

EXFO Purchasing Terms and Conditions ("T&Cs")

1. SCOPE

1.1 These T&Cs specify the terms and conditions under which supplier ("Supplier") shall sell, license and support goods or materials (collectively, "Products") to EXFO Inc. and/or any of its Affiliate ("EXFO"). The Products may, at EXFO's option, either be used internally or be sold separately or together with EXFO products for resale under EXFO's private label.

1.2 Supplier shall be deemed to have accepted these T&Cs, and in the absence of a separate, signed agreement between EXFO and Supplier, these T&Cs become the exclusive and binding agreement between the Parties for the purchase of Products, upon the earlier of (i) acceptance or acknowledgment of the Order whether orally, in writing or otherwise, or (ii) commencement of performance of Supplier's obligations under the Order. All other terms and conditions contained in or referred to in the Supplier's sales order acknowledgement or other sale document, correspondence or any other communication are hereby expressly rejected and superseded by these T&Cs, and failure by EXFO to object to any other provision, and/or EXFO's acceptance of the Products, shall not be deemed acceptance of Supplier's terms, nor a waiver of these T&Cs.

2. DEFINITIONS

The following capitalized terms will have these meanings throughout these T&Cs:

2.1 "**Affiliate(s)**" means any person, corporation, business or other legal entity that is directly or indirectly controlled by, in control of, or under common control with a Party. For purposes of this definition of "Affiliate" the term "control" means legal power to direct or cause the direction of management and policies of a legal entity, or possession of more than 50% of the voting securities (whether directly or pursuant to any option or other similar arrangement) or the power to elect more than 50% of such other corporation's business or other legal entity's board of directors or other managing authority, or other comparable equity.

2.2 "**Confidential Information**" means all information (whether written, visual, oral or stored in any computer or other electronic magnetic or optical storage system) exchanged by the Parties, together with all data, notes, analyses, compilations, forecasts, reports, studies, interpretations and other documents containing or based upon such information prepared by the Parties. The confidentiality of the information disclosed orally or visually to Receiving Party shall be confirmed in writing by the Disclosing Party within 30 days following the disclosure, if the Disclosing Party wishes that such information be considered as Confidential Information. Notwithstanding the above, the term "Confidential Information" shall not include such portions of the Confidential Information which (a) are rightfully in Receiving Party's possession before receipt from Disclosing Party; (b) are or become a matter of public knowledge other than as a result of disclosure by Receiving Party; (c) are rightfully received by Receiving Party from a third party who has no duty of confidentiality; or (d) are independently developed by Receiving Party without use of Disclosing Party's Confidential Information.

2.3 "**Delivery Date**" means the date specified in an Order for the delivery of Products by Supplier to the destination required under the Order.

2.4 "**Disclosing Party**" means either Party disclosing Confidential Information to the other Party.

2.5 "**Documentation**" means the required virtual and written documentation that is needed for the marketing, promotion, sale, distribution and support of the Products that Supplier will make available with the Products.

2.6 "**End-User**" means the person or corporate entity that will purchase the Products from EXFO or any of its sales representatives, customers, resellers and distributors.

2.7 "**Harmful Code**" means any software code with the ability to damage, interfere with, or adversely affect computer programs, data files, or hardware without the consent or intent of the computer user and includes, namely but not limited to, self-replacing and self-propagating programming instructions commonly called "viruses", "trojan horses" and "worms".

2.8 "**Intellectual Property Rights**" means all rights in patents, copyrights, trade secrets, Marks and other similar rights.

2.9 "**Marks**" means the trademarks, service marks, trademark and service mark applications, trade dress, trade names, logos, insignia, symbols, designs or other marks identifying a party or its products.

2.10 "**Noncomplying Product**" means any Product received by EXFO that does not comply with the Specifications or otherwise does not comply with the requirements of an Order or other provisions hereunder. Noncomplying Products include, without limitation, dead-on-arrival products, and over-shipments.

2.11 "**Products**" means the Supplier's products to be provided to EXFO, all related Documentation, Parts, bundled or incorporated firmware and other deliverables provided hereunder.

2.12 "**Open Source Material**" means all software, documentation or other material that is distributed as "free software", "open source software" or under a similar licensing or distribution model, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Perl Artistic License or any other license described by the Open Source Initiative as set forth on www.opensource.org.

