

# EVALUATION TERMS

Version Taiwan 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, 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, nonexclusive, 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.

# 評估條款

2019.7.15 台灣版本

本評估條款適用由 KLA Corporation, 地址為 One Technology Drive, Milpitas, California 95035 (下稱「KLA」) 向任何買方 (下稱「客戶」) 提出之任何報價、訂單與訂單確認文件, 以及任何硬體、軟體、服務或其它產品之授權或交付。KLA 不以明示或暗示方式接收並以本文件拒絕客戶提出之其它或不同條款, 包括但不限於任何訂單、接收文件、確認文件中所含或引述, 或以商業習慣或於先前交易過程中確立之任何條款, 但若 KLA 以正式簽署之書面文件明確無疑義地表示同意此等條款則不在此限。客戶於接獲本評估條款後, 或以其它方式接獲通知獲悉此等交易係依據本評估條款而執行後而訂購、接收、同意或使用產品或以其它方式進行任何交易, 即表示同意此評估條款與 KLA 之一般條款; 前述條款係以參照方式納入合約, 並於本文件中修訂, 且附加於本文件, 或可至網站 [www.kla.com/terms](http://www.kla.com/terms) 下載或索取。

1. **定義與範圍。** 應適用 KLA 一般條款之定義。本評估條款適用於 KLA 同意向客戶交付供評估使用之硬體、軟體與工作產品—普遍發行版或測試版。

2. **交付。** 客戶應向 KLA 提出無款項 (zero-dollar) 產品訂單存參。KLA 應以 KLA 工廠交貨條件 (Incoterms 2010) 於 KLA 交付全部產品。客戶應負全責為產品投保適當保險並安排貨運事宜, 且應向運送人索賠。硬體須以加裝氣動懸吊裝置之封閉式貨車運送; 經 KLA 指定時, 負責貨運的氣動懸吊裝置貨車貨櫃應有控溫設備。客戶承認且同意 KLA: (i) 無義務以來源碼提供軟體, 同時 (ii) 不會轉移任何產品之所有權, 而且僅按本評估條款規定, 授權產品之有限、非專屬評估權。若 KLA 同意安裝產品, 則應另訂服務合約方得提供前述服務, 若未簽訂任何服務合約時, 則按 KLA 當時的時間與材料服務條款 (可索取) 規定。授權分批部分交運。

## 3. 評估權

3.1 **所有權保留。** KLA 及其授權人擁有、取得並保有產品與文件之所有權與全部權益, 包括但不限於全部專有權, 但 KLA 於第 3.2 條 (授與權利) 與第 3.4 條 (副本) 中明示授與之有限權利不在此限。在不限制前述規定之前提下, 客戶確認本文件之內容不構成任何產品或文件之銷售 (或產品或文件之任何智慧財產權), 包括產品或文件之任何備份或任何部分。

3.2 **授與權利。** 授與客戶個人、非授權、非專屬、不可轉讓之有限權利, 有權僅得按下列方式使用產品: (i) 在 KLA 指定地點供客戶評估產品使用; (ii) 供客戶作為與評估產品普遍發行版相關之內部活動使用, 以便客戶考量未來是否願意採購產品, 或協助 KLA 研發或改進產品測試版 (即尚未供普遍商業使用而發行的產品); 以及 (iii) 根據適用文件規定。KLA 授與客戶非授權、非專屬、不可轉讓之有限權利, 可使用 KLA 提供之文件印刷版, 僅得供客戶內部商業使用, 以協助客戶依據本評估條款規定使用產品。客戶之權利有先決條件, 即客戶應持續遵守本評估條款規定之全部限制, 若客戶違反任何前述限制, 客戶權利便會立即自動終止。客戶確認本條第 3 條係定義 KLA 向客戶授權的範圍, 於本條授權範圍與任何法定權利範圍以外使用產品或文件均視為侵犯 KLA 專有權與嚴重違反本評估條款。

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

3.3 評估期間。根據本條款授權之評估權有時間限制(下稱「評估期間」),此期間明載於 KLA 正式簽署之書面文件中,並於文件所載日期當日自動終止。若 KLA 並未載明終止期間,則評估權應於交付日期後 90 天自動終止。

3.4 副本。客戶得複製符合下列條件之各軟體項目:(i) KLA 另行交付(即並非預先安裝於硬體中)僅得永久安裝一份副本於電腦中(但客戶應保留 KLA 交付之軟體正本,且僅可作為備份之用,而非經常使用的軟體;記錄軟體原本儲存位置;並按 KLA 要求將前述記錄向其提供);以及(ii)僅得暫時將軟體副本上傳至電腦之作業記憶體(軟體已安裝或即將安裝於此)並加以使用,但不得超過依據本評估條款使用軟體之必要範圍。客戶得建立合理份數的工作產品與文件副本,但不得超過依據本評估條款使用產品之必要範圍。除 KLA 以書面明示准許外,客戶不得為軟體、文件或工作產品建立任何其它副本。

3.5 限制。在相關法律允許範圍內,客戶同意不為下列行為:(i) 對產品執行逆向工程、將其解編譯或解構;(ii) 根據軟體、文件或工作產品而創作任何衍生作品,或以任何方式修訂或更改軟體、文件或工作產品;(iii) 銷售、轉授權、租賃、出租、借出、轉讓、讓與或以其它方式將產品或文件向任何第三人移轉;(iv) 以未於本評估條款中明示准許之任何目的或任何方式複製或使用產品或文件;(v) 於授權範圍外使用產品或文件;(vi) 以任何型式、透過任何分時服務、服務聯絡處、網路或任何其它型式,為第三人之利益而使用產品或文件;或(vii) 准許或鼓勵任何第三人為前述各項行為。客戶須與 KLA 合作並應提供 KLA 要求之全部合理協助,協助 KLA 防止並指出任何人以違反本評估條款方式使用或接觸產品或文件。

