

CA Education Terms and Conditions CA 培训条款和条件

1. INTRODUCTION 简介

These Education Terms and Conditions specify the terms and conditions which apply to any CA Education offering(s) and Course Materials that CA will provide to Customer. 此培训条款和条件规定的条款和条件适用于 CA 将向客户提供的所有 CA 培训产品和课程材料。

2. DEFINITIONS 定义

- 2.1. "Attendees" mean the participants authorized by Customer to attend or participate in the Education offerings as indicated in the Transaction Document. "学员"是指经客户授权出席或参与交易凭证指定培训产品的参与者。
- 2.2. "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. "课程材料"是指依照交易凭证以任意介质形态提供给客户的所有培训内容,包括但不限于由 CA 或 CA 分包商提供的所有出版物、课件、培训手册和材料、用户指南、Web 门户或虚拟实验室。
- 2.3. "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. "培训"是指由 CA 或 CA 分包商在任意地点以任意格式提供的所有标准或自定义培训产品、培训或指导或相关服务,包括但不限于 (i) 在 CA 场所或客户场所进行的讲师引导式培训, (ii) 虚拟培训,包括在线课堂、课程或课程目录,和/或 (iii) 在 CA 或第三方培训设施开展的课堂培训或测试。
- 2.4. "Education Funds" means a pool of funds prepaid by Customer which may be applied to purchase Education. "培训经费"是指顾客预付的、可用于购买培训的资金池。
- 2.5. "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. 2.5 "交易凭证"是指双方协商一致签订的订购文档,如针对许可或购买的特定 CA 产品的 CA 订单或工作说明。

3. EDUCATION OFFERING 培训产品

- 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. CA 应当提供交易凭证中约定的培训。交易凭证将指定所购买培训产品的类型,至少包括订购的课程、学员数量以及开展此类培训服务的方式和/或地点,视具体情况而定。
- 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. CA 可能要求学员进行注册或预注册,以参加或访问相关培训。客户承认,CA 有权拒绝无法验证其培训注册或授权的个人进入或访问此类培训。

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. 培训材料将以电子方式交付 ("ESD"), 或者按照 INCOTERMS 2010 中的定义从交易凭证指定的 CA 发货地以运费付至 ("CPT") 方式进行有形介质交付。CA 同意承担所有关税,并且任何相关 CA 硬件(如果包括)的许可和授权都会在 CA 的发货位置交付给承运人时一并授予。

4. FEES AND CANCELLATION 费用与取消

- 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. 客户将向 CA 支付交易凭证中定义的费用、开支和其他费用,并且承认此类交易凭证生效后,此类费用到期应付。自定义培训课程将基于提供此课程的讲师费率和费用,或基于交易凭证中所述的此类费用,视具体情况而定。客户同意,除到期应付的费用外,客户还将支付任何适用的增值税、GST、销售税以及任何其他适用税款(总称为"税款")。
- 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. 客户可以在一项或多项交易中使用培训经费。客户承认并同意,必须于购买培训经费的交易凭证生效之日起一(1)年内使用此经费,交易凭证中另有规定的除外。此期限后,培训经费中未使用部分将过期,并且不予退款或给予学分。

- 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. CA 因不可预见的情况或低入学率而取消课程，CA 将尽可能提前发送通知（不晚于开课前十(10)个工作日），此类情况发生时，客户可以获得学分或重新安排课程时间。
- 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. 客户必须于开课至少十（10）个工作日提供书面的取消通知。若未提供此通知，CA 最高可收取该课程的全部费用。对于预付费用，将不予退款。
- 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. 任何一方因已依据本条款妥善取消的培训而产生的任何差旅相关费用或开支，对方均不负责承担。

5. INTELLECTUAL PROPERTY RIGHTS 知识产权

- 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. CA 保留对所有 CA 课程材料及其衍生产品的所有权利、所有权、版权、专利、商标、商业秘密和其他所有其他专有权益。此培训条款和条件未明确授予的所有权、版权、专利、商标、商业秘密或其他知识产权，双方不得交换。
- 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. CA 授予客户学员使用此课程材料和培训产品的非独占且不可转让的许可在客户内部使用，但限于特定学员并且必须遵守交易凭证的条款。客户应负责其学员对培训和课程材料的所有使用。

