

## I. Scope, applicable law

1. All legal relationships between Erbe Elektromedizin GmbH (hereinafter "Erbe") and its business partners shall be subject to the General Terms and Conditions of Sale and Supply set out below, and with subordinate ranking German law, excluding the United Nations Convention on Contracts for the International Sale of Goods.
2. On accepting the offer the buyer acknowledges that these terms and conditions apply to this and any other subsequent business relationships to Erbe.
3. Any agreements which differ herefrom – even if they are set out in the buyer's order or have been agreed orally – will only form part of the contract if they have been expressly confirmed by Erbe in writing.

## II. Offers and offer documents

1. Erbe will not be bound by the terms of any contracts which are not based on a written offer submitted by Erbe until Erbe has issued an express written confirmation of order.
2. In the interests of technical and medical development Erbe reserves the right to modify design/construction and execution after an order has been accepted provided this does not unreasonably adversely affect the buyer's interests.
3. Offer documents may not be disclosed to competitors or their employees temporarily or permanently either in the original or as a copy without Erbe's prior written consent.

## III. Prices

Supplies and services which are delivered more than four months after the contract has been concluded shall be subject to the list price valid on the day of delivery.

All prices quoted are in the currency stated, ex works (EXW Incoterms 2010); the buyer bears the costs of packaging, freight, customs and insurance.

## IV. Delivery time, part shipments

1. If not expressly agreed upon any delivery time stated is not binding. If Erbe fails to meet an agreed binding delivery date the buyer may not invoke the consequences of default as set out in §§ 281, 323, 326 German Civil Code (*Bürgerliches Gesetzbuch*) unless it grants Erbe beforehand and in writing a reasonable extension of at least two weeks.
2. Unless otherwise expressly agreed, Erbe may supply in part shipments.

## V. Assembly and commissioning, liability

1. Erbe will on request erect and commission equipment and apparatus which it has supplied. Such work will be carried out by qualified employees of Erbe and be paid at the applicable hourly rates including travel costs. Travel and waiting times will be charged. The buyer shall provide Erbe's employees with any necessary auxiliary staff at its own cost.
2. Erbe shall only be liable for proper handling and assembling of goods supplied. Erbe shall only be liable for damage caused by Erbe employees to the extent that these losses arose directly in fulfilment of contractual duties and subject to the provisions of VIII.
3. The buyer shall provide any official permits required for erecting and operating the goods supplied by Erbe.

## VI. Acceptance>Returns

1. If the buyer refuses acceptance, Erbe may demand compensation for lost profit in lieu of contractual performance. The loss shall be deemed to be 15 % of the contract value unless the buyer proves that there was no loss or that the loss was substantially lower. Erbe reserves the right to prove that the loss is higher.
2. If Erbe agrees that accessories or equipment are to be returned to Erbe in addition to contractual and statutory warranty obligations, the buyer shall pay 15% of the net value for accessories and a fixed sum of EUR 130 net for equipment which is returned.
3. Sterile products are excluded from return.

## VII. Warranty and impairment of performance

1. The buyer shall inspect the goods without undue delay after delivery and if there is a defect it shall report the defect to Erbe within one week of receipt at the latest. If the buyer fails to report the defect in time, the goods shall be deemed to have been approved unless the defect was not identifiable during inspection. A defect which is not identifiable until later must be reported without undue delay after it has been discovered; otherwise the goods shall be deemed to have been accepted despite this defect.
2. The warranty period for delivered goods is 12 months after delivery. The warranty period is extended to 36 months for Erbe devices and subsystems (Item number beginning with "1"). Erbe shall repair or replace – at Erbe's choice - free of charge any parts which prove defective within this warranty period owing to circumstances which existed prior to transfer of risk including but not limited to defects in design or workmanship. Unless otherwise agreed, the quality of the

goods due under the contract shall be solely as set out in the product specifications of Erbe which were valid at the time the contract was concluded. Any parts which have been replaced become the property of Erbe.

3. The buyer shall only be entitled to claims associated with defects if the goods have undergone the necessary technical safety inspections and maintenance work by Erbe or by a party authorised by Erbe in accordance with the instructions for use.
4. The warranty period for parts replaced and for repairs shall be six months. This period shall run at least until expiry of the original warranty period for the goods supplied. The warranty period for defects in goods supplied shall be extended by the length of the period for which business was interrupted owing to the repair work.
5. If Erbe considers that the repair work must be carried out in its own production facilities the buyer shall send the goods in accordance with Erbe's instructions and at Erbe's cost.
6. If repair or replacement should definitively fail, the buyer may choose to either withdraw from the contract or reduce the purchase price.
7. Erbe will not accept warranty claims if repairs and other changes were made by the buyer or third parties acting on its behalf without Erbe's express written consent unless Erbe has not fulfilled its duty to remedy the defect or has wrongfully refused to do so. Erbe will not refund the costs of such repairs. Erbe will not accept liability for losses caused by abnormal operating circumstances, overloading or improper handling.

## VIII. Liability

Erbe shall be liable for claims of the buyer if (i) the loss is attributable to intent or gross negligence on the part of Erbe, its legal representatives or vicarious agents, (ii) a breach of duty on the part of Erbe, its legal representatives or vicarious agents led to bodily injury or damage to health, (iii) Erbe fraudulently concealed a legal or quality defect or to the extent that Erbe assumed a guarantee (Garantie) for quality of the product, (iv) Erbe has mandatory liability, for example under the German Product Liability Act (Produkthaftungsgesetz), or (v) the loss was attributable to at least negligent breach of material contractual duties on the part of Erbe, its legal representatives or vicarious agents; material contractual duties are those which are essential for due execution of the contract and on which the contractual partner can reasonably expect to be able to rely ("cardinal duties"). However, in the event of a breach of such cardinal duties owing to simple negligence Erbe's liability is restricted in amount to foreseeable damage typical of this type of contract.

