



TORQUE IT STANDARD TERMS AND CONDITIONS

1. Introduction

- 1.1. All capitalised terms used in this agreement shall have the meaning attributed thereto in clause 2 (Definitions) of this Agreement.
- 1.2. You ("**Client**") have appointed Torque Technical Computer Training ("**Torque IT**") to provide training services to the Client (the "**Services**").
- 1.3. Torque IT has the necessary resources and capabilities to provide the Services required by the Client.
- 1.4. The Parties have entered into this agreement on the terms and conditions set out herein.

2. Definitions

- 2.1. "**Agreement**" means these terms and conditions, together with any annexures in respect of the Vendor Specific training courses;
- 2.2. "**Certificate**" means the proof of attendance certificate issued by Torque IT evidencing the attendance by the Client and/ or its attendees;
- 2.3. "**Client**" means, in the case of a juristic person, the juristic person and its nominated delegates who shall attend the training services, and in the case of a natural person, means the attendee for their own personal account, as the case may be;
- 2.4. "**Data Protection Law**" means any statute, directive, legislative enactment, order, regulation, rule or other law imposing data protection or privacy obligations on a Party including but not limited to the Protection of Personal Information Act 4 of 2013 ("**POPIA**");
- 2.5. "**Personal Information**" means that as defined in Chapter 1 of POPIA;
- 2.6. "**Processing**" means that as defined in Chapter 1 of POPIA;
- 2.7. "**Purpose**" means the Processing of the Client's Personal Information required by Torque IT in order for it to deliver the Services.;
- 2.8. "**Vendor Specific Courses**" means the vendors of certain training courses provided by Torque IT to the Client, at the election of the Client, which further details and applicable terms and conditions are set out in the Annexure/s.

3. Payments and charges

- 3.1. Full upfront payment is required from delegates who do not have credit facilities with Torque IT through their employer/sponsoring entity before an enrolment can be processed.
- 3.2. Should a client have pre-approved credit facilities with Torque IT, an official purchase order is required before an enrolment can be processed.
- 3.3. Payment by means of Electronic Funds Transfer ("**EFT**"), wire transfer, credit card, or purchase order, is preferred. The acceptance of any proof of payment, as presented by a delegate, will be at the sole discretion of management and is not guaranteed.
- 3.4. A delegate who is a natural person and who was allowed into class based on the presentation of proof of payment, shall be held jointly with the Client or individually liable, as the case may be, for the total fee of the course/s and any exam/s.
- 3.5. All courses inclusive of related exams must be completed within eight (8) months from initial course start date. Failure to do so will result in the forfeiture of fees for both the course and the exam.
- 3.6. Exam fees cannot be refunded or exchanged once an invoice has been generated.
- 3.7. Client will be charged in full if they and/ or their nominated delegate/s fail to attend or cancel outside of cancellation period for any course/exam that they have enrolled for, unless if sufficient



proof of absence is provided in the manner of either a doctor's certificate or official communication from the delegate's line manager.

- 3.8. Client will not be charged should they re-schedule or cancel within stipulated cancellation period.
- 3.9. The standard cancellation period for public scheduled training at any Torque IT branch is 8 working days. Please refer to Annexure A for Vendor Specific cancellation policies.
- 3.10. The cancellation period for training on-site at the client's venue is 10 working days.
- 3.11. Client will not be charged for any cancellation or rescheduling done by Torque IT.

