

TIME & MATERIALS SERVICES TERMS

Version China 2019.7.15

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 or on request.

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

"**Data Sheets**" means KLA's pricelists for parts and components and lists of standard hourly or daily rates and reimbursement rules for Time & Materials Services, available on KLA's website at www.kla.com/terms or on request.

"**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 Data Sheet. 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 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 and one (1) substitute 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.** KLA may invoice Customer on a weekly or monthly basis in arrears for Personnel time, parts, and out-of-pocket costs based on the applicable Data Sheets 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. (local time where Time & Materials Services are performed), KLA may apply surcharges of fifty percent (50%) or as specified in the applicable Data Sheet, whichever is higher; provided, however, that KLA is not obligated to provide Time & Materials Services at those times.

时间和材料服务条款

2019年7月15日中国用版本

本时间和材料服务条款适用于 KLA Corporation, One Technology Drive, Milpitas, California 95035 ("KLA") 对任何购买人 ("客户") 的时间和材料服务的任何报价、订单、订单确认书或任何出售。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。在收到本时间和材料服务条款后或在被以其他方式告知交易受本时间和材料服务条款约束后, 客户订购、接收、接受或使用服务或另行继续任何交易的, 即表示客户同意本时间和材料服务条款以及 KLA 一般条款 (该等条款经在此提及而纳入本条款, 或可从 www.kla.com/terms 网址或向 KLA 索取获得)。

1. 定义。除下列定义外, KLA 一般条款中的定义同样适用:

"**数据单**" 指与时间和材料服务有关的 KLA 零部件价目表、标准小时或日费率表及偿付规则, 均可从 www.kla.com/terms 网址或向 KLA 索取获得。

"**人员**" 指 KLA 为履行时间和材料服务而部署的雇员、独立承包商和分包商。

"**时间和材料服务**" 指基于 KLA 数据单按照小时或日费率以及材料和费用偿付而履行的服务。时间和材料服务可包括例如咨询服务、硬件和软件部署方面的技术协助以及在保证范围和维护协议之外的修理。时间和材料服务不包括下列服务: (i) 为一次性固定费用、重大事件费用或季度或年度经常性费用 (如维护) 提供的服务; 或 (ii) 性能符合 KLA 保证规格的交付品 (包括 KLA 解决方案的定制化) 的制作服务。

2. 时间和材料服务

2.1 **时间和材料服务的范围。** KLA 应按商定的日数或时数部署人员, 向客户 提供时间和材料服务, 并按出厂交货条款交付任何所需零件。在双方在工作说明或有关特定项目或服务目标的其他文件 (如某些软件或系统的开发或定制化) 中约定的范围内, KLA 将尽商业上合理的努力, 力求在履行时间和材料服务的过程中实现上述目标, 但 KLA 并无义务达到某些技术、经济或其他方面的结果。

2.2 **联系人和指定人员。** 每一方应至少指定一 (1) 名主要联系人和一 (1) 名替代联系人, 以就时间和材料服务与另一方进行一切技术交流; 但每一方可向另一方发出书面通知而随时更换上述联系人。人员可从客户接受关于时间和材料服务预想目标, 特别是关于时间和材料服务履行的指示, 但仅应接受 KLA 监督。在不限制前述规定的条件下, KLA (i) 可自行决定不时挑选、免除和更换人员; 且 (ii) 在双方之间独家负责人员的行政和人力资源事宜。

2.3 **履行记录。** 人员可对为客户履行的时间和材料服务进行记录, 包括履行日期和持续时间以及所履行的服务种类的记录 ("履行记录")。应 KLA 的要求, 客户应每日或每周审查并副署履行记录。

3. 支付

3.1 **费用和支出。** KLA 可根据适用的数据单就已履行的时间和材料服务事后按周或按月为人员时间、零件和实付费用向客户出具发票, 客户应按照一般条款在发票日期的三十 (30) 天内支付。

3.2 **额外收费。** 如果应客户要求, KLA 在周末或在上午 8:00 至下午 5:00 的 KLA 正常营业时间 (履行时间和材料服务的当地时间) 之外履行时间和材料服务, KLA 可适用百分之五十 (50%) 或有关数据单规定的 (以较高者为准) 额外收费; 但是, KLA 并无义务在该等时间内提供时间和材料服务。

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 the applicable Data Sheet 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 6 (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, the warranty period shall be ninety (90) days for non-consumable parts and seven (7) days for consumable parts (i.e., parts that are consumed during operation or that have an expected life time of less than one (1) year, e.g., lamps, lasers, fuses, detectors, and batteries) and begin on the date of installation. Otherwise, the warranty period shall be 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. WORK PRODUCT.

5.1 License to Work Product. KLA shall grant to Customer a non-exclusive, non-transferable, and non-sublicensable 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.

5.2 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.

