

Terms and Conditions

1. Scope of Agreement. All shipments, services, sales and quotations between ERBE USA, INC. ("ERBE") and the purchaser ("Buyer") are subject to the general terms and conditions of business contained herein ("General Terms and Conditions"), and receipt by Buyer of the General Terms and Conditions without immediate written objection thereto and/or acceptance by Buyer of an order of Products (as hereinafter defined) which is confirmed or accompanied by the General Terms and Conditions, shall constitute an acceptance by Buyer of the General Terms and Conditions and any additional terms and conditions of ERBE set forth on any attachment(s) hereto or on the reverse side hereof. Any additional or different terms and conditions contained in any response hereto by Buyer or in Buyer's initial offer shall be deemed rejected by ERBE without the need for further notice of rejection and shall be of no effect and shall not be in any circumstances binding upon ERBE, except as set forth in Section 18 herein. The General Terms and Conditions shall govern any such order and all future business transactions between ERBE and Buyer relating to the purchase and sale of goods manufactured by or for ERBE and any other related parts and/or accessories (hereinafter collectively referred to as "Products" or individually as a "Product"), even in cases where the General Terms and Conditions are not expressly re-agreed upon.

2. Acceptance of Order. Each order of Products shall not become effective and shall not be binding on ERBE until the earlier of (i) shipment by ERBE of Products conforming to such order or (ii) transmittal by ERBE of a written acceptance of such order to Buyer.

3. Cancellation; Indemnification. An order placed with and accepted by ERBE can be canceled by Buyer only with the prior written consent of ERBE and only upon terms that will indemnify ERBE for all losses incurred by ERBE associated with Buyer's cancellation, including but not limited to, the costs already incurred by ERBE in performance of ERBE's contractual duties and any profits which ERBE would have received had the contract been completed. If Buyer makes an assignment for the benefit of creditors, if a petition or other proceeding, voluntary or involuntary, is filed by or against Buyer under applicable bankruptcy, reorganization or other insolvency laws, if Buyer generally becomes unable to pay its debts as they become due, or if Buyer fails to remit payment to ERBE for Products in accordance with the terms hereof, ERBE may, at its option, cancel all deliveries of undelivered Products or any confirmed orders effective immediately by giving Buyer written notice of such cancellation.

4. Product Descriptions. All references in sales brochures, technical data sheets and offers as to size, weight, technical specifications, price and other details of the Products are approximate and shall not be binding on ERBE unless expressly incorporated in an accepted order. ERBE reserves the right, from time to time, to modify, in whole or in part, any one or more of the Products or specifications thereof, to substitute new products in lieu of any one or more of the Products, and to add new products to the Products, whereupon in each case the term of Products as used in this Agreement shall be deemed automatically to reflect such events.

5. Taxes. Prices quoted by ERBE for the Products do not include applicable sales, use, excise and similar taxes. In addition to the amount quoted by ERBE for the Products, Buyer shall pay all such taxes which under applicable statutes are required to be paid as a result of the sale to Buyer regardless of the party upon whom the obligation to pay is placed. Taxes may be included on ERBE's invoice with Products or may be separately invoiced at the discretion of ERBE; any such invoice shall specify each category of taxes which Buyer is required to pay.

6. Shipment; Installments. Buyer will give ERBE reasonable notice regarding Buyer's requirements for time and delivery of the Products unless otherwise specified in a writing signed by ERBE. Buyer understands and agrees that ERBE will use ERBE's reasonable efforts to ship the Products approximately on the estimated supply date set forth in an accepted order. ERBE ensures that the Products will be packaged and prepared for shipment to Buyer in a reasonable manner such as to prevent damage and shall comply with applicable regulations. ERBE shall not be responsible for any delays in shipment beyond ERBE's reasonable control but shall notify Buyer of any anticipated delays. It is expressly understood that ERBE may delay release of the Products to Buyer or Buyer's agents until such time as payments due, as set forth herein, have been received by ERBE. ERBE reserves the right to make delivery in installments unless otherwise expressly stipulated to the contrary in a writing signed by ERBE. Delay in delivery of any one or more installments shall not relieve Buyer of Buyer's obligation to accept remaining deliveries.

