

General terms and conditions for the purchase of machines from Exaktmess GmbH

IMPORTANT NOTICE: This is only a translation of our German terms and conditions. The relevant text for any disputes which may arise shall be the German version (AGB).

I. Scope of Application – Applicable Law

1. The contract is subject to German law.
2. The terms of sale of Exaktmess hold exclusively. Divergent terms of purchase of the customer will not become subject matter of the contract, not even in case of acceptance of an order by Exaktmess and also not even if we do not expressly reject the specific terms of purchase in any individual case.
3. All contractual agreements between Exaktmess and the customer are to be laid down in writing.
4. The Exaktmess terms of sale only hold for entrepreneurs, corporate bodies under public law and special funds under public law.

II. Offer

1. Offers of Exaktmess are subject to change, unless stated otherwise in the order confirmation. Any documents that are part of the Exaktmess offer, such as illustrations, drawings, indications of weight and dimensions are only approximate and not authoritative, unless expressly described as binding.
2. Exaktmess reserves the right of ownership and copyright with regard to quotations, drawings, calculations and other documents; they must not be made accessible to third parties without the explicit approval of Exaktmess.
3. Verbal agreements, information (also about changes as well as amendments to the documents provided by the customer), promises, assurances and guarantees concerning the conclusion of the contract require a written confirmation by Exaktmess to be effective.

III. Prices and Terms of Payment

1. The prices of Exaktmess are in euro (€).
2. All prices are exclusive of VAT, which will be charged at the current statutory rate. In the absence of any special provisions in the order confirmation, the prices are ex works and do not include packaging, freight, postage and insurance costs. Prices do not include any installation costs, commissioning costs and assembly costs either (cf. separate terms of assembly). All these additional costs are charged to the customer.
3. Payments for orders exceeding € 50,000 are due as follows:
30 % as a deposit upon receipt of the order confirmation,
60 % as soon as the customer has been informed that the main parts are ready for dispatch,
10 % within one month after passing of risk;
any remaining orders one month after passing of risk.

4. In the event of the customer's failure to comply with the term of payment, Exaktmess reserves the right to charge an annual interest of 8 % above the valid base rate according to § 247 of the German Civil Code without any further warning or setting a new deadline. This right remains independent of any further claims for compensation by Exaktmess. Exaktmess can claim for higher damages incurred by delay with the obligation to prove this damage. Likewise, the customer is entitled to prove that the damage caused by the delay in payment incurred by Exaktmess is lower or there is no damage at all.
5. If the customer is in default with a substantial part of the payment, the purchase price becomes immediately due and payable. The same holds if - after conclusion of the contract – the Exaktmess payment claim arising from the purchase is put in danger owing to the customer's lack of solvency or if - after conclusion of the contract - circumstances arise leading to the conclusion that the customer's solvency is decreasing considerably. Besides this, Exaktmess retains the rights specified in § 321 of the German Civil Code concerning the aforementioned cases.
6. Offset rights are granted to the customer only if his counterclaims are either ascertained legally, ready for decision, indisputable, or recognised by Exaktmess. In connection with counterclaims that are being controverted, not legally ascertained, not recognised by Exaktmess or not ready for decision, the customer has no right of retention.

IV. Delivery Time

1. The delivery time is based on the agreements made by the contracting parties. In order for Exaktmess to comply with the delivery time, any commercial and technical questions between the contracting parties have to be resolved and the customer has to have fulfilled any duties incumbent on him, such as the procurement of the required documents, permits, certificates, approval, or the payment of a first instalment. If this is not the case, the period of delivery shall be reasonably extended. This does not apply, if the supplier is responsible for the delay.
2. The term of delivery is extended appropriately if after conclusion of the contract Exaktmess is prevented from meeting its obligations by unforeseen circumstances, which lie beyond the will or the influence of Exaktmess. The considerable influence of these circumstances on the completion or the delivery of the article of sale has to be verified. This also holds in case such circumstances occur on the side of the suppliers of Exaktmess. Exaktmess will inform the customer as soon as possible about the beginning and end of such obstacles. If as a result of such events the fulfilment of the contract becomes unreasonable for one of the parties, it can withdraw from the contract.
3. The term of delivery is met if the goods have left the supplier's factory within the delivery period agreed upon or if the goods have been reported as ready for dispatch. In case acceptance is required, the date of acceptance is authoritative - except in case of legitimate rejection. Alternatively, the notification that the customer is ready to accept the delivery item equally suffices.
4. If the dispatch or the acceptance of the delivery item is delayed for reasons the customer is responsible for, he is charged with any costs occurring as a result of the delay, starting one month after notification that the delivery item is ready for dispatch or acceptance.
5. If the non-adherence to the delivery schedule is due to acts of God, labour disputes or other events outside the sphere of influence of Exaktmess, the delivery period shall be reasonably extended.
6. The customer may - without fixing a period - withdraw from the contract if it is definitely impossible for Exaktmess to fulfil its duties as set out in the contract prior to the passing of risk. In addition, the customer may withdraw from the contract if in the case of an order, the fulfilment of one part of the delivery becomes impossible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the customer has to pay the contract price apportioned to the partial delivery. The same shall apply if Exaktmess is unable to perform.
If the impossibility or the inability occurs during the delay of acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall continue to be obliged to provide compensatory measures.
7. If Exaktmess defaults and as a result the customer incurs a loss, he shall be entitled to demand flat rate compensation for the delay. It shall amount to 0.5% for each full week of the delay, but in total no

