

General Terms and Conditions for XING Enterprise Groups

1. Services

1. During the term of the contract, New Work SE provides the Partner with access to the latest version of all functions and tools of Enterprise Groups on XING in the latest minimum standards.
2. New Work SE is permitted to alter technologies, tools, and the scope of functions of Enterprise Groups and thus the Partner EG at any time in the course of the development, improvement and modification of XING, unless such an alteration is unacceptable to the Partner.
3. All rights not explicitly granted to the Partner are reserved by New Work SE. In particular, New Work SE reserves the right to intervene in the operation or administration of the Partner Enterprise Group in the event of a threat of recourse by third parties, or impending damages.

2. Rights and Obligations of New Work SE

1. New Work SE will make available the Partner EG and Partner EG Tools on a New Work SE server (ASP Server Hosting). New Work SE makes every effort to assure availability of the data stored. New Work SE shall provide the Partner with all access data necessary to administer the Partner EG in accordance with the contractually agreed features.
2. New Work SE offers a Partner EG availability of 24 hours a day, seven (7) days a week, at an average availability of at least 95% a year. Any failure times due to maintenance work and software updates are not taken into account and, therefore, not included in the remaining 5% failure time.
3. In the event of scheduled non-availability of the EG due to maintenance work or software updates of more than three (3) hours, New Work SE shall notify the Partner by e-mail in good time in advance.
4. New Work SE reserves the right to make any technical changes at any time provided that such changes do not impair the functionality to be provided by New Work SE.
5. New Work SE points to the fact that continuous error-free Internet-based service is not possible with currently available Internet technologies. In order to rectify and/or prevent any errors, New Work SE shall be entitled to perform maintenance work and/or other technical work at any time, without prejudice to § 2.3, even if such work may impair the services owed by New Work SE under the present agreement. New Work SE shall try to keep impairments and interruptions caused by such work to a minimum. All claims against New Work SE, which are based on impairments and/or interruptions according to this § 2.5, on whatsoever legal grounds, are excluded to the extent permitted by law.
6. After expiry of this contract, New Work SE has the right, in the interest of members of the Partner EG, to operate the Partner EG itself under another name or to have the Partner EG operated by a third party under another name. The Partner may delete Partner Works beforehand, in particular own logos and content.
7. New Work SE makes content, data and/or information provided by the Partner available to third parties only if this content, data and/or information does not breach applicable laws or these GTC, and only if this content is not abusive or offensive, and only if publishing such content is not unacceptable to New Work SE for other reasons. New Work SE is permitted to remove such content, data and/or information without prior warning. Such removal does not constitute grounds for reimbursement to the Partner.
8. New Work SE merely provides the Partner with a platform on which the Partner may establish contact with third parties (XING members and others), and only provides those technical applications which allow users to contact each other. New Work SE does not guarantee that contact between the Partner and XING members or other third parties will occur. As regards content, New Work SE does not take part in any communication between the Partner and third parties. If users enter into agreements with one another over XING web pages, New Work SE is not involved in said agreements and shall not be a contracting party to these agreements. The Partner is solely responsible for the execution and fulfilment of agreements made with third parties. New Work SE shall not be held liable if the Partner is unable to contact third parties via XING regarding such agreements. Furthermore, XING shall not be liable for breaches of duty in relation to agreements between the Partner and third parties.
9. New Work SE does not make any warranties or representations regarding any data and/or information provided or made available by any XING member, nor does New Work SE assume responsibility for the content of externally linked 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.

