

## STANDARD TERMS AND CONDITIONS OF SALE - Version November 2021

### Article 1. Field of application of the Standard Terms and Conditions of Sale

1.1 These Standard Terms and Conditions of Sale ("T&Cs") apply with no restriction or qualification to all quotes, offers and sales from Effbe France SAS ("Seller" or "Effbe") to all professional buyers ("Customers" or "Customer") wishing to buy the products offered for sale by the Seller (diaphragms with or without fabric reinforcement and technical elastomer parts for a variety of applications, services etc. ("Products")).

1.2 In particular, they set out the conditions for order placing, payment and hand-over or delivery of Products ordered by Customers.

1.3 These T&Cs shall always be given to the Customer before it places its order, and shall prevail over any other version or contradictory document where applicable. They shall apply to the exclusion of all other conditions, particularly those of the Customer.

1.4 The Customer hereby agrees that it has reviewed these T&Cs and has accepted them before placing its order.

1.5 These T&Cs may be revised subsequently and the version applicable to the Customer's purchase shall be that in force on the date of the purchase or the placing of the order.

1.6 The confirmation of the order and/or signing of a quote by the Customer shall entail the unrestricted and unqualified acceptance of these T&Cs.

### Article 2. Product characteristics

2.1 The main characteristics of Products, particularly their technical specifications, illustrations and dimensional information shall be set out in the technical data sheets, instructions for use and catalogues of the Seller, available from its website (<https://www.effbe-diaphragm.com/>). The Customer shall refer to the description of each Product to identify its essential particularities and properties.

2.2 Each Product may be adapted by the Seller based on the Customer's requirements (dimensions, applications, materials, shape etc.). Similarly, new products may be designed and developed by the Seller at the Customer's request, in order for them to be manufactured and sold on behalf of the Customer by the Seller, on conditions to be determined on a case-by-case basis by mutual agreement between the Parties.

2.3 The photographs, drawings and diagrams presented in the catalogues or on the website of the Seller are not contractual and the Seller shall not be liable for the same.

### Article 3. Orders for Products or services

3.1 **Orders for Products:** Products shall be offered subject to available stock. Orders for Products shall be placed as follows:

- The Customer shall ask for a quote by sending an email to [info@effbe-diaphragm.com](mailto:info@effbe-diaphragm.com) or by calling +33 (0)3 89 44 38 68;
- Upon receipt of the request, a quote shall be sent to the Customer by the Seller;
- As soon as a signed quote or an order form are received, an order confirmation shall be sent to the Customer.

3.2 **Quotes:** Unless otherwise indicated, each quote shall remain valid for a maximum period of one month from its date, providing material and Products are available in the stock of the Seller.

3.3 **Order confirmation:** The sale shall only be considered to be final and binding on the Seller after it has handed over or sent an order confirmation to the Customer, and after the Seller has collected the totality of the payment instalment due (if an instalment is to be paid by the Customer). After an order has been confirmed by the Seller, it may no longer be modified or cancelled by the Customer without the prior express consent of the Seller, on the financial terms defined by the Seller.

3.4 **Verification by the Customer:** The Customer shall be responsible for verifying the accuracy of its order and the order confirmation, and for immediately reporting any error to the Seller.

3.5 The Seller reserves the right to cancel or refuse any order from a Customer if there is any dispute relating to the payment or performance of an earlier order.

3.6 **Services:** At the Customer's request, the Seller may provide services (particularly the design and development of new products, performance of tests and analyses of the new products etc.) as agreed in the particular terms and conditions of the quote. The Seller shall do its best to provide the services in accordance with its quote. However, in view of the technical uncertainty relating to development services, it shall only be bound by a best-efforts obligation (and not an obligation to deliver results) in respect of the services it provides. The deliverables included in the services shall be those defined in the Seller's quote.

### Article 4. Prices and price lists

4.1 **Prices:** Products shall be sold for the prices stated either in the quote or the catalogue price list of the Seller applicable on the day when the order is recorded by the Seller. Prices are quoted in euros excluding taxes and including taxes.

4.2 Unless otherwise specified by the Seller, all its prices shall be:

- quoted in euros;
- quoted excluding taxes and subject to value added tax (VAT) at the rate applicable on the date of the invoice (except exports);
- quoted net, ex-factory (Ex-Works Habsheim, Incoterms 2020 of the ICC).