6. WARRANTY 保证

- 6.1 If CA provides an instructor, the delivery of the CA Education Course offering shall be provided in a professional, workman-like manner. 如果 CA 提供讲师，则应当以专业熟练的方式交付 CA 培训课程产品。
- 6.2 EXCEPT AS SET FORTH IN THIS SECTION, 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. 除本部分规定外，CA 不做其他任何明示或默示的保证，包括但不限于第三方保证、适销性或适合性的默示保证或适用于特定用途的保证。

7. WARRANTY REMEDY 保证补救措施

- 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. 若违反“保证”条款，CA 将在询问客户后自行决定对客户的补救措施，包括重新进行培训（不向客户收取额外费用），或退还与特定培训、课程或课程材料相关的适用费用。此类补救措施的前提是，所指违约并非因客户未遵守其在交易凭证中定义的义务或未遵从课程材料而造成。

8. INDEMNIFICATION 赔偿

- 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. 如因客户使用许可或购买的特定 CA 培训课程和/或课程材料而侵犯了其在 CA 培训产品交付时有权使用产品的司法管辖区的有效美国专利或版权，CA 应提供赔偿、提出抗辩和/或自行选择解决任何第三方索赔。CA 可以在自行承担费用的情况下选择：(i) 提供客户继续使用 CA 培训产品的权利；(ii) 修复、修改或更换 CA 培训产品，使其不再侵权；或 (iii) 根据培训经费余款，按比例退还为导致赔偿的 CA 培训产品支付的费用。
- 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. 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. 对于以下情况，CA 不承担任何责任：(i) 侵权的宣称是由于对产品进行修改引起的，而且该修改不是由 CA 进行的，(ii) 未按照 CA 的规范、相关文档和指导准则使用 CA 培训产品，(iii) 宣称的侵权本可通过使用 CA 发布的更新或修补程序避免或以其他方式消除，(iv) 宣称的侵权是由于将 CA 培训产品与任何第三方产品结合使用所致，或者 (v) 未支付适用的特定交易凭证费用。对于 CA 按照客户的特定指示制造的 CA 培训产品，此处包含的赔偿不适用，并且 CA 不承担任何责任。前述条款陈述了 CA 关于侵权索赔的全部责任和义务，以及在任何实际或宣称的侵犯任何知识产权或其他专有权利的情况下，对客户的全部补救措施。

- 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. 第三方声称 CA 培训产品和/或交易凭证导致身体伤害或死亡并据此提起诉讼时，双方应向对方赔偿此类诉讼最终裁定的所有损害、费用（包括合理的律师费）、罚金、判决、成本和费用，前提是此类责任是赔偿方重大疏忽或故意侵权行为的直接后果。
- 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. CA 因客户根据交易凭证提供的任何数据、材料、物品或信息侵犯了 CA 获得此类信息所处司法管辖区内的美国专利、版权或商标而导致的索赔，客户应对 CA 进行赔偿。
- 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 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. 上述赔偿取决于：(i) 受偿方就任何侵权索赔提供及时通知并在由此引发的辩护中提供协助；(ii) 如果和解不需要另一方付费或承担责任，则赔偿方拥有对任何此类索赔的辩护或和解的专有控制权；(iii) 受偿方不应采取或避免采取任何妨碍根据赔偿方的合理指示进行的辩护或和解程序。

9. LIMITATION OF LIABILITY 责任限制

- 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, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE 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. 除非存在违反所有权、侵害 CA 知识产权以及赔偿环节中涉及的第三方诉讼情况，否则在适用法律所允许的最大可能范围内，任何一方（包括任何 CA 供应商）对以下情况概不负责：A) 任何性质的间接、特殊、从属、不可预见或惩罚性的损失，包括但不限于利润损失、涉及所节省资金或所产生费用的损害和/或因使用任何 CA 培训产品而造成的任何数据损失，而不论相关方是否已被告知可能出现此类损失或损害；B) 任何情况下，相关方责任都不应超出所支付和/或所结欠作为该索赔主体的 CA 培训产品的费用。