All other liability of Erbe for claims for compensation for direct and indirect losses including concomitant or consequential loss, irrespective of legal grounds, is excluded.

## IX. Terms of Payment

1. Payments shall be due net within 30 days after date of invoice. If payments are not made by the above date they will accrue interest at a rate of 9 % above the respective base rate of the *Deutsche Bundesbank*.
2. Bills of exchange will be accepted in payment subject to prior agreement and subject to the buyer bearing any discount-related expenses. Payments may only be made to Erbe's representatives if Erbe has granted the representative written authority to collect.
3. Claims may not be offset against counter-claims which are disputed or which have not been ruled final and absolute by a court of law.

## X. Reservation of title

1. Erbe reserves title in the goods supplied until the purchase price, all ancillary claims including costs of any accessories and spare parts, and any non-warranty repairs or replacement parts have been paid in full. In particular, the parties agree that any replacement items or parts of the original goods will only be supplied subject to the above and the following terms and conditions.
2. Erbe will retain title in the goods supplied over and above the scope set out in X.1. until all older claims for services and supplies have been settled.
3. If the buyer acts in breach of contract, for example if the buyer is in default with payment, Erbe may repossess the goods without this constituting withdrawal from the contract provided that German consumer credit provisions do not apply.
- 4.a) The buyer may process, mix, combine or resell the goods in the ordinary course of business. The buyer may not dispose of the goods in any other way including but not limited to pledging or transfer by way of security as long as Erbe reserves title. Resale must be subject to reservation of title unless the third party pays immediately in cash. The buyer may not resell if it has discontinued payments. The buyer hereby assigns to Erbe all claims due to it from customers or third parties from resale irrespective of whether the goods supplied were sold subject to an agreement on retention of title. This assignment is for the amount billed for the goods supplied including all ancillary claims and any legitimate repair

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# General Terms and Conditions of Sale and Supply

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b) Erbe may demand that the buyer notify it of the assigned claims and the respective debtors without undue delay after sale and that the buyer provide Erbe with whatever data and documents are necessary to collect Erbe's claims even before they are due. Once such a claim is due, Erbe may notify the third-party debtor that the claim has been assigned and call upon it to make the payment to Erbe. Until such notification the buyer is authorised to collect the claims itself.

c) In all cases the buyer shall remit any money received from a third-party debtor to Erbe immediately, the amount of such remittance being the equivalent of the portion assigned.

d) If the buyer processes, combines or mixes the goods supplied, Erbe shall acquire title in the new item such that its share in the title shall correspond to the ratio of the amount billed for the goods supplied to the list retail price of the new item.

5. Erbe may insure the goods supplied against theft, machinery breakdown, fire, water and other damage at the buyer's cost and without prior notification if the buyer has not provided evidence that it has taken out such insurance itself.

6. If Erbe exercises its right of reservation of title and demands that the goods supplied be returned, the buyer has no right of retention with regard to the goods unless it is based on the same contractual relationship and the right of retention is undisputed or has been declared final and absolute by a court of law.

7. If the value of securities provided exceeds the amounts due to Erbe by more than 10 % of the marketable value of the securities, the buyer may request that securities to that value be released, whereby Erbe may select the securities to be released to the buyer.

#### **XI. Warranty and product liability for exports; indemnification**

1. Erbe's products comply with German construction and safety standards. Erbe does not accept liability for compliance with foreign safety requirements unless this has been expressly agreed in writing in an individual case. The risk, including the risk of any further transport, therefore lies with the buyer.

2. Any claims which the buyer may have against Erbe arising from joint and several liability, enrichment or product liability shall be based solely on substantive German law excluding foreign law with regard to the grounds, scope and quantum of such liability. Such liability shall be limited to foreseeable damages unless more extensive liability is mandatory under German law for intent or gross negligence.

3. If claims are made against Erbe by a third party for damages for which the buyer is responsible, Erbe may seek redress from the buyer and demand reimbursement of costs, including any legal defence costs.

#### **XII. Force Majeure**

Force majeure, including but not limited to floods and other acts of nature, fires, explosions, war, unrest, official measures (including embargoes and other governmental actions or regulations that would prohibit either party from ordering or delivering products or from performing any other aspects of the performance obligations) and other external events which have no operational link, are unforeseeable, unavoidable despite the extremely sensible application of due care to be expected shall release the parties from their performance obligations for the period of the disturbance and the scope of their implications. As far as can be reasonably expected, the parties shall provide whatever information is necessary without undue delay and adjust their obligations to the changed circumstances in good faith. If an event of force majeure lasts for more than eight weeks each party is entitled to rescind the contract.

#### **XIII. Place of performance, choice of law and place of jurisdiction**

1. Place of performance for all obligations of both parties shall be Tübingen, Germany.

2. The law of the Federal Republic of Germany shall apply excluding the United Nations Convention on Contracts for International Sale of Goods.

3. The exclusive place of jurisdiction for all disputes arising from transactions based on these General Terms and Conditions of Sale and Supply shall be Erbe's domicile (Tübingen). However, Erbe may also sue the buyer at the court which has jurisdiction for the buyer's domicile.

#### **XIV. Final provisions**

If any provision of these General Terms and Conditions of Sale and Supply should be or become invalid this shall not affect the validity of the other provisions.

Erbe Elektromedizin GmbH, Tübingen

April 2019