

EVALUATION TERMS

Version China 2019.7.15

These Evaluation Terms apply to any quote, order, and order acknowledgment, and any license or delivery of hardware, software, services, or other products by KLA Corporation, One Technology Drive, Milpitas, CA 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 Evaluation Terms or after otherwise being notified that such transactions are subject to these Evaluation Terms, Customer agrees to these Evaluation Terms and KLA's General Terms, which are incorporated by reference and modified herein and are either attached hereto, or available at www.kla.com/terms or on request.

1. **DEFINITIONS AND SCOPE.** The definitions in KLA's General Terms shall apply. These Evaluation Terms apply to Hardware, Software, and Work Product — generally released versions or beta versions — that KLA agrees to deliver to Customer for evaluation purposes.

2. **DELIVERY.** Customer shall issue a zero-dollar purchase order for the Products to KLA for the purpose of record keeping. KLA will deliver all Products Ex Works (Incoterms 2010) KLA'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 of Hardware must be via air ride suspension enclosed van or, if specified by KLA, via temperature controlled air-ride van. Customer acknowledges and agrees that KLA (i) is not obligated to provide Software in source code form and (ii) does not transfer title to, or ownership of, any Products and only grants limited, non-exclusive evaluation rights to Products as specified in these Evaluation Terms. If KLA agrees to install Products, such services will be provided under a separate services agreement, or, if none is concluded, subject to KLA's then-current Time & Materials Services Terms (available on request). Partial and installment shipments are authorized.

3. EVALUATION RIGHTS

3.1 **All Rights Reserved.** KLA and its licensors own, retain and reserve ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights, in and to the Products and Documentation, subject only to the limited rights that KLA expressly grants in Sections 3.2 (Grant of Rights) and 3.4 (Copies). Without limiting the foregoing, Customer acknowledges that nothing herein shall constitute a sale of any Products or Documentation (or any Intellectual Property in and to Products or Documentation) including any copies and portions thereof.

3.2 **Grant of Rights.** KLA grants Customer a personal, non-sublicensable, non-exclusive, nontransferable, limited right to use the Products solely (i) at the site designated by KLA for Customer's evaluation of the Products; (ii) for Customer's internal activities related to the evaluation of generally available versions of the Products in contemplating future acquisitions by Customer or in helping KLA in the development or improvement of beta versions of Products (i.e., Products that have not been released for general commercial use); and (iii) in accordance with the applicable Documentation. KLA grants Customer a non-sublicensable, non-exclusive, non-transferable, limited right to use the printed versions of the Documentation that KLA provides for Customer's internal business purposes solely in support of Customer's use of the Products in accordance with these Evaluation Terms. Customer's rights are conditioned on Customer's continuous compliance with all limitations and restrictions described in these Evaluation Terms and if Customer violates any of these limitations or restrictions, Customer's rights will automatically and immediately expire. Customer acknowledges that this Section 3 defines the scope of rights that KLA grants to Customer and that any usages of the Products or Documentation outside the scope of that grant and the scope of any statutory rights constitutes an infringement of KLA's Proprietary Rights as well as a material breach of these Evaluation Terms.

3.3 **Evaluation Period.** The evaluation rights granted hereunder shall be limited in time ("Evaluation Period") as indicated by KLA in a duly signed writing and shall automatically expire on the date set forth in such writing. If no date is specified by KLA, the evaluation rights shall automatically expire ninety (90) days after the Delivery Date.

