

# WARRANTY POLICY

Endurequip Hoists Pty Ltd ACN 607 530 736

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 In this Warranty Policy:

**Commencement Date** means the date on which the purchaser first obtains possession of the Product.

**Force Majeure Event** means any circumstance which:

- (a) is beyond the reasonable control of the party affected by it; and
- (b) causes or results in a default or delay in the performance by that party of any of its Obligations under this agreement where the occurrence of the circumstance and the effects of it could not be avoided or remedied by the exercise by that party of a standard of foresight, care and diligence consistent with the operations of a reasonable, prudent and competent person under the circumstances, and includes any of the following circumstances if they meet the requirements of paragraphs (a) and (b):
- (c) explosion, earthquake, landslide, fire, cyclone, flood or other natural disaster declared by the relevant Government Body;
- (d) war, invasion, act of foreign enemy, hostilities (whether or not war has been declared) and any other unlawful act against public order or authority;
- (e) acts or omissions of a Government Body;
- (f) governmental restraint and adverse changes in government regulations that directly affect a party or render unlawful the performance of the party's Obligations under this agreement;
- (g) ionizing radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear waste or from the combustion of nuclear, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (h) pandemic;
- (i) except to the extent instigated by the affected party, a strike, lockout, blockade, picketing action or industrial action, dispute or disturbance of any kind; and
- (j) breakdown of plant or machinery and the loss of supply of services or the unavailability of services.

### RELEVANT WARRANTY PERIOD MEANS:

- (a) in respect of the Structural Warranty – the period commencing on the Commencement Date and ending on the day immediately before the twentieth anniversary of the Commencement Date;
- (b) in respect of the Mechanical Warranty – the period commencing on the Commencement Date and ending on the day immediately before the fifth anniversary of the Commencement Date; and
- (c) in respect of the Electrical Warranty – the period commencing on the Commencement Date and ending on the day immediately before the first anniversary of the Commencement Date.

**Wear Parts** includes products such as solenoids, nylon chain guides and trust washers.

## 2. WARRANTY

### 2.1 Structural warranty

Endurequip warrants that the Product is structurally free from defects in workmanship and materials for the Relevant Warranty Period.

### 2.2 Mechanical warranty

Endurequip warrants that the mechanical components, other than those defined as Wear Parts, of the Product are free

from defects in workmanship and materials for the Relevant Warranty Period.

### 2.3 Electrical warranty

Endurequip warrants that electrical components, other than those defined as Wear Parts, of the Product are free from defects in workmanship and materials for the Relevant Warranty Period.

## 3. TRANSFERABILITY OF WARRANTY

- (a) The Warranties given by Endurequip are non-transferrable and are given only to the original Purchaser of the Product.
- (b) If the Purchaser parts with legal or beneficial title (or both) to the Product at any time during the Relevant Warranty Period then:
  - (1) The Relevant Warranty Period shall be deemed to have ended on the date on which the Purchaser first parts with legal or beneficial title to the Product; and
  - (2) The Warranties shall otherwise cease to be of any force or effect.

## 4. CLAIM PROCESS

### 4.1 Right to refuse

The Purchaser expressly acknowledges and agrees that Endurequip reserves the right to refuse claims which would otherwise be covered under this Warranty if the Purchaser fails to follow the claims process set out in this clause, the intention being that following the defined claim process is for the benefit of both the Purchaser and Endurequip in that the process allows Endurequip to deal with any claims by the Purchaser in a more and timely manner than would otherwise be the case.

### 4.2 Warranty claim

In the event that the Purchaser seeks to make a claim under one of the Warranties:

- (a) The Purchaser shall provide Endurequip with written notice of the Warranty claim as soon as possible (but, in any event, within fourteen (14) days) after discovery of the defect the subject of the Warranty claim, including with such written notice, where appropriate, photographic evidence of such defect and a copy of the invoice or sale docket evidencing the purchase of the Product by the Purchaser.
- (b) Endurequip reserves the right to require the Purchaser to freight or transport the Product or the relevant component to such location as Endurequip reasonably requires for the purposes of inspection by Endurequip, and all freight or transportation charges (including charges incurred in returning the Product or component to the Purchaser) shall be at the Purchaser's sole cost; and
- (c) Endurequip will, upon inspection and to the satisfaction of Endurequip that the cause is as a result of a defect in material or workmanship, pay to repair, repair or replace any part or parts which are required to rectify the defect.

