations resulting from an unforeseeable or insurmountable event, or resulting from the non-performance or improper performance of a third party, and in particular from the publisher of the Product.

NEXWAY shall not be held liable for any malfunction of the Website due to an interruption of the Internet for any reason whatsoever or a failure of the server hosting system used by NEXWAY.

The Customer further acknowledges the right of NEXWAY to temporarily suspend access to the Website, where the Website or any linked server is subject to a refresh or maintenance operation. In this case, NEXWAY will endeavor to limit the inconvenience caused to Customers by reducing the interruption time to the minimum time necessary to complete the transaction in question.

NEXWAY cannot be held responsible for the non-performance of the contract concluded in case of force majeure, a fortuitous event or a cause beyond its control, such as in particular: natural disaster, war, earthquake, fire, explosions, riots, intervention of the governmental authorities, bad weather, water damage, malfunction or interruption of the electricity or telecommunication network.

12.2 Exclusion of Legal Warranty and Liability for Customers Ordering From Europe

All liability of NEXWAY is excluded for the consequences of changes to Products and Services by the Customer or a third party, improper handling or mishandling of Products and Services.

NEXWAY only sells Products and Services as defined in Section 1 and therefore assumes no liability for the proper operation of software and services provided by Suppliers for the specific needs of the Customer or for the compatibility of such software and services with the Customer's computer equipment and components.

If NEXWAY by negligence breaches an essential contractual obligation, NEXWAY's liability for damages shall be limited to the foreseeable damages normally expected under the circumstances. The essential contractual obligations are those the performance of which is required to achieve the objective of the contract.

If the Customer claims damages against NEXWAY for deliberate or gross negligence or the lack of a warranted feature, NEXWAY shall be liable within the statutory provisions.

NEXWAY's liability remains legally valid in the event of culpable harm to life, body and health.

If NEXWAY's liability is excluded or limited, so is the individual liability of NEXWAY's employees, representatives and agents.

12.3 Exclusion of Legal Warranty and Liability for Customers Ordering outside Europe

The publisher of the Product may offer certain warranties for its software, but NEXWAY does not offer warranties on software purchased from this Website. NEXWAY disclaims all warranties and will not be held liable for any statement, warranty and conditions regarding the Software, whether express or implied, including warranties regarding merchantable quality, fitness for a particular purpose, titles, non-infringement, integration of system, serenity of use, and precision.

By no means shall the Customer hold NEXWAY liable for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, even if NEXWAY has been advised of the possibility of such damages, including any loss of income, customers, goodwill or profits, arising out of or in connection with these conditions, whether in contract, tort or other liability. The total and cumulative liability of NEXWAY set forth herein shall in no event exceed the purchase price of the particular Products and Services that gave rise to the rights claim. Submitting multiple claims does not increase this limit. This limitation of liability applies notwithstanding the failure of any other exclusive remedy set forth herein.

Article 13: Personal Data Protection

By registering on the Website, you agree to provide us with sincere and genuine information about you and you consent that the website owner and its corporate affiliates may disclose your personal data to NEXWAY for the purposes of processing your purchase of Products and Services on the Website in accordance with these Terms and Conditions.

If the Customer is a minor under the age of sixteen (16) years old, his / her legal representative must expressly have validated the provisions relating to the Personal Data Charter. In this case, it is the legal representative who will exercise the rights of access, modification, rectification, erasure and, where applicable, portability of personal data concerning the minor, under the conditions provided for in this section. These rights will then be exercised exclusively by the concerned Customer when reaching the full legal age.

Customer data is subject to electronic data processing. Where applicable, NEXWAY may transmit personal data to the Supplier of Products and Services purchased by the Customer, service partners or joint venture companies, some of which may also be outside the European Economic Area, including USA, subject to appropriate security measures and legal provisions.

Thus, without prior notice, NEXWAY may store and use your personal information, provide your personal information to NEXWAY affiliates or third parties, its affiliates or its third parties for the purpose of:

- order processing, including processing your online payment and informing you of the status of your order
- charging and delivering for the ordered Products
- helping secure and improving the security of your order and transactions (for example by applying anti-fraud filters)
- registering your purchase with the Supplier (for warranty, technical support, or other purposes)
- the putting through to customer service and technical support
- informing you about Product upgrades, special offers, other products, services and information (including third parties), market research, or survey and evaluation fill-in (in the case, you opted to receive these communications)
- improving the usability of the Website
- providing you with access to restricted areas of the Website
- complying with legal requirements
- implementing the terms and conditions, including the investigation of potential violations

And for other lawful purposes.

