

NAUTILUS MEDICAL REPLACEMENT AND EXTENDED WARRANTY TERMS

A. Nautilus Medical's Responsibilities

During the term of this Agreement, Nautilus Medical Inc ("Nautilus Medical") or its designees will provide Service, as defined below, of the products listed on originating warranty invoice (the "Products") and coverage commences at the date of the originating invoice based upon the serial number of the units supplied. If Service requires replacement of the Product or parts, Nautilus Medical will supply these on an exchange basis. Exchanged products/parts become Nautilus Medical's property. The replacement Product or parts may be new or refurbished to the Nautilus Medical standard of quality.

B. Services Included

1. Replacement Warranty: "Service" includes whole-unit Product exchange of a replacement unit for defective Product as a supplement to the limited warranty provided with the Product at the time of purchase. Products must be used under normal conditions as specified by the manufacturer. Products provided as replacement units will be Nautilus Medical standard configurations with factory-set switches and jumpers. Service includes express shipping charges to and regular shipping charges from Customer's locations; provided, however, that shipments to locations in the contiguous United States (including without limitation remote locations and residential addresses) may be shipped for delivery later than the next business day. For Service calls prior to 1:00PM Central Standard Time, the replacement unit will usually ship the same day; for Service calls after 1:00 PM Central Standard Time, the replacement unit will usually ship the following day. Shipping to customers outside of the contiguous United States will be express ground, not overnight air.
2. Extended Warranty: "Service" means the provision of replacement parts and labor, except as excluded below, necessary to service and repair the Product for normal use as specified by the manufacturer. Customer is responsible for shipping Product to and from the service location. Extended Warranty Service is available for purchase in the United States for Products located in the contiguous United States.

C. Eligibility

Customer may request warranty coverage at any time but Nautilus Medical reserves the right to require an inspection of the Product(s) at Customer's expense prior to acceptance of this Agreement and any renewal thereof to verify that each Product is in unaltered, operable condition and in good working order suitable for normal use.

D. Fee

The fee for the initial term of Service is payable in full at the time of purchase. The fee for any renewal term shall be due prior to expiration of the current term and payable on or before the Expiration Date. Any renewals after the Expiration Date may be honored at Nautilus Medical's sole discretion, but such renewal will be considered started at the previous Expiration Date.

E. How To Obtain Service

Customer may obtain Service by following the procedures issued by Nautilus Medical from time to time.

F. Services Limited

1. This Agreement does not modify the terms and conditions of the limited warranty included with the Product at the time of purchase.
2. This Agreement does not cover loss, negligent use or theft of the covered Product
3. Replacement Customers agree to pay Nautilus Medical's standard rates if excluded services are necessary to restore exchanged units to working condition and to pay such charges upon receipt of invoice. If Extended Warranty Customers authorize the repair of excluded services, they agree that they will pay the usual and customary fees for such work. Services excluded from this Agreement are:
 - a. Service made necessary by misuse, abuse, neglect, improper installation, or improper maintenance.
 - b. Installation or removal of non-Nautilus Medical accessory retrofits, peripheral equipment or computer systems of which the Product may be a part.
 - c. Service on covers, lids or other stationary parts, consumables such as ribbons, batteries, magnetic media, or appearance parts such as interior or exterior finishes or trim.
 - d. Service made necessary by any external cause, including disasters such as fire, flood, lightning, theft, alteration, problems arising from software or hardware not supplied or approved by Nautilus Medical, power failures or shortages, or repairs or services done by persons other than those authorized by Nautilus Medical to service the Product.
 - e. Service on Product purchased and/or used outside the United States.

