TERMS AND CONDITIONS (AND PRIVACY POLICY)

These Terms and Conditions govern access to, and the use of applications and/or websites and their content, and Services provided by Exceed Finance (“we”, “our”, “us”).

1. DEFINITIONS

1.1 In these Terms and Conditions:

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including government orders, pandemics, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

“Intellectual Property Rights” means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 and 'Intellectual Property’ has a corresponding meaning.

“Loss” includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis;

“Party” or “Parties” in these Terms and Conditions shall mean You and/or Us separately or together as the context indicates;

“Personal Information” means information about an identifiable, living person;

“Price” means the purchase price payable for the Services as agreed between the parties in accordance with clause 6 below.

“Services” means the finance and insurance brokerage services performed for you, and subject to these Terms and Conditions;

“Terms and Conditions” means these terms and conditions which govern the use of our Website and which sets out the agreement between you and us;

“Underlying System” means any network, system, software, data or material that underlies or is connected to the Website;

“We, us or our” means Exceed Finance Limited, a private limited liability company incorporated in New Zealand, company number 8249213, trading as Exceed Finance;

“Website” means the website at [www.exceedfinance.co.nz](http://www.exceedfinance.co.nz/);

“You”, “your” or “yours” means you, being the person accessing the Website, or if clause 3.1.b applies, both you and the person on whose behalf you are acting.

2. INTERPRETATION

2.1 In these Terms and Conditions, unless expressly state otherwise:

a. a reference to a statute or statutory provision includes a reference to:

• that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

• any subordinate legislation made under that statute or statutory provision;

b. headings do not affect the interpretation;

c. “persons” includes companies, partnerships, limited liability partnerships, unincorporated associations and trusts;

d. “including” and similar words do not imply any limit.

3. ACCEPTANCE OF TERMS AND CONDITIONS

3.1 By accessing and/or using the Website:

a. you agree to be bound by these Terms and Conditions; and

b. where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms and Conditions on that person’s behalf and that, by agreeing to them on that person’s behalf, that person is bound by them.

3.2 If you do not agree to these Terms and Conditions, you are not authorised to access and use the Website, and you must immediately stop doing so.

4. CHANGES

4.1 We may change these Terms and Conditions at any time by updating them on the Website. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms and Conditions. By continuing to access and use the Website, you agree to be bound by the Terms and Conditions as amended from time to time.

4.2 We may change, suspend, discontinue, or restrict access to, the Website without notice or liability.

4.3 These Terms and Conditions were last updated on 2 September 2022.

5. YOUR OBLIGATIONS

5.1 You must provide true, current and complete information in your dealings with us, and must promptly update that information as required so that the information remains true, current and complete.

5.2 You must:

a. not act in a way, or use or introduce anything (including any malware, virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Website or any Underlying System, or otherwise attempt to damage or interfere with the Website or any Underlying System; and

b. only access the Website via standard web browsers and not by any other method, unless with our written agreement. Other methods include scraping, deep-linking, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering, extraction or monitoring method.

5.3 You must obtain our written permission to establish a link to our Website. If you wish to do so, email your request to info@exceedfinance.co.nz.

5.4 You indemnify us against all Loss we suffer or incur as a direct or indirect result of your failure to comply with these Terms and Conditions.

6. PRICE

6.1 The Price payable for Services shall be a commission earned by our introducing you to the relevant finance or insurance provider(s), as disclosed to and agreed with you and as altered by us at our sole discretion from time to time.

6.2 In accordance with Credit Contracts and Consumer Finance Act 2003 guidelines, you are liable to pay any and all establishment fees upfront. If you choose to have these fees included in your borrowing there will be no additional upfront fee, however the fees will be added to and included in the total loan amount and will accrue additional interest based on the fixed interest rate secured.

6.3 Establishment fees for personal lending will vary depending on which lender we secure your borrowing from, starting from $204.10 ranging to $1500.00.

6.4 Establishment fees for business lending are determined differently, based on the size of borrowing required, and an estimate of those fees will be provided to you closer to the time of your loan drawdown.

7. PAYMENT

7.1 Time for payment of the Price being of the essence, the Price will be payable by you on the date/s determined by us at our sole discretion, which may be:

a. payment in full at the time that the Services are performed, or the relevant finance or insurance brokerage is provided; or

b. in accordance with any other payment terms we have agreed with you in writing.

7.2 Payment must be made in cleared funds by direct debit, on-line banking or by any other method stipulated or approved by us.

