

# KLA Corporation's Certified and Relunched Division Terms and Conditions of Sale

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KLA Corporation's Certified and Relunched Division ("KLA Pro") offers testing, refurbishment and certification services as well as system software and hardware performance Upgrades and Enhancements. These KLA Pro Terms and Conditions of Sale ("Terms") apply to any quote, order, and order acknowledgment, and any sale or delivery of used, relaunched, remanufactured and/or refurbished Products (the "Products") by KLA Corporation, One Technology Drive, Milpitas, California 95035 ("KLA") to any acquirer ("Customer"). KLA Pro does not accept, expressly or impliedly, and KLA Pro 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 Pro 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 Terms or after otherwise being notified that such transactions are subject to these Terms, Customer agrees to these Terms and KLA's General Terms and Pre-installed Software License Terms, which are incorporated by reference herein and are either attached hereto, or available at [www.kla.com/terms](http://www.kla.com/terms), or on request. Where these Terms conflict with KLA's General Terms and Pre-installed Software License Terms, these Terms shall govern.

## 1. DEFINITIONS AND SCOPE

The definitions in KLA's General Terms shall apply to capitalized terms used herein except where otherwise defined herein. These Terms apply to new, used, relaunched, remanufactured and/or refurbished Products offered by KLA Pro, including Upgrades and Enhancements. "Upgrades" or "Enhancements" mean an enhancement or modification of a Product made for purposes other than correction of a failure of a Product to conform to the applicable Documentation. Pre-installed Software covered by these Terms are additionally governed by KLA's Pre-installed Software License Terms. Software that are to be installed on Third Party Products are governed by KLA's Standalone Software License Terms, which are available at [www.kla.com/terms](http://www.kla.com/terms) or on request. Work Product may be provided by KLA under separate services arrangements (including, but not limited to, maintenance services, time & materials services, or fixed fee services) and is governed by KLA's General Terms and any applicable KLA services terms.

## 2. DELIVERY AND ACCEPTANCE

**2.1 Delivery.** KLA Pro will deliver all Products Ex-Works (Incoterms 2020), KLA Pro's premises. Customer is solely responsible for obtaining, and arranging for, appropriate insurance coverage and transportation arrangements with respect to the Products and to file any claims with the carrier. Transportation must be via air ride suspension enclosed van or, if specified by KLA Pro, via temperature controlled air-ride van. Risk of loss and title to used and/or refurbished Hardware shall pass to Customer on the Delivery Date. Customer acknowledges and agrees that KLA Pro (i) is not obligated to provide Software in source code form; (ii) does not transfer ownership or title to any Software, Documentation, Work Product, or any Intellectual Property (KLA Pro only grants limited, non-exclusive licenses as specified in KLA's Pre-installed Software License Terms). Partial and installment shipments are authorized.

**2.2 Hardware Inspection and Uncrating.** Immediately upon receipt of the Products, Customer shall (i) uncrate and visually inspect the Hardware; and (ii) notify KLA Pro in writing of receipt of the Hardware and any abnormalities that Customer notes. Customer shall ensure that a KLA Pro representative is present and is permitted to supervise the uncrating and inspection of the Hardware. If Customer fails to comply with this Section 2.2, Customer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging and any warranty rights.

**2.3 Installation and Acceptance Testing.** All Products include refurbishment, factory and field acceptance based on KLA's Conformance Test Document ("CTD"), installation, and a limited warranty (as set forth in Section 7, below), beginning upon the date that the Product achieves acceptance in accordance with the acceptance terms provided herein. Upon completion of the installation, KLA Pro shall notify Customer when the Products are ready for acceptance testing. Customer shall enable KLA Pro to perform acceptance testing of the Product and, without limiting the foregoing, shall provide KLA Pro with on-site and remote access to the Products (and any related hardware or software) for such acceptance testing. At Customer's request, a Customer representative may attend KLA Pro's acceptance testing. Via acceptance testing, KLA Pro shall determine whether the Products conform to the mutually agreed performance requirements ("Acceptance Criteria"). If the acceptance testing demonstrates that the Acceptance Criteria are met, KLA Pro shall provide Customer with a written summary of the results of the acceptance testing ("Test Results") following the completion of the acceptance testing procedure. Special Test Requirements ("STRs") for factory acceptance with Customer and/or Customer provided wafers or reticles are not allowed on KLA Pro Products unless previously approved by KLA Pro in writing. If KLA Pro does agree to respond to Customer specification or STR's, KLA Pro reserves the right to do so at an additional charge.

