

# TIME & MATERIALS SERVICES TERMS

Standard (U.S.) Version 2.0.19.07.15

These Time & Materials Services Terms apply to any quote, order, and order acknowledgment, and any sale of time & materials 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 Time & Materials Services Terms or after otherwise being notified that such transactions are subject to these Time & Materials Services Terms, Customer agrees to these Time & Materials 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](http://www.kla.com/terms) or on request.

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

"**Personnel**" means employees, independent contractors, and subcontractors that KLA deploys for the performance of the Time & Materials Services.

"**Time & Materials Services**" means services performed against an hourly or daily rate and reimbursement of materials and expenses based on KLA's then-current price for parts and components and standard hourly or daily rates and reimbursement rules. Time & Materials Services may include, for example, consulting services, technical assistance with the deployment of hardware and software, and repairs beyond warranty coverage and maintenance agreements. Time & Materials Services do not include services (i) provided for a fixed one-time fee, milestone fees, or recurring quarterly or annual fees (*e.g.*, maintenance); or (ii) to produce deliverables (including customizations of KLA solutions) whose conformance to specifications KLA warrants.

## 2. TIME & MATERIALS SERVICES

2.1 **Scope of Time & Materials Services.** KLA shall deploy Personnel for the agreed-upon days or hours to provide Time & Materials Services to Customer and unless otherwise agreed upon in writing by KLA, deliver any required parts Ex-Works (Incoterms 2010). To the extent the parties agree in a statement of work or other document on specific project or service objectives (*e.g.*, development or customization of certain software or systems), KLA will use commercially reasonable efforts to pursue the realization of such objectives in performing the Time & Materials Services, but KLA shall not be obligated to achieve certain technical, economical, or other results.

2.2 **Contacts and Assigned Personnel.** Each party shall appoint at least one (1) primary contact person for all technical communications with the other party in connection with the Time & Materials Services; provided, however, that each party may replace such contacts from time to time upon written notice to the other party. Personnel may receive direction from Customer regarding desired objectives of Time & Materials Services and particularly with respect to the performance thereof, but shall be subject to supervision exclusively by KLA. Without limiting the foregoing, KLA (i) may select, remove and replace 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 Personnel.

2.3 **Performance Records.** The Personnel may keep records of the Time & Materials Services performed for Customer including records with respect to the dates and duration of performances and the type of services performed ("**Performance Records**"). At KLA's request, Customer shall review and countersign the Performance Records on a daily or weekly basis.

## 3. PAYMENT

3.1 **Fees and Expenses.** Unless otherwise agreed upon by KLA in writing, KLA may invoice Customer on a weekly or monthly basis in arrears for Personnel time, parts, and out-of-pocket costs based on the then-current price for parts and components and standard hourly or daily rates and reimbursement rules for Time & Materials Services performed and Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

3.2 **Surcharges.** If, at Customer's request, KLA performs Time & Materials Services on weekends or outside KLA's regular business hours of 8:00 a.m. to 5:00 p.m. (or unless otherwise specified by KLA's local office where Time & Materials Services are performed), KLA may apply surcharges of fifty percent (50%) or as specified in KLA's then-current price for parts and components and standard hourly or daily rates and reimbursement rules, whichever is higher; provided, however, that KLA is not obligated to provide Time & Materials Services at those times.

3.3 **Minimum Time.** Whenever KLA has deployed Personnel to Customer's site at the Customer's request and the Personnel was available and willing to perform Time & Materials Services, Customer will be charged for the time specified in KLA's then-current standard hourly or daily rates or for two (2) hours, whichever is higher.

## 4. LIMITED WARRANTY AND DISCLAIMER

4.1 **Limited Warranty.** KLA shall perform Time & Materials Services in a professional and workmanlike manner. Any parts that KLA may install in connection with Time & Materials Services shall substantially conform to the specifications in the applicable Documentation on the day of installation.

4.2 **Exclusive Remedy.** If a part materially fails to conform to the limited warranty set forth in Section 4.1 (Limited Warranty), KLA shall, at its sole discretion, repair or replace the non-conforming part to remedy the non-conformity identified by Customer in accordance with Section 4.3 (Warranty Period). Customer hereby transfers to KLA title and ownership of any parts that KLA replaces at Customer's request. If Time & Materials Services otherwise fail to conform to the limited warranty set forth in Section 4.1 (Limited Warranty) and KLA fails to cure such non-conformance within ten (10) days after receiving Customer's detailed request to cure, Customer may terminate Time & Materials Services in accordance with Section 7 (Termination). Termination shall not affect (i) Customer's obligations to pay for Time & Materials Services already performed before KLA receives Customer's request to cure; or (ii) any other obligations of Customer under these Time & Materials Services Terms. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 4.2 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 TIME & MATERIALS SERVICES OR PARTS.

