



# Falck

Safety Services

## GENERAL TERMS AND CONDITIONS OF FALCK NUTEC B.V. TRADING UNDER THE NAME FALCK SAFETY SERVICES (APRIL 2012 VERSION)

### Article 1 Definitions

In these General Terms and Conditions, the following terms will be used in the following sense, unless explicitly indicated otherwise:

**Customer:** the party contracting with the Contractor;

**Contractor:** Falck Nutec B.V. and/or the companies affiliated with them who provide services to the Customer;

**Agreement:** any offer made by the Contractor consisting of, among other things, providing training;

**Parties:** the Customer and the Contractor.

### Article 2 General

1. All offers by and all assignments to the Contractor to provide services to the Customer and all related Agreements are subject to these General Terms and Conditions.
2. In the event of the lease of fire-fighting equipment, the Terms and Conditions as referred to in Annex 1 to this document are also applicable.
3. The applicability of terms and conditions of the Customer (regardless of their nomenclature) is hereby explicitly rejected.
4. The Customer can only invoke stipulations in deviation of these Terms and Conditions if and insofar as they have been accepted in writing by the Contractor.
5. If one or more provisions of these Terms and Conditions and/or the Agreement are declared null and void or non-binding, or are cancelled, the other provisions in these Terms and Conditions and/or the Agreement will remain valid. In such a case, the Contractor and the Customer will endeavour to replace the null and void or non-binding provision by a valid provision that approximates the Parties' original intention as much as possible.

### Article 3 Offers

1. All offers made by the Contractor are non-binding and only valid during a period of 30 days after the date of the offer. The Contractor has the right to revoke an offer at all times. The Contractor is only bound to an offer made once (i) the Customer has signed the offer, and (ii) the Contractor has received signed offer from the Customer; or once the Contractor has commenced performance of the Agreement.
2. Prices mentioned in an offer are exclusive of VAT or similar taxes and levies, as well as costs to be incurred within the scope of the performance of the Agreement (for example, shipping and administrative charges), insofar as not evidenced otherwise by the offer.
3. Assignments and the acceptance of offers by the Customer cannot be revoked by Customer.
4. The Customer can only accept an offer in full and in its original contents. Any partial acceptance of an offer and/or any adjustments made to an offer made by the Customer shall not be binding upon the Contractor unless subsequent written approval hereof is submitted by the Contractor to the Customer.

### Article 4 Performance of the Agreement

1. The Contractor will perform the Agreement according to its best insights and ability. The Contractor is entitled to perform the work as it deems appropriate, the Contractor may engage third parties for the performance of the work and the Contractor may perform the work in parts.
2. The Customer must ensure that all information (i) of which the Contractor indicates to the Customer that such is necessary for the performance of the Agreement or (ii) of which the Customer should reasonably understand that such is necessary for the performance of the Agreement, shall be supplied by the Customer to the Contractor without undue delay. If the Customer does not comply with the aforementioned obligation or fails to do so without undue delay, the Contractor will be entitled to suspend performance of the Agreement and/or charge the Customer the ensuing additional costs according to customary rates.
3. The Customer guarantees the accuracy and completeness of the information it has provided to the Contractor. If the Customer does not comply with the aforementioned obligation, it shall be liable for all ensuing damage, unless the inaccuracy or incompleteness was obvious and evident to the Contractor.
4. If it is agreed between the Parties that the Agreement will be performed in stages, the Contractor is entitled to suspend parts that belong to a subsequent stage until the Customer has approved the previous stage in writing.
5. If the Contractor, or third parties it engages, performs work at the Customer's site or a site designated by the Customer, the Customer will provide the facilities reasonably required by those employees free of charge.
6. The Customer ensures that those using the Contractor's services have the required health statements and/or inspection certificates for such services. In the absence of such health statements and/or inspection certificates the Contractor will be entitled to withhold the services from those involved. Acquiring services from the Contractor without the necessary health statements or inspection certificates is at all times for the risk of the Customer.

