

Terms of Trade



In this document:

Customer means the customer, any person acting on behalf of or with the authority of the customer, or any person purchasing Products from exeed. If the Customer comprises more than one person, the obligations of the Customer under these Terms shall apply to all such persons jointly and severally. exeed, we, us or our means Exeed Pty Limited (ACN 140 757 768).

Force Majeure means any circumstances or events beyond the reasonable control of exeed including without limitation, any acts of God, or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargos, riot or civil disturbance, lock out, strikes, raw material shortage, breakdown of plant, transport or equipment, or other labour disputes or industrial actions.

Goods or Products includes all Information technology equipment and software supplied by exeed, whether under Licence or otherwise and all Products sold by exeed from time to time.

Quote means any quote we issue from time to time.

Terms means the terms and conditions contained in this document, as amended by us and published on our website www.exeed.co.nz from time to time.

1. GENERAL

- (a) The Customer prior to the date hereof has warranted to exeed (and such warranty and representation is a precondition hereof) that it is intended that the Customer shall deal in the Products. Any failure in this warranty may result in loss and damage to exeed.
- (b) exeed shall supply to the Customer Products in such quantities and at such prices as shall be agreed between the parties from time to time upon the following terms and conditions.
- (c) Terms and conditions contained in any form, order or other writing of the Customer and which are at variance with or additional to these terms and conditions are not binding upon exeed unless specifically accepted by exeed in writing.
- (d) All prices are exclusive of Goods and Services Tax ("GST") unless expressly stated to be otherwise.
- (e) Where GST is payable in respect of any supply made by exeed to the Customer, the Customer must pay to exeed an additional amount equal to such GST liability.

2. QUOTATION

- (a) We may from time to time issue Quotes for the supply of the Products. All Quotes issued by us to you are subject to these Terms.
- (b) *Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 14 days, unless withdrawn by us earlier.*
- (c) *A Quote may be accepted by signing and returning the Quote. If you accept a Quote, you are also accepting all of these Terms without amendment.*

3. PRICE INCREASES

- (a) Amounts and prices stated on any Quote are those at the date of the Quote. If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.
- (b) In addition, notwithstanding the period of validity of the Quote, exeed reserves the right to increase the price of any Product which is not already in stock to take into account the changes in price due to the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials and taxes or otherwise.
- (c) exeed also reserves the right to increase or introduce new prices for all Products at any time. In the event that a Product is mistakenly listed at an incorrect price, exeed reserves the right to refuse or cancel any orders

placed for the Product listed at the incorrect price, regardless of whether the order has been confirmed or a Quote provided.

4. (PAYMENT) TRADING TERMS

The Customer at its own expense shall arrange collection of Products from exeed at its premises. Alternatively, exeed at its sole and absolute discretion may arrange physical delivery of Products to the Customer at the Customer's business address as specified in the Reseller Application form, such delivery being at the sole cost of the Customer. Delivery shall occur upon physical delivery to the Customer or if installation is required upon loading at the Customer's premises. The Customer shall be deemed to assume and shall be liable for loss or damage to Products from the time they are delivered to the premises of the reseller or their customer and once the delivery documentation has been signed by an employee of either organization.

(a) Payment for Products supplied or services rendered shall be made in full by the Customer to exeed without deduction or demand within the approved term as advised in writing by exeed or in the absence of a term approved by exeed not later than the last day of the month immediately following the date of invoice, ("30 days from End of Month" or "30 days EOM") unless the Seller otherwise agrees in writing. Time shall be of the essence for payment of invoices.

(b) The Customer shall pay interest on all amounts due to exeed which are in default at the rate of 2% above the then current overdraft rate of the National Australia Bank (NAB). An account will be in default if it has not been paid within the approved terms or within thirty (30) days from the end of the month. (c) If the Customer fails to make payment in accordance with sub-clause (a) for each and every supply of Products and each and every service rendered:

(i) exeed may in its sole and absolute discretion suspend the provision of credit to the Customer until all amounts owing by the Customer are paid in full;

(ii) All amounts owing by the Customer to exeed shall become due and payable forthwith without demand.

(d) A certificate signed by a Director for the time being of exeed stating the amount due (including any interest) by the Customer to exeed shall be conclusive evidence of the facts stated therein. (e) If the Customer fails at any time to comply with these trading terms and conditions all amounts shall become ipso facto due, owing and payable without deduction or demand to exeed and exeed may cancel the provision of credit to the Customer forthwith without notice in addition to exercising any other rights it might have.

(f) All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms including, but not limited to, legal costs on a solicitor and client basis, are payable by you.

