

CA Education Terms and Conditions

1. INTRODUCTION

These Education Terms and Conditions specify the terms and conditions which apply to any CA Education offering(s) and Course Materials that CA s.r.l., with registered office at Via Francesco Sforza 3, 20080 Milano 3, Basiglio (M), tax/VAT number 04200340158 registration number at the REA 996554, share capital Euro 8,000,000,00 entirely paid in, subject to direction and coordination of CA Computer Associates European Holding GmbH (“CA”) will provide to Customer.

2. DEFINITIONS

- 2.1. “Agreement” means these Terms and applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.2. “Attendees” mean the participants authorized by Customer to attend or participate in the Education offerings as indicated in the Transaction Document.
- 2.3. “Course Materials” means any Education content provided to Customer in any media form pursuant to a Transaction Document, including without limitation, all publications, courseware, training manuals and materials, user guides, web portals, or virtual labs provided by CA or a CA subcontractor.
- 2.4. “Education” means any standard or customized education offerings, training or instruction, or related services, provided by CA or a CA subcontractor in any format or location, including without limitation, (i) instructor led training, including at CA or Customer site(s), (ii) virtual training, including online classes, courses, or course catalogues and/or (iii) class room training or testing, at a CA or third party training facility.
- 2.5. “Education Funds” means a pool of funds prepaid by Customer which may be applied to purchase Education.
- 2.6 “Transaction Document” means a signed mutually agreed ordering document such as a CA order form or statement of work for the specific CA offering licensed or purchased.

3. EDUCATION OFFERING

- 3.1. CA shall provide the Education as agreed in a Transaction Document. The Transaction Document will specify the type of Education offering being purchased, including at a minimum, the courses or classes ordered, the quantity of Attendees, and the manner and/or location of delivery of such Education services, as applicable.
- 3.2. CA may require the registration or pre-registration of Attendees in order to attend or access the applicable Education. Customer acknowledges that CA reserves the right to refuse entry or access to any individual that cannot authenticate their registration or authorization for such Education.
- 3.3. The Course Materials will be delivered either by electronic delivery (ESD) or in tangible media carriage paid to (CPT), as defined in INCOTERMS 2010, from CA’s shipping point as indicated in the Transaction Document. CA agrees to be responsible for all customs duties and clearances and title to any CA hardware if included will pass upon point of delivery to carrier at CA’s shipping location.

4. FEES AND CANCELLATION

- 4.1 The Customer will pay to CA the fees, expenses and other charges as defined in the Transaction Document and acknowledges that such fees are due and payable upon execution of such Transaction Document. Any customized educational courses will be based on the rates and expenses of the instructor providing the course or such fees as stated in the Transaction Document, as applicable. Customer agrees to pay any applicable VAT, GST, sales tax, and any other applicable taxes (collectively the Taxes) in addition to the fees when such payments are due. CA may charge interest as per the interest rate established by art. 5 of the Legislative Decree 231/2002, unless Customer has a bona fide dispute supported by written explanation. CA reserves the right to charge expenses to recover fees due as established by art. 6 of the Legislative Decree 231/2002. If Customer’s account is sixty (60) days or more overdue, CA shall have the right with prior written notice to Customer to withhold performance of its obligations under the Order, without liability, until such amounts are paid in full.
- 4.2 Customer may use Education Funds in one or more transactions. Customer acknowledges and agrees that it must use Education Funds within one (1) year from the effective date of the Transaction Document purchasing such funds, unless otherwise stated on the Transaction Document. Any portion of Education Funds unused following such period shall expire and not be subject to any refund or credit.
- 4.3 If CA cancels a class due to unforeseen circumstances, or low enrolment, CA will provide as much advance notice as possible but no less than ten (10) business days prior to the class in which case Customer may receive credit or reschedule the class to an alternative time.
- 4.4 Cancellation in writing by Customer must be provided at least ten (10) business days prior to the class. If such notice is not given CA may charge up to 100% of the fees for the class. If fees are pre-paid, no refund will be provided.



4.5 Neither party shall be liable for any travel related fees or expenses incurred by the other party in relation to Education which such party has properly cancelled in compliance with this section.

4.6

5 INTELLECTUAL PROPERTY RIGHTS

5.1 CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Course Materials and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under these Education Terms and Conditions is exchanged between the Parties.