4. Enrolments, Cancellation and Rescheduling

- 4.1. Refer to Annexure A for vendor specific terms and conditions.
- 4.2. The Client hereby acknowledges that it has selected the correct course/s and has read the pre-requisites for the course/s listed on the enrolment form. The Client will be liable for the full course fee, should they enrol for a module without meeting the stipulated pre-requisites.
- 4.3. The Client hereby confirms that they understand that it is up to them to ensure that these criteria have been met before attending the courses. Torque IT will not be responsible in the event that the Client is unable to complete the course if these pre-requisites have not been met and reserves the right to ask the Client to leave the course.
- 4.4. The Client hereby acknowledges that the successful completion of courses necessitates that it attends and obtains a minimum in class attendance score of 80 %. If this 80 % rating is not achieved, it will result in the Client's status being captured as, 'insufficient course attendance'. Insufficient attendance does not qualify for the receipt of a Torque IT electronic attendance certificate.
- 4.5. The Client hereby acknowledges that the successful completion of a 1-day course, necessitates that it attends and obtains a score of 100 % in class attendance.
- 4.6. If 100 % attendance is not achieved, this will result in a Client's status being captured as, '*insufficient course attendance*'. Insufficient attendance will not qualify for the receipt of a Torque IT electronic attendance certificate.
- 4.7. As per vendor regulations, we are not permitted to issue attendance certificates on any CompTIA and AXELOS/PeopleCert completed courses.
- 4.8. Enrolment application forms to be completed in full by the applicant before the enrolment will be processed.
- 4.9. Clients have the opportunity to re-attend a course at Torque IT, within 6 months of the initial course start date at a cost of R150.00 (excluding VAT) per person per day.
- 4.10. Booking of re-attendance courses is subject to full upfront payment of the re-attendance cost before the enrolment will be processed, regardless of whether the Client is an account holder with Torque IT.
- 4.11. Re-attendance options and benefits only applies to the original nominated delegate/s. Re-attendance bookings cannot be substituted by a different nominated delegate/s.
- 4.12. Client's re-attending must bring along their own courseware and toolkit that was initially issued for the course/s that will be re-attended, as this will not be provided to the Client again.

- 4.13. If there is a version change before the re-attendance option expires, a new course will have to be purchased at full cost. The re-attendance option will no longer apply on the old version.
- 4.14. Minimum required bookings must first be met before any re-attendance bookings will be accepted.
- 4.15. Torque IT reserves the right to alter, cancel or reschedule any course or instructor without liability and at its discretion. Torque IT will use reasonable efforts to notify you at least one week in advance.

5. Examination Identification Requirements

- 5.1. Examination requirements are as set out in this clause 5 and/or the Annexure/s.
- 5.2. When a Client registers to take any examination at a Torque IT branch, the Client will be required to provide an original and valid identification document (ID) that is recognized by the country in which the Client is a citizen or permanent resident. In the absence of a formal identity document, a driver's license may be accepted, and foreign nationals must provide an official Passport.
- 5.3. All Clients are required to bring along an original and valid identification document i.e. ID, Driver's License or Passport each time the Client and/ or its nominated delegate/s reports to a test centre and it is the client and/ or the nominated delegate's responsibility to ensure that their Identity documents are up-to-date and available on the day of the test. Prior to entering the testing room, the Client and/ or nominated delegate/s is/are identified and processed for admission by a test administrator in accordance with the exam centre admission requirements.
- 5.4. Failure to produce the required identification document, will result in the Client and/ or the nominated delegate/s being unable to write the examination and the Client and/ or the nominated delegate/s will forfeit the fees paid for the particular exam, resulting in the Client and/ or nominated delegate/s having to reschedule the examination and pay the full fee again.
- 5.5. ID documents must meet all of the following requirements. Each ID document must:
 - 5.5.1. Be an original document, photocopied documents are not acceptable.
 - 5.5.2. Be a government-issued national/state/provincial identity card that is recognized by the country in which you are a citizen or permanent resident.
 - 5.5.3. Be valid, expired documents (bearing expiration dates that have passed) are not acceptable.
 - 5.5.4. Bear your full name exactly (excluding accents) as it was when registering for the test including a recent, recognizable photograph.
 - 5.5.5. Include your signature (the name and signature on the ID document must match).
- 5.6. An examination booking form will only be regarded as valid if it contains the following Information:
 - 5.6.1. A valid identification number.
 - 5.6.2. A signature.
- 5.7. The exam booking is provisional. Your booking will only be valid, if accompanied by proof of payment/a purchase order. Final confirmation will be sent once all of the documents are received.
- 5.8. Exam bookings are to be secured at least one (1) week in advance.
- 5.9. Bookings are subject to availability.



- 5.10. Postponements, where permitted, must be made in writing with at least 48 working hours' notice prior to the booking date.
- 5.11. Cancellations cannot be made once the appointment is confirmed.
- 5.12. All exam bookings are non-refundable.

