

## EXACTO, INC. TERMS AND CONDITIONS OF SALE

**1. Terms; Acceptance of Orders; Entire Agreement.** All purchase orders ("Orders") received from a customer ("Customer") by Exacto, Inc. or its affiliates, as seller ("Exacto"), are subject to acceptance by Exacto, and Exacto reserves the right to reject any Order. Except as otherwise specifically agreed in writing by Exacto, acceptance of an Order is expressly conditioned on Customer's assent to these Terms and Conditions of Sale ("Terms") and the waiver by Customer of any terms and conditions in any Order, confirmation, or any other communications of Customer, whether previously or hereafter delivered to Exacto, which either add to, differ from, modify, conflict with, or are otherwise inconsistent with, the Terms, other than the type and quantity of products ordered. Exacto hereby gives notice of its objection to and expressly rejects any additional or different terms or conditions in any such Order, confirmation or communication. Customer's failure to object in writing to these Terms prior to the earlier of Customer's acceptance of the products ordered or ten (10) days after delivery thereof to Customer will constitute agreement by Customer to these Terms. These Terms constitute the entire agreement of the parties with respect to the subject matter herein and supersede any prior or contemporaneous agreements or understandings between the parties with respect to such subject matter. These Terms may not be altered or modified except in writing duly executed by both parties. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these Terms. Clerical errors are subject to correction in all cases.

**2. Production and Delivery Dates; Force Majeure.** Due to rapid changes in production levels and customer requirements, Exacto cannot commence manufacturing nor commit to an estimated schedule until it has received and accepted the Order. Exacto will schedule manufacturing of product based on available production capacity at the time of receipt of all necessary information. The completion of the Order is subject to accidents, strikes, lockouts, labor disputes, government actions, court orders, wars, terrorism, civil commotion, riots, embargoes, acts of civil or military authorities, acts of the public enemy, acts of God, floods, earthquakes, tempests, fires, diseases, epidemics, unusually severe or abnormal weather, fires, shortages of materials required for production, equipment failure, any necessity to not operate, or to reduce operation of, equipment in order to protect the safety of people or to protect the environment, energy curtailments, or any other delay or contingency resulting from causes beyond its reasonable control, and without its fault or negligence, and Exacto will not be liable for any delay or failure of performance due to any such causes. In such event, Exacto will reschedule the Order into the next available production cycle. Once established by the parties, delivery dates are estimates and are not guaranteed. Exacto will use commercially reasonable efforts to make deliveries as scheduled and reserves the right to make partial deliveries.

**3. Prices.** Prices for product and services will be as agreed to by the parties in writing. If no price is agreed upon, the price shall be Exacto's regular price on the date of delivery. Customer agrees to pay the prices quoted in Exacto's written order confirmation and is responsible for any additional applicable costs or price changes in effect the date of shipping. Unless otherwise agreed to by Exacto in writing, Exacto reserves the right to modify its prices without notice. For special or non-standard orders, including those requiring pre-printed boxes, Customer shall pay Exacto for its additional costs. Unless agreed by Exacto in writing, all prices exclude shipping and handling charges, sales, use, excise, VAT or similar or other taxes or duties. Customer must pay these taxes or duties directly if the law permits or will reimburse Exacto if Exacto is required to collect and pay them. If applicable, Customer will provide certificates of tax exemption in advance, or will provide evidence of tax payment upon request. All payments are due in the currency specified on Exacto's invoice.

**4. Delivery, Title and Risk of Loss.** Unless otherwise agreed to by Exacto in writing, products will be delivered EXW (Incoterms 2010) Exacto's facility. Title and risk of loss pass to Customer when the products are made available to Customer at Exacto's facility. All delivery dates are approximate and Exacto shall not be liable for any damages of any kind resulting from delay in delivery. Selection of carrier and routing of all deliveries shall be at Customer's option, unless Exacto is responsible for shipping. If Customer does not pick up products within five (5) business days of the date the products are available for pickup, Customer will be responsible for a one-time missed pickup charge of \$250 per shipment, as well as an ongoing charge of \$5 per pallet (full or partial) per day for each calendar day the products are not picked up beyond the aforementioned five business day period. If the products are not picked up within thirty (30) days of the date the products are available for pickup, Exacto may transfer the products to another storage facility at its discretion, and in any such event Customer will be responsible for additional charges to cover Exacto's costs plus a reasonable markup.