(g) Pending payment in full for the goods, the Customer:

(i) must not supply any of the goods to any person outside of its ordinary or usual course of business;

(ii) must not allow any person to have or acquire any security interest in the goods;

(iii) must insure the goods for their full insurable or replacement value (whichever is the higher) with an insurer licenced or authorised to conduct the business of insurance in the place where the Customer carries on business;

(iv) must not remove, deface or obliterate any identifying plate, mark or number on the goods.

5. RETENTION OF TITLE

(a) (i) Notwithstanding any other clause contained herein the full legal and equitable title in the goods shall be retained by exeed its lawful successors in title and assigns and will only be transferred when the Customer's indebtedness to exeed or its lawful agents for the purpose under this Agreement, together with any sales tax or interest payable is fully discharged.

(ii) Until the moment of receipt of full payment of all the Customer's indebtedness as referred to in paragraph (a(i)) herein the Customer shall keep the goods for and on behalf of exeed.

(b) Notwithstanding any other clause contained herein, the Customer is responsible for insurance and risk in the Products from the earlier of the time they are received by a carrier for delivery to you or the time they are

collected by the Customer or the Customer's agent. All goods must be paid for notwithstanding the destruction thereof or any damage thereto however caused.

(c) The Customer shall ensure that the goods are stored in such a way that they are clearly identifiable as the property of exeed and are not intermingled with the property of the Customer or any other person. The Customer shall not in any way alter or treat the goods so as to change their quality or nature in any way until as aforesaid and further shall ensure that the goods remain clearly marked as exeed property.

(d) Payment of the amounts owed by the Customer to exeed under this Agreement shall be deemed to have been made when cash has been received or cheques for the price and all other moneys owing under this Agreement have been met and honoured in full.

(e) (i) exeed authorises the Customer to sell the goods as exeed fiduciary agent for the account of exeed only. The proceeds of sale are the property of exeed and the Customer shall hold such proceeds for and on behalf of exeed in a fiduciary capacity. The Customer shall keep separate records as to the goods sold and as to the amount(s) received.

(ii) While exeed retains full legal and equitable title in the goods the Customer shall not bail, pledge, mortgage, charge, grant a lien over, lease or assign the goods by any other way of security.

Only sales pursuant to paragraph e(i) hereof are permitted.

(iii) Notwithstanding any period of credit allowed in exeed's terms and conditions of sale, the Customer shall account to exeed for the purchase price of the goods, (or such part thereof as represents the goods on-sold) as soon as the goods (or any of them) are on-sold by the purchaser and the proceeds of such sale are received by the purchaser.

(f) The Customer shall notify exeed in writing of any intended sale of the Customer's business, which includes or purports to include the goods as part of the Customer's stock.

(g) In the event of the Customer failing to pay for the goods pursuant to this Agreement or the determination or repudiation of the contract (howsoever occurring) exeed is hereby irrevocably authorised to enter onto the premises of the Customer and re-possess the goods and any other goods in the Customer's possession the property which is vested in exeed.

6. PPSR REGISTRATION

6.1 The Buyer acknowledges and agrees that these Terms and Conditions constitute a security agreement and the Buyer:

(a) grants to the Seller a PMSI, for the purposes of the PPSA and that PMSI exists in all goods (and their proceeds) supplied by the Seller to the Buyer effective from 1st February 2012 (if any) and all future goods supplied (and their proceeds) without the need for further action or agreement; (b) agrees that the PMSI has attached to all goods supplied to the Buyer since 1st February 2012 (in respect of which invoices remain unpaid) or in the future, is attached to all goods supplied to the Buyer from the date of these Terms and Conditions, and that the attachment of the PMSI has in no way been deferred or postponed;

(c) acknowledges that he/she/it has received value for the PMSI granted to the Seller.

6.2 The Buyer will execute documents and do such further acts as may be required by the Seller to register the security interest/PMSI granted to the Seller under these Terms and Conditions under the PPSA and/or provide all information necessary to enable the Seller to perfect and maintain the perfection of any security interest/PMSI granted under these Terms and Conditions including but not exhaustively, by registration of a financing statement. The Buyer agrees to indemnify the Seller, upon demand, for all costs and expenses the Seller incurs in registering and maintaining any financing statement or a financing change statement.

