

# GENERAL TERMS

Version Singapore 2019.7.15

These General Terms apply to any quote, order, and order acknowledgement, and any sale, license or delivery of hardware, software, services, or other products by KLA Corporation, One Technology Drive, Milpitas, California 95035 ("**KLA**") to any acquirer ("**Customer**"). KLA does not accept, expressly or impliedly, and KLA 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 KLA expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, receiving, accepting or using products or otherwise proceeding with any transaction after receipt of these General Terms or after otherwise being notified that such transactions are subject to these General Terms, Customer agrees to these General Terms.

## 1. DEFINITIONS

"**Agreement**" means a contract between KLA and the Customer that is formed by reference to these General Terms and / or one or more sets of KLA's product-specific terms (e.g., hardware sales terms or fixed fee services terms) that are attached hereto or available from KLA on request.

"**Confidential Information**" means KLA Information, Customer Contributions and any other information that is marked or otherwise expressly identified as confidential in writing or that should have been reasonably understood as such due to its nature, regardless of whether in tangible, electronic, verbal, graphic, visual or other form, that one party ("**Owner**") discloses to the other party ("**Recipient**"). Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or omission of the Recipient; (ii) subsequent to disclosure hereunder was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (iii) was already known by the Recipient prior to receiving it from the Owner and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by the Recipient without use of Confidential Information of the Owner.

"**Customer Contributions**" means any Intellectual Property or information that (i) is created by or with Customer and contains KLA Information, is based on KLA Information, is developed because of or with the help of KLA Information, or constitutes a modification or improvement of KLA Information; or (ii) is specifically related to KLA Information and not specifically related to Intellectual Property or information owned or created by Customer unrelated to KLA Information.

"**Delivery Date**" means the date on which KLA puts a Product into the possession of a carrier for shipment, or on which Customer downloads Software, as applicable.

"**Documentation**" means KLA's information manuals that (i) contain operating instructions and performance specifications for the Products; (ii) KLA delivers to Customer with the Products; and (iii) KLA generally makes available to all users of its Products.

"**Hardware**" means any standard tangible products or parts thereof that KLA agrees to deliver to Customer, excluding any Software that may be contained therein, but including hardware revisions that KLA may deliver under KLA's Hardware Maintenance Terms.

"**Intellectual Property**" means any computer program or routines (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, designs, utility models, symbols, logos, marks, names, procedures, processes, technical improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.

"**KLA Information**" means (i) any technical or other information related to Products or services (including, but not limited to, any documentation, services offerings, class materials, and written, visual, and oral instructions) and (ii) any Intellectual Property owned, or provided to Customer, by KLA.

"**Product**" means Hardware, Software and/or Work Product.

"**Proprietary Rights**" means any and all rights, title, ownership and interest in and to copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, recognized in any jurisdiction or country of the world, whether or not perfected.

"**Software**" means any standard computer program in object code, source code, embedded, or other format and any Documentation in electronic form that KLA agrees to deliver to Customer, including software revisions and updates that KLA may deliver under maintenance terms.

"**Third Party Products**" means any products that are manufactured by third parties and do not bear KLA's name, logo, or mark and may include, without limitation, (i) Products recommended or delivered by KLA; and (ii) components of Products delivered by KLA, unless such components are not recognizable as separate items and are not identified as

separate items in KLA's price list, product specifications on KLA's website at <http://www.kla.com/products/browse.html>, Documentation, or another KLA document.

"**Work Product**" means any tangible or intangible results or deliverables that KLA agrees to create or deliver, or intentionally delivers to Customer, as a result of performing services, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith.

2. **COOPERATION.** Customer shall timely and free of charge provide KLA with all information, materials and cooperation necessary for KLA to provide services or as otherwise reasonably requested by KLA. Without limiting the foregoing, Customer shall comply with KLA's site preparedness guidelines. If Customer fails to meet any of its obligations, KLA may, without limiting any other remedy (i) delay or suspend its performance and charge Customer for any resulting costs; and (ii) charge Customer its then-current time & materials rates (available on request) for every day (or part thereof) on which KLA personnel is unable to perform services. If Customer delays any performance, delivery, or acceptance for more than 60 days, (a) KLA may invoice and Customer shall pay the full amount owing immediately; (b) Customer shall be deemed to waive its right to any refund; and (c) any applicable warranty period shall start running.

3. **PAYMENT TERMS.** Unless KLA expressly states otherwise, all fees and prices quoted or invoiced exclude sales taxes, service taxes, withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any but include Singapore Goods and Services Tax ("GST"). Any such charges and costs shall be paid or reimbursed by Customer. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, KLA receives the full amount invoiced. If KLA does not receive all amounts when due (i) any due and unpaid portion of the fees shall bear interest in the amount of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is less, and (ii) KLA may immediately suspend deliveries, licenses and performance of any services. At KLA's request, Customer shall provide an irrevocable letter of credit from a financial institute and with terms reasonably acceptable to KLA.

