

General Terms and Conditions for Delivery and Payment

I. Scope, Applicable Law

1. The General Conditions for Delivery and Payment shown below shall apply to all legal relationships between the company Erbe Elektromedizin GmbH (hereinafter referred to as »Erbe«) and its business partners, supplemented by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
2. When the customer takes delivery of our services or goods this constitutes the customer's consent both to the present and to all future business relationships with Erbe.
3. Different agreements – even if these have been included in the customer's order or agreed upon orally – only become part of the contract if they are explicitly confirmed in writing by Erbe.

II. Quotations, Bids, Offers, Documentation

1. All offers which are not based on a written offer submitted by Erbe only become binding for Erbe after Erbe has explicitly confirmed the order in writing.
2. In the interest of continuing technical and medical development Erbe shall retain the right to alter the construction and the design after the order has been accepted and confirmed, provided that this does not unreasonably interfere with the interests of the customer.
3. Documents which form part of Erbe's offer, bid or quotation may not be relinquished or made temporarily available to Erbe's competitors/rivals or any of their employees, neither in the original nor as a copy, without the prior permission of Erbe.

III. Prices

The list price on the day of delivery shall apply for deliveries and services which are effected more than 4 months after conclusion of the contract.

All quotations in the currency declared are ex works, without packaging, freight charges, customs duties or insurance fees.

IV. Delivery Period, Delivery by Instalments

1. The delivery date stated is in principle not binding. In the event that the fixed date of delivery agreed upon as binding is exceeded, the customer is only entitled to invoke the consequences of delay laid down in §§ 281, 326 BGB (German Civil Code) if the customer has previously given Erbe a grace period of at least 4 weeks in writing.

Force majeure or events beyond Erbe's control - such as strikes and breakdowns of the plant - making the delivery impossible or rendering delivery more impractical shall entitle Erbe to postpone the shipment or cancel the order. In these cases the customer shall not be entitled to any compensation.

2. Unless expressly agreed otherwise Erbe is entitled to effect delivery by instalments.

IV a. Shipment, Transfer of Risk

Even if Erbe bears the shipping costs, risk of loss shall be transferred to the customer as soon as the shipment has left Erbe's facilities. Unless otherwise agreed in writing, Erbe shall have the right to choose the means of transport and applicable insurance. The customer, however, has to bear the costs for transport and insurance. If shipment is delayed for reasons beyond Erbe's control, risk of loss shall pass to the customer in connection with the note on readiness for delivery by Erbe. Erbe then shall have the right to charge the customer for storage expenses.

V. Installation and Putting into Operation, Liability

1. On request Erbe shall undertake to have the facilities and equipment installed and put into operation by its trained staff if the customer reimburses the travel expenses and the effective hourly rates of pay of the Erbe employees. Travel time and waiting periods shall be billed as hours of work. The customer must provide Erbe's staff with any auxiliary helpers required at the customer's own expense.

2. Erbe shall only be liable for the proper handling and installation of the articles delivered. Erbe shall only be liable for damages caused by Erbe employees, if these damages are directly connected to the fulfilment of the contractual obligations and are ascribable to intent or gross negligence.

3. Any official permits or authorization required for the erection and the operation of the items supplied by Erbe must be applied for and procured by the customer.

VI. Taking Delivery

If the customer should refuse to take delivery, then Erbe is entitled to demand compensation for loss of profit in lieu of performance of the contract. The damages shall be assessed as amounting to 30 % of the value of the order, unless the customer can furnish proof that no damages or much smaller damages resulted therefrom. Erbe also reserves the right to furnish evidence that far higher damages resulted.

VII. Warranty and Disruption to Performance

1. The customer must inspect the goods delivered immediately after they have been delivered and – in the event of any defect – must inform Erbe of any defect within one week of the goods having been delivered at the latest. If the customer does not inform Erbe, then the goods are considered as having been approved and all warranty claims shall be deemed waived unless the defect is of such a nature that it was not recognisable during the inspection. If a defect appears at a later date then Erbe must be informed without delay after the defect has been discovered, otherwise the goods will be considered as having been approved and all warranty claims shall be deemed waived.

