

Cardiac Science™ Limited Hardware Warranty

Hardware license and limited warranty information
for Cardiac Science Corporation products.



This Limited Hardware Warranty ("Hardware Warranty"), together with any written order, form or other agreement (the "Agreement") signed by both Cardiac Science Corporation ("The Company") and the customer set forth in the Agreement ("Customer") applies to the Hardware (as defined below) purchased, leased, rented or otherwise obtained by Customer from Cardiac Science Corporation. The Company and Customer agree as follows:

Section 1. Definitions

- (a) "Documentation" means the specifications, operators manual, and other documentation for the Hardware furnished by The Company to Customer.
- (b) "Service Part" means any component, module or subassembly that is used by The Company to effect a warranty repair under this Agreement.
- (c) "Hardware" means a complete product or system manufactured or sold by The Company.
- (d) "Hardware Upgrade" means a component, module, or subassembly that is used by The Company to effect an upgrade to a Hardware product.
- (e) "IPR" means patent, copyright, trademark, trade secret and other intellectual property rights.
- (f) "Warranty Commencement Date" means (i) with respect to Hardware, Hardware Upgrade, or Service Part, the date of invoice from The Company or an authorized distributor to the Customer or (ii) with respect to Hardware sold in connection with certain software products, the date of first clinical acceptance.
- (g) "Warranty Period" means (i) with respect to Hardware, the period indicated in The Company's then currently published information for the product(s) or other period specifically indicated by The Company in writing, beginning on the Warranty Commencement Date, or (ii) with respect to a Service Part or Hardware Upgrade, means 90 days after the Warranty Commencement Date, or other period specifically indicated by The Company in writing.

Section 2. Limited Warranty and Remedies

- 2.1 Warranties.** The Company warrants to Customer that: (a) the Hardware will substantially comply with its specifications as set forth in the Documentation; and (b) the mechanical and electrical components of the Hardware will be free from defects in materials and workmanship.
- 2.2 Remedies.** The Company will use commercially reasonable efforts to correct any Hardware that does not comply with the warranties set forth in this paragraph, provided that Customer provides and The Company documents the notice of the noncompliance (including full details of the noncompliance and the model and serial number(s) of the Hardware) within the

Warranty Period. When The Company receives any such notice, The Company will document and Customer will be advised as to the service arrangement: field repair, field replacement, or factory repair. In the case of factory repair, Customer will be assigned a "return material authorization number" and directed to return the Hardware to The Company at The Company's expense. If, after the expenditure of commercially reasonable efforts, The Company is unable to correct the noncompliance, The Company will refund any amount paid by Customer for the Hardware. Any replacement under this Hardware Warranty will be warranted for the remainder of the original Warranty Period. This Hardware Warranty in the case of field repair or replacement includes (a) physical installation or removal of the Hardware at or from Customer's site; (b) visits to Customer's site; (c) labor necessary to effect repairs or replace defective parts during The Company normal business hours, exclusive of weekends and The Company holidays. This Hardware Warranty does not include, in any case, (a) expendable or disposable items including, without limitation, electrodes and recording paper; (b) Hardware calibration; (c) operator adjustments, (d) any power distribution related to the Hardware, accessories or other devices associated with the use of the Hardware within the Customer's facility (e.g., outlets, fuse boxes and wiring); or (e) any work with any third party equipment or software.

2.3 Support. During the applicable Warranty Period, The Company will make available to Customer telephone support during The Company normal business hours, exclusive of weekends and The Company holidays, to assist Customer in the use of the Hardware.

2.4 Infringement. The Company will defend and indemnify Customer from any third party claim that the Hardware infringes any copyright, trademark or United States patent of any third party, provided that: (a) Customer promptly notifies The Company of the claim; (b) The Company has control over the defense and settlement of the claim; (c) Customer provides such assistance in the defense of the claim as The Company may reasonably request; and (d) Customer complies with any settlement or court order made in connection with the claim.