4.3 **Warranty Period.** With respect to parts and Services, the warranty period shall be as follows:

- (a) one-hundred and eighty (180) days for non-consumable parts installed by KLA Personnel, beginning upon the date of installation;
- (b) ninety (90) days for non-consumable parts installed by non-KLA Personnel, beginning upon the date of shipment;
- (c) seven (7) days for consumable parts installed by KLA Personnel (*i.e.*, parts that are consumed during operation or that have an expected life time of less than one (1) year, *e.g.*, lamps, fuses, detectors, and batteries) beginning upon the date of installation;
- (d) seven (7) days for consumable parts installed by non-KLA Personnel (*i.e.*, parts that are consumed during operation or that have an expected lifetime of less than one (1) year, *e.g.*, lamps, fuses, detectors, and batteries) beginning upon the date of shipment;
- (e) for Time & Material Services, ten (10) days from the day on which the non-conforming Time & Material Services have been performed.

Customer shall have no warranty claims, unless KLA receives from Customer, during the warranty period (i) a written notice describing the warranty breach in reasonable detail, and (ii) remote and physical access to the affected parts as well as information in sufficient detail to enable KLA to reproduce and analyze the failure.

4.4 **Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 4.1 (LIMITED WARRANTY), KLA MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY TIME & MATERIALS SERVICES OR PARTS. 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.

## 5. EXCHANGE CREDIT.

In certain instances, parts that are returned by Customer to KLA in connection with these Time & Materials Services may qualify for an exchange credit. In such instances, KLA may offer Customer an exchange credit for spare parts returned to KLA that have not been self-repaired by Customer or sourced or repaired through a third party not authorized by KLA in writing in advance. Customer represents and warrants that spare parts that Customer returns to KLA for exchange credit have not been self-repaired or sourced or repaired

through an unauthorized third party. Customer hereby understands and agrees that no exchange credit will be offered for spare parts that have been subjected to self-repair by Customer or sourced or repaired through an unauthorized third party. For qualified spare parts returned by Customer for exchange credit hereunder, Customer hereby transfers to KLA title and ownership to any such spare parts. KLA will have the right to inspect and validate all spare parts returned to KLA for exchange credit. If the returned spare part is determined by KLA in its sole discretion to have been subjected to self-repair by Customer or sourced or repaired through an unauthorized third party, KLA shall be entitled to refuse granting Customer an exchange credit and furthermore reserves the right to sell future spare parts to Customer at KLA's then-current list price.

## 6. WORK PRODUCT.

6.1 License to Work Product. KLA shall grant to Customer a non-exclusive, non-transferable, and non-sublicenseable license to use Work Product solely for Customer's internal business purposes if and to the extent that (i) KLA intentionally makes such Work Product available to Customer as part of Time & Materials Services; (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.*, fixed fee services terms or a software license terms, shall exclusively govern); and (iii) Customer complies with all provisions of these Time & Materials 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.

6.2 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 Time & Materials Services Terms in and to all Work Product as well as all information, materials and technology developed or acquired by KLA prior to, or independently of, the provision of Time & Materials Services hereunder, including, without limitation, all Intellectual Property embodied therein and all Proprietary Rights therein and thereto. Customer reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to all Intellectual Property that Customer owns or acquires independently of the provision of Time & Materials Services hereunder.

## 7. TERMINATION

7.1 Right to Terminate. Either party may terminate any or all orders of Time & Materials Services with or without cause, at any time by giving the other party thirty (30) days' prior written notice. Either party may terminate any or all orders of Time & Materials Services by written notice, effective immediately, if the other party fails to cure any material breach of these Time & Materials Services Terms within ten (10) days after receiving a written notice from the non-breaching party detailing the alleged material breach.

7.2 Consequences. Unless Customer terminates Time & Materials Services because of KLA's material breach of these Time & Materials Services Terms or KLA terminates the Time & Materials Services without cause, Customer shall pay to KLA an amount equaling either the ramp-down or cancellation fees or, where no such fees are specified, the estimated total fees for Time & Materials Services contemplated, the costs for materials, and the expenses actually incurred less the expenses saved by KLA as a result of the early termination. If Customer validly terminates Time & Materials Services because of KLA's material breach, Customer shall not be obligated to pay the fees for the time spent, the costs for materials, and the expenses incurred performing Time & Materials Services during the ten (10) days preceding the termination. If KLA terminates Time & Materials Services because of Customer's material breach of these Time & Materials Services Terms, Customer shall return to KLA all Work Product, KLA's Confidential Information and other tangibles and intangibles received in connection with Time & Materials Services, without retaining any copies thereof, and all licenses granted to Customer under these Time & Materials Services Terms for Work Product shall be automatically revoked.

7.3 Survival. Sections 3 (Payment), 4 (Limited Warranty and Disclaimer), 6 (Work Product), and this Section 7 of these Time & Materials Services Terms and KLA's General Terms shall survive any termination of these Time & Materials Services Terms, provided that the license to Work Product granted to Customer by KLA in Section 6.1 (License to Work Product) shall survive only so long as Customer continues to fully comply with these Time & Materials Services Terms.