2.13 "**Orders**" means a written or electronic purchase order issued by EXFO to Supplier for purchase of the Products.

2.14 "**Parts**" means the replacement parts, components, consumables or other products that may be supplied in conjunction with or as additions to the Products.

2.15 "**Party**" shall mean either EXFO or Supplier, as the case may be, and "**Parties**" shall mean both of them.

2.16 "**Receiving Party**" means either Party receiving Confidential Information from the other Party;

2.17 "**Specifications**" means the technical, functional and manufacturing requirements for the Products as agreed to by the Parties.

2.18 "**Territory**" means worldwide.

3. LICENSE (if applicable)

The rights set out in this Section 3 shall extend to EXFO Affiliates and third-party channels of distribution and resale.

3.1 "**Grant of Licenses**. Supplier hereby grants to EXFO a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to use and practice Supplier's Intellectual Property Rights in the Products including future versions of the Products in the marketing, promotion, sale, distribution and support of the Products in the Territory. Supplier shall provide EXFO with any improvements to the Products as soon as practicable after development, and any such improvements shall be subject to the license rights granted hereunder. EXFO shall be entitled to sublicense the Intellectual Property Rights in the Products hereunder to such third parties as necessary for the use, marketing, promotion, sale, distribution and support of the Product to any channel partners or sales agents or distributors, and to any End-User as is necessary for them to fully utilize and gain the benefits of the Products.

3.2 "**Marketing Authority**. EXFO will have the exclusive authority to market the Products to the extent it deems appropriate, in its sole discretion. EXFO will have the right to use its own business and license terms for all marketing and distribution of the Products.

3.3 "**Private Labeling**. For no additional fee, Supplier shall ensure that the Products contain the EXFO Marks. EXFO serial number format and Supplier packaging shall conform to EXFO specifications for external appearance.

3.4 "**Firmware License**. Supplier hereby grants to EXFO, under Supplier's Intellectual Property Rights in firmware embedded in the Products, a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to use, import, reproduce, offer for sale and distribute the firmware in object code form as integrated with the Products.

3.5 "**Third Party Software**. Supplier represents and warrants that it has in place and shall maintain for the benefit of EXFO, at no additional charge,

all necessary licenses to any third-party software contained in the Products, and that it has the right to license or sublicense such third-party software consistent with these T&Cs.

3.6 Documentation License. Supplier hereby grants EXFO a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to use, reproduce, distribute and prepare derivative works in EXFO's name of all Documentation and other information, other than Confidential Information, furnished by Supplier under these T&Cs. EXFO may reproduce such Documentation without Supplier's logo or other identification of source, subject to affixing copyright notices to all copies of Documentation.

4. ORDER AND SHIPMENT OF PRODUCTS

4.1 Orders. Each delivery of Products shall be initiated by an Order issued to Supplier by EXFO. EXFO shall not be liable for or can refuse to pay for any delivery of Products that is not subject to an Order issued to Supplier. Each Order will include: (i) unit quantity; (ii) unit price; (iii) shipping destination; (iv) Delivery Date; and (v) other instructions or requirements pertinent to the Order. To the extent of any inconsistency between the terms of an Order and these T&Cs, the terms specified herein shall control and take precedence.

4.2 Orders by EXFO Affiliates. Any Affiliate of EXFO shall have the right to place Orders for Products under these T&Cs. The rights and obligations of EXFO hereunder shall apply to and be to the benefit of any EXFO Affiliate that orders Products under these T&Cs.

4.3 Order Acknowledgment. Supplier shall accept or reject the Order within 2 business days of receipt the Order.

4.4 Shipment Requirements. All Orders are required to be shipped in their entirety. Supplier shall give EXFO immediate notice if it knows that it cannot meet a Delivery Date or that only a portion of the Products will be available for shipment to meet a Delivery Date. The Parties shall work jointly toward resolution on a plan to resolve the delayed delivery. If the Parties reach agreement on an extended delivery date, and Supplier fails to meet that extended date, or if the Parties are unable to reach agreement on an extended delivery date, EXFO may at its sole discretion cancel the Order and further exercise its right to recover liquidated damages hereunder in an amount equal to the greater of: (1) 5% of the price of delayed Product for each day or (2) one \$100.00 for each day after the original delivery date or the extended delivery date (if one was agreed to), until the day of actual delivery.