6. EC-Council Examination Vouchers

- 6.1. When you attend any authorized EC-Council training course at Torque IT you will receive the associated EC-Council examination voucher as part of your course material.
- 6.2. Your certification examination voucher can be used to book and pay for your certification examination at an authorized EC-Council Testing Center (ETC) only.
- 6.3. If a Client and/ or its nominated delegate/s is/are unable to attend a certification examination at Torque IT, and it has no other ETC locally available, the Client and/ or nominated delegate/s has the ability to convert the EC-Council examination voucher into a Pearson VUE examination voucher, at an additional cost stipulated through EC-Council directly.

7. Complaints & Appeals

- 7.1. All complaints and appeals should be submitted to Torque IT in writing within 2 working days from the incident.
- 7.2. Torque IT will acknowledge receipt of the complaint within 2 working days.
- 7.3. Torque IT will nominate a competent member of staff to verify all the necessary information to validate the complaint and to conduct an investigation into the complaint.
- 7.4. Torque IT will determine the course of action to be taken based on the reported findings and recommendations.
- 19.5 The decision and outcome of the complaint will be communicated in writing to the complainant by Torque IT.

8. Intellectual Property

- 8.1. All right, title and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in the Torque IT offerings shall belong solely and exclusively to Torque IT or the applicable licensors, and Client shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement.

9. Confidentiality

- 9.1. In connection with this Agreement, each Party may have access to or be exposed to information of the other Party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, client lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each Party agrees to take the necessary precautions to maintain the confidentiality of the other Party's Confidential Information by using at least the same degree of care as such Party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (i) was known by one Party prior to its receipt from the other or is or becomes public knowledge



through no fault of the recipient; or (ii) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other Party before making such a disclosure. The obligations with respect to Confidential Information shall continue for three (iii) years from the date of disclosure.

10. Protection of Personal Information

- 10.1. The parties acknowledge and agree that, for the duration of this Agreement, they may each be exposed to Personal Information.
- 10.2. The parties specifically record that all Personal Information shall constitute Confidential Information, and as such shall be protected as provided for in this Agreement.
- 10.3. The parties record further that all Personal Information exchanged between the Parties, in whatever form, shall constitute such Party's intellectual property and accordingly, such Party retains all right, title and interest in and to the Personal Information.
- 10.4. Each party hereby warrants in favour of the other Party that it shall at all times strictly comply with all applicable laws relating to the protection of Personal Information (including, but not limited to, POPIA) and with all the reasonable requirements of which the Parties may, from time to time, communicate in writing to each other, or which may be required by legislation, regulation or any relevant industry body within the Republic of South Africa.
- 10.5. Each party hereby warrants in favour of the other party that:
 - 10.5.1. it shall not, at any time Process the Personal Information for any purpose other than with the express prior written consent of the other Party and/or to act in terms of this Agreement; and
 - 10.5.2. all of its systems on which the Personal Information may be stored shall at all times be of a minimum standard required by the applicable law.
 - 10.5.3. The Parties hereby expressly provide their consent to the other Party, and their third party service providers and contractors, to process their Personal Information in order to act in terms of this Agreement.
 - 10.5.4. The Disclosing Party hereby warrants and undertakes that it shall not provide any Personal Information to the Receiving Party without the prior written consent of the person to whom the Personal Information relates, which consent will include the processing by the Receiving Party of its Personal Information and the transfer of its Personal Information to a third party who may be outside the Republic of South Africa.
 - 10.5.5. The Parties shall take all reasonable, appropriate, technical and organisational measures to safeguard Personal Information under its possession, care and/or control, as required by POPIA and/or all other applicable laws.
 - 10.5.6. To the extent that either Party transfers any Personal Information to a third party who is outside the Republic of South Africa, it shall ensure that the recipient of the personal information is subject to laws, binding corporate rules or a binding agreement which provides an adequate level of protection as required by POPIA and/or all other applicable laws.
 - 10.5.7. To the extent that the Parties shall conclude or have concluded an agreement which contains provisions specific to the Processing of the Personal Information forming part of and disclosed under this Agreement, the terms of such agreement shall take precedence over this Agreement.



10.6. **Third Parties.** Whenever we commission other organisations to provide support services to us, we will bind them to our privacy policies as far as they may be required to have access to our customers' personal information to perform such services. Our website may contain links to or from other sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content, or the security or privacy practices employed by other sites. We recommend that you always read the privacy and security statements on such sites.

