

GENERAL TERMS

Version China 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 ("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,

一般条款

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本一般条款适用于 KLA Corporation (One Technology Drive, Milpitas, California, 95035, ("KLA")) 对任何购买人 ("客户") 的硬件、软件、服务或其它产品的任何报价、订单、订单确认书或任何出售、许可或交付。K 不明示或默示地接受而且 KLA 特此拒绝承认客户提出的任何附加或不同的条款或条件, 包括但不限于任何订单、接受、确认书或其它文件中包含或提及的或由商业惯例或此前的业务惯例确立的任何条款或条件, 除非 KLA 在正式签署的书面文件中明确清楚地同意上述条款和条件。客户在收到本一般条款或在以其它方式被通知交易受本一般条款约束后, 订购、接收、接受或使用产品或继续进行任何交易, 即表示客户同意本一般条款。

1. 定义

"**有关协议**" 指 KLA 与客户通过提及本一般条款和/或附于本一般条款或 KLA 应要求提供的一套或多套 KLA 具体产品条款 (如硬件销售条款或固定费用服务条款) 而成立的合同。

"**保密信息**" 指 KLA 信息、客户贡献和一方 ("所有人") 向另一方 ("接收人") 披露的标示为或以其它方式书面明确确定为保密的或由于其性质应被合理理解为保密的任何其它信息, 无论其是有形的、电子的、口头的、图像的、视觉的或其它形式。保密信息不包括下述材料或信息: (i) 并非由于接收人的作为或不作为而为第三方普遍知悉的材料或信息; (ii) 在按本条披露后 从有权传播该信息的第三方处在不附加披露限制的情况下合法收到的材料或信息; (iii) 接收人在从所有人收到之前已经知悉的并且并非是从违反其保密义务的第三方收到的材料或信息; 或(iv) 接收人在未使用所有人的保密信息 的情况下独立开发的材料或信息。

"**客户贡献**" 指符合下述条件的任何知识产权或信息: (i) 由客户或与客户一道创造的并且包含 KLA 信息、基于 KLA 信息的、由于或在 KLA 信息的帮助下 开发的或构成 KLA 信息的修改或改进的知识产权或信息; (ii) 指与 KLA 信息有具体关联的但与由客户拥有的或创造的与 KLA 信息无关的知识产权或信息 无具体关联的知识产权或信息。

"**交付日期**" 指 KLA 将产品交付承运人占有以便装运之日或指客户下载软件 之日 (如适用)。

"**文档**" 指下述 KLA 信息手册: (i) 包含产品的操作指示和性能规格; (ii) KLA 与产品一道向客户交付; 和(iii) KLA 向产品的所有用户普遍提供的。

"**硬件**" 指 KLA 同意向客户交付的任何标准的有形产品或其部分, 不包括其中可能包含的任何软件, 但包括 KLA 根据 KLA 硬件维护条款可能交付的硬件 修改。

"**知识产权**" 指任何计算机程序或例程 (以目标代码、源代码或嵌入方式存在, 无论其存在介质是什么)、算法、诀窍、硬件和/或软件配置、发明、文档、翻译、有著作权的文本和其它作品、数据、数据库、信息、设计、实用 新型、图案、标记、标志、名称、程序、工艺、技术改进和任何其它无形资产以及上述各项无形资产的原型、样品、复制件和其它物质形式。

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 www.kla.com/products, 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 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. 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

“KLA 信息”指(i)与产品或服务有关的任何技术或其它信息(包括但不限于任何文档、服务项目、课堂学习材料和书面、图像和口头指示)(ii)KLA 拥有的或向客户提供的任何知识产权。

“产品”指硬件、软件和/或工作产品。

“专有权利”指在世界上任何司法管辖区或国家得到承认的著作权、掩膜作品、外观设计、商标、服务标志、商号、商业秘密、专利和任何其它知识产权的任何权利、产权、所有权和利益,无论其是否手续完备。

“软件”指KLA 同意向客户交付的以目标代码、源代码、嵌入方式或其它形式出现的任何标准计算机程序和任何电子文档,包括KLA 根据维护条款可能交付的软件修改与更新。

“第三方产品”指第三方生产的不带有KLA 的名称、标记、标志的任何产品,可包括但不限于以下各项:(i)KLA 推荐或交付的产品;(ii)KLA 交付的产品的部件,除非该部件不被认为是独立部件,而且在KLA 的价格单、KLA 网站www.kla.com/products上的产品规格、文档或其它KLA 文件中未被确定为独立部件。