6.3 Until the ownership of goods passes to the Buyer, the Buyer must not;

(a) give the Seller a written demand or allow any other person to give the Seller a written demand requiring the Seller to register a financing change statement under the PPSA; or

(b) enter into or allow any other person to enter into the register of personal property securities set up and maintained pursuant to the PPSA, a financing statement or a financing change statement in respect of goods supplied by the Seller (and/or their proceeds), and will immediately notify the Seller if the Buyer becomes aware of any person taking steps to register a financing statement or a financing change statement in relation to such goods; or

(c) allow the goods to become accessions or comingled with other products unless the Seller has first perfected any security interest that it has in the goods (or their proceeds)

6.4 Until ownership of the goods passes to the Buyer, and to the extent permitted by law, the Buyer waives his/her/its rights under Chapter 4 of the PPSA:

(a) to receive a copy of any verification statement in respect of any financing statement we register pursuant to the PPSA;

(b) to receive any notice of intention of removal of an accession;

(c) to receive a notice that the Seller decides to enforce its security interest in accordance with applicable land law;

(d) to receive a notice on enforcement of security in liquid assets;

(e) to receive a notice on enforcement action against liquid assets;

(f) to receive a notice to seize collateral;

(g) to receive notice on enforcement of security interests in liquid assets;

(h) to receive a notice of disposal of goods by the Seller purchasing the goods;

(i) to receive a notice to dispose of goods;

(j) to receive a statement of account following disposal of goods by the Seller;

(k) to receive a statement of account if no disposal of goods by the Seller, for each 6 (six) month period;

(l) to receive notice of any proposal of the Seller to retain goods;

(m) to object to any proposal of the Seller to either retain or dispose of goods;

(n) to redeem the goods; and

(o) to reinstate a security agreement between the Buyer and the Seller following termination.

6.5 The Buyer further agrees that where the Seller has enforcement rights in addition to those under Chapter 4 of the PPSA, those rights (including those expressed in these Terms and Conditions) will continue to apply.

6.6 The Buyer irrevocably grants to the Seller the right to enter upon the Buyer's property or premises, without notice, and without in any way being liable to the Buyer or to any third party, if the Seller has cause to exercise any of the Seller's rights under the PPSA, and the Buyer shall fully indemnify the Seller from any costs (including legal costs and expenses) or claims made by any third party as a result of such exercise.

7. WARRANTY AND EXCLUSION OF LIABILITY

7.1 To the extent permitted by law, the Seller warrants to the Buyer that under proper use in accordance with the Seller's specifications and instructions (if any), the goods will be free from defects solely due to faulty workmanship and materials during a period of twelve (12) months from delivery, to the extent that upon authorised return to the Seller during that period, freight pre-paid, of any part of the goods covered by this warranty the Seller shall if it finds such a part to be so defective in its sole opinion, at its option repair such part or supply (but not fit) a replacement part, provided that:-

(a) the goods or any part thereof are not, and have not been, without the Seller's consent, altered, repaired or subjected to any technical attention by any person other than the Seller's authorised representatives;

(b) the provision of this sub-clause 7.1 may, at the Seller's option, be varied or replaced by specific warranty conditions issued in respect of particular products; and

(c) this warranty does not cover damage due to normal wear and tear, improper installation, use of any of the Seller's goods in life support products, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum values in the applicable specification.

7.2 To the extent permitted by law and except as expressly provided in sub clause 7.1, all warranties, representations, terms and conditions, concerning the goods or services to be supplied by the Seller in respect of the goods, including but not limited to warranties, representations, terms or conditions regarding the ability of goods to be used in life support products, whether express or implied, are hereby expressly excluded.

7.3 To the extent permitted by law, the Seller shall not be liable, nor shall there be any remedy against the Seller in respect of any claim, whether contractual, tortious, statutory, in common law or in equity or actions constituting fundamental breach of contract, or otherwise, for any loss, damage, costs (including legal costs), expenses or other injury or harm suffered by the Buyer or any other person in relation to or arising out of use of the goods or in relation to or arising out of services supplied by the Seller in relation to the goods, including but not limited to, loss of profits, loss of business, unavailability of goods or losses arising from claims by third parties.

7.4 Where the Seller is not permitted under the Competition and Consumer Act 2010 (Cth) (as amended), or other applicable laws to exclude, restrict or modify its liability for the breach of a condition or warranty that is implied by the Competition and Consumer Act 2010 (Cth) (as amended) or any other applicable laws but is permitted to limit its liability for the breach of such condition or warranty, then, to the extent to which the Seller is entitled to do so, the Seller's liability (if any) shall be limited, at its option, to:-

(a) in the case of goods:-

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired,

(b) in the case of services:-

(i) the supply of the services again; or

(ii) the payment of the cost of having the services supplied again.

