

## KLA TERMS & CONDITIONS OF PURCHASE

REVISION DATE: 1 JUNE 2025

- 1. AGREEMENT OF THE PARTIES.** These terms and conditions (the “Terms”) are the exclusive and binding agreement between the KLA buying entity (“KLA”) issuing a purchase order, amendment, statement of work, or other order (each, an “Order”) to the entity to whom such Order is addressed, or who performs pursuant to such Order (“Supplier”) relating to the purchase of Products ordered. Any reference to “KLA” under the Terms or in an applicable Order will include and apply to the buying entity, any parent entity, and any of its directly or indirectly owned or controlled subsidiaries. For purposes of these Terms, “Products” means the goods, materials, products, parts, services, software, technical data, intellectual property, drawings, personal property, or items identified and/or listed in the Order, or actually provided by Supplier to KLA under the Order. Any acknowledgement and/or commencement of performance by Supplier shall be deemed acceptance of these Terms in full. KLA HEREBY OBJECTS TO ANY AND ALL ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY SUPPLIER BY QUOTATION, ACKNOWLEDGEMENT OR OTHERWISE, WHETHER PREVIOUS, CONCURRENT OR SUBSEQUENT HERETO. PAYMENT FOR OR ACCEPTANCE OF PRODUCTS OR SERVICES DELIVERED HEREUNDER SHALL NOT BE DEEMED AN ACCEPTANCE OF SUPPLIER'S TERMS AND CONDITIONS. No change, modification or revision of an applicable Order shall be effective unless in writing and signed by KLA's duly authorized purchasing representative or officer.
- 2. DELIVERY.**

  - (a) **Performance.** Time is of the essence in regard to the performance by Supplier of the applicable Order. Supplier shall be liable for all excess transportation or other charges or costs resulting from failure to follow and meet KLA's routing instructions and delivery schedules. No partial or complete delivery shall be made prior to the date or dates designated on the Order without KLA's prior written approval. KLA reserves the option to refuse or to return at Supplier's expense any shipments of Products either in excess of the amount, or in advance of the schedule, stated on the face of the applicable Order.
  - (b) **Packing and Shipment.** Unless otherwise specified by KLA in writing, all Products shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice and ISTA 1G/1H standards, (ii) acceptable to common carriers for shipment at the lowest rate for the particular Products, (iii) in compliance with all tariffs, governmental laws, and regulations, and (iv) adequate to ensure safe arrival of the Products at the destination designated in the Order and for storage and protection against weather. Supplier shall mark all containers with necessary lifting, handling, and shipping information and also Order numbers, date of shipment, and the names of the consignee and consignor. Supplier will clearly identify the country of origin of all Products delivered to KLA. An itemized packaging record must accompany each shipment unless otherwise specified by KLA in writing.
  - (c) **Transfer of Risk of Loss and Title.** Unless otherwise specifically provided on the face of an applicable Order, all Products shall be delivered FCA or DAP, KLA's named place (INCOTERMS 2020). Title and risk of loss or damage to all Products shall transfer to KLA at the designated INCOTERMS point. Notwithstanding the foregoing, KLA's rights and remedies with respect to any Products that fail to conform to the Order shall remain.
- 3. INVOICES.** Supplier shall deliver written invoices to KLA in duplicate and shall include the following information: KLA's Order number, product model number, KLA's unique part number, description of Products, sizes, quantities, unit prices, the applicable harmonized tariff codes and export-control classifications of the Products, the country of origin of the Products, whether the Products are subject to U.S. export regulations, and any other information specified by KLA in writing. KLA relies on the accuracy of the data presented to KLA on these written invoices in its import and business operations and, as such, the Supplier shall be solely responsible for Supplier's failure to correctly identify information on its written invoices. Bills of lading or other shipping documentation shall accompany each invoice. Payment of any invoice shall not constitute acceptance of any Products or other failure of Supplier to meet the requirements of the Order or constitute an acknowledgement that the corresponding delivery of Products or services were provided in accordance with the Order. If Supplier offers a discount for prompt payment, discounts will be computed from the latest of: (a) the scheduled delivery date or (b) the date of actual delivery. KLA shall be entitled to set off, or withhold for reasons of deficiency, any amount owed by a KLA entity to Supplier against any amount owed by Supplier or any of its affiliated companies to KLA. Unless otherwise agreed upon in writing by KLA in advance, payment to Supplier shall be in the currency designated on the applicable KLA Order issued in connection with these Terms. KLA reserves the right to pay in United States dollars.