**2.4 Express Acceptance or Rejection.** If the Products materially conform 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 Product materially fails to conform to the applicable Acceptance Criteria, then Customer shall promptly provide KLA Pro with a reasonably detailed written description of the perceived non-conformance ("Rejection Notice"). If KLA Pro receives a justified Rejection Notice within ten (10) days after Customer has received the Test Results, KLA Pro shall use commercially reasonable efforts to remedy the non-conformance and repeat the acceptance testing process per Section 2.3 (Installation and Acceptance Testing) and this Section 2.4.

**2.5 Deemed Acceptance.** In the absence of an express acceptance, Products, Enhancements or Upgrades shall be deemed to have conformed to the applicable Acceptance Criteria (i) sixty (60) days from shipment if there is no fault of KLA Pro for the absence of an express acceptance; or (ii) the date the Products, Enhancements or Upgrades are put in production use or used for any purpose other than for testing as is necessary in order to determine conformity to the applicable Acceptance Criteria. Warranty shall commence and final payment shall be due upon the Products, Enhancements or Upgrades achieving express acceptance or deemed acceptance, whichever is sooner.

**2.6 Training.** If Customer desires applications support and training as part of its purchase of the Products, such applications support and training shall be provided at an additional charge, unless previously agreed to by the parties in writing.

**2.7 Upgrades and/or Enhancements.** Any Upgrade and/ or Enhancement purchased through KLA Pro by Customer for a Product is subject to the existing Product successfully passing the same CTD prior to KLA Pro delivering and/or implementing the Upgrade or Enhancements. Accordingly, KLA Pro will perform an assessment and overall health check of the Product at KLA Pro's prevailing time and materials rates prior to the delivery and/or implementation of the Upgrade or Enhancement. Any repairs identified by KLA Pro (as a result of the assessment and overall health check of the Product) required for the existing Product to meet the CTD shall be at Customer's sole expense, and quoted separately by KLA Pro.

## 3. PAYMENT.

**3.1 Payment Terms for Products.** Customer shall pay (i) a thirty percent (30%) non-refundable deposit of the total purchase price for Products within thirty (30) days of placement of the purchase order; (ii) sixty percent (60%) pre-delivery payment of the purchase price sixty (60) days prior to the scheduled shipment date; and (iii) ten percent (10%) of the purchase price upon express acceptance in accordance with Section 2.4 (Express Acceptance or Rejection) or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance), whichever occurs earlier but in no event beyond sixty (60) days from shipment. All payments hereunder shall be non-refundable and except where otherwise stated herein. At KLA Pro's request, Customer shall provide an irrevocable letter of credit from a reputable financial institution and with terms reasonably acceptable to KLA Pro at least thirty (30) days prior to the scheduled shipment date.

**3.2 Payment Terms for Upgrades and/or Enhancements.** Customer orders for Upgrades and/or Enhancements shall be paid one hundred percent (100%) within thirty (30) days after the Delivery Date. Payment shall be made in accordance with the General Terms.

3.3 Additional Payment Terms. All payments hereunder shall be non-refundable and except where otherwise stated herein, made in accordance with the General Terms. Deviations from the above payment terms are subject to the advance written approval of KLA Pro. At KLA Pro's request, Customer shall provide an irrevocable letter of credit from a reputable financial institution and with terms reasonably acceptable to KLA Pro at least thirty (30) days prior to the scheduled shipment date.

4. CANCELLATION. Prior to shipment, Customer may unilaterally cancel any delivery of the Products under these Terms with written notice to KLA Pro and upon payment of cancellation charges as follows: If KLA Pro receives Customer's cancellation notice

- (a) within 60 days of the scheduled shipment date, cancellation charges shall be 90% of the remaining balance.
- (b) more than 60 days, but less than 90 days of the scheduled shipment date, cancellation charges shall be 75% of the remaining balance.
- (c) 90 days or more, but less than 150 days of the scheduled shipment date, cancellation charges shall be 60% of the remaining.
- (d) 150 days or more of the scheduled shipment date, cancellation charges shall be 30% of the remaining balance.

