

## Schedule 1 – Terms and Conditions

### 1 APPLICATION OF THIS DOCUMENT

- (a) This Contract applies to any and all Goods which:
  - (i) the Customer from time to time requests Evolve Surplus to supply; or
  - (ii) Evolve Surplus from time to time supplies to the Customer.
- (b) This Contract takes effect on and from the first to occur of the following:
  - (i) the date all Parties have executed a copy of this Contract; or
  - (ii) after Evolve Surplus sends a copy of this Contract to the Customer and requests or proposes (howsoever described) that the Customer executes that copy.

### 2 PRICE, INVOICING & PAYMENT

- (a) In consideration for the provision of the Goods under the Contract, Evolve Surplus will invoice the Customer for the Price, which the Customer must pay.
- (b) At Evolve Surplus's discretion, a deposit of part or all of the Price may be required from the Customer before provision of Goods commences. If a deposit is requested by Evolve Surplus, the amount of the deposit will become immediately due and payable by the Customer.
- (c) Evolve Surplus reserves the right to vary the Price if any additional charges, fees or taxes apply to the Goods at delivery.
- (d) Where special packing is required to deliver the Goods, it will be charged to the Customer. Some packing material is charged with a deposit, which is refundable on return of this material to the applicable Evolve Surplus.
- (e) Unless otherwise stated, Prices are exclusive of GST.
- (f) Any other tax, fee, levy or duty imposed by any competent authority on any of the Goods supplied by Evolve Surplus, including withholding tax and stamp duty, will be to the Customer's account and calculated using the rates and methods of assessment in force at the time of delivery.
- (g) The Customer must pay each invoice given under clause 2(a) within [30] days of the invoice date.

### 3 GOODS

- (a) Evolve Surplus shall supply the Goods to the Customer and will attempt to complete the supply of the Goods by the date specified for supply of the Goods in Schedule 1 and meet any milestone by the milestone dates specified in Schedule 1.
- (b) The Customer shall assign a qualified representative to oversee the supply of the Goods as noted in Schedule 1.
- (c) The Customer is responsible for all management decisions relating to the Goods and the use or implementation of the Goods.
- (d) All information provided by the Customer will be accurate and complete in all material respects. The provision of information to Evolve Surplus will not infringe any copyright or other third-party rights.
- (e) The Goods shall be free from defects for the Defects Liability Period. Any defects in the Goods discovered by the Customer during the Defects Liability Period shall be rectified promptly by Evolve Surplus at Evolve Surplus's cost excluding any transport, dismantling and other costs.

### 4 DELIVERY

- (a) Unless expressly stated otherwise, delivery dates set out in the Contract or otherwise agreed in writing between the Parties are an estimate only. Although Evolve Surplus will use commercially reasonable efforts to keep the delivery date stated or agreed.

- (b) The Customer will take delivery of the Goods whenever they are tendered for delivery.
- (c) Late delivery does not entitle the Customer to cancel the Contract or any part of it.
- (d) Evolve Surplus will not be liable for any loss resulting from a change of the delivery date(s) or late delivery.
- (e) Evolve Surplus determines the route and manner of delivery of the Goods at the cost of the Customer.
- (f) Delivery of the Goods will occur at the delivery location in Schedule 1, and Goods are taken to have been delivered at the time when:
  - (i) in the case of collection by the Customer, when the Customer or Customer's carrier takes possession of the Goods; or
  - (ii) in the case of delivery by Evolve Surplus, when the Goods are delivered to the delivery location in Schedule 1, even if the premises are unattended by the Customer at the time of delivery.
- (g) Evolve Surplus may deliver the Goods in instalments. Each instalment will be invoiced upon delivery.
- (h) Evolve Surplus's delivery records will be prima facie proof of delivery of the Goods to the Customer.
- (i) The Customer will inspect the Goods upon delivery and notify Evolve Surplus within three (3) days of delivery if the Customer alleges a defect or short delivery. Upon such notification, the Customer will allow Evolve Surplus to inspect the Goods.
- (j) Goods compliant with the applicable specifications are deemed fit for their purpose and accepted by the Customer upon delivery.
- (k) If the Customer is unable to take delivery for any reason, Evolve Surplus will be entitled to charge a reasonable fee for the storage, insurance and redelivery of the Goods.

### 5 INSURANCE, TITLE AND RISK

- (a) At all times during the term of this Contract, the Goods will not be insured by Evolve Surplus.
- (b) Risk of damage to and loss of the Goods passes to the Customer on delivery. It is the responsibility of the Customer to insure the Goods at all times.
- (c) Title to the Goods passes to the Customer only if and when the Customer has paid Evolve Surplus all amounts owing to Evolve Surplus. Where Goods are delivered by instalments, title does not pass in any Goods until payment has been made to Evolve Surplus for all the Goods delivered under the Contract.

