

FIXED FEE SERVICES TERMS

Standard (U.S.) Version 2019.7.15

These Fixed Fee Services Terms apply to any quote, order, and order acknowledgment, and any sale of fixed fee services 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 services or otherwise proceeding with any transaction after receipt of these Fixed Fee Services Terms or after otherwise being notified that such transactions are subject to these Fixed Fee Services Terms, Customer agrees to these Fixed Fee Services Terms and KLA's General Terms, which are incorporated by reference herein and are either attached hereto, or available at www.kla.com/terms or on request.

1. **DEFINITIONS** The definitions in KLA's General Terms shall apply in addition to the following definitions:

"**Fixed Fee Services**" means services performed by KLA that KLA identifies as such or expressly agrees to provide for a fixed price or on a milestone basis (as opposed to, e.g., services performed at hourly, daily, weekly, or monthly rates). Fixed Fee Services may include, for example, re-installation of relocated or moved Hardware, and analysis and reports, such as yield technology assessment.

"**Milestone**" means a project phase or sub-task as contemplated in a Statement of Work.

"**Statement of Work**" means a statement of work or other document expressly agreed upon by the parties in writing that sets forth the specifications for Work Product. If the parties agree on Milestones, the Statement of Work shall also set forth specifications and installment payments for each Milestone.

2. FIXED FEE SERVICES

2.1 **Scope of Fixed Fee Services.** KLA will provide to Customer Fixed Fee Services based on a Statement of Work. If Customer requests services that are not covered by the Statement of Work then KLA may, at its sole discretion, either (i) agree to a duly signed amendment of the Statement of Work; or (ii) provide such services on a time & materials basis subject to KLA's then-current Time & Materials Services Terms (available at www.kla.com/terms or on request).

2.2 **Contacts and Assigned Personnel.** Each party shall appoint at least one (1) primary and one (1) substitute contact person for all technical communications with the other party in connection with the Fixed Fee Services; provided, however, that each party may replace such contacts from time to time upon written notice to the other party. KLA's personnel shall be subject to instructions and supervision exclusively by KLA. Without limiting the foregoing, KLA (i) may select, remove and replace its personnel from time to time in its sole discretion; and (ii) as between the parties, shall be exclusively responsible for administrative and human resources matters with respect to such personnel.

3. ACCEPTANCE

3.1 **Acceptance Requirement.** Work Product does not require acceptance testing or a formal acceptance, unless the parties have expressly agreed on an acceptance requirement in the applicable Statement of Work or another duly signed writing, in which case Section 3.2 (Completion and Acceptance Testing) through Section 3.4 (Deemed Acceptance) shall apply.

3.2 **Completion and Acceptance Testing.** If Work Product is subject to acceptance testing as set forth above, KLA shall notify Customer when such Work Product is ready for acceptance testing. At Customer's request, a Customer representative may attend KLA's acceptance testing. Via acceptance testing, KLA shall determine whether the Work Product conforms to the mutually agreed specifications in the applicable Statement of Work ("**Acceptance Criteria**"). If the acceptance testing demonstrates that the Acceptance Criteria are met, KLA shall provide Customer with a written summary of the results of the acceptance testing ("**Test Results**") following the completion of the acceptance testing procedure.

3.3 **Express Acceptance or Rejection.** If the Work Product materially conforms to the Acceptance Criteria, Customer shall sign a written acceptance statement (i) at the end of the acceptance testing procedure; or (ii) if no Customer representative attends the acceptance testing procedure, within ten (10) days after Customer's receipt of the Test Results. If any Work Product materially fails to conform to the applicable Acceptance Criteria, then Customer shall promptly provide KLA with a reasonably detailed written description of the perceived non-conformance ("**Rejection Notice**"). If KLA receives a justified Rejection Notice within ten (10) days after Customer has received the Test Results, KLA shall use commercially reasonable efforts to remedy the non-conformance and repeat the acceptance testing process per Section 3.2 (Completion and Acceptance Testing) and this Section 3.3.

3.4 **Deemed Acceptance.** In the absence of an express acceptance, Customer shall be deemed to have accepted Work Product upon the earlier of (i) approval of the Work Product; (ii) payment, without reservation, of any amounts with respect to the Work Product;

(iii) ten (10) days after Customer's receipt of the Test Results, unless KLA receives a Rejection Notice within such period; or (iv) use of the Work Product for any purpose other than testing as necessary in order to determine conformance to the applicable Acceptance Criteria.

4. **PAYMENT.** Customer shall make payment in accordance with the applicable Statement of Work and the General Terms.

5. LIMITED WARRANTY AND DISCLAIMER

5.1 **Limited Warranty.** KLA warrants that the Work Product substantially conforms to the Statement of Work and Acceptance Criteria, if any, as of (i) the date of Customer's express acceptance or deemed acceptance in accordance with Section 3.4 (Deemed Acceptance), whichever occurs earlier, with respect to Work Product that is subject to acceptance testing (as set forth in Section 3.1 — Acceptance Requirement); or (ii) the date of KLA's invoice with respect to all other Work Product.