3.4 **Copies.** Customer may duplicate each item of Software (i) that KLA delivers separately (i.e., not pre-installed on Hardware) only by permanently installing one (1) copy on a computer (provided that Customer keeps the original copy that KLA

评估条款

2019年7月15日中国用版本

本评估条款适用于 KLA Corporation (地址为 One Technology Drive, Milpitas, CA 95035, 下称“KLA”)就硬件、服务或其他产品提供的任何报价单、收到的订单、发出的订单确认书以及向任何购买人 (“客户”)进行的该等硬件、服务或其他产品的任何许可或交付。KLA 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、接受函、确认书或其他文件中包含或提及的或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该等条款和条件。在收到本评估条款后或在被以其他方式告知交易受本评估条款约束后,一旦客户订购、接收、接受或使用产品或另行继续任何交易的,即表示客户同意本评估条款以及 KLA 一般条款(该等条款经在此提及而纳入本条款并加以修改,或者可在 www.kla.com/terms 网站上获得,或者见索即供)。

1. **定义和范围。**KLA 一般条款中的定义应予以适用。本评估条款适用于 KLA 同意交付给客户评估的硬件、软件和工作成果 - 普遍发布的版本 或 β 版本。

2. **交付。**客户应向 KLA 发出一份金额为零的产品购买订单,以用于记录目的。KLA 将按 KLA 场所工厂交货条款(《2000 年国际贸易术语解释通则》)交付所有产品。客户单独负责为产品获得适当的保险和作出适当的运输安排,并负责向承运人提出任何索赔。硬件的运输必须使用带有空气悬挂系统的封闭式厢式货车,或者,在 KLA 指定的情况下,使用温控型空气悬挂厢式货车。客户承认并同意(i) KLA 没有义务以源代码的形式提供软件;(ii) KLA 未转让任何产品的产权或所有权,而仅按本评估条款授予有限和非独占的产品评估权利。如 KLA 同意安装产品,则将按单独的服务协议提供该等服务,或者,如果未签订单独的服务协议,则将按 KLA 届时有效的时间和材料服务条款(见索即供)提供该等服务。允许部分和分批发货。

3. 评估权利

3.1 **保留一切权利。**除 KLA 在第 3.2 条(权利的授予)和第 3.4 条(拷贝)中明示授予的有限权利外, KLA 及其许可人拥有、保留、保持产品和文档的所有权、产权及一切权益,包括但不限于一切专有权利。在不限制前述规定的同时,客户认知,本条款中的任何规定均不构成任何产品或文档或其任何知识产权(包括其任何拷贝或任何部分)的销售。

3.2 **权利的授予。**KLA 授予客户一项专有的、不可分许可的、非独占的、不可转让的有限权利,(i) 在 KLA 指定的场地仅将产品用于对客户对产品进行评估的目的;(ii) 仅将产品用于与评估普遍提供的产品版本有关的客户内部活动,以期将来由客户购买,或者帮助 KLA 开发或改进产品的 β 版本(即没有为普遍的商业使用而发布的产品);(iii) 仅按有关文档使用产品。KLA 授予客户一项不可分许可的、非独占的、不可转让的有限权利,使用 KLA 仅为支持客户按本评估条款使用产品的内部业务目的而提供的文档的打印文本。客户的权利以客户持续遵守本评估条款所述的一切限制为条件。如果客户违反上述任何限制,客户的权利将立即自动失效。客户认知,本第 3 条规定了 KLA 向客户授予的权利的范围,在该授权范围以外或者在任何法定权利范围以外使用产品或文档的,将构成对 KLA 专有权利的侵犯和对本评估条款的实质性违反。

3.3 **评估期限。**本评估条款项下的评估权利受到 KLA 在正式签署的书面文件中所指明的期限限制(“评估期限”),并于该书面文件中载明的日期自动失效。如果 KLA 没有指定日期,则评估权利于交付日期后的九十(90)日自动失效。

3.4 **拷贝。**客户仅可按下述方式复制 KLA 另行交付(即不是在硬件上预先安装的)的每份软件:(i) 在一部计算机上永久性地安装一(1)份拷贝(但条件是,客户将 KLA 交付的原始拷贝仅作为备份拷贝,与

delivered only as a back-up copy, separately from any actively used Software; keeps records of such original copies indicating the location of its storage; and provides such records to KLA upon request) and (ii) only by temporarily uploading and using copies of the Software into the working memory of the computer on which it has been or is to be installed, as applicable, to the extent necessary for using the Software in accordance with these Evaluation Terms. Customer may create a reasonable number of copies of Work Product and the Documentation to the extent necessary for using the Products in accordance with these Evaluation Terms. Customer may not create any other copies of the Software, Documentation, or Work Product unless KLA expressly permits additional copies in writing.

