

EXCEED

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www.exceedgroup.com.au



EXCEED PTY LTD – GENERAL TERMS AND CONDITIONS OF TRADE

1. Definitions

“Client” means the party named as client/customer under any Contract.

“Contract” means any agreement between Exceed and the Client whereby Exceed agrees to provide Goods and / or Services to the Client. This includes a quote and/or scope of Services and/or proposal which has been accepted by the Client either in writing or verbally.

“Exceed” means Exceed Pty Ltd ABN 51 600 982 367.

“Force Majeure” means any act, omission, or circumstance over which Exceed could not reasonably have exercised control.

“Furniture” means any furniture supplied by Exceed on a hire basis as part of the Services;

“Goods” means any goods supplied by Exceed to the Client in the course of providing the Services, and any other Goods supplied from time to time.

“Hire Period” means the period during which the Furniture is hired to the Client, as specified in the Contract/these Terms.

“Lien” means a right to ownership of the Goods supplied by Exceed until the Client has fully paid the amount owed to Exceed under these Terms.

“Loss” includes the following, whether direct or indirect, special or consequential in nature: Loss, damage, costs (including legal costs on a solicitor and own client basis), action or expense of any kind.

“PPSA” means the *Personal Property Securities Act 2009 (Cth)* and its associated Regulations as amended.

“PPSR” means the Personal Properties Securities Register established under the PPSA.

“Property” means the Client’s property at which the Services are provided.

“Services” means the Services to be provided by Exceed to the Client as set out under the Contract.

“Terms” means these general terms and conditions of trade, as amended from time to time.

2. Scope

- a. These Terms form part of the Contract/s between Exceed and the Client.
- b. These Terms should be signed and returned to Exceed prior to the commencement of Services. However, by accepting Goods and / or Services from Exceed the Client will be deemed to have accepted these Terms, even if they have not been signed.
- c. In the event of inconsistency between these Terms and the Contract, the Contract shall prevail to the extent of the inconsistency.
- d. The Client acknowledges and agrees that no part of the Services constitutes the repair, improvement, renovation or alteration work of a building/home. Exceed essentially provides minor property refresh, cleaning, photography and styling services. For the avoidance of doubt:
 - i. Exceed and its contractors do not undertake “building work” or “domestic building work” or any other type of work which falls under the scope of the *Domestic Building Contracts Act 1995 (Vic)* or the *Building Act 1993 (Vic)* (“Building Legislation”);
 - ii. Without limitation to the above, if Exceed is found to have undertaken “building work” or “domestic building work” or similar which falls under the scope of the Building Legislation, the Client acknowledges that the component of the fee payable for the “building work” or “domestic building work” is less than \$10,000 and the balance of the fee is allocated to styling/photography services.

3. Payment

- a. The price and payment terms are as stipulated in the Contract.
- b. Unless otherwise agreed in writing:
 - i. the Client must pay a deposit equal to 50% of the agreed fee for Services into Exceed’s nominated bank account so as to confirm the booking and /or the requested scope of works or Services. This is to be paid within 48 hours of acceptance;
 - ii. in respect of furniture hire and styling Services, the balance of the agreed fee for Services must be paid at least 3 days prior to installation or the commencement of any styling Services (and funds must have cleared prior to installation or commencement).

