

# HARDWARE MAINTENANCE TERMS

Standard (U.S.) Version 2005.1.1

These Hardware Maintenance Terms apply to any quote, order, and order acknowledgment, and any sale of hardware maintenance services by KLA-Tencor Corporation, 160 Rio Robles, San Jose, California 95134 ("K-T") to any acquirer ("Customer"). K-T does not accept, expressly or impliedly, and K-T hereby rejects, any additional or different terms or conditions that Customer presents, including but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless K-T expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, receiving, accepting or using services or otherwise proceeding with any transaction after receipt of these Hardware Maintenance Terms or after otherwise being notified that such transactions are subject to these Hardware Maintenance Terms, Customer agrees to these Hardware Maintenance Terms and K-T's General Terms, which are incorporated by reference herein and are either attached hereto, or available at [www.kla-tencor.com/terms](http://www.kla-tencor.com/terms) or on request.

## 1. SCOPE AND DEFINITIONS

1.1 Scope. These Hardware Maintenance Terms apply to Hardware and Software installed thereon (governed by K-T's Pre-installed Software License Terms), for which K-T has agreed in writing to provide Hardware Maintenance Services. Maintenance services for computer programs that are to be installed on Third Party Products are governed by K-T's Software Maintenance Terms, which are available at [www.kla-tencor.com/terms](http://www.kla-tencor.com/terms) or on request. If K-T performs any services outside the scope of the applicable Standard Services Offering — including, but not limited to, services requested by Customer in accordance with Section 4.5 (Other Errors) or services required due to actions or events listed in Section 4.6 (Limitations and Exclusions) — K-T's then-current Time & Materials Services Terms (which are available at [www.kla-tencor.com/terms](http://www.kla-tencor.com/terms) or on request) shall apply; provided, however, that K-T shall not be obligated to perform any services outside the scope of the applicable Standard Services Offering. K-T's obligation under these Hardware Maintenance Terms shall solely be to undertake the agreed services activities and not to achieve certain technical, economical, or other results.

1.2 Definitions. The definitions in K-T's General Terms shall apply in addition to the following definitions:

"Hardware Maintenance Services" means the services defined in Section 4 (Scope of Hardware Maintenance Services).

"Hardware Revision" means a modified version or modification of Hardware for Problem correction.

"Maintenance Period" means a period of twelve (12) consecutive calendar months commencing on the date specified by K-T in writing or, if not specified by K-T, the date on which K-T first makes Hardware Maintenance Services available to Customer.

"Problem" means the failure of a Product to conform to the applicable Documentation.

"Revision" means a Hardware Revision or a Software Revision, but not Upgrades.

"Software Revision" means a modified version or modification of Software for Problem correction.

"Standard Services Offering" means K-T's written description of the scope, technical details, procedural requirements and/or price of certain types of standard maintenance and support services programs, which K-T makes available to Customer on K-T's website at [www.kla-tencor.com/terms](http://www.kla-tencor.com/terms), or otherwise or upon request.

"Upgrades" means an enhancement or modification of a Product made for purposes other than Problem correction.

## 2. ELIGIBILITY

2.1 Eligible Hardware. Hardware is not eligible for Hardware Maintenance Services, unless it was (i) supplied and installed by K-T less than five (5) years ago; and (ii) covered by a warranty under the Hardware Sales Terms immediately prior to the commencement of Hardware Maintenance Services hereunder.

2.2 Inspection and Approval. Hardware that does not meet the requirements specified in Section 2.1 (Eligible Hardware) is eligible for Hardware Maintenance Services subject to K-T's written approval and only within thirty (30) days after such approval. If K-T determines, in K-T's sole discretion, through inspection that such Hardware is in good operating condition, K-T shall approve the eligibility of the Hardware for Hardware Maintenance Services.