## 4. INFRINGEMENT INDEMNITY

4.1 **Indemnity.** KLA will defend and indemnify Customer from and against all infringement claims brought against Customer with respect to Products if and to the extent that, on the Delivery Date, Products infringe any third party's copyright, trade secret or United States patent, on the condition that Customer (i) notifies KLA in writing within fifteen (15) days of the date on which Customer becomes first aware of such claim; (ii) gives KLA, at KLA's expense, sole authority and control of the defense or settlement of such claim; and (iii) provides all reasonable information and assistance requested by KLA to handle the defense or settlement of any such claim.

4.2 **Remedial Measures.** If a Product infringes, or KLA reasonably believes it may infringe, third party rights, KLA may, at its own expense and sole discretion (i) procure for Customer the right to continue use of such Product; (ii) replace or modify such Product so that it becomes non-infringing; or (iii) refund amounts paid by Customer for such Product in exchange for return of the affected Product.

4.3 **Exclusions.** KLA shall have no indemnity obligation for any infringement claim based on any (i) Products that have been modified by someone other than KLA, unless such modifications were directed by KLA in writing and made in conformance with all of KLA's specifications or instructions; (ii) Products created or modified by KLA in accordance with Customer's requests, specifications, or instructions; (iii) Products that Customer uses with hardware, software or materials or in a manner or method not expressly recommended in writing by KLA; (iv) versions of Products that are not the latest version if such infringement could have been avoided by use of the latest version of the Products that has been made available by KLA to Customer; (v) infringements caused by third parties or Third Party Products, or (vi) infringements of any patent or other right that Customer was aware of or should have been aware of on the Delivery Date (unless KLA should have been aware of such infringement also and failed to notify Customer accordingly).

4.4 **Customer Indemnification.** Customer shall defend and indemnify KLA from and against all infringement claims brought against KLA in any of the situations described in

Section 4.3 (Exclusions) on the condition that KLA (i) notifies Customer in writing within 15 days of the date on which KLA becomes first aware of such claim; (ii) gives Customer, at Customer's expense, sole authority and control of the defense or settlement of such claim; and (iii) provides all reasonable information and assistance requested by Customer to handle the defense or settlement of any such claim.

4.5 **Limitation.** KLA SHALL HAVE NO LIABILITY FOR ANY DAMAGES ALLEGED OR AWARDED BASED DIRECTLY OR INDIRECTLY UPON THE QUANTITY OR VALUE OF GOODS MANUFACTURED BY MEANS OF THE PRODUCT, OR UPON THE AMOUNT OF USE OF THE PRODUCT. KLA'S ENTIRE LIABILITY RELATED TO ITS INDEMNIFICATION OBLIGATIONS SHALL IN NO EVENT EXCEED THE GREATER OF (i) TWO TIMES THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR AN INFRINGING PRODUCT, OR (ii) TWO MILLION U.S. DOLLARS (U.S.\$2,000,000). THIS SECTION 4 STATES KLA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF A THIRD PARTY'S PROPRIETARY RIGHT.

## 5. LIMITATION OF LIABILITY

5.1 **Limitations.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, OR DATA, OR COST OF COVER. THE LIABILITY OF KLA FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR SERVICE SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY CUSTOMER FOR THE PRODUCTS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY EXCEED A TOTAL AMOUNT EQUAL TO ONE MILLION US DOLLARS (US\$1,000,000.00).

5.2 **Scope.** THE LIMITATIONS OF LIABILITY IN SECTION 5.1 (LIMITATIONS) SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES UNDER THESE GENERAL TERMS OR ANY PRODUCT-SPECIFIC TERMS FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY IN SECTION 5.1 (LIMITATIONS) SHALL NOT APPLY WITH RESPECT TO CONTRACTUAL INDEMNIFICATION, CONFIDENTIALITY OR COMPLIANCE OBLIGATIONS UNDER THIS AGREEMENT.

NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT KLA'S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR WILLFUL DEFAULT OR FOR FRAUDULENT MISREPRESENTATION.

## 6. INFORMATION

6.1 **Confidentiality.** Recipient will protect the secrecy of Owner's Confidential Information with the same degree of care as it uses to protect its own confidential information, but in no event with less than due care. Recipient will not (i) disclose Owner's Confidential Information to anyone, except to persons in its own organization who have a need to know in order to fulfill Recipient's obligations under the Agreement and who are bound by non-disclosure obligations requesting them to treat the Confidential Information as confidential; and (ii) use Owner's Confidential Information except as necessary for the performance of Recipient's obligations or the exercise of Recipient's express rights under the Agreement.

