




# General conditions

 January 2025

## Introduction

The private limited company FalconForce B.V. is registered at the Chamber of Commerce under number 76682307 and is established on Energieweg 3, 3542DZ Utrecht, The Netherlands.

## Article 1 Definitions

In these general conditions, the terms below are used in the meaning as follows, unless expressly stated otherwise.

1. **Offer:** an offer contains a description of the Services to be carried out by FalconForce.
2. **Services:** the cyber security activities to be performed by FalconForce pursuant to the Agreement, for the benefit of Client.
3. **FalconForce:** the private limited company FalconForce B.V., established in the Netherlands that offers Services to Client.
4. **Client:** the legal or natural person acting from the exercise of a profession or business that appoints or considers appointing FalconForce to perform Services on grounds of an Agreement.
5. **Agreement:** means an executed Offer, these general conditions and applicable service terms, which form the whole agreement between FalconForce and Client.
6. FalconForce and Client may hereafter be mutually referred to as “**Parties**” and individually as a “**Party**”.

## Article 2 Applicability

1. These general conditions are applicable to each Offer of FalconForce to Client and each agreement between FalconForce and Client, and will prevail in case of discrepancies and inconsistencies. In case of a conflict between provisions in the executed Offer, these general conditions and applicable service terms, the following order of preference shall apply: (1) applicable service terms, (2) these general conditions and (3) the executed Offer, unless explicitly stated otherwise with a reference to the general conditions and/or applicable service terms.
2. The purchase conditions or any other general conditions of Client are explicitly excluded.
3. If one or more provisions of these general conditions are partially or completely void or are annulled, the other provisions of these general

conditions remain in force, and the void/annulled provision(s) will be replaced by a provision with the same tenor as the original provision.

4. FalconForce and Client agree to comply with the provisions of the Agreement, and all laws, rules and regulations directly applicable to respective Party in the performance of the Services.

## **Article 3 The Offer**

1. FalconForce is only bound by an Offer if it is confirmed in writing by Client within 30 days.
2. Delivery times in the Offer in principle are indicative and do not confer to Client the right, in case of their overrunning, to termination or compensation of damages, unless expressly agreed otherwise.

## **Article 4 Adoption of the Agreement**

1. The Agreement is concluded at the moment that Client has accepted an Offer by FalconForce by returning a signed copy (scanned or on paper) to FalconForce, or by giving explicit and unambiguous approval for the Offer by e-mail.
2. FalconForce is not bound by an Offer if Client could reasonably have understood or should have understood that the Offer contains an apparent mistake or typing error. Client cannot derive any rights from such mistake or typing error.
3. Every Agreement that is entered into by Client with FalconForce lies with the company and not with an individual person who is associated with FalconForce. The applicability of articles 7:404 BW (Dutch Civil Code) and 7:407 section 2 BW is explicitly excluded.

## **Article 5 Duration and termination of the Agreement**

### **Duration**

1. The Agreement is adopted for a fixed term, unless the content, nature, or substance of the Services entails that it was adopted for an unlimited time. The duration of the Agreement also depends on external factors, including, though not limited to, the quality and the timely provision of the information that FalconForce obtains from Client.
2. The Agreement shall automatically terminate without further action upon complete delivery of the Services and Parties' completion of all obligations

under article 11, unless the Agreement is terminated earlier under this article 5 or article 15.

