

# General Terms and Conditions for the Use of onlyfy 360°

## Recitals

The offer to use the onlyfy 360° suite and any accompanying services (onlyfy 360°) is intended exclusively for business clients.

The Company enters into this 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 on the 'about this site' page by visiting [www.xing.com](http://www.xing.com).

## 1. Subject matter

1. The onlyfy 360° suite provides the Customer with the opportunity to use various onlyfy products. The exact extent to which the onlyfy 360° suite can be used depends on the specific product description and on these General Terms and Conditions. onlyfy products are web services accessed via the New Work SE server(s) and/or the server(s) of the service provider commissioned by New Work SE, meaning that the Customer is not provided with any source code. Certain paid or unpaid accompanying services provided by New Work SE may also form part of this agreement.
2. Certain limitations apply when onlyfy 360° (e.g. the number of daily messages that can be sent via the onlyfy TalentManager). Please refer to the product description and these General Terms and Conditions for further details. The respective General Terms and Conditions of the products included in onlyfy 360°, available via <https://www.xing.com/terms>, also apply.
3. The use of a onlyfy 360° licence grants the Customer the right to use the following New Work SE products:
  - o Employer Branding Profile Professional
  - o onlyfy ReferralManager
  - o onlyfy TalentManager
  - o onlyfy JobManager with Professional or Professional Plus ads
  - o onlyfy TalentpoolManager
4. New Work SE makes the content, data and other information provided by the Customer in the onlyfy products available to third parties as long as they do not violate any legal regulations or these General Terms and Conditions, and as long as they are 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.
5. 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 the onlyfy 360° licence or 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 the onlyfy 360° licence or 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
6. New Work SE accepts no responsibility for content, data or other information provided by XING members or other third parties, or for content on linked external websites. In particular, New Work SE does not warrant that any such content is true, that it fulfils any particular purpose or that it could be used for any specific purpose.

## 2. Scope of use

1. Any onlyfy products the Customer uses prior to taking out a onlyfy 360° licence will be incorporated into the onlyfy 360° licence during the contractual term. Any unused performance periods for onlyfy products the Customer uses prior to taking out a onlyfy 360° licence will be offset pro rata against the onlyfy 360° fees.
2. The following also applies to the use of the Employer Branding Profile Professional and the onlyfy ReferralManager: If, prior to using onlyfy 360°, the Customer has a Company Profile on www.xing.com consisting of two merged Company Profiles, the onlyfy ReferralManager can only be used with Company Profile displayed on www.xing.com. The onlyfy 360° licence includes an Employer Branding Profile Professional for the respective Customer's country; the Customer must purchase additional Employer Branding Profiles Professional by way of a separate agreement.
3. The following also applies to the use of the onlyfy TalentManager: onlyfy 360° comprises an environment for the onlyfy TalentManager with an unlimited number of recruiter seats for HR and recruiting staff to be used to look for candidates for their own company. Depending on the purpose of the business, onlyfy 360° may also comprise an additional environment per licence where the Customer can look for candidates for third parties. The number of recruiter seats is based on and limited to the number of employees at the Customer's company as determined by New Work SE.
4. The following also applies to the use of the onlyfy TalentpoolManager: onlyfy 360° comprises the use per licence of the onlyfy TalentpoolManager with an unlimited number of recruiter seats for HR and recruiting staff to be used to look for candidates for their own company and for the Customer's purpose of looking for candidates for third parties. The number of recruiter seats is based on and limited to the number of employees at the Customer's company as determined by onlyfy.
5. The following also applies to the use of onlyfy Job Ads: Professional or Professional Plus job ads may only be posted pursuant to B. Section 2.1 or Section 2.5 of these additional terms and conditions, and the Customer must supply job ads by way of self-posting or via the XING API, XING feed or Jobware API. New Work SE and the Customer will agree on the given form of delivery in advance. The format of displayed job ads may deviate slightly when delivered via XING feed. Should the Customer choose to deliver job ads via the Jobware API, New Work SE will charge a fee of EUR 27.00 per posted ad, to be billed on a quarterly basis. At the end of the contract, all of the job ads posted by the Customer will be removed from XING Jobs and no longer displayed, irrespective of their posting period. Job ads posted on behalf of beneficiaries or other legally independent entities of the Customer or third parties that are not covered by this agreement will be billed subsequently at the respective job ad list price applicable at the time.
6. The Customer is not entitled to a refund, price reduction or extension of term if any parts of the products within onlyfy 360° are not used during the contractual term.
7. The Customer purchases a onlyfy 360° licence either for itself or for a company stated in the contract as being the beneficiary. Should any legally independent entities other than the stated beneficiary access this licence, said entities must be explicitly provided in the contract or contract annexes at the time of concluding the contract.
8. Under the terms of this agreement, only the Customer and staff employed directly by the Customer are permitted to use onlyfy 360°. Unless otherwise agreed upon by contract, the Customer's affiliates and their employees or third parties are not covered by the rights of use granted within the scope of this contract.
9. In addition to the provisions of the General Terms and Conditions applicable to the product used by the Customer, New Work SE reserves the right to take action if it suspects any misuse or major contractual breaches and, in the event of a justified suspicion, to block the Customer - at least until the Customer has rectified said suspicion - from accessing onlyfy 360° and/or to delete content posted by the Customer. In the event of particularly serious contractual breaches, New Work SE is entitled to terminate the contractual relationship without notice.

### **3. Changes to services or general design**

New Work SE reserves the right to make changes to the services related to onlyfy 360° and its general design, or to offer alternative services, as long as this is not unreasonable for the Customer. New Work SE will ensure that the Customer always has access to the latest available version of services. The Customer is not entitled to demand that it be offered additional features beyond those described in these terms and conditions.