4.3 **Taxes, duties and carriage costs:** Unless otherwise specified by the Seller, all taxes, customs duties and other charges due under national or international laws or treaties or national or international regulations shall be paid by the Customer, and may be charged to the Customer if they have been advanced by the Seller.

4.5 **Price revisions:** The Seller reserves the right to revise its sale prices at any time; however such revisions shall not apply to pending orders that have already been accepted by the Seller.

### Article 5. Invoicing, terms of payment and payment delays

5.1 **Invoices:** The invoice shall be prepared by the Seller when the ordered Products are shipped. The invoice may also be issued a short while after delivery. Invoices shall be sent in printed or paperless form. If the Customer does not dispute an invoice within 15 days of the date of issue of the invoice, that shall entail full and final acceptance of the contents of said invoice.

5.2 **Instalment:** Unless otherwise provided for in the quote, the Seller may require the Customer to pay an instalment of 30% of the agreed price with the order. Any instalment, provision, deposit or part of the price that is already paid by the Customer shall be retained by the Seller.

5.3 **Payment times:** Unless otherwise agreed or indicated by the Seller in its quote or the invoice, payment shall be made within 30 days of the date of the invoice. The Seller shall not allow any discount, unless otherwise agreed specifically.

5.4 **Terms of payment:** Payments shall be made by cheque, bank transfer or bill. In the event of payment by bank cheque, the cheque shall be issued by a bank domiciled in metropolitan France or Monaco. Cashing the cheque shall be immediately possible. In the event of payment by trade bill, the bill shall be returned accepted to the Seller no later than five days after sending. Failure to accept a bill or submit a promissory note within that time shall be considered to be payment default.

5.5 Payments by the Customer shall only be considered final after the amounts owed are effectively collected by the Seller. No charges may be applied to the Seller or deducted from the invoice in respect of the use of a payment method by the Customer.

5.6 **Penalty for late payment:** Penalty for late payment shall be applied automatically by the Seller if the payment time agreed by the Parties is exceeded. Such penalty shall be owed as of right from the day following the due date. The penalty shall apply with no need for any action or reminder. The annual rate of interest for the penalty for late payment shall be equal to the legal interest rate applicable at the time when the delay is observed, plus 7%. Further, flat compensation for collection costs in the amount of €40 shall also be due as of right with no prior notice in the event of a payment delay. Lastly, the Seller reserves the right to demand additional compensation from the Customer if the collection costs actually incurred are higher than that amount, subject to the submission of substantiation.

5.7 **Payment default:** Without prejudice to the foregoing, any payment default or failure to comply with the terms of payment shall entitle the Seller to:

- immediately discontinue all the particular commercial conditions and payment facilities granted to the Customer,
- suspend all pending orders without notice or compensation,
- require, for the performance of any future delivery of Products, cash payment before the start of performance or any other payment method at the Seller's option,
- require the immediate payment of the entire balance still due.

5.8 **Offsetting:** The Seller may offset the Customer's debts and/or charge its payments to unpaid invoices and any interest or costs for delayed payment accrued in that respect.

5.9 The Customer may not delay any payment owed or offset it in any way, including in the event of a dispute with the Seller.

5.10 Payments received from the debtor shall always be charged to the oldest payment due.

5.11 The Customer may transfer its claims to a third party.

Customer's initials:

## **Article 6. Shipment times and Product hand-over**

**6.1 Delivery times:** Products ordered by the Customer shall be shipped within the time stated on the Seller's quote, providing material and Product stock are available in the Seller's stock. That time shall start from the date on which the order is confirmed by the Seller. The shipment or delivery times stated on the quote of the Seller or any other document (Customer's order, Seller's order confirmation, catalogue etc.) are only stated for guidance and shall not be binding on the Seller.

**6.2 Place of delivery:** Unless otherwise provided in the quote, delivery shall be deemed to be completed in the Seller's factory.

## **Article 7. Product inspection upon delivery and complaints**

**7.1 Inspection by the Customer:** Within two days of the delivery of the Products, the Customer shall inspect them completely and comprehensively, including their packaging, conformity, quality and quantities. Any nonconformity, visible damage to the packaging and/or Products or any missing quantity shall be recorded and reported as soon as they are found to the Seller by email and confirmed by recorded delivery with acknowledgement of receipt, no later than two days after the delivery. Similarly, if the Customer finds any problem upon delivery, it shall record the customary exceptions on the delivery form and/or consignment note presented by the carrier of the Products.