2. All components which become unserviceable or whose use becomes severely impaired within 36 months after delivery must be repaired or replaced free of charge by Erbe if the components have become unserviceable due to circumstances which occurred prior to the passing of risk – in particular due to defective design or faulty workmanship; the choice between repair or replacement shall be at the reasonable discretion of Erbe. This does not apply however to expendable/consumer items. This shall only apply if Erbe or a party authorised hereto by Erbe has carried out the necessary technical safety inspections and maintenance work on the products in as far as this is specified in the instruction manual. The warranty period for operating materials, wear-and-tear items and accessories shall be limited to six months. Components which have been replaced become the property of Erbe.

3. In all cases the customer's right to make a claim based on defects is time-barred after 6 months from the date on which the customer has notified Erbe of the defect within the prescribed period, at the earliest however with the expiry of the limitation period in actions for breach of warranty.

4. The limitation period for breach of warranty for the replacement part and the repair is 3 months; the limitation period shall run at least until the original limitation period for the item delivered has expired. The limitation period for liability for defects of the item supplied shall be extended by the period during which operations were interrupted due to the necessity of rectifying the defects.

5. If Erbe is of the opinion that the repairs should be carried out in Erbe's own factory then the customer must dispatch the articles in accordance with Erbe's instructions and at Erbe's expense and have the articles shipped to Erbe.

6. If the repair or the replacement should repeatedly prove to be a failure, the customer shall be entitled to either withdraw from the agreement or to reduce the purchase price at its discretion.

7. The customer is not entitled to any other claim, in particular to claims for damages caused by defects in the merchandise supplied or by a breach of pre-contractual duty or by a breach of collateral duties, other than a breach of material contractual provisions (cardinal duties) or in the event of intent or gross negligence on the part of Erbe.

8. Repairs and other modifications which are carried out by the customer himself or by third parties without Erbe's express authorization shall terminate the warranty. The customer will not be indemnified for the costs of such repairs. Nor will Erbe be liable for damages caused by exceptional operating conditions, overload or improper handling.

9. The above stated warranty is given expressly in lieu of all other warranties, expressed or implied, including but not limited to warranties of merchantability and fitness for particular purpose,

and constitutes the only warranty made by Erbe. This warranty is void if repairs have been made by persons other than Erbe or unauthorised Erbe repair facility. Erbe's warranty does not extend to any products subject to (a) improper installation, modification or storage; (b) accident, damage, abuse or misuse; (c) upnormal or unusual operating conditions or applications; (d) operating conditions or applications above the rated capacity of the products; or (e) a purpose or application in any way different from that for which the products were designed. In no event will Erbe be liable for consequential or incidental damage due to a breach of this warranty or other obligations arising out of the purchase contract or otherwise, unless in case of the exceptions listed in VII.7.

VIII. Conditions of Payment

1. The net payment must be effected within 30 days of the billing date. Repairs, assembly, servicing and maintenance charges must be paid net within 30 days. If the above prescribed term of payment is exceeded then the customer must pay interest on the invoiced amount and the interest shall be 8 % above the current basic rate of interest of the German Federal Bank.

2. Bills of exchange are accepted in payment after prior arrangement and provided the customer shall take over the discount costs. Payments may only be made to Erbe's agents if Erbe has given them a written authority to collect.

3. The customer is not entitled to offset Erbe's claim for payment against a counterclaim if the counterclaim is contested or has not been recognized by declaratory judgment.

IX. Retention of Title

1. Erbe shall retain title to the articles supplied until the purchase price and all additional claims have been paid in full, including the costs of possible accessories and spare parts and repairs and replacement deliveries if these have been incurred.

In particular, the contracting parties do agree herewith that substitute deliveries of articles or parts of the original delivery, if these take place, shall be only on the basis of this agreement and subsequent agreements.