7.3 Financial services are exempt under the Goods and Services Tax Act 1985 and unless stated otherwise the Price excludes GST.

8. CANCELLATION

8.1 We reserve the right to cancel any order for Services subject to these Terms and Conditions, and/or to cancel provision of the Services at any time before the Services are performed, by giving you written notice at our sole discretion.

8.2 In the event we exercise our rights pursuant to clause 8.1, we shall not be liable for any Loss arising from such cancellation.

9. EFFECTS OF CANCELLATION

9.1 Upon cancellation of any order for Services, all the provisions of these Terms and Conditions will cease to have effect, save for those provisions intended to and that will survive and continue to have effect (in accordance with their terms or otherwise indefinitely).

9.2 Cancellation of any order for Services will not affect either party’s accrued liabilities and rights (including, where relevant, any accrued rights to be paid) as at the date of cancellation.

10. CONFIDENTIALITY

10.1 The provisions of these Terms and Conditions are strictly confidential to the parties. Neither party may disclose or permit to be disclosed any provision of, or any information (and particularly any financial information) relating to the contract the subject of these Terms and Conditions to any person not a party to them without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.

11. INTELLECTUAL PROPERTY

11.1 We (and our licensors) own all proprietary and intellectual property rights in the Website (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos and look and feel), and the Underlying Systems.

11.2 To the extent that we develop or create any intellectual property as the result of performing the Services, we shall retain ownership of all the rights in that intellectual property and any commercial applications thereof.

11.3 The rights to intellectual property as set out in this clause 16 shall not limit our confidentiality obligations as provided by clause 15.

12. FORCE MAJEURE EVENT

12.1 Where a Force Majeure Event gives rise to a failure or delay in either Party performing its obligations required by this agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

12.2 Where a Party’s obligations have been suspended pursuant to clause 17.1 for a period of 90 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other Party.

13. DISCLAIMERS

13.1 To the extent permitted by law, we and our licensors have no liability or responsibility to you or any other person for any Loss in connection with:

a. the Website being unavailable (in whole or in part) or performing slowly;

b. any error in, or omission from, any information made available through the Website;

c. any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Website. To avoid doubt, you are responsible for ensuring the process by which you access and use the Website protects you from this; and

d. any site linked from the Website. Any link on the Website to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

13.2 We make no representation or warranty that the Website is appropriate or available for use in all countries or that the content satisfies the laws of all countries. You are responsible for ensuring that your access to and use of the Website is not illegal or prohibited, and for your own compliance with applicable laws in your jurisdiction.

14. LIABILITY

14.1 To the maximum extent permitted by law:

a. you access and use the Website at your own risk; and

b. we are not liable or responsible to you or any other person for any Loss under or in connection with these Terms and Conditions, the Services, the Website or your access and use of (or inability to access or use) the Website. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

14.2 Except to the extent permitted by law, nothing in these Terms and Conditions has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited, our liability is limited to the Price of the Services.

14.3 To the maximum extent permitted by law and only to the extent clauses 14.1 and 14.2 of these Terms and Conditions do not apply, our total liability to you under or in connection with these Terms and Conditions, or in connection with the Website, or your access and use of (or inability to access or use) the Website, does not exceed the Price of the Services.

15. PRIVACY POLICY

15.1 Our collection and use of personal information in connection with the Website is governed by the following Privacy and Cookies Policy.

15.2 We comply with the New Zealand Privacy Act 2020 (“the Act”) when handling Personal Information. This policy does not limit or exclude any of your rights under the Act. If you would like further information on the Act, see [www.privacy.org.nz](http://www.privacy.org.nz/).

15.3 We collect, use, disclose and protect Personal Information in accordance with these Terms and Conditions, and any other specific arrangements we have agreed with you.

15.4 We collect personal information about you from:

a. you, when you provide it to us, including via our Website, through any registration or subscription process, or through any other contact with us (e.g. phone call or email);

b. your Facebook or other social media account profile page, if you provide us with your account details, in accordance with any privacy settings you have set for that account;

c. third parties where you have authorised this or the information is publicly available.

15.5 If possible, we will collect personal information from you directly.

15.6 We may also collect technical information whenever you access or use our Website. This may include information about the way you arrive at, browse through and interact with our Website.

15.7 We may collect this type of technical information through the use of cookies and other means. Cookies are pieces of digital identification code that we transfer to your device, with your express permission, to enable our systems to recognise your browser. If you want to disable cookies, you may do so by changing the settings on your browser or within our Website directly. However, if you do so, you may not be able to use all of the functions available on our Website. We use the technical information we collect to have a better understanding of the way you use our Website, to improve the way it works and to personalise it to be more relevant and useful to your particular needs.