## Termination

3. Client is only entitled to terminate the Agreement for convenience up to three months before the actual start of the Services as agreed between the Parties, in which case FalconForce is entitled to invoice the costs already effectively incurred (including the time spent). The administration of FalconForce is thereby leading to determine the costs Client owes. If the client terminates or otherwise cancels the Agreement within three months before the start of the Services as agreed between the Parties, Client is liable for the full fee as agreed in the Agreement, which becomes immediately payable at the time of termination or cancellation by Client.
4. Either Party may at any time terminate the Agreement for cause with immediate effect by providing written notice to the other Party if the other Party:
  - a. materially breaches any obligation under the Agreement which breach cannot be remedied;
  - b. fails to cure a material breach of an obligation under the Agreement which can be remedied, within a reasonable term after receiving written notice from the terminating Party of the breach;
  - c. becomes subject to any bankruptcy or insolvency proceeding;
  - d. is declared bankrupt or granted a moratorium of payments or is in any other way subject to insolvency proceedings in the relevant local jurisdiction; or
  - e. terminates or suspends its business.
5. Termination of the Agreement under articles 5.3 and 5.4 leaves unaffected the payment obligations of Client to the extent FalconForce at the time of termination has already carried out part of the Services, which becomes immediately payable at the time of termination.

## Article 6 Obligations of FalconForce

1. FalconForce carries out the Services with due care, skill and diligence, as may be expected from a good service provider operating in the same industry. All Services provided by FalconForce under the Agreement are efforts-based (“inspanningsverplichtingen”) obligations, unless results have been explicitly established in the Agreement as obligations of result (“resultaatsverplichtingen”).

2. The Agreement will only be carried out for the benefit of Client. Third parties cannot derive any rights from (the results of) the Services carried out in connection with the Agreement.
3. During the implementation of the Services, FalconForce will follow the instructions of Client pertaining to the scope of the established Services and any reasonable security and compliance measures imposed by Client on FalconForce, unless such instruction alters the content or scope of the established Services.
4. FalconForce has the right to deploy third parties at its own discretion for the implementation of the Services. FalconForce will remain responsible for the acts and omissions of such third parties.
5. If the nature and the duration of the Services require such, FalconForce will inform Client intermediately of progress of the Services in the manner established.
6. The implementation of the Services is based on the information supplied by Client. If the information is altered by Client, this may affect the planning and costs associated with the timely delivery of Services. FalconForce will inform Client of any consequences such alteration may cause and the potential cost.

## **Article 7 Obligations of Client**

1. Client is obligated to timely provide FalconForce with all required information, assets, and decisions, in the form requested, for the purpose of the correct and timely completion of the Services. Failing such, it may happen that FalconForce is not able to realize the full implementation of the Services and/or delivery of the relevant results of the Services.
2. Client agrees to obtain all required permissions and authorizations from Client's third parties to allow FalconForce to carry out the Services, as evidenced in writing and shared with FalconForce at first request.
3. Client is responsible for the accuracy and/or completeness of information delivered to FalconForce and/or third parties for the purpose of implementing the Services.
4. If Client provides electronic files, software, or information carriers to FalconForce, Client will ensure, as far as possible, that these are free from viruses and defects.
5. Prior to the start of the Services, Client will report all circumstances to FalconForce in writing that are or may be of importance to the Agreement, including any points and priorities for which Client desires attention.
6. In case of changed circumstances pertaining to the Services, Client must communicate this immediately to FalconForce, or as soon as reasonably possible after the change has become known.

7. If after the implementation of the Services or if in connection with observations of FalconForce during the implementation of the Services it turns out that new or altered security controls or mitigations are required (such as the changing of login data, passwords or configuration settings, the purchase of security software, etc.), Client will always be responsible for implementing such measures for its own risk and account.

## **Article 8 Advice**

1. FalconForce can prepare deliverables, such as an advice, action plan, design, report, or planning, during the provisioning of the Services. The content of the deliverables is not binding and is advisory in nature, though FalconForce will observe the care obligations it is subject to. Client decides himself and under its own account and responsibility whether to follow the advice.
2. Client is aware that advice provided and security checks conducted by FalconForce are based on the facts that are known to FalconForce at the time the Services are delivered. All communications made by FalconForce regarding the security of IT systems only regard a snapshot in time.
3. The advice provided by FalconForce pertains to, among other things, taking (ICT) security measures for the purpose of the environment of Client. The degree of efficacy of these security measures depends on various (external) factors, such as the state of current technology, the availability of software from third parties, etc. FalconForce therefore cannot guarantee that these measures and the advice provided by it always lead to an environment that is constantly adequately secured. Taking security measures does not offer a full guarantee against any cyber breaches by third parties (such as cyber criminals, hacking, phishing, DDoS- attacks, etc.).