7. Payment. Payment terms shall be thirty (30) days from the date of invoice unless otherwise specified on the invoice. Invoices for equipment and materials shall be payable only in United States currency. ERBE may from time to time demand different terms of payment from those specified herein whenever it reasonably appears that Buyer's financial condition requires such change, and may demand assurance of Buyer's ability to pay whenever it reasonably appears that such ability is in doubt. ERBE may, upon making of such demand, stop production and suspend shipments hereunder. If, within the period stated in such demand, Buyer fails or refuses such different terms of payment, or fails or refuses to give adequate assurance of its ability to pay, ERBE may at ERBE's option treat such failure or refusal as a repudiation of any portion of an accepted order that has not been fully performed. In all events, time shall be of the essence with regard to Buyer's payment obligations to ERBE hereunder. Any amount not paid by Buyer when due shall accrue interest at the lower of eighteen percent (18 %) per annum or the highest legal rate allowed under applicable law. In addition, Buyer agrees to pay all reasonable costs and expenses of collection of amounts past due hereunder (including any interest thereon), including, but not limited to, actual fees and expenses of ERBE's attorneys, and other legal and court costs.

The foregoing rights of ERBE shall be in addition to, and not in lieu of, any other rights or remedies ERBE may have at law or in equity. With respect to amounts properly invoiced or otherwise payable hereunder, Buyer shall have no right of offset by virtue of any claim against ERBE, unless and until such claim has been finally adjudicated in favor of Buyer by a court of competent jurisdiction and such adjudication is not subject to appeal, or ERBE has acknowledged the validity and amount of such claim in writing.

8. Grant of Security Interest. Buyer hereby grants ERBE a security interest in the Products and all proceeds thereof to secure Buyer's obligation to ERBE. As a secured party, ERBE shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. To assist ERBE in protecting ERBE's interest, Buyer agrees to execute any and all documents necessary to perfect ERBE's interest, including all financing statements. Buyer further appoints ERBE as Buyer's attorney in fact for the purpose of executing all documents on Buyer's behalf which are necessary to perfect and maintain ERBE's security interest in the Products.

9. Carrier and Routing. Unless the parties agree otherwise, ERBE shall have the right to select the carrier(s) and routing of shipment. Products sold herein are sold EX WORKS (INCOTERMS in their applicable current version) ERBE's place of business in Marietta, Georgia, USA. Buyer assumes all responsibility for payment of freight, and all costs associated therewith, which freight charges and other costs are not, unless specifically set forth in a writing signed by ERBE, reflected in the prices quoted by ERBE. ERBE may, at ERBE's option, prepay freight and seek reimbursement from Buyer. Unless requested in writing by Buyer, ERBE will not insure the Products against loss during transit. If ERBE so insures any Products at Buyer's request, the cost of such insurance shall be the sole responsibility of Buyer.

10. Title and Risk of Loss. Title to and risk of loss in the Product shall pass to Buyer upon delivery of the Product by ERBE (or ERBE's agent or representative) to the carrier at the shipping point.

11. Warranties.

(a) EXCEPT AS PROVIDED HEREINBELOW, ERBE MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE PRODUCT(S) AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, SPECIFICALLY INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. ERBE warrants, for the applicable time periods set forth below, (i) that the Products will be packaged and labeled in accordance with applicable laws; (ii) that upon payment of the purchase price by Buyer to ERBE for the Product, ERBE shall convey good and merchantable title to Buyer and that the Products will be delivered free from any lawful lien, claim or encumbrance of any nature, kind or character, except as contemplated by this Agreement; (iii) the Products, when shipped, will comply in all material respects to any specifications referenced in the applicable accepted order, as modified by any order acknowledgement or confirmation issued by ERBE, and (iv) that the Products will be free from defects in material or workmanship for the period specified for the applicable Product. The applicable warranty periods for the Products are as follows:

- (i). Electrosurgical generators, for a period of two (2) years from the original date of sale.
- (ii). APC units, Erbokryo units, Water-Jet units and Lavage Pumps, for a period of one (1) year from the original date of sale.
- (iii). Used Electrosurgical generators, APC units, Erbokryo units, and Water-Jet units, for a period of one (1) year from the original date of sale, and used Lavage Pumps, for a period of ninety (90) days from the original date of sale.
- (v). All other reusable/non-disposable accessories for a period of ninety (90) days from the original date of sale.

Buyer acknowledges that any warranty period specified for the Products will commence on the original date of sale of the Product. If the Product is purchased as a new Product, the original date of sale of such Product will be the invoice date to Buyer. If the Product is purchased as a used or refurbished Product, however, the original date of sale of such Product will be the date of delivery of such Product to its original buyer. ERBE reserves the right from time to time to make available extended warranties to purchasers of designated Products. Any such extended warranty shall be subject to the terms and conditions offered to such purchaser, provided that ERBE confirms the applicability of such extended warranty to such Buyer in a writing signed by ERBE.

