



Cellfina® 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 Cellfina® System from Merz (such individual or entity, the “Customer”):

- The two 50-use motor modules provided as part of the Cellfina System shall be free from material defects and shall function in accordance with the written technical specifications and standards set forth in the Cellfina System User Manual (such specifications, the “Merz Specifications”) for the maximum use of each motor module. If Customer fully utilizes both motor modules during the one-year period beginning on the date of shipment of the Cellfina System to Customer (hereinafter, the “Limited Warranty Term”), then Customer is entitled to receive a total of one (1) additional motor module upon its request prior to the end of the Limited Warranty Term. In addition, if, during the Limited Warranty Term, a motor module does not function in accordance with the Merz Specifications, then Merz will facilitate the repair or replacement of the defective motor module at no cost to Customer (including any and all parts, labor, and shipping charges).
- The suction pump and cart provided as part of the Cellfina System (such items hereinafter, collectively, the “Accessories” for the purposes of this Limited Warranty) shall be free from material defects and shall function in accordance with the written technical specifications and standards set forth in the original equipment manufacturers’ manual(s) (such specifications, the “OEM Specifications”; the Merz Specifications and the OEM Specifications, hereinafter, collectively, the “Specifications”) for the duration of the Limited Warranty Term. If, during the Limited Warranty Term, an Accessory does not function in accordance with the OEM Specifications, then Merz will facilitate the replacement of the defective Accessory at no cost to Customer (including any and all parts, labor, and shipping charges).

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 motor modules and Accessories (hereinafter, collectively, the “Components”) provided with Cellfina Systems which are owned and operated in the United States; (3) the Cellfina System (including all Components) must be operated at all times in accordance with the applicable 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 the Limited Warranty.

Further, the Limited Warranty does not cover damage to Components resulting from misuse, abuse, accident, or other use not strictly in accordance with the applicable Specifications. The Cellfina 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 Components (or any other part of the Cellfina 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 applicable Specifications.

Merz is the only authorized provider of the Equipment and disposables. For regulatory compliance, medical oversight, and training purposes, Merz documents and tracks the Equipment and disposables delivered to each Customer site. Equipment and disposables must be operated under the direction of a physician, in accordance with the Instructions for Use and Customer’s applicable state medical regulations. **Merz prohibits the re-sale or rental of Equipment or disposables**, regardless of whether such products are new or used, or are sold within or outside the United States. **Sale or transfer of Equipment or disposables to third parties for uses unauthorized by Merz (e.g., refurbishment, modification, etc.) is also prohibited.** Customer acknowledges that refurbished products are not FDA-cleared, do not meet the strict manufacturing and quality controls of Merz, and may result in patient safety concerns. If Customer uses refurbished products, Customer assumes full liability for any adverse event that occurs. In addition, because it is unable to regulate the quality of refurbished products, Merz is required to notify the FDA of any known violations, as well as any individuals suspected of being involved in these unlawful practices. Customer hereby further acknowledges and agrees that the Equipment and disposables are covered by valuable intellectual property owned by or licensed to Merz, including one or more valid United States patents. Customer’s purchase of Cellfina products shall not be construed as a grant of any other rights in or to the intellectual property covering such products. Customer acknowledges that Customer’s use of Cellfina products other than those purchased directly from Merz, or unauthorized sale/transfer of Cellfina product(s) to third parties, would cause immediate, material, and irreparable harm to Merz. **In the event of any violations of this section, then, in addition to any other remedies available to Merz, Merz may refuse to sell future Cellfina products to Customer or refuse to service Cellfina Systems. Additionally, any use of Cellfina products not purchased directly from Merz will automatically void Customer’s limited warranty and any applicable service contract.**

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 CELLFINA 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.