3. Rights and Obligations of the Partner

1. The Partner is only permitted to upload banner advertisement to the Partner EG if such use has been approved in advance by New Work SE, and which only advertises the organisation of the Partner. New Work SE shall not refuse this approval unfairly. Regardless of the approval of New Work SE, the Partner is solely responsible for insuring that the banner ads uploaded by the Partner to the Partner EG do not violate applicable law.
2. The Partner shall not abuse the authorisation granted to upload his own or third party content to the Partner EG or other designated areas by advertising for services or products of third parties, or allowing third parties to advertise for services or products. Nevertheless, the Partner may promote services or products from which members of the Partner EG could draw substantial benefit, and which are in line with the purpose and structure of the Partner EG. New Work SE reserves the right to ban individual ads, at its own discretion. This right shall not be exercised unfairly.
3. The Partner shall ensure that the Content it uploads is free from viruses or other malicious code.
4. When integrating its own or any third-party content, particularly using I-Frame, the Partner must also adhere to the following regulations:
 - The integrated content and all elements uploaded subsequently must be SSL-encrypted. The SSL certificate must be signed by a verified certification body,
 - the integrated content must be graphically customized to the design of XING,
 - the integrated content may not copy or imitate any content or content elements of XING,
 - the integrated content may not attempt to access any content on XING, in particular via scripting,
 - any content from competitors of New Work SE may not be integrated.
5. The Partner is obliged to keep access information secure and confidential from unauthorised persons. In particular, the Partner agrees to keep usernames and passwords secure, ensuring that this data cannot be accessed by unauthorised individuals. The Partner agrees to inform New Work SE immediately in the event that the Partner learns that an unauthorised individual has gained access to a password.
6. The Partner agrees to inform New Work SE immediately upon the occurrence of crucial changes to the status of the Partner which could be relevant to the contractual relationship.
7. Upon the termination of the contract, the Partner agrees to return to New Work SE all documents, data and other information provided by New Work SE during the course of the contract, or to delete or destroy irretrievably such data and/or information. If requested by New Work SE, the Partner agrees to confirm in writing the fulfilment of the obligations contained in § 3.7. The Partner has no right of retention in the documents, data and other information to be returned, destroyed or deleted in compliance with § 3.7.
8. The Partner is permitted to transfer rights contained within the contract to third parties only with prior written consent of New Work SE.
9. The Partner commits to comply with all applicable laws and observe all rights of third parties. Content posted on XING by the Partner, both those of the Partner and those of others, shall not violate applicable law, infringe on the rights of third parties, or damage the reputation of XING or New Work SE in any manner. Furthermore, the Partner is not permitted to, particularly,
 - unreasonably harass XING members or other individuals (particularly with spam) (cf. § 7 of the German Unfair Competition Act, "Gesetz gegen den unlauteren Wettbewerb"),
 - use or promote any commercial practices considered unfair competition, including progressive customer acquisition practices (such as chain distribution systems, multilevel selling or pyramid sales), or
 - performing, advertising and promoting any form of structural distribution measures (such as multi-level marketing or multi-level network marketing).

4. Data Protection

1. Unless permitted by German or European data protection laws, or accompanied by a valid consent document from the relevant member, the Partner is prohibited from processing, using, or transferring personal information of XING members.
2. When collecting, processing, or using personal data of XING members, the Partner shall assume all responsibility for enacting sufficient technical and organizational measures to ensure that the provisions of the German Data Protection Act ("Bundesdatenschutzgesetz") are upheld.
3. New Work SE does not make any warranty that the Partner will be able to or will be permitted to process or use personal data of XING members for a specific purpose.
4. Upon request, the Partner shall provide New Work SE with the contact details of the Partner's professional data protection officer.

