

# General Terms and Conditions for the use of the XING TalentpoolManager

## Recitals

The offer to provide the XING TalentpoolManager and any accompanying services (XTP) 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. Subject matter

1. The Customer can use the XTP to create so-called "talent pools" in which it manages XING members and third parties of interest to its company as potential employees, and to stay in touch with said persons regarding future hiring processes. The exact extent to which the XTP can be used depends on the specific product description. The Customer shall not be provided with the source code as the XTP is a web service that accesses 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 limits (e.g. the number of messages that can be sent via the XTP) and requirements (e.g. the Customer must have an existing XING Employer Branding Profile) apply when using the XTP. Further details are available in the product description.
3. If the Customer uses both the XING TalentManager and the XTP, the number of messages the Customer can send via the XTP will be added on to the number of messages it can send via the XING TalentManager. The Customer can send messages from both products.
4. New Work SE makes the content, data and other information provided by the Customer 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 or 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 XTP 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 XTP 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 and/or information is true or accurate, or that it fulfils or serves any particular purpose.

## 2. Functionality or general design changes

New Work SE reserves the right to make changes to the services related to the XTP 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.

## 3. Authorisation of recruiters

1. Access and use of the XTP is only available to administrators and recruiters who are employees appointed such

by the Customer or third parties to which the Customer has granted XTP access. Administrators and recruiters must be authorised by the Customer and registered members on XING. The Customer must be listed as the administrator's or recruiter's current employer in their XING profile.

2. The administrator of the Customer's existing XING Employer Branding Profile has access to the Customer's existing XING Employer Branding Profile so as to be able to grant permissions to exchange data between the Customer's XING Employer Branding Profile and XTP.
3. If an administrator or recruiter cancels its XING membership, or if XING bans it from using the site (especially as a result of the administrator or recruiter violating the General Terms and Conditions of its XING membership), this administrator or recruiter will no longer be permitted to use the XTP.
4. The Customer has the right to revoke an administrator's or recruiter's authorisation, or to assign another person as a replacement for the administrator or recruiter. A new administrator 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. The administrator shall authorise recruiters. The administrator may, of its own accord, grant Customer employees or third parties which have been granted access to the Customer's XTP with recruiter access rights. If a recruiter has been replaced by another recruiter, it shall only be possible to replace the newly appointed recruiter after a minimum of thirty (30) days.

## 4. Content in the XTP

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

## 5. Contract term

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 the same length of 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.
2. Either party may terminate the agreement without stating a reason by serving notice up to three months before the end of the initial contract term or the end of a renewal term. Agreements for products without a specific initial contract term can be terminated by either party by serving notice up to three months before the end of the month. This does not affect either party's right to termination for cause.
3. Terminations must be submitted in writing (e-mail, fax or letter sent by registered post).
4. Following timely termination, the XING TalentManager and all of the content and information saved there may only continue to be used if a new XING TalentManager contract has been concluded and the start date for the new contractual term commences immediately at the end of the previous contractual term.

## 6. Use of the XTP

1. Under the terms of this agreement, only the Customer, staff employed directly by the Customer, or third parties granted access to the XTP by the Customer, are permitted to use the XTP. 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 XTP, 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 XTP or New Work SE.

3. The company is obliged, in particular, to observe applicable data protection and privacy law. Unless the affected XING members or 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 within the XTP, and from passing on said data to third parties. The Customer is obliged to ensure that XING is permitted to process the personal data of affected individuals within the scope of providing XTP services to the Customer. If third parties are affected, the respective third party is generally required to grant XING permission to collect and save the data pertaining to the third party which the Customers enters in the XTP.
4. The Customer is also specifically prohibited from engaging in the following:
5. Unreasonably harassing XING members or other people (particularly with spam) (cf. Section 7 of the German Unfair Competition Act (UWG)),
6. 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
7. 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
8. 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 comply with these terms and conditions, the General Terms and Conditions for the use of XING, and observe all applicable laws and rights of third parties when using the XTP
9. New Work SE may impose the following sanctions in the event that obligations from the 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:
10. Temporarily or permanently deactivate the Customer's XTP, and/or
11. Terminate the agreement for using the XTP.

## 7. Other obligations of the Customer

1. The Customer is obliged to keep login details confidential from unauthorised third parties. In particular, the Customer 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 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.

## 8. Availability

The Customer acknowledges that it is not technically possible to make the XTP available 100% of the time. However, New Work SE endeavours to keep the XTP 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 XTP. 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.

## 9. Fees and billing

1. Fees for the entire subscription or renewal period are immediately payable in advance at the time the invoice is issued. The payment can be made with any of the various means of payment offered.
2. 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 (4) weeks of the date of invoice a written declaration of withdrawal from the agreement with retroactive effect from the date of the renewal.
3. The Customer can purchase additional XTP licences during an ongoing contractual term. The terms of the additionally booked XTP 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.

## 10. Indemnity

1. The Customer shall indemnify and exempt XING 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 contractually imposed obligations, or the Customer's violation 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 XING as a result of the Customer's violation of rights, the Customer's violation of contractually imposed obligations, or the Customer's violation of pertinent data protection regulations.
3. All other rights, including damage claims by XING, 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. Non-utilisation and reimbursement of advance payments

1. Any XTP 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:
  - If New Work SE terminates the agreement for cause
  - If New Work SE imposes one or more of the sanctions in accordance with Section 5.4, or
  - If the Customer terminates the agreement. The Customer's claim for reimbursement of advance payments is not excluded, however, if the cause for termination arises from New Work SE's area of responsibility.

## 13. 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 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 company due notice of any amendments to these General Terms and Conditions. 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 shall inform the company of its right to object and of the relevance of the objection deadline in said notice.
3. The exclusive place of jurisdiction and place of performance is Hamburg.
4. German law is applicable, excluding international private law and provisions of the United Nations Convention on Contracts for the International Sale of Goods.
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.