5.2 CA grants to Customer, a non-exclusive, non-transferable license to use the Course Materials and Education offering for the internal use of the Customer, but limited to the specific Attendees and subject to terms of the Transaction Document. Customer shall be responsible for all use of the Education and Course Materials by its Attendees.

6 WARRANTY

6.1 If CA provides an instructor, the delivery of the CA Education Course offering shall be provided in a professional, workman-like manner.

6.2 EXCEPT AS SET FORTH IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY PROVISIONS OF APPLICABLE LAW NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CA.

7 WARRANTY REMEDY

7.1 In the event of a breach of the Warranty section, Customer's remedy shall be, at CA's discretion and in consultation with Customer, to re-perform the Education at no additional charge to Customer or to refund the applicable fees paid which relate to the specific Education, Course or Course Material. These remedies are contingent upon the alleged breach not resulting from Customer's failure to abide by its obligations as defined in the Transaction Document or to conform to the Course Materials.

8 INDEMNIFICATION

8.1 CA will indemnify, defend and/or, at its option, settle any third party claims that Customer's use of the specific CA Education course and/or Course Material licensed or purchased by Customer infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the CA Education offering at the time of delivery. CA may, at its option and expense: (i) procure for Customer the right to continue to use the CA Education offering; (ii) repair, modify or replace the CA Education offering so that it is no longer infringing; or (iii) provide a pro-rated refund of the fees paid for the CA Education offering which gave rise to the indemnity calculated against the remainder of Education funds.

8.2 CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the CA Education offering except a modification by CA, (ii) if the CA Education offering is not being used in accordance with CA's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch, (iv) if the alleged infringement is a result of use of the CA Education offerings in combination with any third Party product, or (v) if the applicable fees due for the specific Transaction Document have not been paid. The indemnifications contained herein shall not apply and CA shall have no liability in relation to any CA Education offering produced by CA at the specific direction of Customer. SUBJECT SOLELY TO MANDATORY PROVISIONS OF APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CA REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

8.3 Each Party shall indemnify the other against all damages, fees, (including reasonable attorney's fees) fines, judgments, costs and expenses finally awarded as a result of a third Party action alleging a bodily injury or death which arise from the CA Education offering and/or Transaction Document, provided that such liabilities are the proximate result of gross negligence or intentional tortuous conduct on the part of the indemnifying Party.

8.4 Customer shall indemnify CA against any claim that any data, materials, items or information supplied to CA under the Transaction Document infringes any US patent, copyright or trademark within the jurisdictions where CA is provided with such information.

8.5 The above indemnities are contingent upon: (i) the indemnified Party providing prompt notice of any claim of infringement and assistance in the defense thereof, (ii) the indemnifying Party's sole right to control the defense (to the maximum extent permitted under the procedural laws applying to the dispute) or settlement of any such claim, provided that the settlement does not require a payment or admission of liability on the part of the other Party, and (iii) the indemnified Party not taking any actions or failing to take actions that hinder the defense or settlement process as reasonably directed by the indemnifying Party.

9 LIMITATION OF LIABILITY

9.1 EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF CA'S INTELLECTUAL PROPERTY RIGHTS AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY

(INCLUDING ANY OF CA'S SUPPLIERS) SHALL BE LIABLE FOR A) ANY INDIRECT OR UNFORESEEABLE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF DATA BY USE OF ANY CA EDUCATION OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY, EXCEED THE FEES PAID AND OR OWED FOR THE THE EDUCATION OFFERING THAT IS THE SUBJECT OF THE CLAIM.