Certain data, such as the types of services used and the number of users we receive each day, may be used by NEXWAY for statistical, marketing, promotional or other lawful purposes. This kind of information is collected in aggregated or statistical form, without identifying users individually.

If you have expressly accepted it during your registration on the Website, we may transmit your data to our business partners for information and prospecting purposes. If you accept, NEXWAY and its partners may send you information in the context of specific and ad hoc promotional campaigns or newsletters. These partners are specially chosen by NEXWAY and are recognized for the quality of their products and services.

You may request to no longer receive emails from us for marketing purposes at any time by clicking on the link provided and inserted at the bottom of each email that we or any of our partners will address you.

This data is securely stored in NEXWAY's information system.

NEXWAY may communicate this data only as evidence or as part of a sales report to its partners. Where applicable when a partner is located outside the European Union, you agree that your data will be transmitted in the country of residence of that partner.

You may withdraw your consent for NEXWAY to use, store, transfer, disclose or otherwise process your information at any time by providing NEXWAY with reasonable prior notice via [this form of contact](#). Nexway will then inform the Website owner of your decision.

The completeness of the treatments of your data are preserved in a register and were the object of a declaration with the *Commission Nationale de l'Informatique et des Libertés* ("CNIL") under number 1297698 **(*4)**.

NEXWAY also appoints a Personal Data Protection Officer ("DPO") **(*5)**. Our DPO can be contacted at the following email address: DPO@nexway.com.

The Customer's data are kept as long as his account is active as well as for a period of three months from the date of closing.

The data is then archived and returned exclusively in the context of litigation, during the period of the legal prescription.

The Customer has a right to access, modify, rectify, erase and, where applicable, to portability of his personal data **(*6)**.

The right of access, modification, correction and deletion provided for in the preceding paragraph is exercised by either contacting the NEXWAY's customer service at the following email address: customercare@nexway.com, or by directly contacting NEXWAY's DPO: DPO@nexway.com.

If need be, the Customer is informed of his right to define guidelines for the storage, erasure and communication of his personal data after his death.

The Customer also has a right to portability on its data that has been processed using automated processes **(*7)**.

The Customer expressly acknowledges that once he has shared content to a social network, an application or a third-party Internet site, NEXWAY is no longer responsible for the performance of its right to erase on these sites. If needed, the Customer should contact the publishers of the applications through which it shared the content in order to exercise its rights.

In case of difficulty related to the management of his personal data, the Customer has the right to lodge a complaint with the CNIL or with any other competent supervisory authority.

Cookies may be automatically installed on the browser software when accessing this Website. A cookie is an element that does not identify the visitor but is used to record information about its navigation. The browser settings may be used to refuse cookies according to the procedure described in the "Internet Option" tab of the browser.

We draw your attention to the fact that NEXWAY exclusively operates the online store for dematerialized sales accessible from the Website. You should refer to the general provisions of the publisher of Products for information on their personal data policy.

Article 14: Miscellaneous

In the event of nullity of one of the provisions of the present Terms and Condition the remaining provisions of these Terms and Conditions shall remain in full force in effect.

The headings of the sections of these Terms and Conditions appear for convenience only and in no way affect the meaning of the provisions to which they refer.

No fact of tolerance by Nexway, even repeated, constitutes a waiver to any of the provisions of these Terms and Conditions.

These Terms and Conditions of sales are the only ones applicable and replace all other Terms and Conditions, except preliminary, express and written derogation.

Nexway may be required to modify some of the provisions of these Terms and Conditions. In any case, each purchase on the Website is governed by the Terms and Conditions applicable on the date of purchase and the modifications shall not apply to contracts concluded previously. For this reason, the Terms and Conditions in force must be expressly accepted by the Customer prior to each new order.

Article 15: Governing Law and Litigations

These terms and conditions are subject to French Law, subject to mandatory legal provisions in the consumer's country of residence.

In the absence of a legal provision that assigns the decision of a possible dispute to the jurisdiction of the consumer's place of residence, only the courts of Nîmes in France have jurisdiction.

***1:** according to the preliminary article of the French Consumer Code

***2:** according to the terms of articles L121-20 and L221-28 of the French Consumer Code

***3:** according to article L-221-28 paragraph 13 of the French Consumer Code

***4:** according to the Law "Informatique et Libertés"

***5:** according to article 37 of the General Data Protection Regulation

***6:** according to law relating to computers, files and the freedoms of January 6, 1978 in the version in force on the date hereof, and in accordance with the European Community regulations

***7:** under the conditions set out in Article 20 of the General Data Protection Regulation

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