6.2 **Proprietary Rights.** Customer shall treat all KLA Information and Customer Contributions as Confidential Information of which KLA is the Owner for purposes of this Section 6. Customer is not obligated to share Customer Contributions with KLA and Customer may, at its sole discretion, (i) keep Customer Contributions to itself, or (ii) disclose Customer Contributions to KLA; provided, however that if Customer wishes to retain certain rights to a specific Customer Contribution, Customer shall not disclose such Customer Contribution to KLA until Customer has notified KLA accordingly and KLA has confirmed to Customer in writing that KLA wishes Customer to disclose under such circumstances. To the extent, that Customer discloses Customer Contributions to KLA without such notice and written confirmation from KLA (for example, without limitation, in connection with feedback suggestions or maintenance or improvement requests) or to any third parties (for example, without limitation, with KLA's written permission or in violation of these General Terms), Customer irrevocably agrees to assign, and hereby assigns to KLA, title, ownership, and all rights and interests, including, but not limited to, all Proprietary Rights to such disclosed Customer Contributions, to the broadest extent permitted by applicable law. Such assignment notwithstanding, Customer may use all Customer Contributions internally in the same manner as Confidential Information received from KLA subject to all limitations and restrictions of the Agreement. KLA reserves all rights to KLA Information and Customer Contributions, except as expressly provided otherwise in these General Terms or in a duly signed writing.

6.3 **Return.** If and when Confidential Information is no longer needed for the performance of obligations or exercise of rights under the Agreement, Recipient must promptly destroy or return all Confidential Information and any copies thereof upon Owner's written request. Recipient agrees to provide written certification of compliance with this Section 6.3 within 30 days after the receipt of the request.

## 7. CHOICE OF LAW AND ARBITRATION.

The Agreement is governed by the laws of the Republic of Singapore, excluding its conflict of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any dispute arising out of or in connection with this Agreement ("**Dispute**"), including any question regarding its existence, validity or termination, shall be referred to, and finally resolved by, arbitration in Singapore in accordance with the then-current International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this clause. The language of the arbitration shall be in English. The tribunal shall consist of three (3) arbitrators appointed by the Chairman of the SIAC in accordance with the SIAC Rules. The arbitrators shall, at either party's request, give a written opinion stating the factual basis and legal reasoning for the decision in the English language. The arbitrators shall have the authority to determine issues of arbitrability. The arbitrators shall have the authority to award compensatory damages only and shall not award punitive or exemplary damages. The parties, their representatives, other participants and arbitrators shall hold the existence, subject matter and result of arbitration in confidence. Notwithstanding the foregoing, either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). The prevailing party in any legal proceeding brought by one party against the other party in a Dispute shall be entitled to recover its legal expenses, including, but not limited to, the costs of any court or arbitration proceeding and reasonable attorneys' fees.

## 8. MISCELLANEOUS

8.1 **Compliance.** Each party shall comply with all applicable laws including, but not limited to, the export control laws of the United States. Customer shall not export or re-export any Products or KLA Information without the appropriate United States licenses, and Customer shall defend, indemnify, and hold KLA and all KLA suppliers harmless from any claims arising out of Customer's violation of applicable export control laws.

8.2 **Written Form.** Any notices and any modifications of, or amendments to, the Agreement shall be invalid, unless (i) notices are in writing and sent by fax or by registered or certified mail, postage prepaid; and (ii) modifications and amendments are in writing and signed by duly authorized officers of both parties. Representations made by sales or technical personnel of KLA shall have no legal effect, unless confirmed by a duly authorized officer of KLA in writing. Furthermore, notices to KLA are invalid, unless and until received at the address specified in the preamble of these General Terms or at such other address as may be specified by KLA to Customer in writing as the appropriate address for notices.

8.3 **Dates and Timelines.** All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a duly authorized representative of KLA expressly agrees in a duly signed writing that a certain date shall be legally binding.

8.4 **No Waiver.** The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.

8.5 **Assignment and Delegation.** Customer may not assign any of its rights against KLA, and any (purported) assignment, either voluntarily or by operation of law, is invalid, unless KLA has given its prior written consent. Any warranties extended by KLA (i) are nontransferable and for Customer's benefit only; and (ii) shall expire effective immediately if Customer resells or otherwise transfers the warranted Product to any third party. KLA may assign its rights and delegate its obligations.

8.6 **Insolvency.** If either party (i) becomes insolvent; (ii) suspends its business; or (iii) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within 30 days, then the other party may immediately cancel any outstanding part of any order without penalty.

8.7 **Force Majeure.** Except for payment obligations, non-performance or late performance of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing or late-performing party whether or not similar to the foregoing. If by reason of any such force majeure event, KLA's supplies of Products are limited, KLA shall have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate. Deliveries suspended or not made by reason of this Section 8.7

shall be canceled without liability; provided however, that payment obligations for Products already delivered shall otherwise remain unaffected.

8.8 Severability. If and to the extent any provision of the Agreement in writing is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof shall be ineffective as to the jurisdiction in which it is illegal, invalid, or

unenforceable to the extent of its illegality, invalidity, or unenforceability and shall be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction shall not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.