8. RETURNS

(a) The Customer must notify in writing of Products they wish to return within seven (7) days from the date of the invoice relating to that or those Products subject to compliance with the provisions of (b), (c) and (d) below and subject also to the provisions of exeed's Returns Procedure as set, that specifies that the product is current on the price list, and the goods are not opened or damaged. (b) Each claim of the Customer for Return shall be dealt with under exeed's Customer Returns Procedure. The Customer acknowledges that he is aware of the terms of the said Customer Returns Procedure and further acknowledges that his Agreement incorporates the provisions contained therein. Products to be sent or returned to the Customer following compliance with the Customer Returns Procedure shall be sent by exeed to the Customer by ordinary freight pre-paid, subject to (c)

below. If the Customer requests the same to be sent by other than ordinary freight the excess cost of such accelerated or special freight shall be borne by the Customer.

(c) exeed shall have no liability for any damage or defects in the Products that have been caused by improper storage, warehousing or transport, or by neglect, abuse or improper use, installation, maintenance or unauthorised repair to our Products.

(d) Any claims for returns must be made in writing within seven days of delivery of goods.

(e) Restocking fees may apply to certain items. exeed reserves the right to apply a minimum restocking fee of 10% of the invoiced value of the Product. No claims for returns will be accepted after the expiration of seven days from the delivery date. Returns will not be accepted unless a Return Authorisation (RA) number has been issued by exeed. Returns will not be accepted if returned after seven days of issuing the RA. Goods returned incomplete or not in a saleable condition, including original packaging and accessories (product manuals, software etc) will not be accepted even if a RA number has been issued. All software purchases and volatile hardware purchases (such as memory modules), where packaging has been opened, are neither refundable nor creditable. In the case of goods returned contrary to the terms and conditions of sale, credit may be provided solely at the discretion of exeed however no claim for refund will be entertained.

(f) Despite the provisions of clause 8(a), in the event there is any discrepancy between the invoice and the Products supplied by exeed to the Customer pursuant to that invoice, the Customer must notify exeed of the discrepancy within fourteen (14) days of the date of the invoice. If exeed determines that there is a discrepancy for which the Customer needs to return some or all of the Products, exeed will provide written notice to the Customer identifying those Products that need to be returned and the Customer must return such Products within 7 days of written notice from exeed.

9. PATENTS, TRADEMARKS, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- The Customer acknowledges that any and all of the trademarks, trade names, patents, copyright and other intellectual property rights embodied in or in connection with the Products and any information, documentation, parts or software relating thereto are the property of exeed or such other manufacturer/supplier of any such rights and further acknowledges that exeed has the right to import and distribute the Products in Australia and New Zealand.
- The Customer also acknowledges that such copyright and intellectual property rights and other rights belonging to exeed or other manufacturer/supplier as the case may be, are only used by the Customer with the consent of exeed or other manufacturer/supplier during the continuation of this Agreement and such consent extends only to use essential for the direct purposes of the proper implications of this Agreement. Upon expiry or termination hereof the Customer shall forthwith discontinue such use, without receipt of compensation for such discontinuation, and the Customer acknowledges that upon expiry or termination hereof any licence of intellectual property rights in software created or implied hereby will immediately cease.
- The Customer shall not during or after the expiry or termination of the Agreement, without the prior written consent of exeed or other manufacturer/supplier use or adopt any name, trade name, trading style or commercial designation or design used by exeed or other manufacturer/supplier as the case may be nor shall the Customer repackage any Products, reproduce any artwork appearing on the package of any Products or copy sell or hire or offer for sale or hire a copy of the Products.
- The Customer shall indemnify exeed against all liabilities, costs and expenses which exeed may incur as a result of work done in accordance with the Customer's specifications or as a result of the combination or use of the Products with other equipment parts or software not supplied by exeed, involving infringement of any patent, copyright or other proprietary right.
- The Customer will comply with the terms of any licence agreement applicable to any part of the goods and the Customer shall not copy the goods in whole or in part except to make copies as are necessary for the purpose of a bona fide system backup and security.

10. CONFIDENTIAL INFORMATION

Products means all goods and services (including software) supplied to the Customer (or which may be supplied to the Customer) by exeed. I agree to exeed collecting, using and disclosing certain personal information about me for various purposes, including to:

- (a) assess credit worthiness;
 - (b) supply the Products to Customer and the management of Customer's account, including suppliers;
 - (c) communicate with the Customer about the Products which exeed or its partners or affiliates may provide to the Customer;
 - (d) implement the Terms and the Credit Terms; and comply with relevant laws.
2. exeed at my written request, will:
- (a) provide me with access to any personal information relating to me held by exeed; and
 - (b) correct or amend any personal information relating to me held by exeed which is inaccurate or out of date.