### Article 5 Term of the agreement, performance term

1. The Agreement is entered into for an indefinite period of time, unless agreed otherwise by the Parties in writing.
2. If the Contractor has agreed with the Customer upon a certain end date or term for the performance of the services, and in the event such end date can not be met due to circumstances which can be attributed to the Contractor, the Customer is entitled to give the Contractor a reasonable period of no less than 20 business days within which the services should be finalized by the Contractor.  
Subsequent to such reasonable period, the Customer is entitled to terminate the Agreement on the part that has not been performed. Exceeding the reasonable period agreed upon or given by the Customer for the performance of the services will not entitle the Customer to non-performance of any of its obligation ensuing from the Agreement or to any damages or compensation or alternative damages or compensation.

### Article 6 Prices

1. Paragraphs 2 and 3 of this Article are only applicable to Agreements in which no fixed price is agreed to between the Parties. Paragraphs 4 and 5 of this Article are only applicable to Agreements in which a fixed price is agreed to between the Parties. Paragraphs 6 through 8 of this Article are applicable to all Agreements.
2. If no fixed price is agreed, the Customer will be invoiced based upon the number of hours spent, multiplied by the applicable rate of the Contractor applicable during the period in which the services are performed, unless a deviating rate is agreed in writing.
3. The Contractor is entitled to change its rates (also during the performance of an Agreement) for work to be performed after the price change, however always subject to a 10 business days written notice thereon to the Contractor.
4. If a fixed price is agreed, the Contractor is during the term of the Agreement entitled to increase its prices for the services to be performed under the Agreement, if higher costs than estimated are incurred as a result of an increase in price-determining factors such as purchase prices, transport costs, insurance premiums, wages, taxes, social security contributions and/or similar costs, or in the event of other price increasing circumstances which lead to price increases which the Contractor could not have foreseen. In that case, the Contractor is entitled to charge the higher costs on to the Customer.
5. In addition to the above, the Contractor can increase the prices for the services to be performed under the Agreement, if during the term of the Agreement it emerges that the originally agreed or expected amount of work and the price related thereto was estimated and fixed on a misleading, inadequate and/or incomplete basis.
6. The Contractor can increase its prices for the services to be performed under the Agreement, if the Contractor's cost related thereto increases as a result of government measures, social security levies and/or statutory rules and regulations, applicable to the Contractor.
7. The Contractor shall inform the Customer in writing of its intentions to increase its prices in accordance with the above principles and with no less than 10 business days written notice. If a notice on price increase is submitted by the Contractor to the Customer within three months after the conclusion of the Agreement, the Customer can by written notice which needs to be sent within 10 business days after receipt of the notice of price increase to the Contractor terminate the Agreement for the part not yet performed.
8. The Customer will be invoiced for the services provided by the Contractor on a monthly basis.

### Article 7 Payment

1. Payment should be effected in euros and within 30 days after the invoice date and in the manner as designated by the Contractor in the invoice, without any discount or set off. Objections to the amounts charged do not suspend the obligation to pay. The Contractor can at any time demand full or partial advance payment and/or otherwise require security for payment for the services performed or to be performed under the Agreement.
2. If the above term of payment is exceeded by Customer, the Customer will automatically be in default of the Agreement. Once the Customer is in default of any payment, all other claims the Contractor has on the Customer will immediately be due and payable, and default will occur immediately, without notice, with regard to those claims as well. As from the day on which the Customer is in default, it shall owe the Contractor the statutory trade interest, all without prejudice to all other rights accruing to the Contractor.
3. In the event of liquidation, insolvency, attachment or suspension of payments on the part of the Customer, all the Contractor's claims on the Customer are immediately exigible.
4. All judicial or extrajudicial costs incurred by the Contractor as a result of the Customer's default shall be paid by the Customer.