more than 5% of the value of the relevant part of the complete delivery, which - as a consequence of the delay - either cannot be used in due time or as agreed in the contract.

If the customer after maturity – in compliance with the statutory exceptions – has granted Exaktmess a reasonable period to fulfil its obligations and the time limit is exceeded, the customer is entitled to withdraw from the contract within the scope of the statutory regulations.

Any further claims based on a delay of delivery are governed exclusively by section VIII.2.

V. Passing of Risk and Acceptance

1. The risk is passed to the customer when the delivery item has left the factory. This includes partial deliveries or if Exaktmess also has taken over other services, such as the forwarding charges or delivery and installation. If acceptance is required, it shall be authoritative for the passing of risk. It must be carried out immediately on the date of the acceptance of delivery, alternatively promptly after Exaktmess has reported the delivery ready for acceptance. The customer may refuse to accept delivery in case of an essential defect.
2. If the dispatch or the acceptance is delayed or does not occur as a result of circumstances, which are not attributable to Exaktmess, the risk passes to the customer from the date when the delivery is reported ready for dispatch or acceptance. Exaktmess undertakes to take out insurance as requested by the customer and at the customer's expense.
3. Partial delivery shall be admissible, in so far as it is reasonable for the customer.

VI. Reservation of Title

1. Exaktmess retains ownership of the delivery item until all payments from the delivery contract have been received.
2. Exaktmess shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the expense of the customer at the customer's cost, unless the customer can prove that he has insured the ordered items himself.
3. The customer must not sell, pledge or assign the delivery item as collateral. The customer must notify Exaktmess immediately of any seizure, garnishment, or other acts of disposal by third parties.
4. If the customer acts contrary to the terms of the contract, in particular in the case of a default of payment, Exaktmess is entitled to take back the item after a warning notice and the customer is obliged to return the item.
5. On account of the retention of title Exaktmess can demand back the object of delivery only if it has withdrawn from the contract.
6. If a petition for insolvency proceedings has been filed, Exaktmess is entitled to withdraw from the contract and request the immediate return of the delivered item.

VII. Claims for Defects

In case of material or legal defects of the delivery, Exaktmess warrants – to the exclusion of further claims (subject to section VIII.) - as follows:

Material Defects

1. Any parts, which turn out to be defective as a result of circumstances existing prior to the passing of the risk, must be rectified or redelivered free of charge at the discretion of Exaktmess. Exaktmess has to be notified immediately in writing when any such defects have been identified.

Any replaced parts become the property of Exaktmess.

2. Following agreement with Exaktmess, the customer shall grant Exaktmess the required time and opportunity to perform any rectification of defects and substitute deliveries Exaktmess considers necessary; otherwise Exaktmess shall be discharged from the liability for the resulting consequences. The customer only has the right to remedy the defect himself or to have it remedied by third parties and to request reimbursement of the required expenses from Exaktmess in urgent cases where industrial safety is endangered or to avert disproportionately large losses. In these cases, Exaktmess has to be notified immediately.
3. With respect to the costs incurred due to the rectification or substitute delivery, Exaktmess shall bear - provided the notice of defect proves justified - the cost of the replacement part, including shipping costs. In addition, Exaktmess shall also bear the costs of dismantling and installing as well as the cost of providing any fitters and auxiliary staff required, including driving costs, as long as this can be reasonably requested without being a disproportionate burden to Exaktmess.
4. The customer has the right to withdraw from the contract within the scope of the statutory provisions, if Exaktmess - taking into account the statutory exceptions - lets a reasonable deadline that was given to it for rectification or substitute delivery because of a material defect pass without result. If the defect is insignificant, the customer only has the right to reduce the contract price. Apart from that, the right to reduce the contract price remains excluded.