**7.2 Inspection time:** The Product shall be automatically deemed to be accepted if the Customer does not make any written complaint within two (2) days of delivery or within a period of two (2) days following the finding of a latent defect. No complaint shall be accepted by the Seller for defects, nonconformity, deficiencies or missing quantities that a normal inspection should have revealed, if said inspection is not carried out or is carried out improperly during that two-day period. In any event, no further complaints may be made by the Customer six months after the delivery of the Products.

**7.3** If the Customer makes a written complaint, it shall send the affected Product immediately to the Seller to allow the Seller to inspect the Product.

## **Article 8. Transfer of risks**

**8.1 All risks relating to the Products shall be transferred from the Seller to the Client according to the Incoterms rule applicable, as defined in the quote and/or order confirmation from the Seller. Failing that, risks shall be transferred at the plant of the Seller.**

**8.2** When the Customer uses the services of a carrier selected by itself, risks shall be transferred no later than when the Products ordered by the Seller are handed over to the carrier selected by the Customer, regardless of the applicable Incoterms rule. Products shall therefore be transported at the risk of the Customer.

## **Article 9. Transfer of title**

**The title to the Products shall only be transferred from the Seller to the Customer after the price is paid by the Customer in full, regardless of the date of delivery of said Products. The Seller shall therefore retain the ownership of the Products, including in the Customer's premises, till their price is paid in full. Any clause contrary to this retention of title clause may not be enforced against the Seller.**

## **Article 10. Literature and mutual information of the Parties**

**10.1 Literature:** The Customer shall carefully read all the technical data sheets, instructions for use and maintenance and the written recommendations of the Seller and seek information about the possible risks and hazards relating to the improper use of the Products. It agrees to use each Product with caution and diligence, in accordance with its instructions for use, data sheet, recommendations and purpose and the laws and regulations applicable in the country of use. Where necessary, the Customer shall make its employees and workers aware of the need to follow the usage instructions and requirements determined both by the regulations and the Seller. The Customer shall not modify, adapt or transform the Products and agrees to ensure that its employees and workers do not do so. In case of doubt, the Customer shall be responsible for seeking information from the Seller.

**10.2 Use:** The Customer shall be responsible for selecting each Product for its own needs as first determined along with the Seller, and for making sure that it is suited to its needs. The Customer shall clearly and precisely inform the Seller of any specific constraints relating to the use of the Products it intends to develop and purchase. The Seller shall not be liable for any choice made by the Customer in respect of the suitability of the Product for its needs.

**10.3 Care and maintenance:** The Customer shall maintain the Products in good condition. It shall regularly carry out, under its own responsibility, all the routine maintenance, cleaning, consumable replacement or inspection operations in accordance with the recommendations for use or those provided in the documents of the Seller. It agrees to immediately inform the Seller of any anomalies found in the Products.

**10.4 Damage:** All costs of repair or replacement due to damage to the Products (for any reason), a force majeure circumstance or deficient maintenance by the Customer shall be borne by the Customer.

**10.5 Advice:** All advice, information, Product descriptions or instructions relating to the Products from the Seller shall be given to the Customer in good faith based on the experience of the Seller, for guidance only, and shall not make the Seller liable in any way.

## **Article 11. Liability of Seller and guarantee**

**11.1** The Products shall be guaranteed to conform to their technical specifications. Product performance shall be compatible with the professional purposes for which the Products are designed. Products shall be covered as of right by the following, for no additional payment in accordance with the law:

- legal guarantee of conformity for Products that are visibly defective, damaged or not as ordered,
- legal guarantee for latent defects in the Products due to defective material, design or workmanship, which make them unfit for their use.

**11.2** In order to exercise its rights, the Customer shall inform the Seller in writing of any Product nonconformity within the following times:

- within two days of delivery for visible damage to the packaging and/or Products, missing quantities or any visible or manifest nonconformity;
- within two days of discovery of any latent defect.

In the event of a problem duly notified to the Seller within that two-day period, the Customer shall return the defective Products in the condition in which they were received, with all the items (accessories, packaging, instructions etc.). In any event, no further complaints may be made by the Customer six months after the delivery of the Products.

**11.3** The Seller shall refund, replace or repair the Products covered by a guarantee that it finds nonconforming or defective. In the event of delivery, shipping costs shall be refunded on the basis of the costs charged and return costs shall be refunded upon the production of substantiation.

