

# HTC VIVE Focus LIMITED WARRANTY

## Australia

**PLEASE READ THIS LIMITED WARRANTY CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS. THIS LIMITED WARRANTY CONTAINS A MANDATORY ARBITRATION CLAUSE WITH A CLASS ACTION WAIVER.**

**BY USING YOUR HTC PRODUCT OR ACCESSORY, YOU AGREE TO THE LIMITED WARRANTY, INCLUDING THE MANDATORY ARBITRATION CLAUSE AND CLASS ACTION WAIVER BELOW.**

**OUR GOODS COME WITH GUARANTEES THAT CANNOT BE EXCLUDED UNDER THE AUSTRALIAN CONSUMER LAW. YOU ARE ENTITLED TO A REPLACEMENT OR REFUND FOR A MAJOR FAILURE AND FOR COMPENSATION FOR ANY OTHER LOSS OR DAMAGE. YOU ARE ALSO ENTITLED TO HAVE THE GOODS REPAIRED OR REPLACED IF THE GOODS FAIL TO BE OF ACCEPTABLE QUALITY AND THE FAILURE DOES NOT AMOUNT TO A MAJOR FAILURE.**

**THE BENEFITS OF THIS WARRANTY ARE IN ADDITION TO ANY OTHER RIGHTS AND REMEDIES OF THE CONSUMER UNDER A LAW IN RELATION TO THE GOODS OR SERVICES TO WHICH THE WARRANTY RELATES**

**THIS PRODUCT IS FOR PERSONAL, NON-COMMERCIAL USE ONLY. WARRANTY COVERAGE IS VOID IF USED FOR COMMERCIAL OR NON-PERSONAL PURPOSES (INCLUDING BUT NOT LIMITED TO: RENTAL, PAY-PER-PLAY, ARCADE ... ETC.)**

## **DEFINITIONS**

The following definitions apply to this Limited Warranty:

1. **“Product”** means the VIVE Focus virtual reality system provided in the box at the time of original purchase from an authorized retailer or e-commerce channel and which consists of the head mounted display (“VIVE Focus Headset”) and the handheld controller (“VIVE Focus Controller”).
2. **“Accessory”** or **“Accessories”** means other secondary component(s) that are supplied with the Product at the time of sale and included in the box and which includes the USB Type-C cable and HTC Rapid Charger 3.0; provided that it was manufactured by or for HTC and purchased from an authorized retailer and can be identified by the “VIVE” or “HTC” trademark, trade name, or logo affixed to the component, if present, as originally supplied.
3. **“Warranty Period for Product and Accessory”** means twelve (12) months from the date You purchased the Product from an authorized retailer; or the date You received the Product after you purchased from an authorized e-commerce channel.
4. **“You”** or **“Your”** means the original retail or e-commerce purchaser and/or original end-user of the Product.

5. **“Normal Use Conditions”** means common end-user use under normal home conditions in accordance with the user instruction materials (User Manual as defined below) provided with the Product or Accessory or posted on-line.
6. **“User Manual”** means the user instruction materials and safety guide packaged with the Product or Accessory or posted on-line.

### **WHAT IS COVERED BY THIS LIMITED WARRANTY?**

During the Warranty Period HTC warrants that the Product or Accessory will be free from defects in material and workmanship if used under normal conditions in accordance with the user instruction materials packaged with the Product or Accessory or posted on-line.

This Limited Warranty is given only to You, and may not be sold, assigned, transferred, or given in full or in part to any subsequent purchaser or acquirer of the Product or Accessory or any other person.

### **WHAT IS NOT COVERED BY THIS LIMITED WARRANTY?**

This Limited Warranty does not apply other than to the Product or Accessory. It therefore does not apply to any non-HTC equipment or any software (e.g. software development kit (SDK) and android application package (APK) support) whatsoever, whether developed by HTC or a third party, even if intended or labelled as for use with the Product. Third party manufacturers, suppliers, or publishers may provide warranties for their own products and You may contact them directly for service.