5. Data Retrieval Function

1. The Partner EG may contain a function allowing the Partner to store the following personal details of the members of the Partner EG in their latest version in CSV data format for set purposes ("Data Retrieval Function"), but only if members of the Partner EG have entered such information and have given prior permission to such retrieval:
Last name, first name, current company, job title, e-mail address (business), ZIP, city (business), state (business), country/region (business), address (business), phone number (business), fax number (business), e-mail address (private), ZIP, city (private), state (private), country/region (private), address (private), phone number (private), fax number (private), ICQ number, MSN name, AIM alias, Yahoo ID, Skype username, birth date, mobile phone number, language abilities.
2. The Partner shall store, use and/or process personal information of Partner EG members transmitted to the Partner as part of the Data Retrieval Function only for the following purposes:
 - for the Partner's only internal statistical analyses,
 - for updating existing data stores already in possession of the Partner,
 - for improving the Partner's internal processes to optimize customer service,
 - for sending e-mail newsletters or postal mailings to members of the Partner EG, but only if said newsletters or mailings are related to the topic of Partner EG or to the products and/or services offered by the Partner, and only to the extent permissible as per § 3.9, and
 - for inviting members of the Partner EG to attend events, but only if said events are related to the topic of Partner EG or to the products and/or services offered by the Partner, and only to the extent permissible as per § 3.9.
3. However, the Partner may use the data of members of the Partner EG which have been transferred to the Partner as part of the Data Retrieval Function, for the purposes indicated in § 5.2, only if
 - the Partner EG members have granted explicit permission for data to be transferred to the Partner on the registration page for the Partner EG, and
 - such a transfer of data is legally lawful; the Partner is solely responsible and shall bear sole responsibility that the process of data use and/or storage in connection with the data transfer is legally permissible in full. The Partner is obliged to check the legal permissibility for processing and use of data before processing or using the data of members of the Partner Enterprise Group which has been transferred to the Partner as part of the Data Retrieval Function.
4. New Work SE reserves the right to change, amend or delete data fields and purposes in the future.
5. The Partner may only process and/or use the latest version of Partner EG member information transferred to the Partner via the Data Retrieval Function. All stored data transferred at an earlier time must be deleted after the latest version of data is retrieved.
6. The Partner is obligated to process and use Partner EG member data transferred to the Partner via the Data Retrieval Function only to the extent such use and processing is permitted by the consent of the affected XING member.

6. Indemnity

The Partner shall indemnify New Work SE from all rights and claims from third parties or governmental agencies vis-à-vis New Work SE arising from a legal breach by the Partner, failure of the Partner to fulfil obligations set out in these GTC, or a breach in applicable data protection regulations by the Partner. Furthermore, the Partner assumes responsibility for all costs within reason (including attorney costs) of New Work SE arising from legal measures (either judicial or extrajudicial) asserted against New Work SE by third parties due to a breach of law, of these GTC or of relevant data protection laws by the Partner.

All further rights and claims for damage by New Work SE remain unaffected. The preceding obligations of the Partner do not apply in the event that the Partner is not responsible for the particular breach of law.

7. Non-disclosure

1. The contractual partners agree not to disclose any confidential information made known to them in the course of the cooperation set out in this contract, nor to reveal the details of this contract. The partners agree not to pass such information along to others, to use it in any way, or to inform third parties of such information.
2. "Confidential information" refers to all information which
 - is confidential by its nature (business or trade secrets),
 - is marked as "confidential" and/or as "Property of.../Belongs to...", or
 - in the case of orally communicated information, which is indicated by the person providing the information to be of confidential nature or as proprietary, or which is indicated to be of such nature in writing within ten (10) days of being communicated.
3. Each contractual partner agrees to only pass along confidential information to those employees who are required to have possession of such information to fulfil the contract, and guarantees that at the time such

information is passed on, these employees have agreed not to disclose the information as per the conditions of these GTC. Furthermore, the contractual partners are obligated to ensure that all natural and legal persons employed to execute this contract have been bound to non-disclosure in accordance with the conditions of these GTC.

4. Unless otherwise stipulated in writing, all confidential information is at the sole power of disposal of the disclosing party, and may only be used by the receiving party for purposes intended by the disclosing party, and not for any purpose that might have a negative impact on the disclosing party, or which would create competition for the disclosing party. All confidential information, including all copies of this information and all documents, reports, working documents or other objects which contain confidential information, must be returned to the disclosing party or destroyed upon the earlier of the disclosing party's request or the expiration of the contract. The receiving party will confirm in writing that he has fulfilled this obligation.
5. The preceding non-disclosure obligations do not apply to confidential information,
 - which the receiving party can demonstrate it knew of at the time such information was transferred, or
 - which was made public through no fault of the receiving party, or
 - which was received from a third party without any duty to maintain secrecy and under no violation of this § 7, or
 - which has been developed independently by the receiving party, or
 - which the receiving party is required by law to make public. The precondition for the above is that the receiving party informs the disclosing party immediately of said event so that the disclosing party may take appropriate legal or other protective measures. The receiving party shall only reveal such parts of confidential information required by legal decision. He shall make every effort to avoid revealing confidential information, making use of legal or other measures.
6. The termination of the contract does not terminate the non-disclosure obligations of the receiving party, however these non-disclosure obligations remain in effect for three (3) years after the contract terminates.