### **4. Contract period**

1. This agreement is initially effective for the initial period of use selected by the Customer. Thereafter, this agreement will be automatically renewed for 12 months at a time at the list price applicable at the time of renewal if it is not terminated in good time by the Customer or by New Work SE. If the Customer selects services without a specific initial period of use, the agreement will run for an unlimited period of time. At the time of contract renewal, the expiry of any previously granted discounts does not represent a price increase, meaning that the Customer is not granted a special right of termination as a result of this.

2. The Customer may upgrade its onlyfy 360° licence during the contractual term in order to add further companies as beneficiaries and thus the number of estimated employees, or to add user-limited or volume-limited products that are a part of onlyfy 360°. This shall not affect the term of the basic agreement. Any upgrade shall be billed pro rata to the remaining contractual term. The cost of upgrade shall be based on the pricing applicable at the time of purchase. An upgrade to the onlyfy 360° licence shall be subject to a separate agreement. It is not possible to downgrade a licence during a contractual term.
3. Either party may terminate the agreement without stating a reason by serving notice up to three months before the end of the initial period of use or before the end of a renewal period. Agreements without an initial period of use can be terminated by either party by serving notice of three months to the end of the month. The right of either party to terminate the agreement for cause remains unaffected.
4. Terminations must be submitted in writing (e-mail, fax or letter sent by registered post).
5. Following timely cancellation of the contract and the products it covers, the Customer can only continue to use said products with all of the content and information saved there if a new onlyfy 360° contract is concluded and commences immediately after the previous contract term comes to an end.

## 5. Use of onlyfy 360°

1. The Customer may only transfer contractual rights to third parties with prior written consent from New Work SE.
2. The Customer is obliged to observe all applicable laws and all rights of third parties. When adding its own or other content to onlyfy 360°, 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 the products or New Work SE.
3. The Company is obliged to comply with currently applicable data protection laws. The Company is prohibited from collecting, processing, using or forwarding personal data about XING members or third parties in connection with onlyfy 360° to third parties without permission in the form of valid approval from the XING member or third parties, or if prohibited by German or European data protection laws. In doing so, the Company must ensure that XING is also permitted to process the personal data of affected persons to the extent required to render onlyfy 360° services to the Company. If third parties are involved, consent must generally be obtained, particularly with a view to collecting and saving third-party data which the Company adds to onlyfy 360°.
4. The Customer is also prohibited from the following:
  - Unreasonably harassing XING members and other people (in particular by way of spam messages) (cf. Section 7 of the German Act against Unfair Competition - UWG),
  - Using or promoting any commercial practices considered unfair competition, including progressive customer acquisition practices (such as chain distribution systems, multi-level 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.
5. The Customer is responsible for any faults on the part of its administrators and recruiters to the same extent that it is responsible for any faults of its own. It must, in particular, ensure that administrators and recruiters observe all applicable laws and all third-party rights when using onlyfy 360°.
6. 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:
  - Temporary or permanent deactivation of the Customer's access to onlyfy 360° and/or
  - Termination of the agreement to use onlyfy 360°.

## 6. Other duties of the Customer

1. The Customer is obliged to keep login details 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. The Customer must ensure that its administrators and recruiters do not disclose their login details 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.

## 7. Availability

The Customer acknowledges that it is not technically possible to make onlyfy 360° available 100% of the time. However, New Work SE endeavours to keep onlyfy 360° 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 to public communication networks or a loss of power) could lead to brief interruptions or to the temporary unavailability of onlyfy 360°. 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.

## 8. Fees and billing

1. Fees for the entire subscription period are immediately payable in advance at the time the invoice is issued. Payment can be made with any of the various means of payment offered.
2. Any payment by instalments agreed between New Work SE and the Customer remain unaffected by the provisions set out in Section 8.1.
3. 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 Company for the given renewal period. In the event of a price increase, the Customer is entitled to submit to New Work SE within 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. 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 these General Terms and Conditions, or the Customer's violation of pertinent data protection regulations.
2. Furthermore, the Customer assumes all reasonable costs (including legal defence costs) that New Work SE may incur in the event that a third party initiates or takes legal action (in or out of court) against New Work SE as a result of the Customer's violation of rights, the Customer's violation of the obligations imposed by these General Terms and Conditions, 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.

## 10. Liability

1. In the event of intent or gross negligence, the Parties shall be held liable for any and all damage caused in connection with rendering the contractual services.
2. In the event of slight negligence, the Parties shall be held liable without limitation for injury to life, body or health.
3. Otherwise the Parties shall only be liable if there is a breach of a 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 party to the agreement can rely on the fact that these on the fact that these obligations are complied with. In such cases, liability is limited to typical and foreseeable damage.
4. If the Parties' liability is excluded or limited based on the aforementioned provisions, this shall also apply to the Parties' vicarious agents.
5. 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.

## 11. Non-use and reimbursement of advance payments

1. Non-use of booked onlyfy 360° licences during the contract period does not entitle the Customer to claim a reimbursement, price reduction or extension of term beyond the respective contract period.
2. 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 5.4,
  - If the Customer terminates the agreement.

3. The Customer's claim for reimbursement of advance payments is not excluded if the Customer terminates the agreement for cause arising from New Work SE's area of responsibility.

## **12. Final provisions**

1. New Work SE may employ subcontractors. 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 entitled to transfer rights and obligations in full or in part to third parties.
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 Company. XING shall give the Company due notice of any amendments of these general terms and conditions. If the Company 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 Company. New Work SE shall inform the Company 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.
4. German law is applicable, excluding international private law and provisions of the United Nations Convention on Contracts for the International Sale of Goods.
5. If any provision of this agreement is or becomes invalid and/or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law.