**EVEN WITH RESPECT TO THE PRODUCT OR ACCESSORY YOU PURCHASED, THIS LIMITED WARRANTY SHALL NOT APPLY:**

1. if the Product or Accessory serial number, the date code, the water indicator, or the warranty seal (void label) has been removed, erased, defaced, or altered, or is illegible;
2. to any deterioration of the cosmetic appearance of the Product or Accessory due to normal wear and tear;
3. to consumable parts, such as AAA batteries, wrist strap, face cushion or protective coatings that are reasonably expected to diminish over time, unless failure has occurred due to a malfunction;
4. to malfunctions caused by the battery, if improperly installed, or if the seals of the battery or the battery pack is broken or show evidence of leakage or tampering;
5. to malfunctions caused by electrical surges or other electrical current problems that are not the fault of the Product or Accessory;
6. to use not in accordance with the user manual or not under Normal Use Conditions;
7. to rough handling; use outdoors; exposure to liquids; dampness or extreme thermal or environmental conditions or a rapid change in such conditions; corrosion; or oxidation;
8. to use for commercial purposes, as the Product is intended only for personal entertainment purposes;
9. to defects, conditions, or other issues damage caused by or resulting from to unauthorized modifications or connections or unauthorized opening, repair by use of unauthorized spare parts, or repair by an unauthorized person or location non-warranty repairs;
10. to physical damage to the surface of the Product or Accessory, including but not limited to cracks or scratches on the surfaces of the Product or Accessory, including any screen or lens;

11. to any computer or other product to which the Product may connect. HTC does not warrant that the operation of the Product or Accessory will be uninterrupted or error-free;
12. where the software loaded on the Product, including but not limited to the operating system and/or firmware, needs to be upgraded, if such updates can be loaded by You;
13. to any Product in which the operating system and/or firmware has been altered, including any failed attempts to alter the operating system, regardless of whether such modifications are authorized, approved, or otherwise sanctioned by HTC;
14. to malfunctions caused by unplugging any cable from the Product, or otherwise powering off the Product, or powering off your computer during the firmware update; or
15. to malfunctions caused by the use of the Product or Accessory with or connection of the Product to an accessory not approved or provided by HTC, or used in any way other than its intended use and where such defect is not the fault of the Product itself.

This Limited Warranty is valid and enforceable only in Australia and New Zealand where the Product and Accessories are intended to be sold. A Product or Accessory can only be returned to be repaired under this Limited Warranty in the country where it was purchased. Warranty service availability and response time may vary from country to country.

Service availability may also be the subject of a consumer guarantee or statutory warranty in the case of consumer sales.

#### **HOW DO I OBTAIN WARRANTY SERVICE?**

In the event of a perceived malfunction in the Product or Accessory, You should take the following actions:

1. Refer to the user manual and/or resources available at [www.vive.com](http://www.vive.com) in order to identify and correct the problem. **Please note that opening the Product or Accessory may cause damage that is not covered under the Limited Warranty.**
2. If the problem cannot be resolved by reference to the user manual and/or resources available at [www.vive.com](http://www.vive.com), You should contact the retailer from which You purchased the Product or Accessory, or visit [www.vive.com/support/](http://www.vive.com/support/) for further information about contacting HTC service center.
3. When You contact the retailer or HTC, please be sure to have the following information available:
  - a. The model and serial number of the Product or Accessory.
  - b. Your full address and contact information.
  - c. A copy of the original invoice, receipt or bill of sale for the purchase of the Product. You must present a valid proof of purchase upon making any claims pursuant to this Limited Warranty.

Upon completion of these steps, HTC will provide You with instructions regarding how and when the Product or Accessory should be returned. You may be responsible for costs in connection with the return of the Product or Accessory to HTC. Before returning the Product to HTC for warranty service, You must backup and delete your personal digital data stored on the Product storage media. HTC and HTC authorized service centers are not responsible for any loss of any kind of digital data stored on the Product storage media.

If You return the Product or Accessory during the Warranty Period and it satisfies the terms of this Limited Warranty, HTC or its authorized agent will, at its sole discretion, repair or replace it. Repair or replacement may involve the use of a functionally equivalent reconditioned Product or Accessory and/or parts. The Retailer or HTC will return the repaired or replacement Product or Accessory to You in good working condition. Any Product, Accessory, or parts or components thereof that are replaced under the terms of this Limited Warranty become the property of HTC.

If HTC repairs or replaces the Product, the repaired or replaced Product shall continue to be warranted for the remaining time of the original Warranty Period or for three (3) months from the date of repair or replacement, whichever is longer.

Rather than ask You to return the Product or Accessory, HTC may instead elect to supply user-installable parts directly to You to fulfill its Limited Warranty obligations. You in turn agree to return the replaced parts if requested by HTC.

HTC reserves the right to restrict warranty service to the country where the Product or Accessory was intended to be sold. HTC must be notified of a perceived malfunction during the applicable Warranty Period in order for You to be eligible for any remedy under the Limited Warranty. Do not ship Your Product or Accessory directly to HTC unless You are asked to do so when following the steps above. If You need to return the Product or Accessory for warranty service, the steps above must be followed.

