

## Mountain Torq's Terms and Conditions

Mountain Torq Sdn. Bhd. (Co. No. 692110-U) of Mountain Torq Sdn Bhd (Co. No. 692110-U) of Unit 3-36, Asia City Complex 3<sup>rd</sup> Floor, Jalan Asia City, 88000 Kota Kinabalu, Sabah, Malaysia of the one part (hereinafter referred to as "MT") organizes high adventure activities and itineraries at its Mountain Torq activity area located at Mt. Kinabalu, Sabah, East Malaysia (hereinafter referred to as "Mountain Torq Activities").

The following terms and conditions form an agreement between you and MT. Payment for the selected MT's Mountain Torq Activities means that you have read, agreed to and accepted the following terms and conditions:

You hereby agree as follows:

### 1. Reservations and payments

- 1.1 Advance reservations for Mountain Torq Activities may be made within the booking period.
- 1.2 Upon receipt of your booking fee and written request for reservation of the selected Mountain Torq Activities but subject to availability and at MT's sole discretion, MT will reserve the available slots for the selected Mountain Torq Activities on the selected dates at the price quoted.
- 1.3 You acknowledge that your booking fee and written request for reservation of the selected Mountain Torq Activities must be made within 5 working days from the date of receipt of MT's quotation. Your reservation is valid upon MT's receipt of 100% of the total price of the selected Mountain Torq Activities and the reservation has been confirmed in writing by MT, failing which, the reservation and quotation will be automatically cancelled.
- 1.4 MT's payment process is as follows:

	DURATION	PAYMENT AMOUNT
Booking fee	5 working days from the date invoice is issued by MT or 3 days before activity commencement, whichever is earlier.	100% of the total price of the selected Mountain Torq Activities

- 1.5 You acknowledge and agree that the price of the selected Mountain Torq Activities is confirmed when the booking fee is paid and MT has confirmed the reservation of the selected Mountain Torq Activities in writing.
- 1.6 All bank charges incurred shall be borne by you. You agree and acknowledge that all administrative fees, taxes, charges or levies imposed by any government, financial institutions, credit /debit agencies, banks, or their agencies shall be borne by you.

### 2. Acknowledgement

- 2.1 While MT shall use its best endeavors to notify you in the event of supply difficulties, price alterations or alterations of the terms of business, you hereby agree and acknowledge that MT shall be entitled to revise the prices of the Mountain Torq Activities, Mountain Torq Activities and the terms of business from time to time at its sole discretion and without any prior notice to you.
- 2.2 You agree that MT shall not be held responsible under any circumstances whatsoever including without limitation, unfavourable weather conditions, or in the event any of the Mountain Torq Activities and/ or Packages is cancelled or amended by you at any time on the basis of unfavourable conditions. You agree and is aware that no refund or reimbursements will be made.

### 3. Price Guarantee

- 3.1 You acknowledge that the price quoted is only applicable for the selected Mountain Torq Activities at the date requested. You agree that the price is exclusive of any Goods and Services Tax (GST), any amount which is payable on account of goods and services tax, value added tax or any other like tax which you shall be additionally liable at the applicable rate from time to time. No surcharge in respect of the price of the selected Mountain Torq Activities will be imposed once the booking fee has been received by MT. For the avoidance of doubt, this guarantee does not apply to any taxes, charges or levies imposed by any government or their agencies. You further agree that no refund will be made if the prices of the selected Mountain Torq Activities are reduced for any reasons whatsoever.

### 4. Cancellation of reservations by MT

- 4.1 You acknowledge that MT reserves the right to change or cancel your reservation in accordance with operating requirements or circumstances beyond its control. For some Mountain Torq Activities to operate successfully, a minimum number of participants are required. Should the number of participants fail to reach the minimum number required, you agree that MT reserves the right to cancel your reservations by giving you a minimum of 2 weeks notice.
- 4.2 In the event of Clause 4.1 occurring and if an alternative Mountain Torq Activity is not available or acceptable to you, you will be entitled to either a full refund or transfer to another MT activity/package without payment of any transfer fee. You agree that if you select to transfer to another MT activity/package of higher value, the difference in price between the original selected Mountain Torq Activity and the newly selected MT activity/package will be borne by you.
- 4.3 You agree and acknowledge that If the change or cancellation is due to force majeure events (including without limitation political unrest, war or threat of war, riots, civil strife, closure of airports or ports, industrial disputes, terrorist activity, natural and nuclear disasters, fire, epidemic or health risk, flood, Acts of God, adverse weather conditions or other similar events beyond MT's control), no refund will be made by MT.
- 4.4 You further agree that MT shall not be responsible for the costs of any other travel arrangement affected due to its cancellations or rescheduling of any Mountain Torq Activities.
- 4.5 You agree that MT reserves the right to change or cancel the activities if the safety of the customers and / or MT staff will be compromised. You agree that no form of compensation will be made of MT