- c. In the event that a Contract does allow payment after the provision of Services:
 - i. the Client must make the required payment on the specified due date; and
 - ii. without limiting the immediately preceding sub-clause, the Client must irrevocably authorise its real estate agent or other such advisor who holds the deposit to pay the amount owed to Exceed by the Client from any deposit resulting from the sale of the property; and
 - iii. the Client must complete and sign the authority at Appendix A to this effect.
- d. Notwithstanding any provision in these Terms or the Contract to the contrary, if Exceed permits the Client to make payment of all or any part of its fees 30 days following the auction date of the Property, then in addition to the fees set out under the Contract the Client must pay Exceed the following charges (which represent any additional costs incurred by Exceed, as well as loss of opportunity):
 - i. An administrative charge equivalent to 15% of the total amount payable by the Client under the Contract; and
 - ii. For any amount paid after that period of 30 days following the auction date of the Property, a further charge of 10% of the total amount payable under the Contract will be payable every 30 days (pro-rated).
- e. Where no due date for payment is specified, the due date is deemed to be 7 days of the Client receiving a tax invoice from Exceed.
- f. Payments can be made via electronic bank transfer to such bank account as is nominated by Exceed from time to time. The current nominated account is as follows:
 - i. **Bank: NAB**
 - ii. **Account name: Exceed Pty Ltd**
 - iii. **BSB: 083 315**
 - iv. **Account No: 74 403 9266**
 - v. **Reference: Please use invoice or customer reference number**
- g. Credit Card payments can be arranged upon request. Please note that credit card payments attract a **2.5% transaction fee**. Exceed accepts Visa & Mastercard payments only.
- h. In the event of default, the Client must pay interest on any money overdue during the period of default at a rate 4% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, fixed as at the date of default.
 - i. All prices quoted are exclusive of GST.
 - j. If the Client is a Company, the directors of the Client must personally guarantee all amounts owing to Exceed and must sign the directors guarantee at Appendix B.
- 4. Acceptance and Cancellation**
 - a. Should Exceed perform or the client accept Goods and / or Services under a Contract, this will imply acceptance of all of the terms of the Contract (including but not limited to the Terms).
 - b. The Client undertakes to inspect all Goods/Services immediately after their installation/performance. Following the supply, the Client has 24 hours to notify Exceed of any faults in the Goods/Services. Beyond this period, it will be inferred that the Client accepts the Goods/Services supplied.
 - c. It is the Client’s responsibility to ensure that the Goods correspond with the description, quality and character suitable for the purpose for which they have been purchased and Exceed shall not be liable for any Loss or from the failure of the Client to ensure suitability for purpose.
 - d. The Client must submit in writing any request to vary agreed installation dates at least 7 business days prior to the original agreed installation date. If such notice is given, Exceed will use reasonable endeavours to accommodate the request. The Client agrees to bear Exceed’s costs associated with or caused by any variation.

