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General Terms & Conditions - Fluke Premium Care

The terms and conditions (“Terms”) under which Fluke will provide Fluke Premium Care and Gold Support (“Premium Care”), as more fully defined herein, to the purchaser of Premium Care (“Member” or “you”), and the responsibilities of the Member and Fluke are as follows:

1. PURPOSE

Premium Care is a paid membership for Fluke customers only, providing a range of Services not available to the regular customer base. These Services are established by the purchase of Premium Care coverage and as described within the applicable then-current Fluke Product data sheets.

2. GENERAL

Members are given priority for any Services. The Services will remain available for each applicable Product for 12 months from the date of purchase of Premium Care and upon annual renewal for each subsequent year. A 3-year option is available for some Products, and when selected, Premium Care will be paid in advance and remain in effect for 3 years. Member’s issuance of a purchase order is conclusive evidence of Member’s acceptance of these terms and conditions. Fluke reserves the right to change or modify these Terms at any time and in its sole discretion. If Fluke makes changes to these Terms, Fluke will provide notice by updating the “Last Updated” date at the top of these Terms. Fluke encourages you to frequently review the terms and conditions to ensure that you understand the terms and conditions that apply to Premium Care. Your continued use of the Services will confirm your acceptance of the revised Terms.

3. RESPONSIBILITIES

Determination of duties and Services will be based upon information the User provides to Fluke.

3.1 - Member will: Maintain accurate and up-to-date records of the number and location of all Hardware, serial numbers and copies of the Software supplied to Member under the terms of the applicable license agreement. Cooperate with Fluke personnel in the diagnosis of any error or defect in the Hardware, Software, Updates, or Upgrades reported by Member. Make available to Fluke all reasonable information, facilities, services, and access required by Fluke in order to perform Services.

3.2 - Fluke will: Use its reasonable commercial efforts to ensure that Premium Care will be performed with reasonable skill and care in such a way as to cause only minimal interruptions to Member business processes. There may be occasions when interruption will be required in order to perform the program support in a proper and efficient manner. The express terms of Premium Care are in lieu of all warranties, conditions, undertakings, terms of obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

4. DESCRIPTION OF PREMIUM CARE SERVICES

4.1 Priority Technical Assistance (for Premium Care Products that include 24X7 technical support)

4.1.1- Premium Care provides 24-hour, seven days a week coverage for technical support except Fluke company holidays for most Products. The data sheet for the Product describes if 24-hour support is included for that particular Product. Our worldwide Technical Assistance Centers (TAC), staffed by trained technicians, are based at our corporate headquarters near Seattle, Washington (US), Eindhoven (NL) and locations in Asia. Priority Technical Assistance benefit includes live troubleshooting assistance with our TAC, escalation to engineering support as required and unrestricted knowledge base access. There may be times that technicians are busy helping other customers.

4.2 Hardware Repair or Replacement

4.2.1 - When Hardware has been pre-qualified as defective or faulty, Fluke will either exchange or repair the unit, at Fluke's discretion, at no charge to the Member. Exchange units will be new or refurbished at Fluke's option. The model exchanged will be the same unit covered by Premium Care. Faulty or defective accessories that were shipped with the Product and that are considered essential to the operation of the primary Hardware are covered provided a) the TAC approves its return and b) the accessory is returned to Fluke for evaluation.

4.2.2 - Any repair Service must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by TAC.

4.2.3. - Any item, either abused or simply "worn out" due to normal usage does not qualify for Services. Fluke reserves the right to determine if the cause of failure or out of specification performance is due to expected normal wear and tear or abuse of the Product. Should Fluke determine that the Product failure is due to abuse, any applicable warranty or Premium Care coverage will be immediately voided for that Product. Future coverage will be denied to this Product unless it has undergone repair and is deemed suitable for coverage by an authorized Fluke Service repair facility.

4.2.4 - Hardware must have been continuously covered by the standard warranty or Premium Care coverage to be eligible for Premium Care repair/replacement Services. Out of warranty hardware or hardware with lapse Premium Care coverage must be judged "warranty supportable" by a Fluke authorized service center to be eligible for initiation or re-installment into Premium Care. There is a nominal charge for this service; however, the Member may forego the charge, but they must wait a minimum of thirty (30) days before using any repair/exchange or loaner Service of the program.

4.2.5 - Fluke pays for shipping for Premium Care Hardware repair or replacement Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.2.6 - Repair/exchange (with pre-paid shipping) may not be available in certain countries worldwide. For a list of countries these Services are available, please see section 5.

4.3 Hardware Calibration/Performance Verification

4.3.1 - Calibration is the precision adjustment of electronic measurement characteristics, traceable to officially recognized standards. Certificates are not available in all countries free of charge due to local government regulations. This Service is offered once annually free of charge to Members. Traceable calibration data can be provided upon request for an additional fee. In certain countries, these Services are performed by authorized Service partners. In certain situations, Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling.

4.3.2 - Any calibration/performance verification must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by Fluke's Technical Assistance Center (TAC).

