

Terms and conditions: Deliveries from Nextway

— January 2020

nextway®

We make companies more efficient and people's lives at work easier. We replace processes that involve paper documents, Post-its, spreadsheets, and emails with easy-to-use software. Our Next smart process applications boost corporate efficiency, scalability, and the personal joy of work. Since 1986, we have served our customers from all over the world, through a network of certified partners and own offices in Denmark, Finland, Germany, Norway, Sweden, Switzerland, and the UK.

making good business run better.

These terms and conditions

Any delivery

These terms and conditions apply to any delivery from Nextway — hardware, software, services, and consultancy services. And no matter which of our legal entities you engage with — to you, we are one company.

The scope of delivery

Order confirmation

We do not deliver any services or products without a written order confirmation. This order confirmation is the basis of our delivery. It contains all the obligations we have accepted. That is why it is essential that any expectations you may have are explicitly described in the order confirmation, and not simply implied, mentioned in a brochure, or on a web page.

If urgency, and minding your best interest, makes it impractical for us to produce an order confirmation ahead of the delivery, these terms and conditions still apply, and services are invoiced as time and material according to our current price list.

Solution proposals, orders, and confirmations

A delivery is often described in a solution proposal. A priced solution proposal is valid for a maximum of 30 days, unless something else is stated in the solution proposal. During this period, we will accept your order on the conditions in the solution proposal. We may however at any time withdraw our offer, if: 1. we discover material errors in our solution proposal (including pricing errors); 2. a third-party vendor changes its conditions on products or services; or 3. legislation or governmental regulations change. If this happens, we will provide you with an updated solution proposal.

This is our agreement. Period

You can place your order by phone, text, email, website, or letter. The order does not become legally binding for either of us until we have sent you an order confirmation. When you receive the order confirmation, you must verify it and immediately notify us in writing if something does not meet your expectations. The order confirmation, any documents mentioned in the order confirmation, and these terms and conditions are the basis for our delivery — our mutual agreement.

If both parties agree to modify this agreement, this will be done in writing. The changes do not become binding for either of us until we have sent you a new order confirmation.

Prices, invoicing, and payments

Prices are exclusive of all taxes and VAT, and do not include transportation, insurance, or installation beyond what is explicitly specified in the order confirmation. Prices for services not mentioned in the order confirmation follow Nextway's standard consultancy price list.

We invoice software licenses and hardware when we have sent you the order confirmation. We invoice Next Software Service Plans together with the software, and these recur each year. We invoice consultancy services on a time and material basis at the end of each month. We invoice expenses at the end of each week.

We invoice you with a payment term of 14 days. All payments must be made without deduction or set-off. If you fail to pay on time, we will charge interest without any further notice from the due date to the date of payment at the rate of 1.75% per month. For each reminder, we will invoice you a fee to cover our cost. Until you have paid in full, the delivered products remain ours. You are obliged to keep them safe and insured. If your account is more than 30 days overdue, we reserve the right to withhold performance under the agreement without liability.

Our mutual obligations

Together for success

Both you, as the customer, and we, as the supplier, are obliged to contribute loyally to the successful fulfilment of the agreed delivery. Flexibility, collaborative spirit, and a sense of joint responsibilities are paramount.

We must provide the agreed resources and use best practices in providing a successful delivery. We allocate (and reallocate) resources based on knowledge, skills, and availability. Any work we do must be done in line with any instructions we have agreed to in writing. When we access your systems, we are obliged to make reasonable and practical efforts to ensure that we do not cause damage to them. Securing passwords, having updated virus protection, and following instructions received from you are elements of this.

You must provide the resources needed to fulfill your role in the delivery, including making the decisions needed to execute the delivery in due time. To eliminate the risk of us causing damage to any of your systems, you must secure the IT environments to which you give us access. Operational instructions, backups, and virus protection are all elements of this obligation. Unless specified as a part of the delivery, we do not make any backup of software, data, or documents in your environments — this is included in your responsibilities.

If either of us foresees a delay in our fulfilment of the agreement, we must immediately inform the other. We will then jointly mitigate the consequences. If you cause the delay, you must allow us to reschedule the delivery accordingly and pay any additional cost associated with the delay. If we cause a reschedule, any linked payment dates are rescheduled accordingly. If you cause the reschedule, the original payment dates are upheld, even if the planned activities and milestones are not yet finalized.

Unforeseen events happen. That is why both of us are allowed to postpone any agreed time schedule with two working days' notice. If neither of us delays the delivery by more than 20 working days, this does not constitute a delayed delivery.

Documentation

Manuals and documentation for hardware and standard software products are part of the delivery, to the extent they are available from the manufacturer. We do not create or deliver documentation of services, consultancy services, and custom software, unless this is defined as part of the delivery.