Payment is deemed to be made on the date of mailing of KLA's check or when it activates a wire transfer on Supplier's behalf. KLA shall have no liability to Supplier for fraudulent check endorsement that arises following KLA's proper mailing of the check.

**4. TAXES AND EXPENSE.** The prices set forth in the applicable Order include all applicable taxes and miscellaneous charges including but not limited to shipping costs, duties, customs, tariffs, imposts, and government-imposed surcharges (together, "Taxes"). All such Taxes shall be stated separately on Supplier's invoice. Where any relevant taxing authority imposes any withholding taxes on the payment by KLA to Supplier and requires KLA to withhold such tax, KLA may deduct such tax from the payment to Supplier and remit such tax to the relevant taxing authority on behalf of Supplier, unless Supplier provides KLA with a valid exemption certificate in advance. KLA shall have no obligation or liability for, and Supplier agrees to indemnify, defend, and hold KLA harmless for any liability for Taxes, irrespective of when the tax is assessed, as well as the collection or withholding thereof, including all penalties and interest.

**5. INSPECTION.**

- (a) All Products purchased by KLA under an applicable Order shall be subject to inspection and test by KLA to the extent practicable at all times and places during and after the period of manufacture and in any event, prior to acceptance. If inspection or test is made by KLA at Supplier's premises, Supplier, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of KLA's inspectors. No inspection or test shall relieve Supplier from responsibility for defects or other failure to meet the requirements of the applicable Order and these Terms.
- (b) Notwithstanding any prior inspections or payments thereunder, all Products shall also be subject to inspection and acceptance at KLA's plant within a reasonable time after delivery. Supplier shall provide and maintain an inspection system which is acceptable to KLA. Supplier shall keep and maintain complete and accurate records of all inspection work, which records shall be available to KLA during the performance of this order and for five (5) years thereafter or such longer period as specified by KLA in writing.

**6. WARRANTY.**

- (a) Supplier represents and warrants that all Products delivered to KLA, including all components and raw materials incorporated therein, as well as Products corrected under this warranty (i) shall be free from defects in workmanship, materials and manufacture; and (ii) shall comply with and conform to (A) the requirements under these Terms, (B) any drawings or specifications published by Supplier or incorporated herein or under an applicable Order or submitted to KLA, (C) any samples furnished by Supplier; and (iii) comply with all applicable laws and regulations and generally recognized standards and codes; (iv) are new and not used, refurbished, or counterfeit, and (v) where design is Supplier's responsibility, be free from defects in design. Supplier also warrants that all services shall be provided at the highest professional standards. The foregoing warranties are in lieu of all other warranties, whether expressed or implied, and shall survive any inspection, acceptance, and payment by KLA. All warranties shall benefit and be enforceable by KLA and its customers.
- (b) Supplier represents and warrants that it has the full power and authority to grant the rights granted hereunder. Supplier further represents and warrants that KLA's use of all Products provided hereunder will not infringe any third party's Intellectual Property Rights as defined in Section 11 herein. Supplier also warrants that it has the necessary right, title, and interest to provide said Products to KLA free and clear of all liens and encumbrances.
- (c) Supplier represents and warrants that it complies with KLA's Virus Protection Policy found at [Anti-Virus.pdf \(kla.com\)](#) to ensure systems or parts that contain an operating system or hard drive are scanned and certified clean using a standard anti-virus software utility before shipment to KLA. In accordance with this Policy, Supplier shall provide with each shipment a written anti-virus declaration of compliance listing the anti-virus software product and version used, the date and process step at which the scan was completed, and a copy of the final scan report to ensure systems or parts that contain an operating system or hard drive are scanned and certified clean using a standard anti-virus software utility before shipment to KLA. In accordance with this Policy, Supplier shall provide with each shipment a written anti-virus declaration of compliance listing the anti-virus software product and version used, the date and process step at which the scan was completed, and a copy of the final scan report.
- (d) Supplier represents and warrants that it has implemented and maintains a robust business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning, and cybersecurity. Upon KLA's request, Supplier will provide a summary of the business continuity plan and test results. Cybersecurity programs must include, at a minimum, provisions to prevent, detect, respond, and address cybersecurity incidents in a timely manner, including unauthorized access,