5.2 **Exclusive Remedies.** If Work Product materially fails to conform to the limited warranty set forth in Section 5.1 (Limited Warranty), KLA shall, at its sole discretion (i) repair or replace the non-conforming Work Product to remedy the non-conformity identified by Customer in accordance with Section 5.3 (Warranty Period); or (ii) refund to Customer the fees paid for such Work Product in exchange for return of the non-conforming Work Product, in which case all licenses granted to Customer under these Fixed Fee Services Terms for such Work Product shall be automatically revoked. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 5.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST KLA WITH RESPECT TO ANY NON-CONFORMANCE OF FIXED FEE SERVICES OR WORK PRODUCT.

5.3 **Warranty Period.** Unless KLA expressly specifies or agrees on a different warranty period in a duly signed writing, the warranty period shall be ninety (90) days. The warranty period shall begin on the date of KLA's applicable invoices; or, if an acceptance requirement has been agreed on, upon Customer's express acceptance or deemed acceptance in accordance with Section 3.4 (Deemed Acceptance), whichever occurs earlier. Customer shall have no warranty claims, unless (a) KLA receives from Customer, during the warranty period a written notice describing the warranty breach in reasonable detail ("**Warranty Claim**"); and (b) with respect to any Work Product that is subject to acceptance testing, the applicable non-conformity could not, with reasonable diligence, have been identified during the course of such testing and/or examination of the applicable Test Results.

5.4 **Costs and Procedure.** If KLA receives a Warranty Claim in accordance with Section 5.1 (Limited Warranty), Section 5.3 (Warranty Period), and any procedure guidelines that KLA may publish or make available to Customer (the "**Warranty Guidelines**"), KLA will not charge for any repair or re-performance, except for any costs that are caused by Customer's relocation of the Work Product from the destination to which it was originally delivered by KLA. If Customer's Warranty Claim fails to meet any of the requirements of Section 5.1 (Limited Warranty), Section 5.3 (Warranty Period), or the Warranty Guidelines, KLA's then-current Time & Materials Services Terms shall apply to any error identification or correction efforts, repair, replacement, and shipment costs by KLA.

5.5 **Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 5.1 (LIMITED WARRANTY), KLA MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY FIXED FEE SERVICES OR WORK PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KLA DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6. **ALLOCATION OF PROPRIETARY RIGHTS.** The Proprietary Rights to Intellectual Property contained in Work Product or created by either party under these Fixed Fee Services shall be allocated as follows:

6.1 Preexisting Intellectual Property.

6.1.1 Pre-existing Customer Intellectual Property. Customer retains all Proprietary Rights that Customer holds or acquires outside the scope of these Fixed Fee Services Terms, including, but not limited to Proprietary Rights to any pre-existing Intellectual Property that Customer provides to KLA in connection with the performance of the Fixed Fee Services ("Pre-existing Customer Intellectual Property").

6.1.2 Pre-existing KLA Intellectual Property. KLA retains all Proprietary Rights that KLA holds or acquires outside the scope of these Fixed Fee Services Terms, including, but not limited to Proprietary Rights to any pre-existing Intellectual Property that KLA incorporates into Work Product ("Pre-existing KLA Intellectual Property").

6.2 Newly Developed Intellectual Property. Subject to Section 6.1 (Pre-existing Intellectual Property), upon creation of any Intellectual Property under these Fixed Fee Services, the Proprietary Rights to such new Intellectual Property shall be allocated as follows:

6.2.1 Improvements of Either Party's IP. Regardless of whether the Intellectual Property is created by KLA, Customer, or jointly by both parties (i) Customer shall acquire all Proprietary Rights to any improvement and modification of any Pre-existing Customer Intellectual Property that does not constitute an improvement or modification of Pre-existing KLA Intellectual Property; and (ii) KLA shall acquire all Proprietary Rights to any improvement and modification of Pre-existing KLA Intellectual Property that does not constitute an improvement or modification of Pre-existing Customer Intellectual Property.

6.2.2 Improvements of Both Parties' or Neither Party's IP. If newly created Intellectual Property constitutes an improvement or modification of both or neither Pre-existing KLA Intellectual Property and Preexisting Customer Intellectual Property, then all Proprietary Rights to such Intellectual Property shall be acquired by the party that solely creates such Intellectual Property, unless such newly created Intellectual Property is jointly developed by both parties, in which case the Proprietary Rights shall be jointly acquired by both parties without a right to accounting, revenue sharing or prior approval for commercialization or enforcement.

