

# HARDWARE SALES TERMS

Version Taiwan 2019.7.15

These Hardware Sales Terms apply to any quote, order, and order acknowledgment, and any sale or delivery of hardware 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 Hardware Sales Terms or after otherwise being notified that such transactions are subject to these Hardware Sales Terms, Customer agrees to these Hardware Sales Terms and KLA's General Terms and Pre-installed Software License Terms, which are incorporated by reference 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 Hardware Sales Terms apply to (i) Hardware; (ii) Software pre-installed, or to be installed on any Hardware (other than Third Party Products); and (iii) Work Product created by KLA under these Hardware Sales Terms. Software and Work Product covered by these Hardware Sales Terms are additionally governed by KLA's Preinstalled Software License Terms. Computer programs that are to be installed on Third Party Products are governed by KLA's Standalone Software License Terms, which are available at [www.kla.com/terms](http://www.kla.com/terms) or on request. Work Product provided by KLA under separate services arrangements (including, but not limited to, maintenance services, time & materials services, or fixed fee services) is governed by the applicable KLA services terms.

## 2. DELIVERY AND ACCEPTANCE

**2.1 Delivery.** 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 must be via air ride suspension enclosed van or, if specified by KLA, via temperature controlled air-ride van. Risk of loss on Hardware passes to Customer on the Delivery Date. Title to Hardware passes to Customer (a) with respect to Hardware shipped from Belgium to a destination outside the European Union, at the moment that the Hardware has left the territory of the European Union and (b) with respect to all other Hardware shipments, on the Delivery Date. Customer acknowledges and agrees that KLA (i) is not obligated to provide Software in source code form; and (ii) does not transfer ownership or title to any Software, Documentation, Work Product, or any Intellectual Property (KLA only grants limited, non-exclusive licenses as specified in KLA's Preinstalled Software License Terms). Partial and installment shipments are authorized.

**2.2 Hardware Inspection and Uncrating.** Immediately upon receipt of the Products, Customer shall (i) uncrate and visually inspect the Hardware; and (ii) notify KLA in writing of receipt of the Hardware and any abnormalities that Customer notes. Customer shall ensure that a KLA representative is present and is permitted to supervise the uncrating and inspection of the Hardware. If Customer fails to comply with this Section 2.2, Customer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging and any warranty rights.

**2.3 Installation and Acceptance Testing.** Upon completion of the installation, KLA shall notify Customer when the Products are ready for acceptance testing. Customer shall enable KLA to perform acceptance testing of the Products and, without limiting the foregoing, shall provide KLA with on-site and remote access to the Products (and any related hardware or software) for such acceptance testing. At Customer's request, a Customer representative may attend KLA's acceptance testing. Via acceptance testing, KLA shall determine whether the Products conform to the mutually agreed performance requirements ("Acceptance Criteria"). Further details about pre-shipment factory testing and postinstallation field testing are

# 硬體銷售條款

2019.7.15 台灣版本

本硬體銷售條款適用由 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、訂單與訂單確認檔，以及任何硬體之銷售或交付。KLA 不以明示或暗示方式接收且以本檔拒絕客戶提出之其他或不同條款，包括但不限於任何訂單、接收檔、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，除非 KLA 以正式簽署之書面檔明確無疑義地表示同意此等條款。客戶於接獲本硬體銷售條款後，或以其他方式接獲通知獲悉此等交易係依據本硬體銷售條款而執行後而訂購、接收、同意或使用產品或以其他方式進行任何交易，即表示同意此硬體銷售條款、KLA 之一般條款及預先安裝軟體授權條款，該等條款係以參照方式納為本條款之一部分，可附加為本條款附件或可自網站 [www.kla.com/terms](http://www.kla.com/terms) 查詢或可索取。

## 1. 定義及範圍

KLA 一般條款之定義應予適用。本硬體銷售條款適用於(i)硬體；(ii)預先安裝，或被安裝於任何硬體（非第三人之硬體）之軟體；及(iii)由 KLA 依據硬體銷售條款所製作之工作產品。硬體銷售條款所涵蓋之軟體及工作產品並另由 KLA 預先安裝軟體授權條款所規範。安裝於第三人產品之電腦程式係由 KLA 獨立電腦軟體授權條款（在 [www.kla.com/terms](http://www.kla.com/terms) 網站查閱或可索取）所規範。KLA 在另外服務安排下（包括但不限於維護服務、時間及材料服務或固定費用服務）所提供之工作產品係由所適用之 KLA 服務條款所規範。

