



EXFO Hardware Products Terms

These EXFO Hardware Products Terms (“**Hardware Products Terms**”) together with Standard Terms apply to Customer’s purchases of Hardware Products from EXFO and form an integral part of contract between the Customer and EXFO.

1. DEFINITIONS

Unless otherwise defined herein, capitalized expressions used in these Hardware Products Terms shall have the meanings respectively assigned to them herein or in the Standard Terms.

1.1 “**Non-Standard Product(s)**” means a Hardware Product identified as non-standard or “NS” in an EXFO quotation.

2. DELIVERY AND ACCEPTANCE

2.1 The deliveries of Hardware Products on physical media will be under FCA, EXFO's shipping point (Incoterms® 2020). VAT, sales, use, excise or similar taxes are not included. Consequently, these taxes may be added to the prices stated herein. If Customer wishes that another incoterm be applied to the sale, such other incoterm shall need to be agreed in writing by EXFO prior to shipment.

2.2 If the shipping instructions are not provided by Customer to EXFO at the latest five (5) Business Days before the scheduled shipping date mentioned in the Sales Acknowledgement, EXFO shall: (i) have the sole discretion with respect to mode of transportation routing and any other matters related to transportation of Hardware Products. All costs incurred by EXFO associated with the transportation of Hardware Products to Customer, including the custom brokerage fees and custom duties, will be invoiced to Customer by EXFO; or (ii) delay the delivery.

2.3 EXFO will make every reasonable effort to meet Customer's delivery requirements. Scheduled delivery and shipping dates are estimated and not guaranteed. EXFO shall not be liable for late delivery or non-delivery due to any reason.

2.4 The Hardware Product shall be deemed accepted upon shipment by EXFO, or its Affiliate, unless otherwise agreed by the Parties in a statement of work (“**SOW**”) which includes acceptance conditions, including but not limited to, an acceptance test protocol (“**ATP**”), as the case may be. In event of an ATP, it shall be performed in accordance with Professional Services Terms, available at www.exfo.com/how-to-buy/sales-terms-conditions or from EXFO upon request. Notwithstanding anything else to the contrary herein or in a SOW or ATP, the Hardware Product shall also be deemed accepted immediately if Customer starts using the Hardware Product in a production environment.

3. LIMITED HARDWARE PRODUCT WARRANTIES AND DISCLAIMER

3.1 The standard warranty period for each Hardware Product is one (1) year following EXFO’s shipment of the Hardware Products (“**Warranty Period**”), unless otherwise indicated on the quotation, the user manual or EXFO’s website upon product registration. The complete EXFO warranty terms including the Warranty Period, are included in the user manual or the Documentation of the Hardware Products.



3.2 Extended warranty is available in subsequent years and is provided under EXFO's Support Program.

3.3 During the Warranty Period, Hardware Products are warranted under normal use: (i) to be free from any defect in design, material and workmanship; (ii) to conform to applicable specifications; and (iii) to be fit and sufficient for the intended purpose.

3.4 EXFO will, at its option, repair or replace the affected Hardware Product proven to be defective within the Warranty Period. The warranty does not cover recalibration or additional performance verification unless requires as a result of any under-warranty repair.

3.5 Customer shall prepay shipping charges, taxes and duties for Hardware Products returned to EXFO under this warranty. Shipping insurance is at Customer's expense.

3.6 EXFO's warranty does not cover (i) Third Party Products; (ii) Hardware Products, equipment or parts subjected to misuse, negligence, accidental destruction, incoming power problems or that are not used as per the Documentation; (iii) all consumable parts, including but not limited to batteries, connectors, adapters, cleaning tools, cases, chargers and patch cords; (iv) an Hardware Product that has been modified by someone other than EXFO or a Service Centre, (v) prototypes, experimental, alpha, beta, field trial or unqualified Hardware Product; or (vi) use in hazardous activities. All Third-Party Products provided by EXFO carry only the original manufacturer's warranty applicable to Customer.

3.7 Only EXFO's trained personnel may open the case of a Hardware Product, as permanent damage to the unit may occur. All EXFO warranties will immediately become null and void if i) any unauthorized Third Party opens an instrument case, removes the warranty sticker from across the seam of the case or removes any of the case screws; ii) the Hardware Product serial number is altered, erased, or removed; iii) the Hardware Product is altered; or (iv) units are not installed as per manufacturer's instructions or applicable security standards.

3.8 The Hardware Product is not fault-tolerant and is not designed, manufactured or intended for use or resale in hazardous environments that require fail-safe performance such as in the operation of nuclear facilities, aircraft navigation or communications system, air traffic control, emergency response, terrorism prevention or response, life support or weapons systems (collectively "**High Risk Activities**"), the failure of which could lead to death, personal injury, or severe physical or environmental damages. EXFO EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

3.9 THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 3 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST EXFO WITH RESPECT TO ANY NON-CONFORMANCE OF HARDWARE PRODUCTS. THE WARRANTIES IN THESE HARDWARE PRODUCTS TERMS ARE EXCLUSIVE, AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. EXFO SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, DURABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

3.10 The standard warranty and/or extended warranty is non-assignable and non-transferrable and applies only to the original Customer who purchased the Hardware Product from EXFO or EXFO's authorized distributor.