8. Liability

1. Claims of damage resulting from slight negligence against one of the contractual parties by the other (including vicarious agents of the contractual party) apply only if a key contractual obligation/cardinal obligation has been breached. Cardinal obligations are such obligations, which, when fulfilled, make it possible for the contract to be properly carried out. The contracting party can regularly rely on the fact that a cardinal obligation is complied with. In this case, claims for damages are limited to typical and foreseeable damages.
2. As far as contract law permits compensation of financial losses independent of fault, such claims only apply if the applicable contractual party is at fault.
3. Claims arising from bodily damage or property damage as per product liability law remain unaffected.
4. Neither contracting party is liable to the other party for the non-compliance of contractual duties, if non-compliance is due to circumstances beyond the party's control. This shall apply particularly to the cases of force majeure.

9. Rights of third parties

1. The Partner guarantees that all content and/or data and information provided by the Partner to New Work SE and/or on the Internet (hereinafter referred to as "Content") such as text, pictures, graphics, music and video sequences, drawings, database content and structures as well as the personal data of the members of the Partner EG are free from rights of third parties, which impair the contractual use of this Content by New Work SE as a whole or in part. The Partner also guarantees that the Partner is entitled to use the Content for the performance of this agreement, in particular to present this Content on the Internet. Integration of the Content is effected exclusively at the Partner's own risk.
2. The Partner shall indemnify New Work SE for all rights and claims of third parties, brought forward in connection with the execution of the present agreement, as a result of rights of third parties having been violated by the Content, and the Partner assumes, in the internal relationship, sole liability and pays all necessary and useful expenses as well as other costs for the judicial or extra-judicial defence against such claims (including attorney costs), except where the Partner is not responsible for such a violation of rights. When defending against such claims, New Work SE will comply solely with reasonable instructions of the Partner, if the Partner has declared in writing to New Work SE to pay the costs and under the condition that the Partner's instructions are reasonable.
3. If the Content of the Partner injures the rights of third parties, the Partner shall, at the discretion of New Work SE, either acquire the rights for New Work SE to use the Content at full cost to the Partner, or re-design the Content to be free of protective rights' claims.
4. The Partner shall assume sole responsibility that hyperlinks inserted by the Partner do not link to Content by third parties which violate applicable law.

10. Proprietary rights and rights of use

1. All intellectual property rights (in particular patents, trademarks, business names, utility models and copyrights, hereinafter referred to as “property rights”) which are created at the Partner through activities of the Partner in carrying out this agreement, shall remain the property of the Partner. This does not include such property rights relating to the Internet sites of New Work SE, XING, the Partner EG or Partner EG-Tools within its structure. These property rights shall be vested in New Work SE when created.
2. The contracting parties agree that all data entered by members in the Partner EG on their own accord shall remain the property of the member. The member may decide in the context of the functionalities of the Partner EG, which personal data and contact data may be disclosed to whom. Neither contracting partner shall use or exploit this member data in an impermissible way.
3. The Partner owns and retains all rights, property and claims on the works, information, and images which the Partner made available to New Work SE (hereinafter referred to as “Partner Works”). Each use of the Partner Works by New Work SE shall occur only for the purpose of fulfilling the contractual duties of New Work SE, and beyond that aim does not constitute additional rights for New Work SE.
4. New Work SE owns and retains all rights, property and claims to New Work SE, to XING, to the Partner EG and the Partner EG tools and all works, information, reports and images contained herein (hereinafter referred to as “New Work SE Works”), with the exception of the Partner Works. The rights of the Partner to and concerning New Work SE Works are strictly limited to rights explicitly granted in the contract.