Any further claims are governed exclusively by section VIII. 2 of these conditions.

In particular, no warranty shall be given in the following cases:

Unsuitable or improper use, defective assembly or start-up by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable means of operation, defective construction work, unsuitable building foundation, chemical, electrochemical or electric influences - provided Exaktmess is not responsible for them.

5. If the customer or a third party rectifies any defects improperly, Exaktmess has no liability for the resulting consequences. The same applies to any modifications made to the delivery item without prior consent by Exaktmess.

Legal defects

6. If the use of the delivery item leads to any violation of industrial property rights or copyright within the country, Exaktmess shall procure, at its costs, the right to continued use for the customer or modify the delivery item in a way that is reasonable to the customer so that the violation of the protective right does no longer remain.
If this is not possible under economically reasonable conditions or within a reasonable period, the customer shall have the right to withdraw from the contract.
Under the conditions set out, Exaktmess also has the right to withdraw from the contract.
In addition, Exaktmess shall release the customer from undisputed claims or claims recognised by declaratory judgement by the holder of the industrial property rights concerned.
7. The obligations of Exaktmess set out in section VII.6 shall not, with the exception of liability as set out in section VIII.2, be extended to include liability for violation of industrial property rights or copyright.

They are only in force if

- the customer immediately notifies Exaktmess of any asserted violations of industrial property rights or copyright,
- the customer supports Exaktmess to a reasonable extent in averting the asserted claims or enables Exaktmess to carry out the modification measures according to section VII.6,
- all actions of defence, including extra-judicial regulations, are reserved to Exaktmess
- the legal defect is not due to any instructions given by the customer and

- the infringement was not caused by the customer modifying the delivery item arbitrarily or by the customer having used it in a manner that is not in accordance with the contract.

VIII. Liability

1. If the customer cannot use the delivery item in accordance with the contract and this is caused by the failure to perform or the improper performance of any recommendations or advice given before or after conclusion of the contract or by the violation of any other collateral obligation under the contract - in particular instructions on the proper operation and maintenance of the delivery item -, then the provisions of sections VII and VIII. 2 shall apply accordingly, to the exclusion of any further claims by the customer.
2. For damages not caused to the delivery item itself, Exaktmess is will only be liable, for whatever reasons,
 - a) in the case of intent,
 - b) in the case of gross negligence by its owner or chief executives,
 - c) in the case of culpable injury to life, body or health,
 - d) in the case of defects which were concealed fraudulently or whose absence was guaranteed,
 - e) in the case of defects of the delivery item, as far as there is liability for personal injury or property damage to objects for private use in accordance with the German Product Liability Act.
 - f) In the case of culpable violation of essential contractual obligations, Exaktmess shall also be liable for gross negligence of non- chief executives and for slight negligence.
In the latter event this is limited to any reasonably foreseeable losses that may reasonably be expected to occur under the contract.

Any further claims shall be excluded.

IX. Limitation

Any claims by the customer - for whatever legal reasons - become time-barred within 12 months. Claims for damages according to section VIII.2. a-e can only be asserted within the statutory periods. They also apply to defects in a structure or for delivered items, which were used according to their intended use for a structure and caused its defectiveness.

X. Use of Software

If any software is included in the scope of delivery, the customer is granted a non-exclusive right to use the software supplied, including its documentation. It is left to the customer for use on the delivery item it was designed for. Using the software on more than one system is prohibited.

The customer may only duplicate, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. German Copyright Act). The customer shall be obliged not to remove or modify manufacturer details - in particular copyright notes - without the express prior consent of Exaktmess.

Any other rights to the software and the documentation including the copies shall remain with Exaktmess or the software supplier. It is prohibited to issue sublicenses.

XI. Applicable Law, Place of Jurisdiction

1. For all legal relationships between the Exaktmess and the customer, the law of the Federal Republic of Germany for legal relationships amongst domestic parties applies exclusively.

2. Place of jurisdiction is [Göttingen](#). However, Exaktmess shall also be entitled to sue the customer at the place of the customer's headquarters.