## 5. LIMITATIONS OF LIABILITY

The Purchaser expressly acknowledges and agrees that, to the maximum extent permissible by law:

- (a) All implied conditions, warranties and undertakings are expressly excluded and except as provided in the Warranties;
- (b) Endurequip is not liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by Endurequip or any negligence of Endurequip, its employees or agents and the customer releases Endurequip from those claims;
- (c) Endurequip can deem the warranty void if the Purchaser of the Product fails to maintain the Product in accordance with Endurequip's written direction and Australian Standard AS/

## WARRANTY POLICY

Endurequip Hoists Pty Ltd ACN 607 530 736

NZS 2550.9:1996. It is the responsibility of the Purchaser to maintain adequate records that can substantiate that the Product has been maintained in accordance with Endurequip's written direction and Australian Standard AS/NZS 2550.9:1996;

- (d) Endurequip may deem the warranty void if the Purchaser of the Product fails to have the Product serviced or repaired by an authorised repairer using genuine parts;
- (e) The Purchaser must maintain the Product in accordance with the minimum maintenance requirement as detailed in the Maintenance Schedule of the Operator Manual, and must maintain documentary evidence of such maintenance (to be provided to Endurequip upon request);
- (f) The Warranties will be void if the Purchaser:
  - (1) Fails to maintain the Product in accordance with the minimum maintenance requirement as detailed in the Maintenance Schedule of the Operator Manual; or
  - (2) Is unable to produce, upon request by Endurequip, documentary evidence of such maintenance;
- (g) Repair or replacement under the Warranties does not extend the original warranty period; and
- (h) Claims made under these warranties shall be accepted only if the Product is within the Relevant Warranty Period and the cause of the defect was not due to:
  - (1) Improper adjustment or operation by the purchaser;
  - (2) Any modification of the Product which was not authorised in writing by Endurequip;
  - (3) Any misuse of the Product;
  - (4) Any use or operation of the product outside the physical, mechanical, electrical or environmental specifications of the Product;
  - (5) Inadequate or improper maintenance of the Product;
  - (6) Storage of the Product other than as set out in the Operator Manual; or
  - (7) A Force Majeure Event.

## 6. RISK, RELEASE AND INDEMNITY

### 6.1 Risk

The Purchaser assumes all risks and liability for the Product and the use, maintenance, repair and storage of the Product (including liability for injury to any person or damage to any property, whether direct or consequential but excluding liability to the extent caused by the Endurequip's negligence or wilful misconduct).

### 6.2 Release

The Purchaser releases and discharges Endurequip from all claims that the Purchaser has or may have against Endurequip, in relation to the Product, including in respect of:

- (a) any damage to property or death of, or injury to, any person caused directly or indirectly by the Product;
- (b) any claim against Endurequip in relation to the Product or the use or operation of it; or
- (c) any other thing in relation to which the Purchaser has assumed the risk or liability under clause 6.2.

The release in this clause applies irrespective of whether Endurequip provides training or commissioning in relation to the Product to the Purchaser.

### 6.3 Indemnity

The Purchaser must indemnify Endurequip and keep Endurequip indemnified against all claims, taxes, liabilities, losses and expenses incurred by Endurequip as a result of:

- (a) any damage to property or death of, or injury to, any person caused directly or indirectly by the Product;
- (b) any claim against Endurequip in relation to the Product or the use or operation of it; or
- (c) any other thing in relation to which the Purchaser has assumed the risk or liability under clause 6.3.

The indemnity in this clause applies irrespective of whether Endurequip provides training or commissioning in relation to the Product to the Purchaser.

### 6.4 Effect of indemnity

- (a) It is not necessary for Endurequip to incur any expense before enforcing its right to an indemnity under clause 6.3.
- (b) The Purchaser must pay to Endurequip on demand any amount payable under the indemnity contained in clause 6.3.