2.3 Relocation of Hardware. At Customer's request, K-T will relocate Hardware for Customer. Such request must be received by K-T at least thirty (30) days prior to the requested relocation date. Hardware that is being relocated is automatically removed from coverage under these Hardware Maintenance Terms upon de-installation. K-T shall not be obligated to perform any Hardware Maintenance Services for relocated Hardware unless and until K-T has approved the eligibility of such Hardware for Hardware Maintenance Services. K-T shall approve the eligibility of the Hardware for Hardware Maintenance Services if K-T has (i) inspected the Hardware; and (ii) determined that it is in good operat-

ing condition and that sufficient K-T personnel is available to provide Hardware Maintenance Services for such Hardware in the new location. Relocated Hardware that has been approved by K-T as being eligible for Hardware Maintenance Services shall be automatically added again to coverage under these Hardware Maintenance Terms upon approval by K-T.

2.4 Time & Materials Services. Relocation and inspection services and services required to achieve a good operating condition that K-T agrees to perform upon Customer's request will be performed subject to K-T's then-current rates and Time & Materials Services Terms.

3. AUTHORIZED SUPPORT CONTACTS. Customer may appoint up to two (2) contact persons who shall participate in any training programs that K-T, at its sole discretion, may offer or require as part of the Hardware Maintenance Services, and who shall be Customer's support contacts for all requests for Hardware Maintenance Services and all communications between Customer and K-T regarding Hardware Maintenance Services ("Authorized Support Contacts"). Customer may request the designation of additional Authorized Support Contacts subject to payment by Customer of additional hardware maintenance fees at K-T's then-current rates.

4. SCOPE OF HARDWARE MAINTENANCE SERVICES. During the Maintenance Period, K-T will provide the services that K-T, at its sole discretion, makes generally available to all of K-T's customers that are then receiving services under the same Standard Services Offering (collectively, "Hardware Maintenance Services").

4.1 Revisions. This Section 4.1 shall apply to Hardware Maintenance Services performed by K-T based on a Standard Services Offering that includes the provision of Revisions. Revisions will be made available to Customer in such form and — in case of Software Revisions — on such media as K-T in its discretion deems appropriate. K-T reserves the right not to create any Revisions and to market new versions of the Products as new products or Upgrades for additional consideration. Customer may use the Revisions only instead of, but not in addition to, the revised Products. Upon installation of a Software Revision, Customer shall (i) return all previous versions of the Hardware upon installation of a Hardware Revision; and (ii) delete all previous versions of the Software. Revisions are covered by these Hardware Maintenance Terms, but, without limiting Section 6.3 (Disclaimer), are not covered by the warranties applicable to the revised Products. Notwithstanding the foregoing, Customer's use of any Revisions shall be subject to the infringement indemnity provisions of K-T's General Terms and Customer's use of the Software Revisions shall additionally be subject to all license limitations and restrictions contained in the Pre-installed Software License Terms applicable to the revised Software. KLA-Tencor Technologies Corporation owns, retains and reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to the Software Revisions, subject only to the limited rights that K-T expressly grants herein. Without limiting the generality of the foregoing, Customer acknowledges that nothing herein shall constitute a sale of any Software Revisions (or any Intellectual Property in and to the Software Revisions) including any copies and portions thereof.

4.2 Preventive and Remedial Maintenance. During the maintenance hours specified in the applicable Standard Services Offering, K-T shall perform the preventive and / or remedial maintenance described in such Standard Services Offering.

4.3 Refurbished Parts. K-T may use refurbished parts in order to perform remedial maintenance for Hardware.

4.4 Problem Reporting, Response and Resolution Times. Customer shall inform K-T of a Problem by contacting K-T as specified in the applicable Standard Services Offering. K-T shall provide remedial maintenance to Customer in accordance with the target response times and target resolution times identified in the applicable Standard Services Offering, if any. Notwithstanding the foregoing, any response and resolution times specified in the applicable Standard Services Offering shall constitute non-binding targets only.

