

# General Terms and Conditions for using Consulting Services

## Recitals

The proposal to provide Consulting Services and any accompanying services 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 in the [www.xing.com](https://www.xing.com) legal notice.

The following General Terms and Conditions for Consulting Services (hereafter referred to as “T&Cs”) apply within the scope of the contractual relationship between corporate clients (hereafter referred to as “Customer”) and New Work SE (hereafter referred to individually as “Party” and collectively as “Parties”).

## 1. Applicability of these T&Cs

1. These T&Cs only apply to companies as defined in Section 14 of the German Civil Code (BGB), legal persons under public law, or special legal entities under public law. They apply to the contractual relationship in which they were included, as well as any and all future business relations if New Work SE does not stipulate any other terms and conditions.
2. Should the Customer have any terms and conditions that deviate from, conflict with, or complement these T&Cs, they will not form part of this agreement unless New Work SE expressly agrees to them, even if New Work SE acknowledges them. These T&Cs also apply even if New Work SE renders its service unreservedly, despite being aware that the Customer has terms and conditions that deviate from, conflict with or complement these T&Cs.

## 2. Conclusion of contract

1. Quotations do not constitute a legally binding contract. By accepting a quotation, the Customer makes a binding declaration to use the Consulting Services described in the quotation. New Work SE is entitled to accept the contractual offer made by the Customer, either by confirming the offer in writing or by starting to process the order.
2. The specifications of the Consulting Services to be performed are limited to the scope described in the quotation. Any statements, recommendations or promotions deviating from this scope do not constitute descriptions of the contractually agreed specifications of the consulting services.

## 3. Subject matter

1. New Work SE supports the Customer in its active sourcing or employer branding activities by providing New Hiring Consulting Services or the kununu Status Quo Analysis. The subject matter of the order is the agreed Consulting Service, not a certain economic success on the part of the Customer. The Customer is solely responsible for making use of the results of said service.
2. The Customer bears the outcome of any damage incurred if the Consulting Services provided by New Work SE contain incorrect or incomplete statements and must be repeated, in whole or in part, or if there is a delay that falls within the Customer’s remit and responsibility.
3. New Work SE is not required to review the legal permissibility of the Consulting Services.
4. If New Work SE is unable to provide any of the Consulting Services due to circumstances for which New Work SE is not responsible and/or due to force majeure, including, in particular, technical system faults not within New Work SE’s contractual remit as well as official decrees and court rulings, New Work SE will inform the Customer accordingly and is then entitled to choose whether to provide the services at a later time or be relieved of its duty to perform said services on the Customer’s behalf.

## 4. Approval and delays

1. New Work SE is not liable for delays owing to the Customer neglecting its duty to cooperate.
2. If the Customer delays approval or culpably breaches any other duty to cooperate, New Work SE is entitled to

demand compensation for the damage along with any additional expense incurred.

3. If New Work SE has a duty to deliver a specific outcome, e.g. a customisable work, the Customer is required to approve said work. The Customer will be deemed to have approved such an outcome if it does not explicitly approve or reject the work within fourteen (14) days of delivery, provided the work largely meets the contractually agreed specifications. Should there be any major deviations from the contractually agreed specifications, New Work SE will rectify them within an appropriate period of time and submit the work again for approval. At the latest, the Customer will be deemed to have approved the outcome of New Work SE's work upon payment or use of said work.

## **5. Usage rights**

1. Unless governed otherwise in the service description, upon full payment, the Customer acquires the usage rights to the Consulting Services provided by New Work SE in line with the purpose set out in the agreement for a period of twelve (12) months. Usage rights are limited to the territory of the Federal Republic of Germany, Austria or Switzerland. The Customer requires prior written consent from New Work SE before transferring or licensing usage rights to third parties.
2. New Work SE holds the usage rights for drafts rejected or unused by the Customer. This also applies to services not covered by separate statutory rights, in particular copyrights.

## **6. Customer's duty to cooperate**

1. The Customer is required to support New Work SE in its contractual performance to the extent required. In particular, The Customer will ensure it meets all of its obligations, free of charge, to facilitate proper performance of contract.
2. Upon conclusion of contract, the Customer will send New Work SE all of the documentation, data and information in its possession which New Work SE requires from the Customer to fulfil the contract.
3. For the term of the contract, the Customer will appoint an informed and competent contact person.