10 GENERAL TERMS

- 10.1 **Amendments.** The CA Education Terms and Conditions may only be amended by mutual written agreement of the Parties.
- 10.2 **Force Majeure.** Except for payment obligations and obligations pertaining to non-disclosure, notwithstanding any contrary provision in the Transaction Document, neither Party will be liable for any action taken, or any failure to take any action required to be taken, in the event and to the extent that the taking of such action or such failure arises out of causes beyond a Party's control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal).
- 10.3 **Order of Precedence.** Any conflict or inconsistency among or between the terms and conditions of the documents comprising the agreement between CA and Customer shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Transaction Document; (2) these Education Terms and Conditions. Notwithstanding this Order of Precedence, a Customer issued purchase order shall not modify the terms of the documents indicated herein.
- 10.4 **Independent Contractors.** The Parties expressly agree that the relationship between them is that of customer-independent contractor.
- 10.5 **Customer Data.** If Customer transfers any personal data to CA as a requirement pursuant to any CA Education offering, then Customer represents that (i) it is duly authorized to provide personal data to CA and it does so lawfully in compliance with relevant legislation, (ii) CA and any entity within the CA group of companies (each a "CA entity") or its subcontractors can process such data for the purposes of performing its obligations and (iii) CA may disclose such data to any CA entity and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. CA, Inc. is Safe Harbour certified and the CA Entities have committed to comply with relevant data protection/privacy legislation.
- 10.6 **Traceability of financial flow.** The Parties agree to observe, severally and not jointly, if and when applicable and insofar as applicable to each Party, the provisions of Law 13 August 2010 no. 136 (the "Law") and, in particular, section 3 of the Law regulating the traceability of financial flows. Without prejudice to any other termination event set out under the Agreement, it is expressly agreed that, in the event of a Party's breach of its obligations on the traceability of financial flows, the other Party can automatically terminate this Agreement according to section 1456 of the Italian Civil Code, without any prior notice. All payment shall be made by wire transfer within the payment due date using bank account details specified in the Transaction Document.
- 10.7 **Assignment.** If CA assigns or sells or otherwise transfers its rights to a business or product line or substantially all of its assets and provided such Party agrees to perform the obligations under the Transaction Document, then CA may transfer its rights and obligations under the Transaction Document upon written notice to Customer. Except as permitted herein, neither Party may transfer, whether by operation of law or otherwise, the Transaction Document without prior written consent of the other Party, and consent shall not be unreasonably withheld. Attempts to transfer in contravention of this section shall be deemed null and void. The Transaction Document shall be binding on the Parties hereto and their respective successors and assigns.
- 10.8 **Import Export.** Customer agrees that CA Education offerings, software Documentation and Course Materials is subject to export controls of the United States of America and import controls of any other country in which such information may be used. Customer agrees to export, re-export or import such information only in compliance with such laws and controls.
- 10.9 **Announcements.** Neither Party may issue press releases relating to the Transaction Document without approving the content with the other Party. Either Party may include the name and logo of the other Party in lists of customers or vendors in accordance with the other Party's standard guidelines.
- 10.10 **Ethical Code, Organizational Model and safety in the workplace.** Customer acknowledges and accepts that CA has implemented an Organizational Model (Modello Organizzativo) and a Code of Ethics in accordance with Legislative Decree no. 231/2001. CA has made a copy of such documents available to the Customer. Customer undertakes to comply with -and to ensure that its directors, employees, contractors and subcontractors equally comply with - all laws and regulations, thus including Legislative Decree n. 231/2001, as well as all applicable provisions of CA's Organizational Model and of the Code of Ethics in all dealings regulated by the Agreement. Failure to comply with these commitments constitutes a serious breach of contract and shall entitle CA to terminate the Agreement and/or the Transaction Document/s with immediate effect, pursuant to section 1456 of the Italian Civil Code, without prejudice to any damage compensation. The Customer further represents and warrants: (a) to comply with Legislative Decree 81/2008 and subsequent amendments; (b) to have the necessary equipment - and that such equipment complies with local regulations - and qualified manpower, duly informed on security duties; (c) that it will not utilize equipment belonging to the CA, unless previously and expressly authorized in writing. The Customer will provide all necessary information relating to all the specific risks identified in its premises, specifically within the areas which shall be affected by the activities under the Agreement. For such purpose, the Customer shall provide the CA person in charge of prevention and protection with an extract of its risk assessment document. Furthermore, for the purposes of coordination on safety, the Customer agrees to provide the name of its head of prevention and protection. The coordination of



prevention and emergency interventions relating to the work activities and the personnel used in its premises shall be under the exclusive responsibility of the Customer

- 10.11 **Validity.** In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.
- 10.12 **Third Parties.** This Agreement shall not create any rights in favor of, or any obligations owed by, any third Party unless otherwise expressly defined in any Transaction Document. The Parties agree that any action arising from CA Education Transaction Document shall solely be brought by Customer or CA.
- 10.13 **Choice of Law.** The laws of Italy shall govern the construction and enforceability of the Transaction Document. The Parties agree that any action arising under or relating to the Transaction Document shall lie within the exclusive jurisdiction of the Courts of Milan, Italy. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Transaction Document.
- 10.14 **Entire Agreement.** The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Transaction Document.