data breaches, and other cyber threats. Supplier shall immediately notify KLA of any cybersecurity incidents that may affect the integrity or security of the Products or services provided hereunder.

- (e) No acceptance, payment, inspection or failure to inspect, or approval of Supplier's product or design or services, shall excuse Supplier from any obligation or warranty under the applicable Order or these Terms, even if a defect, non-conformity or other deficiency could or should have been observed or detected. A waiver by KLA of any drawing or specification required for one or more of the Products or a portion of the services shall not constitute a waiver of such requirements for the remaining Products.
- 7. CHANGES.** KLA may at any time by a written order to Supplier, suspend performance hereunder, increase or decrease the ordered quantities, or make changes in any one or more of the following: (i) applicable drawings, designs or specifications; (ii) method of shipment or packing; (iii) place of delivery; and/or (iv) schedules, including time of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of the applicable Order, the parties will discuss in good faith an equitable adjustment to the Order price and/or delivery schedule, or both.
- 8. TERMINATION FOR CONVENIENCE.** KLA may terminate any Order placed hereunder, in whole or in part, at any time for its sole convenience, by giving written notice of termination to Supplier. Upon Supplier's receipt of such notice, Supplier shall, unless otherwise specified in such notice, immediately stop all work with respect to such Order, give prompt written notice to and cause all of its vendors or subcontractors to cease all related work and, at the request of KLA, return any materials provided to Supplier by KLA with respect to such Order. There shall be no charges for termination of Orders for standard, off-the-shelf Products or for services not yet provided. KLA will be responsible for payment of standard, off-the-shelf Products or authorized services already provided by Supplier and accepted by KLA. Supplier's claim for any termination of Orders for custom Products which are based upon, incorporate, or leverage, KLA's Intellectual Property Rights and/or confidential information, and therefore are both unique and exclusive to KLA, may only include the net cost of work in process for the terminated Products or finished Products as substantiated in Supplier's records as of the date of Supplier's receipt of such termination. Any obligations and duties that by their nature extend beyond the expiration or termination of these Terms shall survive the expiration or termination of these Terms and/or Order.
- 9. TERMINATION FOR CAUSE.** KLA may terminate all or any part of an applicable Order if Supplier fails to perform any of its obligations hereunder or so fails to make progress as to endanger its performance in accordance with its terms. Additionally, should Supplier (i) become insolvent; (ii) suspend its business; (iii) file a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within thirty (30) days; or (iv) in accordance with Section 16(k), below, then KLA may immediately cancel any outstanding part of any applicable Order without penalty. Upon notice of such termination, KLA may require Supplier to transfer title and deliver to KLA any completed or partially completed Products and materials as Supplier has produced or acquired for the performance of an applicable Order. Supplier shall remain liable for all damages incurred by KLA as a result of Supplier's breach and will reimburse KLA for all such damages. In addition, KLA may offset any such damages from any amounts of money due Supplier by KLA, whether or not such amounts arise out of this Order. If, after notice of termination for default, it is determined that the failure to perform is not a breach of this Order, then any notice of default shall be deemed to have been issued pursuant to Section 8 hereof.
- 10. GENERAL INDEMNITY.** Supplier agrees to defend KLA at KLA's discretion, and shall indemnify and hold KLA, and KLA's officers, directors, shareholders, employees, Affiliates, agents, and customers harmless from and against any and all costs, expenses (including reasonably attorneys' fees), losses, damages, claims, liabilities, demands, penalties, forfeitures, suits, and judgments, which KLA may hereafter incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean-up costs in connection therewith, or any violation of governmental law, regulation, or orders, caused, in whole or in part, by (a) Supplier's breach of any term or provision of an Order; (b) any negligent or willful acts, errors or omissions by Supplier, its personnel, officers, agents, representatives or contractors in connection with the Product supplied by Supplier and/or performance of services under an Order.
- 11. INFRINGEMENT INDEMNITY**
  - (a) **Indemnity.** Supplier shall defend, at KLA's discretion, indemnify, and hold KLA and KLA's officers, directors,