**5. Quantities; Minimum Order Quantity.** Exacto will deliver products within ten percent (10%) of the quantity ordered (over or under) unless Exacto otherwise agrees in writing. Customer will accept and pay for the actual quantity delivered within this parameter and any amount delivered within this parameter constitutes full satisfaction of the Order. A minimum order quantity (MOQ) of 3 pallets per product per pack size shall apply to all Orders of private label products placed between October 1 and April 30 of each year. Orders of private label products placed between May 1 and September 30 of each year that are accepted by Exacto but do not meet the MOQ may be subject to extended lead times.

**6. Payment.** Payment terms will be as agreed to by the parties in writing or, if not so agreed, pursuant to the terms set forth in the invoice. If no terms are specified on the invoice, payment will be net 30 days from the date of invoice, without any deductions or setoff. Invoices for partial deliveries shall be payable in accordance with this paragraph even though delivery of all products sold hereunder is not completed as of the date of the invoice. All late payments will bear interest on the unpaid amount at the lesser of one percent (1%) per month or the maximum rate permitted by law. If any action is taken by Exacto to collect any amount due hereunder, whether through a collection agency, attorney or otherwise, Customer will pay all costs (including, without limitation, interest, court costs and attorneys' fees) incurred by Exacto in collecting such amount. Exacto, in its sole discretion and determination, may require Customer to provide sufficient evidence of its ability to pay Exacto any amounts that may become due under the Order.

**7. Cancellation.** Orders placed by Customer with Exacto may not be cancelled subsequent to the initiation of the manufacturing process except upon Exacto's written consent, and subject to Customer's acceptance of Exacto's then-current cancellation and/or restocking charges that protect Exacto against applicable costs and losses arising from such cancellation. Customer shall indemnify Exacto for all such costs and losses it sustains arising from Customer's cancellation of an Order without Exacto's written consent.

**8. Specifications; Safety Data Sheets.** Exacto will manufacture product in accordance with Exacto's product specifications and standards or other specifications and standards agreed to between Exacto and Customer in writing (collectively, the "Specifications"). Exacto is not an expert at Customer's end use requirements, and accordingly it is Customer's responsibility to determine that the products are safe, lawful and suitable for the intended end use application before placing them into the marketplace. Exacto will provide Customer with a Safety Data Sheet ("SDS") for each product. Customer acknowledges the hazards, as described in the SDS, associated with the handling, unloading, discharge, storage, transportation, use, disposition, processing, admixture, or reaction (the "Use") of products supplied by Exacto and assumes the responsibility of advising those of its employees, agents, contractors, and customers in connection with such Use of the hazards to human health or human or environmental safety as described in the SDS, whether such product is used singly or in combination with other substances or in any processes or otherwise. In addition, if Customer believes or has reason to believe the SDS or other information provided to Customer by Exacto is inaccurate or in any way insufficient for any purpose, Customer will immediately notify Exacto of the same, and provide Exacto a reasonable opportunity to supplement or correct the information. Customer acknowledges and agrees to abide by any instructions for disposal of packaging provided by Exacto or otherwise as provided by law.

**9. Warranties.** All product delivered to Customer will, at the time of such delivery, be free and clear of all liens, security interests and other encumbrances and will conform, in all material respects, to the Specifications. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE WARRANTIES OF EXACTO SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER CREATED BY CONTRACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Exacto's liability under this warranty or in connection with any claim relating to the products shall be as set forth in Section 10 below. Exacto makes no warranty with regard to any products sold hereunder which are not manufactured by or for Exacto, and the only warranty attaching to such products shall be that of the original manufacturer, if applicable.

