

EXACTO SPRING CORP - TERMS AND CONDITIONS



Revised September 26, 2024

I. Acceptance

These terms and conditions of the Quotation/Agreement/Sale are the only terms binding upon EXACTO SPRING CORP (the "Seller") of the Product(s) ("Product") to the buyer ("Buyer") unless explicitly accepted in writing signed by the Seller. Any differing or additional terms in any communication from the Buyer are rejected. This document constitutes the complete statement of terms, except for Purchase Orders (the "PO") consistent with this Agreement and accepted by the Seller. These Terms and Conditions comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, and communications both written and oral. The Buyer's general or standard Terms and Conditions of purchase are rejected unless expressly agreed to in writing by EXACTO SPRING CORP in advance of the Buyer's submitted PO. Fulfillment of the Buyer's order does not constitute acceptance of any of the Buyer's Terms and Conditions and does not serve to modify or amend these Terms.

II. Shipment, Delivery, and Inspection

EXACTO SPRING CORP shall not be liable for any delays, loss, or damage to Product(s) in transit, unless otherwise set forth in the Quotation/Agreement/Sale. All Product(s) are shipped F.O.B. from the Seller's facility, and the Buyer is responsible for selecting and paying the carrier. Title and risk of loss transfer to the Buyer upon pickup/delivery to the carrier. Any special packing or handling costs requested by the Buyer will be borne by the Buyer. Claims for damage, shortages, or shipping errors must be reported within five (10) business days of receipt ("Inspection Period"). The Buyer will be deemed to have accepted the Product(s) unless it notifies EXACTO SPRING CORP in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by EXACTO SPRING CORP. "Nonconforming Product(s)" means only the following: (i) Product(s) shipped is different than identified in Buyer's PO; or (ii) Product(s)' label or packaging incorrectly identifies its contents. If the Buyer notifies EXACTO SPRING CORP of any Nonconforming Product(s) within the Inspection Period, EXACTO SPRING CORP shall, in its sole discretion, (i) replace such Nonconforming Product(s) with conforming Product(s), or (ii) credit or refund the Price for such Nonconforming Product(s), together with any reasonable shipping and handling expenses incurred by the Buyer in connection therewith. The Buyer shall ship, at the expense of EXACTO SPRING CORP and risk of loss, the Nonconforming Product(s) to EXACTO SPRING CORP. After the Inspection Period has expired, the Buyer is deemed to have accepted the Product(s) and waives the right to reject them. Neither party is liable for delays due to causes beyond reasonable control, including but not limited to acts of God, labor disputes, or shortages.

III. Price and Payment

The Buyer shall purchase the Product(s) from EXACTO SPRING CORP at the price or prices (the "Prices") set forth in the Quotation/Agreement/Sale. The Prices are based on existing labor, material, and outside service costs and are subject to be revised by EXACTO SPRING CORP, as indicated on the Quotation/Agreement/Sale. Prices are subject to review as needed. EXACTO SPRING CORP does not hold pricing for service usage or severe decline in usage and prices are subject to be updated, based on actual usage. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by the Buyer. The Buyer shall be responsible for all such charges, costs and taxes; provided that the Buyer shall not be responsible for any taxes imposed on, or with respect to, EXACTO SPRING CORP's income, revenues, gross receipts, personnel, real or personal property, or other assets. Prices quoted are exclusive of transportation, insurance, duties, and taxes, including sales and excise taxes. Buyer cannot change or cancel a PO without the Seller's written consent and must pay for all associated charges. If Buyer fails to remove property from the Seller's facility within thirty (30) days after notice, Seller may charge a storage fee or dispose of the property at Buyer's expense. The Buyer may also be invoiced for any specialty materials purchased by the Seller specifically for the Buyer.

IV. Payment Terms

The Buyer shall pay all invoiced amounts due to Exacto within 30 days from the date of Exacto's invoice. The Buyer shall make all payments hereunder by ACH transfer, wire transfer or check and in official United States Currency (U.S. Dollar). The Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. The Buyer shall reimburse EXACTO SPRING CORP for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms and Conditions or at law (which EXACTO SPRING CORP does not waive by the exercise of any rights hereunder), EXACTO SPRING CORP shall be entitled to suspend the delivery of any Product(s) if the Buyer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof. The Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with EXACTO SPRING CORP, whether relating to an EXACTO SPRING CORP breach, bankruptcy or other corporate crisis.

