

Grant of an additional voluntary manufacturer's guarantee

ERCO GmbH, Brockhauser Weg 80-82, D-58507 Lüdenscheid, registered under HRB 3922 (hereinafter referred to as "**ERCO**"), gives a

five-year manufacturer's guarantee for products manufactured by ERCO (hereinafter referred to as "**ERCO products**")

to the first purchaser buying the ERCO product ex works or ex ERCO distribution company (hereinafter referred to as "**customer**"), which guarantee is subsequent to the statutory warranty under the relevant law applicable to the purchase agreement and is granted according to the terms and conditions set out hereinafter. It is hereinafter briefly referred to as "**guarantee**".

What does the guarantee include and how long is the guarantee period?

- ERCO, as of the date of delivery by ERCO 1st January 2018, gives the customer the present manufacturer's guarantee for ERCO products which is subsequent to the statutory warranty to which the customer is entitled against the seller. This guarantee takes effect after expiry of the customer's statutory warranty rights against the seller and exists independently of any other statutory liability such as liability under the Produkthaftungsgesetz (German Product Liability Act) or liability in all cases of intentional or grossly negligent conduct, injury of the life or limb or health by ERCO or its organizational distribution units. These rights as well as the warranty rights to which the customer is entitled under the purchase agreement are neither excluded nor restricted by the present guarantee nor does the present guarantee create any such rights.
- ERCO warrants to the customer that ERCO Products are free of defects in material, manufacturing and constructional defects ("Material-, Herstellungs-, Konstruktionsfehler"). For this, the state of the art applicable at the time of manufacturing serves as the benchmark to be met. The product flaw which has caused the defect must have existed at that point in time already. This guarantee does not grant claims to compensation of consequential damage or product liability claims; such claims only exist under the mandatory statutory provisions.
- This guarantee only pertains to ERCO products with proven defects in material or manufacturing or constructional defects (referred to hereinafter as "**defective products**") that have failed or are inoperable as a result of such defect (referred to hereinafter as "**guarantee claim**"). In particular, the guarantee does not cover any suspected defects.
- The present guarantee takes effect and runs from the day when the warranty to which the customer is entitled under the purchase agreement in the context of the first delivery of the ERCO

product has expired, subject to the other conditions to be fulfilled according to the present guarantee certificate. The guarantee period **ends no later than five years after the day of the first delivery** of the product by ERCO.

- The guarantee period is **not** extended in the case that guarantee services are provided in the context of this guarantee or the statutory warranty; in particular, it is not extended in the case of repair or substitution. These cases do not restart the guarantee period either.

Which measures does ERCO take under the guarantee and which not?

- If a guarantee claim is asserted, ERCO is free in its sole discretion to either repair the product or deliver a substitute or refund the purchase price to the customer. For such purpose, ERCO, with the prior consent of the customer, may inspect the defective product on site by itself or through a duly qualified craftsman and, where possible, have the product repaired. In this case, the guarantee includes gratuitous supply of the required spare parts. If ERCO decides to have the product repaired in the factory, ERCO bears the costs incurred for spare parts and own labour costs. In this case, the customer is obliged to send the defective product to ERCO.
- In the case of substitution, ERCO replaces the defective product by a non-defective product of the same kind, the same quality and the same type. If the product in question is no longer manufactured at the time when the defect is reported, ERCO is entitled to deliver a similar product.
- If ERCO decides to refund the purchase price and confirms this in writing, the customer is obliged to return the defective product and ERCO will refund the purchase price to the customer.
- If the defect of the product did not exist at the time of delivery already, ERCO will decide from time to time whether to remedy the defect as a gesture of goodwill and fair dealing ("Kulanz"). However, in this case, the customer is not entitled to any rights under this guarantee.
- ERCO, due to product ageing processes, does not warrant that substituted or repaired products fully conform to and fit in the existing installations as regards surface appearance and/or photometric features (such as luminous colour, luminous flux etc.).

What are the conditions underlying this guarantee?

- The guarantee applies exclusively on the condition that defective products are used according to the prescribed product and application specifications (data sheet, product brochure and the like) and were properly installed (according to the installation/assembly instructions delivered with the product) and commissioned. The applicable limits for operating/ ambient temperatures and supply voltage must be observed at all times. The defective product must not be exposed to any mechanical and/or electrical and/or chemical stress which is contrary to its designated use.

