

**POLICY: FOREVER WARRANTY™ MATTRESS WARRANTY POLICY**

**EFFECTIVE DATE: DECEMBER 12, 2022**

**APPLICABLE PRODUCT(S):** [NECTAR MATTRESS](#); [NECTAR PREMIER MATTRESS](#); [NECTAR PREMIER COPPER MATTRESS](#); [NECTAR HYBRID MATTRESS](#); [NECTAR PREMIER HYBRID MATTRESS](#); AND, [NECTAR PREMIER COPPER HYBRID MATTRESS](#)

**WARRANTY COVERAGE – LIMITED WARRANTY TERMS:**

Your new Nectar Sleep mattress is covered by a Limited Nectar Sleep Forever Warranty™ (the “Warranty”) for the full period of the original owner’s (“you”, “your”) ownership and use.

**WHO IS COVERED:**

This Warranty is valid only for the original owner from the original purchase date, in Canada, of mattresses sold by Resident Home Canada ULC (“Nectar Sleep”, “we”, “us”, “our”) and purchased directly from Nectar Sleep or Nectar Sleep’s authorized retailers (the “Mattress”), and is non-transferable, unless otherwise required by applicable law. The “original owner,” for the purposes of this Warranty, is the first purchaser (billing addressee) or first recipient (shipping addressee), in Canada, of the Mattress directly from Nectar Sleep or a Nectar Sleep-authorized retailer. Please retain a copy of your receipt as proof of purchase and owner.

If the original owner sells or otherwise relinquishes ownership of the Mattress to another, this Warranty terminates, unless otherwise required by applicable law, and the subsequent owner accepts the Mattress “as is” and “with all faults.”

**WHAT IS WARRANTED:**

This Warranty extends only to Mattresses. Nectar Sleep warrants the Mattress in its original packaging sold to you against the defects in material and workmanship set forth below (“Defects”) for the full period of ownership by you and use by you commencing from the time your Mattress is purchased by you.

Replaced or repaired Mattresses are subject to the same Warranty as the original Mattress. For example, if you obtain a replaced or repaired Mattress, the warranty term of the replaced or repaired Mattress begins from the date of purchase of the original Mattress.

**THE FOLLOWING DEFECTS ARE COVERED:**

- Deterioration causing the Mattress to have a visible indentation greater than one and one half inches (1.5”) that is not associated with an indentation or sag which results from use of an improper or unsupportive foundation or bed base. Normal wear requires that a Mattress be continuously supported by a matching foundation or adjustable bed base with a proper bed frame sufficient to support the collective weight of the Mattress and any user(s).
- Any physical flaw in the Mattress that causes the foam material to evidence degradation, split or crack, despite normal usage and proper handling.
- Any manufacturing defect in the assembly of the Mattress cover.

**THIS MATTRESS WARRANTY DOES NOT COVER:**

- Any Mattress that has had the cover removed for any reason (removing the Mattress cover will void this warranty);
- Any damage to the Mattress due to environmental causes;
- Any Mattress which has been subject to misuse, neglect, accident or used in violation of instructions, including, without limitation, instructions to place the Mattress on a proper bed frame;
- A normal increase in softness of the foam pressure-relieving material which does not affect the pressure-relieving qualities of the Mattress;
- Comfort preference;
- Defects caused by physical abuse or damage to the structure and/or cover material of the Mattress, including, without limitation, burns, cuts, tears, liquid damage, or stains;
- Mattresses sold “as-is”, “preconditioned”, “reconditioned”, “used”, “returned”, “previously owned”, or any other similar wording indicating that the Mattress is not “new” or of “first quality”, or has previously been purchased or used by another consumer, unless otherwise required by applicable law; and,

– Any shipment of replacement Nectar Sleep mattresses outside of Canada.

**WARRANTY REMEDY:**

In the event of a Defect (as defined above), Nectar Sleep's sole liability and your sole remedies under this Warranty will be replacement of your Mattress with a brand new Nectar Sleep mattress of equal or greater value at no charge.

**YOUR RESPONSIBILITIES:**

In order for this Warranty to apply, the Mattresses must be used on a firm, solid-surface, such as a bed base that is structurally capable of supporting the weight of the Mattress and user(s) for the entirety of its use.

You must return your Mattress and show proof of original purchase. At Nectar Sleep's option, we may authorize you to provide photo evidence of defect in lieu of returning the Mattress.