V. Limited Warranty

The exclusive and limited warranty provided by the Seller hereunder is that the Product(s) will conform to those specifications provided by the Buyer and accepted in writing by the Seller for a period of one year from the date of shipment (the "Warranty Period") binding that the Product(s) were properly inspected for nonconformance within the Inspection Period defined in Section II. EXACTO SPRING CORP warrants that the Product(s) will be (A) free of defects in material and workmanship, (B) the Product(s) was designed or manufactured to the specifications of the Buyer, and (C) the Product(s) conforms to the specifications provided by the Buyer. If the Product(s) was designed by EXACTO SPRING CORP, the Product(s) will conform to the published specifications in effect as of the date of the shipment and will be free of defects in design.

The Seller recommends that the Buyer independently test the Product(s) to determine suitability for the intended use and of any materials used in the manufacture of the Product(s) (and the Buyer is not relying upon Seller to determine said suitability). The foregoing warranties do not apply where Product(s): (A) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any specifications or to any instructions issued by EXACTO SPRING CORP or (B) have been reconstructed, repaired, altered or modified by persons other than EXACTO SPRING CORP. EXACTO SPRING CORP shall not be liable for a breach of the warranty set forth in Section V unless: (i) The Buyer gives written notice of the defect, reasonably described, to Exacto within (10) days of the time when the Buyer discovers or ought to have discovered the defect; (ii) EXACTO SPRING CORP is given a reasonable opportunity after receiving the notice to examine such Product(s), and the Buyer (if requested to do so by EXACTO SPRING CORP) returns such Product(s) to EXACTO SPRING CORP at the Seller's cost for the examination to take place there; and (iii) EXACTO SPRING CORP reasonably verifies the Buyer's claim that the Product(s) are defective. (C) With respect to any Product(s) failing to comply with the limited warranty set forth in Section V, EXACTO SPRING CORP shall, in its sole discretion, either: (i) repair or replace such Product(s) (or the defective part) or (ii) credit or refund the price of such Product(s) at the pro rata contract rate; provided that, if EXACTO SPRING CORP so requests, the Buyer shall, at the Seller's expense, return such Product(s) to EXACTO SPRING CORP. THE REMEDIES SET FORTH IN THIS SECTION V SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND EXACTO SPRING CORP'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH. OTHER THAN THE WARRANTY, EXACTO SPRING CORP MAKES NO WARRANTY WITH RESPECT TO THE PRODUCT(S), AND THE BUYER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

VI. Limitation of Liability

In the event that it is determined that the Warranty has been breached, the liability of the Seller and the exclusive remedies available to the Buyer will be limited to the repair or replacement of the Product(s) by the Seller or the return of the purchase price of such Product(s), as determined by Seller in its sole discretion. IN NO EVENT SHALL EXACTO SPRING CORP BE LIABLE TO THE BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EXACTO SPRING CORP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THE SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO EXACTO SPRING CORP FOR THE PRODUCT(S) SOLD HEREUNDER (THE "CAP"). The Cap shall not apply to (A) liability resulting from Exacto's willful misconduct or (B) death or bodily injury resulting from Exacto's negligent acts or omissions. Neither party is liable for special, incidental, punitive, indirect, or consequential damages.

VII. General Indemnification

Subject to the liability limitations outlined in Section V, the Buyer agrees to indemnify and hold harmless the Seller and its affiliates, shareholders, members, directors, officers, employees, and agents (collectively, "Seller Indemnified Parties") from any losses, liabilities, damages, or expenses, including reasonable attorneys' fees ("Losses"), that the Seller may incur due to any breach, misrepresentation, or failure to fulfill obligations by the Buyer under this Agreement. Additionally, the Buyer shall protect the Seller Indemnified Parties from any Losses arising from or related to the Buyer's or its customers' use, marketing, distribution, or sale of the Product(s).

VIII. Infringement Indemnification

The Buyer agrees to indemnify, defend, and hold harmless the Seller and the Seller's Indemnified Parties from any and all claims, demands, complaints, or actions brought by third parties alleging that the Product(s) manufactured by the Buyer infringe upon any patent, copyright, or other intellectual property rights of a third party, in any jurisdiction, both within and outside the United States. This indemnification encompasses all settlements, losses, liabilities, judgments, court costs, reasonable attorneys' fees, fines, penalties, and other litigation costs and expenses arising from such claims. However, the Buyer's obligations under this section do not apply if the infringement claim results from: (a) any alterations or modifications to the Product(s) not authorized by the Buyer or its agents; (b) the combination of the Product(s) with items not provided or authorized by the Buyer or its agents, unless the Buyer was aware of and approved such a combination; or (c) the Seller's use of the Product(s) in a manner inconsistent with the Buyer's recommendations or intended purpose. In such instances, the Seller shall indemnify, defend, and hold harmless the Buyer.