## 2. 交付及收受

**2.1 交付** KLA 應送交所在地工廠交貨價所有產品(Incoterms 2010)。客戶僅須負責取得及安排適當保險項目及有關產品之運送安排並向運送人提出請求。運送必須使用氣動懸吊系統密閉式貨車，或如經由 KLA 具體指定時，需採用耐凍氣動式貨車。硬體損失之風險於交付日移轉予客戶。硬體所有權在如下時間移轉予客戶：(a)從比利時運往歐盟以外的目的地，於硬體離開歐盟區域之時移轉予客戶，以及(b)所有其他硬體之運送，於交付日移轉予客戶。客戶知悉並同意 KLA (i)並無義務以原始碼形式提供軟體；且(ii)並未轉移軟體、文件、工作產品或任何智慧財產（KLA 僅給予於 KLA 預先安裝軟體授權條款所定之有限、非專屬授權）。部分與分期裝運係受核准。

**2.2 硬體檢查與拆封** 在收受產品之同時，客戶應(i)拆封並目視檢查硬體；及(ii)以書面通知 KLA 收受該硬體及客戶所注意到之任何異常情形。客戶應確保一位 KLA 代表在場並受允許得監督硬體之拆封及檢查。如客戶未遵守 2.2 條，客戶將被視為放棄主張錯誤或未完整交貨或包裝及任何保證之權利。

**2.3 安裝及驗收測試** 安裝完成時，KLA 應即通知客戶產品何時得進行驗收測試。客戶應使 KLA 得執行驗收測試，此外並應提供 KLA 駐點及產品（及任何有關之硬體或軟體）之遠端存取以供該驗收測試。在客戶請求下，一名客戶代表得出席 KLA 之驗收測試。藉由驗收測試，KLA 應決定產品是否符合雙方同意之效用需求（驗收標準）。在 KLA 測試指南或其他指導中（得於 [www.kla.com/terms](http://www.kla.com/terms) 網站查閱或可索取）載有關於裝運前製造測試及安裝後實地測試之進一步細節雙方同意之效用需求（驗收標準）。

contained in KLA's testing guidelines and other policies, which are available at [www.kla.com/terms](http://www.kla.com/terms) or on request. If the acceptance testing demonstrates that the Acceptance Criteria are met, KLA shall provide Customer with a written summary of the results of the acceptance testing ("Test Results") following the completion of the acceptance testing procedure.

**2.4 Express Acceptance or Rejection.** If the Products materially conform to the Acceptance Criteria, Customer shall sign a written acceptance statement (i) at the end of the acceptance testing procedure; or (ii) if no Customer representative attends the acceptance testing procedure, within ten (10) days after Customer's receipt of the Test Results. If any Product materially fails to conform to the applicable Acceptance Criteria, then Customer shall promptly provide KLA with a reasonably detailed written description of the perceived non-conformance ("Rejection Notice"). If KLA receives a justified Rejection Notice within ten (10) days after Customer has received the Test Results, KLA shall use commercially reasonable efforts to remedy the non-conformance and repeat the acceptance testing process per Section 2.3 (Installation and Acceptance Testing) and this Section 2.4.

**2.5 Deemed Acceptance.** In the absence of an express acceptance, Customer shall be deemed to have accepted a Product upon the earlier of (i) payment, without reservation, of any amounts with respect to the Product; (ii) ten (10) days after Customer's receipt of the Test Results, unless KLA receives a Rejection Notice within such period; or (iii) use of the Product for any purpose other than testing as necessary in order to determine conformance to the applicable Acceptance Criteria.

**2.6 Training Credits.** In connection with sales of Hardware, KLA may grant training credits, which Customer can redeem for certain training courses within twelve (12) months after the Delivery Date.

**3. PAYMENT.** Customer shall pay (i) ninety percent (90%) of the contract price thirty (30) days after the Delivery Date; and (ii) ten percent (10%) of the contract price fifteen (15) days after express acceptance or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance), whichever occurs earlier. Payment shall be made in accordance with the General Terms.

**4. CANCELLATION.** Prior to shipment, Customer may unilaterally cancel any delivery of Products under these Hardware Sales Terms with written notice to KLA and upon payment of cancellation charges as follows: If KLA receives Customer's cancellation notice

(a) within 60 days of the scheduled shipment date, cancellation charges shall be 80% of the applicable fees.

(b) more than 60 days, but less than 90 days of the scheduled shipment date, cancellation charges shall be 60% of the applicable fees.