### Article 8 Retention of title

1. If the Agreement includes sale of goods from the Contractor to the Customer, the ownership of such goods does not pass to the Customer until the latter has paid the Contractor all that which it owes to the Contractor pursuant to or in connection with the Agreement thereon.
2. The Customer is not entitled to pledge or otherwise encumber the goods covered by the above retention of title.
3. If any third parties impose an attachment on the goods covered by the above retention of title or wish to establish or assert rights on the same, the Customer is required to inform the Contractor thereof immediately.
4. The Customer is required to insure and keep insured the goods covered by the above retention of title against fire, explosion and water damage, as well as against theft, and to provide the Contractor with the insurance policy upon the Contractor's first request.
5. The Customer may only sell the goods delivered under retention of title which it has not yet paid in full when acting in the ordinary course of its business, however the Customer may not lease such goods, encumber them with limited rights or use them as a means of payment.
6. In the event the Contractor wishes to exercise its ownership rights in accordance with the above retention of title, the Customer authorises the Contractor (or any third parties designated by the Contractor), now for then, unconditionally and irrevocably, to enter the locations where the Contractor's goods are located and retrieve such goods there from.
7. As long as the retention of title is applicable to the goods delivered by the Contractor, the Customer will store the goods and label them in such a way that they are clearly identifiable as goods belonging to the Contractor.

### Article 9 Investigation, recoveries

1. The Customer must report complaints regarding defects and shortcomings in the services and/or goods provided under the Agreement to the Contractor in writing within 5 business days after discovery of such defects/shortcomings, but no later than 10 business days after the service was provided or the goods



# Falck

## Safety Services

were delivered. The notice of default must state the details of the defect/shortcomings default as accurately as possible, so that the Contractor can respond adequately.

2. If a complaint is valid, the Contractor shall: (i) if a service is involved, perform the services in the correct manner, unless performing the services is no longer useful to the Customer and the Customer can demonstrate in writing that this is the case, in which case the Contractor will credit the services in question, and/or (ii) if the delivery of a good is involved, repair the good, redeliver or credit the purchase price, at the discretion of the Contractor.

### Article 10 Cancellation of training and termination

The following cancellation conditions apply to training confirmed by the Contractor verbally and/or in writing:

1. Cancellation of the confirmed training reservation or training participation can only be effected by letter, fax or e-mail sent to the Contractor's training administration department.
2. If a training is cancelled by the Customer the following conditions shall apply:
  - if the training is cancelled more than 15 workdays before the commencement date of the training, the Contractor will not charge any costs;
  - if the training is cancelled less than 15 workdays but more than 10 workdays before the commencement date of the training, then if: (a) simultaneously the same training will be booked by Customer for an alternative date, the Contractor will not charge any costs, or (b) the same training will not be booked simultaneously for an alternative date, the Customer will pay EUR 250 as compensation to Contractor;
  - if the training is cancelled less than 10 workdays but more than 5 workdays before the commencement date of the training, then if: (a) simultaneously the same training will be booked by Customer for an alternative date, the Customer will pay EUR 250 as compensation to Contractor, or (b) the same training will not be booked simultaneously for an alternative date, the Customer will pay the entire price of the training;
  - in addition to the foregoing, if the training is cancelled less than 10 workdays before the commencement date of the training, then Customer will reimburse all costs and damages of Contractor (and indemnify Contractor for any damages related thereto) if as a result of such cancellation by Customer, insufficient participants to the training remain (unless Contractor finds sufficient replacements) and as a result thereof the training needs to be cancelled due to a minimum number of participants being required to provide such training.
3. Any examination fees related to the training will be charged on to the Customer in full if the training is cancelled less than 10 business days prior to the commencement date of the training.
4. Any amounts paid in advance by the Customer with respect to the cancelled training will be refunded, less the above costs for cancellation.
5. The Contractor is entitled to cancel standard training with open registration no later than 10 business days prior to the commencement date, if the number of registrations received for the training in question is lower than the established minimum. If the Customer has registered for a standard training which is cancelled, the Contractor will inform the Customer of any alternative dates for the standard training concerned.
6. The parties can terminate an Agreement related to services other than offering a training, in writing, with due observance of a notice period of at least two months.
7. If an Agreement is terminated prematurely by the Contractor, the Contractor will be responsible, in consultation with and at the expense of the Customer, for transferring services yet to be performed to third parties, unless there are facts and circumstances upon which the termination is based that can be attributed to the Customer. In the latter instance, the Contractor is not obliged to organise the transfer of the services.

