

GENERAL TERMS AND CONDITIONS FOR MAINTENANCE WORK AND SERVICES

1. Scope of Application

Unless expressly otherwise agreed, these terms and conditions shall apply to repair work, maintenance work, inspections and improvements undertaken by ERBE Elektromedizin GmbH (hereinafter ERBE) and to modifications and other ancillary services for ERBE products ("Services"). The Services shall serve to restore or maintain operability, however, it may not always be possible to prevent an interruption to operability. ERBE Elektromedizin GmbH's General Terms and Conditions of Sale and Supply shall also apply. Terms and conditions of the customer shall only apply if ERBE has given its express written consent.

2. Services and place of performance

ERBE shall perform Services ordered by the customer to a professional standard. Unless the scope of such Services is otherwise agreed in the contract the scope shall include whatever measures are necessary to restore and preserve operability and availability of the product. Repair work cannot be carried out if this is precluded by the product design or if ERBE has officially stopped maintenance work for a product. Services will be carried out at the ERBE service centre in Tübingen. ERBE's field service team may on request also carry out Services on site. ERBE will provide a written record of the Services performed and the material used.

3. Remuneration and payment

The remuneration payable for the Services is as set out in the ERBE service price list which applies at the time the Services are performed. Any parts required and any carriage and packaging costs will be charged separately (as shown in the invoice; a standard charge will be made for consumables). All Services will be charged after they have been rendered. Invoices for Services, including both material and work, shall be payable net within 30 days after invoicing.

4. Estimates

ERBE will provide an estimate of the costs at the request of the customer or if the range of the expected cost of repair is likely to be the same as or more than the value of the product. If the customer requests an estimate and subsequently decides against the repair being carried out or continued ERBE may charge for any costs which it has incurred thus far.

5. Repair times and service dates

As soon as the technical and the commercial aspects of the contract are clear ERBE will commence repair work within a reasonable period. If a binding date has been agreed this shall be deemed to be the date on which the Services begin. The average time for repair work which is carried out on standard products in the Tübingen service centre can be expected to be around one calendar week. If circumstances such as force majeure, strike, lock-out, operating disruptions, shortages or material and energy delay or impair ERBE in fulfilling its obligation to perform the work, the time for completing the Services shall be extended accordingly. If the customer cannot be reasonably expected to accept this extension, it may request an equivalent product on a loan basis as a temporary solution (temporary replacement product).

6. Customer's duty to cooperate

The customer shall send ERBE the product or make it directly available to ERBE on site at a pre-arranged time so that ERBE can perform the Services. The customer shall provide ERBE's service personnel unsolicited with information on the problems which have occurred and any features specific to the product concerned. The customer shall inform the ERBE field service personnel of any safety and other regulations in force at the customer's premises before the Services are carried out and shall provide sufficient explanations. If ERBE has considerable idle (waiting) periods before starting or while working on the Services on site for reasons for which ERBE is not responsible, ERBE reserves the right to charge for such periods as working time.

7. Acceptance

7.1. Once the product has been returned, the customer shall issue acceptance of properly carried out Services without undue delay in as far as acceptance has been agreed or is prescribed by statute.

7.2. The Services shall be deemed to have been accepted if the customer does not issue notice of refusal of acceptance to ERBE within 30 days.

8. Warranty on Services

8.1. The warranty period for ERBE's Services shall be 12 months from the time when the Services are rendered or, if so agreed or provided for by statute, from acceptance.

8.2. Warranty shall comprise remedying defective Services and remedying or replacing defective material free of charge. If the customer cannot be reasonably expected to accept remedy or if the attempt to remedy the defect fails definitively, the customer may reduce the remuneration or revoke the contract.

8.3. Any problems which arise with a product which ERBE has repaired or inspected which are not attributable to defective performance on the part of ERBE, including but not limited to problems resulting from natural wear-and-tear, improper usage or other external influences, are not covered by this warranty.

8.4. If the customer asserts claims owing to defective performance it shall notify ERBE of such defects without undue delay after they have been discovered. The customer shall assert claims for damage caused in transport with the forwarder or parcel service without undue delay after the customer has received the product. To prevent or mitigate any loss the product concerned may not be used any further and must be made available promptly to ERBE so that ERBE can meet its obligations to remedy defects.

8.5. The warranty period shall not start to run from zero again following remedy except in cases of intent or gross negligence of ERBE.

8.6. If the inspection of the defect reported shows that the alleged defects are not covered by warranty, ERBE may charge for the inspection in as far as the customer is at fault.

9. Temporary replacement

The purpose of a temporary replacement product is to maintain product/equipment availability in the event of and for the duration of necessary maintenance work. Temporary replacement products are not provided with instructions for use or accessories such as leads, etc. because they are intended solely as a 1:1 replacement for the customer's equipment. They are intended to be used with existing accessories using existing instructions for use and documentation. The parameters for the settings, for software or equipment programs are not always consistent with those normally used by the customer. The customer must therefore check the functioning and the setting parameters before using the temporary replacement product. Temporary replacement products may not be passed on to third parties. Any losses or defects and wear-and-tear which have occurred during normal use are covered by the charge for use set out in the service price list. This also covers the inspection before the temporary replacement product is provided/despatched and after it has been returned. If the temporary replacement product is returned late ERBE may apply the charge for using such product per week commenced after the scheduled date of return. In some cases the charge for using the temporary replacement product may be waived or reduced if this has been agreed with ERBE before the product is sent (for example in the case of warranty claims). The customer has no right to retain parts or the entire temporary replacement product after ERBE has rendered the Services, irrespective of the legal grounds. In the event of loss or damage to the temporary replacement product resulting from improper use or negligence the costs of repair or, if necessary, of replacement shall be charged to the customer.

10. Liability

ERBE shall not be liable for claims for compensation for direct and indirect losses, including concomitant or consequential loss, irrespective of legal grounds. This shall not apply to claims of the customer if (i) the loss is attributable to intent or gross negligence on the part of ERBE, ERBE's legal representatives or vicarious agents, (ii) a culpable breach of duty on the part of ERBE, ERBE's legal representative 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, (iv) ERBE has mandatory liability, for example under the German Product Liability Act (*Produkthaftungsgesetz*), or (v) the loss was attributable to at least a negligent breach of material contractual duties on the part of ERBE, its legal representative 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.

11. Data protection

Neither the products themselves or the activity of ERBE's employees in rendering the Services constitute processing or access to personal data within the meaning of § 3 (1) German Data Protection Act (*Bundesdatenschutzgesetz*).

12. Applicable law, place of jurisdiction

The law of the Federal Republic of Germany shall apply excluding the United Nations Convention on Contracts for International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from transactions based on these General Terms and Conditions for Maintenance and Service of ERBE Elektromedizin GmbH shall be ERBE's domicile (Tübingen). However, ERBE may also sue the customer at the court which has jurisdiction for the customer's domicile.

13. Final provisions

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

ERBE Elektromedizin GmbH Tübingen
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