

ROSA Advantage Warranty TERMS AND CONDITIONS

Effective as of April 30, 2020

THESE ROSA Advantage WARRANTY (HEREINAFTER "WARRANTY") TERMS AND CONDITIONS ("TERMS AND CONDITIONS") COVER CERTAIN PRODUCTS MANUFACTURED AND DISTRIBUTED BY ZIMMER BIOMET, INC. OR ANY OF ITS SUBSIDIARIES OR AFFILIATES (COLLECTIVELY, "ZIMMER BIOMET") WHEN USED BY ZIMMER BIOMET CUSTOMERS (EACH A "CUSTOMER" AND, COLLECTIVELY, "CUSTOMERS") UNDER CERTAIN CIRCUMSTANCES, AS FURTHER DESCRIBED BELOW.

1. QUALIFYING PRIMARY SURGERIES

The WARRANTY set out in these TERMS AND CONDITIONS is granted for Persona® Knee implants used by CUSTOMERS in QUALIFYING SURGERIES performed after the EFFECTIVE DATE.

- As used herein, "QUALIFYING SURGERY" means a primary (initial) knee replacement surgery performed using all of the following ZIMMER BIOMET products: (1) a ZIMMER BIOMET Persona® Knee (the "COVERED IMPLANT"); (2) the ROSA® Knee System ("ROSA"); and (3) Bactisure™ Wound Lavage ("BACTISURE"), in each case, in accordance with their intended use.
- In order to qualify under this WARRANTY, the QUALIFYING SURGERY must be performed before the applicable expiration date set forth in any ZIMMER BIOMET product's packaging.

2. QUALIFYING REVISION SURGERIES

The WARRANTY set out in these TERMS AND CONDITIONS applies in the event a QUALIFYING REVISION (as defined below) is required and performed within three (3) years of a QUALIFYING SURGERY.

- As used herein, a "QUALIFYING REVISION" means a total knee revision surgery performed on the same joint following a QUALIFYING SURGERY that is medically necessary consistent with standard and customary medical practice in the relevant community as a result of the failure of a COVERED IMPLANT or an infection at the surgical site of a COVERED IMPLANT, in each case, following a QUALIFYING SURGERY.

3. WARRANTY BENEFITS

Subject to the limitations and exceptions described in these TERMS AND CONDITIONS, ZIMMER BIOMET will provide the following benefits under the WARRANTY (as applicable, the "WARRANTY BENEFITS").

In the event of a QUALIFYING REVISION following a QUALIFYING SURGERY:

- ZIMMER BIOMET will provide the applicable CUSTOMER of the COVERED PRODUCTS (as defined below) with a purchase credit of \$2,500 that may be applied to the purchase by such CUSTOMER of any ZIMMER BIOMET products; and
- ZIMMER BIOMET will additionally provide such CUSTOMER, or the health care facility where the QUALIFYING REVISION is performed if so indicated by such CUSTOMER in a CLAIM FORM (each a "THIRD-PARTY PROVIDER" and, collectively, "THIRD-PARTY PROVIDERS"), with a one-time free replacement of the COVERED IMPLANT (i.e., the same or a comparable knee implant at no charge) for use in the QUALIFYING REVISION.

The WARRANTY BENEFITS set out above replace the standard warranties for the COVERED IMPLANT, ROSA, and BACTISURE (collectively, the “COVERED PRODUCTS”) with respect to any QUALIFYING SURGERY and constitute ZIMMER BIOMET’s sole liability and obligation, and the sole and exclusive remedy of CUSTOMERS, with respect to a QUALIFYING REVISION or the use of the COVERED PRODUCTS in a QUALIFYING SURGERY.

If eligible, ZIMMER BIOMET’s obligations under this WARRANTY are limited to the foregoing benefits only and ZIMMER BIOMET’s obligations do not extend to any other components or products, guides, instruments, systems, devices, surgical or professional costs/fees, or any other services.

Except as provided in Section 6 below, this WARRANTY cannot be varied or extended in any manner by any employee or agent of ZIMMER BIOMET.

4. ELIGIBILITY AND CLAIM PROCEDURE

In order to claim the benefits of this WARRANTY, a CUSTOMER must complete and submit a claim form in the form attached hereto as Exhibit A (a “CLAIM FORM”) per the submission instructions contained therein, along with the documentation described in the CLAIM FORM, at least fourteen (14) days prior to the date of the QUALIFYING REVISION surgery.