**10. Nonconforming Product.** Upon delivery, Customer shall promptly inspect products for defects, loss or shortage. Customer must notify Exacto in writing of any alleged breach of Exacto's obligations under this Section 10 and hold such products for Exacto's inspection. Customer does not have the right to reject nonconforming products to the extent that the products were not stored in normal warehousing conditions in the original packaging as delivered or were used for purposes other than its approved and intended uses. Customer must provide to Exacto all materials and documentation necessary for the investigation or resolution of any nonconforming product claims, including, but not limited to, product samples, weight tickets, and shipping and warehousing documents. In case Exacto accepts the nonconforming nature of the products, Exacto will, at its option, either replace at the original point of delivery or allow a credit for any such nonconforming products as soon as reasonably possible. Nonconforming products properly and timely rejected by Customer will either be returned in accordance with Exacto's reasonable instructions and at Exacto's expense or disposed of by Customer in a manner authorized in advance and in writing by Exacto. Products may in any case not be returned without prior written authorization from Exacto. In case of loss or shortage of products, and without prejudice to Section 5, Exacto will deliver the full quantity ordered. Exacto's remedial obligations under this Section

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10 will expire unless Customer notifies Exacto in writing of an alleged defect (i) in the case of a visible defect, immediately upon becoming aware of its existence and in any event within five (5) days after delivery and (ii) in case of a hidden defect, within five (5) days of becoming aware of its existence, and in any event within ninety (90) days from the date of delivery. Claims for loss or shortages will only be allowed if such loss or shortages are reported to Exacto within ten (10) days from the date of delivery. Customer hereby waives all claims and actions not brought against Exacto in accordance with this paragraph.

**11. Compliance with Law; Export Controls.** Customer shall comply with all applicable laws, statutes, ordinances and regulations of any federal, state, or local governmental authority having jurisdiction thereof, including, without limitation, the Foreign Corrupt Practices Act, the anti-money laundering provisions of the USA Patriot Act and Bank Secrecy Act, and United States export control laws ("Applicable Laws"). Customer shall not export or re-export any products purchased hereunder to any person or entity that is a "denied party" under the Denied Parties List (or any similar list maintained by any governmental authority) or to entities or persons located within embargoed countries (in both cases as defined under the referenced export control laws). Exacto assumes no liability for Customer's failure to comply with Applicable Laws or Customer's obligations arising under European Union REACH Regulations.

**12. Indemnification for Third Party Claims.** Subject to the limitations of liability set forth herein, each party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party and their respective equity holders, directors, officers, managers, employees, and agents (the "Indemnitees") from and against any and all third party claims (other than those covered by the warranties set forth in Section 9 above), resulting in actual losses, damages, suits, fees, judgments, costs, and expenses (collectively referred to as "Claims"), including reasonable attorneys' fees incurred in response to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with: (a) the Indemnifying Party's negligence, willful misconduct, or violation of any law or regulation; (B) the Indemnifying Party's handling, possession, use, exposure to or disposal of the products or material produced therefrom and any packaging in the Indemnifying Party's possession or control, including Claims related to environmental contamination or violation of any environmental law or regulation, (c) any personal injury (including death) or damage to property resulting from the Indemnifying Party's acts or omissions, except to the extent that any such Claims are caused by the negligence or willful misconduct of the Indemnitee. Exacto shall be deemed to have possession or control of the products, including any packaging, prior to transfer of title to Customer and Customer shall be deemed to have possession or control of the products including any packaging, for all periods of time after title to products, including any packaging, passes to Customer. The parties shall cooperate reasonably with each other and counsel in the compromise or settlement of, or defense against, any such Claim.

