

## TERMS & CONDITIONS

### 1. Interpretation & Definitions

- 1.1 The following expressions shall have the following meanings:
  - 1.1.1 "Client" means the client specified in the booking.
  - 1.1.2 "Company" means SafetyNow Training Limited, 9 Poplar Place, Leeds, West Yorkshire, LS14 2FG.
  - 1.1.3 "Conditions" means these terms and conditions as amended from time to time in accordance with clause 16.
  - 1.1.4 "Contract" means the contract between the Company and the Client for the supply of Services in accordance with these Conditions.
  - 1.1.5 "Order" means the Client's order for Services as set out in the Company's Quote.
  - 1.1.6 "Quote" means the Company's official and detailed quotation as emailed to the Client.
  - 1.1.7 "Services" means the courses as detailed in the Quote.
- 1.2 The headings to these Conditions are for guidance only and shall not affect the construction of the Contract. The singular shall include the plural and vice versa.
- 1.3 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority (and for the avoidance of doubt the document in 1.3.1 takes priority over the document in 1.3.2):
  - 1.3.1 the open course booking confirmation email;
  - 1.3.2 these Conditions.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

### 2. Appointment

- 2.1 All Orders must be confirmed to the Company by email. Each receipt of a course booking confirmation email will be deemed to be an offer by the Client to purchase Services in accordance with the Quote and upon these Conditions. The Contract is formed when the Order is accepted by the Company by way of a written acknowledgment of Order. No contract will come into existence until a written acknowledgement of Order is issued by the Company.

### 3. Description

- 3.1 The quantity and description of the Services will be as set out in the Quote. All samples, drawings, descriptive matter specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures, excluding the Quote, are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described by them. They shall not form part of the Contract or have any contractual force. The Company reserves the right to alter the content, timing, venue and format of the Services.

### 4. Open Courses

- 4.1 Whilst we will try to maintain ideal numbers of delegates to tutors, this is not always possible. The final decision on the number of delegates per course is made by the Company.
- 4.2 The Company reserves the right to deliver a course by using one or multiple trainers. Whilst the same trainer will always be used where possible, this is not always practical.
- 4.3 Course materials are kept under continuous review via rigorous quality procedures. The Company cannot be held responsible for any omissions or errors in the course materials.
- 4.4 The Company cannot be held responsible for unforeseen circumstances (including acts of God) that affect the running/delivery of a course. We will endeavour to work with our clients to resolve any such matter to the best of our ability.
- 4.5 Venues will be of a suitable standard and refreshments will be included in the delegate rate.

## 5. E-Learning Training Courses

- 5.1 Invoices will be issued immediately on receipt of booking confirmation email.
- 5.2 Login details and access to E-Learning courses are supplied only on payment of invoice, or as agreed.
- 5.3 No refunds or cancellations can be offered once login and access details have been provided.

## 6. In-House Training

- 6.1 For any courses that are to be provided on the client's premises, it is the responsibility of the Client to provide the following:
  - 6.1.1 A suitable training room, large enough for all attendees
  - 6.1.2 Lunch and refreshments (if applicable)
  - 6.1.3 A projector, flipchart and pens
  - 6.1.4 Toilet and washing facilities
- 6.2 The Company reserves the right to deliver a course by using one or multiple trainers. Whilst the same trainer will always be used where possible, this is not always practical.

## 7. Price

- 7.1 The Client agrees to pay the fees at the rates and in the manner set out in the Quote. Value Added Tax (VAT) is quoted separately where applicable and will be charged at the standard rate and shall be payable by the Client in addition to the fees.
- 7.2 Invoices will be submitted by the Company on receipt of an open course booking confirmation email and shall be paid by the Client 14 days before the start of the course or as otherwise agreed in writing.
- 7.3 In the event of late payment for whatever reason and without prejudice to its other rights and remedies, the Company shall have the right:
  - 7.3.1 to suspend any further performance of the Services for such period as the Company feels fit including, where appropriate, the issuing of any exam results;
  - 7.3.2 to charge interest on all outstanding monies due from the Client to the Company which will accrue each day at a rate of 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%, from the date of the invoice to the date of payment. The Client shall pay the interest together with the overdue amount.
- 7.4 If the performance of the Services is suspended or cancelled at the request of the Client or is prevented or delayed by any act or omission by the Client, or through any failure or delay by the Client, including but not limited to the performance of its obligations under clauses 10.1 below, then the Company shall be immediately entitled to:
  - 7.4.1 full payment for Services commenced prior to suspension, cancellation or delay by the Client; and
  - 7.4.2 cancellations by the Client must be provided to the Company in writing and are subject to the following charges:
    - Cancellation over 28 days before the Services start date – 10% of fees;
    - Cancellation between 15 and 28 days before the Services start date – 50% of fees;
    - Cancellation up to 14 days before the Services start date – 100% of fees.
- 7.5 All payments to be made by the Client under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim. Time for payment shall be of the essence of the Contract.

