

1. Scope

These General Terms and Conditions of Use (hereinafter: "GTCs") apply to all contracts in which **atwork corporate AG** (hereinafter: "atwork") provides **software as a service** ("SaaS") and related additional services (hereinafter "Services") to a **customer** (hereinafter: the "Customer"). The GTCs serve to regulate the relationship between atwork and its Customer (collectively: the "Parties") in connection with the provision of the Software and, in particular, to define the rights and obligations of the Parties.

Unless explicitly agreed otherwise between the Parties, these GTCs shall take precedence over any conflicting agreements between the parties.

For customers with a seat in the EU, the Data Act Addendum, available [here](#), applies additionally.

Customer's terms and conditions are explicitly excluded.

2. Definitions

2.1. Software

The term "**Software**" refers to the web-based computer program provided by atwork. The Software is a SaaS application and supports the Customer in providing a multifaceted solution for measuring the entire employee engagement lifecycle.

The Software consists of various modules. The right of use in accordance with these GTCs only applies to the modules designated in the contract between the Customer and atwork (the "**Customer Contract**" or the "**Contract**").

"Services" refers collectively to the Software, all functionalities made available within the Software, hosting and technical operations, support services, consulting services (if any), onboarding or implementation activities (if any), and any other services provided by atwork under the Contract or these GTCs.

"Agreement" means the entire contractual relationship between atwork and the Customer, consisting of (i) the Contract (including any order form, proposal, quote, or subscription agreement), (ii) these GTCs, (iii) the Data Processing Agreement ("DPA"), and (iv) any other documents or annexes explicitly incorporated by reference.

2.2. Availability level

The degree of availability describes the temporal measure of the unrestricted usability of the Software on all working days (with the

exception of Swiss public holidays) in the period from 09:00 to 17:00, for the duration of the Contract.

Maintenance periods, which are necessary for regular optimization and performance enhancement, or for the elimination of faults outside of atwork's influence or responsibility, shall not be taken into account.

Furthermore, atwork is permitted and possibly required by law to suspend access to the Software, Services, or Consulting Support (if any) based upon reasonable determination of the occurrence or potential for occurrence of illegal or wrongful activity, fraudulent use or attempted fraudulent activity. In case of a suspension, the Customer remains liable for all charges and fees incurred during the suspension period. Such suspension shall not be taken into account for the calculation of availability level.

3. Right of use

3.1. Scope of the right of use

atwork grants the Customer a limited, non-exclusive, non-sublicensable, revocable, and non-transferable right to use the Software (including updates) and related Services for the duration of the Contract and in accordance with these GTCs.

The use of the Software is limited to a certain number of employees of the Customer and to a certain duration, both of which are specified in the Contract.

3.2. Limits to the right of use

The right of use does not grant the Customer any further rights to the Software, such as intellectual property or ownership rights. atwork retains all rights, titles, and interests to the Software, the Services, and the Consulting Support, including all copyrights, inventions, trademarks, designs, domain names, know-how, trade secrets, data and other intangible property rights.

The Customer shall not decompile, reverse-engineer, edit (including error correction) or edit, reproduce or otherwise use the source or object code of the Software or any part of the Services without atwork's express consent.

The Customer is not entitled to sell, license or otherwise transfer the Services or individual components thereof to third parties. The Customer is also not entitled to make the Services available to third parties, whether against payment or free of charge, or to use it for the training of persons who are not employees or workers of the Customer.

The Customer is not entitled to create derivative works based on the whole or any part of the Services or any content available via the Services.

The Customer is not entitled to remove or circumvent any existing protective mechanisms of the Software against unauthorized use, unless this is necessary to enable trouble-free use. Copyright notices, serial numbers and other features serving to identify the Software must also not be removed or changed.

4. Software delivery and installation

4.1. Client-server Software

The Software is made available to the Customer in the respective current version on a host server operated by atwork or a third-party provider.

The Customer is solely responsible for the connection of the Customer's IT systems to the Software.

4.2. Provisioning

The delivery of the Software and its installation and provision ("Implementation") shall be carried out by atwork. The Implementation of the Software shall take place as agreed between the parties at the time agreed by the parties. Any delays in Implementation caused by Customer's failure to cooperate shall automatically extend timelines without liability for atwork.

atwork may defer the Implementation of the Customer's access to the Software until the usage fee has been paid.

4.3. Updates and feature changes

The Software is subject to further development and modifications, including temporary or permanent adjunction or removal of features, and, if necessary, performance changes (e.g., through updates or the use of newer or different technologies, systems, procedures or standards). Where reasonably possible, the Customer shall be informed in good time in advance of any significant changes in performance. **Such changes do not entitle the Customer to an early termination of the Contract or to an adjustment of the usage fees paid.**

5. Additional Services

To the extent agreed in the Contract, atwork shall provide consulting services related to the Software ("**Consulting Support**").

