

# Terms & Conditions

## 1. Scope of Application

### 1.1

5w155 SA (hereinafter referred to as 5w155) offers a web-based team administration and recruiting software (hereinafter referred to as hubteam) for small and medium-sized companies on the hubteam.io website.

### 1.2

Deviating terms and conditions of the customer do not apply to contracts, unless 5w155 expressly agrees to their application in writing.

## 2. Conclusion of Contract Between the Customer and 5w155, Trial Period

### 2.1

The offer provided on hubteam to use the designated and described web-based software does not represent a binding offer by 5w155.

### 2.2

The use of the software of hubteam requires the creation of a customer account (in the following: account). For the creation of the account, the required data and a password must be specified. By confirming the creation of the account, the customer submits a binding offer to conclude a contract for the free of charge use of the software for trial purposes. 5w155 can accept this offer by setting up and granting access to the account or by sending a notification to the indicated e-mail address with the login details for the account set up.

### 2.3

By concluding a contract for the free of charge use according to paragraph 2.2 5w155 grants the right to the customer to use the software after the granting of the access to the software or the notification of the login details by 5w155 exclusively for 7-days for trial purposes (trial period). Each customer is only entitled to one trial period. On customer request 5w155 can extend the trial period. Whether the trial period is extended is at the discretion of 5w155. After the trial period has expired, the customer's account will be blocked. There will be no automatic conversion into a contract for the fee-based use of the software.

### 2.4

After expiration of the trial period according to paragraph 2.3 the customer has the possibility to conclude a fee-based contract with 5w155 for the use of the software. The customer can choose between different software versions with a fixed, maximum number of employees.

### 2.5

The preparation of an offer and the conclusion of a fee-based contract with monthly billing, the contract is concluded in the account itself. For this purpose the customer must select the appropriate software version and confirm his selection. Then, in addition to the company name and billing address, the customer must also submit his credit card data. By confirming and sending this information, the customer concludes a contract with 5w155 for the fee-based use of the software with monthly billing.

## 2.6

For the conclusion of a fee-based contract with annual billing, the sales team of 5w155 upon request creates a corresponding offer in written or textual form, which is accepted by the customer through confirmation in textual form, written form or verbally, at the latest, however, by payment of the invoice.

## **3. Services, Change of Versions**

### 3.1

For the duration of the concluded contract 5w155 provides the customer access to the selected version of the software on a Software-as-a-Service (hereinafter: SaaS) basis via the Internet.

### 3.2

In principle the customer can switch between the offered versions of the software as well as the maximum number of employees, that can be administered by a version at any time with effect from the date of the adjustment of the customer access by 5w155.

### 3.3

Customers with a contract for a fee-based use of the software with monthly billing can make this adjustment of the version directly in the account. Customers with a contract for a fee-based use of the software with annual billing must contact 5w155's customer service (info@hubteam.io) for the adjustment of the version. If the customer changes into a version with a larger scale of features or into a version with a larger number of employees to be administered during a current billing period, the customer may use the additional features of the software or administrate a larger number of employees from the date of the adjustment of the customer access by 5w155. If the customer changes to a version with a lower scale of features or with a lower number of employees to be administered, the customer may only use reduced features of the software or administer a lower number of employees from the date of the adjustment of customer access by 5w155.

## **4. Availability and Response Time in the Event of Disruptions**

### 4.1

5w155 guarantees 99% availability of the software provided on a SaaS basis on an annual average. Excluded from this are times in which the server cannot be reached due to other

technical problems beyond the control of 5w155 (in particular force majeure, third party negligence). Also excluded are planned maintenance work (e. g. updates to the software) which either take place outside of the normal business hours from Monday to Friday between 9:00 am and 6:00 pm CET, or were announced in advance in accordance with section 4.2.

#### 4.2

5w155 is entitled to interrupt the availability of the software for maintenance purposes and due to other technical requirements. Maintenance work will be carried out whenever possible outside of the normal business hours from Monday to Friday between 9:00 am and 6:00 pm CET. If a maintenance action results in an interruption of more than 30 minutes of use of the software during normal business hours from Monday to Friday (taking into account public holidays at the Munich location) between 9:00 am and 6:00 pm CET, 5w155 will announce this maintenance work by email. The announcement will be made at least 24 hours in advance. Upon customer request, the announced maintenance work can be postponed if this is technically and economically reasonable from the perspective of 5w155.