**HOW TO MAKE A WARRANTY CLAIM:**

Resident Home LLC

Nectar Sleep Canada

100 Logistics Avenue

Jeffersonville, IN 47130

E-Mail: [support@nectarsleep.ca](mailto:support@nectarsleep.ca)

Phone: 1-888-863-2827

**WARRANTY LIMITATIONS, DISCLAIMERS, AND LIMITATION OF LIABILITY:**

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS IN PLACE OF OTHER RIGHTS, AND YOU MAY ALSO HAVE ADDITIONAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

*THE FOLLOWING CLAUSE DOES NOT APPLY TO QUÉBEC CONSUMERS.*

TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY,

EXPRESS, IMPLIED OR OTHERWISE ARISING AT LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OR CONDITIONS AGAINST HIDDEN OR LATENT DEFECTS, AND THOSE ARISING OUT OF A COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. IN SO FAR AS SUCH WARRANTIES OR CONDITIONS CANNOT BE DISCLAIMED, NECTAR SLEEP LIMITS THE DURATION OF SUCH WARRANTIES OR CONDITIONS TO THE SHORTER OF EITHER A) THE DURATION OF THIS WRITTEN WARRANTY, OR B) ANY MAXIMUM DURATION FOR IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS PROVIDED BY STATUTE. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION MAY LAST, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

*THE FOLLOWING CLAUSE DOES NOT APPLY TO QUÉBEC CONSUMERS.*

NECTAR SLEEP LIMITS THE REMEDIES FOR SUCH WARRANTIES AND CONDITIONS TO, AT NECTAR SLEEP'S SOLE AND ABSOLUTE OPTION, THE REPAIR OR REPLACEMENT SERVICES DESCRIBED HEREIN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS SET FORTH IN THIS LIMITED WARRANTY, IN NO EVENT WILL NECTAR SLEEP OR ITS SUPPLIERS BE LIABLE FOR PROCUREMENT OF SUBSTITUTE MATTRESSES OR OTHER PRODUCTS OR ANY LOSS OF PROFITS, LOSS OF REVENUE OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXTRAORDINARY, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE MATTRESSES OR THEIR USE BY YOU OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. THIS LIMITATION WILL APPLY EVEN IF NECTAR SLEEP HAS BEEN ADVISED OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. WITHOUT LIMITING THE FOREGOING, NECTAR SLEEP'S TOTAL LIABILITY WILL NOT EXCEED THE PURCHASE PRICE PAID FOR THE MATTRESS GIVING RISE TO

SUCH LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

**GOVERNING LAW:**

Unless you are a Quebec consumer, you agree that all matters relating to this Warranty, including, without limitation, its interpretation, construction, and any disputes hereunder, shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to its conflict of laws principles. If you are a Quebec consumer, Quebec law applies.

**DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION AND JURY WAIVERS:**

*Please Read This Provision Carefully. It Affects Your Legal Rights.*

THIS “DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION WAIVER AND JURY WAIVERS” PROVISION DOES NOT APPLY TO YOU WHERE PROHIBITED BY APPLICABLE LAWS IN YOUR JURISDICTION, INCLUDING APPLICABLE LAWS OF QUEBEC.

This Provision facilitates the prompt and efficient resolution of any dispute (e.g., claim or controversy, whether based in contract, statute, regulation, ordinance, tort – including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence – or any other legal or equitable theory, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below) that may arise between you and us. Effectively, then, “dispute” is given the broadest meaning enforceable by law and includes any claims against other parties relating to services or products provided or billed to you (such as our licensors, suppliers, dealers or third-party vendors) whenever you also assert claims against us in the same proceeding.

This Provision provides that, to the greatest extent permitted by applicable law, all disputes between you and us shall be resolved by binding arbitration. You hereby waive your right to litigate claims and all opportunity to be heard by a judge or jury in respect of this Warranty. To be clear, there is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this agreement and can award the same damages and relief as a court (including legal fees). You may, however, opt-out of this Provision which means you would have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). YOU AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION AND THAT YOU AND NECTAR SLEEP ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Pre-Arbitration Claim Resolution: For all disputes, whether pursued in court or arbitration, you must first give us an opportunity to resolve the dispute which is first done by emailing to us at [legal@residenthome.ca](mailto:legal@residenthome.ca) the following information:

- your name;
- your address;
- a written description of your claim; and,
- a description of the specific relief you seek. If we do not resolve the dispute within 45 days after receiving your notification, then you may pursue your dispute in arbitration. You may pursue your dispute in a court only under the circumstances described below.

Exclusions from Arbitration/Right to Opt Out: Notwithstanding the above, nothing in this Warranty shall be deemed to waive, preclude, or otherwise limit the right of either you or us to:

- Initiate and pursue court proceedings in small claims court if the dispute qualifies for initiation in small claims court;

- Pursue an enforcement action through the applicable federal, state, provincial, territorial or local agency if that action is available;
- Initiate and pursue court proceedings to seek injunctive relief in aid of arbitration or to enforce an arbitration award; or,
- Initiate and pursue court proceedings for an intellectual property infringement claim.