**11.4 Exclusions of liability of the Seller:** The Seller shall not be liable in the following circumstances:

- failure to comply with the laws and regulations of the country to which the Products are delivered, which the Customer shall verify,
- use of Products not advised by the Seller, in a manner not conforming to the recommendations, technical data sheets, instructions for use or good practices,
- improper use or defective assembly by the Customer,
- negligence or deficient maintenance of Products by the Customer, normal wear and tear of the product, accident or force majeure circumstance.

IN NO EVENT SHALL THE SELLER BE LIABLE FOR LOSS OF OPERATIONS, PRODUCTION, PRODUCTIVITY AND/OR ANY OTHER LOSS OR CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGE THAT MAY BE SUSTAINED DIRECTLY OR INDIRECTLY BY THE CUSTOMER OR ANY OTHER PARTY AS A RESULT OF THE PRODUCTS OR PRODUCT NONCONFORMITY. THEREFORE, THE CUSTOMER HEREBY WAIVES ALL CLAIMS AGAINST THE SELLER AND ITS INSURERS IN THAT RESPECT AND AGREES TO SECURE A SIMILAR WAIVER FROM ITS OWN INSURERS.

**11.5 Limitation of liability of the Seller:** THE SELLER'S GUARANTEE SHALL IN ANY EVENT BE LIMITED TO THE REPLACEMENT OR REFUND OF THE NONCONFORMING OR DEFECTIVE PRODUCTS. IN NO EVENT MAY THE LIABILITY OF THE SELLER FOR A QUOTE OR ORDER EXCEED THE VALUE OF THE PRICE STATED IN THE QUOTE OR ORDER. The refund or replacement of Products found to be nonconforming or defective (at the sole option of the Seller) shall take place as soon as possible and no later than within 60 days of the observation by the Seller of the nonconformity or latent defect. Any refund shall take the form of a credit note or be credited to the Customer's bank account or sent by cheque to the Customer.

## **Article 12. Confidentiality**

**12.1** All the information provided by the Seller to the Customer in respect of its Products, offers, concepts, processes, specifications, documents and any samples of the Seller, including its know-how, intellectual property and any information, documents and data ("**Information**") shall be treated as strictly confidential information by the Customer (even when it is has not been identified as such) and may not be disclosed to any third parties by the Customer without the prior written consent of the Seller. However, that shall not apply to information clearly intended for the public, such as that available freely from the Seller's website.

**12.2** This confidentiality agreement of the Customer shall remain in force throughout the term of the performance of the order concerned and for at least five years following the date of disclosure of the information to the Customer. Said information shall be exclusively used by the Customer for the purposes of performing the order concerned.

Customer's initials:

### Article 13. Product design and development and intellectual property

**13.1** If requested by the Customer, the Seller may develop new products for the Customer, on conditions to be defined on a case-by-case basis. If the Seller develops Products on the basis of the information, data, drawings or samples of the Customer, the Customer shall guarantee to the Seller that the Customer holds all the rights and licences relating to the same and therefore indemnify the Seller against all action by third parties in respect of the use or developments that may be made by the Seller on that basis.

**13.2** If the Seller purchases specific production equipment or moulds that are specifically adapted (or need to be adapted) to the Products developed for a Customer, these shall be purchased by the Seller on behalf of the Customer and their cost shall be ultimately be paid by the Customer on conditions to be defined between the Parties. The Customer shall in that case become the owner of the specific equipment or moulds paid for by it. On the other hand, if the cost of the equipment and specific moulds is paid by the Seller on its own behalf, they shall remain the property of the Seller.

**13.3** The Seller shall remain the owner of all the intellectual property rights (particularly copyright, patent rights, rights to trademarks, drawings, instructions, data sheets, photographs, designs, patterns and models, prototypes etc.) in respect of the Products, its activities or its company, whether or not these have been developed at the request of the Customer.

**13.4** Unless otherwise agreed by the Parties, the Customer shall not reproduce or reverse engineer the Products or make any use of the diagrams, drawings, samples, moulds, photographs, presentations, designs, prototypes etc. of the Seller without express written prior permission from the Seller, which may make that conditional upon financial consideration.