- f. Service on third party products not manufactured or sold by Nautilus Medical which may be installed in or used in connection with the Product.
 - g. Service on Product on which the NAUTILUS MEDICAL label or logo or the rating label or serial number have been defaced or removed.
 - h. Service made necessary by use of incompatible third party products.
4. If a Replacement Customer claims replacement Product, Replacement Customer will confirm with Nautilus Medical technical service representative the condition of the existing Product to be replaced by means of reasonable local testing and include, if requested, digital photographs of the unit.
5. If a Replacement Customer is authorized by Nautilus Medical to return defective Product and Nautilus Medical:
 - a. Does not receive the returned Product within twenty (20) days of shipment of the exchange Product, or
 - b. Returned Product is received by Nautilus Medical damaged and/or not in the same box and polystyrene inner protection of the Replacement Product shipping

Customer will be invoiced for each unit not returned at one thousand dollars (\$1000). Customer agrees to pay Nautilus Medical that amount upon receipt of invoice.

6. If a claimed problem cannot be identified or reproduced at the service location, Customer will pay servicer its usual and customary fee for defects not found.

G. Term and Renewal

1. Replacement: The term shall be for a period of no less than one year and shall begin on the date of invoice and end on the Expiration Date being the anniversary of that date in the final year of coverage.
2. Extended Warranty: The term shall be for a period of up to five years and shall begin on the date of purchase and end on the Expiration Date being the anniversary of that date in the final year of coverage.
3. Renewal of either service program may be made any time prior to the Expiration Date (or the end of any renewal period) for up to a three-year period after the Expiration Date upon written agreement by the parties and payment of the renewal fee for each renewal period. Nautilus Medical reserves the right not to agree to renewals, modify the terms and conditions applicable to any renewal, and to increase the renewal fee without prior notice.

H. Warranty Disclaimer

NAUTILUS MEDICAL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SERVICES PROVIDED IN THIS AGREEMENT AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I. Limitation of Liability

1. Customer's right to recover damages shall be limited to moneys actually paid by Customer to purchase this Agreement. This limitation shall apply regardless of the form of action. Any action for breach of this Agreement must be brought within six months of termination of this Agreement and any extensions thereof.
2. Except as provided in this Agreement, neither Nautilus Medical nor its affiliates or agents shall be liable for (a) any loss, inconvenience, or damage, including direct, special, incidental, or consequential damages, including lost profits, cost of substitute equipment, downtime, claims of third parties, including customers, or injury to property, resulting from the use or inability to use the Products, whether resulting from a breach of any express or implied warranty or any other legal theory, or (b) delay in furnishing or failing to furnish service if such delay is caused by an act of God, strike, governmental action or any cause beyond Nautilus Medical's reasonable control. Some States may not allow limits on warranties or on remedies for breach in certain transactions. In such States, the limits of this paragraph and the preceding paragraph may not apply.

J. General

1. Customer agrees to notify Nautilus Medical immediately if any Product is sold, lost, stolen, or destroyed.
2. This Agreement constitutes the entire agreement between the parties. There are no representations, agreements or understandings, expressed or implied, affecting the parties which are not expressly set forth herein or therein. Nautilus Medical's sales representatives do not have authority to change the terms hereof or thereof. The agreement described herein and therein shall not be supplemented or modified by any course of dealing, trade usage, or any inconsistent terms in any purchase order or confirmation. This Agreement may only be modified by a writing signed by both parties.
3. The parties hereto confirm that it is their wish that this Agreement, and all other documents relating hereto, including any notices, have been and shall be drawn up in the English language only.
4. Customer may not assign or transfer this Agreement without Nautilus Medical's prior express written consent. Any other purported transfer or assignment shall be void.
5. Any controversy or claim arising out of or relating to this Agreement or any other document relating hereto, or the breach hereof or thereof, shall be determined by arbitration before the American Arbitration Association in Chicago Illinois. Neither party may take any other action by way of request for injunctive relief or otherwise. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the parties unless the arbitration award provides otherwise; provided that each party shall bear its own cost of preparing and presenting its case. In no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The decision of the arbitrator shall follow the plain meaning of the relevant documents, and shall be final and binding, without any right of appeal therefrom, whether on questions of law, fact, or mixed law and fact. Upon award, judgment may be recorded in and enforced by any court of competent jurisdiction. This Agreement and all other documents relating hereto shall be construed in accordance with the laws of Illinois. In the event that it becomes necessary for either party to institute litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred by it in connection with the litigation.