Standard software products

Priority to specific terms

When the delivery includes standard software products (from Nextway or a third party), they come with their own terms and conditions. Such specific terms and conditions will always take priority over the more generic terms and conditions in this document. You must familiarize yourself with these terms and comply with them.

Additions to or modifications of the terms and conditions for Nextway's Next software products (either stated in these generic terms and conditions or in the specific terms and conditions for Next software products) are only valid if these are in writing, and if they are signed and confirmed by Nextway Software A/S. Resellers and local Nextway offices are not authorized to make such additions or amendments.

Custom software and materials

We get the rights, you get the use

When we, as part of the delivery, develop custom software and materials for you, we do so based on what we have previously developed for ourselves and for others. That is why you get a permanent, non-exclusive, nontransferable right to use the custom software and materials. While we retain all intellectual rights and are free to license this right to others or include it in our Next software products.

We develop custom software according to the specifications in the agreement and in line with best practices. It is important to understand that custom software, whether a complete application or a minor extension, is not a standard software product. That is why it comes without any of the provisions you would expect from a standard software product: product documentation, test cases, help desk, bug fixes, support and maintenance, future development, warranties etc. Specifically, we do not guarantee that the custom software will work with future releases of the software components it interacts with. At your request and your expense, we will assist you in resolving such issues going forward.

Consultancy services

If nothing else is agreed, we invoice consultancy services based on the actual time spent. With the invoice, you get detailed records of activities: dates, activity, time, and resource.

Estimates and fixed prices

Before we initiate a task, you may request an estimate. We invoice the time used to develop this estimate. Such estimates are based on our knowledge of the task at the time, and on our experience. If it becomes evident that the task cannot be completed within the provided estimate plus an additional 25% (minimum one day), we will notify you, and ask for instructions on how to proceed. If you then choose to terminate the task, we will invoice the time we have spent until the termination is confirmed by us.

You may also request a fixed price. A fixed price requires a more detailed specification. We invoice the time used to develop such specifications. Fixed prices come with a risk premium and more rigorous delivery management.

Neither estimates nor fixed prices include expenses, travel costs, or overtime payment in case you require parts of the delivery to be made outside office hours. No matter if a task is delivered or terminated, you must pay such cost separately.

When a delivery contains substantial consultancy services, they come with their own terms and conditions. Such specific terms and conditions will always take priority over the more generic terms and conditions in this document. You must familiarize yourself with these terms and comply with them.

Subcontracting

Resources from everywhere

Nextway has offices in several different countries, and with separate legal entities. We will distribute efforts related to the delivery among our different entities as if they are one — based on qualifications and availability. From a legal point of view, you only relate to the local entity with whom you engaged.

We also engage with external subcontractors for specialized services. We will notify you before we do.

Warranty and claims

We provide no separate warranties for products or services produced by a third party. Your rights are determined by the terms and conditions provided by the manufacturer, and our sole responsibility is to forward your claim to them.

The maximum warranty period for standard software products and hardware products is 12 months. For any claim against the warranty to be valid, you must have exercised your obligations to investigate the product when it was delivered. Any claim you file must be filed in writing — e.g. by email — and without undue delay.

Software is never bug free

Especially when it comes to software you must acknowledge that the actual performance is influenced by so many factors that are beyond our control that we cannot assume responsibility for this. Software is never completely bug free, and you must accept that minor defects may not be corrected.

You must allow us access to investigate and mitigate defects. If we cannot mitigate a defect in a delivered item (replace or repair) within reasonable time (20 working days), you are entitled to compensation relative to the cost of this one item. If the defect is material to the use of the item, you may be entitled to return the item and receive a refund. Only if the defect has a major negative impact on the usability of the entire delivery may you be entitled to cancel the order or claim compensation relative to the entire delivery.

Claims on consultancy services and custom software must be made ASAP and no later than 1 month after the delivery date.

If you report a defect, and it turns out that the issue is not a result of defects in our delivery but originates from your use or other factors beyond our control, we will invoice you the time used to process the claim.

Confidentiality and personal data

We are obliged to keep confidential any sensitive knowledge we obtain about you and your business as part of our dealings with you. Each of our employees has signed an

extended confidentiality agreement and is bound to protect this confidentiality. If you want to implement any other non-disclosure agreement, you must submit it to the Nextway headquarters for prior approval and registration. You can do so at management@nextway.software.

You agree that we may use feedback provided by you for any business purposes.

Personal data protection

You, on the other hand, are only required to keep information obtained from us as confidential if it is clearly marked confidential, or if you have been notified about its confidentiality in writing.

We collect, protect, use, and discard personal data in accordance with Nextway's policy for protecting personal data. The document is available from our website. Please familiarize yourself with its content.