#### 4.3

Any disruption of the system availability must be reported by the customer without undue delay after it has become known. In case of reports and disruptions of the system availability which lead to a total failure of the software and which are received within the support hours (Monday to Thursday between 9:00 am and 6:00 pm and Friday between 9:00 am and 5:00 pm CET), 5w155 will attempt to ensure a reaction time of four hours from the beginning of the disruption. In case of minor errors that do not lead to a total failure of the software and that occur during ongoing operation, 5w155 will attempt to respond no later than one working day after receipt of the error message.

#### 4.4

In case of error reports, which are received outside the support hours, the fault elimination begins on the following working day. Delays of the fault elimination, that the customer is responsible for (e. g. due to unavailability of a contact person on the customer side or belated notification of the disruption), are not credited towards the fault elimination time.

## **5. Cooperation Services of the Customer**

### 5.1

The following participation services are major obligations of the customer and are not only to be classified as secondary obligations or duties.

### 5.2

During the trial period according to sections 2.2 and 2.3, the customer is obliged to review the functionalities and the general condition of the software and to notify 5w155 about possible defects and other deviations from the requirements before concluding a fee-based contract for the use of the software. The customer cannot invoke defects and other deviations from the requirements, which were already known or present during the trial

period, but were not reported before the conclusion of a fee-based contract for the use of the software.

### 5.3

The customer is obliged to provide a qualified contact person together with a deputy, who is entitled to make all necessary decisions, that are required for the contractually agreed performance of services or to immediately bring about such decisions without undue delay. The customer is obliged to inform about any changes of the contact person (including deputy) without undue delay.

### 5.4

The customer is solely responsible for the content and data processed within the software. The customer hereby undertakes to use hubteam's software only in accordance with the contract and within the framework of the applicable statutory provisions and not to infringe any rights of third parties during use. The customer will inform 5w155 immediately and without undue delay, preferably in writing, about: (i) the misuse or suspicion of misuse of the contractually agreed service; (ii) a danger or suspicion of a danger for the compliance of data protection or data security which occurs within the scope of the provision of the contractually agreed service; (iii) a danger or suspicion of a danger for the service provided by 5w155 (e. g. by loss of login details or hacker attack).

### 5.5

The customer is obliged to ensure the technical requirements himself.

#### 5.5.1

The connection to the Internet in adequate bandwidth and latency is the customer's responsibility.

#### 5.5.2

For an optimal use of the offers and functions of hubteam the customer will use the browser types Google Chrome or Safari in their up to date version. Additionally the use of cookies must be permitted in the settings of the browser used. If these technical requirements are not fulfilled by the customer, under circumstances it may come to restrictions of the usability of the services of hubteam. 5w155 is not responsible for these restrictions.

#### 5.5.3

The customer is responsible for taking state-of-the-art IT security measures within his own organization and for his employees. This includes, inter alia but is not limited to, the installation and regular updating of common antivirus software on the laptops, computers or other mobile devices of the customer's employees, ensuring the assignment and regular updating of secure passwords in accordance with "BSI IT" or other equivalent, recognised security standards for the hubteam account as well as for laptops, computers or other mobile devices of the employees or the use of appropriate mechanisms such as two-factor authentication, automatic inactivity blocking, firewall, etc.

#### 5.5.4

The customer is further obliged to ensure the confidentiality of the identification and authentication data assigned to his users, which also means, for instance, taking care of an organizational and possibly technical prohibition of the disclosure of passwords and prohibition of the use of so-called “shared accounts”. The prohibition of the use of “shared accounts” refers to the hubteam account.

#### 5.5.5

Furthermore, the customer must ensure the security of the internet connection used, in particular the use of company-owned instead of public Virtual Private Networks (VPN) as well as the use of VPN connections in public networks.

#### 5.6

The customer is responsible for the professional setup and administration of the account. This applies regardless of whether hubteam supports the customer setting up the account in whatever form. In Particular, this includes: (i) the professional setup of the account, in particular the migration of data, configuration of processes and products; (ii) the technical connection of interfaces on the part of the Customer depending on the specification for incoming and outgoing data; (iii) the administration of the account, in particular the creation of users and roles and the assignment of access to the account.