shareholders, employees, affiliates, agents and customers, harmless from and against any and all costs, expenses (including reasonably attorneys' fees), losses, damages or liabilities incurred because of actual or alleged infringement of any Intellectual Property Rights arising out of the use or sale by KLA, or KLA's customers, of (i) any Products provided hereunder or KLA's products manufactured using the Product(s), (ii) any inventions provided by Supplier, or (iii) any Work Product provided by Supplier. KLA shall promptly notify Supplier of such claim or demand and shall permit Supplier to participate in the defense or settlement thereof. "Intellectual Property Rights" means any patent, copyright, trademark, mask work rights, design rights, database rights, rights in know-how, trade secrets, and other confidential information and any other similar rights worldwide, whether registered or not, and including any applications for the foregoing.

- (b) **Remedies.** Should the use of any Products by KLA, its distributors, agents, subcontractors, or customers be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Supplier shall, at its sole cost and expense, either (i) substitute fully equivalent non-infringing Products; (ii) modify the Products so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for KLA, its distributors, subcontractors, agents or customers the right to continue using the Products; or (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Products.

**12. RIGHTS IN WORK PRODUCT.** In the course of its performance under these Terms and/or any Order, Supplier may develop, conceive or reduce to practice inventions, discoveries, improvements, concepts, ideas, works of authorship, and developments, in tangible or intangible form, written materials, documentation, and/or results (collectively, "Work Product"). Any and all Intellectual Property Rights in and to the Work Product shall be the exclusive property of KLA from the date of inception. Supplier agrees to assign and does hereby assign, at no additional charge to KLA all right, title and interest to the Work Product and all Intellectual Property Rights therein or associated therewith or arising therefrom. Supplier hereby waives any Intellectual Property Rights it may have in any Work Product. All Work Product shall be deemed KLA proprietary information and shall not be disclosed to anyone outside of KLA or used by Supplier or others without the prior written consent of KLA. Supplier will ensure that Supplier representatives and employees appropriately waive any and all claims and assign to KLA any and all rights or any interests in any Work Product or original works created in connection with these Terms.

**13. NON-DISCLOSURE OF CONFIDENTIAL MATTER AND PUBLICITY.** Products and services provided by Supplier pursuant to KLA's specifications or drawings shall not be offered or disclosed to third parties without KLA's prior written authorization. Supplier shall retain KLA's confidential information under strict confidentiality. KLA's confidential Information includes but not limited to specifications, drawing, samples, data, software, information on KLA's method of doing business, its customers, suppliers, business plans, and all information marked "confidential," "proprietary," or the like. Supplier agrees that all such confidential information shall remain KLA's property, shall not be disclosed, shall be used only for purposes of Supplier's performance under the applicable Order and shall be promptly returned to KLA upon request. Any publicity regarding KLA and/or such Order (including pictures, descriptions, or samples thereof) is prohibited except with KLA's prior written approval.