### 6 PERSONAL PROPERTY SECURITIES ACT

- (a) This clause applies only to the extent that the Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA), only in Australia, as amended.
- (b) Evolve Surplus may register any actual or impending security interest in any manner it considers appropriate.
- (c) The Customer must do anything (such as obtaining consents and signing documents) which Evolve Surplus requires for the purposes of:
  - (i) ensuring that Evolve Surplus's security interest is registered, enforceable, perfected and otherwise effective under the PPSA;
  - (ii) enabling Evolve Surplus to gain first priority (or any other priority agreed to by Evolve Surplus in writing) for its security interest; and
  - (iii) enabling Evolve Surplus to exercise rights in connection with the security interest.
- (d) Evolve Surplus may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.
- (e) The rights of Evolve Surplus under the Contract are in addition to and not in substitution for Evolve Surplus's

- rights under other law (including the PPSA) and Evolve Surplus may choose whether to exercise rights under these terms, and/or under any other law, as it sees fit.
- (f) To the extent that Chapter 4 of the PPSA applies to the security interest under this Contract, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are contracted out of this Contract in respect of all Goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Evolve Surplus to give notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 129(2) and 129(3); section 130 (notice of disposal to the extent it requires Evolve Surplus to give notice to the Customer); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- (g) The following provisions of the PPSA confer rights on Evolve Surplus: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Customer agrees that in addition to those rights, Evolve Surplus shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Evolve Surplus may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- (h) The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.
- (i) Evolve Surplus shall have the right to apply payments received from the Customer as it sees fit and in such order and amounts as Evolve Surplus, in its sole discretion, may elect. The provisions of this clause shall apply irrespective of the Customer's designation of such payments and any prior application of payments made by Evolve Surplus and / or the Customer.

### 7 LIABILITY

- (a) The Customer must indemnify Evolve Surplus against all Liabilities incurred or sustained in connection with:
- (i) any breach of this Contract by the Customer;
  - (ii) any act or omission of:
    - (A) any Worker performing work for the Customer under this Contract; or
  - (iii) any:
    - (A) damage to or loss or destruction of any asset or property of any person;
    - (B) death of or injury to any person; or
    - (C) breach of a Law,
 if or to the extent that the Liabilities arise in connection with any act, error or omission of the Customer.
- (b) If the Liabilities are caused by any act, error or omission of Evolve Surplus then the Customer's liability to indemnify Evolve Surplus under this clause will be reduced proportionally to the extent that the Liabilities are caused by the act, error or omission of Evolve Surplus.
- (c) Without limiting any other provision, Evolve Surplus shall not be liable to the Customer (whether arising out of or in connection with the Contract, under statute, in tort (or any other basis in law or equity) for any loss of revenue, profit, indirect and consequential loss.
- (d) Evolve Surplus's liability under this Contract is limited to the amount set out in Schedule 1.

### 8 TERMINATION

- (a) Evolve Surplus may for its convenience on 10 Business Days notice or immediately for cause, terminate this Contract at any time by giving notice to the Customer. Evolve Surplus shall have no Liability to the Customer for any such termination.

### 9 INFORMATION SECURITY

- (a) The Customer is obligated to safeguard all information and systems which are relevant within the context of supplying the Goods, against unauthorised access, alteration, destruction or other misuse.
- (b) The Customer shall take suitable and reasonable technical and organisational measures to ensure a level of protection commensurate with the risk in terms of integrity, confidentiality, availability and resilience of all information and systems which require protection and are relevant within the context of supplying the Goods.
- (c) The Customer is obligated to report to Evolve Surplus without delay and in writing any security incidents in its organisation that have or could have an effect on the availability, integrity, confidentiality or resilience of all information and systems, both the Customer's and Evolve Surplus's, which require protection and are relevant within the context of supplying the Goods (**Security Incident**). In such cases, the report is to be made to [info@evolvesurplus.com](mailto:info@evolvesurplus.com).
- (d) In the event of a Security Incident for which the Customer is to blame, the Customer shall provide resources free of charge to mitigate and/or eliminate the impacts of the incident as well as the final analysis results in the form of a cause and correction report.