10. GENERAL TERMS 一般条款

- 10.1 **Amendments.** The CA Education Terms and Conditions may only be amended by mutual written agreement of the Parties. 修订。未经双方书面同意，不得修订 CA 培训条款和条件。
- 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). 不可抗力。除付款义务和有关不披露的义务外，不管本交易凭证中的任何相反条款，如果由于一方不可控的原因，包括但不限于战争、民众骚乱、天灾、员工罢工或其他停工（不管是部分还是整体）、任何政府或政府机构（包括任何法院或裁决机构）的任何法律、法令、法规或命令，致使任何诉讼或未能提出任何所需的诉讼，则任一方都不应对此承担责任。
- 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. 优先顺序。如果 CA 和客户所签署协议的文档条款和条件存在冲突或不一致，则文档效力遵循以下由高到低的优先顺序：(1) 交易凭证；(2) 培训条款和条件 尽管设有此优先顺序，客户发出的采购订单并不构成对此处提及文档条款的修改。
- 10.4 **Independent Contractors.** The Parties expressly agree that the relationship between them is that of customer-independent contractor. 独立订约人。双方明确同意他们之间的关系为独立于客户的订约人关系。

- 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. 客户数据。如果客户按照任何 CA 培训产品要求将任何个人数据传输给 CA, 则客户声明如下: (i) 他/她获得正式授权向 CA 提供个人数据, 并且遵守相关法规合法地提供该数据; (ii) CA 以及 CA 公司集团内的任何实体或其分包商都可以出于履行其义务的目的使用此类数据; 并且 (iii) CA 可以出于此目的向任何 CA 实体及其分包商披露此类数据, 并可此类数据传输到原国家/地区以外的国家/地区。CA, Inc. 已通过 Safe Harbour 认证且 CA 实体承诺遵守相关的数据保护/隐私法规。
- 10.6 **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. 转让。如果 CA 分配或出售或以其他方式转让某业务或产品线权利或几乎所有资产, 并且对方同意履行交易凭证规定的义务, 则 CA 可在以书面形式通知客户后, 转让其在交易凭证中的权利和义务。除本条款和条件允许, 任一方不得在未经另一方书面许可 (不得无理拒绝) 的情况下转让交易凭证, 而不论是否通过法律实施。违反本部分的转让计划应视为无效。此交易凭证对双方及双方各自所有的继承人和受让人均具有约束力。
- 10.7 **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. 进出口。客户同意 CA 培训产品、软件文档和课程材料受美国的出口控制和在其中使用此类信息的任何其他国家/地区的进口控制。客户同意仅在遵守此类法律和控制的条件下出口、再出口或进口此类信息。
- 10.8 **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. 公告。任何一方不得在未经另一方批准的情况下发布有关交易凭证的新闻稿。任何一方都可根据对方的标准指南在客户或供应商列表中包含对方的名称和徽标。
- 10.9 **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. 有效性。本协议中任何条款或规定被视为无效时, 不应在任何方面影响本协议中其余部分的有效性。
- 10.10 **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. 第三方。除非在任何交易凭证中明确规定, 否则本协议不得创建利于任何第三方的任何权利或由任何第三方承担的任何义务。双方一致同意, 任何有关 CA 培训交易凭证的诉讼只应由客户或 CA 提出。
- 10.11 **Choice of Law.** The laws of the State of New York (excluding its conflict of laws provisions) 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 State and Federal Courts located in Suffolk County, New York. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Transaction Document. 法律选择。纽约州法律 (不包括其冲突的法律条款) 适用于本交易凭证的解释和实施。对于由本交易凭证引起或与之相关的任何诉讼, 双方同意将位于纽约州苏福克郡 (Suffolk County) 的联邦法院和州法院作为唯一的司法裁决机构。《联合国国际货物销售合同公约》将不适用于本交易凭证。
- 10.12 **Entire Agreement.** The Transaction Document 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. 全部协议。交易凭证及通过引用并入的所有文档构成全部协议, 有关其中主题、所有其他事前协议、提议以及双方围绕该主题交换的其他此类信息将由本交易凭证整体取代。