

General Terms and Conditions for using onlyfy 360+

Recitals

The offer to provide the onlyfy 360+ suite and any accompanying services (onlyfy 360+) 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 authorised representatives of New Work SE can be found under <https://onlyfy.com/en/legal-notice/>.

1. Subject matter

1. The onlyfy 360+ suite gives the Customer access to various onlyfy products. The exact scope of which and to what extent products can be used is defined in the Customer's quotation, in the product description applicable upon contract conclusion, and in these T&Cs. The Customer will not be provided with the source code as onlyfy products are web services that access New Work SE's server(s) and/or New Work SE's service provider's server(s). Certain free or paid accompanying services from New Work SE may also form part of the agreement.
2. Certain limitations (e.g. on the number of messages which can be sent via the onlyfy TalentManager) and requirements are in place when it comes to using onlyfy 360+. Further details about this are available in the product description and in these T&Cs. The respective General Terms and Conditions applicable to the products included in onlyfy 360+ apply and are provided under <https://www.xing.com/terms>.
3. The use of an onlyfy 360+ licence entitles the Customer to use the following products provided by New Work SE:
 - onlyfy Employer Branding Profile Pro
 - onlyfy TalentManager Pro
 - onlyfy one Job Ads Essential, Core, Pro & Ultimate or onlyfy Job Ads Essential, Core, Pro & Ultimate
4. New Work SE makes the content, data and other information the Customer enters in onlyfy products available to third parties as long as it does not violate any legal regulations or these T&Cs, 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 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 onlyfy or the onlyfy 360+ licence 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. Scope of use

1. BAny existing products the Customer has prior to using the onlyfy 360+ licence will be included in the onlyfy 360+ licence for the duration of the contract. Any unused service periods of products the Customer had prior to using the onlyfy 360+ licence will be offset pro rata against the onlyfy 360+ fee.

2. The following also applies to use of the onlyfy Employer Branding Profile: The onlyfy 360+ licence includes onlyfy Employer Branding Profile Pro access for the Customer's respective country, while additional onlyfy Employer Branding Profiles must be purchased separately by the Customer and subject to a separate contract.
3. The following also applies to use of the onlyfy TalentManager: If the Customer's onlyfy 360+ licence includes an environment offering an unlimited number of recruiter seats for the onlyfy TalentManager so HR and recruiting staff can actively engage in hiring activities for their company and, if required, a second environment for the Customer to engage in hiring activities for third parties, then the number of recruiter seats is calculated based on and limited to the number of people employed by the Customer as determined by New Work SE. New Work SE reserves the right to cease assigning recruiter seats to the Customer once the number of recruiters employed by the Customer and any contractually affiliated companies has been reached. If more seats are required, the Customer must provide New Work SE with proof.
4. Any parts of products included in onlyfy 360+ that are booked 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.
5. The Customer acquires an onlyfy 360+ licence for itself or for an affiliate listed as the service recipient in the contract. Should any legally independent entities other than the named service recipient access this licence, they must be listed explicitly in the contract or in an annex.
6. Under the terms of the agreement, only the Customer and staff employed directly by the Customer are permitted to use onlyfy 360+ and the products it contains. Unless otherwise agreed upon by contract, the Customer's affiliates and their staff are not covered by the rights of use granted within the scope of the contract. In addition to Section 2(5) of these T&Cs, New Work SE reserves the right to bill the Customer for products used by affiliates or other legally independent entities of the Customer or third parties which are not stated in the contract, with billing subject to the list price applicable to the product at the given time.
7. Further to the provisions of the T&Cs applicable to the product used by the Customer, on suspicion of misuse or major contractual breaches, New Work SE reserves the right to investigate said suspicion, to take necessary precautions and, if the suspicion is justified, to block the Customer's access at least until the Customer can clear up the suspicion, and/or to delete content posted by the Customer, and/or to cancel the contractual relationship without notice in the event of severe contractual breaches.

3. Functionality or general design changes

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. The Customer understands that it is not entitled to claim more functionality than that which has been described.