(c) 90 days or more, but less than 150 days of the scheduled shipment date, cancellation charges shall be 40% of the applicable fees.

(d) 150 days or more of the scheduled shipment date, cancellation charges shall be 20% of the applicable fees.

**5. RESCHEDULING.** Customer may request once in writing that KLA postpone shipment up to sixty (60) days after the scheduled shipment date provided that (i) Customer compensates KLA for any resulting costs (including but not limited to storage costs); (ii) KLA receives Customer's written request at least sixty (60) days prior to the scheduled shipment date; (iii) if Customer subsequently to postponing shipment in accordance with this Section 5 cancels shipment in accordance with Section 4 (Cancellation), the scheduled shipment date shall be the original shipment date and not the rescheduled shipment date for purposes of determining the cancellation charges.

## 6. LIMITED WARRANTY AND DISCLAIMER

**6.1 Limited Warranty.** KLA warrants that on the Delivery Date and on the date of express acceptance or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance), whichever occurs earlier, the Products substantially conform to the specifications in the applicable Documentation, subject to the following limitations and exclusions:

如果驗收測試之結果符合驗收標準，KLA 應於完成驗收測試程式後提供客戶驗收測試結果（「測試結果」）之書面摘要。

**2.4 表示驗收或拒絕** 如產品實質上符合測試標準，客戶應於下述時間(i)於驗收測試程式終止時；或(ii)若無客戶代表出席驗收測試程式，於客戶收受測試結果十天內，簽署書面驗收證明。如任何產品實質上未符合所適用之驗收標準，客戶應立即提供 KLA 合理詳細書面，描述所檢查出之不相符（「拒絕通知」）。若 KLA 於客戶收到測試結果後十日內，收受有正當理由之拒絕通知，KLA 應以商業上合理之努力修正該不相符，並依據 2.3 條（安裝及驗收測試）及 2.4 條，重複驗收測試程式。

**2.5 視為驗收** 若無明示驗收，在下述三種情形之一最早發生時，視為客戶驗收產品(i)未保留與產品有關之任何款項之付款；(ii)客戶收受測試結果後十日內，但 KLA 於該期間內收到拒絕通知者不在此限；或(iii)為任何其他目的，而非為決定產品是否符合驗收標準所必要之測試而使用產品。

**2.6 培訓代金券** KLA 得就硬體銷售提供培訓代金券，客戶得憑培訓代金券於交付日後12個月內購買培訓課程。

**3 付款** 客戶應於(i)交付日後 30 日支付 90%之合約價格，並(ii)於依據 2.5 條於明示驗收或視為驗收後 15 日，視何者發生較早，支付 10%合約價格。款項之支付依據一般條款。

**4 取消 裝運前**，客戶得依據硬體銷售條款以書面通知 KLA，單方取消任何產品之運送，並如下述方式支付費用：如 KLA 收到客戶取消通知

(a)在預定裝運日 60 日內，取消費用為應付費用 80%

(b)超過預定裝運日 60 日但少於 90 日，取消費用為應付費用 60%

(c)超過預定裝運日 90 日以上但少於 150 日，取消費用為應付費用 40%

(d)超過預定裝運日 150 日以上，取消費用為應付費用 20%

**5.重新安排** 客戶得書面請求一次 KLA 遲延預定裝運日至多 60 天，如(i)客戶補償 KLA 因此所生之費用（包括但不限於保管費用）；(ii)KLA 在裝運日前 60 天內收到客戶之書面請求；(iii)若客戶依據第 5 條延後裝運後隨後依據第 4 條（取消）取消裝運，為計算取消費用之目的，預定裝運日應為原裝運日且非預定裝運日。

## 6.有限保證及免責聲明

**6.1 有限保證** KLA 保證在交付日及在明示驗收日或依據第 2.5 條（視為驗收）視為驗收，視何者較早發生，除下述之限制及除外情形，產品大致上符合適用檔之規格：

6.1.1 **Excluded Causes.** Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Products with hardware or software that was not expressly specified in writing by KLA as suited for use with the Products; (ii) Customer's failure to follow KLA's operating instructions; (iii) failure to implement all updates, upgrades, and other new releases of Software made available to Customer; (iv) changes to the Customer environment, in which Products were installed; (v) acts or omissions of persons other than KLA or its authorized representatives; (vi) installation or maintenance of Products by someone other than KLA or persons certified by KLA; (vii) abuse, use at an unsafe or not suitable site, unusual physical or electrical stress; (viii) any relocation of Products without, or not in accordance with, a prior written authorization by KLA; or (ix) Force Majeure conditions as defined in KLA's General Terms.