4.5 Title and Risk of Loss. Shipments which are sent to EXFO designated facility shall be FCA (named place of origin) ICC Incoterms 2020. Title to Product ordered hereunder and risk of loss or damage shall pass from Supplier to EXFO upon Supplier's tender of delivery to the carrier designated by EXFO.

EXFO shall retain title to all designs, sketches, drawings, blueprints, patterns, inventions, dies, models, molds, tools, special appliances and material furnished by or paid for by EXFO. The Supplier shall ensure that EXFO's property is identified as such while in the Supplier's possession.

4.6 Packing List. Each delivery of Products to EXFO must include a packing list that contains at least:

- (a) The Order number and the EXFO part number;
- (b) The quantity of Products or Parts shipped;
- (c) The country, date of manufacturing; and Harmonized Tariff Code (HS Code)
- (d) The date of shipment.

4.7 Packaging. Supplier shall preserve, package, handle, and pack all Products so as to protect the Products from loss or damage, in conformance with good commercial practice, government regulations, and other applicable standards.

5. PRICES AND PAYMENT TERMS

5.1 Product Prices. Supplier's prices for the Products and the Parts shall remain firm.

5.2 Invoices and Payment Procedure. Supplier's invoice shall be sent electronically to the "bill-to" email address indicated on the Order for EXFO locations in North America and Europe. For EXFO's Shenzhen location, the original invoice must be sent by regular mail. Each shipment shall include 1 invoice. A valid invoice must be addressed to the same EXFO company

that issued the Order (if applicable) and must include all the necessary information to process the payment, including the Order number (if applicable), quantities, agreed prices, and bank details.

Payment for Products will be made within 45 calendar days from the later of the following dates: (i) receipt by EXFO of a valid invoice from the Supplier, or (ii) delivery of the corresponding Products or Parts. In case of a dispute regarding an invoice or non-conforming products, EXFO may withhold payment until the issue is resolved. EXFO shall not be liable for costs related to unordered or non-conforming products. Payment will be made by bank transfer according to the details provided by the Supplier. EXFO shall not be responsible for any bank charges or fees incurred during the payment process.

5.3 Sales Taxes and Duties. Prices are exclusive of all taxes or duties after delivery to the designated destination (other than taxes levied on Supplier's income or any other related taxes) that Supplier may be required to collect or pay upon shipment of the Products. Any such taxes or duties must appear as a separate item on Supplier's invoice. EXFO agrees to pay such taxes or duties in the Territory unless EXFO is exempt from such taxes or duties.

6. WARRANTIES

6.1 Product Warranties. Supplier warrants that the Products shall:

- 1) Be manufactured, processed, and assembled by Supplier;
 - 2) Conform to the Specifications, be free from defects, will perform without error;
 - 3) Be new, except as otherwise provided by the Parties;
 - 4) Be fit for its intended purpose;
 - 5) Be of good quality and workmanship;
 - 6) Be free and clear of all liens, encumbrances, restrictions, and other claims against title or ownership;
 - 7) Be free of Harmful Code and implement reasonable procedures adequate to prevent any software or code provided to EXFO hereunder from being contaminated with Harmful Code. If Supplier learns or suspects that the Product contains any Harmful Code, it will promptly notify in writing EXFO of this information.
 - 8) Not violate or infringe any third-party Intellectual Property Rights and Supplier warrants that it is not aware of any facts upon which such claim could be made. If Supplier learns of any claim or any facts upon which claim could be made, it will promptly notify in writing EXFO of this information.
 - 9) In the event that the Products incorporate Open-Source Software, Supplier hereby represents that the software is in compliance with all licenses applicable to all such Open-Source Software.
- 6.2 Third Party Software.** Unless otherwise agreed upon in writing by the Parties, no Product shall incorporate: (i) third party software, nor require the use of any third party software, which is not readily and commercially available to consumers without material cost, or; (ii) Open Source Packages that create, or purport to create, obligations to grant, or purport to grant, to any third party, any rights or immunities under Intellectual Property rights (including, but not limited to, using any Open Source Packages that require, as a condition of such use, that other software combined, merged or embedded with, linked with, incorporated into, derived from or distributed with such Open Source Packages be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, (c) redistributable at no charge or minimal charge, or (d) licensed or distributed with notices or markings explicitly referring to the Open Source Packages).