#### 5.7

The customer is obliged to inform 5w155 in text form about occurring service disruptions (defects in the services, lack of availability) without undue delay and to transmit comprehensible information about occurring service disruptions. In case of occurring service disruptions the customer will support 5w155 to a reasonable extent in the identification and correction of errors. 5w155 is entitled to show temporary error-avoiding-possibilities to the customer and to eliminate the actual cause later by adaptation of the 5w155 software, provided that this is reasonable for the customer.

## 6. Grant of Rights

#### 6.1

5w155 grants the customer a non-exclusive, simple, non-transferable and time-limited – to the term of the (fee-based) contract – usage right for the booked software.

#### 6.2

The customer undertakes to use the software only in accordance with the contract and not to provide it to third parties to use. When booking the functionalities of the enterprise version, the customer’s usage right also extends to the customers affiliates or to affiliated companies/holding companies/subsidiaries within relevant applicable provisions of corporate law.

## 7. Prices, Payment Method and Terms of Payment

### 7.1

The prices indicated on the hubteam website at the time of the order are valid. These prices are monthly net prices in US Dollars and do not include statutory value added tax at the valid statutory rate which have to be added to the net price, if applicable. The amount of monthly remuneration for the use of the software depends on the price category of the selected version of the software, which then again depends on the desired feature scope (Start Up & NGO, Essential, Professional, Enterprise) and the selected package size, i. e. the maximum number of employees of the customer to be administered as well as any selected Add-ons and/or the selection of the Recruiting Option.

### 7.2

The customer has the choice between monthly or annual billing. All payments are due in advance upon invoicing.

### 7.3

In case of monthly billing, the billing period begins on the day of the conclusion of a contract for the fee-based use of the software through the account and ends with the expiry of one month.

Payments for contracts for the fee-based use of the software with monthly billing shall be made monthly in advance by credit card. The credit card will be charged on the due date.

When paying with a credit card, 5w155 reserves the right to check the validity of the card, the transaction limit for debits and the address details. In case of a material reason 5w155 is entitled to reject the credit card as a means of payment.

In case of monthly billing, an invoice in electronic form will be made available to the customer in his profile for retrieval by 5w155 and sent by email.

### 7.4

In case of annual billing, the billing period begins with the day the account is activated and ends after the expiry of one year.

The invoice amount arises from the 12x monthly remuneration for the ordered software (section 7.1), minus the discount noted on the website of 5w155 for annual advance payment. 5w155 activates the customer's access according to the performance period agreed with the customer and stated on the invoice initially for one year.

Payments for contracts for the fee-based use of the software with annual billing must generally be made by bank transfer annually in advance.

In case of annual billing, an invoice for 12 months will be sent to the customer in electronic form by email. The payment is due two weeks from the invoice date.

#### 7.5

In addition, the customer has the option of direct debit payment for monthly and annual billing. If a direct debit payment method is selected, we use the SEPA Direct Debit Scheme. 5w155 will inform the customer about the SEPA Direct Debit procedure before the direct debit is executed with reasonable notice, usually two days in advance. However, the parties agree that the period for the preliminary information of the SEPA Direct Debit will be shortened to one day.

#### 7.6

In the case of a return debit (in particular due to lack of necessary coverage of the account, due to account expiry, unauthorized objection by the account holder or incorrect entry of account data), the customer authorizes 5w155 to submit the debit for the due payment obligation one more time. In such a case, the customer is obliged to pay the costs arising from the return debit. Further claims are reserved.

#### 7.7

If the price category of the version with monthly billing increases due to a change of the number of employees or the extent of features (Start Up & NGO, Essential, Professional, Enterprise, Add-ons etc.) (section 3.2.), 5w155 will invoice the difference between the advanced payment already made and the changed price until the end of the billing month either immediately or with the following invoice for the next billing month. If the price category of the version with monthly billing decreases due to a change of the number of employees or the scope of features (Start Up & NGO, Essential, Professional, Enterprise, Add-ons etc.) during the billing period (section 3.2.), the customer is not entitled to a (pro rata) refund of the advance payment already made.

#### 7.8

If the price category of the version with annual billing increases during the billing period due to a change of the number of employees or features (Start Up & NGO, Essential, Professional, Enterprise, Add-ons etc.) (section 3.2), 5w155 will additionally invoice the difference between the advance payment already made or the amount already invoiced and the amount based on the changed price up to the end of the annual period (daily pro rata billing). If the price category of the version with annual billing decreases due to a change of the number of employees or the scope of features (Start Up & NGO, Essential, Professional, Enterprise, Add-ons etc.) during the billing period (section 3.2), the customer is not entitled to a (pro rata) refund of the advance payment already made.

