

# General Terms and Conditions for the use of XING Coaches + Trainers and accompanying services

## Introduction

The offer to use XING Coaches + Trainers and accompanying services is intended exclusively for entrepreneurs.

The Customer enters the agreement with New Work SE, Am Strandkai 1, 20457 Hamburg, Germany. Additional contact information, commercial registry data, as well as the name of the authorised representative of New Work SE can be found under About this site.

## 1. Subject matter

1. XING allows Customers to claim, create, use and edit a coach and/or trainer profile (hereafter referred to as Profile). The exact extent to which they may use the Profile and any fees for creating, claiming and/or using a Profile depends on the specific product description. Certain free or paid accompanying services from New Work SE may also form part of the contract.
2. The Profile may be used to present a coach's and/or trainer's products and services. All of the data entered on XING Coaches + Trainers is **publicly available online**.
3. New Work SE makes the content, data and other information provided by the Customer available to third parties as long as it does not violate any legal regulations or these General Terms and Conditions, and as long as it is not improper, offensive to the general public or unacceptable for publication by New Work SE for other reasons. New Work SE is entitled to remove such content, data or other information without prior notice. Should this occur, the Customer is not entitled to any refund.
4. New Work SE simply offers the Customer a platform to connect the Customer and third parties (XING members and other third parties) and for this purpose only provides technical applications that make it possible to establish general contact. New Work SE does not guarantee contact between the Customer and XING members or other third parties. New Work SE does not participate in the communication between the Customer and third parties in terms of content. New Work SE does not participate in any legal agreements that may be made through XING and is therefore not a contractual partner. The Customer alone is responsible for the execution and fulfilment of any agreements made with third parties. New Work SE is not responsible in the event that no contact through XING is established between the Customer and the third party in connection with such an agreement. New Work SE is also not liable for any breaches of duty from the agreements made between the Customer and third parties.
5. New Work SE accepts no responsibility for content, data or other information provided by XING members, or for content on linked external websites. In particular, New Work SE does not warrant or represent that said data and/or information is true or accurate, or that it fulfils or serves any particular purpose.

## 2. Availability

The Customer acknowledges and agrees that it is technically impossible to achieve 100% availability of the XING profile or of XING. However, New Work SE endeavours to keep XING and the Profile available without interruption, to the best of its ability. In particular, maintenance, security and capacity requirements, or events beyond the control of New Work SE (such as interruptions in public communication networks, loss of power, etc.) could lead to brief interruptions or to the temporary unavailability of XING or the Profile. Any claims against New Work SE arising from adverse effects and/or interruptions, irrespective of the legal basis, are excluded to the extent permissible by law.

## 3. Functionality changes

New Work SE reserves the right to make changes to the services related to XING or XING Coaches + Trainers and their general design, or to offer alternative services, as long as this is not unreasonable for the Customer.

## 4. Use of XING Coaches + Trainers and accompanying services

1. The Customer is obliged to observe all applicable laws and all rights of third parties. When adding their own or other content to XING, the Customer must ensure that it does not violate currently applicable law or the rights of third parties, or in any other way compromise the reputation of XING, kununu or New Work SE. The Customer is also specifically prohibited from engaging in the following:
  - Unreasonably harassing others (particularly with spam) (cf. Section 7 of the German Unfair Competition Act (UWG)),
  - Using or promoting any commercial practices considered unfair competition, including progressive customer acquisition practices (such as chain distribution systems, multilevel selling or pyramid sales), or
  - Carrying out, advertising or promoting structural distribution measures (such as multi-level marketing or multi-level network marketing), even if these actions do not specifically constitute a breach of any applicable laws.
2. The content of the Profile must be related to the Customer. The following are prohibited:
  - Exaggerated use of capitalisation or punctuation,
  - Inadequate content,
  - URLs that lead to external websites that are not related to the Company.
3. The user is not permitted to be a member of a religious sect or a denomination that is controversial in Germany.
4. New Work SE may impose the following sanctions in the event that obligations from this agreement, legal regulations or third party rights are violated, or if New Work SE has any other legitimate interest:
  - Delete content that the Customer has published in its Profile,
  - Temporarily or permanently deactivate the Profile,
  - Terminate the agreement for using the Profile
  - New Work SE reserves the right to impose the sanctions listed under Section 4.3, in particular in the event that the means of payment provided by the Customer is invalid, or the Customer does not fulfil a payment obligation on time and/or sufficiently.
5. Complaints from XING members could lead to the temporary deactivation of the Profile.

## 5. Other rights and obligations of the Customer

1. The Customer is obliged to keep access data confidential from unauthorised third parties. In particular, the Customer will store user names and passwords in such a way that it is not possible for unauthorised third parties to gain access to them. The Customer is obliged to inform New Work SE without delay should it become aware that a password is known to third parties.
2. The Customer must inform New Work SE without delay should there be any important changes in the status of the Customer which could be relevant to the contractual relationship.
3. The Customer may only transfer contractual rights to third parties with prior written consent from New Work SE.

