
TERMS OF USE – Erbe ASSIST and Support App

PREAMBLE

- (A) As an owner-managed family business, we have been developing, manufacturing and selling surgical systems for professional applications across a variety of medical fields. Surgeons, OR teams (Operating Room Team: the group of healthcare professionals who work together during a surgical operation.) and patients throughout the world rely on medical technology from Erbe Elektromedizin GmbH ("Erbe"). Our surgical devices and instruments are used in almost every specialist discipline. The foundation system is provided by electrosurgery, which is combined with other Erbe technologies such as cryosurgery or hydrosurgery. As a hybrid solution, this enables new and innovative medical applications.
- (B) Items sold by Erbe include the electrosurgical device VIO devices. They can exchange data with a Mobile Device (see no. 8) using a wireless connection (WiFi) or a **USB stick**. Use of the Erbe ASSIST App and/or Support App (together referred to as "the Apps") is a prerequisite for this type of data exchange and for using other functions provided by VIO devices.
- (C) These terms and conditions of use ("**Terms of Use**") govern the use of the Support App and Erbe ASSIST (the "**Apps**"), and the connected online interfaces and properties (e.g. websites and online services) as well as other related services available to users of the App (collectively the "**Digital Services**") provided by Erbe Elektromedizin GmbH, Waldhoernlestr. 17, 72072 Tübingen, Germany ("**Erbe**"). The terms "you" mean you as user of the Digital Services.
- (D) Your acceptance of, and compliance with, these Terms of Use is a condition to your use of the Digital Services. By entering into these Terms of Use, you acknowledge that you have read, understand, and accepted all terms and conditions contained within these Terms of Use.

1. SCOPE

- 1.1 These Terms of Use are applicable for the following two applications:

Support-App: This application enables users to manage and configure user-specific settings, update the device, and manage chrono data (device usage data) for **VIO 3**.

Erbe ASSIST: This application enables users to manage and configure user-specific settings for **VIO 3n** and **VIO Seal**.

- 1.2 These Terms of Use shall apply as a supplement to the Terms of Use provided by App Store Operators. In the event of a discrepancy, these Terms of Use shall take precedence over those of the App Store Operators with regard to the relationship between Erbe and the respective user. The App Store Operators are nonetheless entitled to assert the rights in respect of the user, which arise in connection with these Terms of Use, directly against the user.

2. PURPOSE

- 2.1 These Terms of Use are concerned with the nature and scope of use of the apps on the part of the user. Amongst other things, the Apps enable users to access information about VIO devices, define custom

configurations, download and use public configuration profiles, as well as avail of the portability of configuration profiles and a better, more efficient service from Erbe.

- 2.2 Erbe provides the Apps "as is". No assurance is given with respect to features that are not expressly mentioned in this document or in the product description prior to download. Erbe is not obliged to provide updates or upgrades for the Apps or to adapt the Apps in any other way in line with any hardware or software modifications (in particular, operating systems).
- 2.3 Erbe shall enable use of the Apps in the context of the current level of technology. Erbe reserves the right to temporarily restrict access to the Apps or to their usage in part or in full, should this be required with regard to capacity limits and server security or integrity, or in order to carry out technical procedures, and where this facilitates correct or improved provision of the services (e.g. in the case of maintenance work).
- 2.4 Installation and usage of the Apps is free of charge.