## **Article 9 Intellectual property**

1. Client and FalconForce each own all rights, title and interest (including, without limitation, copyrights, database rights, trade secrets and all other industrial and intellectual property rights) to the information, advice, action plans, designs, reports, detection content and all other materials that they themselves developed or acquired prior to the date of the Agreement or outside the scope of the Agreement ("Background IP"). Nothing in these general conditions or the Agreement will operate to transfer any Background IP from one Party to the other Party.
2. FalconForce (and its licensors) owns all rights, title, and interest (including, without limitation, copyrights, database rights, trade secrets, and all other

industrial and intellectual property rights) in and to the (results of the) Services, including but not limited to any advice, action plans, designs, reports, detection content and all other materials drafted or developed for the benefit of Client and/or made available to Client under the Agreement ("Foreground IP").

3. Client is solely granted a non-exclusive, non-transferable, non-pledgeable (*niet-verpandbaar*), non-sublicensable right to use FalconForce's Background IP and Foreground IP for the improvement of its own cyber security posture - meaning that FalconForce's Background and Foreground IP may only be shared for that purpose on a need-to-know basis within Client's own organization or with Client's relevant stakeholders, such as an external IT supplier, auditor or regulator - or to improve the cyber security posture of its customers - meaning that FalconForce's Background IP or Foreground IP may only be shared for that purpose, on a need-to-know basis, with Client's customers.
4. Deliverables drafted by FalconForce may not be altered by Client or on behalf of Client and may only be used for the agreed purposes.

## **Article 10 Additional activities and modifications**

1. If for any reason it turns out during the implementation of the Services that changes are required, such changes will be discussed by Parties in advance, after which Parties will jointly assess the impact of these changes on the implementation of the Services, completion of timelines, and additional costs, if any.
2. In the event FalconForce is unable to accommodate the changes under the existing Agreement, FalconForce may issue a new Offer for Client to consider, or FalconForce may refer Client to a competent third party capable of implementing such changes.
3. To the extent the changes are the result of negligence on the part of FalconForce, these costs are not passed on to Client.

## **Article 11 Prices and payment**

1. All prices are exclusive of sales tax (VAT), unless agreed otherwise.
2. FalconForce carries out the Services in conformity with the fee arrangement laid down in the Agreement. For Services based on 'time and material' the costs of the Services are calculated afterwards, based on the hour registration prepared by FalconForce (post-calculation).
3. Travel time outside the Netherlands for the purpose of Client and reasonable costs associated with travel will be agreed beforehand with and are passed on to Client.

4. Client is obligated to fully reimburse the costs of third parties that are deployed by FalconForce after approval of Client, unless expressly agreed otherwise.
5. Parties can agree that Client must pay in advance. If advance payment has been agreed, Client must settle the advance before a start is made with the implementation of the provision of Services.
6. Client cannot derive any rights or expectations from a budget issued beforehand, unless Parties have expressly agreed otherwise.
7. FalconForce has the right to annually increase the applicable prices and rates in accordance with the effective inflationary rates and will notify Client of such increases. The index '[handel en diensten omzet M Specialistische zakelijke diensten](#)' by CBS (Centraal Bureau voor de Statistiek) will be used. Other price changes during the Agreement are only possible if and to the extent expressly agreed between the Parties.
8. Client must settle the amount invoiced pursuant to the Agreement at once, without any setoffs or suspensions, within the indicated payment term as stated on the invoice, on the bank account number communicated by FalconForce. The standard payment term is 30 days from the date of issuance of an invoice from FalconForce.
9. In case of the liquidation, insolvency, bankruptcy, involuntary liquidation or request of payment vis-à-vis Client, the payment and all other obligations of Client on account of the Agreement become immediately exigible.