IF YOU DO NOT WISH TO RESOLVE DISPUTES BY BINDING ARBITRATION, YOU MAY OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN THIRTY (30) DAYS FROM THE ORIGINAL PURCHASE DATE OF THE MATTRESS BY PROVIDING US WITH NOTICE AS FOLLOWS (the “Opt-Out Deadline”). You may opt-out of this Provision by emailing us at [legal@residhome.com](mailto:legal@residhome.com) the following information:

- your name;
- your address; and,
- a clear statement that you do not wish to resolve disputes with us through arbitration.

Either way, we will not take any decision you make personally. In fact, we promise that your decision to opt-out of this Arbitration Provision will have no adverse effect on your relationship with us. But, we do have to enforce the Opt-Out Deadline so keep in mind that any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your dispute in arbitration or small claims court, as applicable.

Arbitration Procedures: If this Provision applies and the dispute is not resolved as provided above (Claim Resolution) either you or we may initiate arbitration proceedings. Any arbitration between you and Nectar Sleep will be governed by the Arbitration Rules of the ADR Institute of Canada, Inc. (“ADRIC”) and conducted by a sole arbitrator.

Nectar Sleep shall nominate an individual to act as an arbitrator. You shall, by providing notice to us in writing, either signify your acceptance of our nominee or propose an alternative nominee to act as arbitrator. If you fail to provide such notice within ten (10) days of receipt of notice of Nectar Sleep’s nominee for arbitrator (“Response Date”), you shall be deemed to have accepted our nominee for arbitrator. If you provide notice and

propose an alternative nominee to act as arbitrator, we may accept your nominee or reject such nominee and propose another nominee. In the event that the parties do not agree within ten (10) days of the Response Date on the individual to act as an arbitrator, then either party may ask ADRIC to make the required appointment. All issues shall be for the arbitrator to decide, including the scope of this Provision.

*Arbitration Award:* the arbitrator may award on an individual/personal basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal available at the seat of arbitration, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

*Seat of Arbitration:* the seat of arbitration shall be the city and province/territory associated with your billing address or shipping address. The venue and format of any arbitration hearing shall be as mutually agreed by you and us or, failing agreement, as determined by the arbitrator.

*Payment of Arbitration Fees and Costs:* so long as you place a request in writing prior to commencement of the arbitration, we will pay all arbitration fees and associated costs and expenses. But, you will still be responsible for all additional fees and costs that you incur in the arbitration which include but are not limited to legal fees or expert witnesses. In addition to any fees and costs recoverable under applicable law, if you provide notice and negotiate in good faith with us as provided in the provision above titled "Claim Resolution" and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable legal fees and costs as determined by the arbitrator.

*Class Action Waiver:* YOU AND NECTAR SLEEP AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL/PERSONAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED



CLASS OR REPRESENTATIVE PROCEEDING. Further, except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action or consolidated action) unless both you and we specifically agree to do so following initiation of the arbitration. If you choose to pursue your dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to you. You cannot be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

*Jury Waiver:* YOU UNDERSTAND AND AGREE THAT YOU HEREBY WAIVE THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT. In the absence of this Provision, you and we might otherwise have had a right or opportunity to bring disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that you would have if you went to court (e.g., the rights to both appeal and certain types of discovery) may be more limited or may also be waived.

*Severability:* if any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision whose remainder will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the dispute will be decided by a court in accordance with the "Governing Law" and "Jurisdiction" Provisions.

*Continuation:* Notwithstanding any provision in this Agreement to the contrary, we agree that if we make any change to this Provision (other than a change to the Notice Address), you may reject any such change by sending us written notice within 30 days of the change and require us to adhere to the language in this Provision as in effect immediately prior to the changes you rejected, and such language in this Provision shall survive, if a dispute between us arises.

**JURISDICTION:**

THIS "JURISDICTION" PROVISION APPLIES TO ANY DISPUTE NOT SUBJECT TO ARBITRATION.

Unless you are a Quebec consumer, any claim arising from, in connection with, or relating to this Warranty must be resolved before the Courts of the Province of Ontario, Canada sitting in the City of Toronto, and you hereby irrevocably submit and attorn to the jurisdiction of those Courts in respect of any such dispute. You and Nectar Sleep waive any objection to the laying of the venue of any such legal proceedings in Toronto, Ontario and you and Nectar Sleep agree not to plead or claim in such courts that any such action has been brought in an inconvenient forum. If you are a Quebec consumer, you may submit claims to the courts of Quebec or Ontario, as you prefer.

**GENERAL:**

It is the express wish of the parties hereto that the Warranty and all related documents, including notices and other communications, be drawn up only in English. *La volonté expresse des parties aux présentes est que la présente garantie / cette "Warranty" et tous les documents s'y rattachant, y compris les avis et les autres communications, ne soient rédigés qu'en anglais.*

**WARRANTOR:**

Resident Home Canada ULC