“工作产品”指KLA 作为提供服务的结果同意创造或向客户交付或有意交付的任何有形或无形成果或交付项目,包括但不限于与之一起开发的配置、计算机程序、其它信息、定制硬件和任何知识产权。

2. 合作。客户应及时并免费向KLA 提供KLA 提供服务所必需的或KLA 在以其它情况下合理要求的一切信息、材料和合作。在不限制上述规定的前提下,客户应遵守KLA 的场地准备指导规定。如果客户未履行其任何义务,则KLA 在不限制任何其它补救措施的情况下可采取下述行动:(i)推迟或中止其履行并向客户收取由此导致的任何费用;(ii)对KLA 人员无法提供服务的每一天按KLA 当时实行的时间与材料费率(见索即供)向客户收取费用。如果客户的任何履行、交付或接受延迟达六十(60)天以上,则(a)KLA 可以立即开具帐单,而且客户应立即支付欠付的全部款项;(b)客户应视为放弃了其要求任何退款的权利;(c)任何适用的保证期限应开始计算。

3. 付条款。除非KLA 有其它明确说明,否则所报出的或帐单所示的一切费用和价格均不包括销售税、服务税、预提税、关税和其他税费、保险,以及与运输和客户要求的特殊包装(如有)有关的费用。上述任何税费应由客户支付或偿付。如适用任何预提税,则客户应将该等预提税加总到发票额中,以确保该等预提后,KLA 仍收到全部发票额。如果KLA 未收到所有到期款项,则(i)任何到期未付款项应按百分之一点五(1.5%)的月利率或法律允许的最高月利率(以较低者为准)计息;(ii)KLA 可以立即中止交付、许可和提供任何服务。客户应按照KLA 的要求提供金融机构开立的具有KLA 可合理接受的条款的不可撤销信用证。

4. 侵权赔偿

4.1 赔偿。如果在交付日期,产品侵犯了任何第三方的著作权、商业秘密或美国专利权,则KLA 将就针对客户提起的与产品有关的一切侵权索赔为客户辩护并赔偿客户,但条件是(i)客户在得悉该等索赔的首日后十五(15)天内书面通知KLA;(ii)赋予KLA 独自处理该等索赔的

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 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

辩护和和解的授权和控制权, 费用由 KLA 承担; (iii) 提供 KLA 处理任何该等索赔的辩护与和解时要求的一切合理信息和协助。

4.2 补救措施。如果产品侵犯或 KLA 合理认为产品可能侵犯第三方权利, 则 KLA 可自行酌情决定并自行承担费用 (i) 为客户取得该等产品的继续使用权; (ii) 更换或改动该等产品使之不侵权; (iii) 客户退还受影响的产品后, 退还客户为该等产品所支付的金额。

4.3 除外情形。KLA 对基于下述各项提出的任何侵权索赔不承担赔偿义务: (i) 由 KLA 之外的人修改过的任何产品, 除非该等修改是按 KLA 书面指示进行的且符合 KLA 的一切规格或指示; (ii) KLA 按客户的要求、规格或指示创造或修改的任何产品; (iii) 客户与并非 KLA 明确书面推荐的硬件、软件或材料一道使用或以并非 KLA 明确书面推荐的方式使用的任何产品; (iv) 并非最新版本的任何产品版本, 如果使用 KLA 向客户提供的最新版本产品, 则可避免侵权; (v) 第三方或第三方产品引起的任何侵权; 或 (vi) 客户于交付日期知道的或应当知道的对任何专利权或其它权利的侵犯行为 (除非 KLA 也应知道该等侵权但未通知客户)。

4.4 客户赔偿。客户将就在第 4.3 条 (除外情形) 所述的任何情形下针对 KLA 提起的一切侵权索赔为 KLA 辩护并赔偿 KLA, 但条件是 (i) KLA 在得悉该等索赔的首日后十五 (15) 天内书面通知客户; (ii) 赋予客户独自处理该等索赔的辩护和和解的授权和控制权, 费用由客户承担; (iii) 提供客户处理任何该等索赔的辩护与和解时要求的一切合理信息和协助。

4.5 限制。KLA 不对直接或间接基于通过产品制造的商品的数量或价值或基于产品总的使用量而主张或裁决的任何损害赔偿承担责任。KLA 有关其赔偿义务的责任总额在任何情况下均不得超出下述两项中的较大金额: (i) 客户为侵权产品已付或应付金额的两倍; (ii) 二百万美元 (U.S.\$2,000,000)。本第 4 条规定了 KLA 就对第三方专有利权的任何侵权行为所承担的全部责任和客户所享有的唯一补救措施。