3.6 專有權聲明。客戶不應移除、修改或遮掩任何出現於產品或文件中的產品標示、任何著作權、專利、商標聲明或任何其它法律聲明或說明,且於按本條款規定製作任何產品與文件複本時,應完整正確複製同樣聲明或說明。

#### 4. 客戶評估

4.1 產品評估。客戶應按 KLA 提供或簽字之評估計畫(若有即應適用)操作並評估產品。

4.2 評估報告。在不損及 KLA 一般條款第 6.2(i) 條規定的前提下,客戶應按 KLA 要求盡全力向 KLA 提供書面技術報告,說明產品性能,包括但不限於問題、缺陷與建議修正項目,但報告頻率不得低於每週一次。除技術報告外,客戶應按 KLA 要求,提供一份最終書面報告,綜整客戶有關產品的看法與建議應強化項目。

4.3 報告与其它評估資訊之權利。由客戶按第 4.2 條(評估報告)而提供之評估報告、測試与其它與 KLA 向客戶提供產品之評估相關資訊中所含之智慧財產全部專有權,以及自客戶之產品評估所生之其它專有權與/或客戶接觸有關產品之機密資料(以下將前述全部項目合稱為「評估資訊」)首先均應歸屬於 KLA,並為其所專有。若法律強制規定且在法律規定範圍內,KLA 一開始即無法使前述專有權歸其所有,則客戶在此將有關評估資訊與和評估資訊相關之任何有形材料或軟體副本具有之專有權的所有權與全部權益,向 KLA 轉讓。在不超越法律強制規定只有在創造完成後方得將權利讓與之範圍內,客戶在此不可撤銷地同意,於創造完成後立即將前述專有權向 KLA 讓與。在不超越法律強制規定專有權不得讓與之範圍內,客戶在此同意授與 KLA 無限制、專屬、不可撤銷、永久、無授權費、遍及全球與無條件授權之權利,將前述權利授權予 KLA。

<p>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.</p> <p>4.4 <u>Insurance</u>. 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.</p> <p>4.5 <u>No Duty to Release Products</u>. 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.</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>8. TERMINATION</p> <p>8.1 <u>Termination</u>. 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.</p> <p>8.2 <u>Consequences</u>. 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.</p> <p>8.3 <u>Survival</u>. 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.</p> <p>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.</p> <p>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.</p>	<p>在不超越前述授權無效或根據法律強制規定不得完整執行之範圍內，客戶不可撤銷地同意按 KLA 合理要求將前述權利授權予 KLA 並在此做或此等授權，使其取得之法律地位儘可能接近若 KLA 可取得評估資訊中含有智慧財產之專有權時 KLA 應具有的法律地位，但絕不可少於無限制、非專屬、不可撤銷、永久、無授權費、遍及全球與無條件授權。</p> <p>4.4 保險。客戶將為產品投保評估期間之損失或損害險，客戶持有產品期間若發生任何損害事件，客戶負全責。</p> <p>4.5 無發行產品之義務。儘管本評估條款中有任何相反規定，KLA 仍無義務發行產品之測試版作普遍商業運用。</p> <p>5. 評估協調員。雙方當事人應指派一人做為 KLA 與客戶之間有關產品評估全部通訊的協調員。雙方得向對方發出書面通知更換其協調員。</p> <p>6. 保證除外條款。所有產品均以「現狀」提供。KLA 並未作出任何保證或聲明。KLA 否認所有暗示之保證和聲明，包括但不限於任何對適銷性、特殊用途之可適性與不侵權之保證，同時在不限制前述聲明之情況下，不保證產品絕無錯誤、不保證產品性能絕對與規格相符，亦不保證產品之性能或操作不會中斷。</p> <p>7. 責任限制。在不損及 KLA 一般條款第 5.1 條規定的前提下，KLA 的責任不應超過 1,000 美元總額。</p> <p>8. 終止</p> <p>8.1 終止。在不限制第 3.2 條 (授與權利) 有關自動終止客戶權利的規定下，KLA 得以任何理由或毫無理由而書面通知客戶終止於此授與關於產品之權利。KLA 之終止權利係附加於 KLA 根據法律規定或衡平原則而享有之任何其它權利或可採取之補救措施。</p> <p>8.2 後果。於 KLA 終止產品權利或評估期間結束時，客戶應完全自費立即歸還全部產品、文件、由客戶持有之 KLA 機密資訊，不可持有任何副本，且根據本評估條款而授權客戶評估產品與文件的全部權利亦應自動撤銷。客戶應以書面方式向 KLA 保證將遵守前述義務。</p> <p>8.3 效力存續。KLA 的一般條款和評估條款—除第 3.2 條 (授與權利) 外—應於授與之產品權利終止或評估期間到期後繼續維持效力。</p> <p>9. 檢查權。KLA 有權在提出合理之事前書面通知後，隨時進入客戶場所，檢查客戶對產品之使用，以便確定客戶確實遵守本評估條款。</p> <p>10 適用語言。本評估條款應以英文版為準，且具完全之法律約束力，若有任何歧義處，均以英文版為準。</p>
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