4.3.3 - Fluke pays for shipping for Premium Care calibration and performance tests Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.3.4 - Calibration/performance verification (with pre-paid shipping) for primary Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

4.4 Hardware Loaner Units (for Premium Care Products that include loaners)

4.4.1 – If your Product includes hardware loaner units and a Hardware unit is being repaired or calibrated. If needed and approved, the Member can be shipped a refurbished loaner or new unit of the same, or greater, model as that covered by Premium Care ("loaner equipment" or "loaner unit").

Loaner equipment is and remains the property of Fluke and must be returned in the condition they were received within five (5) business days of receipt of the repaired/serviced Product. Costs of repair or replacement of the loaner equipment will be as per Fluke's quotation and Members who fail to return the Fluke loaner equipment within 5 business days after they received the repaired/serviced Product will be invoiced for the replacement price (at local MSRP) of the delinquent items. Non-return of loaners is grounds for termination of Premium Care. Loaner units are not provided during a voluntary Enhancement or Option to the Product.

4.4.2 - Fluke pays for all shipping for loaner equipment under a valid Premium Care program. Shipping from Fluke is by common carrier, "next day" unless circumstances require later shipment.

4.4.3 - In order to receive a calibration loaner unit, calibration must be scheduled at least 6 weeks in advance, and the Member must ship their unit to Fluke when the loaner arrives. Commercially reasonable effort will be made by Fluke to provide calibration loaners within 6 weeks, but this timeline is indicative only and Fluke will not accept liability for any delays in providing a loaner unit.

4.4.4 - Loaner units (with pre-paid shipping) for Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

4.4.5 – To the maximum extent permitted by law in Member's jurisdiction: (a) Member assumes all risks associated with use of the loaner equipment, and shall indemnify, defend, and hold harmless Fluke and its officers, directors, employees, agents, affiliates, successors, and permitted from and assigns against any and all losses, damages, liabilities, claims, costs, or expenses of whatever kind, arising out of or occurring in connection with the loaner equipment or Member's or End-User's

negligence, willful misconduct, or breach of law or this Agreement; and (b) Loaner equipment is provided on an “AS-IS, WHERE IS” basis and Fluke makes no warranty whatsoever, including any warranty of merchantability, fitness for a particular purpose, non-interference, or non-infringement.

4.5 Accessory Repair or Replacement (for Premium Care Products that include accessory coverage)

4.5.1 - When an Accessory covered by the Program is pre-qualified as defective or faulty, Fluke will either exchange or repair the accessory, at our discretion, at no charge to the Premium Care Member. Exchange accessories will be new or refurbished (like new) at our option. The model exchanged will be the same accessory covered by the Premium Care. Faulty or defective Accessories that were shipped with the product and are considered essential to the operation of the primary Hardware are covered provided a) the technical assistance center approves its return and b) the accessory is returned to Fluke for evaluation when requested. Members are entitled to a replacement of a maximum of one defective set per year per the terms of this Premium Care.

4.5.2 - Fluke pays for shipping for replacement Accessories under a valid Premium Care program.

4.5.3 - Accessory repair or replacement not available in all countries. For a list of countries these Services are available, please see section 5.

4.6 Software and Firmware Support

4.6.1 - Premium Care will provide technical support for the current version of the Software and firmware associated with the covered Product. Fluke shall have no obligation to support Software that is not the current release.

5.0 - Support Availability

5.1 Most Services are available in the countries listed below. Loaners and 24 X 7 support may not be available in all countries. Varying levels of Premium Care may be available in other countries not listed above. Contact your local sales representative or TAC for questions on availability of Services in your area

Asia/Pacific	Latin America	North America	Europe	
Australia	Argentina	Canada	Austria	Luxembourg
China	Brazil	United States (excluding territories)	Belgium	Malta
Hong Kong	Chile		Czech Republic	Netherlands
India	Columbia		Denmark	Norway
Japan	Costa Rica		Estonia	Poland
Korea	Mexico		Finland	Portugal
Malaysia	Peru		France	Romania
Singapore	Uruguay		Germany	Slovenia
Taiwan			Greece	Spain
			Hungary	Sweden
			Ireland	Slovakia
			Italy	Switzerland
			Liechtenstein	United Kingdom

5.2 - Services vary by Product. Contact your local sales representative or TAC for questions on availability of Services for your products.

5.3 - In certain situations Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling. Contact your local sales representative or TAC for questions on availability of Services in your area.

6. PAYMENT TERMS, TERM OF AGREEMENT, AND GOVERNING LAW

6.1 - Full payment for Premium Care is to be made at purchase, unless otherwise stipulated. No refunds will be granted for unused Services. Members that have utilized repair, Accessory replacement, calibration Services or had a firmware release made available via Premium Care during the term of the Premium Care program are ineligible for a refund.

6.2 - An account is considered delinquent under the following circumstances: a) Fluke loaner or Member's replaced (exchange) equipment is overdue to the Fluke designated return location; or b) The Member has failed to complete the purchase process with specified terms.

