

# EVALUATION TERMS

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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, 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 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](http://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, non-transferable, 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 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 BY CUSTOMER

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.

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, CONDITIONS AND REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, 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.