4.5 Other Errors. If K-T believes that an error reported by Customer may not be due to a Problem or is otherwise outside the scope of the applicable Standard Services Offering, K-T will so notify the Customer, who may then either (i) instruct K-T to proceed with Hardware Maintenance Services regarding said error at Customer's possible expense, as

further specified in this Section 4.5; or (ii) advise K-T that Customer does not wish the error pursued, in which case K-T may elect, at its sole discretion, not to pursue the error without liability therefor. If the Customer requests that K-T proceed with Hardware Maintenance Services regarding an error and K-T subsequently determines that the error was not due to a Problem, K-T's then-current Time & Materials Services Terms shall apply to any error identification or correction efforts undertaken, and repair costs incurred, by K-T.

4.6 Limitations and Exclusions. K-T shall not be obligated to provide Hardware Maintenance Services if such Hardware Maintenance Services are required due to (i) Customer's mishandling, abuse, misuse, or use of the Product other than in accordance with K-T's operation instructions; (ii) use of the Products with hardware or software that was not expressly specified in writing by K-T as suited for use with the Products; (iii) changes to the Customer environment, in which the Products were provided; (iv) actions of persons other than K-T; (v) installation, maintenance, or repair of Products by someone other than K-T, except maintenance performed by Customer if and to the extent authorized by K-T in a duly signed writing; or (vi) Force Majeure conditions as defined in K-T's General Terms. K-T shall not be obligated to provide Hardware Maintenance Services for (a) Products that have been modified by someone other than K-T, unless such modifications were directed or approved by K-T in writing and made in strict conformance with all specifications and instructions provided in such writing; (b) Products that K-T modified in accordance with Customer's request, specifications, or instructions; (c) Third Party Products; or (d) Hardware whose eligibility for Hardware Maintenance Services has not been approved by K-T in accordance with Section 2.3 (Relocation of Hardware) after a relocation and the Software pre-installed on such relocated Hardware. The relocation of wafer prober Hardware within a test facility and mechanical and software interface changes, as required for normal operations, do not constitute an unapproved modification or relocation under Sections 4.6 (a) and (d) (Limitations and Exclusions). K-T shall not be obligated to provide Hardware Maintenance Services, except for (y) the most recent version of a Product and (z) prior versions of a Product for a period of twelve (12) months following the issuance of the next version of the Product; K-T shall have no obligation to provide Hardware Maintenance Services for any other version of a Product.

## 5. PAYMENT

5.1 Payment. K-T may invoice Customer quarterly in advance for the performance of Hardware Maintenance Services, at K-T's current standard rates, which are available on request and Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

5.2 Relocated Hardware. Payment obligations with respect to relocated Hardware are (i) automatically suspended on the day Hardware is de-installed, and (ii) automatically reinstated on the day following re-installation of the Hardware. Without limiting Section 2.3 (Relocation of Hardware) and Section 4.6(d) (Limitations and Exclusions), the performance of Hardware Maintenance Services for relocated Hardware and the Software pre-installed on such Hardware may be subject to increased hardware maintenance fees at K-T's then-current rates, e.g., due to a greater distance of the Hardware location from K-T's service center.

5.3 Increased Level of Specifications. K-T is only required to perform the Hardware Maintenance Services necessary to maintain the standard level of specifications of the Products as specified in the Documentation. If K-T, upon Customer's request, performs Hardware Maintenance Services that result in the certification of an increased level of specifications by K-T, the hardware maintenance fee may increase.

5.4 Upgrades. Upon installation of new versions of the Products that add new features or functionality (such as Upgrades), the maintenance fee may increase.

5.5 Discounts. K-T's discount schedule as applicable on the first day of the Maintenance Period shall apply to the Hardware Maintenance Services performed hereunder. If any of the factors that determine Customer's discount change, such discount will change effective at the beginning of the calendar months following the change. If Customer terminates Hardware Maintenance Services for any or no reason before the end of a Maintenance Period (i) any multi-year discount applicable to that Maintenance Period shall be forfeited retroactively and Customer shall pay up the resulting difference; and (ii) any multi-system discount will be recalculated based on K-T's then current discounts.