## **Article 12 Collection policy**

1. In case Client does not comply with its payment obligation and has not complied with its obligation within the term set for payment, Client falls legally into default.
2. As from the date that Client is in default, FalconForce is entitled without any further default notice to the statutory commercial interest from the first day of default until full settlement, and to compensation of the extrajudicial collection costs pursuant to article 6:96 BW (Civil Code), to be calculated according to the table from the decree regarding extrajudicial collection costs 'besluit vergoeding voor buitengerechtelijke incassokosten' of 1 July 2012.
3. If FalconForce has incurred more or higher costs than were reasonably necessary, these costs are eligible for reimbursement. Also, the integral judicial and enforcement costs incurred are borne by Client.

## **Article 13 Privacy, data processing, and security**

1. In the event FalconForce processes personal data while performing the Services under the direction and responsibility of Client, they will act as data processor in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") and its Dutch Implementation Act ("Uitvoeringswet AVG") and their successors. Both FalconForce and Client agree to comply with the requirements of GDPR as it relates to the Services, in particular when processing and sending personal data.
2. Should FalconForce process and store any data, information or documents of Client (including but not limited to personal data) it shall implement market-standard security measures and practices to make sure the data is protected against internal and external threats and the risk of data loss. Client will make sure proper backups are made of Client's data in their own environment.

## **Article 14 Suspension**

1. FalconForce has the right to withhold deliverables or suspend the Services if client is in default with compliance to its obligations under the Agreement, including late payment of invoices. The withholding of deliverables or suspension of Services does not affect the payment obligations of Client for the Services that have already been carried out.
2. If Client suspends or otherwise delays the delivery of Services:
  - a. within three months before the start of the Services as agreed between the Parties, or
  - b. during provisioning of the Services,

for a reason not attributable to FalconForce, FalconForce is entitled to invoice Client for the costs calculated on a time and material basis for all already scheduled hours against its standard rates. FalconForce will use reasonable efforts to reduce these costs by deploying the personnel concerned on assignments for other clients.

## **Article 15 Force majeure**

1. FalconForce is not liable in case, as a result of a situation of force majeure, it is unable to comply with its obligations pursuant to the Agreement.
2. By force majeure on the part of FalconForce is included in any case, though it is not limited to: (i) force majeure of suppliers of FalconForce, (ii) non-

performance of third parties, (iii) government measures, (iv) malfunction of electrical power, the internet, data network and/or telecom facilities, (v) illness of employees of FalconForce or of advisors deployed by it, and (vi) other situations that in the opinion of FalconForce fall outside its sphere of influence that temporarily or permanently prevent compliance with its obligations.

3. In case of force majeure, both Parties have the right to completely or partially terminate the Agreement. All costs incurred before the termination of the Agreement will in such case be paid by Client. FalconForce is not obliged to compensate Client for any such losses as may have been caused by such a termination.

## **Article 16 Limitation of liability**

1. The result of the Services and deliverables provided by FalconForce is always based on a snapshot in time and always depends on various external factors, such as the suitability and availability of ICT systems and software of Client and of third parties and the state of technology. FalconForce cannot guarantee that the implementation by Client of advice from FalconForce leads to the effective security of the ICT environment and workplace of Client.
2. In the event of an attributable shortcoming of FalconForce, FalconForce is exclusively bound to pay any compensation of damages if Client has declared the default of FalconForce within a reasonable term after discovery of the shortcoming and FalconForce subsequently has not restored this shortcoming within a reasonable term. The default notice must be submitted in writing and contains a description/substantiation of the shortcoming with such detail, that FalconForce is able to respond adequately.
3. The liability of FalconForce for a breach of its obligations under the Agreement or arising from any other legal basis whatsoever, explicitly including each and every failure to meet a guarantee or indemnification obligation, shall be limited to compensation of direct damages of Client with a maximum of the total amount that is invoiced under the Agreement in the preceding 12 months, unless and insofar the damage is caused by intent or deliberate recklessness of the management of FalconForce. Direct damage is limited to: reasonable costs incurred to mitigate or prevent direct damage, the determining of the cause of the damage, the liability, and the manner of restoral.
4. Parties expressly exclude all liability for consequential damage. FalconForce and Client are not liable for indirect damage, business damage, loss of profit, and/or incurred losses, missed savings, damage due to operational stagnation, the loss of assets, delay damage, interest damage, and immaterial damage.
5. If a third party is deployed by or on behalf of Client, FalconForce is never liable for the actions and advice of the third party deployed by Client or for the