(b) This warranty shall not cover any failure caused, wholly or in part, by materials delivered from Buyer and incorporated in the Products or by changes or special features requested by Buyer or associated with drawings, blueprints or other technical data delivered by Buyer. This warranty shall apply only if the Products were operated, used and stored according to all safety, training and other instructional guidance provided to Buyer. This warranty shall not cover damage or failure caused, wholly or in part, by misuse, negligence, external electrical fault, accident, disaster, normal wear, modification, abuse, use for a purpose other than that indicated in the applicable product manual, lack of service, use with improper materials, or improper installation, application, service or operation. Buyer acknowledges that some of the ERBE Products are designed for use with ERBE accessories and parts as noted in the applicable product manual or literature. For products that indicate that they are designed for use

with ERBE accessories or parts, failure to use such ERBE accessories or parts may adversely affect the operation of the Product and may result in injury and/or undesirable patient outcomes, and in such instance, ERBE shall not be responsible for any costs or damages incurred as a result thereof. Buyer shall be responsible for technical support and service costs for any claim not covered by this warranty. In particular, ERBE has not authorized the use of non-ERBE APC probes in its proprietary VIO/APC 2- or ICC/APC 300-series Argon Plasma Coagulation Units. Since ERBE does not control the manufacture and/or the quality of non-ERBE probes, purchasers of non-ERBE APC probes cannot be assured that such probes function according to ERBE's specifications. ERBE shall not be liable under this warranty or otherwise if a purchaser has a problem or incident when ERBE APC units are or have been used with non-ERBE APC probes.

(c) Buyer shall make warranty complaints, if any, within the warranty period specified above for the applicable Product by notifying an ERBE representative of the defect in writing and obtaining a return authorization number ("Return Authorization Number") to be assigned by an ERBE representative within such warranty period. Buyer's failure to give ERBE written notice of any claim and to obtain a Return Authorization Number within the applicable warranty period shall constitute an absolute and unconditional waiver of such claim. Justified warranty claims shall only obligate ERBE to correct the defect by repairing or replacing the defective Product(s) at ERBE's sole option. Buyer shall, at Buyer's expense, return any defective Product(s) to ERBE to the location to be designated by ERBE. Buyer shall bear the expense of removal and reinstallation of any defective Product(s). ERBE shall, at ERBE's expense, return repaired or replacement Products to Buyer and shall have the right to select the carrier(s) and routing of shipment. At ERBE's sole option, in lieu of repairing or replacing a defective Product, ERBE may elect to refund to Buyer the amount paid by Buyer to ERBE for the Product, pro rated to reflect the period from delivery of the Product until receipt by ERBE of the warranty complaint as compared to the applicable warranty period for the respective Product.

(d) With respect to disposable accessories returned by Buyer in accordance with the Section 11(d), ERBE will issue a credit in the amount of the purchase price of such disposable accessories minus a restocking fee in the amount of twenty-five percent (25%) of ERBE's original price of such disposable accessories (not taking into account any applicable discounts) to Buyer. Prior to returning any such disposable accessories to ERBE, Buyer must obtain a Return Authorization Number from an ERBE representative. All freight charges for disposable accessories returned to ERBE shall be borne and paid in advance by Buyer. All such disposable accessories returned to ERBE must be in new, original condition, must be unopened and in original packaging, and must have a minimum shelf life of six (6) months remaining as determined by the expiration date of such disposable accessories. ERBE reserves the right to refuse to accept any disposable accessories not returned in accordance with ERBE's return policy, including, but not limited to, items unsuitable for resale, items returned after thirty (30) days from the date of invoice, special orders, products not in standard ERBE packaging, opened cases or units, or items returned without the prior issuance by ERBE of a Return Authorization Number. For the avoidance of doubt, the provisions of this Section 11(d) are applicable to orders of disposable accessories only and are not applicable to any other Products. No Product may be returned to ERBE except (i) in connection with a warranty claim submitted in accordance with Section 11(c) above or (ii) for disposable accessories returned in accordance with the terms set forth in this Section 11(d).

(e) IN ALL EVENTS, THE LIABILITY OF ERBE, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT WITH RESPECT TO WHICH ERBE'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL ERBE BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCT OR USE THEREOF OR IN CONNECTION WITH EITHER ERBE'S FAILURE TO DELIVER OR ITS LATE DELIVERY OF THE PRODUCT (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCT, LOSS OF REVENUES, AND LOSS OF PROFITS).