### 10 OTHER GENERAL PROVISIONS

#### 10.1 CONFIDENTIALITY

- (i) The Customer acknowledges, agrees and declares that this Contract and all information or other data of or relating to Evolve Surplus is provided to, or otherwise received by, Evolve Surplus 'in confidence' and Evolve Surplus owes an equitable duty of confidence in respect of same.
- (ii) If a Party receives confidential information under this Contract (**Receiving Party**) the following provisions of clause 10.1 apply.
- (iii) The Receiving Party shall act in accordance with generally accepted ethical standards.
- (iv) The Receiving Party warrants that it has not made, promised or authorised, and will not make, promise or authorise, a prohibited payment or any other improper advantages to a government official.
- (v) The Receiving Party warrants that it has not engaged with, and will not engage with, in any prohibited external parties.
- (vi) The Receiving Party warrants that it will promptly report to the other Party, any prohibited payment, improper advantage, prohibited transaction or violation of, or conspiracy or attempt to violate, any of the applicable Laws and regulations, or any allegations of such conduct, related to the permitted use of the Goods, and agrees that it will cooperate fully and in good faith with any inquiry by the other Party.
- (vii) The Receiving Party declares to be aware of all Sanctions and warrants to comply with these Sanctions in all respects related to the performance of this Contract.

#### 10.2 ANTI-BRIBERY AND CORRUPTION, DATA PRIVACY, COMPETITION AND EXPORT CONTROL

- (i) Each Party shall perform this Contract in compliance with all applicable Laws and/or regulations relating to anti-bribery and corruption, data privacy, competition, Sanctions and export control. No Party shall be obliged to perform any obligation under

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		<p>this Contract if this would not be compliant with, would be in violation of, inconsistent with, or would expose either Party to punitive measures under any Laws and/or regulations applicable to either Party relating to anti-bribery and corruption, data privacy, competition, Sanctions and export control.</p> <p>(ii) Each Party shall comply and/or shall cause that its directors, employees, contractors, consultants, agents or other third parties who are performing obligations in connection with this Contract to comply, with all applicable Laws and/or regulations relating to anti-bribery and corruption, data privacy, competition, Sanctions and export control and shall not engage in any conduct that will cause the other Party to be in breach of such applicable Laws and/or regulations.</p>	<p>adjustment note being issued by Evolve Surplus.</p>
10.3	GST/VAT	<p>(i) Unless the context otherwise requires, words or expressions which are defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) have the same meaning in this clause.</p> <p>(ii) If Evolve Surplus makes a taxable supply under or in connection with this Contract, the Customer must pay Evolve Surplus an additional amount equal to the GST payable on that supply. If Evolve Surplus becomes liable to pay any tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than GST or a tax on the net overall income of Evolve Surplus) in relation to its supply of the Goods to the Customer under this Contract, or any interest, penalty, fine or expense relating to any of them (<b>Other Taxes</b>), the Customer must pay Evolve Surplus the amount of those Other Taxes. Any GST or Other Taxes payable must be paid at the same time as the GST exclusive consideration is paid or three days before the Other Taxes become due (whichever occurs first).</p> <p>(iii) If a payment to a Party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party, or the representative member of the GST group that Party is a member of (as the case may be), is entitled for that loss, cost or expense.</p> <p>(iv) If an adjustment event occurs in relation to a taxable supply made under or in connection with this Contract then:</p> <p>(A) if the adjustment event gives rise to an increase in the GST/VAT payable by Evolve Surplus in relation to the supply, a payment equal to that increase will be made by the Customer to Evolve Surplus;</p> <p>(B) if the adjustment event gives rise to a decrease in the GST/VAT payable by Evolve Surplus in relation to the supply, a payment equal to that decrease will be made by Evolve Surplus to the Customer;</p> <p>(C) Evolve Surplus must issue an adjustment note to the Customer within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event; and</p> <p>(D) any payment under clauses 10.3 must be paid to Evolve Surplus or Customer (as the case may be) within 15 days of the</p>	
10.4	DISPUTE RESOLUTION	<p>(i) If a dispute difference of opinion or question arises between the Parties in relation to the Contract (<b>Dispute</b>), a Party to the Dispute must comply with this clause before starting court proceedings (except proceedings for interlocutory or urgent relief) unless another Party to the Dispute has not complied with this clause.</p> <p>(ii) A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute. During the 14 days after such a notice is given (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties to the Dispute have not resolved the Dispute within that period, they must refer the Dispute to a mediator if one of them requests that within 7 days of the expiration of that period.</p> <p>(iii) If a Party to a Dispute requests that the Dispute is referred to mediation but the Parties to the Dispute do not agree on a mediator within 7 days after the request, the chairman of the Resolution Institute (or the chairman's nominee) will appoint a mediator. Each Party to the Dispute must pay its own costs of complying with this clause. The Parties to the Dispute must equally pay the costs of any mediator.</p> <p>(iv) The role of a mediator is to assist in negotiating a resolution of a Dispute. A mediator may not make a binding decision on a Party to the Dispute, except if the Party agrees in writing.</p> <p>(v) If a Dispute has not been resolved through mediation within 60 days of a Party to the Dispute requesting mediation, any Party to the Dispute is free to initiate court proceedings.</p> <p>(vi) The Parties must continue to perform their respective obligations under this Contract pending the resolution of a Dispute.</p>	
10.5	ASSIGNMENT	<p>(i) Evolve Surplus can assign, novate, sub-contract, charge or otherwise deal with any of its rights under this Contract with the prior written consent of the Customer.</p> <p>(ii) The Customer may not assign, novate, charge or otherwise deal with any of its rights or obligations under this Contract without the prior consent of Evolve Surplus.</p>	
10.6	NOTICES	<p>Any notice, demand, consent or other communication given or made under this Contract must be in writing, clearly readable, signed by the Party giving or making it (or signed on behalf of that Party by its authorised representative) and may be sent by email.</p>	
10.7	GOVERNING LAW	<p>The Contract is governed by and must be construed and enforced in accordance with the laws of Western Australia, Australia and the Parties unconditionally submit to the exclusive jurisdiction of the courts of Western Australia, Australia (and courts of appeal from them).</p>	
10.8	SEVERABILITY	<p>Any provision in this Contract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in any other jurisdiction.</p>	
10.9	RIGHT OF SET OFF		