Consulting Support and Services are provided on a best effort basis only and to the extent agreed upon by the parties in the contract.

6. Customer obligations

6.1. Usage fee

Use of the Services is subject to the payment of a fee as per the Customer Contract.

Unless otherwise indicated, prices are in CHF and mentioned exclusive of VAT and other taxes or duties.

atwork may update the fees and charges for some or all of the Services from time to time, which shall take effect from the date that the Customer Contract next renews provided atwork has given at least 30 days' notice of the change prior to renewal.

6.2. Invoicing

If not otherwise agreed in the Contract, atwork will issue the first invoice for the Software usage fees and services at the conclusion of the contract (Effective Date). The first invoice shall cover the entire first Contract Year (12 months from the Effective Date). For subsequent periods, the invoice will be issued annually at the beginning of each subsequent Contract Year.

atwork is entitled to issue invoices electronically, to the e-mail address mentioned in the Contract. The Customer agrees to bear any risks resulting from transmission over e-mail (i.e. delays, delivery failures, data interception or tampering).

6.3. Payment terms

Unless otherwise agreed, invoices from atwork are due for payment by the Customer within 20 days from receipt of the invoice. Any right to set off, retain, deduct, counterclaim and/or withhold any payments due under the Agreement vis-à-vis atwork is hereby expressly waived and excluded.

After expiry of this payment period, the Customer shall be in default without reminder. Late payments result in an interest rate of 5% p.a. **atwork may suspend or limit the Customer's access to the Software, Services, or Consulting Support (if any), at any time and for as long as the Customer is in default. In such case, the Customer remains liable for all charges and fees incurred during the suspension period.**

6.4. Other duties

The Customer agrees to use the Software, the Consulting Support (if any), and the Services (if any) in compliance with the GTCs, the Agreement, and all legal and moral obligations applicable in the territory where they are located. The transmission, processing, storage or distribution of content that violates legal

regulations, official requirements or the rights of third parties is prohibited.

The Customer is obliged to cooperate in the performance of these GTCs and the Contract to the necessary extent free of charge. The Customer is obliged to provide atwork with all necessary information, documents, materials, access, software, data, as well as competent staff, and anything else reasonably required for the provision of the Software, the Services, and the Consulting Support (if any). Furthermore, the Customer is obliged to inform atwork immediately if errors or faults occur and to support atwork in the analysis and, if necessary, in the elimination of errors and faults to the extent required.

If the provision of the Software, the Services or the Consulting Support (if any) is delayed due to the Customer's failure to comply with his duty to cooperate or due to other circumstances for which the Customer is responsible, the Customer shall bear the disadvantages and additional costs incurred.

The Customer is responsible for setting up and maintaining the client hardware and software environment required for the use of the Software. Any credentials required to access the Software must be kept secure by the Customer or the authorized users of the Services and protected from access by unauthorized third parties. The Customer must inform atwork immediately if the access data is lost, used by unauthorized third parties or if there is a concrete risk of misuse or unauthorized use.

Any use of the Software which may impair the security and integrity of the Software or the server on which it is operated is not permitted. In particular, the Customer is required to check all data for viruses or other harmful components beforehand, prior to transmitting them to the Software for processing. For this purpose, a state-of-the-art virus protection program shall be used.

The Customer is responsible for making backup copies of all data transmitted to the Software.

The Customer must not use the Software in a manner that significantly exceeds the typical usage patterns, causes undue load on atwork's infrastructure, including but not limited to network bandwidth, storage, and processing power, or engages in activities such as automated scraping, bulk data processing, or excessive API calls.

6.5. Data and personality protection

atwork treats the data transmitted by the Customer diligently. To this end, atwork takes technical and organizational measures that comply with the applicable requirements of

the Swiss Data Protection Act and the European General Data Protection Regulation.

To the extent that atwork processes personal data on behalf of the Customer, the Data Processing Agreement ("DPA") available [at the atwork Trust Center](#) shall form an integral and binding part of this Agreement. **By accepting these GTCs, the Customer acknowledges and agrees to the applicability of the DPA.**

As the controller of the personal data, **the Customer undertakes to protect the data of its employees in accordance with the applicable legal provisions, in particular the GDPR; the Swiss Data Protection Act and Art. 328b of the Swiss Code of Obligations.** Furthermore, the Customer undertakes to inform its employees of any data transfer to atwork.

Detailed information on data protection can be found in the privacy policy, available [at the atwork Trust Center](#).

The Customer shall not use the Software, Services, or Consulting Support (if any) in any way that could prove incompatible with the duty of employee personality protection as per Art. 328 of the Swiss Code of Obligations. atwork may rely entirely on the instructions of the Customer with regard to the use of the data within the Software, or during the provision of the Services or the Consulting Support (as applicable).

The Customer is aware that data processing within the Software may rely on artificial intelligence technologies, including third-party technologies.