2.5 Exclusions. The Company's obligations under paragraphs 2.1, 2.2, 2.3 and 2.4 do not apply to any: (a) use not in accordance with the Documentation or this Hardware Warranty; (b) modification, damage, misuse or other action of Customer or any third party; or (c) use of the Hardware with items not provided by The Company. The Company does not warrant that the Hardware or Documentation is free from bugs, errors, defects or deficiencies.

2.6 Disclaimer and Release. THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF THE COMPANY AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS SECTION 2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS, AND LIABILITIES OF THE COMPANY AND ALL OTHER REMEDIES OF CUSTOMER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY HARDWARE,

DOCUMENTATION OR OTHER ITEMS FURNISHED BY OR ON BEHALF OF THE COMPANY UNDER THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY: (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) CLAIM OF INFRINGEMENT OR MISAPPROPRIATION; OR (D) CLAIM IN TORT (WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHER THEORY). SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Section 3. Limitations of Liability

3.1 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Hardware Warranty or the Agreement on account of, any delay or failure to perform as required by this Hardware Warranty as a result of any cause or condition beyond such party's reasonable control (including, without limitation, any act or failure to act by the other party). This paragraph will not apply to any payment obligation of either party.

3.2 No Consequential Damages. IN NO EVENT WILL THE COMPANY OR ITS SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFIT, REVENUE, DATA, BUSINESS OR USE IN CONNECTION WITH OR ARISING OUT OF CUSTOMERS USE OF THE HARDWARE, DOCUMENTATION OR ANY OTHER ITEMS FURNISHED UNDER THE AGREEMENT.

3.3 Limitation of Liability. THE COMPANY'S AGGREGATE LIABILITY WITH REGARD TO THE HARDWARE, DOCUMENTATION OR ANY OTHER ITEMS FURNISHED UNDER THIS HARDWARE WARRANTY WILL IN NO EVENT EXCEED THE COMPENSATION PAID BY CUSTOMER TO THE COMPANY FOR SUCH HARDWARE, DOCUMENTATION, OR OTHER ITEMS.

Section 4. Miscellaneous

4.1 Ownership. The Hardware and Documentation involve valuable IPR of The Company. No title to or ownership of any IPR in or to the Hardware or Documentation is transferred to Customer under the Agreement. Customer will not attempt to reverse engineer any Hardware or component thereof or to otherwise misappropriate, circumvent or violate any of The Company's IPR. Without limiting the generality of the foregoing, The Company reserves all of its right, title and interest (including, without limitation, any and all IPR) in and to the Hardware and the Documentation.

4.2 Compliance with Laws. Each party will comply with all applicable laws, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction. Without limitation of the foregoing with respect to Customer's use and other dealings

with the Software, Documentation, Hardware and any other item provided under these Standard Terms, Customer will comply with the U.S. Export Administration Act, regulations of the U.S. Department of Commerce and other export controls of the U.S., as applicable.

4.3 Assignment. Customer shall not assign any of its rights under this Hardware Warranty or the Agreement directly, by operation of law or otherwise, without the prior written consent of The Company. Subject to the foregoing restriction on assignment by Customer, this Hardware Warranty shall be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

4.4 No Additional Terms. Except as expressly permitted by this Hardware Warranty, neither party will be bound by, and each party specifically objects to, any term, condition or other provision that conflicts with the provisions of this Hardware Warranty that is proffered by the other party in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise, unless each party specifically agrees to such provision in writing. Further, if this Hardware Warranty conflict with any terms or conditions of the Agreement, this Hardware Warranty will prevail.

4.5 Applicable Law and Venue. This Hardware Warranty will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law principles to the contrary. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Hardware Warranty. Each party hereby consents to the jurisdiction of the state and federal courts located in King County, State of Washington, U.S.A. with respect to any claim arising under or by reason of these Standard Terms.

4.6 Entire Agreement. The Agreement, including this Hardware Warranty, constitutes the entire agreement, and supersedes any and all prior agreements, between The Company and Customer related to the subject matter hereof. No amendment, modification or waiver of any of the provisions of this Hardware Warranty shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

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