



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”):

- New 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 such new Equipment; refurbished or purchased demonstration 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 two (2) years after the date of purchase of such refurbished/demo 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 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 Ulthera 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 Ulthera products other than those purchased directly from Merz, or unauthorized sale/transfer of Ulthera 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 Ulthera products to Customer or refuse to service Ulthera Systems. Additionally, any use of Ulthera products not purchased directly from Merz will automatically void Customer’s limited warranty and any applicable service contract.**

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.