### 5. Variation of activity / package details and conditions by MT

- 5.1 MT constantly strives to improve its activities and packages including the Mountain Torq Activities. If such improvements can be made, or unforeseen circumstances beyond its control make changes necessary, you agree and acknowledge that MT reserves the right to vary itineraries and to substitute accommodation and meals without prior notice to you. You agree that no form of compensation will be made by MT.
- 5.2 You acknowledge that MT shall not be responsible for any other travel arrangements affected due to the changes to its activities and packages including the Mountain Torq Activities.

### 6. Cancellations and changes

- 6.1 Cancellations of reservation
  - 6.1.1 You agree that notice of cancellation of your selected Mountain Torq Activities must be made in writing to MT.
  - 6.1.2 You agree that once the balance of the total price of the selected Mountain Torq Activities has been paid, the said balance paid is non-refundable upon your cancellation of the selected Mountain Torq Activities.
  - 6.1.3 Upon cancellation, you agree that you shall be liable to pay a fee to cover the estimate of cost and expenses incurred by MT in the terms of the schedule set out hereunder. This is expressed as a percentage of the total price of the selected Mountain Torq Activities and is calculated as follows:

PERIOD OF NOTICE	CANCELLATION FEE
45 to 31 days	50% of total price of the selected Mountain Torq Activities
30 to 15 days	75% of total price of the selected Mountain Torq Activities
Less than 14 days	100% of total price of the selected Mountain Torq Activities

- 6.1.4 You agree that all administrative fees, taxes, charges or levies imposed by any government, financial institutions, credit /debit agencies, banks, or their agencies are to be borne by you.
- 6.1.5 If the reason for cancellation falls within the terms of any holiday insurance policy which you may hold, then any such charges may, subject to the terms of your insurance policy, be refunded to you by your insurance company. You agree to settle any outstanding fees owing to MT prior to making any claim from your insurance company.
- 6.1.6 You agree that if any refund is due to you by MT, all administrative fees, taxes, charges or levies imposed by any government, financial institutions, credit /debit agencies, banks, or their agencies shall be borne by you.
- 6.2 Change of reservation
  - 6.2.1 You agree that any notice of any changes to your selected Mountain Torq Activities must be made in writing to MT,
  - 6.2.2 You acknowledge that if after your reservation has been confirmed and you wish to change to an alternative date or time slot, transfer your reservation to someone else who satisfies all the conditions applicable to the activity/package or you wish to change to a different Mountain Torq Activity, you may do so provided the alternative selected Mountain Torq Activity is available. You agree that a penalty fee of up to RM50.00/pax shall be charged for any revision or alteration made to a confirmed reservation. In the event the revision is to a Mountain Torq Activity of a lesser value, MT will not refund you the difference between the price of the original selected Mountain Torq Activity and the newly selected Mountain Torq Activity. A fee of up to RM50.00 will be charged for any revision or alteration made to a confirmed reservation.

### 7. Other details and conditions

- 7.1 Any other events or activities that you elect not to take or participate in. You agree that facilities may vary from place to place and meals may vary in style.
- 7.2 You further agree and acknowledge that MT cannot guarantee special meal requests nor will it assume any responsibility or liability if your special meal requirements are not fulfilled.
- 7.3 You agree and acknowledge that your eligibility for and the allocation of MT's accommodations to you will be based on the Mountain Torq Activities selected, availability and at the sole discretion of MT.
- 7.4 You agree that you are responsible for all travel arrangements and costs to/from the point of activity/package commencement.
- 7.5 You must be aged between 10 to 70 inclusive, less than 100kg, at least 1.3m in height and without any physical disabilities that may restrict your ability to participate in the activity in a safe manner. Notwithstanding the foregoing, MT may, in its absolute discretion, and, in exceptional circumstances, give confirmation of acceptance of a person outside these limits and you shall not dispute or question MT's decision on this matter.
- 7.6 You agree and undertake to sign the relevant MT indemnity / assumption of risk forms upon reserving the selected Mountain Torq Activities. In the situation where no forms have been submitted to MT, you expressly agree that MT will not be held accountable for any incidents, accidents or misdoings incurred by you or MT.