**14. CHANGES IN PROCESS OR METHOD OF MANUFACTURING.** Supplier agrees that it will not invoke or make any changes in process or method of manufacturing during the term of Supplier's performance under the applicable Order without KLA's written consent. At KLA's option, KLA will define and/or document processes as appropriate. Supplier further agrees that any contemplated changes in process or method of manufacturing will be submitted to KLA in sufficient time to enable KLA a reasonable opportunity in which to evaluate such changes.

**15. LIMITATION OF LIABILITY.** EXCEPT FOR SUPPLIER'S INDEMNIFICATION OBLIGATIONS OR BREACH OF CONFIDENTIALITY, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES, OR LOST PROFITS, WHETHER ANY OF THE FOREGOING ARISE FROM CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT OR STRICT LIABILITY, EVEN IF KLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL KLA'S LIABILITY TO SELLER EXCEED THE AMOUNT OF THE PURCHASE PRICE STATED UNDER THE PURCHASE ORDER AS APPLICABLE TO THE PRODUCTS OR SERVICES IN DISPUTE. IN NO EVENT SHALL KLA'S LIABILITY TO SUPPLIER EXCEED THE AMOUNT OF THE PURCHASE PRICE STATED UNDER THE ORDER AS APPLICABLE TO THE PRODUCTS OR SERVICES IN DISPUTE. SUPPLIER AGREES THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 15 REPRESENTS A DELIBERATE ALLOCATION OF RISK.

**16. COMPLIANCE WITH LAWS**

- (a) **General.** In the performance of an Order, Supplier shall comply with all applicable statutes and governmental



rules, regulations, and orders. Supplier warrants that its supply chain and materials incorporated into its Products comply with all applicable laws and regulations including without limiting laws prohibiting slavery and human trafficking. Seller shall indemnify, hold harmless and defend KLA from and against all losses, costs, fees and damages arising directly or indirectly from any actual or alleged failure by Supplier to comply with such statutes, rules, regulations, and orders. Supplier shall inform KLA immediately of any non-compliance with this Section 16.

