

# General Terms and Conditions for the use of XING Talentlist

## Introduction

The offer to provide XING Talentlist 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 under "About this site" on [www.xing.com](http://www.xing.com).

## 1. Applicability of these Terms and Conditions

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

## 2. Conclusion of contract

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

## 3. Subject matter

1. XING Talentlist supports the Customer in its recruiting activities. The Customer sends New Work SE its candidate requirements, particularly the qualifications required for the role. New Work SE then searches the XING online business network for matching XING members (hereafter referred to as Candidates) and sends them to the Customer. New Work SE has free rein when searching for Candidates. By sending the contractually agreed number of Candidate suggestions, or by informing the Customer that it did not or is unlikely to find any suitable Candidates, New Work SE is released from its performance obligations to the Customer. No warranty is given that New Work SE will provide a minimum number of suggested Candidates, or that it will continue searching for suitable Candidates if such a search is deemed to be a hopeless endeavour.
2. New Work SE is free to suggest candidates to the Customer, even after informing the Customer that it did not or is unlikely to find any suitable Candidates, if it subsequently finds matching candidates. If New Work SE still does not find any matching candidates four weeks after informing the Customer that it did not or is unlikely to find any suitable Candidates, the Customer is entitled, within six months of the end of the four-week extension period, to have New Work SE search for a different role by supplying the requirements for that specific role. The terms provided in Section 3.1 apply mutatis mutandis to this additional search. The terms set out in Section 3.2 only apply to XING Talentlist Pro offers from New Work SE.
3. New Work SE shall inform the Customer and be released from its performance obligations to the customer if it is unable to provide any suitable Candidates for reasons for which New Work SE is not responsible, and/or in the event of force majeure, including, in particular, technical system faults beyond the scope of New Work SE's

contractual responsibilities, and official or judicial orders.

4. New Work SE only provides the Customer with data or other information about Candidates 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 New Work SE to supply it for other reasons.
5. Candidate screening shall not be owed.

## **4. Qualification and availability of Candidates**

1. When searching for suitable Candidates, New Work SE accepts no responsibility for content, data or other information provided by XING members or other third parties. In particular, New Work SE does not warrant or represent that said data or information is true or accurate, or that it fulfils or serves any particular purpose. Despite carrying out meticulous searches for the Customer, New Work SE is unable to provide any warranty as to a Candidate's actual suitability for the role offered by the Customer, or that a Candidate is in fact available to the Customer. However, New Work SE shall perform searches based on requirements provided by the Customer in a timely fashion and, where possible, shall only submit Candidates who meet the requirements based on the information the Customer provides.
2. In the event that the Candidates which New Work SE sends to the Customer are not available or are rejected by the Customer, New Work SE is not obliged to offer substitute performance, particularly by carrying out another search. In such instances, the Customer must place another order. This applies mutatis mutandis should the Customer change its candidate requirements after having already sent them to New Work SE.
3. To support the Customer with regard to availability of submitted Candidates, New Work SE is obliged not to supply the Candidates it submits to the Customer to any other XING Talentlist customer for a period of 48 hours.

## **5. Customer's obligations to cooperate**

The Customer is obliged to assist New Work SE to the extent necessary in its search for Candidates. In particular, the Customer shall ensure it meets all of its obligations, free of charge, to facilitate proper performance of contract. Upon conclusion of contract, the Customer shall send New Work SE its Candidate requirements (qualifications, etc.) along with any documentation, data and information in its possession which New Work SE requires from the Customer to fulfil the contract. The Customer will appoint an informed and competent contact person for the duration of the contract.

## **6. Hiring of a Candidate by the Customer**

New Work SE does not assume any warranty for the Customer coming into contact with and/or entering into a contract with submitted Candidates. New Work SE does not participate in the communication between the Customer and third parties in terms of content. If the Customer concludes agreements with one or more of the submitted Candidates, New Work SE has no involvement in said agreements and is not a contractual partner. The Customer is solely responsible for the execution and fulfilment of any agreements made with Candidates or third parties. New Work SE is not liable for fulfilment of contractual obligations or for breaches of contractual obligations by Candidates in connection with agreements made between the Customer and Candidates.

## **7. Fees and billing**

1. The agreed service fees shall be paid to New Work SE, irrespective of whether and how many Candidates New Work SE submits to the Customer. 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 appropriate 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.

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

1. The term of contract is based on the respective order. In any event, the contract shall end without requiring termination once New Work SE renders its service in full, i.e. by submitting the contractually agreed number of Candidate suggestions, or by informing the Customer that it did not, or is unlikely, to find any suitable Candidates, also after searching for a different role as described in Section 3.2.
2. With package contracts, any services not used within the contract term will expire at the end of the contract term.
3. This does not affect the right to termination for cause. The following reasons constitute grounds for a party's termination for cause:
  1. 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.
  2. If the Customer breaches its obligations, rendering it unreasonable for New Work SE to continue working with the Customer.
  3. If default of payment exceeds EUR 5,000 for a period of more than 60 days.
  4. If the Customer files for insolvency, if insolvency proceedings are opened, and if insolvency proceedings are rejected due to a lack of assets.
4. Terminations must be submitted in writing (e-mail, fax or letter sent by registered post).

## 9. Using the Customer as a reference

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.

## 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 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.

## 11. Final provisions

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 Terms and Conditions 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 General Terms and Conditions at any time during an ongoing contractual relationship, without giving reasons, unless an amendment is unreasonable to the Customer. 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 receiving 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.
9. The customer agrees, for a period of 6 months following the termination of this agreement, that they will not directly or indirectly solicit, recruit or hire-away any employees of New Work SE. For each violation of the provision in sentence 1, the Customer shall 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 shall be decisive for the calculation of 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 shall 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.