3.5 Restrictions. To the extent permitted by applicable law, Customer agrees not to (i) reverse engineer, de-compile, or disassemble the Products; (ii) create any derivative works based on the Software, Documentation, or Work Product or modify or alter the Software, Documentation, or Work Product in any manner whatsoever; (iii) sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Products or Documentation to any third parties; (iv) copy or use the Products or Documentation for any purpose or in any manner not expressly permitted by these Evaluation Terms; (v) use the Products or Documentation outside the permitted scope of its rights; (vi) use the Products or Documentation in any format, through any timesharing service, service bureau, network or by any other means, for or in the interest of any third party; or (vii) permit or encourage any third party to do any of the foregoing. Customer shall cooperate with KLA, and shall render all reasonable assistance requested by KLA, to assist KLA in preventing and identifying any use of, or access to, the Products and Documentation by anyone in violation of these Evaluation Terms.

3.6 Proprietary Notices. Customer shall not remove, alter or obscure any product identification, any copyright, patent, trademark notice or any other legal notice or legend that appears on the Products or the Documentation and shall completely and accurately reproduce the same on any copies of the Products and Documentation made hereunder.

4. EVALUATION

4.1 Evaluation of Products. Customer will run and evaluate the Products in accordance with the evaluation plan provided or signed by KLA, if any.

4.2 Evaluation Reports. In derogation from Section 6.2(i) of KLA's General Terms, Customer shall use its best efforts to provide written technical reports to KLA describing product performance, including, but not limited to, problems, deficiencies and recommended improvements as requested by KLA, but not less frequently than once per week. In addition to the technical reports, Customer shall, at KLA's request, provide a final written report summarizing Customer's concerns and recommended enhancements relative to the Products.

4.3 Rights in Reports and other Evaluation Information. All Proprietary Rights to Intellectual Property embodied in evaluation reports provided by Customer in accordance with Section 4.2 (Evaluation Reports), measurements, and other information regarding the evaluation of the Products furnished by Customer to KLA, and other Proprietary Rights arising from Customer's evaluation of the Products and/or Customer's access to Confidential Information regarding the Products (wherein all of the foregoing is collectively referred to hereinafter as "Evaluation Information") shall initially vest in and be solely owned by KLA. If and to the extent that under mandatory law, KLA is unable to be initially vested with ownership of such Proprietary Rights, Customer hereby assigns to KLA ownership, title and all rights and interest in and to such Proprietary Rights regarding the Evaluation Information and any tangible material or software copy relating to the Evaluation Information. To the extent that under mandatory law, rights can only be assigned after creation, Customer hereby irrevocably agrees to assign, immediately following the creation, such Proprietary Rights to KLA. To the extent that under mandatory law, Proprietary Rights may not be assigned, Customer hereby agrees to grant an unlimited, exclusive, irrevocable, perpetual, royalty-free, worldwide and unconditional license to such rights to KLA. To the extent such license grant is invalid or not fully enforceable under mandatory law, Customer irrevocably agrees to grant and hereby grants such rights to KLA as KLA reasonably requests in order to acquire a legal position as close as possible to the legal position that KLA would hold if it could acquire the Proprietary Rights to Intellectual Property embodied in the Evaluation Information, but in no case less than an unlimited, non-exclusive, irrevocable, perpetual, royalty-free, worldwide and unconditional license.

4.4 Insurance. Customer will insure the Products against loss or damage during the Evaluation Period and shall be solely responsible for any damage that may occur while the Products are in Customer's possession.