## 8. Delivery

- 8.1 The Company shall use its reasonable endeavours to comply with any date (s) for completion of the Services provided that such date(s) shall not be binding and time shall not be of the essence for performance of the Services. All open courses are run, subject to demand, therefore if a course is cancelled by the Company, transfer to an alternative date will be offered to the Client.
- 8.2 The Company reserves to right to alter the content, lecturers, timing and venue of the open courses for reasons beyond their control.

8.3 The Company warrants to the Client that the Services will be provided using reasonable skill and care.

## 9. Warranties and Liability

- 9.1 In the event of any breach of the Company's express obligations under these Conditions the remedies of the Client will be limited to damages, which in any event shall not exceed the contractual price paid by the Client for the Services.
- 9.2 The Company does not exclude its liability (if any) to the Client:
- 9.2.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
  - 9.2.2 for personal injury or death resulting from the Company's negligence;
  - 9.2.3 under section 2(3) Consumer Protection Act 1987;
  - 9.2.4 for any matter which it would be illegal for the Company to exclude (or to attempt to exclude) its liability; or
  - 9.2.5 for fraud.
- 9.3 It is hereby agreed by the Client that the Company shall in no circumstances be liable to the Client for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in performance except as set out in this clause.
- 9.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.5 Except as set out in clauses 9.1 to 9.3, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Client.
- 9.6 All claims against Company must be brought within one 1 year after the cause of action arises and Client waives any statute of limitations which might apply by operation of law or otherwise.

## 10. Clients Obligation

- 10.1 The Client agrees to give the Company such information advice and assistance relating to the Services as the Company may reasonably require within sufficient time to enable the Company to perform the Services in accordance with the Quote.
- 10.2 The Client shall be responsible to the Company for ensuring the accuracy of any information submitted by the Client.
- 10.3 The Client shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Client's information.
- 10.4 The Client shall indemnify the Company against all claims, actions, losses, damages, costs and expenses incurred by the Company arising from or due to the negligence of the Client its servants or agents.

## 11. Confidentiality

- 11.1 All drawings and technical information supplied by the Client to the Company and all information supplied by the Company to the Client shall be deemed to have been furnished in confidence for the purpose authorised by the acknowledgement of Order and no other. The recipient party shall take all reasonable precautions to prevent communication of any such information to any of its employees or to any third party except as may be necessary in order to carry out the purpose of the Order or the Services. If disclosure to an employee or a third party is necessary for such purposes, then such employee or third party shall be required to observe the same confidentiality obligation as the recipient party.
- 11.2 Neither the Company nor the Client shall use the name of the other in any publicity material nor publish anything relating to work being undertaken pursuant to the performance of the Services without the prior written permission of the other (such permission not to be unreasonably withheld).

**11.3** The obligations of confidentiality and non-publication contained in Clauses 11.1 and 11.2 shall not apply to any information which:

- 11.3.1** is in or entered the public domain other than by virtue of the recipient's act or omission;
- 11.3.2** is known to the recipient at the time of the disclosure to the recipient provided that the recipient produces to the other satisfactory evidence of the same within 14 days of such disclosure;
- 11.3.3** is required to be disclosed by the recipient by a court of competent jurisdiction or any UK government or regulatory authority.

## **12. Intellectual Property Rights**

- 12.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Company.
- 12.2** Copyright in all course materials and other recorded matter, whether made in connection with the Quote and/or the Services or otherwise, shall remain vested in the Company at all times.
- 12.3** No part of any course materials, or any other materials provided by the Company may be reproduced or transmitted in any form or by any means or stored in any retrieval system of any nature without prior permission, except as it may be permitted to do so by law.

