**Terms and Conditions of Sale**

* **Application**. These Terms and Conditions of Sale (“Terms”) are incorporated into all quotations (each, a “Quotation”) that Exacto, Inc. of South Bend (“Exacto”) issues to another party (each, a “Buyer”) and governs all of Buyer’s purchases from Exacto of the parts listed in the Quotation (each a “Product” and, collectively, “Products”). The Quotation is an offer to enter into a contract for the sale of Products, and it expires as of the date set forth on its face, or, if no expiration date is set forth on the face of the Quotation, the earlier of (a) 30 days or (b) the occurrence of any material change in the cost to manufacture the Products as reasonably determined by Exacto. Buyer may accept the offer set forth in the Quotation by, among other things, issuing a purchase order for the Products or otherwise agreeing to purchase the Products (“Order”) even if Buyer’s purchase order or other form of acceptance includes terms in addition to or different from these Terms. Unless Exacto agrees otherwise in writing, Exacto objects to any terms in any document provided by Buyer that are in addition to or different from these Terms or the terms set forth in the applicable Quotation.
* **Exacto Warranty.** Exacto warrants the following (the “Warranty”): (i) all Products will conform to the specifications, drawings, or descriptions furnished by Buyer to Exacto in writing and acknowledged in writing by Exacto; and (ii) the Products are free from any liens and encumbrances. Exacto makes no other warranties, either express or implied, relating to the Products other than the Warranty. No representative of Exacto or Buyer has the authority to make any other warranty on behalf of Exacto in addition to this Warranty. **TO THE FULLEST EXTENT PERMITTED BY LAW, EXACTO EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. Exacto expressly incorporates any limitations on remedies provided in any warranty Buyer provides to its customers who purchase goods that incorporate the Product into the Warranty for that Product. No claim for breach of the Warranty may be brought later than one year from the date of sale of the Product or, if the Product is incorporated into a good manufactured by Buyer, the expiration of the warranty provided by Buyer to its customers of the good that incorporates the Product, but in no event will such period exceed three years from the date of sale to the end customer of the good incorporating the Product. The Warranty does not cover any non-conformity in the Products discovered after the earlier of when (a) Buyer commingles the Products with substantially similar Products manufactured by a supplier other than Exacto and the commingling makes it impossible to determine whether the nonconforming Product originated from Exacto or the other supplier or (b) Buyer makes any alteration to the Products, including but not limited to by heat treating or machining the Products.
* **Buyer’s Warranty.** Buyer warrants to Exacto the following (“Buyer’s Warranty”): the designs, drawings, and specifications for the Products that Buyer provides Exacto will not infringe any patents, copyrights, or other proprietary or intellectual property rights of others.
* **Remedies for Breach of Warranty**. Buyer must notify Exacto in writing of any nonconformity in the Products within 10 days of discovering the nonconformity and provide Exacto with sufficient information and evidence for Exacto to confirm the existence of the nonconformity and that Exacto was the source of the nonconformity. Such information and evidence must include, but is not limited to, the Product itself and the shipment date, delivery date, part number, and lot number of the Product. Buyer will work with Exacto to make arrangements for shipping the Product that Buyer alleges is nonconforming to Exacto at Exacto’s cost. If, after inspecting the Product, Exacto reasonably determines that the Product breached the Warranty, Exacto will replace the Product and reimburse Buyer for any incidental expenses that Buyer actually incurred in discovering and remedying the nonconformity. Exacto will only be responsible for the percentage of sorting costs that corresponds to the percentage of Products sorted that Exacto supplied. Exacto is not responsible for any nonconformity in any of the Products discovered after the earlier of when (a) Buyer commingles the Products with substantially similar Products manufactured by a supplier other than Exacto in a manner that makes determining the source of the nonconforming Product impossible or (b) Buyer makes any alteration to the Products, including but not limited to by heat treating or machining the Products. Buyer must act in good faith to resolve any claim for damages, charges, expenses, or costs that Buyer alleges resulted from Exacto’s breach of the Warranty, and Buyer may not deduct or set off any such amounts from amounts Buyer owes Exacto without Exacto’s express written consent.
* **Limitation on Liability**. In no event will Exacto be responsible to Buyer for any consequential or indirect damages, including, but not limited to, lost profits, lost manufacturing time, facility inactivity, loss of use, or damage to machinery resulting from the Products, or any damage to goods incorporating the Products. Exacto’s entire aggregate liability to Buyer will not exceed the total amount Buyer has paid Exacto for Products during the 12-month period immediately preceding Buyer’s most recent claim against Exacto.
* **Payment and Lead Times**. Buyer will pay Exacto for the Products, without setoff or deduction of any kind, within 60 days of receiving Exacto’s invoice. All Orders for Products are subject to Exacto’s customary lead times, and Exacto will not be in breach of the Warranty or any agreement for the sale of Products if (a) Buyer’s order does not account for Exacto’s customary lead time, or (b) Buyer orders a quantity of a Product that exceeds Exacto’s capacity to make that Product within the timeframe for delivery set forth in the order. Buyer may not request a delivery date for any of the Products that is earlier than Exacto’s customary lead time for a Product unless Buyer and Exacto agree on an additional charge that Buyer will pay to Exacto to compensate Exacto for expenses Exacto incurs in meeting Buyer’s requested delivery date.
