

TIME & MATERIALS SERVICES TERMS

Version Taiwan 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

時間與材料服務條款

2019.7.15 台灣版本

本時間與材料服務條款適用任何由 KLA Corporation (One Technology Drive, Milpitas, California 95035 下稱「KLA」) 向任何買方 (下稱「客戶」) 提出之報價、訂單與訂單確認函, 以及時間與材料服務之任何銷售。KLA 不以明示或暗示方式接受且以本文件拒絕客戶提出之其他或不同條款, 包括但不限於任何訂單、接受文件、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, 除非 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。客戶於接獲本時間與材料服務條款後, 或以其他方式接獲通知獲悉此等交易係依據本時間與材料服務條款而執行後而訂購、接受、同意或使用服務或以其他方式進行任何交易, 即表示同意此時間與材料服務條款與 KLA 之一般條款, 該一般條款以本合約引述方式納為本合約之一部分, 可至網站 www.kla.com/terms 查閱該一般條款或可索取條款內容。

1. 定義。除下述定義外, KLA 之一般條款中所載之定義應予適用:

「資料表」係指 KLA 之零附件價目表, 以及時間與材料服務每小時及每日標準費率與退款規則, 載於 KLA 的網站 www.kla.com/terms 或可索取資料表內容。

「人員」係指 KLA 為執行時間與材料服務而安排布署之員工、獨立承包商與轉包商。

「時間與材料服務」係指按時或按日計價提供之服務, 並依據 KLA 資料表所載之材料與費用退款。時間與材料服務得包括例如: 諮詢服務、軟硬體配置技術協助, 以及保固範圍與維修協議範圍以外之修復服務。時間與材料服務不含下列各項服務: (i) 按單次固定收費、達成重要里程碑付費, 或每季或每年反覆產生費用 (例如, 維修); 或 (ii) 生產可交付物 (包括依客戶需求訂做 KLA 解決方案), 且 KLA 保證交付物均符合規格。

2. 時間與材料服務

2.1 時間與材料服務範圍。 KLA 應按雙方同意之天數或時數派遣人員向客戶提供時間與材料服務, 並以工廠交貨價交付任何必要之零件。在雙方以工作說明或針對其他特定計畫或服務目標 (例如, 研發特定軟體或系統或依客戶需求訂做) 而編寫之文件中同意之範圍內, KLA 將盡商業上合理之努力, 於執行時間與材料服務時, 努力達成該等目標, 但 KLA 並無義務達成特定技術、經濟或其他結果。

2.2 聯絡人與指派人員。 雙方當事人各自應指派至少一名主要聯絡人與一名替補聯絡人, 就與時間與材料服務相關之事宜, 負責與對方的所有技術通訊; 然雙方各自均得以書面通知對方的方式, 隨時替換聯絡人。人員得接受客戶有關時間與材料服務欲達成目標而提出之指示, 特別是關於執行該等服務之部分, 但須受 KLA 之專屬監督。在不限制前述約定之前提下, KLA: (i) 得隨時自行決定選任、除任與替換人員; 以及 (ii) 應獨自負責人員相關行政與人力資源事宜。

2.3 工作紀錄。 人員得紀錄為客戶執行之時間與材料服務, 包括執行日期、工作時間, 以及服務類型等資料 (下稱「工作紀錄」)。經 KLA 要求時, 客戶應每日或每週審核並副署工作紀錄。

3. 付款

3.1 費用與支出。 有關 KLA 執行時間與材料服務, KLA 得依據相關資料表以事後支付方式, 就人員工作時間、零件與小額零用雜費, 每週或每月請款一次。客戶應於請款單日期三十日以內按一般條款規定付款。

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.

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 nonconforming 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 nonconforming 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 NONINFRINGEMENT.

5. WORK PRODUCT.

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

3.2 加收費用。若經客戶要求，KLA 於周末期間或 KLA 正常營業時間—上午八時至下午五時 (以執行時間與材料服務地點之當地時間為準) 以外期間執行時間與材料服務，則 KLA 得請領百分之五十 (50%) 的加收費用或按相關資料表之規定請領加收費用—適用金額較高者；然 KLA 並無義務於前述期間提供時間與材料服務。

3.3 最低時間。KLA 應客戶要求派遣人員至客戶地點，並由人員提供時間與材料服務時，KLA 將按相關資料表中所載之時間或以兩小時為準—適用金額較高者—向客戶收費。

4. 有限保證與免責聲明

4.1 有限保證。KLA 應以專業與符合水準的方式執行時間與材料服務。由 KLA 安裝與時間與材料服務相關之任何零件，均應大致符合安裝當日有效之相關文件中所載之規格。