### Article 11 Suspension and dissolution

1. The Contractor is authorised to suspend the performance of its obligations under the Agreement or immediately dissolve the Agreement in full or in part, without any further notice of default or legal intervention being required and without the Contractor being obliged to pay any damages if:
  - the Customer is in default with any obligation under the Agreement and such default is not remedied (if remedy is still possible) within 20 business days after a written notice submitted by the Contractor;
  - the Customer is declared insolvent or if the insolvency of the Customer is applied for, the Customer proceeds to liquidation or dissolution of its business or if the Customer applies for or is granted a suspension of payments.
2. The Contractor's authority to dissolve the Agreement is without prejudice to all other rights of the Contractor. If one of the circumstances referred to in paragraph 1 of this Article occurs, all claims the Contractor has on the Customer will become immediately due and payable.

### Article 12 Return of goods provided

1. If the Contractor has provided goods to the Customer in the performance of the Agreement, the Customer is required to return the goods made available, within 10 business days after the end of the Agreement in their original condition, free of defects and in full.
2. If the Customer fails to comply with the obligation referred to in paragraph 1 of this Article, all ensuing costs, including, but not limited to repair or replacement of the goods shall be for the account of the Customer.

### Article 13 Liability

1. The Contractor's liability (including liability based on tort) is limited to the direct damage suffered by the Customer and caused by wilful misconduct or gross negligence of the Contractor.
2. If the Contractor is liable for any damage, then that liability is limited to a maximum of: (i) the amount actually paid out in that regard by the Contractor's insurer, or (at the discretion of the Contractor) (ii) an amount equal to twice the

invoiced amount under the Agreement, however with a maximum of EUR 100,000 in case of damage to goods and EUR 500,000 in case of damages resulting from personal injury or death.

3. In the case of an Agreement with a term longer than six months, the liability will be limited as stated in paragraph 2, whereby the invoice amount referred to under paragraph 2 (ii) will be equal to the invoiced amount for services rendered by the Contractor under the Agreement during the last six months, without that amount being multiplied by two, however still with a maximum of EUR 100,000.
4. Direct damage is exclusively:
  - the reasonable costs incurred by the Customer in order to remedy the Contractor's faulty performance of the Agreement, if the default is not remedied by the Contractor itself within a written notice of at least 20 business days;
  - the reasonable costs to determine the cause of default and amount of the damage, insofar as the determination relates to damage in the sense of these Terms and Conditions;
  - reasonable costs incurred to prevent or limit the damage caused by the default, insofar as the Customer demonstrates that these costs led to the limitation of direct damage as referred to in these Terms and Conditions.
5. The Contractor is never liable for indirect damage or consequential damage, which is all damage that cannot be considered direct damage, including but not limited to loss of profits, lost savings and damage as a result of the stagnation of operations, except in the case of intent by the Contractor.
6. Entering the sites of the Contractor is at one's own risk. The Contractor is not liable for any damage to vehicles or other machinery of the Customer or its subordinates.
7. If the Customer uses a training facility of the Contractor, which use is not within the scope of an activity led by the Contractor, then the activities will be performed exclusively under the responsibility of the Customer and the Customer will accordingly be liable for any type of damage to itself and/or the Contractor, and the Customer indemnifies the Contractor against all liabilities related thereto.

### Article 14 Indemnification/Guarantee

1. The Customer shall indemnify and hold harmless the Contractor against all claims of third parties on the Contractor as a result of the performance of the Agreement by the Contractor, insofar as those claims of third parties are greater than or different from those to which the Customer is entitled from Contractor on the basis of these conditions.
2. If the Customer provides the Contractor with information carriers, electronic files and/or software etc., the Customer guarantees that the information carriers, electronic files and/or software etc., are free of viruses and defects.