#### 7.9

In case of a payment default of the customer, provided that no payment was made even after expiration of a set deadline of one calendar week after the due date to the customer, 5w155 is entitled to block the customer's access to the software immediately. 5w155 will inform the customer of this blocking in advance, setting a further deadline of one calendar week. In this case the customer remains obliged to continue paying the agreed remuneration plus any default interest due. Any damage to the customer caused by blocking the

customers access to the software cannot be claimed from 5w155. Beyond that 5w155 has no right to block access to the software.

## **8. Start of Contract, Minimum Term and Termination**

### **8.1**

As soon as the customer receives his access data, a free 7-day trial period begins (see sections 2.2 and 2.3). After this 7-day trial period has expired, the term will not be extended automatically. After the end of the trial period the customer can decide whether he wants to conclude a contract for a fee-based use of the software.

### **8.2**

In case of contracts for the fee-based use of the software with monthly billing, a minimum term of one month shall apply. After the expiry of the minimum term, the contract shall be extended by extension periods of one month in each case, unless the customer terminates the contract before the beginning of the extension period.

### **8.3**

In case of contracts for the fee-based use of the software with annual billing, a minimum term of one year shall apply. After the expiry of the minimum term, the contract shall be extended by extension periods of one year in each case, unless the customer terminates the contract with a notice period of three months prior to the beginning of an extension period. For the extension of contracts on the fee-based use of the software with annual billing, 5w155 will provide a new annual invoice to be transferred to the customer at the latest two weeks before the beginning of the new extension period.

### **8.4**

5w155 has the right to terminate fee-based contracts for the use of the software with monthly billing within a period of two weeks and to terminate fee-based contracts for the use of the software with annual billing within a period of three months to the end of the respective billing period.

### **8.5**

The right of both contracting parties to terminate the contract for good cause remains unaffected.

### **8.6**

Notice of termination must be given in textual format. The account of the customer will be locked as soon as the termination comes into effect.

## **9. Limitation of Liability**

### **9.1**

Statutory liability in the case of paid service provision. In the case of paid service provision 5w155 is liable according to the statutory provisions for damages resulting from the injury of



life, of the body or health and for other loss due to a breach of duty resulting from intent, gross negligence and fraudulent intent. In addition 5w155 is liable according to the statutory provisions towards customers with a fee-based contracts for the use of the software for damages covered by liability under mandatory statutory provisions such as in the case of assumption of guarantees, fraudulent concealment of a defect or according to Product Liability Law. Guarantees by 5w155 are only given in written form and in case of doubt are to be interpreted as such, only if they are referred to as “guarantee”.

## 9.2

Limitation of liability in the case of paid service provision. In case of slight negligence for paid service provisions, 5w155 is only liable for damages caused by hubteam and which are due to such essential breaches of duty, which endanger achieving the purpose of this contract or to breaches of duties, whose fulfillment enables the proper execution of this contract in the first place and whose compliance the customer may rely on (so-called violation of cardinal obligations). In these cases the liability of 5w155 is limited to typically contractual predictable damages. Liability for slight negligent violation of obligations that are not cardinal obligations (see Section 9.2 sentence 1) are excluded, except 5w155 is liable by law (see Section 9.1 sentence 2).

## 9.3

Liability for free service provision. In the case of free service provision (e. g. within the test period) 5w155 is responsible only for damage, which is based on wilful intent, or gross negligence as well as fraudulent intent. This limitation of liability does not apply to damages resulting from injury to life, body or health, for this 5w155 is liable without limitation.

## 9.4

Claims against third parties. The limitations of liability in clauses 9.1 to 9.3 also apply to claims against executive employees, employees, other vicarious agents or subcontractors of 5w155.

# 10. Data Protection and Confidentiality

## 10.1

hubteam collects and uses the personal data of the customer only within the framework of the respectively applicable statutory provisions. For this purpose the contracting parties shall enter into an agreement to the necessary extent of the respectively applicable provisions.

