

General Terms and Conditions for the use of the FreelancerManager and accompanying services

Recitals

The offer to provide the FreelancerManager and any accompanying services (FM) is intended exclusively for business clients. The contract is concluded 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" on www.xing.com.

1. Subject matter

1. The Company ("Customer") can use the FM to manage, organise and look for self-employed freelancers with the aim of working with them on projects. Among other things, the Customer can organise freelancers' (both XING members and third parties) contact details, skills, fields of activity and availability, and get in touch with freelancers via the FM. The Customer can create pools with freelancers for various categories, which enables multiple employees at the company to work together and exchange information with one another. The exact extent to which the FM can be used depends on the specific product description of the booked product. New Work SE's portfolio may include products aimed at companies that occasionally need to hire freelancers (hereafter referred to as "single booking products") and/or products aimed at companies that regularly need to hire freelancers (hereafter referred to as "licence products"). Certain free or paid accompanying services from New Work SE may also form part of the agreement.
2. The Customer shall not be provided with the source code as the FM is a web service that accesses New Work SE's server(s) and/or New Work SE's service provider's server(s).
3. Certain restrictions apply when using the FM. Further details are available in the product description. In particular, companies active in the HR services industry are not permitted to use single booking products.
4. New Work SE makes the content, data and other information the Customer enters in the FM 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 and 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 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 FM 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 FM 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 or represent that said data or other information is true or accurate, fulfils a particular purpose, or may serve such a purpose.

2. Authorisation of users, licences

1. Full access and use of the FM is only available to employees ("Users") to which the Customer has granted FM access. Users must be authorised by the Customer and registered members on XING. The Customer must be listed as the User's current company/employer in their XING profile.
2. If a User cancels its XING membership, or if XING bans it from using the site (especially as a result of the User violating the General Terms and Conditions of its XING membership), this User will no longer be permitted to use its assigned FM licence and/or use a single booking product.
3. When purchasing a licence, the Customer has the right to revoke a User's authorisation, or to assign another person as a replacement for the User, especially in the case of Section 2.2. A new User will receive

authorisation once the Customer has informed New Work SE that the replacement has been assigned to the position, and New Work SE has provided its approval. If a User has been replaced by another User, it shall only be possible to replace the newly appointed User after a minimum of thirty (30) days.

4. With licence products, the Customer can purchase additional FM licences during an ongoing contractual term. The terms of the additionally booked FM licences shall run pro rata to the base agreement. Fees for purchasing additional XTP licences shall be based on the pricing applicable to the total package at the time of purchase. Licence purchases are subject to a separate agreement.

3. Content in the FreelancerManager

1. Some content and information (correspondence, conversations, projects, notes, comments, etc.) are shared in the FM, automatically or when initiated by a User, among all current and future Users. Other content and information are not shared between Users.
2. Content shared in the FM will remain in the Customer's FM, even if the User deletes or revokes permission to share the content it shared on XING or in the FM.
3. The appointed administrator of the Company account can permanently view, edit and share in the FM all of the information and content that a User enters into the FM with the Company's other current and future Users. This applies, in particular, to all conversations and correspondence started in or replied to from the FM, including any and all messages to be sent and received via the FM by way of these conversations and correspondence. This also applies if the User loses its access to the FM (e.g. at the Company's request due to the User leaving the company) or if the User terminates its own access.
4. Information not shared by the User, not shared automatically, or which cannot be shared, will not be displayed to other Users. Conversations not started, replied to or shared in the FM will not be saved for the administrator or all of the Users in the FM. Instead, they will only be displayed in the inboxes of the Users involved in the given conversation.

4. Availability

The Customer acknowledges that it is not technically possible to make the FM available 100% of the time. However, New Work SE endeavours to keep the FM 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, loss of power, etc.) could lead to brief interruptions or to the temporary unavailability of the FM. 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.

5. Feature changes

New Work SE reserves the right to make changes to the services related to the FM, its name and its general design, or to offer alternative services, as long as this is not unreasonable for the Customer. New Work SE shall ensure that the Customer always receives the latest version for use. The Customer understands that it is not entitled to claim more functionality than that which has been described.

6. Use of the FreelancerManager (FM), data protection

1. Under the terms of this agreement, only the Customer, staff employed directly by the Customer, or third parties granted separate access to the FM by the Customer, are permitted to use the FM. Unless otherwise agreed upon by contract, the Customer's affiliates and their employees are not covered by the rights of use granted within the scope of this contract. 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 own or other content to the FM or XING, the Customer must ensure that it does not violate applicable law, the rights of third parties, or in any other way compromise the reputation of the FM or New Work SE.
3. The Customer is obliged, in particular, to observe applicable data protection and privacy law. Unless the affected Users have granted their consent, and unless permitted by German and European data protection and privacy law, the Customer is prohibited from collecting, processing or using personal data in the FM, and from passing on said data to third parties. To this end, the Customer must ensure that XING is also permitted to process the data subjects' personal data to the extent the Customer requires this to be able to use the FM. If third parties are involved, the affected XING members and third parties will generally be required to grant their consent, particularly with regard to the Customer collecting and saving the third party's data in the FM.

