

# Limited Warranty

## 1 Definitions

- 1.1 "Bespoke Product" means any product designed and manufactured by Enztec exclusively for a Customer.
- 1.2 "Customer" means (a) any person that buys a Product, whether directly from Enztec or from another person and (b) any person that uses a Product.
- 1.3 "Enztec" means Enztec Limited, a New Zealand corporation.
- 1.4 "IFU" means the Instructions for Use that accompany the Products.
- 1.5 "Information" means all information in relation to the Products that Enztec may provide, from time to time, to the Customer including, without limitation, IFUs, surgical techniques, product labels, design history files and marketing information.
- 1.6 "Products" means any instrument supplied by Enztec to Customer and includes both Signature and Bespoke Products.
- 1.7 "Signature Product" means any instrument supplied by Enztec to Customer on a non-exclusive basis.

## 2 Coverage

- 2.1 Enztec warrants the Products against defects in materials or workmanship.
- 2.2 The term of this warranty is 12 months from date of shipment, *ex works* Christchurch. However, if an IFU for the Product specifies a different term, the IFU shall govern.

## 3 Asserting a Claim

- 3.1 To assert a warranty claim, the Customer should contact Enztec's local representative. If there is no local representative, the Customer should contact Enztec directly. The contact details of Enztec are set forth below.
- 3.2 Enztec shall not accept a warranty claim unless and until either Enztec, or its authorised representative, has inspected the Product (or the part that is the subject of the claim), identified the defect and determined that none of the exclusions to coverage apply. Enztec shall not reject, unreasonably, a warranty claim.
- 3.3 If Enztec determines that a returned Product was not defective, or that the warranty claim was otherwise not valid, Enztec shall charge the Customer a handling and servicing fee.
- 3.4 If Enztec accepts the warranty claim, Enztec shall either repair or replace the defective Product, as Enztec shall determine in its sole and absolute discretion. If Enztec does not wish to repair or replace the defective part, it may, instead, refund the purchase price.
- 3.5 The Customer shall bear all applicable freight and insurance costs, both ways.

## 4 Inspection

- 4.1 The Customer shall visually inspect the Products, to the extent practicable, for any obvious damage, defects or other evidence that the Products do not conform to the order.
- 4.2 For any defect that the Customer could have reasonably discovered through prompt visual inspection, the Customer must give written notice to Enztec of such defect within thirty (30) days after receipt of the Products. Otherwise, the Customer shall have waived its right to make a warranty claim in respect to such defect.

## 5 Exclusions

- 5.1 This warranty is void in any of the following circumstances:
    - 5.1.1 The Product has been damaged due to misuse, abuse, neglect, mishandling or other causes.
    - 5.1.2 The Product has been adjusted, modified, altered or adapted except as authorised by Enztec in writing or as directed by Enztec in relevant documentation and manuals accompanying the Product, and then strictly in accordance with such directions.
    - 5.1.3 The Product has been used by a person who does not possess the appropriate qualifications, experience and training in relation to such Product and its use.
    - 5.1.4 The Product has been improperly used, repaired or maintained.
    - 5.1.5 The Product has been assembled or used with parts not approved by Enztec.
    - 5.1.6 The Product has been used for purposes other than for which it was designed.
    - 5.1.7 The Product has been used outside its stated specifications, capacity and operating parameters.
    - 5.1.8 The Product has been damaged during shipment.
  - 5.2 If the Product needs servicing, the Customer shall only engage service technicians approved by Enztec. Enztec shall not be liable if the Product has been altered, damaged or rendered non-functional through incorrect use or servicing.
  - 5.3 This warranty does not cover normal maintenance and replacement of consumable parts specified by Enztec.
  - 5.4 It shall be a condition of this warranty that the Customer checks the Product periodically for obvious problems or malfunctions. The Customer should check for loose fittings, damage, excessive wear and replacement of consumable parts.
  - 5.5 The Customer may use the Product for many different purposes and applications. Therefore, Enztec cannot warrant that the Product is suitable for the Customer's specific purpose or application.
  - 5.6 Enztec has a policy of continual Product improvement. Specifications are subject to change without notice. Enztec shall be under no obligation to implement an improvement to Products already in the field.
- ## 6 Exclusive Remedy
- 6.1 The remedies in this warranty are the sole and exclusive remedies and no other remedies whatsoever shall be available to the Customer.
  - 6.2 Enztec's sole responsibility is to repair or replace a defective part the subject of a valid warranty claim. Otherwise, Enztec will refund the purchase price.
  - 6.3 This is an express warranty. Enztec disclaims any other express or implied warranties, including warranties of merchantability or fitness for purpose, to the maximum extent permitted by law.
  - 6.4 Statements, representations and specifications in any Information concerning the Product shall not be deemed warranties, nor shall they extend or expand Enztec's obligations under this warranty.
  - 6.5 No employee, representative, dealer, agent, distributor or service company acting for Enztec has the authority to extend or modify the terms of this express warranty unless Enztec expressly agrees, in writing, to such extension or modification.