### Article 14. Personal data

**14.1 Customer's data:** The Customer is informed that the collection of some personal data is required for the proper performance of the contractual relations with the Seller. The data shall be collected by the Seller only as part of these relations, for the purpose of the proper performance of the orders. They shall be reserved for the exclusive use of the Seller, and its subcontractors or suppliers where applicable. In the event of any legal proceedings, they may be disclosed to the legal authorities and the parties involved. The controller in the organisation of the Seller may be contacted at the email address [info@effbe-diaphragm.com](mailto:info@effbe-diaphragm.com) or by post at the address of the registered office of the Seller. Unless the Customer gives its express consent, its personal data shall not be used by the Seller for purposes other than those under this clause. Unless otherwise agreed, the Seller shall retain the personal data collected for a maximum period of five years from the end of the commercial relationship.

The Customer shall have a right of access, rectification, erasure, restriction and objection to processing and the right to the portability of its personal data collected by the Seller. That right, providing it does not oppose the purposes of processing, may be exercised by sending a request by post or email to the controller, the contact particulars of which are indicated herein. The response time shall be one month at the most. Any refusal shall be supported by reasons; in the event of a refusal, the Customer may refer the matter to the French data protection authority (CNIL; 3, place de Fontenoy, 75334 PARIS) or to a legal authority.

**14.2 Data supplied by the Customer:** If the Seller needs to process the personal data of third parties supplied by the Customer, the Customer shall guarantee to the Seller that it shall itself take charge of compliance with the laws and regulations applicable to the collection and processing of personal data.

**14.3 Seller's data:** If the Customer has direct or indirect access to the personal data of the Seller or collects such personal data, the Customer agrees to comply with all the provisions of the GDPR (European regulation 2016/679 known as the General Data Protection Regulation).

### Article 15. Unforeseeable circumstances

In the event of a material change in business circumstances that was unforeseeable when the agreement was concluded (particularly rise in the prices of raw materials, energy etc.), the Party that does not accept a risk of performance that may be excessively burdensome for it may ask for the Agreement to be renegotiated with the other Party. However, if the change in circumstances that was unforeseeable when the agreement was concluded is permanent or lasts more than two months, this Agreement would be terminated altogether.

### Article 16. Force majeure

The Parties shall not be liable if the non-fulfilment or delayed fulfilment of any of their obligations hereunder are the result of a force majeure circumstance in the meaning of article 1218 of the French Civil Code. In particular, the following events shall be considered to be force majeure circumstances, even if they do not fulfil all the conditions of article 1218 of the French Civil Code: fires, hurricanes, storms, floods, unavailability of transport, unavailability of internal or external data processing resources, internal strikes, damage to the machines of the Seller, shortage of raw materials, parts, components, energy or fluids sustained by the Seller, and national or global epidemics or pandemics that prevent the Parties from normally fulfilling their contractual obligations.

### Article 17. Termination of the agreement

If a Party fails to materially fulfil any of its obligations hereunder, the other Party may notify the defaulting Party by recorded delivery with acknowledgement of receipt of the termination hereof due to such non-fulfilment 30 days after the receipt of notice demanding fulfilment that remains unsuccessful, under the provisions of article 1224 of the French Civil Code.

### Article 18. Applicable law and disputes

**18.1 Applicable law:** The Parties expressly agree that these T&Cs and the sales resulting from them shall be governed exclusively by the laws of France.

**18.2 Disputes:** Any disputes arising out of these T&Cs, particularly in respect of their interpretation, performance, termination and the consequences thereof shall be brought exclusively before the courts of Colmar, France. The Seller however reserves the right to refer the matter to any other authority with jurisdiction over the registered office of the Customer.

**18.3 Language:** These T&Cs have been drafted in the French language. If they are translated into one or more languages, only the French text shall be the authentic text in the event of any contradiction, translation issue or dispute.

### Article 19. Final provisions

**19.1 Non-waiver.** The failure by a Party to enforce its rights in respect of any violation of these T&Cs by the other Party may not be considered to be a waiver of its rights in respect of any other violation or provision.

**19.2 Transfer.** The Customer may not transfer any of its rights or obligations hereunder without the prior written consent of the Seller.

**19.3 Severability.** If any part of a provision of these T&Cs is found to be null and void, that shall not have any effect on the validity of the remaining provisions. In such an event, the Parties shall endeavour, if possible, to replace the invalidated provision by a valid provision that complies with the spirit and object of these T&Cs.

**19.4 Information.** The Customer agrees that prior to placing the order or entering into the Agreement, it has received these T&Cs and any information required for placing the order and/or relating to the Products, in clear and understandable form.

### Article 20. Contact information of the Seller

Effbe France SAS  
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Customer's initials: