

# ZIMMER BIOMET LIFETIME LIMITED WARRANTY TERMS AND CONDITIONS

Updated as of 12-03-2015

THESE LIFETIME LIMITED WARRANTY TERMS & CONDITIONS COVER THE BIOMET OXFORD® MEDIAL PARTIAL KNEE REPLACEMENT SYSTEM (COMPRISING OF THE FOLLOWING COMPONENTS ONLY: BEARING, FEMORAL COMPONENT AND TIBIAL BASE PLATE) ("PRODUCT") MANUFACTURED AND DISTRIBUTED BY BIOMET, INC. OR ANY OF ITS SUBSIDIARIES OR AFFILIATES (collectively, "ZIMMER BIOMET") ONLY.

THE WARRANTY OUTLINED IN THESE TERMS AND CONDITIONS IS EXCLUSIVELY FOR THE BENEFIT OF: (A) ELIGIBLE PATIENTS WHO HAVE THE PRODUCT IMPLANTED IN THE UNITED STATES OF AMERICA; AND (B) ELIGIBLE HEALTH CARE PROVIDERS ("HCP") WHO PURCHASE OR IMPLANT REPLACEMENTS FOR THE PRODUCT WHICH WERE ORIGINALLY IMPLANTED IN THE UNITED STATES OF AMERICA (COLLECTIVELY (A) AND (B) "PURCHASER(S)") CONSISTENT WITH THE TERMS HEREIN ONLY AND IS NOT FOR THE BENEFIT OF ANY OTHER PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, ANY PHYSICIANS, HOSPITALS, LABORATORIES, CLINICS, INSURANCE COMPANIES AND INTERMEDIATE SUPPLIERS OR DISTRIBUTORS.

## 1. WARRANTY PERIOD

THE WARRANTY SET OUT IN THESE TERMS AND CONDITIONS IS GRANTED FOR THE FOLLOWING PERIODS:

- As more fully set forth herein, a limited lifetime warranty, for the life of the patient, for the one-time free replacement of the Product, or a component thereof, manufactured or distributed by ZIMMER BIOMET only. The free replacement of Product is limited to no more than one complete replacement of the Product. In the event, however, that a component of the Product (e.g., bearing) needs to be replaced only, such replacement(s) shall not be counted towards the limitation.
- If eligible, ZIMMER BIOMET'S replacement extends to a free replacement of the Product or component **only** and such free replacement does not extend to any guide, products, instruments, systems, devices, surgical or professional costs/fees or any services.

## 2. SCOPE OF WARRANTY

Subject to the limitations and exceptions described in these Terms and Conditions, ZIMMER BIOMET will provide the following benefits:

## QUALITY BENEFITS

If any component(s) of the Product fails for any reason and otherwise qualifies as set forth herein, then ZIMMER BIOMET will either promptly replace the component(s) of the Product with replacement components from the Biomet Oxford® Partial Knee System or, when an entire revision is necessary, Biomet will provide the following 1) for revisions completed on or before 12-03-2015 a Biomet Vanguard® Complete Knee System, or comparable implantable Biomet knee product system as determined by Zimmer Biomet, at no additional charge to the eligible PURCHASER, or, 2) for revisions completed after 12-03-2015, the available replacement products includes comparable implantable Zimmer knee products systems, such as the Zimmer Persona® Knee System. The benefits set out above constitute ZIMMERBIOMET'S sole liability and obligation, and the PURCHASER'S sole and exclusive remedies, with respect to the Product and the subject matter of these Terms and Conditions. No warranty is provided on replacement components or products.

In order to qualify under this warranty, the Product must be implanted before the expiration date set forth in the Product's packaging.

This warranty cannot be varied or extended in any manner by any employee or agent of Zimmer Biomet.

## 3. ELIGIBILITY AND CLAIM PROCEDURE

In order to receive the warranty benefits under these Terms and Conditions, the following must be complied with:

- Subject to Section 1, warranty claims must, to remain eligible, be reported to ZIMMER BIOMET in writing prior to the date of the replacement surgery wherein the Product, or a component thereof, is to be revised or replaced. Reporting shall fully comply with the procedure set out herein. The HCP shall notify its Zimmer Biomet sales representative or contact ZIMMER BIOMET through its website, [www.biomet.com/warranty](http://www.biomet.com/warranty), to request a claim form and receive instructions for Product replacement and return; and
- Within five (5) days of the revision surgery wherein the Product, or a component thereof, was revised or replaced in accordance with the provisions herein, the HCP must complete and return the appropriate

claim form along with the revised Product or component in question. The returned Product (or component) must be decontaminated by the HCP and maintained in safe, "nondestructive" manner prior to being returned to ZIMMER BIOMET; and

- Unless already on file at ZIMMER BIOMET, the HCP submitting a claim form for a free replacement product or component which is eligible under this warranty, must provide a receipt/invoice for Product which replacement is sought.

In order to assist with the claims process, the product registration form should be completed and returned to Zimmer Biomet.

The cost of return shipment shall be borne by ZIMMER BIOMET in cases covered by the warranty under these Terms and Conditions.

#### **4. DISCLAIMER AND GENERAL LIMITATIONS OF THE WARRANTY**

Except for the warranty specified in these Terms and Conditions, ZIMMER BIOMET hereby expressly disclaims and excludes, and PURCHASER hereby expressly waives, any representation, warranty, contract, covenant or other undertaking, negligence, tort, strict liability, statutory, express or implied or otherwise, written or oral, with respect to the Product, quality, condition, results, claims and descriptions, 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 Product) any and all liability with respect to pain and suffering, medical expenses, lost earnings, incomes or profits, failure of the PURCHASER to conform to generally accepted standards of care, surgical procedures, techniques and practice, and any other direct or indirect, special, contingent, incidental or consequential damages resulting or arising from the design, composition, condition, use or performance of the Product or ZIMMER BIOMET.

Notwithstanding anything to the contrary, if applicable, the total liability of ZIMMER BIOMET, if any, under or in connection with the PURCHASER or caused in whole or in part by ZIMMER BIOMET, 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, negligence and liability for infringement of any third party

intellectual property rights) shall be limited to damages in an amount equal to the amount paid by the PURCHASER for the Product.

For the avoidance of doubt, these Terms and Conditions, and the benefits and remedies set out herein, shall be exhaustive with respect to the Product 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 physicians, therapists, surgical, laboratory, radiological, hospital, rehabilitation and clinical treatment, costs, services, charges or fees; and/or travel, instrument, bone cement, product, device, equipment supply charges.

#### **5. MODIFICATION OR WITHDRAWAL OF THE WARRANTY**

BIOMET reserves the right to modify or withdraw the Warranty and/or these Terms and Conditions at any time without notice. Any such modification or withdrawal will not affect Product already implanted in a patient, and fully paid by the PURCHASER to ZIMMER BIOMET, prior to the date thereof.

#### **6. GENERAL CONDITIONS OF SALE**

The warranty provided for under these Terms and Conditions above shall apply alongside, and in addition to, any other terms and conditions set out in the agreement with PURCHASER, if any.

#### **7. SAFE HARBOR**

Any replacement Product or components provided by ZIMMER BIOMET under this warranty represent a price reduction that Purchasers 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). Purchasers must provide information upon request to Medicare, Medicaid and other federal health care programs on price reductions (including free items) obtained as part of this warranty.

#### **8. 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. The parties agree that 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.

#### **9. EFFECTIVE DATE**

THIS WARRANTY UPDATED AS OF 12-03-2015 AND ITS TERMS AND CONDITIONS SHALL ONLY APPLY TO 1) PROCEDURES WHEREIN THE PRODUCT WAS IMPLANTED ON APRIL 29, 2013

AND THEREAFTER, AND 2) PROCEDURES WHEREIN THE PRODUCT WAS IMPLANTED UTILIZING BIOMET SIGNATURE® PERSONALIZED POSITIONING GUIDES FROM SEPTEMBER 10, 2012 THROUGH APRIL 28, 2013 AND FURTHER SUBJECT TO THE TERMS OF THE WARRANTY THEN IN EFFECT AT THE TIME OF THE PROCEDURE. THIS WARRANTY AND ITS TERMS AND CONDITIONS SHALL NOT APPLY TO ANY PROCEDURES THAT OCCURRED PRIOR TO SEPTEMBER 10, 2012 UNDER ANY CIRCUMSTANCE. .

Final Warranty Dec2015v1