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- e. Any cancellation of agreed furniture hire and /or styling Services must be received in writing at least 10 business days prior to the original agreed installation date.
 - f. Any cancellation of agreed furniture hire and / or styling Services received less than 10 business days, but more than 3 business days, prior to the original agreed installation date will incur a cost equal to 50% of the original agreed total styling and furniture hire fee, but no additional delivery, installation or pick-up charge.
 - g. Any cancellation of agreed furniture hire and / or styling Services received 3 business days or less prior to the original agreed installation date will incur a cost equal to 75% of the original agreed total styling and furniture hire fee, including delivery, installation and pick-up charges.
 - h. Until all monies have been paid by the Client to Exceed, title and property in all Goods supplied throughout remain with Exceed but the risk of all Goods shall pass to the Client upon delivery, and the Client grants to Exceed a Lien/security interest over all Goods supplied to the Client during these Terms.
- 5. Additional Services / scope variations**
- a. If additional Services, works, or scope variations are requested over and above those originally agreed, Exceed will complete the scope of works in accordance with the original agreement before commencing the 'additional' works.
 - b. The Client acknowledges that additional Services, works or scope variations will be charged at an additional cost to the original agreement and will affect the originally agreed completion date of the works.
- 6. Safety**
- a. The Client will be responsible for ensuring that the Property is free of avoidable environmental or other risks, and will take all possible steps to minimise risks and ensure the safety of Exceed's employees, agents and sub-contractors (if any). The Client accepts liability for any claims or Loss where it fails to do so.
 - b. The Client warrants that it has appropriate public liability insurance in place to cover any injury suffered by Exceed, its employees, agents and subcontractors on the Property.
- 7. Nature of property styling**
- a. Exceed stylists design and select the furniture and items to be used, based on the principals of property styling, which is focussed on increasing appeal to an agreed target market. This task is not based on a Client's individual taste and style. The Contracts allow for a design and styling fee and for the hire of Furniture based on availability at the time. Unless specifically agreed to the contrary, the Contracts do not allow for a personal interior styling or consulting fee.
 - b. If a Client, or their real estate agent, requests a change (both additional or removal of items), then Exceed will provide a re-scope / variation to the Client for consideration. A minimum fee of \$200 plus GST will be applied, plus any associated transport costs and hire fees.
- 8. Furniture hire**
- a. Unless otherwise agreed in writing, furniture and accessories (hereinafter referred to as "Furniture") are hired for a 4 week period commencing on the agreed installation date.
 - b. The Client may request an extension to the Hire Period extensions by making such a request not less than 3 business days prior to the end of the original Hire Period. Exceed may grant or refuse the extension in its discretion.
 - c. If granted:
 - i. any extension to the Hire Period will be extended in blocks of 1 week (7 days), with a minimum extension of 1 week; and
 - ii. the Client must pay the extended hire charge upon receipt of Exceed's invoice. The extended hire charge will be calculated based on the original hire fee, adjusted on a pro rata basis.
 - d. In the event Exceed's pick-up of the furniture at the conclusion of the Hire Period is delayed due to the Client, the Client must pay an extended hire fee calculated as follows:
 - i. any deemed extension to the Hire Period will be in blocks of 1 week (7 days), with a minimum extension of 1 week; and
 - ii. the Client must pay the extended hire charge upon receipt of Exceed's invoice. The extended hire charge will be calculated based on the original hire fee, adjusted on a pro rata basis to take into account the number of weekly blocks by which pick-up has been delayed.
- 9. Exceed retains ownership in the Furniture at all times**
- a. All Furniture remains, at all times, the property of Exceed. At no stage will title in the Furniture pass to the Client.
 - b. The Client acknowledges Exceed's ownership of the Furniture and authorises Exceed to register its interest in the Furniture on the Personal Property Securities Register maintained by the Australian Government under the PPSA.
- 10. PERSONAL PROPERTY SECURITIES**
- a. The Client acknowledges and agrees that notwithstanding any other provision of these Terms:
 - i. The Goods are used by the Client only for any commercial purposes and are not used by the Client for personal, domestic or household purposes;
 - ii. The Goods received by the Client are not to be used as inventory;
 - b. By agreeing to and/or accepting these Terms the Client grants to Exceed:
 - i. A purchase money security interest in the Goods; and
 - ii. A security interest over all present and after acquired property of the Client and the Guarantors to secure Exceed all monies owing or payable by the Client under these Terms and any other monies payable by the Client to Exceed from time to time on any account whatsoever;
 - c. If a purchase money security interest is not able to be claimed by Exceed in respect of the Goods for any reason, Exceed will have a security interest in the Goods;
 - d. Exceed retains ownership of all of its own property (such as tools, scaffolding, and other materials it uses in the provision of the Goods/Services as well as the Goods until they are fully paid for by the Client), including any property that it leaves on the Property from time to time and Exceed may register its interest in such property on the PPSR;
 - e. The Client agrees that Exceed's security interest under these Terms may be registered on the PPSR and the Client agrees to do all things necessary and required by Exceed to effect registration of Exceed's security interest on the PPSR in order to give Exceed's security interest the best priority possible and anything else Exceed requests the Client to do in connection with the PPSA without delay;
 - f. The Client unconditionally and irrevocably appoints Exceed as its attorney to do any of acts and matters set out in this clause in the event that the Client fails, delays or declines to execute such documents or do such acts;
 - g. Exceed's security interest under these Terms extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring by the Client of its property;
 - h. The Client waives its right under the PPSA to receive a copy of any verification statement, financing change statement, or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of; to object to a proposal by Exceed to dispose of or purchase or retain any of the Client's property in satisfaction of any obligation owed by the Client to Exceed; to receive a statement of account following the sale of the Client's property; or to redeem the Client's property. The Client irrevocably appoints Exceed as its attorney to do all things required by the Client under this clause.