## **7. Workshops and webinars**

1. In order to give workshops, the Customer will provide the trainer with internet access, a video projector and a flipchart in the rooms to be used for workshops. In order to give webinars, the Customer must ensure that each participant has a computer/notebook with internet access as well as a headset or speakers and a microphone in order to participate.
2. Before webinars are held, prospective participants will receive a link to register. After registering, participants will receive an e-mail to confirm their attendance. It is not possible to take part in webinars without registering in advance. The Customer and the participants must ensure that they have sufficient IT equipment to attend webinars.
3. The maximum number of people able to take part in a workshop or webinar, and the length of a workshop or webinar are stated in the quotation. Deviations from this are only permitted with prior written consent (e-mail is suffice) from New Work SE.
4. New Work SE and the Customer will liaise following conclusion of contract to agree on dates for giving a workshop or webinar. The earliest possible date for giving a workshop or webinar is two (2) weeks after receiving the signed order confirmation.
5. Quotations will include the service fee and a flat-rate travel allowance the Customer will pay for workshops held at its event locations.
6. If the Customer cancels a workshop or webinar up to 10 days before it is due to start, 50% of the service fee stated in the quotation must be paid. If the Customer cancels a workshop or webinar within 10 days of its due start date, the entire service fee stated in the quotation must be paid. The Customer must submit cancellations to New Work SE in writing.
7. The Parties will not be liable to one another in the event of non-compliance of contractual duties owing to circumstances over which it has no influence. This applies in particular in the event of force majeure, accident or illness.
8. If New Work SE is unable to keep an appointment to render services due to force majeure, illness, accident on the part of the train, or because of any other circumstances for which New Work SE is not responsible, New Work SE is entitled to render the service at a later date to be agreed on with the Customer.
9. Seminar documentation and presentations are protected by copyright. Any reproduction, disclosure to third parties, or other commercial use by the participants or Customer is only permitted with prior written consent from New Work SE.
10. New Work SE employees do not provide the Customer with any legal advice within the scope of workshops and webinars. Any statement made pertaining to legal issues is non-binding; the Customer is solely responsible for checking each scenario on a case-by-case basis.

## **8. Fees and billing**

1. The fees agreed upon in the quotation are due for services rendered by New Work SE. All fees are net and subject to statutory VAT.
2. Unless agreed otherwise, fees are due immediately upon conclusion of contract.
3. The Customer will incur reasonable dunning fees for each default of payment. In such instances, New Work SE is entitled to charge the Customer a fixed fee for default of payment as per Section 288(5) of the German Civil Code (BGB) once per invoice rather than charging individual dunning fees. This does not affect the option to assert any additional claims for default damages.

## **9. Term and termination of contract**

1. The term of contract is based on the respective order. The contract ends upon full performance by New Work SE or, if so agreed, upon approval by the Customer, without requiring termination.
2. With package contracts, any services not used within the contract term will expire at the end of the contract term.
3. Section 648 of the German Civil Code (BGB) applies with regard to New Work SE's remuneration in the event that the Customer prematurely cancels an order it has placed and confirmed with New Work SE.
4. This does not affect the right to termination for cause. The following reasons constitute grounds for a Party's termination for cause:
  - a. If either party breaches essential contractual obligations and the breach is not rectified despite issuing the respective other party with a warning and deadline for rectification. A warning and deadline are not required if performance is unreasonable.
  - b. If the Customer breaches its obligations, rendering it unreasonable for New Work SE to continue working with the Customer.
5. Terminations must be submitted in writing.

## **10. Using the Customer as a reference**

1. The Customer grants New Work SE permission, to the extent typical and appropriate, to refer to its work on behalf of the Customer for its own promotional purposes (particularly on New Work SE websites). Should the Customer object to this, it must do so in writing.

## **11. Liability and indemnity**

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.
6. In the event of negligence, the Customer releases New Work SE from all claims, including claims for reimbursement of expenses and reimbursement of damages that third parties, including public authorities, assert against New Work SE due to a breach of their rights by the (consulting) services used and/or published by the Customer. The Customer will bear all reasonable costs including reasonable legal defence costs incurred by New Work SE due to a breach of third-party rights by the Customer. All of New Work SE's further rights as well as claims for reimbursement of damages remain unaffected.

## **12. Miscellaneous**

1. If the Customer receives login details from New Work SE, it must take every precaution not to disclose them to 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 users designated by the Customer 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. At the time of contract conclusion, the Parties have not entered into any deviating oral agreements which have

not been documented. Any earlier agreements the Parties made regarding the subject of the contract are hereby revoked.

4. Should any of the provisions in these T&Cs be or become invalid or unenforceable, in full or in part, or should an essential provision be missing, this does not affect the validity and enforceability of the remaining provisions in this agreement.
5. Each party is only entitled to exercise a right of retention or to offset if the counterclaim is legally binding or undisputed.
6. The Customer requires prior consent from New Work SE to assign the entire contract or the rights and duties arising in connection with this contract to a third party. Consent may not be unreasonably withheld.
7. 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.
8. New Work SE reserves the right to amend these T&Cs at any time during an ongoing contractual relationship, without giving reasons, unless an amendment is unreasonable to the Customer. New Work SE will give the Customer due notice of any amendments to these T&Cs. If the Customer does not object to the applicability of the revised T&Cs within six (6) weeks of receiving said notice, the amended T&Cs shall be deemed accepted by the Customer. New Work SE will inform the Customer of its right to object and of the relevance of the objection deadline in said notice.
9. The Customer agrees, for a period of six (6) months following the termination of this agreement, that it will not directly or indirectly solicit, recruit or hire away any New Work SE employees. For each violation of the provision in sentence 1, the Customer will reimburse New Work SE by paying a contractual penalty in the amount of half of the gross annual salary earned by the relevant employee being hired away in violation of the obligation pursuant to sentence 1, whereby the relevant employee's gross annual salary received in the year prior to the forfeiture of the contractual penalty will be decisive for calculating the contractual penalty.
10. This contract is governed by the substantive law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) is not applicable to this contract. International private law also does not apply if it is dispensable.
11. The place of performance is Hamburg, Germany.
12. Hamburg will be the sole legal venue for any and all disputes arising in connection with this agreement. However, New Work SE is also entitled to initiate legal proceedings at one of the Customer's regular legal venues.