#### **DISCLAIMER AND LIMITATION OF OTHER WARRANTIES AND RIGHTS**

TO THE EXTENT PERMITTED BY LAW, THIS LIMITED WARRANTY AND THE REMEDIES SET FORTH ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES, AND CONDITIONS, INCLUDING IMPLIED WARRANTIES.

TO THE EXTENT LEGISLATION PROHIBITS THE EXCLUSION OF IMPLIED WARRANTIES OR STATUTORY CONSUMER GUARANTEES, HTC LIMITS ITS LIABILITY FOR A FAILURE TO COMPLY WITH SUCH WARRANTY OR GUARANTEE TO ONE OR MORE OF THE FOLLOWING: THE REPLACEMENT OF DEFECTIVE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; THE REPAIR OF THE GOODS; PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED.

#### **LIMITATION OF LIABILITY**

EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, HTC SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR COMMERCIAL LOSS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, LOSS OF PRIVACY, OR LOSS OF CONFIDENTIALITY. NOTWITHSTANDING THE FOREGOING AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THE ENTIRE LIABILITY OF HTC AND ITS SUPPLIERS UNDER ANY PROVISION OF THIS LIMITED WARRANTY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT. THESE EXCLUSIONS APPLY EVEN IF HTC HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to You.

#### **AGREEMENT TO ARBITRATE DISPUTES**

**PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH HTC AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM HTC.**

**THE DISPUTE RESOLUTION PROCESS DESCRIBED BELOW IS SUBJECT TO ANY RIGHT YOU MAY HAVE TO PURSUE A RIGHT OR REMEDY IN YOUR LOCAL JURISDICTION IN RESPECT OF AN ALLEGED BREACH OF CONSUMER PROTECTION LAWS.**

**Binding Arbitration.** Except for disputes in which either party seeks to bring an individual action in small claims court, and any claims in respect of which you are entitled to pursue a remedy before a court in respect of a consumer transaction, you and HTC agree (a) to waive your and HTC's respective rights to have any and all disputes or claims arising from or related to this Limited Warranty or the sale, condition, use, or performance of the Product (collectively, "Disputes") resolved in a court, and (b) to waive your and HTC's respective rights to a jury trial. Instead, you and HTC agree to arbitrate Disputes through binding arbitration (which is the referral of a Dispute to one or more persons charged with reviewing the Dispute and making a final and binding determination to resolve it instead of having the Dispute decided by a judge or jury in court).

**No Class Arbitrations, Class Actions or Representative Actions.** You and HTC agree that any Dispute arising out of or related to this Limited Warranty, is personal to you and HTC and that such Dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action, or any other type of representative proceeding. You and HTC agree that there will be no class arbitration or arbitration in which an individual attempt to resolve a Dispute as a representative of another individual or group of individuals. Further, you and HTC agree that a Dispute cannot be brought as a class or other type of representative action, whether within or outside of arbitration, or on behalf of any other individual or group of individuals.

**Notice; Informal Dispute Resolution.** You and HTC agree that each party will notify the other party in writing of any arbitrable or small claims Dispute not less than thirty (30) days of the date it arises, so that the parties can attempt in good faith to resolve the Dispute informally. Notice to HTC shall be sent to HTC Arbitration Program Administrator, 308 Occidental Avenue, Suite 300, Seattle, WA 98104. Your notice must include (a) your name, postal address, telephone number, the email address you use or used for your HTC account or, if different or if you have no HTC account, an email address at which you can be contacted, (b) a description in reasonable detail of the nature or basis of the Dispute, and (c) the specific relief that you are seeking. Our notice to you will be sent electronically to the email address you use or used for your HTC account, where available, and will include (a) our name, postal address, telephone number and an email address at which we can be contacted with respect to the Dispute, (b) a description in reasonable detail of the nature or basis of the Dispute, and (c) the specific relief that we are seeking. If you and HTC cannot agree how to resolve the Dispute within thirty (30) days after the date notice is received by the applicable party, then either you or HTC may, as appropriate and in accordance with this Limited Warranty, commence an arbitration proceeding or, to the extent specifically provided for above, file a claim in small claims court or pursue a remedy before a local court in respect of a consumer transaction..

