

EXCEED MAINTENANCE STANDARD TERMS AND CONDITIONS

1. **CONSENTS AND PROPERTY REQUIREMENTS**
 - 1.1 If any consents or permits are required before, during or following completion of the work, you shall organise and pay for these and shall provide full details of the same to Exceed. We will not be responsible for establishing what the requirements are, nor liable for any work done in breach of any council or other requirement if we have not been given details.
 - 1.2 You need to ensure that we have safe access to the property and the work site and you authorise Exceed to enter the property and to bring vehicles, equipment and materials on to the property for the purpose of this Contract. We will exercise all reasonable skill and care but accept no liability or responsibility for any damage or loss to the access way, or to any other property or services as a result of entry on to the property, unless we have been negligent.
 - 1.3 You warrant that you own the property or have absolute rights to authorise the work. You unreservedly indemnify Exceed against any claim, damages, loss, cost or harm that may be suffered as a consequence of Exceed carrying out the work where you were not so entitled or authorised.
2. **PRICE AND PAYMENT**
 - 2.1 You are responsible for payment of the total Contract Price. The Contract Price does not include building consent fees, cost of power and services to site and used by us, or replacement glass, broken in the repair of the window or door [See 3.6]
 - 2.2 **VARIATIONS.**
 - (a) There are different possible types of variations to the Contract Price. No variation to the Price or plans or work may be made without authority signed by both you and Exceed, and where necessary a building consent variation has been given.
 - (b) Variations may be necessary where Exceed has provided provisional cost sums for work that cannot be firmly quoted prior to commencement because the scope of work is uncertain.
 - (c) Variations may also be needed where work was priced within the Total Cost but unforeseen circumstances have meant different or extra work is required such as preliminary remedial work or access requirements. Also if material costs increase significantly prior to commencement of the work or during the work to an extent or of a type that could not reasonably have been foreseen by Exceed.
 - (d) You may also request a variation.
 - (e) Exceed shall keep you informed of any changes or circumstances likely to lead to a variation.
 - (f) If any variation is not agreed to by you either party may cancel the contract in writing. If the contract is cancelled under this clause all costs and expenses incurred or payable whether invoiced or not shall be payable immediately by the you and you shall have no further claim against Exceed for unfinished work.
 - (g) Exceed may at its option change the specifications of the materials or work where necessary to correct any minor error or to substitute unavailable parts where such change does not result in a variation of price of more than **5%**.
 - 2.3 **PAYMENT.**
 - (a) GST Invoices for payment will be issued by Exceed either for the full amount or progress payments as set out on the front page of this contract.
 - (b) Statements are not issued by Exceed. Payment is due upon invoice and interest will be charged cumulatively at **21%** per annum calculated daily on unpaid balance from due date until payment is received.
 - (c) Exceed may delay commencement or suspend works where payment of any amount is overdue by more than **14** days.
 - (d) All payments due shall be made without any set off or deduction even if you consider you have a claim or dispute against Exceed.
 - (e) If any payment is overdue by more than **21** days Exceed may cancel this contract and retain all payments made with no liability or continuing obligation to you for unfinished work or take any other legal action it thinks fit.

- (f) You shall be liable for all actual costs incurred by Exceed in collecting or enforcing any payments including full, actual legal costs.
- (g) If you cancel the contract for any reason prior to completion Exceed may retain all payments made, and all payments due for work in progress and materials supplied or ordered on a no return basis shall become immediately due and payable. Exceed shall have no liability or continuing obligation to you for unfinished work.

3. WARRANTIES, EXCLUSIONS AND LIABILITY

- 3.1 Exceed will carry out the work in a thorough and tradesman like manner and will apply and affix all materials in accordance with manufacturers specifications.
- 3.2 You agree that any appearance or finishing defects will be notified to us within **30** days of the work being finalised or the defect becoming apparent and in any event no later than **3** months after completion of all work, and we will inspect and repair or replace the defect.
- 3.3 Our Warranty cover for other faults or failure due to our workmanship is **1** year and we shall repair defective workmanship for warranty claims made within that period.
- 3.4 The Warranty for parts and materials supplied to us by other suppliers shall be the same as provided by the manufacturer or supplier of the materials. We shall arrange to replace or repair defective materials within the manufacturer warranty period.
- 3.5 Exceed shall not be responsible for any claim where materials are fitted, serviced or operated incorrectly by another person; or where products are in any way adapted to a use which they are not intended; or where the materials or property have not been maintained.
- 3.6 We will not be responsible for glass broken during the repair and maintenance of windows, doors or conservatories. Any replacement glass required shall be at your cost. Glass may crack or break due to conditions outside our control or due to weakness or defects we cannot identify prior to commencing work.
- 3.7 We do not unconditionally guarantee work or repairs undertaken for leak or draught problems. We will analyse leaks or draught problems and to the best of our ability make repair or remedial works. You acknowledge that Exceed does not warrant that, following completion of the work, the property will meet current Building Code requirements in all respects in relation to weather-tightness.
- 3.8 Our liability in any circumstances to any person is limited to repair or replacement of the work or to the contract price, and only for claims made within the warranty period. We will not be liable for any consequential, indirect or special damage or loss.

4. OWNERSHIP AND INSURANCE

- 4.1 You are responsible for insuring the property (if necessary) for the duration of the work. You are responsible for risk to all materials and components that have been delivered to your property from the time they leave the control of Exceed or our supplier.
- 4.2 The ownership in all materials and products used or intended to be used shall not transfer to you until the total Contract Price is paid in full.

5. DISPUTES

- 5.1 If there is a dispute between the parties both use their best endeavours to resolve the dispute informally. If the dispute can not be resolved, the dispute shall be referred to arbitration under the Constructions Contracts Regulations 2003. If any dispute is not resolved within 30 days of first being referred to arbitration either party may elect to cancel the remainder of the contract without prejudice to any undisputed payment due by the client or the outcome of the arbitration.

6. DELAY OR LOSS OUTSIDE OUR CONTROL

- 6.1 Neither party is liable for any loss or damage incurred by the other arising from any failure to perform the obligations of such party where failure arises from a shortage of or inability to supply labour and materials, failure of subcontractors, strikes, lock-outs, fire, earthquakes, hostilities, government interference or any other cause of force majeure beyond the reasonable control of such party.