

Fluke Biomedical Protect+ Program Terms & Conditions

Last Updated: June 1, 2024

These terms and conditions (“Terms”) are those under which Fluke Biomedical will provide Protect+ Services, as more fully defined herein, to the purchaser of Protect+ Services (“Purchaser” or “you”). The responsibilities of the Purchaser and Fluke Biomedical are as follows:

1. PURPOSE

The Protect+ Program is a paid service available for certain Fluke Biomedical products (“Covered Products”), providing access to a range of premium services (“Services” or “Protect+ Services”). These Services are established by the purchase of Protect+ Program coverage. Each Protect+ plan is associated with a single product via its model and serial numbers.

2. GENERAL, INITIAL TERM, AUTOMATIC ANNUAL RENEWAL

Covered Products of Protect+ Purchasers are given priority for any services included in the Protect+ Services. The Protect+ Services will remain available for each Covered Product for 12 months from the date of purchase of Protect+ Services for that Covered Product and upon annual renewal for each subsequent year. Unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the current term, the Protect+ Services will automatically renew for successive 12-month terms. Purchaser’s issuance of a purchase order or payment of an invoice for the Protect+ plan is conclusive evidence of Purchaser’s acceptance of these Terms. Fluke Biomedical reserves the right to change or modify these Terms at any time and in its sole discretion. If Fluke Biomedical makes changes to these Terms, Fluke Biomedical will provide notice by updating the “Last Updated” date at the top of these Terms. Fluke Biomedical encourages you to review the Terms frequently to ensure you understand the Terms that apply to Protect+ Services. Your continued use of the Protect+ Services will confirm your acceptance of the revised Terms.

3. RESPONSIBILITIES

Determination of duties and Protect+ Services will be based upon information the Purchaser provides to Fluke Biomedical.

3.1 - Purchaser will: Maintain accurate and up-to-date records of the serial number of the Covered Product, certificates of calibration, and repair records. Cooperate with Fluke Biomedical personnel in the diagnosis of any error or defect in the Hardware or firmware. Make available to Fluke Biomedical all reasonable information, facilities (if applicable), services, and access required by Fluke Biomedical in order to perform Services. Ensure contact information, payment and billing information is kept up-to-date with Fluke Biomedical.

Fluke Biomedical waives any responsibility for billing errors and subsequent overdue invoices due to Purchaser's failure to ensure Purchaser's records are updated and accurate.

3.2 – Fluke Biomedical will: Use its reasonable commercial efforts to ensure that Protect+ Services will be performed with reasonable skill and care in such a way as to cause only minimal interruptions to Purchaser business processes. There may be occasions when interruption is required in order to perform the program support in a proper and efficient manner. The express terms of Protect+ Services 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 PROTECT+ SERVICES

4.1 Hardware Repair or Replacement

4.1.1 - When Hardware has been determined to be defective or faulty, Fluke Biomedical will either exchange or repair the unit, at Fluke Biomedical's discretion, at no charge to the Purchaser. The model exchanged will be the same unit covered by Protect+ Services or a newer model, at the discretion of Fluke Biomedical. Faulty or defective accessories that were shipped with the Covered Product and that are considered essential to the operation of the primary Hardware are covered provided a) Fluke Biomedical approves its return and b) the accessory is returned to Fluke Biomedical for evaluation.

4.1.2 - Any repair Service must be performed by a Fluke Biomedical authorized service representative. Requests for Hardware Repair or Replacement must be submitted via the service request form which can be found at <https://www.flukebiomedical.com>.

4.1.3. – Fluke Biomedical 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, deliberate misuse, unauthorized repair, or neglect of the Covered Product. Should Fluke Biomedical determine that the Covered Product’s failure is due to abuse, deliberate misuse, unauthorized repair, or neglect, any applicable warranty or Protect+ Services coverage will be immediately voided for that Covered Product. Future coverage will be denied to this Covered Product unless it has undergone repair and is deemed suitable for coverage by an authorized Fluke Biomedical Service repair facility.

4.1.4 - Hardware must have been continuously covered by the standard warranty or Protect+ Services coverage to be eligible for enrollment in a Protect+ Plan. Out of warranty hardware or hardware without Protect+ coverage must be judged to be in full working order by a Fluke Biomedical authorized service center to be eligible for initiation or re-enrollment into Protect+ Services. There is a charge for this service.