2. Erbe shall retain title to the articles supplied over and above the conditions referred to in item 1 until all earlier claims from deliveries or services have been settled. In accordance with the order of the deliveries or the invoicing of services and their payment the last payment made can result in the passing of title for all previous deliveries if with this payment all claims and additional claims for payment are satisfied.

3. Erbe is entitled to take back the articles delivered if the customer should act contrary to the terms of the contract, e.g. if the customer delays payment; this taking back does not, however, constitute a rescission of the contract unless the law on consumer credit shall apply.

4.a) The customer is entitled to process, mingle or combine the articles delivered in the ordinary course of business and to resell the articles.

The customer is not permitted to otherwise dispose of the articles, in particular the customer may not pledge the articles or give them as a security for debts as long as Erbe still retains title to the articles. Unless the third party immediately pays the amount due in cash, the articles may only be resold if Erbe shall continue to retain title to the article. If the customer suspends payment, the customer shall no longer be entitled to resell the article. The customer shall transfer all claims against the purchaser or third parties arising from the resale of the articles to Erbe herewith, irrespective of whether the article delivered is resold with or without authorization. The transfer of claims declared herewith shall correspond to the invoiced amount of the articles delivered, including all additional claims such as, for example, warranted repairs to the article.

b) After the article has been resold Erbe is entitled to demand that the customer shall inform Erbe without delay about the transfer of the claim and the party liable for claims; the customer must also provide Erbe with all necessary information for collection and surrender the corresponding documents prior to the date on which the debt to Erbe is due. After the debt has become due Erbe is entitled to inform the third party debtor of the transfer of claims and to request the third party debtor to make the payment to Erbe. In other respects the customer is entitled to undertake collection.

c) At all events the customer must immediately pass on the money received from the third party debtor up to the amount transferred to Erbe. If the customer processes, mingles or combines the articles delivered, then Erbe shall become co-owner of the new product up to the invoiced value of the articles delivered, including all additional calculated and legitimate claims.

d) If the customer processes, mingles or combines the articles delivered, then Erbe shall become co-owner of the new product: Erbe's co-ownership of the new product shall correspond proportionately to the invoiced value of the articles delivered compared to the list purchase price of the new article.

5. Erbe is entitled to insure the articles delivered against theft, machine failure, risk of fire, water or other damages at the customer's expense and without special prior notification, unless the customer has already taken out such an insurance policy and can furnish proof of this.

6. Should Erbe make use of its retention of title and demand the return of the articles delivered, then the customer has no right of retention, unless this right is based on the same contractual relationship.

7. If the value of the securities exceeds Erbe's claims by more than 50 %, then Erbe shall release a choice of collateral securities at the customer's request.

X. Warranty and Product Liability for Exports; Release

1. Erbe's products conform to German design and safety regulations; Erbe does not guarantee that the products are in accordance with foreign regulations unless the guarantee is expressly given in writing for every individual case.

Any further dispatch of the product is therefore at the customer's own risk.

2. The customer's right of recourse against Erbe based on joint and several liability, enrichment or product liability is determined by the merits of the liability claim, the extent and the amount of liability and is solely in accordance with German substantive law to the exclusion of the application of foreign law. Within these limits liability is restricted to foreseeable damages, unless German law prescribes a broader scope of liability due to intent or gross negligence.

3. If a third party shall claim damages from Erbe and the causation of these damages lies in the customer's area of responsibility, then Erbe is entitled to have recourse against the customer and also to demand reimbursement of Erbe's legal defence costs.

XI. Place of Performance and Venue

1. Place of performance for all obligations of both contracting parties is Tübingen.

2. Venue for all disputes arising from transactions based on these General Terms and Conditions for Delivery and Payment shall be the domicile of the defendant. However, Erbe is also entitled to file legal action against the customer at the court which is competent for Erbe (Tübingen).

XII. Final Provisions

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