6.1.2 **Consumables and Modifications.** Customer has no warranty rights with regard to any (i) consumable Products or parts thereof (e.g., Products or parts with an expected useful life of less than ninety (90) days, such as lamps, lasers, fuses, detectors, and batteries); (ii) Products that have been modified by someone other than KLA, unless such modifications were directed or approved by KLA in writing and made in conformance with all specifications and instructions provided in such writing; or (iii) Products that KLA modified in accordance with Customer's request, specifications, or instructions, unless KLA agrees in a duly signed writing that the modified Products shall be covered by the limited warranty specified in Section 6.1 (Limited Warranty).

6.1.3 **No Warranties for Revisions.** KLA does not extend any warranties under these Hardware Sales Terms for hardware and software revisions provided under KLA's Hardware Maintenance Terms. Any warranties for such hardware and software revisions are exclusively and finally provided for under KLA's Hardware Maintenance Terms.

6.1.4 **No Warranty for Third Party Products.** KLA does not extend any warranties and KLA disclaims all responsibilities for Third Party Products. If a manufacturer or supplier of Third Party Products makes any documentation providing for an end-user warranty available to KLA, then KLA shall forward such documentation to Customer.

6.1.5 **Refurbished Parts and Prior Testing.** Hardware may incorporate reconditioned or refurbished parts or subassemblies and may have been used in testing prior to sale.

6.2. **Exclusive Remedies.** If a Product materially fails to conform to the limited warranty set forth in Section 6.1 (Limited Warranty), KLA shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with Section 6.3 (Warranty Period); or (ii) refund to Customer the amounts paid for the Product in exchange for return of the non-conforming Product, in which case all licenses granted to Customer under the Pre-Installed Software License Terms shall be automatically revoked. Customer hereby transfers to KLA title and ownership of any parts that KLA replaces at Customer's request. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 6.2 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 PRODUCTS.

6.3. **Warranty Period.** The warranty period shall be one (1) year, beginning upon express acceptance or deemed acceptance in accordance with Section 2.5 (Deemed Acceptance, whichever occurs earlier. For Products that KLA repairs or replaces pursuant to Section 6.2 (Exclusive Remedies) and any parts that KLA incorporates into repaired Products the warranty period shall be ninety (90) days beginning on the date of Customer's receipt of the repaired Product or part, as applicable; provided that such repaired Products or parts shall materially conform to the warranty standard set forth in Section 6.1 (Limited Warranty) on the Delivery Date. 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 (a "Warranty Claim"); and (ii) remote and physical access to the affected Products as well as information in sufficient detail to enable KLA to reproduce and analyze the failure.

6.1.1 **除外條款** 以下情形造成之瑕疵或不相符，客戶無保證權利。(i)使用產品時，與未經 KLA 以書面明確載明適合與產品共同使用之硬體與軟體一起使用；(ii)客戶未遵循 KLA 之操作指示；(iii)未使用所有提供客戶之更新、升級及其他最新版軟體；(iv)客戶環境之改變，而軟體係安裝於該環境中；(v)KLA 或其授權代表以外之人之人為或疏失；(vi)非 KLA 或其所認可之人所為之安裝或維護；(vii)錯誤使用、在不安全或不適當之地點使用、異常之物理壓力或電壓；(viii)任何未經或未依據 KLA 書面授權之產品遷移；或(ix)依 KLA 一般條款所定義之不可抗力。

6.1.2 **消耗與修改** 有下述情形之一者，客戶無保證權利(i)產品或其零件之消耗（例如預期少於 90 日之使用期限的產品或零件，如燈管、雷射、保險絲、偵測器及電池）；(ii)產品由 KLA 以外之人所修改，但如該修改係由 KLA 以書面指示或核准且符合該書面所定之規格與指示者不在此限；或(iii)KLA 依據客戶之要求、規格或指示修改產品，但 KLA 以正式簽署書面同意第 6.1 條（有限保證）所定之有限保證包括該項修改產品者不在此限。

6.1.3 **修改無保證** KLA 並未提供硬體銷售條款下之任何保證予依據 KLA 硬體維護條款所提供之硬體及軟體修改。此等硬體與軟體修改之保證專由且最終由 KLA 硬體維護條款所規範。

6.1.4 **第三人產品無保證** KLA 未提供保證亦不承擔第三人產品之責任。如 KLA 可取得第三人產品製造商或供應商之規範直接用戶保證的檔，KLA 應將該等文件轉交予客戶。