11. CONFIDENTIAL INFORMATION

(a) exeed has imparted and may from time to time impart to the Customer certain confidential information and documentation relating to the Products, their marketing, use, maintenance, operation and software including technical specifications therefore and the Customer hereby agrees that it shall use such confidential information solely for the purposes of this Agreement and that during the operation of this Agreement or thereafter it shall not disclose, whether directly or indirectly, to any third party such information other than is required to carry out the purposes hereof.

(b) In the event that disclosure is necessary, the Customer will obtain from such third parties binding Agreements to maintain in confidence the information disclosed to the same extent at least as the Customer is so bound to exeed hereunder.

(c) The Customer agrees that immediately on expiry or termination hereof it shall cease to use and shall return or destroy (as exeed may instruct) such information and documentation and shall not itself or through any subsidiary, agent or other party sell, market, distribute, manufacture or otherwise deal with the Products or have the same manufactured for it based on any technical or confidential information supplied to it by exeed.

12. ASSIGNMENT

This Agreement shall not be assigned by the Customer whether voluntarily, involuntarily or by operation of law without the prior written consent of exeed. No such assignment by the Customer howsoever occurring shall relieve the assignor of its obligations hereunder.

13. WAIVER

Failure or neglect by exeed to enforce at any time the provisions hereof shall not be construed nor shall be deemed to be a waiver of exeed's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice exeed's rights to take subsequent action.

14. SEVERABILITY

In the event that any or any part of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such terms, conditions or provisions shall be severed from the remaining terms and conditions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

15. WHOLE AGREEMENT

This document supersedes any arrangements understandings provisions or Agreements made or existing between the Customer and exeed prior to or simultaneously herewith and constitutes the sole and entire Agreement between the parties and except as provided herein no variation, amendment, modification or addition to any of its terms shall be of any force or effect unless the same shall be in writing and signed by and on behalf of the Customer and exeed.

16. COMPLIANCE WITH APPLICABLE LAW

The Parties agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of Australia.

17. INFORMATION AND ACCESS TO INDIVIDUALS CONSUMER ACCOUNTS

To the maximum extent permissible by law, the Customer waives all rights and consents to the collection, storage and provision of information by exeed to third parties. Such information may be used in respect of exeed's attendances relating to the Products exeed provides to the Customer and for exeed's our own statistical or marketing purposes, among other uses.

Further, the Customer expressly consents to exeed using any personal information or any other information exeed holds on the Customer for the purposes of investigating the Customer's creditworthiness including but not limited to conducting a credit check on the Customer.

The Customer hereby authorises exeed to make enquires at any time and from time to time to a credit reporting agency relating to the Customer's individual account should it be required and to contact the stated trade reference at any time.

18. PROVISION OF CREDIT

The provision of credit and/or the continued provision of credit by exeed to the Customer from time to time shall be in the absolute discretion of exeed. exeed may in its absolute discretion:

- (a) Extend credit to the Customer; or
- (b) Continue to extend credit to the Customer; or
- (c) Extend and/or continue to extend credit to the Customer subject to the provision of security in a form acceptable to exeed; and/or
- (d) At any time and from time to time vary or cancel the credit facility available to the Customer.

19. DIFFERENCES AND COMPLAINTS

Subject to the provisions of clause 4 exeed shall not be liable in respect of any difference or complaint arising out of this Agreement unless the Customer advises exeed in writing of the difference or complaints not later than seven (7) days after the date of the occurrence of the events or circumstances on which the difference or complaint is based.

20. ACCEPTANCE OF AGREEMENT

Upon presentation to exeed of a valid purchase order either in writing, verbally or by any other means as agreed upon by exeed, the customer indicates acceptance of these terms and conditions of sale and agrees to be irrevocably bound by it.

21. ORDERS

All orders for goods must be submitted on a written purchase order, or electronic order entered through exeed online, unless otherwise agreed to by exeed. The purchase order should state the goods to be purchased, quantity ordered, price, contact person and delivery address.

22. PART DELIVERY

Where exeed makes a part delivery in respect of any order such delivery shall constitute a separate contract upon these terms and conditions of sale.

23. FORCE MAJEURE

exeed will not be liable for any delay or failure to perform its obligations under these Terms by reason of any Force Majeure. Any suspension of performance by reason of this clause will be limited to the period during which the Force Majeure exists and exeed will give notice of such Force Majeure event to the Customer.