**Process.** Except for Disputes in which either party seeks to bring an individual action in small claims court or where a party seeks to pursue a remedy before a local court in respect of a consumer transaction, you and HTC agree that any Dispute must be commenced or filed by you or HTC within one (1) year of the date the Dispute arose, otherwise the underlying claim is permanently barred (which means that you and HTC will no longer have the right to assert such claim regarding the Dispute). You and HTC agree that the arbitration shall be:

1. where the Product was purchased in Australia, according to the Australian Disputes Centre (ADC) Rules for Domestic Arbitration operating at the time the Dispute is referred to ADC except insofar as those rules would be inconsistent with any part of this Limited Warranty, including without limitation the agreement to arbitrate. For claims of \$5,000 or less, You may decide whether You would prefer to have the arbitration decided based only on documents submitted to the arbitrator, or by a hearing in person or by phone. The arbitration shall be held in Melbourne and the state courts located in Victoria, Australia, have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. You may also have the right to litigate a Dispute in a small claims court located in your jurisdiction if the

Dispute meets the requirements to be heard in small claims court, and no attempt is made to exclude any right which you have in relation to commencing court proceedings locally in respect of a consumer transaction;

2. where the Product was purchased in New Zealand, according to the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc., except insofar as those rules would be inconsistent with any part of this Limited Warranty, including without limitation the agreement to arbitrate. For claims of \$5,000 or less, You may decide whether You would prefer to have the arbitration decided based only on documents submitted to the arbitrator, or by a hearing in person or by phone. The arbitration shall be held in Auckland, and the courts of New Zealand have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. You may also have the right to litigate a Dispute in a small claims court located in your jurisdiction if the Dispute meets the requirements to be heard in small claims court, and no attempt is made to exclude any right which you have in relation to commencing court proceedings locally in respect of a consumer transaction;

**Authority of Arbitrator.** Subject to any provision to the contrary as set out (in the case of Australia) in the *International Arbitration Act 1974* (Cth) and uniform State and Territory commercial arbitration acts, or (in the case of New Zealand) in the *Arbitration Act 1996* (NZ), the arbitrator will have the authority to grant any remedy that would otherwise be available in court, provided that the arbitrator's award may not exceed, in form or amount, the relief that a court in the same jurisdiction could order under the Limited Warranty; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by this Limited Warranty. Notwithstanding the foregoing, any decisions concerning arbitrability of a particular dispute, including but not limited to whether a class arbitration is permitted by this Limited Warranty, shall be resolved by a proper court in the jurisdiction of the Dispute, rather than an arbitrator. Any dispute concerning the enforceability of this agreement to arbitrate, or any part thereof, shall also be resolved by a proper court in Victoria, Australia (in the case of Products purchased in Australia) or (in the case of Products bought in New Zealand) Auckland, rather than an arbitrator.

**Rules of DADR bodies.** The rules of the Australian Disputes Centre (ADC) Rules for Domestic Arbitration (in Australia) and the Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc (in New Zealand) are available on their respective websites. By not opting out of this agreement to arbitrate as specified below, you either (a) acknowledge and agree that you have read and understand these rules, or (b) waive your opportunity to read these rules and any claim that the rules are unfair or should not apply for any reason.

**Applicability of Agreement to Arbitrate.** IF THE PROHIBITION ON CLASS ARBITRATIONS SET FORTH ABOVE IS DEEMED TO BE UNENFORCEABLE, THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY.

**RIGHT TO OPT OUT:** This agreement to arbitrate disputes will apply unless You notify HTC in writing postmarked no later than 30 calendar days of purchasing the Product or Accessory that You reject the agreement to arbitrate. You must include in Your notice of opt-out (a) Your name and address; (b) the date on which You purchased the Product or Accessory; (c) the Product model name; and (d) Serial Number of the Product. These numbers can be found on the Product packaging and on the Product. You must send Your written notice to HTC Arbitration Program Administrator, 308 Occidental Avenue, Suite 300, Seattle, WA 98104. No other form of notice will be effective to opt out of this agreement to arbitrate. If You opt out of the agreement to arbitrate, the Limited Warranty will still apply to You.

## **GENERAL PROVISIONS**

1. **Waiver of Jury Trial:** IF A DISPUTE BETWEEN YOU AND HTC PROCEEDS IN COURT RATHER THAN OR IN ADDITION TO IN ARBITRATION, YOU AND HTC UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION,

PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LIMITED WARRANTY.

2. **Governing Law:** Except as preempted by legislation, , the law of the State of Victoria (in the case of Products purchased in Australia) and New Zealand (in the case of Products purchased in New Zealand), without reference to their respective choice of laws principles, shall govern this Limited Warranty. Notwithstanding the foregoing, the laws of Your jurisdiction will apply to any tort claims and/or any claims under any consumer protection statutes and, without limitation, may entitle you to bring proceedings in your jurisdiction.
3. **Severability:** Except as specifically provided above, if any provision of this Limited Warranty is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the enforceability of the remainder of the Limited Warranty.