## 10.2

None of the contracting parties are entitled to transmit confidential information of the respective other contracting party to third parties without express consent (at least in textual form). This applies both to customers with contracts for free of charge use and contracts with a fee-based use. Any information, no matter whether written or oral, which (i) by its nature is confidential or subject to secrecy or (ii) which the contracting party, whom the information is transmitted to, must have recognised as confidential and a subject to secrecy because of exceptional circumstances. Confidential information includes, in particular, product descriptions and specifications as well as prices. Both contracting parties undertake to use

confidential information only for contractually agreed purposes. Both contracting parties take at least the same precautions as they do in regards to their own confidential information. Such precautions shall at least be reasonable to prevent disclosure to unauthorized third parties. In addition both contracting parties are obliged to prevent the unauthorized disclosure or use of confidential information by their customers, employees, subcontractors or legal representatives. The contracting parties shall inform each other in writing of any misuse of confidential information. The aforementioned obligation does not apply to information that (i) was known to the other party prior to transmission and without an existing confidentiality agreement, (ii) is transmitted by a third party not subject to a similar confidentiality agreement, (iii) is otherwise publicly known, (iv) was independently developed without using confidential information, (v) is released for publication in writing, or (vi) is required to be transmitted due to a court order or authority provided that the contracting party affected by the transmission is informed in time in order to take legal protection actions. Furthermore, the confidentiality obligation applies beyond the duration of the contract until twelve months after the effective termination date of the contract.

## **11. Reservation of Changes**

### 11.1

5w155 has the right to change these general terms and conditions at any time or to amend regulations for the use of any newly introduced additional services or features of the software. Changes and amendments to the general terms and conditions shall be announced to the customer by email to the indicated email address not later than four weeks before the scheduled coming into force. The customer's consent to the change of the general terms and conditions will be deemed granted if the customer does not object to the amendment in textual form (e. g. letter, fax, email) within a period of two weeks, beginning with the day following the day of the announcement of the amendment. 5w155 undertakes to separately indicate in the announcement of the amendment the possibility of objection, the deadline for an objection, the textual form requirement and the meaning or consequences of omitting an objection.

### 11.2

5w155 reserves the right to modify the software or to offer deviating functionalities, unless changes or deviations are not reasonable for the customer. If significant change of the software supported workflow of the customer and/or limitations in usability of so far generated data go along with the provision of a modified version of the software or a change of functionality of the software, 5w155 will announce this to the customer in textual form at the latest four weeks before the effective date of such a change. If the customer does not object to the change in textual form within a period of two weeks upon receipt of the notification of change, the change shall become part of the contract. 5w155 will draw the customer's attention to the aforementioned objection period and the legal consequences of its expiration in case of non-seizing of the possibility to object in every announcement of change.

### 11.3

5w155 further reserves the right to modify the software or to offer deviating functionalities, (i) to the extent necessary to make the services offered by 5w155 compliant to the law applicable to such services, in particular if the legal situation changes; (ii) to the extent 5w155 complies with a court order or authority decision addressed to 5w155; (iii) to the extent necessary to eliminate security vulnerabilities of the software; or (iv) to the extent that this is predominantly beneficial for the customer.

#### 11.4

5w155 is entitled to adjust the prices for the fee-based contractual services to compensate personnel cost or other cost increases annually in an appropriate amount. 5w155f will announce these price adjustments and the time of effectiveness of the price adjustments to the customer in textual form. The price adjustments shall not apply to the periods the customer has already paid for. If the price increase is more than 5% of the previous price, the customer may object to this price increase within a period of two weeks from notification. A change in the price resulting from a change in the scope of features or the number of employees to be administered shall not be deemed a price adjustment within the meaning of this section 11.4.

#### 11.5

If the customer objects to a change within the meaning of this section 11 in due form and due time, the contractual relationship continues under the previous conditions. In this case 5w155 reserves the right to terminate the contractual relationship extraordinarily with a notice term of one month.

#### 11.6

Amendments to these general terms and conditions must be made in textual form. This also applies to the waiver of the textual form itself.

## 12. Final Provisions

#### 12.1

If individual provisions of the general terms and conditions have not become an integral part of the contract as a whole or as a part or have become ineffective, the remaining contract stays effective. Insofar as provisions have not become an integral part of the contract or are ineffective, this part of the contract shall be governed by statutory provisions.

#### 12.2

The contractual relationship existing between the contracting parties is exclusively subject to the law of the Switzerland with explicit exclusion of the UN Convention on Contracts for the International Sale of Goods. Exclusive place of jurisdiction for all disputes arising from and/or in connection with this contractual relationship between 5w155 and the customer is, as far as legally permissible, the place of business of 5w155.