5. RESCHEDULING. Customer may request once, in writing, that KLA Pro postpone shipment up to sixty (60) days after the scheduled shipment date provided that (i) KLA Pro shall be entitled to charge Customer liquidated damages in the amount of 0.5% of the total value of the Products postponed for each calendar day of the postponement delay for every seven (7) days after a two (2) week grace period. Odd days less than seven (7) days should be counted as seven (7) days. The penalty, however, shall not exceed the greater of 3% of the total value of the Products postponed or the total resulting costs of KLA Pro for such postponement (including but not limited to storage costs); and (ii) KLA Pro receives Customer's written request at least sixty (60) days prior to the scheduled shipment date. If Customer subsequently to postponing shipment in accordance with this Section 5 or Customer cancels shipment in accordance with Section 4 (Cancellation), the scheduled shipment date shall be the original shipment date and not the rescheduled shipment date for purposes of determining the cancellation charges. Any further requests to reschedule by Customer will be considered a cancellation under Section 4.

6. DELIVERY COMMITMENTS AND DEEMED CANCELLATION. If the thirty percent (30%) non-refundable deposit pursuant to Section 3.1 above is not received within sixty (60) days of the purchase order date, or the sixty percent (60%) pre-delivery payment is not received sixty (60) days prior to shipment, or where KLA deems that an irrevocable letter of credit is required, such letter of credit is not received at least thirty (30) days prior to shipment, unless otherwise agreed upon by KLA Pro in writing in advance, KLA Pro is entitled to void all delivery commitments and obligations. In such an instance, Customer's order will be deemed cancelled, and all applicable cancellation charges (including forfeiture of any pre-payments made), will be assessed. If Customer fails to arrange pick-up of Product(s) more than sixty (60) days beyond the agreed shipment date, unless otherwise agreed upon by KLA Pro in writing in advance, KLA Pro is entitled to void all delivery commitments and obligations with respect to the relevant Product(s). In such an instance, Customer's order for the relevant Product(s) may be deemed cancelled, and all applicable cancellation charges (including forfeiture of any pre-payments made), may be assessed. KLA Pro reserves the right to reschedule deliveries as necessary to manage inventory risk under these conditions.

## 7. LIMITED WARRANTY AND DISCLAIMER

7.1 Limited Warranty. KLA Pro warrants that on the Delivery Date and on the date of express acceptance or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance), whichever occurs earlier, the Products substantially conform to the specifications in the applicable Documentation, subject to the following limitations and exclusions:

7.1.1 Excluded Causes. Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Products with hardware or software that was not expressly specified in writing by KLA Pro as suited for use with the Products; (ii) Customer's failure to follow KLA Pro's operating instructions; (iii) failure to implement all updates, upgrades, and other new releases of Software made available to Customer; (iv) changes to the Customer environment, in which Products were installed; (v) acts or omissions of persons other than KLA Pro or its authorized representatives; (vi) installation or maintenance of Products by someone other than KLA Pro or persons certified by KLA Pro; (vii) abuse, use at an unsafe or not suitable site, unusual physical or electrical stress; (viii) any relocation of Products without, or not in accordance with, a prior written authorization by KLA Pro; or (ix) Force Majeure conditions as defined in KLA's General Terms.

7.1.2 Consumables and Modifications. Customer has no warranty rights with regard to any (i) consumable Products or parts thereof (e.g., Products or parts with an expected useful life of less than ninety (90) days, such as lamps, lasers, fuses, detectors, and batteries); (ii) Products that have been modified by someone other than KLA Pro, unless such modifications were directed or approved by KLA Pro in writing and made in conformance with all specifications and instructions provided in such writing; or (iii) Products that KLA Pro modified in accordance with Customer's request, specifications, or instructions, unless KLA Pro agrees in a duly signed writing that the modified Products shall be covered by the limited warranty specified in Section 7.1 (Limited Warranty).

7.1.3 No Warranties for Revisions. KLA Pro does not extend any warranties under these Terms for Hardware and Software Revisions provided under KLA's Hardware Maintenance Terms. Any warranties for such Hardware and Software Revisions are exclusively and finally provided for under KLA's Hardware Maintenance Terms.