The Customer may opt out of the use of artificial intelligence technologies within the Software, by sending a written notification to atwork. Such opting-out may restrict the full use potential of the Software and will not result in any compensation by atwork.

To the extent necessary, the Customer is responsible for informing the Software users about the use of artificial intelligence technologies.

atwork reserves the right to retain anonymized data records for internal purposes.

More information on atwork and its services is available on the Website via this [link](#).

7. Software warranty

7.1. Scope

atwork shall take all reasonable measures to ensure the highest possible degree of availability. However, the Customer acknowledges that malfunctions, interruptions, or disruptions of

the Software cannot be completely ruled out even with the greatest care and that the uninterrupted and 'error-free' functioning of the Software cannot be guaranteed.

Other than being explicitly granted, the Software, the Services, and the Consulting Support (if any) are provided on an "as" and "as available" basis and no warranties are made by atwork.

The availability level of the Software, calculated as per Art. 2.2, is at least 98 %.

Should the availability level of the Software fall below this threshold, the Customer will only be entitled to compensation in the form of a free Contract duration extension, for a period corresponding to the duration of the unavailability that exceeds 2 %. Any additional compensation is excluded.

7.2. Obligations to give notice of defects

To the extent that a warranty is granted, the Customer must report a defect within 7 calendar days of its discovery, sufficiently documented and in text form.

7.3. Correction of defects

Such defect shall be remedied by rectification or replacement delivery. It can be carried out by one of the following measures at the discretion of atwork:

- Provision of an error-free Software version.
- Establishment of a process or a technical routine to circumvent the error (so-called workaround), provided this is reasonable for the Customer.

Further warranty claims of the Customer (including the right to reduce the usage fee and to claim damages) are excluded.

7.4. Limits

atwork shall be released from its warranty obligation to the extent that a defect in the Software is due to circumstances for which it is not responsible.

The technical data, specifications and performance descriptions communicated by atwork to the Customer do not constitute warranties unless they are expressly designated as such by atwork in writing.

8. Liability

atwork is fully liable to the Customer for damages resulting from atwork's gross negligence or willful misconduct.

In all other cases, atwork's liability under the Agreement is excluded to the maximum extent permitted under applicable law.

atwork will not be held liable for inaccuracy or incompleteness of the Software, Services, or Consulting Support (if any) or the incompatibility of the Software, Services, or Consulting Support (if any) with any specific objectives that the Customer is hoping to achieve.

The Customer agrees to indemnify, and hold atwork harmless from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (i) breach of these GTCs, the Contract, or any legal regulation by the Customer, its employees or other persons acting on behalf of the Customer, or (ii) Customer's violation of the rights of a third party.

9. Contract period and termination

The start and the term of the Contract are determined by the Contract with the Customer.

The Contract shall be automatically renewed for the same term as originally agreed by the parties (e.g., in the case of a two-year term, automatic renewal for two years), unless one of the parties notifies the other of the Contract termination at least three months prior to the Contract's initial end term.

Ordinary termination before the end of the Contract period is excluded. However, each party is entitled to terminate the Contract for good cause. Good cause shall be deemed to exist in particular if the other party commits a material breach of contract and fails to remedy such breach within 10 calendar days. Non-payment of the usage fee after a reminder has been sent constitutes a material breach of contract.

Upon termination, the Customer's access to the Services shall end, and atwork shall delete or return Customer Data in accordance with applicable laws and the Data Processing Agreement, if applicable.

10. Final provisions

10.1. Written form

For the purpose of these GTCs, the written form requires wet-ink, qualified or simple electronic signature (such as DocuSign). Text form includes electronic text, such as e-mail or pop-ups on the Services.

Amendments and supplements to these GTCs must be made in writing. Unless written form is explicitly required, notices can be made in

text form, and are to be sent to the contact addresses indicated in the Contract. Receipt of notices can be confirmed explicitly or conclusively by responding to the notification.

These GTCs and the Data Protection Statement may be revised by atwork at any time and will take effect within 30 days of notification to the Customer.

10.2. Applicable law

These GTCs and all contracts into which they are incorporated are governed by Swiss law, to the exclusion of any international treaty regarding applicable law or forum, especially excluding its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

10.3. Place of jurisdiction

Zurich shall be the exclusive place of jurisdiction for all legal disputes arising from contractual relationships covered by these GTCs.

10.4. Severability clause

Should any provision of the agreement be found to be unlawful, invalid or otherwise unenforceable (in whole or in part), the remaining provisions shall remain in full force and effect. The parties undertake to replace such provision with a valid provision that comes as close as possible to the original economic purpose.

10.5. Assignment

The Customer may not assign any of its rights under this Agreement without our prior written consent.

10.6. Marketing

The Customer agrees that we may refer to the Customer as a customer on our website, and in any of our marketing and investment material and may refer to the type of services that we have provided to the Customer.