4.5 No Duty to Release Products. Notwithstanding anything in these Evaluation Terms to the contrary, KLA shall have no duty to release any beta versions of Products for general commercial use.

任何使用中的软件分别保存, 保留该等原始拷贝的记录, 载明其存放地点, 并按要求向KLA提供该等记录); 以及(ii)在按照评估条款使用软件所需的范围内, 将该等软件拷贝临时上载到已经或将要安装该软件的计算机的工作内存中并加以使用。客户可在按照本评估条款使用产品所需的范围内制作合理份数的工作成果和文档拷贝。除非KLA明示书面允许制作额外的拷贝, 否则, 客户不得制作软件、文档或工作成果的任何其他拷贝。

3.5 限制。在适用法律允许的范围内, 客户同意: (i) 不对产品进行反向工程、反编译或反汇编; (ii) 不基于软件、文档或工作成果创作任何派生作品, 或以任何方式修改或变更软件、文档或工作成果; (iii) 不向任何第三方出售、分许可、租赁、出租、出借、转让或另行转移软件或文档; (iv) 不按未经本评估条款明示许可的任何目的或方式复制或使产品或文档; (v) 不在允许的范围之外使用产品或文档; (vi) 不为任何第三方的利益, 通过任何分时服务、服务机构、网络或任何其他手段, 以任何格式使用软件或文档; (vii) 不允许或鼓励任何第三方从事任一上述行为。客户应与KLA合作, 提供KLA要求的一切合理协助, 以协助KLA防止、查明任何人违反本评估条款使用或接触产品和文档的行为。

3.6 专有声明。客户不得删除、更改或隐匿产品或文档上的任何产品标识、任何版权、专利、商标声明或者其他法律声明或告示, 并应在按本评估条款制作的任一产品和文档拷贝上完整和准确地复制该等标识、声明或告示。

4. 客户的评估

4.1 对产品的评估。客户将按KLA提供或签署的评估计划(如有)运行和评估产品。

4.2 评估报告。不管KLA一般条款第6.2(i)条的规定, 客户应尽最大努力, 按照KLA的要求(但不少于每周一次)向KLA提供描述产品运行情况的书面报告, 其内容包括但不限于问题、不足之处和改进建议。除了技术报告外, 客户还将应KLA的要求提供最终书面报告, 概述客户在产品方面所关注和担心的问题以及所建议的改进措施。

4.3 对报告和其他评估资料的权利。客户按照第4.2条(评估报告)提供的评估报告以及客户向KLA提供的与产品评估有关的衡量标准和其他资料中所含的知识产权的一切专有权利, 以及因客户对产品进行评估和/或接触与产品有关的保密信息而产生的其他专有权利(以下合称“评估资料”)应从一开始就属于KLA, 由KLA独家拥有。如果依照强制性法律, 上述专有权利不能从一开始就归KLA所有, 则客户特此向KLA转让对于评估资料以及与评估资料有关的任何有形材料或软件拷贝的专有权利的所有权、产权以及一切权利和利益。如果依照强制性法律, 权利只能在产生之后转让, 则客户特此不可撤销地同意在上述专有权利产生之后立即将其转让给KLA。如果依照强制性法律, 专有权利不可转让, 则客户特此同意向KLA授予对于该等权利的不受限制、独占、不可撤销、永久性、免收特许权使用费、全球性和无条件的许可。如果依照强制性法律, 上述许可的授予无效或者不可全部强制执行, 则客户不可撤销地同意向KLA授予并特此向KLA授予KLA合理要求的权利, 以便KLA所取得的法律地位与其在取得对于评估资料知识产权的专有权利的情况下本会取得的法律地位尽可能地接近, 但在任何情况下均不得少于不受限制、非独占、不可撤销、永久性、免收特许权使用费、全球性和无条件的许可。

4.4 保险。客户将就评估期限内的损失或损害为产品投保, 并对产品在由其占有期间所发生的任何损害承担全部责任。

4.5 没有义务发布产品。不管本评估条款中有任何相反的规定, KLA没有义务发布产品的任何β版本, 以供用于普遍的商业使用目的。

5. EVALUATION COORDINATORS. Both parties shall designate one person as their coordinator for all communications between KLA and Customer with regard to the evaluation of the Products. Both parties may change their coordinator by giving written notice to the other party.