4.1.5 – Fluke Biomedical pays for shipping in the United States for Protect+ Program Hardware repair or replacement Services of Covered Products. Shipping is by common carrier via ground or similar standard shipping method. In cases where expedited shipping is required this must be requested by the Purchaser and additional fees may apply.

4.2 Hardware Calibration/Performance Verification

4.2.1 - Calibration is the precision adjustment of electronic measurement characteristics, traceable to officially recognized standards. Protect+ Purchasers have peace of mind knowing that Fluke Biomedical will calibrate to OEM standards and provide any necessary adjustments/repairs. This Service is offered at the frequency required in the user manual at no additional charge to Purchasers. Traceable calibration data can be provided upon request. In certain countries, these Services are performed by authorized Service partners.

4.2.2 - Any calibration/performance verification will be performed by a Fluke Biomedical authorized representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by Fluke Biomedical.

4.2.3 – Fluke Biomedical pays for shipping Covered Product in the United States under a valid Protect+ Services program. Shipping is by common carrier via ground or similar standard shipping method where possible, unless circumstances require expedited shipment. This must be requested by Purchaser and additional fees may apply.

4.3 Hardware Loaner Units during Repairs (for Protect+ Covered Products that include loaners)

4.3.1 – If your Covered Product requires repair and will be with Fluke Biomedical for an extended period of time, loaner equipment may be provided upon request, subject to availability.

Loaner equipment is and remains the property of Fluke Biomedical and must be returned in the condition they were received within five (5) business days of receipt of the repaired/serviced Covered Product. Costs of repair or replacement of the loaner equipment will be as per Fluke Biomedical's quotation and Purchasers who fail to return the Fluke Biomedical loaner equipment within five (5) business days after they received the repaired/serviced Covered Product will be invoiced for the replacement price (at local MSRP) of the delinquent items. Non-return of loaners is grounds for termination of Protect+ Services.

4.3.2 – Fluke Biomedical pays for all shipping in the United States for loaner equipment under a valid Protect+ Services program. Shipping from Fluke Biomedical is by common carrier via ground where possible, unless circumstances require expedited shipment. Expedited shipping must be requested by Purchaser and additional fees may apply.

4.3.3 – To the maximum extent permitted by law in Purchaser's jurisdiction: (a) Purchaser assumes all risks associated with use of the loaner equipment, and shall indemnify, defend, and hold harmless Fluke Biomedical and its officers, directors, employees, agents, affiliates, successors, 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 Purchaser's or End-User's negligence, willful misconduct, or breach of law or these Terms; and (b) Loaner

equipment is provided on an “AS-IS, WHERE IS” basis and Fluke Biomedical makes no warranty whatsoever, including any warranty of merchantability, fitness for a particular purpose, non-interference, or non-infringement.

5.0 Firmware Support

Protect+ Services will provide technical support for the current version of the firmware associated with the Covered Product. Fluke Biomedical shall have no obligation to support firmware that is not the current release or Software.

6.0 - Support Availability

6.1 - Most Services are available globally. Loaners and shipping fee coverage may not be available in all countries. Varying levels of Protect+ Services may be available outside of the United States and Canada. Contact your local sales representative for questions on availability of Services in your area.

6.2 - Services vary by Covered Product. Contact your local sales representative for questions on availability of Services for your products.

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

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

7.1 - Full payment for Protect+ Services is to be made at purchase or renewal net 30 days of invoice date, unless otherwise stipulated. No refunds will be granted for unused Services. Purchasers that have utilized repair, Accessory replacement, calibration Services or had a firmware release made available via Protect+ Services during the term of the Protect+ Services program are ineligible for a refund.

7.2 - An account is considered delinquent under the following circumstances: a) Fluke Biomedical loaner or Purchaser’s replaced (exchange) equipment is overdue to the Fluke Biomedical designated return location; or b) Purchaser has failed to complete the purchase or renewal process with specified terms, or c) calibration has not been performed by Fluke Biomedical, as per the frequency required in the user manual and Purchaser has not provided valid (in Fluke Biomedical’s sole discretion) proof of third-party calibration.