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- 7.7 You agree and undertake to advise MT on any medical conditions or physical disability requiring special attention before you make your reservation. If you do not advise MT at this stage, you agree that MT may refuse to accept your reservation. If the medical conditions /physical disabilities are made known only after the reservation has been confirmed and/or at the point of the activity, you agree that MT reserves the right to refuse you from participating in the selected Mountain Torq Activities without any refund or reimbursement.
- 7.8 You acknowledge and agree that there may be occasions where MT's activity trainer has to make a decision in your best interests or in the best interests of the group participating in the selected Mountain Torq Activities. You agree to comply with the authority and decisions of MT staff and the laws of the country in which you are traveling. If you do not so comply or you are not compatible with the general enjoyment and well being of other participants, or you create threats to the safety of the group, or exhibit inappropriate behavior, whether verbal or physical, you agree that MT reserve the right to refuse to let you continue with your selected Mountain Torq Activities without refund or reimbursement. In such cases, you agree to be responsible for your own repatriation and related costs and have no claims against MT.
- 7.9 You agree to comply with MT rules and regulations relating to any accommodations provided by MT. If you do not so comply and exhibit any inappropriate behavior whether verbal or physical at the accommodations provided by MT, you agree that MT reserves the right to refuse to allow you to continue the remainder of the stay at the said accommodations without any refund or reimbursement. In such cases, you shall be responsible for your own repatriation, cost of alternative accommodation and related costs and have no claims against MT.
- 7.10 You shall be responsible for any costs incurred as a result of damage or excess cleaning fees related to the accommodations provided to you as part of the selected Mountain Torq Activities. You shall immediately report any pre-existing damage to the accommodations provided to MT staff as soon as it is discovered.
- 7.11 You hereby agree that MT staff or representatives may take photographs and films of you while you are participating in the selected Mountain Torq Activities and that the said photographs and films may be used in MT brochures and/or advertising or publicity material without obtaining any further consent from you or payment to you in respect of such photographs and/or films.
- 7.12 In the event you have any complaints in respect to MT services or the Mountain Torq Activities, you must inform MT's most senior staff on site. If the matter cannot be resolved after MT staff's best endeavors to do so during the duration of the selected Mountain Torq Activities, your complaint may be made in writing to MT as soon as it is reasonably possible after returning from the Mountain Torq Activities but within 28 days thereof so that your complaint can be investigated. You acknowledge and agree that any claims made after the 28 days period will not be considered by MT.
- 7.13 You are strongly recommended to take out comprehensive insurance cover for cancellation, medical expenses, personal accident, personal baggage, money and public liability before reserving any Mountain Torq Activities. You should check that the insurance covers all of the activities that you will be participating in. Some policies exclude certain adventure activities and some policies cover against loss of deposit or cancellation fees from the date of confirmation of your reservation. This should be arranged at the time of reserving the selected Mountain Torq Activities.
- 7.14 You acknowledge and agree that in the event of your withdrawal from the selected Mountain Torq Activities after the commencement of the Mountain Torq Activities as a result of illness or whatsoever reasons, you shall not be entitled to any refunds for any absence in participation from the said activities.
- 7.15 You acknowledge that transportation to and from the site of the Mountain Torq Activities, all taxes, visas, permits, insurance, beverages, meals not detailed in the itinerary / voucher, tips, items of a personal nature and excess baggage and any other items not covered in MT's quotation is not included in the price quoted.
- 7.16 You agree that MT shall not be held responsible under any circumstances whatsoever including without limitation, unfavorable weather conditions, or in the event any of the Mountain Torq Activities is cancelled or amended by you at any time on the basis of unfavorable weather conditions. You acknowledge and agree that the relevant cancellation fees will apply under these circumstances.
- 7.17 MT reserves the right to change or cancel the activities if the safety of the customers and / or MT staff will be compromised. You agree that no form of compensation will be made by MT.