6.3 Assignments. If under mandatory law, a party is unable to acquire Proprietary Rights upon creation as provided in these Fixed Fee Services Terms, the other party hereby assigns its rights to any Intellectual Property, tangible material or software copy to the party that is entitled to acquire all Proprietary Rights according to Sections 6.1 (Pre-existing Intellectual Property) and Section 6.2 (Newly Developed Intellectual Property) (the "Entitled Party"). To the extent that under mandatory law, rights can only be assigned after creation, the parties hereby irrevocably agree to assign, immediately following the creation, their rights to the Entitled Party. To the extent that under mandatory law, Proprietary Rights may not be assigned, the parties hereby agree to grant an exclusive, irrevocable, and unconditional license to the Entitled Party. To the extent such license grant is invalid or not fully enforceable under mandatory law, the parties irrevocably agree to grant and hereby grant such right to the Entitled Party as the Entitled Party reasonably requests in order to acquire a legal position as close as possible to the legal position described in Section 6.1 (Pre-existing Intellectual Property) and Section 6.2 (Newly Developed Intellectual Property).

6.4 Realization of Proprietary Rights. In order to ensure that each party will be able to retain, acquire, and use its respective Intellectual Property and Proprietary Rights as outlined in Section 6.1 (Pre-existing Intellectual Property) and Section 6.2 (Newly Developed Intellectual Property), each party shall (i) transfer possession, ownership, and title to media, models, and other tangible objects containing Intellectual Property to the other party if the other party is the Entitled Party with respect to the Proprietary Rights to such Intellectual Property; (ii) share copies of media, models, and other tangible objects containing Intellectual Property of both parties if it is not feasible or commercially reasonable to physically separate the Intellectual Property of each party; and (iii) provide the other party with reasonable support, signatures, and information for recording and perfecting the

foregoing assignment and for registering or otherwise securing, defending, and enforcing such other party's Proprietary Rights against third parties.

6.5 Employees and Contractors. In order to ensure that both parties acquire all Proprietary Rights as outlined in Section 6.1 (Pre-existing Intellectual Property) and Section 6.2 (Newly Developed Intellectual Property), both parties shall have all their respective employees, consultants, and agents assign or otherwise transfer as provided in Section 6 (Assignments) to the party which acts as their employer or principal, all Proprietary Rights arising out of any work such employees, consultants, or agents perform in connection with these Fixed Fee Services Terms.

6.6 License to Work Product. KLA grants to Customer a non-exclusive, non-transferable, and non-sublicenseable license to use such Work Product solely for Customer's internal business purposes if and to the extent that (i) the Work Product is identified in the applicable Statement of Work and KLA intentionally makes such Work Product available to Customer as part of Fixed Fee Services (e.g., a deliverable specified under a Statement of Work); (ii) the Work Product is not covered by any other written terms or agreements between the parties (otherwise such other terms or agreements, e.g., time & materials services terms or a software license terms, shall exclusively govern); and (iii) Customer complies with all provisions of these Fixed Fee Services Terms, including but not limited to its obligation to make timely payments of all fees and other amounts hereunder, and its confidentiality obligations under KLA's General Terms.

6.7 All Other Rights Reserved. KLA reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights not expressly granted to Customer in these Fixed Fee Services Terms in and to (i) all Work Product; and (ii) all Pre-existing KLA Intellectual Property and all other information, materials and technology developed or acquired by KLA prior to, or independently of, the provision of Fixed Fee Services hereunder, including, without limitation, all Intellectual Property embodied therein and all Proprietary Rights therein and thereto.

7. TERM AND TERMINATION

7.1 Term. The term of any Fixed Fee Services project will continue until (i) completion of the Fixed Fee Services under the applicable Statement of Work; or (ii) termination of the applicable Statement of Work in accordance with this Section 7.

7.2 Termination for Cause. Either party may terminate a Statement of Work by written notice, effective immediately, if the other party fails to cure any material breach of the Fixed Fee Services Terms related such Statement of Work within ten (10) days after receiving written notice from the non-breaching party detailing the alleged material breach.

7.3 Consequences. Unless Customer terminates a Statement of Work because of KLA's material breach of these Fixed Fee Services Terms, Customer shall (i) pay to KLA all fees specified in the applicable Statement of Work less out-of-pocket expenses saved by KLA as a result of the early termination, or one hundred twenty percent (120%) of KLA's fully loaded costs of all Fixed Fee Services performed before termination, whichever is greater; and (ii) return to KLA all Work Product, KLA's Confidential Information and other tangibles and intangibles received in connection with the Fixed Fee Services, without retaining any copies thereof and all licenses granted to Customer under these Fixed Fee Services Terms for Work Product shall be automatically revoked.

7.4 Survival. Sections 3.3 (Express Acceptance or Rejection), 3.4 (Deemed Acceptance), 4 (Payment), 5 (Limited Warranty and Disclaimer), 6 (Allocation of Proprietary Rights), and this Section 7 of these Fixed Fee Services and KLA's General Terms shall survive any termination of these Fixed Fee Services Terms, provided that if Customer does not comply with all provisions of these Fixed Fee Services Terms and KLA's General Terms, including, but not limited to, its payment obligations under Section 4 (Payment) and its confidentiality obligations under KLA's General Terms, the license to Work Product granted to Customer by KLA in Section 6.6 (License to Work Product) shall not survive termination.