All correspondence with you is automatically captured, kept, and shared in our Next Enterprise Archive. If you correspond with Nextway staff on strictly private matters using email, you may mark the email subject #PRIVATE to avoid sharing the email with others. If you mark the mail #CONFIDENTIAL, it will still be considered business relevant, but with limited access for persons other than the intended recipients.

Liability

We accept the responsibilities of being a professional supplier, and we have reasonable insurance coverage. However, we cannot be held liable for incidental, indirect, consequential, or unforeseeable losses including: damage or expense, loss of profits, loss of business, loss of opportunity, and loss of or corruption of data.

Product liability as the law requires

We assume mandatory product liability for Nextway's standard software products as defined by applicable law. Besides this, we assume no other liabilities.

If you are entitled to seek compensation from us regarding any claim, it may never exceed the fee you have paid us for the delivery. If you seek economic compensation beyond this, you must take out appropriate insurance coverage.

Force majeure

Neither of us will be held responsible for failing to perform our obligations because of a force majeure event, such as: war, strike, extreme weather, disturbances in the public telecommunication network, interference with the internet connection or similar events, provided that we could not anticipate this when we made the agreement.

Severability

We serve customers in many countries, and local legislation may collide with one or more of our terms and conditions. If any single term or condition is found to be invalid or unenforceable, the remaining are unaffected.

Changes to these terms

Terms may change

Additions or modifications to these terms and conditions are only valid if they are in writing and are signed and confirmed by Nextway.

Our customer relations typically last for decades. As technology and business environments change more rapidly, we need to be able to adjust our terms and conditions accordingly. We reserve the right to change these terms and conditions with 12 months' notice. Notification will happen by email and on our website.

Transfer

We may transfer our rights and obligations in relation to this agreement to a third party with prior written notice.

Disputes

Local law and in due time

The agreement is governed by the laws of Denmark. If you have engaged with a local Nextway office outside of Denmark, the laws of this country apply. The venue is the court of law of where the Nextway office is located.

Neither of us may take legal action arising from this agreement more than 12 months from the time when we initially had the opportunity to do so.

What did we change

This is a complete rewrite of our terms and conditions. The basic conditions are the same, but the wording is more clear and direct. Less legal jargon, more straight talk.

Definitions

agreement: the order confirmation, any documents mentioned in the order confirmation, and these terms and conditions constitute our mutual agreement.

best practices: a methodology that, through our — and others' — experience, has proven to reliably lead to the desired result. All with reasonable efforts, and consistent with good business and IT practices.

business relevant: any mail (or other correspondence) with Nextway staff is considered business relevant unless it is clearly marked #PRIVATE. Business relevant correspondence is automatically filed in our Next Enterprise Archive.

consultancy services: any task performed by Nextway Professional Services staff in the areas of: advising, analysis, configuration, design, development, documentation, implementation, testing, and training.

custom software: software developed to the specifications of you or others. Custom software comes without any of the provisions you would expect of a standard software product.

delivery: an agreed delivery from Nextway of hardware, software, services, or consultancy services, with an agreed delivery date and price.

estimate: a highly qualified 'guess' based on the currently available information and our experience of the amount of time a given task will take to perform. An estimate is not a fixed price offer, and you must expect deviations from this estimate.

Nextway: an international software vendor with legal entities in several countries. For all practical purposes, you deal with Nextway as if it was one legal entity.

Next software product: a standard software product owned, developed, maintained, and made generally available by Nextway Software A/S. The use of Next software products is regulated by: 'Terms and conditions for Next software products.'

Next Software Service Plan: a prepackaged offering complementing your software license with product updates, bug fixes, and help desk support. Look up nextway.software/plans to see the different options.

order confirmation: a written confirmation of a planned delivery. The order confirmation and its documents constitute our mutual agreement.

software: computer code and supporting documentation. Software comes as custom software or standard software products.

software license: a non-exclusive license to use a standard software product on your own servers or in a data center of your choice. Licenses for Nextway's Next software products are issued by Nextway Software A/S.

solution proposal: a document describing one or more proposed solutions in detail. A solution proposal may contain either no prices or any combination of indicative, estimated, or fixed prices.

standard software products: a standard software product owned, developed, maintained, and made generally available by a third party through Nextway or a Next software product owned by Nextway Software A/S.

task: a delivery that includes consultancy services is broken down into individually described and estimated tasks.

terms and conditions: a written document outlining the obligations and rights imposed on the parties entering into an agreement regarding a delivery. Specific terms and conditions always take priority over more generic terms and conditions.

time and material: an industry standard agreement where you agree to pay us based upon the time spent to perform the work, and for any materials used in the process.