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- i. The Parties agree that Exceed is not required to respond to a request made under Section 275 of the PPSA and that neither Party will disclose information of the kind set out in Section 275(1) of the PPSA.
 - j. Further Supplies: The Parties acknowledge and agree that any supply of Goods made by Exceed to the Client which is not specifically set out in the Schedule but for which Exceed has or later issues a tax invoice or any other documentation to the Client is deemed to form part of the Agreement and is subject to the terms of the Agreement.
 - k. Enforcement: The enforcement provisions contained in these Terms are in addition to any rights available to Exceed under the PPSA.
 - l. Without limitation to any provision of these Terms sections 125, 129(2), 142 and 143 of the PPSA are contracted out of.
- 11. Security interest over real property**
- a. The Client hereby charges its interest in the Property and any interest the Client may have in any real property to secure payment of any amount payable pursuant to this Agreement.
 - b. The Client agrees that Exceed may lodge a non-lapsing caveat against any of its real property on the land titles register.
 - c. The security interests given by the Client is given as beneficial owner. If the Client is trustee of any trust, the Client acknowledges that the security interest given by it applies to the assets of the trust and its personal assets.
 - d. The Client agrees that Exceed's caveat under these Terms may be registered on the land titles register.
- 12. Initial condition report**
- e. Exceed will conduct a condition report prior to commencing any works on a property – whether it be capital improvement work or styling and furniture hire installations. Any damage or other issues identified that were not previously known to Exceed will be recorded and brought to the attention of the Client. Exceed reserves the right to increase its fees in the event new issues are discovered which were unknown as at the time of quoting.
- 13. Client's obligation to look after the Furniture**
- a. The Client is responsible for looking after the hired Furniture from the time of installation until the Furniture is collected.
 - b. For the duration of the Hire Period:
 - i. The Client must maintain the Furniture so that it remains in the same condition and in the same location that it was in as at the time of installation.
 - ii. The Client must keep the Furniture clean, in working order and fit for the purposes for which the Furniture was intended.
 - c. If the Furniture is damaged during the Hire Period, the Client must immediately notify Exceed.
 - d. The Client is responsible for any damage caused to the Furniture during the Hire Period. Accordingly, in respect of Furniture damaged during the Hire Period:
 - i. If the damage is repairable, the Client must pay the costs of any repairs to the Furniture.
 - ii. If the damage is not repairable and the Furniture must be replaced, the Client must pay the full replacement cost of the relevant Furniture.
- 14. Insurance**
- a. Exceed will insure all Furniture against fire and theft at the Client's expense, for the duration of the Hire Period and until the Furniture is returned.
 - b. If the Furniture is damaged, stolen, lost or destroyed in a manner that nullifies or invalidates Exceed's insurance, then the Client must on demand pay to Exceed the full replacement cost of the affected Furniture. For the avoidance of doubt and without limitation, Exceed's insurance will be invalidated by the Client, or the agent leaving the premises unsecured, or if keys are used to access the property when the incident occurs.
 - c. The insurance of any Client-owned items placed in storage shall be the sole responsibility of the Client.
- 15. Storage and removalist expenses**
- a. To the extent storage is arranged by Exceed:
 - i. any storage expenses must be paid by the Client in advance of the Client's possessions entering into the storage facility;
 - ii. the Client must confirm in writing (via email) the return date and location for personal items in storage.
- 16. Access to Client's property**
- a. The Client must provide Exceed, including any of its employees or sub-contractors, with clear access to the Property to undertake all agreed works as required.
 - b. If clear access to the Client's property is unavailable on the agreed installation dates without prior written notice:
 - i. a delivery re-scheduling fee of \$550 (inc GST) will apply;
 - ii. the Client will be responsible for any additional Loss suffered by Exceed as a result of the delay;
 - iii. the installation will then be re-arranged taking into account resource availability; and
 - iv. if the re-arranged installation date is 5 business days or more from the original installation date as a result of Client requirements or a lack of clear access to then property, a weekly holding charge equal 10% of the total hire fee may, at Exceeds discretion, apply to compensate for the Furniture being unavailable to other jobs.
 - c. The Client must ensure that any free standing valuable or breakable items are removed from the property prior to Exceed, and their subcontractors, commencing work. Any damage or breakage resulting from the Client's failure to comply with this requirement will be the complete responsibility of the Client.
 - d. The Client hereby irrevocably authorises Exceed, its employees, agents and sub-contractors, to enter the property for the purpose of removing any Furniture.
 - e. The Client is responsible to ensure that the Property is a safe worksite for Exceed, its agents, employees and sub-contractors.
- 17. Utilities**
- a. Due to occupational health and safety and practical requirements and Exceed require power, sufficient lighting and water to be connected to perform the agreed works, including the furniture installation and styling.
 - b. The Client must notify Exceed prior to any Services commencing if power or water will not be available. In such circumstances, Exceed may at its discretion re-schedule the Services, or make alternative arrangements that may affect the cost to the client of the Services being completed. In the event that costs will be impacted, Exceed will notify the client of additional costs prior to commencing. The Client is responsible for any additional costs, or Loss suffered by Exceed, to the extent caused by utilities being unavailable.
- 18. Minor scratches, wall hardware and cleaning**
- a. Exceed will take reasonable care to ensure no damage is done to walls, floors, doors and ceilings during the installation. From time to time there may be minor floor and / or wall scuffs, scratches, dents and marks. Exceed will not be held liable for the repair of any such minor issues.
 - b. The Client consents to Exceed using picture hooks, wall plugs, and picture rails as required for hanging artwork and mirrors. Any such wall hardware will not be removed after collection.
 - c. If Exceed has not been engaged to clean the property, the Client is advised to clean the property after installation and prior to photography.
- 19. Photography**
- a. Any pre- and post- installation photography taken by Exceed will remain the property of Exceed for the purposes of marketing. Exceed may request (in writing) permission for the use of the Real Estate campaign photography for marketing purposes.
- 20. WARRANTIES**
- b. To the maximum extent permitted by law and that can be contracted out of, the parties agree that Exceed gives no representations, warranties nor has any rights of obligations in respect of the Goods and Services supplied to the Client. The Client acknowledges that the provision of the Services does not guarantee the sale of the Property or the achievement of a specific sale price.