7.3 - Grounds for termination include, but may not be limited to: a) Purchaser is delinquent with equipment; b) Non-payment of any fees related to the Service; c) (i) Purchaser or any user resides in a country on the US Department of Commerce embargo list, (ii) any Covered Product or any part thereof is exported or re-exported: (A) into (or to a national or resident of) any embargoed or terrorist-supporting country, (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) Purchaser is found to be falsifying any claims on Hardware or Accessories; e) Purchaser knowingly used Protect+ Services to take advantage of Services for products not covered. Fluke Biomedical may terminate this agreement immediately in the event of any of the foregoing or in the event of Purchaser's default, violation of applicable law, or breach of any Protect+ Services terms and conditions, policies, or rules. Fluke Biomedical shall be under no obligation or liability to Purchaser under the Protect+ Services or in relation to such termination.

7.4 - Protect+ Services is non-transferable, including to a new owner if the Hardware is resold.

7.5 - Protect+ Services coverage that has lapsed more than 30 days may require a reinstatement fee to be re-enrolled in Protect+ Services. See paragraph 4.1.4

7.6 - This Agreement is governed, construed and enforced according to the laws of the country where Fluke Biomedical 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.

8. LIMITATIONS OF LIABILITY

8.1 - THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THE COVERED PRODUCT AND ALL MATERIALS RELATED TO THE

COVERED PRODUCT ARE SUBJECT EXCLUSIVELY TO THE WARRANTY ACCOMPANYING THE COVERED PRODUCT AT TIME OF PURCHASE.

8.2 -TO THE MAXIMUM EXTENT PERMITTED AT LAW, THE TOTAL AGGREGATE LIABILITY OF FLUKE BIOMEDICAL OR THIRD-PARTY PROVIDERS UNDER THESE TERMS OR IN CONNECTION WITH THE PROTECT+ SERVICES, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID FOR THE COVERED PRODUCT. FLUKE BIOMEDICAL OR THIRD PARTY PROVIDERS SHALL NOT BE LIABLE UNDER THESE TERMS OR IN CONNECTION WITH THE PROTECT+ SERVICES 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.

8.3 – PROTECT+ SERVICES DOES NOT COVER AND SPECIFICALLY EXCLUDES ANY LOST OR STOLEN PRODUCT.

9. EXCUSABLE DELAYS

Fluke Biomedical shall not be liable for nondelivery or delay in performance when such delay is directly or indirectly caused by, or in any manner arises from an Excusable Delay. "Excusable Delay" used in these terms and conditions shall include plague, fire, floods, acts of god, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; interruptions of telecommunications, power or transportation, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, export control sanctions or embargoes, delay or failure to deliver by Fluke's suppliers, such as, but not limited to, a shortage or inability to obtain critical material or supplies, or other causes (whether or not similar to those specified) beyond Fluke's reasonable control or which would require Fluke to incur unreasonable expense to avoid. The turnaround times listed on the quotation and/or order confirmation are estimated and not binding. Performance and delivery shall be deemed suspended and will be extended to take account of an Excusable Delay.

10. DEFINITIONS

What follows are broad definitions of terms used in these Protect+ Services terms and conditions. They are further defined by Fluke Biomedical normal business practices and procedures.

ACCESSORIES: Accessories are any products that accompany the primary Hardware product at point of sale in the original packaging. Accessories covered within the Protect+ Services 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 BIOMEDICAL: Fluke Biomedical is the regional Fluke Biomedical entity providing Protect+ Services and as identified on either the Fluke Biomedical quote or by your distributor or sales representative.

SERVICES: Services are the support functions which apply to the Purchaser's Covered Products. Purchasers 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 Biomedical is unable to identify the Purchaser.

HARDWARE: Hardware refers to the primary physical equipment that is covered by Protect+ Services.

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 Purchasers.

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

COVERED PRODUCT: Fluke Biomedical Hardware or Accessory which is covered by a valid annual Protect+ Services program.

SOFTWARE: The software program(s) licensed by Fluke Biomedical to the licensee. Software is not covered by Protect+ Services. It may also refer to a program that was sold with Hardware. **In no case shall Protect+ Services coverage be construed to cover 'Operating System Software'.**

11. PRIVACY POLICY

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