4. Term of contract

1. This agreement is initially effective for the initial contract term selected by the Customer. Thereafter, if it is not terminated by the deadline by the Customer or by New Work SE, the agreement will be renewed for 12 months at a time at the list price applicable at the time of renewal. If the Customer selects a product without a specific initial contract term, the agreement will run for an unlimited period of time. Discounts initially granted on a 360+ licence but not upon renewal do not constitute a price increase or grounds for extraordinary termination by the Customer.
2. During a contractual period, the Customer is entitled to upgrade its onlyfy 360+ licence or to purchase products contained therein, and/or to add other companies to its licence, in turn increasing the number of employees covered by the licence, or to add onlyfy 360+ products limited by the number of users or volume. This does not affect the term of the basic agreement. Any upgrade will be billed pro rata to the remaining contractual term. The upgrade cost will be based on pricing and discounts applicable at the time of purchase. Any upgrade to the onlyfy 360+ licence is subject to a separate contract. Contractual downgrades are not possible within a contractual term, and retroactive discounts for products used will not be granted.
3. Either party may terminate the agreement without stating a reason with a notice period of three (3) months to the end of the initial contract term, or to the end of a renewal term. Agreements for products without a specific initial contract term can be terminated by either party with a notice period of three (3) months to the end of the month. This does not affect either party's right to termination for cause.
4. Terminations must be submitted in writing (e-mail, fax or letter sent by registered post).
5. Following timely termination, the contractually agreed products and all of the content and information saved there may only continue to be used if a new onlyfy 360+ agreement is concluded and the start date for the new contractual term commences immediately at the end of the previous contractual term.

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 own or other content to onlyfy 360+, 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 products or New Work SE.
3. The company is obliged, in particular, to observe applicable data protection and privacy law. Unless the affected XING members and third parties have granted their consent, and unless permitted by German and European data protection and privacy law, the company is prohibited from collecting, processing or using personal data pertaining to XING members or third parties via onlyfy 360+, and from passing on said data to third parties. To this end, the company must ensure that onlyfy is also permitted to process the data subjects' personal data to the extent the company requires this to be able to use onlyfy 360+. If third parties are involved, they will generally be required to grant their consent, particularly with regard to the company collecting and saving their data in onlyfy 360+.
4. The Customer is also specifically prohibited from engaging in the following:
 - Unreasonably harassing XING members or other people (particularly with spam; cf. Section 7 of the German Unfair Competition Act (UWG)),
 - Use or promote any commercial practices considered unfair competition, including
 - progressive customer acquisition practices (such as chain distribution systems, multilevel marketing or pyramid sales), or
 - 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.
5. The Customer is responsible for any faults on the part of its administrators or recruiters to the same extent that it is responsible for any faults of its own. In particular, the Customer must ensure that the administrators and recruiters observe all applicable laws and rights of third parties when using onlyfy 360+.
6. The onlyfy 360+ licence and products it contains may only be used for the purposes and business models stated in the contract at the time of conclusion. The Customer is prohibited from excessive misuse of the onlyfy 360+ licence and products in contains, and/or excessive misuse of the unlimited products and services provided there. New Work SE reserves the right to monitor the Customer's product usage and to demand proof to dispel any suspicion of misuse.
7. New Work SE may impose the following sanctions in the event that obligations arising from this agreement between the Customer and New Work SE, legal regulations or third-party rights are violated, or if New Work SE has any other legitimate interest:
 - Temporarily or permanently deactivate the Customer's access to onlyfy 360+, and/or
 - Limit access to parts of the product, and/or
 - Terminate the agreement for using onlyfy 360+.

6. Other obligations of the Customer

1. The Customer is obliged to keep login details confidential from unauthorised third parties. In particular, the Customer must 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 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, 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 or renewal 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 agreements with regard to payment of fees by instalment in place between New Work SE and the Customer are unaffected by the provisions set out in Section 8(1).
3. New Work SE reserves the right to amend the fee, and/or discounts granted on products, 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.

9. Indemnity

1. The Customer will 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 a contractually agreed obligation, or the Customer's breach of pertinent data protection regulations.
2. Furthermore, the Customer will 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 a contractually agreed obligation, or the Customer's breach of pertinent data protection regulations.
3. All of New Work SE's further rights as well as claims for reimbursement of damages remain 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 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. The contractual Parties shall not be liable to one another in the event of non-compliance of contractual duties due to circumstances over which it has no influence. This applies in particular to cases of force majeure.

11. Non-utilisation and reimbursement of advance payments

1. Any onlyfy 360+ licences booked 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 cannot make a claim for reimbursement of advance payments in the following cases:
 - o If New Work SE terminates the agreement for cause
 - o If New Work SE imposes one or more of the sanctions in accordance with Section 5.4, or
 - o If the Customer terminates the agreement.
3. The Customer's entitlement to claim reimbursement of advance payments is not excluded, however, if the Customer terminates for cause attributable to New Work SE.

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 it has taken on. 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 T&Cs at any time, without giving reasons, unless an amendment is unreasonable to the company. New Work SE will give the company due notice of any amendments to these T&Cs. If the company 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 to be accepted by the company. New Work SE will inform the User 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.