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c. The Client warrants to Exceed that as at the date of these Terms and for the duration of these Terms:

- i. The Client is not bankrupt or insolvent and no receiver, liquidator, administrator or receiver and manager has been appointed over any part of its assets and no such appointment has been threatened;
- ii. And no proceedings have been brought or threatened for the purpose of bankrupting or winding up the Client;
- iii. No partner, director or shareholder of the Client is bankrupt, a discharged bankrupt or in any form of receivership, administration or liquidation; and
- iv. It has the capacity to make the payment in accordance with these Terms.

21. INDEMNITY & RELEASE

- a. The Client agrees to indemnify and release Exceed from every cost, claim, Loss, damage, expense, proceeding or liability whatsoever or howsoever caused by or contributed to or arising from (wholly or partially):
 - i. Any breach by the Client (or company or individual engaged by the Client) of any duty or obligation imposed by these Terms or by law or otherwise, relating to or in any way connected with these Terms, or any other Loss suffered by Exceed which is caused by the Client;
 - ii. Any damages to the vicinity of the Property which pre-exist the Commencement Date or are caused after that date by any person other than Exceed;
 - iii. Damage caused by any event outside of the control of Exceed;
- b. In no event shall Exceed or its officers, directors, employees agents, contractors or suppliers be liable for any Loss howsoever arising out of or in connection with its Services.
- c. Without prejudice to the above and notwithstanding any other provision of these Terms and except to the extent permitted by law:
 - i. Exceed's total liability arising out of or in connection with these Terms, and the liability of its contractors, to you or any third parties in any circumstance is limited per event to the amount of \$10.00; and
 - ii. Exceed shall not be liable for any Loss, including loss of contract, loss of profit or revenue, contractual claims of third parties, economic loss, loss of production, business interruption, loss of data, production stoppage, or consequential or indirect loss or damage.

22. TERMINATION

- a. Exceed may in its absolute discretion, by written notice to the Client, immediately terminate the Contract if the Client:

- i. Fails to make payment in accordance with the Contract or breaches any warranty or obligation contained in these Terms;
- ii. Becomes insolvent; Commits an act of bankruptcy or is made bankrupt; Enters a composition or other arrangement with creditors; Assigns assets for the benefit of creditors generally; Being a company, enters into a deed of company arrangement or has a controller, administrator, receiver or receiver and manager appointed; Being a company goes into liquidation; Being a partnership has a receiver or a receiver and manager appointed; or
- iii. In the event of Force Majeure.

- b. Upon termination Exceed may enter the property to collect its Furniture and the Goods. The Client grants Exceed an irrevocable licence to enter the Property for the purpose of collecting its Furniture and the Goods.
- c. The rights and remedies of Exceed contained in this clause are in addition to any other rights and remedies by law, in equity or under these Terms.

23. GENERAL

- a. Entire Agreement: The Contract constitutes the entire Agreement between the parties regarding the Goods and Services.
- b. Waiver: No waiver of any breach or failure to enforce any provision of these Terms at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of these Terms.
- c. Governing Jurisdiction: Each engagement for the provision of Goods/Services by Exceed will be governed by and construed in accordance with Victorian law.
- d. The Client acknowledges and agrees that Exceed may assign its interest in these Terms without notice to the Client, and may engage subcontractors to perform the Services in its discretion. The Client may not assign its interest without the consent of Exceed.
- e. The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under these Terms.
- f. These Terms may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax or electronic communications including email.
- g. The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- h. Time is in all cases and in every respect of the essence of these Terms.

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This agreement is made between
Exceed Group Pty Ltd ACN - 600 982 367

And
I, the undersigned, accept the Contract and agree to these Terms and Conditions

Name:
[Please Print] _____

Signature: _____

Date: _____

Client Address: _____