11. Liability

11.1. Torque IT shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by, or misrepresentations, negligence, fraudulent acts or default on the part of the clients, its directors, employees, contractors or agents. The client indemnifies the company and holds it harmless against all and any claims made against it by any party whatsoever in respect of any such loss, damages, costs or expenses and against the actual costs incurred by the company in defending such claims.

11.2. Personal belongings and items belonging to or in the possession of the client or delegate brought onto the training premises are the sole responsibility of the owner and the company accepts no responsibility for such items.

11.3. Torque IT shall not be held liable for any vendor course/exam version releases or changes, at any stage of a delegate's course/exam booking. Torque IT endeavours to notify customers of such vendor version releases or changes in advance, however this may not always coincide with a delegate/s course/exam date. Delegate/s will be held liable for any applicable cost variances to attend the latest version of a course /exam, based on vendor version upgrades. Delegate/s opting to move course/exam dates to accommodate newer versions, must do so within the specified cancellation period.

11.4. Torque IT will not exchange any pre-issued courseware. In the instance of vendor courseware version changes, prior to course commencement, delegates will be held liable for the total cost of the new courseware.

11.5. The delegate/s acknowledges that they will be working with expensive computer equipment and shall be held liable for any damages suffered by Torque IT to the equipment through any negligent acts by the delegate/s.

12. Warranties

12.1. Torque IT makes no representation or warranties in respect of the Services provided lecturers and except as expressly provided in this Agreement and to the maximum extent permitted by applicable law, Torque IT and its licensors make no representations, warranties, conditions or guarantees with respect to any software and any other materials or Services covered by or furnished pursuant to this Agreement, including without limitation any implied warranty or condition: (i) of merchantability; (ii) of satisfactory quality; and/or (iii) of fitness for a particular purpose.

12.2. It is hereby recorded that a good standard of training will be upheld at all times.

13. Force Majeure

13.1. Neither the Client nor Torque IT shall be liable for the failure to perform any obligation of this Agreement in the event and to the extent that such failure is caused by force majeure.

13.2. For the purposes of this Agreement, force majeure shall mean any circumstances beyond the reasonable control of the party giving notice of force majeure ("**affected party**") and, without prejudice to the generality of the foregoing, shall include an act, event, omission or accident



beyond the reasonable control of the affected party which was not reasonably foreseeable and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that party, strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, explosion, terrorist act, epidemic, pandemic or other spread of infectious disease or the imposition of any measures to prevent the spread of disease, nuclear, chemical or biological contamination, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm;

- 13.3. Each party shall give notice to the other promptly on the occurrence of any force majeure which causes or is likely to cause any failure to perform any obligations hereunder. Such notice shall identify the event (explaining why it will cause such failures), assess the likely consequences and suggest ways of overcoming the problems where after all affected parties shall meet without delay in an endeavour to determine what action if any should be taken to minimize or avoid the consequences of the force majeure.
- 13.4. Should the force majeure event prevent the performance of a material obligation for a period exceeding 60 (sixty) days, a party shall be entitled to cancel this Agreement on written notice to the other party.

14. Breach and Termination

- 14.1. A party will be in default if:
 - 14.1.1. it commits a material breach of this Agreement that is capable of remedy and fails to remedy the breach within a period of 14 (fourteen) days after receipt of a written request from the other party requiring it to do so; or
 - 14.1.2. it commits a material breach of this Agreement that is not capable of remedy; or
 - 14.1.3. it takes steps to place itself, or is placed, in business rescue proceedings or liquidation, whether voluntarily or compulsory, or in judicial management, whether provisionally or finally, or compromises or attempts to compromise with any of its creditors.
- 14.2. Notwithstanding clause 15 (Dispute Resolution), if a party is in default, the other party shall be entitled, in addition to all other remedies at law, to cancel this Agreement forthwith by written notice to the party in default and to recover such damages as may have been suffered by it as a result of such breach.
- 14.3. Nothing herein contained shall be construed as detracting from the rights of either party to claim from the other party specific performance of any of its obligations in terms of this Agreement and to recover from the other party such damages as may have been suffered by it as a result of the other party's breach as envisaged in clause 14.1.1 to clause 14.1.3.
- 14.4. In the event of any action being required in order to recover monies, or any action by Torque IT in terms of these terms and conditions, the delegate/company hereby acknowledges that it will be liable for legal costs on the scale as between attorney and own client, which costs shall include costs of a tracing agent and collection commission.

