



Ulthera® System Limited Warranty (“Limited Warranty”)

LIMITED WARRANTY:

Merz North America, Inc. (“Merz”) hereby extends the following warranties to the individual or entity which purchased the Ulthera® System from Merz (such individual or entity, the “Customer”):

- The Equipment shall be free from material defects and shall function in accordance with the written technical specifications and standards set forth in the Ulthera System User Manual (such specifications and standards, the “Specifications”) for a period of five (5) years after the date of purchase of the Equipment. “Equipment”, as used herein, means any one or more of the following: the Ulthera control unit, the Ulthera hand piece, and/or the Ulthera power cord. The Ulthera transducers and the Ulthera cart are expressly excluded from the definition of Equipment, and from the scope of this Limited Warranty.

If during the Limited Warranty period a piece of Equipment does not function in accordance with the Specifications, Merz will facilitate the repair or replacement of the non-functioning Equipment at no cost to Customer, which repair and replacement will include parts and labor and will cover applicable shipping charges.

If a covered warranty event cannot be resolved remotely through phone or electronic troubleshooting, Merz will provide a replacement or loaner device, delivered to Customer overnight if necessary, to ensure continued operation at the Customer site. If a loaner was provided, upon completion of repair, Merz will pay to ship the Equipment back to the Customer and arrange for pick-up of the loaner Equipment.

ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO LIMITED WARRANTY:

The Limited Warranty is subject to the following terms and conditions: (1) this Limited Warranty is personal to Customer, and is non-transferrable; (2) the Limited Warranty applies only to Equipment which is owned and operated in the United States; (3) the Ulthera System (including all Equipment) must be operated at all times in accordance with the Specifications; and (4) Customer must notify Merz of any defect or non-functionality covered by the Limited Warranty promptly upon the occurrence of the event. Any delay in notification exceeding 72 hours from occurrence of the event will void Merz’s obligations under the Limited Warranty.

Further, the Limited Warranty does not cover damage to Equipment resulting from misuse, abuse, accident, or other use not strictly in accordance with the Specifications. The Ulthera System is comprised of integrated pieces of sensitive, calibrated, electronic, plastic and metal parts and can be easily damaged if not handled carefully. Causing the Equipment (or any other part of the Ulthera System) to come in contact with foreign substances or foreign objects can cause irreparable damage, which events are not covered by this Limited Warranty. The foregoing are for illustration only and are not meant as an exhaustive list of events that would not be covered under the Limited Warranty because of misuse, abuse, accident, or other use not strictly in accordance with the Specifications.

Merz is the only authorized provider of the Equipment. The Ulthera System is covered by valuable intellectual property owned by or licensed to Merz, including one or more valid United States patents. The sale of the Ulthera System to Customer includes a limited, revocable, non-transferable license to such patent(s). This limited license is conditioned upon Customer’s use of the Ulthera System only in an authorized manner. For further details regarding unauthorized uses which would void the above-described limited license (which unauthorized uses include resale, rental, refurbishment, servicing by an unauthorized service provider, or use of unauthorized parts with the Ulthera System), please refer to the *Terms and Conditions of Merz Aesthetics Device Purchase and Use* (if Customer has purchased both Ulthera and Cellfina products) or the *Terms and Conditions of Ulthera Purchase and Use* (if Customer has purchased Ulthera products only). In the event of any unauthorized use or transfer of the Equipment (or any other part of the Ulthera System), this Limited Warranty is immediately and automatically voided in its entirety.

Customer must install all Ulthera System software updates and upgrades provided to Customer during the Limited Warranty period; failure to do so may, at the sole discretion of Merz, void the Limited Warranty. In addition, failure to return a loaner device may result in the Customer being charged list price for such loaner device.

Customer acknowledges and agrees that this Limited Warranty is governed by North Carolina law, with venue in Wake County, North Carolina; Customer expressly waives any objections based on conflict of law principles or inconvenient forum.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE ULTHERA SYSTEM IS PROVIDED TO CUSTOMER “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND. MERZ EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERZ SHALL HAVE NO LIABILITY TO CUSTOMER, ITS AFFILIATES, OR ITS END CUSTOMERS, OR TO ANY OTHER THIRD PARTY, FOR ANY DAMAGES, INCLUDING DAMAGES RESULTING OR ALLEGED TO RESULT FROM ANY DEFECT, ERROR, OR OMISSION IN THE SYSTEM, OR AS A RESULT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. IN NO EVENT SHALL MERZ BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) SUFFERED BY CUSTOMER OR ITS AFFILIATES OR ANY OTHER THIRD PARTY ARISING OUT OF OR RELATED TO THE AGREEMENT, EVEN IF MERZ HAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.