6.3 Product Warranty Remedy. If the Product is found not to comply with the warranties provided under Section 6.1, Supplier shall within the time frame specified by EXFO, either repair or replace the Product at no cost to EXFO. The foregoing remedy is in addition to any other remedy available hereunder, at law or in equity. Supplier shall provide technical assistance, functionally equivalent replacement Products, repair services and failure analysis services, on any individual Product, including discontinued Products, for a period 24 months after the later of: (a) the ship date to EXFO for any individual Product or (b) Supplier's discontinuance of the Product ("**Original Warranty Period**"). Services will be performed by qualified and suitably trained individuals with sufficient

experience and skill to perform such services, and with due diligence and in a manner consistent with industry standards applied to the performance of similar services. All Products replaced at any time before or after the Original Warranty Period shall have a warranty period of 24 months following the return of the replacement Products.

6.4 Survival of Warranties. The above warranties, together with Supplier's service warranties and guarantees, if any, survive inspection, test, acceptance of and payment for the Products and enure to EXFO, its customers and their respective successors and assigns.

6.5 Compliance with Corporate Policies. Supplier warrants that: Neither Supplier, nor its owners, directors, employees, agents or other representatives have or will directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to (i) any official or employee of any government, government agency, political party, or public international organization; (ii) any candidate of political office; or (iii) any employee of a commercial customer or Supplier, for the purpose of obtaining or retaining business or securing any improper advantage. Supplier agrees to accurately document all transactions related to these T&Cs in Supplier's financial books, records, statements, and in reports or other documents provided to EXFO. Supplier agrees that the handling and disbursement of funds related to an EXFO transaction must be pursuant to a duly authorized EXFO written contract or purchase order with clearly defined procedures. No undisclosed or unrecorded fund or asset related to any EXFO transaction may be established or maintained for any purpose. Supplier agrees that any violation of this Section constitutes just cause for the immediate termination by EXFO of these T&Cs without any liability incurred by EXFO to Supplier. Supplier will also indemnify and hold EXFO, and subsidiaries, parents and Affiliates harmless from any claims, losses and liabilities resulting from (i) any breach of any of Supplier's obligations under this Section; and (ii) any violation to EXFO's Agent Code of Conduct. The obligations under this Section shall survive the termination or expiration of these T&Cs. Supplier shall also comply with the terms of the EXFO Agent Code of Conduct, EXFO's Ethics and Business Conduct Policy and Statement on reporting Ethical Violations as updated from time to time by EXFO. The current versions of such policies mentioned herein can be found on EXFO's website at: <http://investors.exfo.com/governance.cfm>. Supplier shall have and maintain a policy to reasonably assure that the Conflict Minerals, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, in the products they manufacture does not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses in the Democratic Republic of the Congo or an adjoining country. Supplier shall have and maintain a policy to reasonably assure compliance with Regulation (EU) 2017/821. Supplier shall exercise due diligence on the source and chain of custody of these minerals and make their due diligence measures available to EXFO upon request.

7. NONCOMPLYING PRODUCTS

7.1 Inspection and Acceptance. Within 15 business days of EXFO's receipt of any shipment of Products (the "Inspection Period"), EXFO shall inspect such Products, to determine conformance with the Specifications and shall notify Supplier of its rejection of such shipment or any portion thereof within the Inspection Period, if the shipment or portion thereof fails to comply with the Specifications. If EXFO does not reject the shipment or part thereof within the Inspection Period, such shipment shall be deemed fully accepted, subject to any warranty claims by EXFO. If EXFO rejects any shipment or part thereof, Supplier shall use its best efforts to promptly correct and replace any rejected Product but in no event later than 5 business days after receipt of the Noncomplying Product from EXFO.

7.2 Repair, Replacement or Credit. EXFO may elect in its sole discretion to return a Noncomplying Product for replacement or repair at Supplier's expense. Notwithstanding the foregoing, if a Noncomplying Product is returned by an End-User to EXFO due to early life failure, EXFO may elect in its sole discretion to return such Noncomplying Product to Supplier at Supplier's expense for full credit even with the absence of all accessories and original packaging material. In the event of an over shipment, EXFO

may elect to keep the additional units, subject to the payment procedures in Section 0.