4. SERVICES AND RETURN PROCEDURE

4.1 For Hardware Product servicing requests, EXFO's technical support group will determine the type of servicing required and if the Hardware Product must be sent to a Service Centre. EXFO will only accept servicing requests in conformance with EXFO's return merchandise authorization ("RMA") process. EXFO reserves the right to modify the process at any time and the content of an RMA after evaluation of the Hardware Product at the Service Centre and to charge an evaluation, calibration fee to Customer.

4.2 With respect to warranty claims under these Hardware Products Terms, EXFO will accept Hardware Products only if returned in compliance with the RMA process. Any other services provided to Customer not covered by a warranty as described under Section 3 are at Customer's sole risk and expense, including all shipping costs. Hardware Product services are covered by a warranty period of three (3) months from the date of the return-to-Customer shipping.

4.3 Any claims of shipping errors, missing items or dead on arrival must be submitted in writing to EXFO within thirty (30) calendar days of delivery pursuant to the Incoterms as set forth in Section 2.1. EXFO, at its sole discretion, may authorize a return by written notice and immediate replacement. In such an event, Customer will have forty-five (45) calendar days from the reception of EXFO's RMA to return the faulty Hardware Product to EXFO. If the Hardware Product is not returned within such period, EXFO will, without further notice, invoice Customer for the replacement product at current list price.

4.4 No repair services, whether under warranty or not, include calibration, unless required because of the repair.

4.5 Should the services require the presence of EXFO's technical personnel at a Customer's site, Customer will be responsible for all expenses, including but not limited to, parts, labour at the current hourly rate, travel and living. Customer will provide EXFO's technical personnel with a suitable work environment and full and immediate access to the equipment, being understood that any wait times will be billed to Customer.

4.6 Additional Hardware Product services subject to separate terms and conditions may be purchased by Customer and are subject to the full payment of the applicable fees published by EXFO or as set forth in the applicable quotation.

5. NON-STANDARD PRODUCTS

If the Customer purchases Non-Standard Products from EXFO, in addition to the terms and conditions set forth in these Hardware Products Terms, the terms and conditions set forth in Exhibit A hereto shall apply. If there is any conflict or inconsistency in or between any these Hardware Products Terms and terms of Exhibit A, the following order of precedence will apply between them:

1. Exhibit A;
2. These Hardware Products Terms



6. INTELLECTUAL PROPERTY

6.1 EXFO shall retain all Intellectual Property in or related to the Hardware Products provided under these Hardware Products Terms, and any Intellectual Property that could result from any alterations, attachments and improvements made to Hardware Product by either Party.

6.2 Notwithstanding any other provision in these Hardware Products Terms, EXFO is not transferring or granting to Customer any right, title, or interest in or to (or granting to Customer any license or other permissions in or to) the Hardware Product. The sole exception to the foregoing reservation of rights is that EXFO hereby grants Customer a limited, nonexclusive, non-transferable license (that shall automatically terminate upon the termination or expiration of the Agreement), under any rights owned by EXFO, to use the Hardware Product solely as instructed by EXFO subject further to the terms and conditions of the Agreement.

7. SURVIVAL

The provisions of Section 3 (Limited Hardware Product Warranties and Disclaimer), Section 5 (Non-Standard Products), Section 6 (Intellectual Property), this Section 7 (Survival) and Section 8 (Incorporated Terms) of these Hardware Products Terms will survive the termination or expiration of the Agreement. All other Sections that by their sense and context are intended to survive the execution, delivery, performance and termination of the Agreement, will survive and continue in effect.

8. INCORPORATED TERMS

Unless otherwise agreed by the Parties, the terms and conditions of the Standard Terms are incorporated herein by reference.



Exhibit A: Non-Standard Products Terms and Conditions

For Non-Standard Products, special conditions may apply as outlined below:

- a. Purchase Orders for Non-Standard Products may not be cancelled. Non-Standard Products cannot be returned to EXFO for refund or credit.
- b. The delivery date provided by EXFO is an estimation based on current and/or planned availability of necessary R&D resources required to develop a Non-Standard Product. A firm delivery date will be provided upon receipt of a Purchase Order. EXFO does not accept any penalty.
- c. The development of the Non-Standard Products includes one or several risk factors. EXFO reserves the right to cancel the offer, or any subsequent Purchase Order should EXFO be unable to meet the project objectives.
- d. Specifications for the Non-Standard Products included in the quotation are guaranteed on a best-effort basis. Calibration certificates and/or test reports, if included, may differ from standard EXFO products.
- e. The software and/or Firmware delivered with the Non-Standard Products may be custom and specific. EXFO does not guarantee compatibility with future updates or upgrades.