6. WARRANTY DISCLAIMER. ALL PRODUCTS ARE PROVIDED "AS IS." KLA MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND. KLA 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 THE PRODUCTS ARE ERROR FREE, WILL PERFORM ACCORDING TO ANY SPECIFICATIONS, OR THAT THEIR PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED.

7. LIMITATION OF LIABILITY. IN DEROGATION FROM SECTION 5.1 OF KLA'S GENERAL TERMS, KLA'S LIABILITY SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO ONE THOUSAND US DOLLARS (US\$1,000).

8. TERMINATION

8.1 Termination. Without limiting Section 3.2 (Grant of Rights) with respect to the automatic termination of Customer's rights, KLA may terminate rights to Products granted hereunder by giving written notice, effective immediately for any or no reason. KLA's termination rights are in addition to any other rights and remedies that KLA may have at law or in equity.

8.2 Consequences. Upon such termination or expiration of the Evaluation Period, Customer shall at its sole costs and expense immediately return all Products, Documentation, and KLA's Confidential Information in Customer's possession without retaining any copies thereof and all evaluation rights granted to Customer under these Evaluation Terms for Products and Documentation shall be automatically revoked. Customer shall certify compliance with all foregoing obligations to KLA in writing.

8.3 Survival. KLA's General Terms and these Evaluation Terms, except Section 3.2 (Grant of Rights), shall survive the termination of any rights granted hereunder or the expiration of the Evaluation Period.

9. RIGHT TO INSPECT. KLA shall have the right, after reasonable prior written notice, to enter Customer's premises and inspect Customer's use of the Products from time to time for the purpose of ensuring Customer's compliance with these Evaluation Terms.

10. PREVAILING LANGUAGE. The English language version of these Evaluation Terms shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.

5. 评估协调人。双方应各自指定一人，作为 KLA 与客户之间关于产品评估的所有联系和沟通的协调人。双方可以通过向另一方发出书面通知而变更其协调人。

6. 排除保证的声明。所有产品都是“按现状”提供的，KLA 不作任何种类的保证或陈述。KLA 排除一切默示陈述与保证，包括但不限于适销性保证、适于特定用途的保证以及无侵权保证。在不限制上述规定的同时，KLA 并不保证产品没有错误、将按任何规格运行或者其运行或操作不会中断。

7. 责任限制。不管 KLA 一般条款第 5.1 条的规定，KLA 的责任总额不超过一千美元 (US\$1,000)。

8. 终止。

8.1 终止。在不限制第 3.2 条（权利的授予）关于客户权利自动终止的规定的前提下，KLA 可经书面通知而立即终止本评估条款项下所授予的对于产品的权利，而不论有没有理由。KLA 的终止权是在 KLA 依普通法或衡平法而享有的任何其他权利和救济之外的权利。

8.2 后果。在发生上述终止或评估期限届满后，客户应自行承担费用和开支，立即归还其所占有的所有产品、文档和 KLA 保密信息，而不保留任何复制件；在本评估条款项下就产品和文档向客户授予的所有评估权利应自动撤销。客户应向 KLA 出具其已遵守上述各项义务的书面证明。

8.3 继续有效。KLA 一般条款和本评估条款（第 3.2 条（权利的授予）除外），在本评估条款项下授予的任何权利终止后或评估期限届满后继续有效。

9. 检查权。经发出合理的事先书面通知，KLA 有权不时进入客户的场所，并检查客户使用产品的情况，以便确保客户对本评估条款的遵守。

10. 作准文本。本评估条款的英文本在所有方面均为作准文本，具有法律约束力。文本间有任何不符时，以英文本为准。