- (b) **Standards of Business Conduct for Suppliers.** Supplier shall comply with KLA's then-current Standards of Business Conduct for Suppliers which sets forth the minimum standards of conduct that KLA expects Supplier to meet while conducting business with, or on behalf of, KLA and can be found at [www.kla.com/sobc](http://www.kla.com/sobc).
- (c) **RBA Code of Conduct.** In addition to complying with KLA's supply chain requirements regarding social, environment and regulatory responsibility found at [www.kla.com/company/supply-chain-socialenvironment-and-regulatory-responsibility.html](http://www.kla.com/company/supply-chain-socialenvironment-and-regulatory-responsibility.html), Supplier shall comply with all the applicable standards of the Responsible Business Alliance Code of Conduct ("RBA"), which can be found at [www.responsiblebusiness.org](http://www.responsiblebusiness.org), and will flow down these RBA requirements to Supplier's suppliers and maintain accurate books and records as it relates to any labor or services provided for KLA. If requested by KLA, Supplier will complete the RBA Self-Assessment Questionnaire and provide KLA with the results. Upon reasonable request, KLA is entitled to have an audit conducted of Supplier's business records to assess and improve Supplier's compliance with this provision.
- (d) **Anti-Bribery and Anti-Corruption.** Without derogating from the foregoing, Supplier warrants that it complies with all applicable anti-bribery and anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act ("FCPA"). KLA has the right to conduct or have a third party conduct an independent audit to assure compliance with this provision, as well as require that Supplier sign a compliance certificate on an annual basis.
- (e) **Export Control.** Supplier shall comply with all applicable export-control laws and regulations in the delivery of its Products to KLA. Supplier agrees to notify KLA in writing before delivery of any Products whether such product requires a license from the U.S. or any foreign government in order to export the product from the U.S. or from any country where the product is delivered. Supplier shall provide KLA all information that KLA needs to obtain such export licenses, including the export-control classification and country of origin of the export-controlled product, as well as whether the product is subject to U.S. export regulations. To the extent applicable for suppliers in the European Union and other applicable jurisdictions, KLA agrees that the provisions of this subsection extend to compliance with restrictions prohibiting the re-export of certain items to the Russian Federation or Belarus, and that remedies for material breach of contract apply in instances of knowing non-compliance with this provision. KLA shall not be obligated to continue performance under any Order if such continued performance of such Order is restricted as a result of national or international foreign trade or customs requirements or any embargos or other sanctions.
- (f) **Provision of Articles of Iron, Steel, Aluminum, or Other Materials.** If Supplier provides articles within scope of any European Union, United Kingdom, or other applicable laws and regulations prohibiting the use of Russian-origin iron, steel, aluminum, or other materials originating from Russia or other restricted jurisdictions, Supplier shall provide KLA with evidence that such articles are not produced from Russian-origin iron, steel, aluminum, or other materials, including but not limited to part-specific certifications, other assurances, or mill test certificates. Upon request from KLA, Supplier shall also affirmatively state the origin of the iron, steel, aluminum or other materials used to produce such articles.
- (g) **Privacy and Data Protection.** Supplier agrees to comply with and Data Privacy Laws governing its activities under an applicable Order, these Terms, and the KLA Data Protection Standards found at: [KLA Data Protection Standards.pdf](#). "Data Privacy Laws" means all laws, regulations, and other legal or self-regulatory requirements in any jurisdiction that are applicable to Supplier's Processing of KLA Data under the Terms, which may include without limitation, to the extent applicable, the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq. ("CCPA") and its implementing regulations and applicable amendments, the General Data Protection Regulation, Regulation (EU) 2016/679 ("GDPR"), equivalent requirements in the United Kingdom including the UK Data Protection Regulation and the Data Protection Act 2018 ("UK Data Protection Law"). "Personal Data" shall have the meaning of such term or like terms in the Data Privacy Laws. Further, Supplier shall: (a) be responsible for Supplier employees and subcontractors' compliance with this subsection; (b) be responsible for the security, accuracy, quality, and legality of KLA Personal Data where KLA Personal Data is being accessed by Supplier employees and/or its subcontractors as part of Supplier's performance hereunder; and (c) have adequate restrictions in place on which Supplier employees and subcontractors can access KLA Personal Data.
- (h) **Compliance with Carbon-Emissions Reporting in Certain Jurisdictions.** Imports of certain iron, steel, aluminum, and other articles imported into the European Union and other jurisdictions may require carbon-emissions reporting or other customs declarations. At the request of KLA, Supplier shall provide KLA with carbon-emissions

data sufficient for KLA to comply with importer requirements in these jurisdictions to report carbon emissions generated to produce such articles.