## **13. Termination**

- 13.1** Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 13.1.1** the Client commits a material breach of any term of the Contract.;
  - 13.1.2** the Client fails to pay any amount due under the Contract on the due date for payment;
  - 13.1.3** the Client takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - 13.1.4** the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - 13.1.5** the Client's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 13.1.6** there is a change of control of the Client;
- 13.2** The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Client or the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination;
- 13.3** On termination of the Contract:
  - 13.3.1** the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices (including any applicable fees as per Clause 7.4) and interest and, in respect of the agreed Services including those for which the agreed Services have not been completed and/or supplied. Where no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 13.3.2** the Client shall return all of the Company Materials which have not been fully paid for. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.4** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.5** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### **14. Restrictive Covenants**

- 14.1** The Client agrees that it will not during the Relevant Period, without the prior written consent of the Company whether directly or indirectly, and whether alone or in conjunction with, or on behalf of any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise solicit, induce or entice away from the Company or employ, engage or appoint in any way cause to be employed, engaged or appointed a Critical Person whether or not such a person would commit any breach of his or her contract of employment or engagement by leaving the service of the Company.
- 14.2** For the purposes of Clause 14.1 above:  
"Critical Person" means any person who is an employee, agent, director, consultant or independent contractor employed, appointed or engaged by the Company at any time within the Relevant Period who delivers to the Client any health, safety and environmental training or provides consultancy/ advisory services or such other person, who is an employee, agent, director, consultant or independent contractor, who by virtue of their knowledge, seniority and/or expertise is likely to be able to assist or benefit the business of the Client to the detriment of the Company. "Relevant Period" means the period during the Contract and for the period of 6 months immediately after the termination of the Contract for whatever reason.
- 14.3** In the event that the Client employs, engages, appoints or in any way causes to be employed, engaged or appointed a Critical Person during the Relevant Period without the prior written consent of the Company, the Client shall pay to the Company an amount of £35,000 by way of liquidated damages within 30 days of such employment, engagement or appointment.

#### **15. Force Majeure**

Neither party shall be liable to the other for any loss or damage or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of either party's obligations in relation to the Services, if failure was due to any cause beyond the reasonable control of either party including without prejudice to the foregoing Act of God, explosion, flood, tempest, fire or accident, wars or threat of war, sabotage, insurrection, an act of terrorism, civil disturbance or requisitions, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either party or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery, and power failure or breakdown in machinery.

#### **16. General**

- 16.1** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether under the Contract or not.
- 16.2** If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 16.3** No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 16.4** The Company may assign, delegate, license, hold on trust or subcontract all or any part of its rights or obligations under the Contract.
- 16.5** The Contract is personal to the Client who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 16.6** The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

#### **17. Data Protection & Processing**

- 17.1** The Client and the Company acknowledge that for the purposes of General Data Protection Regulation (GDPR), the Client is the Data Controller and the Company is the Data Processor in respect of any

Personal Data.

- 17.2** The Company shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Client.
- 17.3** The Company shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 17.4** Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 17.5** The Company warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
- 17.5.1** take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and the nature of the data to be protected.
- 17.5.2** take reasonable steps to ensure compliance with those measures.
- 17.6** Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this Clause 17.
- 17.7** The Client acknowledges that the Company is reliant on the Client for direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Client's instructions.

## **18. Law**

These Conditions together with the Company's standard open course procedures and the Contract shall be governed and construed in accordance with the laws of England and Wales and the Company and the Client submit to the exclusive jurisdiction of the courts of England and Wales.

## **19. Communications**

- 19.1** All communications to the Company shall be emailed or sent to the address appearing on the Quote, unless some other address has been notified in writing to the Client.
- 19.2** All communications to the Client shall be emailed or sent to the address appearing on the Quote, unless some other address has been notified in writing to the Company.

## **20. Variation of Conditions of Contract**

Any variation to the Conditions of the Contract and any representations about the Services shall have no effect unless expressly agreed in writing (on the Company's headed paper) and signed by a director of the Company.

## **21. Entire Agreement**

These Conditions together with the Company's Quote and the Company's acknowledgement of Order shall form the entire agreement between the Company and the Client. These Conditions shall supersede and prevail over terms and conditions sought to be imposed by the Client, provided that this shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company prior to the date of the Order.

## **22. Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise

of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**23. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**24. Notices**

**24.1** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or sent by email to [moira@safetynow.uk.com](mailto:moira@safetynow.uk.com)

**24.2** A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, at 9.00 am on the next Business Day after transmission.

**24.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**25. Third party rights.**

**25.1** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**25.2** The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.