**13. Limitations on Liability.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR NONCONFORMING PRODUCTS IS THE REPLACEMENT OF THE PRODUCTS OR THE REFUND OF THE PURCHASE PRICE PAID, WHICHEVER OPTION EXACTO SELECTS. EXACTO'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM OR IN ANY WAY CONNECTED TO THE ORDER SHALL NOT EXCEED CUSTOMER'S PURCHASE PRICE FOR THE PARTICULAR PRODUCTS OR SERVICES UPON WHICH SUCH LIABILITY IS BASED, REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR UNDER ANY OTHER LEGAL THEORY. EXACTO'S TOTAL LIABILITY FOR ANY AND ALL CAUSES OF ACTION ASSOCIATED WITH THE ORDER OR PRODUCTS, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, THIRD PARTY INDEMNIFICATION CLAIMS, IS EXPRESSLY LIMITED TO \$75,000 USD IN THE AGGREGATE. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR OTHER INDIRECT DAMAGES OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THIS ORDER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION APPLIES EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**14. Further Distribution.** To the extent that Customer is not the end user of the products, the following additional provisions apply in connection with the further distribution/resale of the products: (a) the customers and potential customers to which Customer may promote and sell the products must be end users and not resellers of the products and may not sell the products in a location where sales are prohibited by law or where Exacto has specifically informed Customer that sales are prohibited; (b) Customer's obligations hereunder to Exacto (e.g. the obligation to pay for such products) operates independent of the actions of Customer's customers and Exacto shall not be obligated to comply with any requirements imposed by Customer's customers or as a result of Customer's contractual requirements with its customers; (c) Customer's customers shall have no direct privity with Exacto and Customer agrees to fully indemnify and hold Exacto harmless against any claims made by Customer's customers against Exacto; (d) Customer shall be solely responsible for the handling, storage, transportation and distribution of the products in accordance with the SDS's for the product after delivery of products to Customer's facility; (e) Customer shall establish and maintain records of its sales in sufficient detail to permit identification and destination of each of the products sold by Customer; (f) Customer shall be solely and directly responsible for all ordering and customer service issues with its customers, provided that to the extent Exacto receives any inquiries or complaints directly from Customer's customers, Exacto shall direct such inquiries or complaints to Customer; and (g) Customer shall not sell the products for less than 95% of the suggested retail price communicated to Customer by Exacto, if applicable. Customer acknowledges that any rights to distribute or resell the products are on a non-exclusive basis and nothing herein shall prohibit Exacto from selling products directly or indirectly (through other distributors or sales representatives) to Customer's customers.

**15. Intellectual Property.** The sale of products or the performance of any services pursuant to the Order shall not be deemed to grant the Customer any rights, license or ownership interest in or to any intellectual property rights that pertain to the products purchased which may now or hereinafter be owned or controlled by Exacto, including but not limited to any patent, copyright or trademark rights in any prototypes, samples and/or final products shared with the Customer in product development and/or preparation.

**16. Governing Law; Commencement of Actions.** Each Order will be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws provisions. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Any action based upon breach of these Terms or upon any other claim arising out of any Order (other than an action by Exacto for the purchase price) must be commenced within six (6) months from the delivery date or, in the case of a cause of action based upon an alleged breach of warranty, within six (6) months after the expiration of the applicable warranty period. Exacto shall have an opportunity to inspect all goods subject to any actions and to conduct an adequate investigation of the facts surrounding such actions.

**17. Loss to Customer's Property; Patent and Copyright Infringement.** Exacto shall not be liable for, and shall have no duty to insure against, any damage or loss to any goods or materials of Customer which are used by Exacto in connection with this Order. Where Exacto has agreed that any product sold hereunder shall be manufactured in whole or in part from specifications furnished by Customer, Customer represents that such specifications furnished by Customer do not infringe upon the intellectual property rights of any third party. Customer shall indemnify Exacto against and save harmless Exacto from all loss, damage and expense arising out of any suit or claim against Exacto for infringement of any patent, trademark, or copyright or of any other intellectual property rights of any third party because of Exacto's manufacture of such product or because of the use or sale of such products by any person. At Exacto's option, upon receipt from Exacto of written notice of any such suit or claim, Customer shall appear in and assume the defense of any litigation which may result from such infringement.

**18. Miscellaneous.** Headings set forth herein are inserted for convenience and have no effect on the interpretation or construction of these Terms. If any provision of these Terms is deemed as a matter of law to be invalid, illegal or unenforceable, in whole or in part, such provision shall be ineffective to the extent of such violation without invalidating the remainder of that provision and any other provision of these Terms. The failure of either party hereto to require strict compliance with or complete performance of any obligation of the other party hereto by such other party shall not be construed as a waiver or relinquishment of any such obligation or of any other obligation. Any waiver by either party of a breach of any term, provision or condition of these Terms shall not constitute a waiver of any subsequent breach of the same or any other term, provision or condition of these Terms. Customer may not assign any of its rights or obligations hereunder without the prior written consent of Exacto. A change in control of Customer constitutes an assignment hereunder. Any specifications, or other data attached to any quotation, furnished by Exacto shall be deemed to be a part thereof. Any quotation of Exacto is subject to, and shall not become binding upon Exacto until (i) actual receipt by Exacto of Customer's written order based on all the terms and conditions stated herein, without qualification, within 60 days after the date of the quotation or such other time period as specified by Exacto, and (ii) Exacto's written order confirmation. Provisions of these Terms that are intended to survive termination or completion of an Order shall survive in accordance with their terms.