5. 责任限制

5.1 限制。在任何情况下, 任何一方均不对任何偶发的、特殊的、间接的或后果性的损害赔偿、利润损失、收入损失、数据损失或弥补费用承担任何责任。KLA 对任何产品或服务引起的或与之有关的任何索赔承担的责任, 不得超过客户为对该损害赔偿的发生负主要责任的产品或服务已付或应付费用的总额。在任何情况下, 任何一方的责任总额不得超过一百万美元 (US\$1,000,000.00)。

5.2 范围。第 5.1 条 (限制) 规定的责任限制应适用于任何损害赔偿, 无论其发生原因是什么, 无论其依据的责任理论是什么, 无论其源于合同、侵权 (包括但不限于疏忽) 或任何其它法律理论, 即便双方已被告知可能发生该等损害赔偿, 也无论双方在本一般条款或任何其它具体产品条

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.

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. Customer further agrees to provide KLA with reasonable support, signatures, and information for recording and perfecting the foregoing assignment in accordance with applicable laws. 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 and any dispute between the parties ("Disputes") shall be governed by the laws of the State of California, excluding conflict of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). All Disputes shall be finally resolved by binding arbitration administered by the American Arbitration Association (AAA) before three (3) arbitrators, selected and proceeding in the English language in San Francisco, California pursuant to the AAA's Commercial Arbitration 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 so appointed shall have the authority to determine issues of arbitrability. The arbitrators shall

款项下享有的有限补救措施的根本目的是否落空。第 5.1 条（限制）中规定的责任限额不 适用于本协议项下的约定赔偿、保密义务或守法义务。

6. 信息

6.1 **保密。** 接收人对所有人的保密信息保密的注意程度应与其保护自己的保 密信息时的保密注意程度相同，但在任何情况下不得低于应有的注意。接收 人(i) 不得向任何人披露所有人的保密信息，但向其机构内的为履行接收人在 有关协议项下的义务而有必要知道保密信息，且受到要求其保密信息保密的不披露义务约束的人披露除外；(ii) 不得使用所有人的保密信息，但履行接 收人在有关协议项下的义务或行使其项下的权利所必需的使用除外。

6.2 **专有权利。** 客户应将所有 KLA 信息和客户贡献视为本第 6 条规定的 KLA 为所有人的保密信息。客户没有义务与 KLA 共享客户贡献，并可自行酌情决 定：(i) 将客户贡献留作自用；(ii) 向 KLA 披露客户贡献，但是，如果客户希 望保留其一具体客户贡献的某项权利，则客户在通知 KLA 而且 KLA 向客户书 面确认 KLA 希望客户在此情况下披露其客户贡献之前，不得向 KLA 披露客户 贡献。如果客户在未经通知而且未收到 KLA 书面确认的情况下向 KLA（例如 但不限于就反馈建议、或维护或改进要求）或向任何第三方（例如但不 限于 经 KLA 的书面准许或违反本一般条款）披露客户贡献，则客户不可撤销地同 意并特此在有关法律允许的最大范围内向 KLA 转让该等披露的客户贡献的所 有权、产权及一切权利和利益（包括但不限于一切专有权利）。客户进一步 同意向 KLA 提供合理的支持、签字和信息，以便依照适用法律完善上述转让 和进行备案。尽管有上述转让，但客户可在遵守有关协议的一切限制与约束 的情况下，按与使用从 KLA 收到的保密信息相同的方式在内部使用一切客户 贡献。KLA 保留对 KLA 信息和客户贡献的所有权利，但本一般条款或正式签 署的书面文件中另有明确规定的除外。

6.3 **归还。** 如果保密信息不再是履行或行使有关协议项下义务或权利所需要 时，则接受人必须按所有人的书面要求迅速销毁或归还一切保密信息及其任 何复制件。接收人同意在接到要求后的 30 天内提供遵守本第 6.3 条规定的书 面证明。

7. **法律选择与仲裁。** 有关协议及双方间的任何争议（“**争议**”）均受加利 福尼亚州法律的管辖，但排除其冲突原则与《联合国国际货物销售合同公 约》。一切争议应由美国仲裁协会按照其商事仲裁规则处理，在加利福尼亚 圣弗兰西斯科由选择的三（3）名仲裁员进行的有约束力的仲裁予以最终解 决。应任何一方的要求，仲裁员应在裁决中给出书面意见，陈述事实依据和 法律推理过程。被指定的仲裁员有权决定可仲裁性问题。仲裁员仅有权裁定 补偿性损害赔偿，不得裁定惩罚性或惩戒性损害赔偿。双方及其代表、其它 参与人和仲裁员应对仲裁的存在、内容及结果保密。尽管有上

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 and foreign government 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;

述规定, 但任 何一方可独自酌情决定在任何有管辖权的法院寻求禁制令救济 (包括但不限于 于预防性禁制令)。任何争议法律程序中的胜诉方有权追索其法律费用, 包 括但不限于任何法院或仲裁程序费用和合理的律师费用。

8. 其它规定

8.1 守法. 每一方应遵守一切适用法律, 包括但不限于美国的出口管制法律。未取得美国和外国政府的适当许可, 客户不得出口或转出口任何产品或 KLA 信息。对于因客户违反有关出口管制法律而产生的一切索赔, 客户应为 KLA 及其所有供应商辩护, 赔偿 KLA 及其所有供应商并使之免受损失。

8.2 书面形式. 任何通知和有关协议的任何修订或修改均为无效, 除非(i) 通知以书面形式作出, 并以传真、挂号邮件、保证邮件 (邮资预付) 发出; (ii) 修订和修改以书面形式作出, 并由双方的正式授权高级职员签署。KLA 销售人员或技术人员作出的承诺, 除非由 KLA 的正式授权高级职员书面确认, 否则均为无效。另外, 除非在本一般条款前言所述的地址或 KLA 书面向客户指定作为有关通知地址的其它地址收到, 否则, 给 KLA 的通知均为无效。

8.3 日期和期限. 所提及的所有“日”或“天”均指日历日, 除非另有明确说明。一切预定装运日期、交付日期或其它日期均为不具约束力的估算日期, 除非 KLA 的正式授权代表在正式签署的书面文件中明确同意某个日期具有法律约束力。

8.4 无放弃. 任何一方未行使或执行, 或延迟行使或执行任何权利或权利主张, 不构成对该等权利或权利主张的放弃, 不影响该方以后行使或执行的权利, 除非该方出具明确的、由正式授权代表签署的书面弃权书。

8.5 转让与委托. 客户不得转让其对 KLA 的任何权利, 任何 (声称的) 转让, 不管是自愿的还是由于法律运用而产生的, 如 KLA 未事先书面同意, 均为无效。KLA 提供的任何保证(i) 均是不可转让的, 并仅为客户的利益而提供; (ii) 如果客户向任何第三方转售或以其它方式转让有保证的产品, 该等保证即立即失效。KLA 可转让其权利, 以及委托他人履行其义务。

8.6 资不抵债. 如果任何一方(i) 资不抵债; (ii) 中止营业; (iii) 提出自愿破产申请, 或被提出非自愿破产申请, 该申请在 30 天内未被驳回, 则另一方可立即取消任何订单中任何未履行的部分, 且不受处罚。

8.7 不可抗力. 除付款义务之外, 任何一方因罢工、火灾、水灾、政府行为、命令或限制、供应商不履行, 或不在其合理控制范围之内的导致履行不能或履行延迟的任何其它原因 (无论是否与上述相似), 而发生履行不能或履行延迟的, 该方无需承担责任。如果由于上述任何不可抗力的原因, KLA 的产品供应受到限制, 则 KLA 可自行酌情决定按其认为适当的方式按比例供应可提供的供货。由于本第 8.7 条的原因暂停或无法进行的交货应予取消, 且不需承担责任, 但对已交付产品的付款义务不受影响。

<p>provided however, that payment obligations for Products already delivered shall otherwise remain unaffected.</p> <p>8.8 <u>Severability</u>. 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.</p> <p>8.9 <u>Prevailing language</u>. The English language version of these General Terms shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.</p>	<p>8.8 <u>可分割性</u>。如果有关协议的任何书面规定在任何有关法律中被认定为全部或部分非法、无效或不可强制执行，则该等条款或其部分在其非法、无效或不可强制执行的范围内，在其被认为非法、无效或不可强制执行的司法管辖区内无效，并应视为在遵守有关法律所需的范围内加以修改，以最大程度地实现双方的意图。上述条款在上述司法管辖区属于非法、无效或不可强制执行，不影响该等条款有关协议的任何其它条款在任何其它司法管辖区的合法性、有效性或可强制执行性，也不影响任何其他条款在任何司法管辖区的合法性、有效性或可强制执行性。</p> <p>8.9 <u>作准文本</u>。本一般条款的英文文本在所有方面均作为作准文本，具有法律约束力。文本间有任何不符的，以英文文本为准。</p>
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