11. Warranty

1. Defects are defined as deviances from the qualities which the Partner EG and the Partner EG tools should have as per standards of New Work SE for the most current version or for ordinary use.
New Work SE points to the fact that the frontend layout and the design of the Partner EG may appear differently to different Partner EG members due to variances in technical standards and compatibility issues with web browsers and hardware. These differences do not represent defects in the Partner EG. Similarly, errors resulting from problems displaying certain programs or other technologies in browsers, such as Visual Basic Runtime, JavaScript, (X)HTML, CSS, XML, RSS, SOAP or vCard/iCal, do not represent defects in the Partner EG.
2. The Partner shall report defects immediately via e-mail, including all relevant information necessary to find the error, and assist New Work SE to a reasonable extent in remedying the defect. When reporting defects, the Partner shall indicate the symptoms as well as the system and hardware settings.
3. New Work SE will remedy defects within a reasonable time. In the event of a defect which seriously impairs the use or function of the Partner EG or one of the Partner EG tools, New Work SE may employ a workaround solution until the defect is permanently remedied.
4. New Work SE is permitted to remedy other defects in the course of normal version maintenance. In particular, this applies to defects which the Partner can tolerate until the next version is delivered. New Work SE will also provide workarounds for these defects to the extent that doing so is reasonable for New Work SE (for software that is indicated expressly as from sub-suppliers, New Work SE is only required to do so to the extent to which New Work SE is technically capable within a reasonable effort).
5. The Partner is permitted to reduce the fees indicated in this contract to the degree which the Partner EG and/or the Partner EG tools were not available within the agreed-upon period of provision, provided that this amount does not exceed 50%. Restrictions as per § 2.3 and § 2.5 will not be calculated.
6. New Work SE expressly points to the fact that non-contractual usage of the Partner EG or the Partner EG tools can lead to complications which shall be borne by the Partner. New Work SE shall provide no warranty and/or liability for the non-contractual usage of the Partner EG and/or the Partner EG tools, nor shall a warranty or liability be provided for the consequences of such usage.

12. Violation of contractual duties by the Partner

1. If New Work SE proves that the Partner has violated an essential duty contained in this contract, New Work SE may temporarily suspend its services vis-à-vis the Partner EG. In this case, New Work SE will inform the Partner of the suspension. New Work SE will reinstate its services vis-à-vis the Partner EG as soon as the Partner has removed the contractual violation.
2. As an alternative to suspending services, New Work SE may instead choose to limit the functionalities of the Partner EG to such a degree that the Partner may continue to use the Partner EG as a simple discussion forum (a so-called “Group”), with the range of features available to XING Groups.
3. Additionally, New Work SE may choose to make the Partner EG invisible. In this case, the Partner EG will no

- longer be visible on XING for non-members of the Partner EG.
4. This § 12 does not affect all other rights of New Work SE.

13. Termination, reimbursement of fees paid in advance

1. The term of this contract will be agreed upon in a separate agreement. If there is no such agreement in place, the contract shall have a term of two (2) years from the beginning of the contract and shall be renewed on an annual basis unless notice is served in writing up to three months before the end of the initial term or any subsequent extension term.
2. The right of either contracting partner to terminate for important cause shall not be affected.
3. Each notice of termination must be made in writing. A fax will be accepted as written form.
4. In the following cases, the Partner shall not be entitled to claim reimbursement of any advance payments:
 - New Work SE cancels the contract for important cause,
 - New Work SE imposes one or more sanctions as per § 12, or
 - The Partner cancels the contract; however, the Partner's right to claim reimbursement of any advance payments shall not be excluded in this case if the Partner has terminated the agreement for a good cause attributable to New Work SE.

14. Written form, miscellaneous

1. New Work SE is permitted to appoint subcontractors. In the event that it employs subcontractors, New Work SE retains responsibility for fulfilling all duties assumed by New Work SE.
2. New Work SE is permitted to transfer rights and duties in part or in whole to third parties.
3. All changes and amendments of this contract must be made in writing. This shall also apply to amendments of this written form requirement.
4. The place of jurisdiction shall be Hamburg, Germany. However, New Work SE may also select a different place of jurisdiction.
5. The agreement shall be subject to German law, the conflict-of-laws provisions and the UN Sales Convention (CISG) being excluded.
6. If individual provisions of this agreement are or become invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible. The above shall apply accordingly to the closing of any gaps in the contract.