(f) Buyer acknowledges that the remedies provided herein are exclusive and in lieu of all other remedies available to Buyer at law or in equity.

12. Acceptance. Buyer shall inspect all shipped goods immediately following arrival thereof at the destination, and shall give written notice to ERBE within ten (10) days of the receipt thereof (i) of any claim that the Products are nonconforming, provided that a reasonable inspection should have revealed such nonconformity, (ii) of any shipping damage to such Products, or (iii) of any claim of shortage of Products. If Buyer shall fail to give such notice within such time period, the Products shall be deemed to conform to the terms of an accepted order, Buyer shall be deemed to have accepted the Products, and Buyer may not make any subsequent warranty claim that should have been revealed upon a reasonable inspection at the time of delivery.

13. Defaults. If either party should default in the fulfillment of any obligation or condition hereunder (other than defaults in the payment of money due from Buyer to ERBE hereunder, which defaults are subject to Section 7 herein), and such default is not cured within thirty (30) days after written notice specifying the nature of such default, then the non-defaulting party shall have the right to terminate an accepted order by giving notice of termination to the other. Such right of termination shall be in addition to, but not in lieu of, any other remedies that may be available at law or in equity.

14. Confidentiality and Nondisclosure. Except as required by law, Buyer shall not disclose any of the terms or conditions of an accepted order to any third party (other than a permitted successor or assign) for any reason whatsoever. All specifications, drawings, sketches, models, samples, designs, technical information or data, written, oral or otherwise furnished by or on behalf of ERBE shall remain the property of ERBE and shall be returned (together with all copies) promptly upon ERBE's request. Such information shall be treated as confidential, and shall not be used, disclosed or reproduced by Buyer, except as required in the course of performance under this Agreement. The obligations of confidentiality contained herein shall extend for a period of three years beyond the expiration or termination of an accepted order; provided, however that Buyer's obligations of confidentiality hereunder with respect to any such information which shall rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. For purposes of this Agreement, the confidentiality obligations embodied herein do not extend to any information which, at the time of disclosure, (i) is already known or independently developed by Buyer as evidenced by its written records; (ii) is in the public domain through no wrongful act of Buyer; or (iii) is received by Buyer from a third party who was under no legal obligation not to disclose such information. The parties acknowledge that the rights of ERBE hereunder and in addition to those rights ERBE may have under common law or applicable statutes for the protection of trade secrets.

15. Force Majeure. Under no circumstances shall ERBE be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, terrorist acts, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes beyond ERBE's control whether or not similar in nature to any of the foregoing.

16. Waiver. No waiver by either party of any breach of any of the terms or conditions contained herein shall be construed as a waiver of any succeeding breach of the same or any other term or condition contained herein.

17. Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

18. Entire Agreement. These General Terms and Conditions supersede all prior agreements between the parties with respect to the subject matter hereof and constitute the entire agreement and understanding between the parties covering the sale and purchase of the Products. Except for demands by ERBE under Section 7 above or other modifications as may be expressly accepted in writing by ERBE, no modification hereof shall be affected by telephone or orally or by the use of purchase orders, acknowledgments, acceptances or other forms at variance with or in addition to the terms and conditions contained herein. In the event of a conflict in terms between the preprinted terms on this form and the terms of any attachments hereto or specific terms added to an accepted order, the specific additional terms and/or the terms on the attachment shall control provided such terms were (i) added prior to acceptance by ERBE and (ii) specifically referenced and agreed to by ERBE in writing.

19. Arbitration. Any controversy or claim arising out of or relating to this Agreement, the breach thereof or the purchase, delivery or use of the Products in general as well as all subsequent dealings between the parties relating to the subject matter thereof, shall be submitted to and resolved by the American Arbitration Association ("AAA"), with such arbitration to be held in Atlanta, Georgia, USA, in accordance with the AAA's Commercial Arbitration Rules then in effect. Any award or decision rendered in such arbitration shall be final and binding on both Buyer and ERBE, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as provided to the contrary hereinabove, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator.

20. Assignability. Buyer may not assign these General Terms and Conditions, by operation of law or otherwise (excluding merger), without the express written consent of ERBE.

21. Governing Law. The rights and obligations of ERBE and Buyer shall be governed by the laws of the State of Georgia without regard to principles of conflicts of laws, and ERBE and Buyer shall have all rights and remedies accorded to them by the Uniform Commercial Code, except as such rights are modified by the terms hereof.