6.3 - Grounds for termination include, but may not be limited to: a) Member is delinquent with equipment; b) Non-payment of any fees related to the Service; c) (i) Member or any user resides in a country on the US Department of Commerce embargo list, (ii) any Product or any part thereof is exported or re-exported: (A) into (or to a national or resident of) any embargoed or terrorist-supporting county, (B) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (C) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (D) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or foreign agency or authority; d) Member is found to be falsifying any claims on Hardware or Accessories; e) Member knowingly used Premium Care to take advantage of Services for products not covered. Fluke may terminate this agreement immediately in the event of any of the foregoing or in the event of Member's default, violation of applicable law, or breach of any Premium Care terms and conditions, policies, or rules. Fluke shall be under no obligation or liability to Member under the Premium Care or in relation to such termination.

6.4 - Premium Care is non-transferable, including to a new owner if the Hardware is resold. Fluke Software license agreements and accompanying Software Support are non-transferable.

6.5 - Premium Care coverage that has lapsed more than 30 days may require a reinstatement fee per Hardware item to be covered by Premium Care. See paragraph 4.2.4

6.6 - This Agreement is governed, construed and enforced according to the laws of the country where Fluke is registered (and if in the United States, then according to the laws of the State of Washington), without applying any conflicts or choice of law provisions under such law that might refer the construction or interpretation of any term hereof to the laws of any other jurisdiction.

7. LIMITATIONS OF LIABILITY

7.1 - THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THE PRODUCT AND ALL MATERIALS RELATED TO THE PRODUCT ARE SUBJECT EXCLUSIVELY TO THE WARRANTY ACCOMPANYING THE PRODUCT AT TIME OF PURCHASE.

7.2 – SUBJECT TO CLAUSE 8, AND TO THE MAXIMUM EXTENT PERMITTED AT LAW, THE TOTAL AGGREGATE LIABILITY OF FLUKE OR THIRD-PARTY PROVIDERS UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID FOR THE PRODUCT COVERED BY THE PREMIUM CARE. FLUKE OR THIRD PARTY PROVIDERS SHALL NOT BE LIABLE UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA AND INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 – PREMIUM CARE DOES NOT COVER AND SPECIFICALLY EXCLUDES ANY LOST OR STOLEN PRODUCT.

8. CUSTOMERS IN AUSTRALIA

8.1 If you are in Australia, nothing in these Terms and Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

8.2 If you are in Australia and are a consumer as defined in the *Australian Consumer Law*, then the following statement applies to you:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:

- *to cancel your Service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

8.3 If you have any queries, please contact us on:

FLUKE
6920 Seaway Blvd, Everett, WA 98203
1-888-498-9367
support@flukenetworks.com

9. DEFINITIONS

What follows are broad definitions of terms used in these Premium Care terms and conditions. They are further defined by Fluke normal business practices and procedures.

ACCESSORIES: Accessories are any products that accompany the primary Hardware product. Accessories covered within the Premium Care do NOT include individually purchased or ancillary accessories.

ENHANCEMENTS: Enhancements are defined as a modification that changes the product form, fit or function. Software and firmware upgrades to a product are not considered Enhancements.

FLUKE: Fluke is the regional Fluke entity providing Premium Care and as identified on either the Fluke quote or by your distributor or sales representative.

SERVICES: Services are the support functions which apply to the Member's Products covered by Premium Care. Members may access their Services immediately upon purchase (unless their Product is out of warranty in which case, they will be required to have the Product performance verified or to wait 30 days before using any repair/exchange or loaner features of the program). For security reasons, proof of purchase may be required in certain instances if Fluke is unable to identify the Member.

HARDWARE: Hardware refers to primary physical equipment that is covered by Premium Care.

OPTIONS: Options are new Software or firmware functionality (not upgrades) that can be purchased after owning Hardware. Options are not included with the original Hardware purchase and are not provided free of charge to Members.

PREVIOUS RELEASE: The release of Software that has been replaced by the then-current release of the same Software.

PRODUCT: Fluke Hardware, Software, or Accessory, which is covered by a valid annual Premium Care program.

SOFTWARE: The software program(s) licensed by Fluke to the licensee that is covered by Premium Care. It may also refer to a program that was sold with Hardware. **In no case shall Software Premium Care coverage be construed to cover 'Operating System Software'.**

TECHNICAL SUPPORT: Support services as described in these Software Premium Care terms and conditions.

UPDATE: A modification to the Software Product within the current version. Typically, these are known as 'dot releases', i.e.: 3.1, 3.2 and 3.3 are dot releases to base Software program release 3.0. Updates are provided to Software Premium Care Members at no additional charge.

UPGRADES: A major revision to existing Software that augments current functionality. These are typically referred to as major version releases and are accompanied by a new leading digit in the Software version identification i.e.: 3.x to 4.x Software Upgrades are also provided to Software Premium Care Members at no additional charge.

10. PRIVACY POLICY and INTERNATIONAL TRANSFERS

Fluke and Member each represents and warrants that all personal data and information collected and shared under this Premium Care program has been and will be processed in compliance with all applicable law (including the content and presentation of any required privacy notices).