7.3 Audit. EXFO reserves the right to place in the Supplier plant, at EXFO's expense, an inspector or inspectors who shall be permitted reasonable access to the facilities operations and processes to the Supplier to inspect during the process of manufacture of before shipment any Products subject to any Order.

8. RETURN OF PRODUCTS

8.1 Return Material Authorization. All Products returned by EXFO to Supplier must be accompanied by a Return Material Authorization ("RMA"). Supplier shall supply RMA within 24 hours of EXFO's request.

8.2 Transportation Charges. All Products returned by EXFO to Supplier for replacement or repair under warranty, and all replacement or repaired Products shipped by Supplier to EXFO shall be at Supplier's expense, including transportation charges (round trip charges for replacement or repaired Products). The transportation charges for Products returned for repair or replacement beyond the warranty period will be at EXFO's expense.

8.3 Repair or Replacement Period. Supplier shall return the replacement or repaired Products as soon as possible but in no event later than 5 business days after receipt of the defective Product from EXFO.

9. GOVERNMENT AND REGULATORY AGENCY

9.1 Duty to Comply. Supplier agrees to comply with all federal, state, local and foreign laws, rules, and regulation applicable to its performance hereunder or to Products. Without limiting the generality of the foregoing sentence, Supplier represents and warrants that:

- 1) Each chemical substance contained in Products is on the inventory of chemical substances compiled and published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act;
- 2) All Products shall be shipped in conformance with government or freight regulation and requirements applicable to chemicals;
- 3) Supplier shall provide complete and accurate material safety data sheets prior to shipping any Products;
- 4) Products shall comply with the requirements of the latest Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) currently in effect in Europe and China and Supplier shall provide all documents necessary to demonstrate compliance;
- 5) Products shall comply with WEEE recycling worldwide rules and be labeled as such. Supplier will be responsible for recycling the Products. EXFO will return Products for recycling to Supplier. Upon request, Supplier shall provide the following documents: dismantling procedure and the rate of recovery, reuse and recycling.
- 6) Supplier must provide REACH data or full material disclosure (FMD) in compliance with European's REACH directive about substances of very high concerns (SVHC) for each item quoted to EXFO http://ec.europa.eu/enterprise/sectors/chemicals/reach/index_en.htm. REACH information must be available within six (6) months of the Effective Date.

9.2 Certifications (if applicable). Supplier represents that the Products meet those certification standards set forth on Exhibit A and agrees that it shall maintain such certifications. In addition, Supplier agrees, at its own expense, to make any reasonable modifications requested by EXFO in order to allow EXFO to obtain and maintain any additional certifications for the Products. Supplier shall secure from the bodies certifying the Products, the right to allow EXFO to present the certification reports to End-Users with EXFO's Marks placed thereon.

9.3 Export Control. Parties acknowledge that the Products or any other material or information made available hereunder may be subject to export control regulations and laws governing trade sanctions and embargoes, and which may either prevent or restrict export or re-export without prior authorization or license from the relevant competent authority. Parties agree to comply with all relevant export control regulations and shall be responsible for obtaining all necessary authorizations and/or export licenses.

Supplier agrees to provide EXFO with information reasonably necessary and prior to shipment for the export or import of any technology it provides

hereunder, including but not limited to the U.S. export classification (ECCN).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Ownership. Supplier shall retain the ownership of all Intellectual Property Rights in and to the Product provided that if any of the foregoing includes any of EXFO's Intellectual Property Rights, the ownership of such rights shall remain vested in EXFO. For avoidance of doubt, each Party retains full ownership of its Intellectual Property Rights.

11. CONFIDENTIAL INFORMATION

11.1 All information (whether written, visual, oral or stored in any computer or other electronic magnetic or optical storage system) relating to the operation and activities of EXFO, and all technical information related to EXFO products shall be deemed "**Confidential Information**". Supplier agrees not to disclose, use, communicate, reveal nor make available to any person whomsoever in any manner whatsoever, any Confidential Information other than for performing its obligations or exercising its rights under these T&Cs. Furthermore, Supplier shall only furnish and provide access to Confidential Information to those of its employees who need to know the Confidential Information for performing Supplier's obligations or exercising Supplier's rights under these T&Cs and who agree to receive the Confidential Information under terms at least as restrictive as those specified herein. Supplier shall be responsible for the use of the Confidential Information by its employees. Supplier acknowledges that its breach of this Section would cause EXFO immediate and irreparable harm for which payment of money would not adequately compensate EXFO. Therefore, EXFO shall be entitled, in addition, to any other remedies available at law or in equity, to seek injunctive relief for any such breach without proof of actual damages or the posting of bond or other security in any court of competent jurisdiction under the laws of such jurisdiction. These provisions of this Section shall survive the termination or expiration of these T&Cs.