incorporation of results (of advice drawn up) of the third party deployed by Client in FalconForce's own deliverables.

6. Only in case of intent or deliberate recklessness is FalconForce liable for loss of data and information as may occur as a result of the Services conducted by FalconForce.
7. All claims of Client on account of shortcomings on the part of FalconForce lapse if they have not been reported in writing, including substantiation, to FalconForce within one year after Client has become or could reasonably have become aware of the facts on which he bases its claims. One year after the termination of the Agreement between Parties, the liability of FalconForce lapses.

## **Article 17 Non-disclosure**

1. Each Party undertakes to take all necessary steps to protect the confidential nature of all confidential information of the other Party, agreeing in particular:
  - to share confidential information solely with personnel and representatives of the Parties which have a need to access such information to draft an Offer and or to exercise the rights and obligations under the Agreement;
  - to refrain from making any confidential information available to any third party without the prior written consent of the other Party;
  - to take all reasonable measures to avoid disclosure or unauthorized use of confidential information, which measures shall include the highest degree of care that either Party utilizes to protect its own confidential information of a similar nature, which will in no event be a less than reasonable degree of care.
2. The obligation to maintain confidentiality does not apply to information:
  - available to the general public.
  - disclosed to one of the Parties by a third party without any obligation of confidentiality.
  - already in the possession of or known to one of the Parties at the time of disclosure.
  - developed independently of the confidential information by the other Party, or
  - if and to the extent to one of the Parties and/or its personnel are obliged by law, regulation or under an act or decision of a court or administrative authority to disclose such information.
3. The obligation of confidentiality as described in this article 17 shall remain in effect also following the termination of the Agreement, regardless of the grounds for termination.

4. All data and information regarding the IT systems of Client are not retained longer than is necessary, with a final term of a maximum of 3 months after termination of the Agreement, unless a longer term is required on grounds of a legal obligation.

## **Article 18 Indemnification**

1. Client will defend, indemnify and hold harmless FalconForce from and against any claims by third parties, including data subjects, and administrative fines and penalties imposed by a supervisory or other governmental body, based on, or in relation to, FalconForce provisioning of the Services, unless such claim results from FalconForce's breach of its obligations under this Agreement.

## **Article 19 Complaints**

1. If Client is not satisfied with the service of FalconForce or has complaints otherwise about the execution of the Services, Client is obligated to report such complaints as soon as possible, though no later than 10 business days after the relevant occasion leading to a complaint. Complaints can be reported in writing at [info@falconforce.nl](mailto:info@falconforce.nl), specifying "Complaint" as the subject.
2. The complaint must be sufficiently substantiated and/or clarified for FalconForce to take the complaint under advisement.
3. FalconForce will respond as soon as possible, though no later than within 5 business days, to the complaint substantively.
4. Parties will try to find a solution through mutual consultation.

## **Article 20 Applicable law**

1. The legal relationship between FalconForce and Client shall be governed by Dutch law. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.
2. In case of disputes that have arisen through or in connection the Agreement, Parties shall attempt in good faith to resolve the dispute. All disputes arising in connection with the Agreement, or further agreements resulting therefrom, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The place of arbitration shall be Amsterdam (the Netherlands), without prejudice to FalconForce's right to submit a dispute about the payment for its Services to the Court of Midden-Nederland (the Netherlands). The proceedings shall be conducted in English.