6. TERMINATION

6.1 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

3.3 最低限度时间. 凡 KLA 已按客户要求向客户场地部署人员, 且人员已经 到达并愿意履行时间和材料服务的, 即按适用数据表中规定的时间或两 (2) 个小时 (以较多者为准) 向客户收费。

4. 有限保证和免责声明

4.1 有限保证. KLA 应以专业和娴熟的方式履行时间和材料服务。KLA 可能就 时间和材料服务安装的任何零件于安装之日应实质上符合适用文档中的规格。

4.2 排他性救济. 如果零件实质上不符合第 4.1 条 (有限保证) 中规定的有限保证, KLA 应依其自行决定, 按照第 4.3 条 (保证期) 的规定对不相同的零件进行修理或替换, 以纠正客户认定的不符之处。客户特此将 KLA 应客户要求替换的任何零件的产权和所有权转移给 KLA。如果时间和材料服务由于其 他原因未符合第 4.1 条 (有限保证) 中规定的有限保证, 且 KLA 在收到客户 的详细纠正要求后十 (10) 天内未纠正该不符之处, 则客户可按照第 6 条 (终止) 终止时间和材料服务。终止不得影响 (i) 客户为 KLA 在收到客户关于 纠正要求之前已履行的时间和材料服务支付的义务; 或 (ii) 客户在本时间和 材料服务条款项下的任何其他义务。本第 4.2 条明示规定的救济将是客户的 唯一和排他性救济, 并应取代客户就时间和材料服务或零件的任何不符之处而可能享有的针对 KLA 的任何其他权利或救济。

4.3 保证期. 就零件而言, 非消耗件的保证期为九十 (90) 天, 消耗件 (即 在运行中消耗的或者预期使用寿命少于一 (1) 年的零件, 如灯泡、激光器、探头和电池) 的保证期为七 (7) 天, 自安装之日起算。否则, 保证期 应自完成履行不符的时间和材料服务之日起十 (10) 天。除非在保证期内, KLA 从客户获得(i) 以合理详细的程度描述违反保证的书面通知, 和(ii) 远程和 实际查看受影响零件的机会以及足够详细的信息, 使 KLA 能够再现和分析故障, 否则, 客户不能提出任何保证要求。

4.4 免责声明. 除在第 4.1 条 (有限保证) 中规定的以外, KLA 对任何时间和 材料服务或零件未作任何明示陈述或保证。在适用法律最大允许范围内, KLA 不作出任何默示保证和陈述, 包括但不限于任何适销性、特定用途适用性 以及无侵权的默示保证和陈述。

5. 工作产品

5.1 对客户的许可. 如果且在下述范围内, KLA 应向客户授予一项非排他性 的、不可转让和不可授予分许可的许可, 仅为客户的内部业务目的使用工作 产品: (i) KLA 有意将该工作产品作为时间和材料服务的一部分提供给客户; (ii) 双方之间任何其他书面条款或协议不适用于该工作产品 (否则上述其他 条款或协议 (例如固定费用服务条款或软件许可条款) 应排他性地适用); 和 (iii) 客户遵守本时间和材料服务条款的全部规定, 包括 (但不限于) 其按 时支付本条款项下一切费用和其他金额的义务以及其在 KLA 一般条款项下的 保密义务。

5.2 保留其他一切权利. KLA 保留其对全部工作产品和 KLA 在提供本条款项下 时间和材料服务之前或独立于该等提供而开发或获得的所有其他信息、材料 和技术 (包括但不限于) 其中体现的一切知识产权以及其中的一切专有权利) 的所有权、产权和权益, 包括但不限于未在本时间和材料服务条款中明 示授予客户的一切专有权利。客户保留其拥有的或在在本条款项下时间和材料 服务提供之外独立获得的一切知识产权的所有权、产权及一切权益, 包括 (但不限于) 其中的一切专有权利。

6. 终止

6.1 终止权. 任何一方均可经向另一方发出三十 (30) 天事先书面通知而在 任何时候因故或无故终止时间和材料服务的任何或全部订单。如果一方未在 收到守约方发出的载明指称实质违反本时间和材料服务条款的书面通知后十 (10) 天内纠正任何实质违约, 则另一方可经书面通

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.

6.2 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.

6.3 Survival. Sections 3 (Payment), 4 (Limited Warranty and Disclaimer), 5 (Work Product), and this Section 6 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 5.1 (License to Work Product) shall survive only so long as Customer continues to fully comply with these Time & Materials Services Terms.

7. PREVAILING LANGUAGE

The English language version of these Time & Materials Services Terms shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.

知而终止时间和材料服务的任何或全部订单，并立即生效。

6.2 后果。除非客户因 KLA 对本时间和材料服务条款的实质违约而终止时间和材料服务或者 KLA 无故终止时间和材料服务，否则客户应向 KLA 支付一笔金额，要么等于缩减金或解除费，要么在没有规定该等费用的情况下，等于所规定的时间和材料服务费、材料费和实际发生的支出总额减去 KLA 由于提前终止而节省的费用。如果客户因 KLA 实质违约而有效终止时间和材料服务，则客户无义务支付已花费的时间的费用、材料费以及在终止前十（10）天期间履行时间和材料服务而发生的费用。如果 KLA 因客户实质违反本时间和材料服务条款而终止时间和材料服务，则客户应向 KLA 退还因时间和材料服务而收到的全部工作产品、KLA 的保密信息和其他有形和无形物，且不得保留其任何拷贝，而且，在本时间和材料服务条款项下就工作产品向客户授予的一切许可均自动撤销。

6.3 继续有效。本时间和材料服务的第 3 条（支付）、第 4 条（有限保证和免责声明）、第 5 条（工作产品）和本第 6 条以及 KLA 一般条款，在本时间和材料服务条款任何终止后继续有效，但是，KLA 在第 5.1 条（对工作产品的许可）中授予客户的工作产品许可，仅在客户继续充分遵守本时间和材料服

7. 作准文本

本时间和材料服务条款的英文文本，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。