## 6. LIMITED WARRANTY AND DISCLAIMER

6.1 Limited Warranty. K-T will perform Hardware Maintenance Services substantially in accordance with the applicable Standard Services Offering.

6.2 Exclusive Remedy. If the Hardware Maintenance Services fail to conform to the limited warranty set forth in Section 6.1 (Limited Warranty), Customer may terminate Hardware Maintenance Services in accordance with Section 7.3 (Termination for Cause) if K-T fails to cure a non-conformance within thirty (30) days after receiving Customer's detailed request to cure the non-conformance. Termination shall not affect (i) Customer's obligations to pay for Hardware Maintenance Services already performed before K-T receives Customer's request to cure; or (ii) any other obligations of Customer under these Hardware Maintenance Terms. THE REMEDIES EXPRESSLY PROVIDED OR REFERENCED IN THIS SECTION 6.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST K-T WITH RESPECT TO A NON-CONFORMANCE OF HARDWARE MAINTENANCE SERVICES OR REVISIONS.

6.3 Disclaimer. EXCEPT AS SPECIFIED IN SECTION 6.1 (LIMITED WARRANTY), K-T MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY HARDWARE MAINTENANCE SERVICES OR REVISIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, K-T DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER SHALL HAVE NO WARRANTY CLAIM UNDER SECTION 6.1 (LIMITED WARRANTY), UNLESS K-T RECEIVES CUSTOMER'S WRITTEN REQUEST TO CURE A NON-CONFORMANCE WITHIN THIRTY (30) DAYS AFTER ITS OCCURRENCE.

## 7. TERM AND TERMINATION

7.1 Term and Renewals. K-T will provide Hardware Maintenance Services during the Maintenance Period, which shall not be automatically renewed. If Customer wishes to obtain Hardware Maintenance Services beyond the initial Maintenance Period or for additional Products, Customer has to submit a new order.

7.2 Termination for Convenience. Either party may terminate Hardware Maintenance Services or exclude individual Products from the scope of Hardware Maintenance Services with ninety (90) days' written notice to the other party.

7.3 Termination for Cause. Either party may terminate Hardware Maintenance Services by written notice, effective immediately, if the other party fails to cure any material breach of these Hardware Maintenance Terms within thirty (30) days after receiving a written notice from the non-breaching party detailing the alleged material breach.

7.4 Automatic Termination. Hardware Maintenance Services shall be automatically terminated with respect to Software, and Hardware that contains Software, for which the license has expired or was terminated for any reason.

7.5 Consequences. Unless K-T validly terminates Hardware Maintenance Services for cause due to Customer's material breach of these Hardware Maintenance Terms, Customer shall be entitled to receive a proportionate refund of any prepaid fees applicable to the terminated portion of the Maintenance Period. If Customer validly terminates Hardware Maintenance Services for cause because of K-T's material breach of these Hardware Maintenance Terms, Customer shall also be entitled to receive a proportionate refund of any fees applicable to the thirty (30) days immediately preceding the termination. Otherwise, Customer shall not be entitled to receive any refunds. If K-T terminates Hardware Maintenance Services due to Customer's material breach, Customer shall return to K-T all Software Revisions, K-T's Confidential Information and other tangibles and intangibles received in connection with Hardware Maintenance Services, without retaining any copies thereof and all licenses granted to Customer under these Hardware Maintenance Terms for Revisions shall be automatically revoked.

7.6 Survival. K-T's General Terms and Sections 5 (Payment), 6 (Limited Warranty and Disclaimer), and this Section 7 of these Hardware Maintenance Terms shall survive any termination of Hardware Maintenance Services. Customer's licenses to Software Revisions shall survive only so long as Customer continues to fully comply with all provisions of these Hardware Maintenance Terms (including K-T's General Terms).