* **Changes to Products**. All changes requested by Buyer to the Products must be made in writing. Exacto will implement changes requested by Buyer provided that Buyer agrees to increase the price of the Products or the time of delivery if the requested change causes an increase in Exacto’s costs of manufacturing the Products or the time required for Exacto to manufacture or deliver the Products. Upon reasonable request by Buyer, Exacto will provide Buyer with support for any cost increases resulting from Buyer’s changes.
* **Packaging and Delivery**. Unless otherwise agreed to in writing between the parties, Buyer will be responsible for providing packaging for the Products and all shipments will be “F.O.B. South Bend, IN.”
* **Termination.** Either party may terminate part or all of the Orders upon a material breach committed by the other party that is not cured after 30 days’ written notice is provided to the breaching party, or 5 days’ written notice to the breaching party in the case of nonpayment. Material breaches that justify terminating all Orders include, but are not limited to, bankruptcy, the appointment of a receiver or trustee, nonpayment of an amount due under this Order, a failure to deliver conforming Products that substantially impairs the value of all outstanding Orders, and a failure to deliver Products by a requested delivery date provided that the delivery date conforms with Exacto’s customary lead times and Exacto’s delay in delivering the Products substantially impairs the value of all outstanding Orders. Upon termination, Buyer must pay Exacto for all finished Products at the price set forth in the Quotation and for all work-in-progress and raw materials at Exacto’s actual cost.
* **Indemnification.** Exacto agrees to indemnify and hold Buyer harmless from and against any and all liabilities, damages, claims, demands, or expenses (including reasonable attorney’s fees) (collectively, “Claims”) asserted by a third party and resulting from Exacto’s breach of the Warranty except to the extent that such Claims resulted from the negligence, gross negligence, or intentional misconduct of the Buyer (including Buyer’s employees and agents) or a third party. Buyer agrees to indemnify and hold Exacto harmless from and against any and all Claims for damages resulting from Buyer’s breach of Buyer’s Warranty or from the Products except to the extent that such Claims resulted from Exacto’s breach of the Warranty or any gross negligence or intentional misconduct by Exacto.
* **Force Majeure**. Either party will be excused from performing their obligations under an Order as a result of any event not within the reasonable control of the party, including but not limited to acts of God, strikes, and raw material shortages.
* **Tooling**. Buyer is responsible for the tooling costs resulting from any changes to the Products or tooling requested by Buyer.
* **Non-Disclosure**. During the course of the Orders, Exacto may, from time to time, disclose to Buyer certain confidential business, technical, and proprietary information (“Exacto Confidential Information”), including, but not limited to, information relating to Exacto’s pricing, manufacturing processes, and operations. Buyer agrees, and will require its employees to agree, that all rights in and to Exacto Confidential Information belong to Exacto and that Exacto Confidential Information will not be copied, duplicated, used, sold, or disclosed to others by Buyer or any of Buyer’s employees or agents without Exacto’s express written permission. Buyer may use Exacto Confidential Information only in connection with determining Exacto’s compliance with its obligations under the Orders. Exacto Confidential Information will be treated by Buyer and its employees as confidential and will be immediately returned to Exacto upon Exacto’s request. This provision will survive the termination of any Order and will apply for three years from the date of disclosure by Exacto unless the information constitutes a trade secret under applicable law, in which case no such three-year limit will apply. Buyer agrees that any unauthorized disclosure of Exacto Confidential Information will cause Exacto irreparable harm, and will entitled Exacto to injunctive relief (in addition to all other available remedies at law or equity) without the necessity of posting bond.
* **Intellectual Property**. The right and title to any and all intellectual property developed by Exacto or any of Exacto’s employees or agents at Exacto’s cost (“Exacto Intellectual Property”) will remain with Exacto at all times, and Buyer obtains no interest in any such Exacto Intellectual Property.
* **Attorney’s Fees**. With the exception of the fees provided under Section 10 and the attorney’s fees that Exacto incurs in enforcing Buyer’s payment obligations under any Order or the prohibition against setoff or deduction in Section 4, neither party will be entitled to receive from the other party the attorney’s fees and costs the party incurs in enforcing the Terms or the obligations contained in any Order.
* **Applicable Law and Venue**. The laws of the State of Indiana apply to any purchases of Products by Buyer without regard to conflicts-of-laws principles. Both parties agree to the exclusive jurisdiction and forum of the state and federal courts located in St. Joseph County, Indiana, for any dispute arising out of the purchase of Products by Buyer, with the exception of any suit by Exacto requesting injunctive relief, which may be brought in the county where the activities Exacto seeks to be enjoined are occurring. The parties waive their right to a jury trial for any disputes arising out of the purchase of Products by Buyer.
* **Entire Agreement**. Upon acceptance by Buyer, these Terms and the terms included in the applicable Quotation constitute the entire agreement between the parties relating to the sale of Products and supersede all prior written and oral agreements. The parties may not modify or amend these Terms except by a writing signed by both parties.