## 6. Rights to content

By allowing New Work SE to include its content, the Customer grants New Work SE the right to all types of use for this content that are related to the publication of the information on XING and kununu.

## 7. Contract term

1. This ProCoach/ProTrainer membership agreement is initially effective for the minimum period of use selected by the Customer. After the end of the first contract period, if the ProCoach/ProTrainer membership contract is not terminated by the deadline by the Customer or by New Work SE, it will be renewed for the same period each time the contract is due for renewal. Following renewal, the regular ProCoach/ProTrainer pricing will apply to the respective renewal period. The ProCoach/ProTrainer membership may be terminated by serving notice up to three months before the end of the minimum period of use or the end of of a renewal period.
2. Terminations must be submitted in writing (e-mail, fax or registered letter).
3. If the agreement is terminated, the paid Profile will return to the status of a free Profile.

## 8. Fees and billing

1. Fees for the entire subscription period are immediately payable at the time the invoice is issued. The payment

can be made with any of the various means of payment offered.

2. New Work SE reserves the right to change the fee, to be effective as of the following period of renewal. New Work SE shall notify the Customer of any fee change in the invoice sent to the Customer with regard to the period of renewal. In the event of a price increase, the Customer is entitled to submit to New Work SE within four (4) weeks of the date of invoice a written declaration of withdrawal from the agreement with retroactive effect from the date of the renewal.

## **9. Data protection**

1. The Customer is obliged to comply with currently applicable data protection laws.
2. The Customer is prohibited from collecting, processing, using or forwarding personal data about XING members to third parties without permission in the form of valid approval from the XING member concerned, or if prohibited by German or European data protection laws.

## **10. Indemnity**

1. The Customer shall indemnify and exempt New Work SE from all actions, including damage claims, asserted by third parties or state authorities against New Work SE which are related to the Customer's infringement of rights, the Customer's violation of obligations imposed on the Customer by this contract, or the Customer's violation of pertinent data protection regulations.
2. Furthermore, the Customer assumes all reasonable costs (including legal-defence costs) that XING may incur in the event that a third party initiates or takes legal action (in or out of court) against XING as a result of the Customer's violation of rights, the Customer's violation of the obligations imposed by this contract, or the Customer's violation of pertinent data protection regulations.
3. All other rights, including damage claims by XING, are hereby unaffected.
4. The aforementioned obligations of the Customer shall not apply to the extent the Customer is not responsible for the infringement.

## **11. Liability**

1. Claims for damages against the other contractual party (including the vicarious agents of the contractual party) that are attributable to ordinary negligence, shall exist only if XING breaches a basic/cardinal obligation under this agreement. The concept of cardinal obligation refers abstractly to such obligations, which, when fulfilled, make it possible for the contract to be properly carried out. The other contractual party can rely on the fact that these obligations are complied with. Claims for damages in this case are limited to typical and foreseeable damages.
2. This shall not affect personal injury and property damage claims based on the German Product Liability Act.
3. Neither party is liable to the other party for non-compliance with contractual obligations if the non-compliance is due to circumstances beyond the party's control. This applies in particular to cases of force majeure.

## **12. Reimbursement of advance payments**

The Customer cannot make a claim for reimbursement of advance payments in the following cases:

- If New Work SE terminates the agreement with cause,
- If New Work SE imposes one or more of the sanctions in accordance with Section 4.4, or
- If the Customer terminates the agreement, the Customer's claim for reimbursement of advance payments is not excluded if the cause for termination arises from New Work SE's area of responsibility.

## **13. XING Coaches + Trainers ratings**

1. The Customer agrees that third parties may submit ratings and reviews to its Profile. The ratings feature cannot be deactivated, nor is it possible to deactivate individual ratings at one's own discretion.
2. The user agrees that its ratings may be moved to other sections and parts of the XING Websites.
3. The user agrees that its ratings may be edited or shortened by XING.
4. The user agrees that its ratings may be published globally and on third-party services.

## **14. Final provisions**

1. New Work SE is permitted to commission sub-contractors. In the event that subcontractors are employed, New Work SE remains responsible for fulfilling the obligations taken on by New Work SE. New Work SE is permitted to transfer rights and duties to third parties, in whole or in part.
2. New Work SE reserves the right to amend these general terms and conditions at any time, without giving reasons, unless an amendment is unreasonable to the Customer. XING shall give the Customer due notice of any amendments of these General Terms and Conditions. If the Customer does not object to the applicability of the revised general terms and conditions within six (6) weeks after receipt of said notice, the amended General Terms and Conditions shall be deemed to be accepted by the Customer. New Work SE shall inform the Customer of its right to object and of the relevance of the objection deadline in said notice.
3. The exclusive place of jurisdiction and place of performance is Hamburg, Germany.
4. These GTC and the contractual relationship shall be governed by German law, excluding international private law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods that have been adopted by German Law.
5. If any of the provisions of this agreement are or become unenforceable, they shall not affect the validity of the remaining provisions.