15.8 We may use your Personal Information:

a. to verify your identity;

b. to provide to you, and to improve, our Website;

c. to market our Services to you, including electronically (e.g. by text or email);

d. to bill you and process payments from you, including authorising and processing credit card transactions;

e. to protect and/or enforce our legal rights and interests, including defending any claim and verifying your compliance with any terms under which we have provided our Website to you;

f. for any other purpose authorised by you or the Act.

15.9 You have the right to opt-out from any promotional, marketing or informational communications that we may send you. You may do so by following the instructions included in each communication or by emailing us at info@exceedfinance.co.nz.

15.10 We will not sell, distribute or lease your Personal Information to third parties. However, we may disclose Personal Information to:

a. only those businesses that support our business – including the relevant finance or insurance provider(s) – and our Website (including a business that hosts or maintains an underlying IT system or data centre that we use to provide our Website) where necessary for that business to provide those services to us;

b. a person who can legally require us to supply your personal information (e.g. a regulatory authority);

c. any other person authorised by law (e.g. a law enforcement agency);

d. any other person authorised by you.

15.11 A business that supports our business or our Website may be located outside New Zealand. This may mean your Personal Information may be held and processed outside New Zealand.

15.12 We will take reasonable steps to keep your Personal Information safe from loss, unauthorised activity, or other misuse.

15.13 Subject to certain grounds for refusal set out in the Act, where we hold readily retrievable Personal Information about you, you have the right:

a. to obtain confirmation of whether or not we hold that information;

b. to access that information;

c. to request a correction to that information or removal of that information (commonly known as the “right to be forgotten”).

15.14 If you would like to exercise any of the above rights, email us at info@exceedfinance.co.nz. Before you exercise these rights, we will need evidence to confirm that you are the individual to whom the Personal Information relates and reserve the right to not action them until we are satisfied as to the authenticity of the claim. Your email should provide that evidence and set out the details of your request (e.g. the Personal Information, or the correction, that you are requesting).

15.15 In relation to a request for correction, if we think the correction is reasonable and we are reasonably able to change the Personal Information, we will make the correction. If we do not or cannot make the correction, we will take reasonable steps to note on the Personal Information that you requested the correction.

15.16 Where necessary we may charge you our reasonable costs of providing to you copies of your Personal Information, correcting or removing that information.

15.17 While we take reasonable steps to maintain secure internet connections, if you provide us with Personal Information over the internet, you accept that the provision of that information is at your own risk.

15.18 If you follow a link on our Website to another website located on the internet, the owner of that website will have its own privacy policy relating to your Personal Information. We suggest you review that site’s privacy policy before you provide Personal Information to that site.

16. SUSPENSION AND TERMINATION

16.1 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms and Conditions or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the Website (or any part of it).

16.2 On suspension or termination, you must immediately cease using the Website and must not attempt to gain further access.

17. COMPLAINTS

17.1 If you are not satisfied with the service you receive from us you should contact us. We have an internal complaints process and undertake to investigate your concerns promptly and fairly. You may contact us to make a complaint by telephone on 0800 2 exceed or 0800 2 392333, or by email at info@exceedfinance.co.nz.

17.2 We are a member of an independent dispute resolution scheme operated by Financial Dispute Resolution Service (“FDRS”). If you are not satisfied by our response, you may refer the matter to FDRS by visiting their website on [www.fdrs.org.nz](http://www.fdrs.org.nz/) or calling FDRS on 0508 337 337. Full details of how to access the FDRS scheme can be obtained on their website [www.fdrs.org.nz](http://www.fdrs.org.nz/). There is no cost to you to use the services of FDRS.

18. GENERAL

18.1 If we need to contact you, we may do so by email or by SMS message. You agree that this satisfies all legal requirements in relation to written communications.

18.2 These Terms and Conditions, and any dispute relating to them or the Website, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms and Conditions or the Website.

18.3 For us to waive a right under these Terms and Conditions, the waiver must be in writing.

18.4 If any part or provision of these Terms and Conditions is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms and Conditions and the remainder of these Terms and Conditions will continue to be binding and enforceable.

18.5 These Terms and Conditions set out everything relating to your use of the Website and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to them. You accept and acknowledge that you have not relied on any representation, warranty or agreement relating to the Website that is not expressly set out in these Terms and Conditions, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms and Conditions.