12. INDEMNIFICATION

12.1 Infringement Indemnification. Supplier will, at Supplier's expense, indemnify, defend and hold harmless EXFO (including its officers, directors, employees and agents), its Affiliates and customers against any loss, cost, expense or liability (including but not limited to attorneys' fees and awarded damages) arising out of a claim that the Product(s) infringes, violates or misappropriates the Intellectual Property Rights of any third party. In the event of such a claim, Supplier will, at its expense replace or modify the Product(s) to be non-infringing and of equivalent functionality. If no replacement or modification is reasonably possible, Supplier will in addition to the indemnification obligations provided under this Section, refund the amounts paid hereunder for the Product(s) and reimburse EXFO for the expenses for removal and replacement of the Product(s).

12.2 General Indemnification. Supplier will indemnify, defend and hold harmless EXFO (including its officers, directors, employees and agents), its Affiliates and customers, against any loss, cost, expense or liability (including reasonable attorneys' fees and costs) arising out of (i) any breach by Supplier of any representation, warranties or covenant contained herein; (ii) any act or omission, negligence or willful misconduct of Supplier (including its affiliates, agents, employees and others under its direction or control); or (iii) the use by EXFO or EXFO's customers of the Products.

12.3 Third Party Claims. If the indemnification obligation arises from a third-party claim, EXFO will notify Supplier within a reasonable time after receiving notice of a claim. Provided that Supplier promptly and reasonably investigates and defends any such claim, Supplier will have control over the defense and settlement thereof. The party to be indemnified will furnish, at Supplier's reasonable request and expense, information and assistance necessary for such defense.

13. INSURANCE

13.1 Insurance Coverage. Supplier shall, at its own expense, at all times during any period of providing Products and for three (3) years following the termination of these terms and conditions, provide and maintain in effect: (i) Commercial General Liability Insurance (including, but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent

contractors, personal injury) with limits of at least \$5,000,000 USD combined single limit for each occurrence (Limits may be satisfied with primary and/or excess coverage); (ii) professional liability/error & omission liability (E&O) with limits at least 2,000,000 USD and (iii) Cybersecurity insurance with limits at least 2,000,000 USD. Coverage provided will extend to legal liabilities that may arise from use of the Products or acts or omissions of Supplier under these T&Cs.

13.2 Additional Requirements. Such insurance policies will be written with appropriately licensed and financially responsible insurers and shall provide for a minimum of 60 calendar days written notice to EXFO of any cancellation or reduction in coverage. Supplier's policy shall name EXFO, its officers, directors and employees as additional insured. Such insurance shall apply as primary insurance and no other insurance shall be called upon to contribute to a loss covered thereunder.

13.3 No limitation. Supplier is responsible for determining whether the above minimum insurance coverage is adequate to protect its interests. The above minimum coverage does not constitute limitations upon Supplier's liability.

13.4 Claims Made Coverage. If any policies have "claims made" coverage, Supplier shall maintain such coverage with "EXFO Inc." named as an additional insured for a minimum of 3 years after provision of Products under these T&Cs. Any such coverage must have a retroactive date no later than the date upon which work commenced under these T&Cs.

14. LIMITATION OF LIABILITY

TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EXFO OR ITS AFFILIATES, THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER REPRESENTATIVES BE LIABLE TO SUPPLIER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS, EXPENSES OR DAMAGES INCLUDING WITHOUT LIMITATION LITIGATION COSTS, THE LOSS OF PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES OR EVEN IF SUCH COSTS OR DAMAGES ARE ALLEGED TO ARISE FROM NEGLIGENT ACTS, OMISSIONS OR CONDUCT OF EXFO OR ITS AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER REPRESENTATIVES. TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EXFO'S LIABILITY TO SUPPLIER UNDER THESE T&Cs EXCEED THE AMOUNT PAID OR DUE TO SUPPLIER FOR PRODUCTS DELIVERED IN ACCORDANCE WITH THESE T&Cs.