6.1.5 **翻新零件與預先測試** 硬體得置入修復或翻新之零件或配件，並得於銷售前測試中使用。

6.2. **唯一之救濟** 如產品實質上未符合第 6.1 條（有限保證）所定之有限保證，KLA 應，以自己之判斷，(i)修補或更換不相符之產品以補救客戶依第 6.3 條（保證期間）所確認之不相符；或(ii)返還客戶就產品所支付款額，並取回不相符產品，於此情形，客戶依據預先安裝軟體授權條款所取得之授權應自動撤銷。KLA 依客戶要求所更換零件之所有權轉移予 KLA。本第 6.2 條明定之補救係客戶唯一之救濟，且排除客戶得對抗 KLA 其他關於不相符產品之任何權利或救濟。

6.3. **保證期間** 保證期間為一年，始於明示驗收或依第 2.5 條（視為驗收）之視為驗收，視何者較早發生。KLA 依據第 6.2 條（唯一的補救措施）修復或更換之產品及任何 KLA 置入修理產品之零件，其保證期間為自客戶收到修理產品或零件之日起 90 日；惟該修理產品或零件在交付日應實質符合第 6.1 條（有限保證）所定之保證標準。客戶並無保證請求，除非 KLA 於保證期間自客戶處收到(i)合理詳細書面描述違反保證（「保證請求」）；及(ii)能遠端與直接存取受影響產品及足夠詳盡之資訊俾 KLA 能再現並分析該故障。

**6.4 Costs and Procedure.** If KLA receives a Warranty Claim in accordance with Section 6.1 (Limited Warranty), Section 6.3 (Warranty Period), and any procedure guidelines that KLA may publish or make available to Customer ("**Warranty Guidelines**"), KLA will not charge for any repair, replacement, error identification, or correction of the non-conforming Product, or for return shipment of any repaired Hardware to Customer, except for any costs that are caused by Customer's relocation of the Hardware from the destination to which it was originally delivered by KLA. Customer must prepay freight and insurance charges for the return shipment of the non-conforming Product to KLA and will be reimbursed by KLA if the Warranty Claim meets the requirements of Section 6.1 (Limited Warranty), Section 6.3 (Warranty Period), and the Warranty Guidelines. If Customer's Warranty Claim fails to meet any of the requirements of Section 6.1 (Limited Warranty), Section 6.3 (Warranty Period), or the Warranty Guidelines, KLA's then-current Time & Materials Services Terms (available on request) shall apply to any error identification or correction efforts, repair, replacement, and shipment costs by KLA and Customer shall compensate KLA accordingly on a time & materials basis at KLA's then-current rates (available on request).

**6.5 Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 6.1 (LIMITED WARRANTY), KLA MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS. 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 AND, WITHOUT LIMITING THE FOREGOING, MAKES NO WARRANTY THAT ANY OF THE PRODUCTS WILL BE ERRORFREE OR THAT THEIR PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED.

#### 7. PREVAILING LANGUAGE

The English language version of these Hardware Sales Terms shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.

**6.4 費用及程式** 如 KLA 收到依據第 6.1 條（有限保證）、第 6.3 條（保證期間）及任何 KLA 得發布或提供客戶之程式指南（「保證指南」）之保證請求，KLA 不收取任何修理、更換、錯誤鑑定或糾正不相符產品費用，或返還修理硬體給客戶之裝運費用，但該費用係由客戶由 KLA 原送達之目的地遷移硬體所造成者不在此限。客戶須預付裝運返還不相符產品予 KLA 所需之空運及保險費，如保證請求符合第 6.1 條（有限保證）、第 6.3 條（保證期間）及保證指南之規定，該等費用 KLA 將於予以返還。如客戶之保證請求未符合 6.1 條（有限保證）、第 6.3 條（保證期間）及保證指南之規定，KLA 所為之任何錯誤鑑定或糾正、修理、更換及裝運費用應適用 KLA 當時之時間及材料服務條款，且客戶應依時間及材料之基礎，以 KLA 當時之費用（可索取）補償 KLA。

**6.5 免責聲明** 除於第 6.1 條（有限保證）具體指明者外，KLA 未明示聲明或保證有關任何產品。於法最大許可範圍內，KLA 否認所有暗示保證或聲明，包括但不限於任何銷售之保證、符合特定目的及不侵權，此外，亦不保證任何產品係沒有錯誤或性能或操作是不被中斷的。

#### 7. 適用語言

硬體銷售條款英文版規範並合法拘束所有事項，且如有不一致發生時，以英文版為準。