4. The Customer must observe third-party rights, particularly when sharing content and information. It may not, for example, share correspondence that is clearly private without having first obtained consent from the sender.
5. The Customer is also prohibited from engaging in the following:
 1. Unreasonably harassing XING members or other people (particularly with spam; cf. Section 7 of the German Unfair Competition Act (UWG)),
 2. Using or promoting any commercial practices considered unfair competition, including progressive customer acquisition practices (such as chain distribution systems, multilevel marketing or pyramid sales), or
 3. Carrying out, advertising or promoting structural sales measures (such as multilevel marketing or multilevel network marketing), even if these actions do not specifically constitute a breach of any applicable laws.
6. The Customer is responsible for any faults on the part of its Users to the same extent that it is responsible for any faults of its own. In particular, the Customer must ensure that FM Users comply with these General Terms and Conditions, the General Terms and Conditions for the use of XING, and observe all applicable laws and rights of third parties, especially those of freelancers managed in the FM. Above all, the Customer must ensure that FM Users do not share correspondence that is clearly private without having first obtained consent from those affected.
7. New Work SE may impose the following sanctions in the event that obligations arising from this agreement, legal regulations or third-party rights are violated, or if New Work SE has any other legitimate interest:
 1. Temporarily or permanently deactivate the Customer's FM,
 2. Terminate the agreement for using the FM. New Work SE reserves the right to impose the sanctions stated above, in particular in the event that the means of payment provided by the Customer is invalid, or the Customer does not meet a payment obligation on time and/or sufficiently.
8. Complaints by XING members or third parties may lead to temporary deactivation of the Customer's FM account.

7. Other rights and obligations of the Customer

1. The Customer is obliged to keep login details confidential from unauthorised third parties. In particular, the Company will store usernames 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 Users 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 Company 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.

8. Term of contract

1. The following provisions apply to licence products:
 - a) This agreement is initially effective for the initial minimum usage term booked by the Customer and may include multiple licences. After the initial minimum usage term, the agreement will be renewed for the same length of time if it is not terminated by the deadline by the Customer or by New Work SE. Upon renewal of the agreement, any subsequently purchased licences (Section 2.4) will also be automatically renewed along with licences purchased at the time of concluding the agreement.
 - b) Either party may terminate the agreement without stating a reason with a notice period of three months to the end of the initial minimum usage term, or to the end of a renewal term. Agreements for products without a specific initial usage term can be terminated by either party with a notice period of three months to the end of the month. This does not affect either party's right to termination for cause.
2. This agreement covering the use of a single booking product is effective for an unlimited period and can be terminated by either party at any time without the need to supply a reason.
3. Following timely termination, the FM and all of the content and information saved there may only continue to be used if a new FM agreement has been concluded and the start date for the new contractual term commences immediately at the end of the previous contractual term.

9. Fees and billing

1. Fees for using and working with the FM or accompanying services such as the FS are based on the selected offer/product.
2. The following provisions apply to licence products:

- a) Fees for the entire agreement 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.
 - b) Pricing for contract renewals is based on the list price applicable at the time of renewal, less any bulk discount depending on the number of licences to be renewed.
 - c) When purchasing a licence, New Work SE reserves the right to amend the fee, to be effective as of the following renewal period. New Work SE shall notify the Customer of any fee change in the invoice sent to the Customer with regard to the renewal period. In the event of a price increase, the Customer is entitled to submit to New Work SE within four weeks of the date of invoice a written declaration of withdrawal from the agreement with retroactive effect from the date of the renewal.
3. Fees for single booking products are only incurred when the Customer actually hires a freelancer that New Work SE suggests via the FM. The following provisions apply:
- a) The agreed fee shall be due each time the Customer hires a freelancer that New Work SE suggests via the FM within 12 months of receiving said suggestion, and applies to the entire duration and value of hiring the freelancer, including beyond the aforementioned time period. This applies irrespective of whether the Customer hires the freelancer via the FM or other channel.
 - b) The period of time stipulated in subsection a) and the accompanying obligation to pay fees still apply if the single booking product agreement has been terminated in the meantime.
 - c) The Customer is required to notify New Work SE without undue delay each time it hires a freelancer that New Work SE suggests via the FM within the period of time stipulated in subsection a) and must submit the documentation New Work SE requests for billing purposes (in particular, invoices the freelancer submits to the Customer). The Customer must notify New Work SE and submit documentation via the means which New Work SE provides. New Work SE will bill the Customer based on such notifications and documentation.
 - d) The obligation to pay fees and the provisions set out in section 9.3 also apply to the Customer *mutatis mutandis* if the Customer hires a freelancer that New Work SE suggested via the FM on the basis of third party involvement or a third party request. Here, third parties include, in particular, the Customer's affiliates, subsidiaries or branch offices.

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 Company's violation of the obligations set out in these General Terms and Conditions, or the Customer's breach of pertinent data protection regulations.
2. Furthermore, the Customer shall assume 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 set out in these General Terms and Conditions, or the Customer's breach of pertinent data protection regulations.
3. All other rights, including damage claims by New Work SE, 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. In the event of intent or gross negligence, the Parties shall be liable without limitation for all damages in connection with rendering the contractual services.
2. In the event of ordinary negligence, the Parties shall be liable without limitation for damages resulting from injury to life, limb or health.
3. Furthermore, 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 obligations are complied with. In such cases, liability is limited to typical and foreseeable damages.
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.

12. Reimbursement of advance payments

1. FM licences booked with a licence product or other accompanying services but not used during the contractual term do not constitute grounds for reimbursement, a price reduction or extension of access beyond the given contractual term.
2. The Customer is not entitled to claim reimbursement of advance payments in the following cases:

1. If New Work SE terminates the agreement for cause
2. If New Work SE imposes one or more of the sanctions in accordance with Section 6.7, or
3. If the Company terminates the agreement.

13. Miscellaneous

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 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 Company. New Work SE shall give the Customer due notice of any amendments to 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 of receipt of said notice, the amended General Terms and Conditions shall be deemed 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 sole place of jurisdiction and place of performance is Hamburg, Germany.
4. German law is applicable, excluding international private law and provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
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.