- 8. Exclusion**
- 8.1 To the extent permitted by law, MT shall not be liable to you by reason of any representation or any implied warranty, condition or other term or any duty at common law, or under the express terms of this Agreement, for any loss, damage, death, personal injury, liability, legal fees, costs, claims, damages and expenses of whatsoever nature (whether caused by the negligence of MT, its servants or agents or otherwise) which arise out of or in connection with the provision of the Mountain Torq Activities and your participation in the Mountain Torq Activities.
- 8.2 Where MT supplies in connection with the provision of the Mountain Torq Activities any goods or services supplied by a third party, you acknowledge that MT does not give any warranty, guarantee or other term as to the quality, fitness for purpose or otherwise, but shall, where possible, assign to you the benefit of any warranty, guarantee or indemnity given by the third party supplying the goods or services to MT.
- 8.3 You agree that MT shall have no liability for any loss, damage, costs, expenses or other claims for compensation arising from instructions supplied or reservations made by you which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from your late arrival or non-arrival or any other fault of yours.
- 9. Indemnity**
- 9.1 You undertake and agree to fully and effectively indemnify MT and keep MT indemnified for and against all loss, damage, liability, proceedings (civil or criminal), including legal fees and costs, claims, damages and expenses of whatsoever nature howsoever suffered or incurred by MT as a direct or indirect result of the your breach of any warranty and obligations contained in this Agreement, including by way of example only, all costs, claims, suits, actions, proceedings, damages, losses, penalties, fines, liabilities and expenses of investigation and defense of any claim, including legal fees and disbursements, consultant fees and disbursements, consequential or otherwise, which may be brought against MT in respect of your participation in the selected Mountain Torq Activities.
- 10. Governing laws and jurisdiction**
- 10.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia regardless of your nationality. You agree to submit to the exclusive jurisdiction of the Malaysian courts.
- 10.2 If you are unsuccessful in any legal action instituted against MT, you agree to pay all costs including but not limited to, attorney/client costs.
- 10.3 You agree to use your best efforts to negotiate in good faith and amicably any dispute that may arise out of or related to this Agreement.
- 11. Severance**
- 11.1 If any term or condition of this Agreement is held invalid or unenforceable by any court of competent jurisdiction in Malaysia, that term or condition shall be deemed to be rewritten to give effect to the same purpose within the permitted limits of the law. The validity and enforceability of the remainder of this Agreement shall not be affected.
- 12. General**
- 12.1 The terms and conditions detailed herein is the complete and only agreement between you and MT and supersede all prior negotiations, representations and prior written or oral understandings. No variation, modification or alteration of any of the terms and conditions herein shall be of any effect unless evidenced in writing and signed by and on behalf of MT by a duly authorized representative.
- 12.2 This Agreement will be binding upon and inure to the benefit of MT and you and MT's and your respective successors and assigns. You agree that MT shall be entitled to assign, transfer or novate its rights and/or obligations under this Agreement to any party. You agree that you shall not have the right to assign, sell, charge, transfer, pledge or otherwise grant any other interest in this Agreement to any third party without the prior written consent of MT.
- 12.3 The failure of MT to enforce at any time or for any period of time any provision of this Agreement will not be construed to be a waiver of such provision or of the right of MT thereafter to enforce each such provision and shall not be construed to be a waiver of any subsequent breaches by MT in complying with any such provision of this Agreement.
- 12.4 You acknowledge that every effort is made to ensure activity and price accuracy at the time of MT's marketing collaterals and website going to print, however MT cannot be held responsible for printing or typographical errors, or errors arising from unforeseen circumstances.
- 12.5 Whenever the singular number or reference to the singular is used in this Agreement and when required by the context, the same shall include the plural and vice versa. The masculine gender shall include the feminine and neuter genders and vice versa and the word "person" and/or "it" shall include a corporation, firm, partnership or other form of association.
- 12.6 Any notice, request, demand or statement herein required or desired to be given by you to MT shall be in writing and forwarded to the company address.