- (i) **Government Contracts.** For Products involving or subject to a government contract or if an applicable Order bears a government contract number on the face of that Order, Supplier shall comply with all pertinent provisions of said government contract and pertinent executive orders, regulations and directives to the extent that they apply, including but not limited to the applicable provisions of the Federal Acquisition Regulations ("FAR") and any amendments or supplements enacted thereto, and all such pertinent contract provisions, orders, regulations and directives are hereby incorporated by reference into such applicable Order. A copy of the government contract's terms and conditions will be given to Supplier upon request.
  - (j) **Product Conformity and CE Marking.** Supplier warrants that all Products delivered to the European Economic Area ("EEA") shall conform to all applicable EU safety, health, and environmental protection requirements. Supplier shall ensure that all Products bear the CE marking, indicating compliance with relevant EU directives and regulations. Supplier shall provide all necessary documentation, including the EU Declaration of Conformity, upon KLA's request.
  - (k) **Supply Chain Security Compliance.** Supplier shall comply with all applicable supply chain security standards, including but not limited to the World Customs Organization ("WCO") SAFE Framework of Standards and the Customs-Trade Partnership Against Terrorism ("C-TPAT"). Supplier shall implement and maintain appropriate security measures to protect the integrity of the supply chain and prevent unauthorized access, tampering, and theft.
  - (l) **Books and Records.** Supplier shall maintain complete and accurate records of and supporting documentation for the Supplier's compliance with this Section 16. Supplier agrees to provide such documentation and other information as reasonably required by KLA to verify Supplier's compliance with this Section 16.
  - (m) **Inspection.** KLA, its authorized agents and representatives, or a third party appointed by KLA, shall be entitled, but not obliged, to conduct inspections at Supplier's premises to verify Supplier's compliance with this Section 16. Supplier shall reasonably cooperate in any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
  - (n) **Remedies.** In addition to any other rights and remedies KLA may have under these Terms, in the event of (i) Supplier's material and/or repeated failure to comply with its obligations under this Section 16; or (ii) Supplier's denial of KLA's right of inspection as set out in Section 16(m), KLA may immediately terminate the Order in accordance with Section 9.
- 17. ARTIFICIAL INTELLIGENCE.** For purposes of these Terms, "AI Technologies" shall mean all artificial intelligence or machine learning processing or computing models, algorithms, applications, and technologies, including without limitation, generative artificial intelligence technologies that are capable of outputting new content or information based on prompts of end users. For the avoidance of doubt, KLA reserves the rights to reproduce and/or otherwise use the Work Product in any manner for purposes of creating, testing, training, developing, improving and refining AI Technologies, including without limitation, AI Technologies that are capable of generating works in the same style or genre as the Work Product. Supplier has no rights to use, or permit any third parties to use, the Work Product, any KLA Intellectual Property Rights or any other materials provided by KLA in any manner, including, without limitation, for purposes of creating, testing, training, developing improving or refining AI Technologies, except as expressly permitted by these Terms or unless Supplier obtains KLA's specific and express permission to do so. Supplier shall additionally comply with the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 March 2024 on the development, placing on the market, and use of artificial intelligence systems, and amending certain Union legislative acts (EU AI Act), as applicable to Supplier's deployment or specific application of AI Technologies.
- 18. OPEN SOURCE.** Supplier shall not, without KLA's prior written consent: (i) incorporate, combine, or distribute any open source software with the Products; or (ii) use Open Source Software in the development of any Products, in such a way that would require KLA, and or its customers to: (A) disclose or distribute the source code in the Products; (B) license the Products for the purpose of making derivatives; or (C) redistribute the Products free of charge.
- 19. GOVERNING LAW AND VENUE.** Unless otherwise agreed in writing, any dispute arising out of or in relation to an Order will be governed by the law of the jurisdiction where KLA receiving the Products under such Order is organized. The parties agree that the provisions of the United Nations Convention on Contracts for the

International Sale of Goods shall not apply to these Terms. KLA and Supplier hereby submit to the jurisdiction of, and waive any venue objections against, the courts of the jurisdiction where KLA receiving the Products under the applicable Order is organized, in any litigation arising out of such order. In any action or proceeding related to or arising out of the Order, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

**20. ASSIGNMENT.** KLA may assign any applicable Order or any right or obligation thereunder upon written notice to Supplier. Supplier shall not, either in whole or in part, subcontract or assign any Order or any rights, duties, or obligations thereunder, or any claims for any debt owed by KLA to Supplier under an Order, except upon the prior written consent of KLA, such consent to be signed by authorized representatives of both parties to such assignment or subcontract. For purposes of this Section, the acquisition, merger, consolidation or change in control of Supplier, or any assignment by operation of law, shall be deemed an assignment of the applicable Order that requires KLA's written consent. Any attempted delegation or assignment in violation of the provisions of this Section shall be null and void.