3. REGISTRATION AND VERIFICATION

- 3.1 The Apps are aimed at a select group of users. As VIO Devices are medical products, users of the Apps should have particular specialist knowledge of handling products of this kind. The Apps are therefore aimed exclusively at physicians and at specialist technical and medical personnel in hospitals, medical practices and comparable facilities. The Apps can also be used by medical advisors or service technicians.
- 3.2 To use the Apps, the user must register through Erbe's unified login platform ("Erbe Connect") (Refer to the Terms of Use of Erbe Connect: https://en.erbegroup.com/fileadmin/user_upload/documents/Terms_of_Use/Terms_of_use_EN.pdf)
- 3.3 Following registration, the Registration Data of the user is verified with regard to plausibility and authorization. Depending on the location of the user, this verification process may take place directly at Erbe, at an affiliated company, or at a contracted specialist dealer for Erbe products, as only the corresponding local organizations have the appropriate knowledge and information to perform verification.
- 3.4 Following completion of verification, the user receives an email regarding the decision that has been taken by Erbe regarding authorization. If the decision regarding authorization is positive, the Usage Relationship begins, and the user can log in through Erbe Connect. Erbe reserves the right to reject registration without explanation. Erbe also reserves this right in respect of future cases of authorization verification.

4. RIGHT OF USE

- 4.1 The Apps are distributed independently of the sale of VIO devices. Purchasing a VIO device does not imply a right of use or any other rights with regard to the Apps. VIO devices can be operated independently of the Apps. The Erbe General Terms and Conditions of Sale and Delivery shall apply to the acquisition of VIO devices.
- 4.2 On commencement of the Usage Relationship, Erbe grants the user the right to install and use the Apps, which, in accordance with these Terms of Use, is restricted to the duration of the Usage Relationship, and is non-exclusive, personal and non-transferable, applicable internationally, and may not be sublicensed. The user is not entitled to obtain unauthorized access to, or to make use of the apps functions that have not been activated for his/her use.

5. OBLIGATIONS OF THE USER

- 5.1 The User undertakes to only provide information that is truthful (i.e. also up to date) during registration. The user is obliged to treat his/her Login Data as confidential, not to pass it on to third parties, and to keep it protected against access by third parties. In particular, the user must inform Erbe immediately, and immediately change his/her Login Data, should there be reason to suspect that his/her Login Data has become known to third parties. Registered users must also ensure that the Registration Data that they entered during registration is always up to date.
- 5.2 The User is not entitled to copy either in whole or in part, modify, distribute, sell, lease or rent out the Apps. Furthermore, reverse engineering of the Apps or extraction of the source code is prohibited. Exceptions are applicable only insofar as these are legally permissible or where written consent has been provided by Erbe.
- 5.3 When using the apps, the user may not
- transgress accepted moral standards;
 - violate industrial and intellectual property rights, personality rights, rights of ownership or other rights of third parties;
 - distribute content containing viruses, Trojan horses or other malware;
 - enter, save, or pass on illegal content or patient information, or links to content of this kind; or
 - pass on advertisements, spam emails, misleading information or false information.
- 5.4 The user himself/herself is responsible for ensuring a suitable Internet connection. The user is also responsible for observing the system requirements necessary for using the apps, in particular with regard to the operating system that he/she uses.
- 5.5 Where the user is free to name data as he/she deems fit, e.g. copied user sets (User profiles), the user must name this data in such a way that no personal information is contained in the name. Erbe reserves the right to assign a different name.

6. SECURITY

6.1 Verification of the Right of Use

Login and user credential management are handled under Erbe Connect. Please refer to the Terms of Use of Erbe Connect. https://en.erbegroup.com/fileadmin/user_upload/documents/Terms_of_Use/Terms_of_use_EN.pdf

6.2 Viruses

In spite of corresponding efforts and controls on the part of Erbe with a view to keeping the apps free from viruses, Erbe does not offer any guarantee in this respect. Prior to and during use of the apps, the user must therefore, for his/her own protection and in order to prevent the apps from becoming infected with a virus, take appropriate security precautions, in particular the installation of a recognized and up-to-date virus scanner.