15. Dispute Resolution

- 15.1. Any dispute arising out of or in connection with the Agreement must be resolved in terms of this clause **Error! Reference source not found..** Disputes must first be referred to senior representatives of each party with settlement authority as soon as possible for attempted resolution.
- 15.2. The parties' senior representatives must attempt to resolve the dispute as speedily as possible and will meet as often as necessary to do so. Any settlement must be recorded in writing and signed



by authorised persons on behalf of each party. The senior representatives will have failed to resolve the dispute when either party declares this to be the case.

- 15.3. If the dispute is not resolved by the senior representatives, the dispute will be resolved by way of arbitration at the instance of either party.
- 15.4. The arbitration will be held subject to the provisions of the Agreement:
 - 15.4.1. in South Africa
 - 15.4.2. with only the parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present; and
 - 15.4.3. otherwise in accordance with the provisions of the Arbitration Foundation of Southern Africa ("AFSA") provided that both the Parties and their legal representatives shall be entitled to attend by video conference.
- 15.5. The arbitrator will be a senior counsel with no less than ten years standing agreed upon between the Parties. If the Parties cannot agree upon an arbitrator within ten Business Days after the arbitration has been demanded, the nomination will be made by the chairman of AFSA at the request of either Party.
- 15.6. All information concerning the arbitration proceedings, all evidence led or presented, and the arbitrator's award will be confidential and final.
- 15.7. The arbitrator will be obliged to give written reasons for the award.
- 15.8. This clause will remain valid and enforceable in perpetuity notwithstanding the expiry or termination of the Agreement.
- 15.9. Notwithstanding the institution and commencement of Arbitration proceedings, either party may nonetheless approach a competent court with jurisdiction for relief of an urgent nature and in circumstances where the arbitrator cannot urgently give such relief.

16. Non-Solicitation

- 16.1. Neither party shall during the subsistence of this Agreement and for 6 (six) months thereafter without the other party's prior written permission, employ, canvass or solicit for direct or indirect employment any member of the other party's personnel, which shall for this Agreement include such party's agents, consultants, contractors, sub-contractors and their respective personnel, or proceed with any application by or on behalf of that member of personnel for direct or indirect employment, if that member of personnel is attached to or has contributed in any way to the Services or any other Torque IT services, or was introduced as a result of the provision of the Services pursuant to this Agreement nor shall it solicit, entice, encourage or persuade any such member of personnel to terminate his/her employment.
- 16.2. Notwithstanding the provisions of this clause 16, nothing shall prevent either party from hiring the other party's personnel who have responded to a general advertisement of the one Party, in relation to a vacant position within that party. In the event that either party breaches the provisions of this clause, such party shall be obliged to pay, as a placement fee to the other party, an amount equivalent to 25% of the relevant personnel member's annual remuneration (total cost of engagement) with their new employer.

17. Domicilium

- 17.1. The Parties choose as their domicilium addresses for all purposes the addresses set out below:
 - 17.1.1. **Torque IT:**



Attention: **Torque Technical Computer Training (Pty) Ltd**

Email: **info@torque-it.com**

With a copy of all legal notices sent to legal@adcorpgroup.com

18. Governing Law and Jurisdiction

18.1. This Agreement shall be governed in accordance with the laws of South Africa. Client hereby consents in terms of Section 45 of the Magistrates Court Act 32 of 1944 to the jurisdiction of the Magistrates Court in respect of any action instituted by Torque IT notwithstanding the fact that the sum claimed may exceed the jurisdiction of such court.

19. Waiver

19.1. No relaxations or indulgences granted by Torque IT to the delegate/Client shall in any way be construed as being a waiver or renunciation by Torque IT of any of its rights in terms of this Agreement. Such relaxation or indulgence shall further not be regarded as a negation of the delegate's/Client's liability in terms hereof.

20. Sole Agreement

20.1. This Agreement and terms and conditions, read together with Annexure/s, if applicable, shall form the sole agreement between Torque IT and the delegate/Client. No amendment or variation thereto shall be of any force or effect unless reduced to writing and signed by all the parties concerned, or their duly authorised agents and/or representatives.

20.2. In the event of any conflict between the terms of this Agreement and the terms contained in the Vendor Specific Courses annexure, the content of the Vendor Specific Courses shall take precedence.