4.2 唯一之救濟。若任何零件顯然不符合第 4.1 條「有限保證」中規定之有限保證，KLA 應自行全權決定修復或替換不符合規定之零件，以補正客戶按第 4.3 條「保證期間」而指出之違反情事。客戶在此將 KLA 依客戶要求而替換之任何零件之所有權轉移予 KLA。若時間與材料服務有其他不符合第 4.1 條「有限保證」中規定之有限保證情事，且 KLA 未於接獲客戶要求修正之詳細請求後十日內將違規情事加以補正，則客戶得依據第 6 條「終止」規定，終止時間與材料服務。終止並不會影響：(i) 客戶就 KLA 於接獲客戶要求修正之通知前已執行之時間與材料服務付款之義務；或 (ii) 客戶根據時間與材料服務條款應負之義務。本條第 4.2 條中明載之補救措施即為客戶可取得之唯一之救濟，且應取代客戶以未遵守時間與材料服務或零件為理由而向 KLA 提出之任何其他權利或救濟。

4.3 保證期間。非消耗品零件之保證期間為 90 天，消耗品零件 (指運轉期間消耗的零件，或預期使用期限低於一年的零件，例如，燈、雷射、保險絲、偵測器和電池等) 之保證期間為 7 天，保證期始於安裝當日。否則保證期間應為十日，始於不符規定之時間與材料服務已執行當日。客戶無請求保證權利，除非 KLA 於保證期間自客戶處接獲：(i) 書面通知，以合理細節說明違反保證事宜；以及 (ii) 能以遠端方式或直接取得受影響零件，並獲得充分的資訊，讓 KLA 能夠就狀況進行複製並加以分析。

4.4 免責聲明。除於第 4.1 條「有限保證」中明載者外，KLA 並未就時間與材料服務或零件提供任何明示聲明或保證。於相關法律許可之最大範圍內，KLA 聲明排除所有暗示之保證與聲明，包括但不限於可銷性、特殊用途之可適性與未侵權保證與聲明。

5. 工作產品

5.1 向客戶授權。KLA 同意授權客戶非專屬性、不可轉讓與不可再授權之權利，得使用工作產品，然僅供客戶內部之商業目的使用，且須符合下列條件：(i) KLA 將該等工作產品作為時間與材料服務之一部分刻意向客戶提供；(ii) 工作產品並未規定於雙方當事人任何其他書面條款或協議 (否則應完全受該等條款或協議約束，例如，固定費用服務條款或軟體授權條款)；以及 (iii) 客戶遵守時間與材料服務條款所有規定，包括但不限於按時支付合約規定全部款項與其他金額之義務，以及 KLA 一般條款規定之保密義務。

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 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.

5.2 保留全部其他權利。KLA 保留以下所有權、權利與全部權益，包括但不限於：所有未於本時間與材料服務條款中明示向客戶授權之全部專有權，以及全部工作產品與 KLA 於簽訂時間與材料服務條款前研發或取得，或獨立研發或取得之全部資訊、材料與技術之全部專有權，包括但不限於其中包含之全部智慧財產，以及其中所含與由其衍生之全部專有權。客戶保留非因時間與材料服務條款而擁有或取得之全部智慧財產之全部專有權。

6. 終止

6.1 終止權利。任一當事人均得於任何時候向對方提出三十日之事先通知，不附理由而終止任何或全部時間與材料服務訂單。若對方未於接獲未違約當事人詳載涉嫌重大違約之書面通知後十日內補正對時間與材料服務之重大違約情事，則未違約當事人即可以書面通知立即終止任何或全部時間與材料服務訂單。

6.2 終止後之處理。除非客戶係因為 KLA 嚴重違反時間與材料服務條款，或因 KLA 無因終止時間與材料服務條款而終止時間與材料服務條款，否則客戶應向 KLA 支付違約款 (ramp-down fees) 或取消款，若並未載明此等款項時，則應支付時間與材料服務條款規劃的預估費用、材料費與實際產生的支出，扣減因提前終止而使 KLA 省下的開銷。若客戶係因 KLA 嚴重違約而有效終止時間與材料服務條款，則客戶即無義務支付已花費時間、材料費與終止前十日內因執行時間與材料服務而產生的支出。若 KLA 係因客戶嚴重違反時間與材料服務條款而終止時間與材料服務，則客戶應歸還 KLA 全部工作產品、KLA 之機密資訊與其他與時間與材料服務相關而接受之有形與無形物，且不得保留任何複本，同時所有依時間與材料服務條款而給予客戶的工作產品授權均自動撤銷。

6.3 效力存續。時間與材料服務條款之第 3 條「付款」、第 4 條「有限保證與免責聲明」、第 5 條「工作產品」與本條第 6 條，以及 KLA 之一般條款，於本時間與材料服務條款終止後繼續有效，然第 5.1 條「向客戶授權」中由 KLA 授予客戶之工作產品授權存續之前提為，客戶必須繼續完全遵守時間與材料服務條款之全部規定。

7. 適用語言

本時間與材料服務條款應完全以英文版為準，且具法律約束力，任何版本未合之處均應以英文為準。