### Article 15 Force Majeure

1. The Parties are entitled to invoke force majeure if the performance of their obligations under the Agreement in full or in part, temporarily or not, is impeded or complicated by circumstances that are reasonably beyond their control, including lightning strike, floods, exceptionally extreme weather conditions, fire, war, epidemic, illness of the Contractor's personnel, terrorist acts, acts by local or national governments or other authorised authorities, planned strikes and wildcat strikes, selective strikes or work to rule acts. In the case of force majeure on the part of one of the Parties, the Parties' obligations under the Agreement will be suspended.
2. If the force majeure lasts longer than three months, each Party is authorised to terminate that part of the Agreement that cannot be performed, by written notification to the other Party.

### Article 16 Insurance

1. The Customer shall take out compulsory and necessary insurance to cover its employees and its other interests in connection with any training provided by Contractor such as, but not limited to industrial injury insurance.
2. Contractor shall enter into and maintain professional liability insurance for the training provided to the Customer. The insurance shall cover Contractor's liability to pay damages at any time in accordance with Clause 13.

### Article 17 Confidentiality

1. The Parties are obliged to observe confidentiality with regard to all confidential information they receive from each other or from another source within the scope of the Agreement. Information is considered confidential if the other Party is informed thereof or if this ensues from the nature of the information. In the case of doubt, information will be considered confidential.
2. If, on the basis of a statutory provision or a legal court order, one of the Parties is required by the law or the competent court to provide information to third parties, and the relevant Party cannot invoke a statutory right or right of privilege recognised or permitted by the competent court, then that Party is not required to pay damages or give indemnification and the other Party is not authorised to terminate the Agreement.

### Article 18 Intellectual property rights and copyrights

1. All intellectual property rights (regardless of their nomenclature), regardless of whether they accrue to the Contractor, subcontractors or suppliers of the Contractor and which the Contractor uses within the scope of the Agreement or which are vested in works provided or delivered to the Customer by the Contractor within the scope of the Agreement, remain with the Contractor.
2. All works and material provided by the Contractor, such as teaching materials, in any form whatsoever, are exclusively intended to be used by the Customer and the Customer may not multiply, publish or disclose to third parties without the prior, written authorisation of the Contractor, neither for internal nor for external use, in any form whatsoever.
3. The Contractor reserves the right to use the knowledge gained through the performance of the Agreement for other purposes, insofar as this does not



# Falck

## Safety Services

involve the disclosure of the Customer's confidential information to third parties. Intellectual rights vested in such knowledge belong solely to the Contractor.

4. The Customer is not permitted to make photographs, to film and/or videotape the training or training facilities without the prior, written authorisation of the Contractor.

### **Article 19 Non-acquisition of personnel**

1. During the term of the Agreement and a period of one year after the termination thereof, the Customer will not, in any way, directly or indirectly, solicit and/or hire personnel (in permanent or temporary employ) from of the Contractor (or from companies that are involved with the Contractor in the performance of this Agreement), or otherwise have them work for Customer. Violation of this prohibition leads to forfeiture of an immediately exigible penalty by the Customer to the Contractor of twice the annual salary of the employee in question.

### **Article 20 Disputes**

The competent court is the Court of Rotterdam, that has exclusive jurisdiction to examine disputes ensuing from or related to the Agreement.

### **Article 21 Applicable law**

The Agreement, these General Terms and Conditions and all ensuing obligations are governed by the laws of the Netherlands.

### **Article 22 Amendments of the Terms and Conditions**

The Contractor may amend these Terms and Conditions from time to time. The amended terms and conditions will be applicable to the Customer 20 business days after the Contractor has informed the Customer of the amendments in writing, unless the Customer sends a written objection to the amendments to the Contractor within 10 business days after receipt of the information from the Contractor. If the Customer objects to the amendments, the Contractor can terminate the Agreement without further notice. If the Contractor does not terminate the Agreement within one month after receiving the objection from the Customer, the unamended Terms and Conditions will continue to apply to Agreement.

### **Article 23 Translation**

This English translation has been provided for convenience of the Customer only. In case of any discrepancy between this English text and the Dutch version, the text of the Dutch version shall prevail.