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### 7 Limitation of Liability

- 7.1 The Customer acknowledges that the Products are capable of being used in many different surgical procedures. Enztec provides general guidelines concerning the suitability of its Products. It is not always possible for Enztec to provide specific guidelines for all surgical procedures. Proper selection of a specific Product for a specific surgical procedure will always be the Customer's responsibility. The Customer must assume the ultimate responsibility for the selection and use of the Products. Enztec does not warrant the performance of its Products or their suitability for any specific purpose.
- 7.2 The Customer shall strictly comply with any instructions for use, care and maintenance, trouble shooting, warnings and safety procedures provided by Enztec. Enztec shall not be liable for any costs or damages incurred by any person because of such person's failure to comply with such instructions.
- 7.3 To the maximum extent allowed by law, Enztec disclaims liability for direct, indirect, incidental, special or consequential costs or damages of any kind. Without limiting the generality of the foregoing, Enztec disclaims liability for: (a) Damages to person or property caused by a Product; or (b) Damages resulting from the inability to use the Product, including loss of profits, loss of operations whether incurred by the Customer, its employees or a third party.
- 7.4 The liability of Enztec under any circumstance shall not exceed the original purchase price paid by the Customer for the Product giving rise to such liability.

### 8 Information

- 8.1 Enztec does not warrant that the Information is timely, complete or accurate. Enztec accepts no liability for any errors or omissions in the Information. Any Information provided shall not be deemed a warranty, representation or guarantee concerning a Product's suitability or fitness for a Customer's specific purpose. The Information shall not expand Enztec's obligations under this Warranty. The Information shall not constitute a warranty that the Customer will derive any particular benefits from the Products. It is the Customer's responsibility to determine the suitability of the Products for its own use. The Customer must use its own independent judgment and assessment and should not rely on any opinions, interpretations, statements, assurances or representations in the Information or otherwise.
- 8.2 Although the Information may include surgical techniques and Product usage guidelines, Enztec cannot know the actual condition of a given patient nor the countless other variables that relate to the proper diagnosis and treatment of such patient. For that reason, the Customer shall not rely upon any Information provided by Enztec but shall rely, instead, on its own professional judgment.

### 9 No Sale by Description or Sample

- 9.1 Subject to clause 9.2, Enztec does not warrant that the Products conform to any specific design or sample. Enztec reserves the right to alter its Product dimensions, drawings, specifications, designs, materials components and construction methods. Enztec may do so without notice. Any such alterations shall not impose on Enztec an obligation to alter Products that Enztec has already delivered to the Customer.
- 9.2 Clause 9.1 shall not apply in circumstances where the Customer has (a) furnished its own specifications and information in order for Enztec to develop and manufacture a Bespoke Product; and (b) it is an express condition of sale that Enztec manufacture the Bespoke Product to conform to the Customer's specifications and information.

### 10 Representations

- 10.1 Enztec's staff, agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with this Warranty, unless made in writing and signed by a duly authorized officer of Enztec. Any such unauthorized representations, statements, warranties, conditions or agreements shall not bind Enztec nor form part of any contract between the Customer and Enztec.

### 11 Local Law

- 11.1 Some jurisdictions do not allow limitations or disclaimers of implied or statutory warranties. Some jurisdictions do not allow disclaimers or exclusions of consequential or incidental damages. Therefore, the above disclaimers, limitations and exclusions may not apply in certain jurisdictions in which Enztec sells the Product. As to such jurisdictions, this warranty shall be deemed modified, and the offending clauses amended or removed, but only to the extent necessary to bring them into conformity with the laws therein.
- 11.2 The invalidity of any clause shall not affect the validity of any other clause.
- 11.3 This warranty gives the Customer specific legal rights. The Customer may have other rights or remedies pursuant to the laws in its territory.
- 11.4 Nothing in this limited warranty should be construed as limiting or restricting any other statutory right or remedy of the Customer, except for such limitations or restrictions herein as may be allowed by the law of the territory.

### 12 Severability

- 12.1 Where there is a conflict between a clause in this Warranty and a mandatory provision of law, the mandatory provision shall prevail. The clause in conflict with such mandatory provision shall be deemed severed from this Warranty but the balance of this Warranty shall continue in full force and effect.
- 12.2 Where there is a conflict between a clause in this Warranty and a provision of law which is expressed to be subject to any contractual provision to the contrary, or which may be altered or overridden by a contract, such clause in this Warranty shall prevail.

### 13 Governing Law

- 13.1 New Zealand law shall govern this Warranty. The Customer submits to the non-exclusive jurisdiction of New Zealand courts.

#### Important!

To ensure the proper use, handling, and care of devices and equipment, consult the applicable catalogue, brochure, instruction manual, teaching film and other literature included with the Product and/or otherwise available from Enztec upon request.