**21. INSURANCE.** Supplier shall take such steps as may be reasonably necessary to prevent personal injury, property damage, or electronic threats to computer systems or data during any work under an applicable Order that may be performed by any employees, agents, or subcontractors of Supplier at KLA's facilities. Supplier shall at all times carry and maintain insurance, including but not limited to Commercial General Liability, Automobile, Worker's Compensation, Professional Liability, and Cybersecurity Insurance, necessary to protect KLA against the aforementioned risks and against any such claims and as is required by applicable law or as is the common practice in Supplier's trade or business.

## **22. GENERAL**

- (a) **Entire Agreement.** These Terms and the applicable Order contain the entire understanding between KLA and Supplier with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, dealings, and negotiations. No modification, alteration, or amendment of these Terms shall be effective unless made in writing, dated, and signed by authorized representatives of both parties.
- (b) **Record Retention and Inspection.** Supplier shall maintain complete and accurate written or electronic records reflecting the basis for any charges billed in connection with the Products delivered under these Terms for the greater period of five (5) years after final payment for any particular Order. Supplier shall provide KLA, upon reasonable notice, access to such records for audit purposes as maybe required for a specified Order(s).
- (c) **Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by an act of war, hostility, or sabotage; an act of God, pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party shall use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than ninety (90) days, either party may cancel unperformed services upon written notice. This subsection does not excuse either party's obligation to take reasonable steps to follow reasonable disaster recovery procedures.
- (d) **Waiver.** The failure of KLA to enforce at any time any of the provisions of the applicable Order or these Terms, or to exercise any election or option provided therein, or to require at any time performance by the Supplier of the provisions thereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of such order or any part thereof, or the right of KLA thereafter to enforce each and every such provision.
- (e) **No Publicity.** Except and to the extent expressly required by applicable law, Supplier shall not advertise or otherwise disclose to any other person or entity the existence of these Terms, without the express prior written consent of KLA in each instance. In connection with or in reference to these Terms, Supplier shall not (i) issue any publication, announcement, press release, or any other public statement that contains or alludes to KLA's name or any trademark, trade name, logo, or service mark or (ii) advertise, reference, reproduce, publish, or display KLA's name or any trademark, trade name, or service mark without the express prior written consent of KLA in each instance.
- (f) **No Minimum Commitment.** KLA and Supplier acknowledge and agree that: (i) these Terms do not obligate KLA to purchase a minimum amount of any Product from Supplier; and (ii) KLA is under no obligation to issue an Order to Supplier.
- (g) **Severability.** If any one or more of the provisions of these Terms shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of these Terms shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by mutually acceptable provision(s), which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable

provision(s).

- (h) **Headings.** The headings provided in these Terms are for convenience only and shall not be used in interpreting or construing these Terms.
- (i) **Interpretation.** Each party hereto acknowledge that they have had the opportunity to review these Terms and obtain advice from their respective legal counsel. In construing these Terms, the fact that one party or the other may have drafted its various provisions shall not affect the interpretation of such provisions. In the event that the Order is drafted and executed in more than one language apart from English due to a requirement of applicable laws, the parties agree that English shall be the governing language in the Order and in the event of any conflict and/or inconsistency between the English version and the non-English version, the English version shall prevail, and the relevant non-English version shall be deemed to be automatically amended to conform to, and be consistent with, the English version.
- (j) **Notices.** All notices to be given or served under these Terms shall be effective upon receipt at the address appearing on the face of the applicable Order, provided that notices to KLA specify KLA's authorized buying agent and KLA's Order number.
- (k) **Order of Precedence.** Except as specifically provided otherwise in these Terms, in the event of a conflict or inconsistency between the terms and conditions herein, or any applicable statement of work, or applicable Order, the following order of precedence shall govern:
  - i) Any written agreement between the parties where the parties agree that any of the provisions in these Terms should be superseded with an express reference to this Clause 22(k);
  - ii) These Terms;
  - iii) Any applicable statement of work;
  - iv) Any applicable Order.