7. RIGHTS

- 7.1 The user is entitled to use the data available in the Apps. Using the Apps does not grant the user any intellectual property rights or industrial property rights with respect to the data in the Apps. Erbe will retain exclusive rights to access, use, and control all data obtained from VIO devices, as well as any data

stored on the endpoints running the apps, including, without limitation, any content created by the user ('User-Generated Content')

- 7.2 With respect to User-generated Content, the user, at no extra cost, grants Erbe the irrevocable, non-exclusive, transferrable right, which may be sub-licensed and is unlimited in terms of duration, location and content, to use User-Generated Content for its own purposes, make User-Generated Content available to selected persons or to the public as well as – where required – to save, reproduce and edit this content, and in particular to use it for the development, improvement and sale of Erbe products. Where ERBE creates databases in this context, Erbe shall be considered the manufacturer as laid down in § 87a Para. 2 of the German Copyright Act (UrhG).
- 7.3 The user shall ensure that he/she is entitled to grant the rights mentioned above to Erbe. The user himself/herself is directly liable with respect to third parties in the event that he/she is deemed responsible for violating the rights of such parties. In the event of justified claims by third parties against Erbe arising from an infringement of this kind, the user shall be obliged to release and discharge Erbe in full.
- 7.4 The apps are protected by copyright law. The user shall not be granted any rights of any kind beyond the Rights of Use that have been expressly conferred upon the user within these Terms of Use, in particular with respect to brand names, elements of branding or Erbe logos or other naming rights or industrial property rights. Legal notices that are shown in the Apps may not be removed, camouflaged, or modified.

8. DEVICE COMPATIBILITY

- 8.1 Erbe ASSIST is available in a Windows version and runs on PCs/notebooks. The Support App is available in Windows and iOS and runs on PCs/notebooks and Apple iPad ("Mobile devices"). Use of the Apps is prohibited on Mobile Devices on which the user or a third party has removed usage restrictions imposed by the respective manufacturer as standard (known as "jailbreaking").

9. RIGHT OF MODIFICATION

The Apps are non-binding offer without obligation. Erbe expressly reserves the right to modify or supplement the Apps in part or in full and without prior notice in future versions, or to discontinue them on a temporary or permanent basis.

10. TERMINATION OF THE USAGE RELATIONSHIP

- 10.1 Erbe reserves the right to terminate the Usage Relationship at any time and without explanation. This shall apply in particular should the user violate individual provisions of these terms of Use.
- 10.2 With the exception of the cases previously mentioned, the Usage Relationship between Erbe and the user shall end with the discontinuation of the Support App offer (see no. 8.1) or with cessation of the user's authorization.
- 10.3 Termination is carried out by disabling the user's Login Data for the App. Once Erbe has disabled the Login Data, the user can no longer log in to Apps.

11. LIABILITY

- 11.1 Erbe does not offer any warranty with regard to availability, reliability, functionality or suitability of the apps for the user's purposes.

- 11.2 Erbe makes every effort to compile the information provided in connection with the apps with the greatest possible care and to keep it up to date. Nevertheless, Erbe does not offer any warranty with regard to the current relevance, accuracy, quality or completeness of the information provided.
- 11.3 Erbe expressly draws attention to the fact that the user himself/herself is responsible for backing up his/her data. He/she must ensure that appropriate data backup mechanisms are in place in order to prevent the loss of data or to minimize it as far as possible.
- 11.4 As the apps is provided free of charge, liability on the part of Erbe in connection with the use of the apps is excluded, except in the case of intent and gross negligence.

12. FINAL PROVISIONS

- 12.1 This contract and its interpretation shall be subject to the laws of the Federal Republic of Germany to the exclusion of conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 12.2 Should individual provisions of these Terms of Use be deemed legally invalid, the remaining provisions shall nevertheless remain binding. Invalid provisions shall be replaced by statutory provisions, where available.
- 12.3 Any other agreements must be made in writing. In the event that the user runs a business, is a legal entity in accordance with public law, or is a special fund under public law, the place of fulfillment and sole court of jurisdiction for all present and future claims arising from or in connection with the use of the apps is Tübingen, Germany.
- 12.4 The user can view the Terms of Use and the Data Privacy Policy in the apps at any time.

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