15. MISCELLANEOUS

15.1 Publicity. Unless EXFO's written consent is first obtained, the Supplier shall not in any manner advertise, publish or release for publication any statement mentioning EXFO or depicting or describing goods or services purchased by EXFO or the fact that the Supplier has furnished or contracted to furnish any goods or services to EXFO.

15.2 Recall (if applicable). Supplier shall, at its sole expense, defend and hold harmless EXFO, its officers, directors, shareholders, employees and agents, and its Affiliates and customers, and successors and assigns of any of them, in connection with a voluntary Product recall conducted by EXFO after it has deemed necessary to initiate such a procedure for the protection of its customers. In the event of such a recall procedure, EXFO shall notify Supplier without delay. Although EXFO will have sole control in the conduct of such Product recall, Supplier may be involved in the process if required. All cost related to such recall of Products shall be borne by Supplier.

15.3 Specifications. Each EXFO specification referenced or attached to an Order is deemed a part of these T&Cs and incorporated herein wherever reference to it is made.

15.4 Headings. The Section headings used in these T&Cs are for convenience of reference only. They will not limit or extend the meaning of any provision of these T&Cs, and will not be relevant in interpreting any provision of these T&Cs.

15.5 Language. The Parties agree that these T&Cs and any document referenced herein or attached hereto shall be drafted in English. Supplier understands that EXFO is subject to the *Quebec Charter of the French*

Language and related regulations which namely provides that EXFO is required to offer to its employees and customers located within the province of Quebec products and documentation in the French language. Accordingly, Supplier hereby agrees that it shall at its option either: (i) offer its products, documentation services and any related matters ("**Material**") also in the French language without additional costs to EXFO unless otherwise agreed by EXFO; or (ii) provide EXFO a license to access and use all the material required for the purpose of translating the Material in the French language without additional costs to EXFO. The foregoing license shall extend to any material required by EXFO to fully exercise its rights to translate the Material.

15.6 Entire Agreement. These T&Cs constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede (i) all prior agreements, oral or written; (ii) any conflicting terms in Supplier's order acknowledgment or Supplier's invoice; and (iii) all other communications relating thereto. If any Section or portion of a Section of these T&Cs is held invalid or unenforceable, the remainder of the T&Cs shall not be affected, and the remaining terms will continue in effect and be binding on the Parties, provided that such holding of invalidity or unenforceability does not materially affect the essence of these T&Cs. No modification of these T&Cs will be binding on either Party unless in writing and signed by an authorized representative of each Party.

In case of any conflict between these T&Cs and the terms of the Order, the terms of the Order shall prevail.

15.7 No waiver. The failure of either Party at any time to enforce any of the provisions of these T&Cs or any right under these T&Cs, or to exercise any option provided, will in no way be construed to be a waiver of the

provisions, rights, or options, or in any way to affect the validity of these T&Cs. The failure of either Party to exercise any rights or options under the terms or conditions of these T&Cs shall not preclude or prejudice the exercising of the same or any other right under these T&Cs.

15.8 Governing Law. These T&Cs will be governed in all respects by and construed in accordance with the federal laws of Canada applicable therein, except as to (i) its conflicts of laws provisions; and (ii) the reference to the Incoterm "FCA", which incorporates into these T&Cs all the current rules of the International Chamber of Commerce pertaining to the 2020 Incoterms. In addition, the Parties expressly exclude the application of the *United Nations Convention on Contracts for the International Sale of Goods*.

15.9 Dispute and Arbitration. The Parties agree that any disputes or questions arising hereunder, in particular concerning its formation, existence, validity, effects, interpretation, implementation, violation, resolution or annulment, shall be finally resolved by means of arbitration in accordance with the International Arbitration Rules of the Canadian Commercial Arbitration Center by one (1) arbitrator appointed in accordance with the said Rules. Any such arbitration shall occur in Quebec City, Province of Quebec, in Canada, and the decision of the arbitrator shall be final and binding upon the Parties both as to law and to fact and shall not be appealable to any court in any jurisdiction. The Parties shall share the expenses of the arbitrator equally, unless the arbitrator determines that expenses shall be otherwise assessed.

15.10 Conflict with local law. If any provision of these T&Cs is inconsistent with a valid applicable law, the provision will be deemed amended to conform to the minimum standards required.