- The warranty period under the purchase agreement between the customer and his supplier must have expired. The customer is obliged to first and foremost pursue the warranty claims to which he is entitled.

How do you assert a guarantee claim?

- The customer is to assert the rights under this guarantee by notice in text form ("Textform" as defined by German civil law) within the guarantee period granted by the ERCO distribution company from which the customer has purchased the defective product. The customer may further only claim the guarantee on the condition that he has given notice of the defect within 30 (thirty) days from when he became aware of the defect or could reasonably be expected to become aware of the defect ("hätte erkennen müssen").
- The burden of proof that the guarantee period has not yet expired lies with the customer (e.g. by presentation of the delivery note by the customer). If the customer fails to present evidence of delivery, ERCO is entitled to determine the date of manufacture as the date of commencement of the guarantee period.

This guarantee does not include the following:

- Failure of wear-and-tear parts such as seals due to wear and tear or failure of analogue bulbs and illuminants etc.;
- Failure of breakable parts such as glass, bulbs and illuminants, due to breakage or mechanical stress;
- Failure of expendables such as batteries, due to consumption;
- Failure of parts subject to ageing (such as discolouration of substances, change of colours, discolouration of coatings and embrittlement of plastic products), due to ageing;
- LED ageing: Our data sheets for the different products contain all relevant technical data – especially regarding the LED ageing behaviour or LED colour shifts that are due to and depend on their operating time. Ageing and colour shifts that are indicated therein are not covered by the manufacturer's guarantee. The luminous flux and the power of a new LED product are subject to a tolerance of +/- 10%.
- Settings resp. parameterizations of installations that change due to wear and tear, ageing, fatigue or dirt;
- Minor deviations of the ERCO products from the target quality that do not impair the serviceability of the product;

- Operating and handling errors, damage caused by aggressive environmental impact, chemicals, cleaning agents;
- Failure of ERCO products that is due to the assembly, installation, transport or test run (such as operation with an on-site current generator) of the purchased item;
- Luminaries with analogue bulbs or illuminants such as QT, HIT, TC T, etc.; and, where applicable, the operating devices/transformers required for the operation of these analogue lamps, that are available separately;
- Light control systems and their components (such as servers, dimming components etc.)
- Consequential damage (such as damage to property or pecuniary loss) incurred as a result of the defective product;
- All ancillary costs incurred in connection with defect remedy (such as assembly and disassembly, transport of the defective product and the repaired product or new product, disposal, travelling time, lifting devices, scaffolding, etc.); these costs are borne by the customer.
- Software and firmware errors, software bugs or software viruses;
- Required services, if any, such as maintenance, servicing, cleaning, recommissioning, software updates etc.;
- Spare parts or separately delivered components of the products; resp. consequential damage caused by improper handling or use of the said spare parts/components contrary to their designated purpose;
- Repairs ordered by the customer.
- The guarantee does **not** apply to commodities that were not manufactured by ERCO.

What does your guarantee cause to be forfeited?

Protection by this guarantee will be forfeited

- if the products were assembled, installed, maintained, repaired or serviced by persons that are not duly qualified;
- if defects were caused by the assembler/ installer or third parties;
- if defects are due to intentional damaging – e.g. vandalism;
- if defects are due to improper assembly, installation or commissioning;
- in the case of missing or improper maintenance;
- if products are or were not used according to their designated purpose; given the varying power supply systems and licensing regulations, this includes but is not limited to the use of luminaries in a country not provided for in the purchase agreement;

- if damage was caused by force majeure or act of God, natural disasters, e.g. by flood, fire or frost;
- if products are changed or repaired without the prior written consent of ERCO.

Which is the legal framework otherwise applicable to this guarantee?

- This guarantee is governed by the non-harmonized German substantive law.
- Guarantee claims asserted against the ERCO distribution company within the guarantee period or otherwise in due time become **time-barred** after expiry of six months from the day when the claims were asserted (receipt by post by the ERCO distribution company).
- The court having subject matter jurisdiction and local jurisdiction over the territory of 58507 Lüdenscheid will decide on all disputes arising out of this guarantee.

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