7.1.4 No Warranty for Third Party Products. KLA Pro does not extend any warranties and KLA Pro disclaims all responsibilities for Third Party Products. If a manufacturer or supplier of Third Party Products makes any documentation providing for an end-user warranty available to KLA Pro, then KLA Pro shall forward such documentation to Customer.

7.1.5 Refurbished Parts. KLA Pro may use used and/or refurbished parts in systems, upgrades, retrofits and as replacement parts or on Products as required.

7.1.6 Imperfections. KLA Pro Products are in some cases, used and/or previously owned. As such, such KLA Pro Products may have cosmetic defects, scratches, or surface flaws. However, these imperfections will not impact the performance of the Products and KLA Pro warrants in accordance with Section 7.1 herein, that all used and/or refurbished Products will substantially meet or exceed the specifications in the applicable Documentation.

7.2. Exclusive Remedies. If a Product materially fails to conform to the limited warranty set forth in Section 7.1 (Limited Warranty), KLA Pro shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with Section 7.3 (Warranty Period); or (ii) refund to Customer the amounts paid for the Product in exchange for return of the non-conforming Product, in which case all licenses granted to Customer under the Pre-Installed Software License Terms shall be automatically revoked. Customer hereby transfers to KLA Pro title and ownership of any parts that KLA Pro replaces at Customer's request. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 7.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST KLA PRO WITH RESPECT TO ANY NON-CONFORMANCE OF PRODUCTS.

7.3. Warranty Period. The warranty period for the Products shall be twelve (12) months, beginning upon express acceptance or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance), whichever occurs earlier. For Upgrades or Enhancements and for Products that KLA Pro repairs or replaces pursuant to Section 7.2 (Exclusive Remedies) and any parts that KLA Pro incorporates into Upgrades, Enhancements or repaired Products or sells to Customer separately, the warranty period shall be ninety (90) days beginning on the completion of the Upgrade/ Enhancement or the date of Customer's receipt of the repaired Product or part, as applicable; provided that the Upgrade, Enhancement or such repaired Products or parts shall materially conform to the warranty standard set forth in Section 7.1 (Limited Warranty) on the Delivery Date. Customer shall have no warranty claim, unless KLA Pro receives from Customer, during the warranty period (i) a written notice describing the warranty non-conformity in reasonable detail (a "Warranty Claim"); and (ii) remote and physical access to the affected Products as well as information in sufficient detail to enable KLA Pro to reproduce and analyze the failure.

7.4 Costs and Procedure. If KLA Pro receives a Warranty Claim in accordance with Section 7.1 (Limited Warranty), Section 7.3 (Warranty Period), and any procedure guidelines that KLA Pro may publish or make available to Customer ("Warranty Guidelines"), KLA Pro will not charge for any repair, replacement, error identification, or correction of the non-conforming Product, or for return shipment of any repaired Hardware to Customer, except for any costs that are caused by Customer's relocation of the Hardware from the destination to which it was originally delivered by KLA Pro. Customer must prepay freight and insurance charges for the return shipment of the non-conforming Product to KLA Pro and will be reimbursed by KLA Pro if the Warranty Claim meets the requirements of Section 7.1 (Limited Warranty), Section 7.3 (Warranty Period), and the Warranty Guidelines. If Customer's Warranty Claim fails to meet any of the requirements of Section 7.1 (Limited Warranty), Section 7.3 (Warranty Period), or the Warranty Guidelines, KLA's then-current Time & Materials Services Terms (available on request) shall apply to any error identification or correction efforts, repair, replacement, and shipment costs by KLA Pro and Customer shall compensate KLA Pro accordingly on a time & materials basis at KLA's then-current rates (available on request).

7.5 Disclaimer. EXCEPT AS SPECIFIED IN SECTION 7.1 (LIMITED WARRANTY), KLA PRO MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KLA PRO DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND, WITHOUT LIMITING THE FOREGOING, MAKES NO WARRANTY THAT ANY OF THE PRODUCTS WILL BE ERROR-FREE OR THAT THEIR PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED.

## 8. MISCELLANEOUS

8.1 Limited Availability. Due to limited availability in some cases, KLA Pro Products are sold on a first come, first serve basis.

8.2 Errors. Typographical or clerical errors are subject to correction.