CUSTOMERS accept these TERMS AND CONDITIONS by using COVERED PRODUCTS in a QUALIFYING SURGERY. A THIRD-PARTY PROVIDER’s eligibility to receive a replacement implant is subject to the THIRD-PARTY PROVIDER providing such information and documentation as is required by ZIMMER BIOMET.

5. DISCLAIMER AND GENERAL LIMITATIONS OF THE WARRANTY

The WARRANTY set out in these TERMS AND CONDITIONS is exclusively for the benefit of CUSTOMERS of COVERED PRODUCTS and is not for the benefit of any other person or entity, including, but not limited to, any other hospital, facility or health care provider, physician, patient, third party payer, or intermediate supplier or distributor.

Except for the provisions specified in these TERMS AND CONDITIONS, ZIMMER BIOMET expressly disclaims and excludes, and CUSTOMERS of COVERED PRODUCTS waive, any representation, warranty, contract, covenant or other undertaking, whether express or implied or otherwise, written or oral, with respect to the COVERED PRODUCTS or their quality, condition, safety or effectiveness, including (without limitation) any warranties of merchantability, non-infringement (except for implied warranty of title), durability or fitness for a particular use or purpose.

In addition, ZIMMER BIOMET disclaims (on behalf of itself and any of its representatives or other third parties which manufacture or distribute the COVERED PRODUCTS), and CUSTOMERS of COVERED PRODUCTS release and waive, any and all liability with respect to lost income, lost profit or other direct or indirect, special, contingent, incidental or consequential damages for any claim resulting or arising from the design, manufacture, composition, condition, use or performance of the COVERED PRODUCTS, including, without limitation, any claim or lawsuit based on a cause of action for negligence, tort, strict liability, or statutory violation.

Notwithstanding anything to the contrary, if applicable, the total liability of ZIMMER BIOMET, if any, under or in connection with the COVERED PRODUCTS, including for any breach of contractual obligations, breach of duty, breach of warranty, misrepresentations, misstatements or tortious act or omissions (including without limitation, strict liability, tort, negligence statutory violation and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the WARRANTY BENEFITS, as applicable.

For the avoidance of doubt, these TERMS AND CONDITIONS, and the benefits and remedies set out herein, shall be exhaustive with respect to the COVERED PRODUCTS and the subject matter of these TERMS AND CONDITIONS, and shall exclude any other rights, benefits and/or remedies, such as, for example, reimbursement or payment of any physicians or therapists; surgical, laboratory, radiological, hospital, rehabilitation or clinical treatment costs, services, charges or fees; and/or travel, instrument, bone cement, product, device, or equipment supply charges.

6. MODIFICATION OR WITHDRAWAL OF THE WARRANTY

ZIMMER BIOMET reserves the right to modify or withdraw the WARRANTY and/or these TERMS AND CONDITIONS at any time. Notice of any such modification or withdrawal will be posted on ZIMMER BIOMET's public website. Any such modification or withdrawal will not affect any QUALIFYING SURGERY or QUALIFYING REVISION performed prior to the effective date of such modification or withdrawal.

7. GENERAL CONDITIONS OF SALE

The provisions provided for under these TERMS AND CONDITIONS above shall apply alongside, and in addition to, any other terms and conditions applicable to the COVERED PRODUCTS, a QUALIFYING SURGERY, a QUALIFYING REVISION, or other ZIMMER BIOMET products used in connection therewith, if any, except that this WARRANTY shall replace the standard warranty for the COVERED PRODUCTS when used in a QUALIFYING SURGERY.

8. SAFE HARBOR

Any WARRANTY BENEFITS provided by ZIMMER BIOMET under this WARRANTY represent a price reduction that CUSTOMERS and THIRD-PARTY PROVIDERS, as applicable, must fully and accurately report in applicable cost reports or claims for payment filed with federal or state health care programs in accordance with the warranty safe harbor provisions of the federal anti-kickback statute at 42 C.F.R. § 1001.952(g). Each CUSTOMER and THIRD-PARTY PROVIDER, as applicable, must provide information upon request to Medicare, Medicaid and other federal health care programs on price reductions obtained as part of this WARRANTY.

9. GOVERNING LAW AND VENUE

Any action relating to or hereunder shall be governed by the laws of the State of Indiana exclusive of any choice of law principles that would result in the application of the laws of any other jurisdiction. The exclusive venue for such action shall lie in a court located in Kosciusko County, Indiana or in the United States District Court of the Northern District of Indiana.

10. EFFECTIVE DATE

This WARRANTY and its TERMS AND CONDITIONS shall only apply to procedures performed on the date first set forth above (the "EFFECTIVE DATE") and thereafter.

EXHIBIT A

[Insert Warranty Claim Form]