If the Product(s) were designed by or manufactured to the specifications of the Buyer, the Buyer shall indemnify EXACTO SPRING CORP and defend and hold EXACTO SPRING CORP harmless from any claims, proceedings, damages, costs, expenses, and liabilities incurred or suffered by EXACTO SPRING CORP or to which it becomes subject, resulting from any claim: (A) that the Product(s) infringe upon the proprietary or other rights of any third party; or (B) of loss or damage arising from the Product(s) or their use. This indemnity, defense, and hold harmless agreement applies even if the alleged loss or damage was partially caused by the strict liability or negligence of EXACTO SPRING CORP, except when the loss or damage is claimed to be caused entirely by the strict liability or negligence of EXACTO SPRING CORP and is solely related to a manufacturing defect.

IX. Compliance with Law.

The Buyer shall comply with all applicable laws, regulations and ordinances. The Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Quotation/Agreement/Sale. The Buyer shall comply with all export and import laws of all countries involved in the sale of the Product(s) under this Agreement or any resale of the Product(s) by the Buyer. The Buyer assumes all responsibility for shipments of Product(s) requiring any government import clearance. EXACTO SPRING CORP may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Product(s).

X. Termination

In addition to any remedies that may be provided under these terms and conditions, EXACTO SPRING CORP may terminate this Agreement with immediate effect upon written notice to the Buyer, if the Buyer: (i) fails to pay any amount when due under this Quotation/Agreement/Sale; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

XI. Waiver

No waiver by EXACTO SPRING CORP of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by EXACTO SPRING CORP. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Quotation/Agreement/Sale operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

XII. Confidential Information.

All non-public, confidential, or proprietary information belonging to EXACTO SPRING CORP, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed to the Buyer—whether verbally, in writing, electronically, or in any other form—shall be considered confidential. This information is intended solely for the purpose of fulfilling this Quotation/Agreement/Sale and may not be disclosed or copied without prior written authorization from EXACTO SPRING CORP. Upon request from EXACTO SPRING CORP, the Buyer must promptly return all documents and materials received from EXACTO SPRING CORP. EXACTO SPRING CORP reserves the right to seek injunctive relief for any breach of this Section XII. This Section XII does not apply to information that is: (a) publicly available, other than through the actions of the Buyer; (b) already known to the Buyer at the time of disclosure; or (c) lawfully obtained by the Buyer from a third party on a non-confidential basis.

XII. Force Majeure.

EXACTO SPRING CORP shall not be held liable or responsible to the Buyer, nor shall it be considered in default or breach of this Quotation/Agreement/Sale, for any failure or delay in fulfilling or performing any term of this Quotation/Agreement/Sale that is caused by circumstances beyond its reasonable control. Such circumstances include, but are not limited to, acts of God, floods, fires, earthquakes, explosions, governmental actions, war (declared or undeclared), terrorist threats or acts, riots, civil unrest, national emergencies, revolutions, pandemics or epidemics, lockouts, strikes, or other labor disputes (regardless of whether they involve either party's workforce), as well as any restraints or delays affecting carriers or difficulties in obtaining adequate or suitable materials, telecommunications failures, or power outages.

XIII. Governing Law; Jurisdiction.

All matters arising from or related to this Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Wisconsin, Ozaukee County, the Village of Grafton as specified on the face of the Quotation/Agreement/Sale, without regard to any choice or conflict of law provisions that would result in the application of laws from any other jurisdiction. The parties explicitly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

The parties agree that the exclusive jurisdiction and venue for any legal action arising from, involving, or in any way connected to this Agreement shall be the federal or state courts located in the Village of Grafton or, if no such courts exist in that city, Ozaukee County. Each party irrevocably submits to the exclusive jurisdiction of these courts in any such lawsuit, action, or proceeding.

XIV. Miscellaneous.

The Buyer shall not assign any of its rights or delegate any of its obligations under this Quotation/Agreement/Sale without obtaining prior written consent from EXACTO SPRING CORP. Any assignment or delegation made in violation of this provision shall be considered null and void. Furthermore, no assignment or delegation shall relieve the Buyer of its obligations under this Quotation/Agreement/Sale.

This Quotation/Agreement/Sale is intended solely for the benefit of the parties involved and their respective successors and permitted assigns. Nothing herein, whether expressed or implied, is intended to confer any legal or equitable right, benefit, or remedy upon any other person or entity.

If any term or provision of this Quotation/Agreement/Sale is found to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity shall not affect the validity or enforceability of any other term or provision, nor shall it invalidate or render unenforceable that term or provision in any other jurisdiction. Provisions of these terms and conditions that naturally extend beyond their terms shall remain in effect after any termination or expiration of this order.