

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 Limited.

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Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 14 days, unless withdrawn by us earlier.*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 by the twentieth (20th) of the month following the invoice date.

(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 Bank of New Zealand. An account will be in default if it has not been paid within the approved terms or within twenty (20) 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

You agree that all Products supplied to you by us shall be subject to a purchase money security interest as that term is defined in the Personal Property Securities Act 1999 ("PPSA") and we shall treat the security interest in the Products as continuing and subsisting security with priority over a registered general security and any unsecured creditors.

Accordingly, you grant us a security interest in the Products and in any proceeds arising from the sale of the Products or in any accessions in the Products or if the Products become an accession the accession and the Products, to secure your obligations to us including, but not limited to, your obligation to make payment for the Products.

You are responsible for all costs incurred by us in registering our interest under the PPSA and all costs of enforcement.

If we, pursuant to the PPSA, take all or any of the Products in satisfaction of your obligations to us you agree that you shall remain liable to us for the difference between the market value of the Products at the time they are first able to be sold by us free from all rights and interests of you and other persons pursuant to s 123(1) of the PPSA and the amount of your obligation for which you are in default.

You agree that you waive to the maximum extent possible at law the following rights under the PPSA:

- receipt of a verification statement pursuant to s 148 and a statement of account under s 116;
- to recover a surplus under s 119;
- to receive notice from us to retain collateral under s 120(2) and to object to that proposal under s 121;
- to redeem collateral under s 132;
- to reinstate a security agreement under s 133 and 134;
- to not have goods damaged or to be reimbursed in respect of such damage if we take possession of an accession or goods (see s 125 and 126);
- to refuse permission to remove an accession until security is given by us for reimbursement as per s 127;
- to receive notice of removal of an accession under s 129;
- to apply to court for an order concerning removal of an accession;
- any other right in favour of you that can be lawfully contracted out of under the PPSA

You will immediately notify us of any change in your name, address, and contact person's details to enable us to register a financing change statement if required. In the absence of such notification, the address we hold in our records is deemed to be your relevant address.

You will not agree, encourage or allow any other person to register a financing statement without the express written consent of us and shall notify us as soon as you are aware of any other person taking steps to registering an interest in the Products.

7. LIABILITY

(a) Save to the extent provided in sub-clause (c) below exeed shall not be liable to the Customer or to any other person whomsoever for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Products (or any of them), parts of the Products, or otherwise, other than as expressly imposed by statute in terms of which it is not possible to limit or exclude liability. The provisions of Sale of Goods Act 1908 are hereby excluded.

(b) Notwithstanding the generality of (a) above, exeed expressly excludes liability for consequential loss or damage including but not limited to loss of profit, business, revenue, goodwill or anticipated savings.

(c) The sole liability of exeed for any loss as is contemplated by sub-clause (a) above shall be limited to the price or licence fee or other sum paid by the Customer to exeed for the Product licence or service from which such loss or damage directly arose.

(d) The Customer is not a consumer as that term is defined in the Consumer Guarantees Act 1993 and accordingly the Consumer Guarantees Act 1993 shall have no application to goods sold by exeed to the Customer.

(e) For the avoidance of any doubt, exeed does not warrant that the goods will be error free, the use of the goods shall be uninterrupted or that the goods will be fit for purpose. Any liability of exeed shall be in the case of goods be limited to the replacement of the goods or the supply of equivalent goods and in the case of services to the supply of the services again.

8. RETURNS

- (a) The Customer must notify exeed 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 HP's 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

(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.

11. 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.

12. 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.

13. 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.

14. 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.

15. COMPLIANCE WITH APPLICABLE LAW

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

16. INFORMATION AND ACCESS TO INDIVIDUALS CONSUMER ACCOUNTS

To the maximum extent permissible by law, the Customer waives all rights under the Privacy Act 1993 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. LIMITED WARRANTY

exeed warrants to the Customer that any manufacturers warranty in respect of any goods supplied will apply. To make a claim, the Customer must notify exeed that the goods are defective, whereupon exeed shall provide a RA number to be quoted by the Customer when returning defective goods to exeed. exeed's sole obligation is, at its option, to either repair or replace the defective goods or return same to manufacturer for repair or replacement.

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.