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	Evolve Surplus may at any time, deduct from any amount due or becoming due to the Customer under the Contract to meet all debts and amounts due to Evolve Surplus from the Customer whether under or in connection with the Contract or otherwise.	(A)	a statutory provision which supplements, amends, extends, consolidates or replaces it; and
		(B)	any applicable orders, regulations, instruments or other delegated legislation;
10.10	<b>FURTHER ACTS AND DOCUMENTS</b>  Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by relevant Laws or reasonably requested by the other Party to give effect to this Contract.	(iv)	another grammatical form of a defined word or expression has a corresponding meaning;
		(v)	a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract;
10.11	<b>WAIVER</b>  The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.	(vi)	a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
		(vii)	a reference to A\$, \$A, dollar or \$ is to Australian currency;
		(viii)	a reference to time is to Australian Western Standard Time;
10.12	<b>ENTIRE AGREEMENT</b>  The Contract contains the entire agreement between the Parties concerning its subject matter and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Goods (including any terms and conditions proposed or delivered to Evolve Surplus by the Customer) or the Contract. The Customer warrants that all information set out in <b>Error! Reference source not found.</b> is true, accurate and complete.	(ix)	a reference to a Party to a document includes that Party's executors, administrators, successors and permitted assigns and substitutes;
		(x)	a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
		(xi)	a reference to a person includes a natural person, partnership, corporation, association, governmental or local authority or agency or other entity;
10.13	<b>NO MERGER</b>  The rights and obligations of the Parties will not merge on completion of any obligation or transaction under this Contract.	(xii)	including (in any form) or such as when introducing a list of items does not limit the meaning of the word to which the list relates to those items or to items of a similar kind; and
10.14	<b>RELATIONSHIP</b>  The Parties mutually acknowledge and agree that this Contract must not be construed as constituting an association, company, agency, joint venture, partnership or relationship of employment between the Parties.	(xiii)	if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.
10.15	<b>COUNTERPARTS</b>  This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.	10.18	<b>SPECIAL CONDITIONS</b>  The Special Conditions shall have precedence over all provisions of this Contract in the event of any ambiguity, discrepancy or inconsistency.
10.16	<b>PRIVACY</b>  (i) The Privacy Act 1988 (Cth) and the National Privacy Principles apply to the collection, use and disclosure of personal information.  (ii) Evolve Surplus acknowledges the importance of maintaining the confidentiality of personal information relevant to individuals connected to it, including from adverse parties. Evolve Surplus will only collect personal information that is necessary. Evolve Surplus will also take all reasonable steps to ensure that any personal information is not disclosed to, or accessed by, unauthorised persons.  (iii) The Customer authorises Evolve Surplus to disclose any information it holds about persons connected to Evolve Surplus to others where it is necessary.		
10.17	<b>INTERPRETATION</b>  In the interpretation of the Contract:  (i) words in the singular include the plural and words in the plural include the singular;  (ii) words importing a gender include all genders;  (iii) a reference to a statute or statutory provision includes:		

## Definitions

In the Contract:

**Business Day** means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in Perth, Western Australia, Australia.

**Claims** includes an allegation, claim, notice, demand, action, proceeding, litigation, suit, investigation or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a third person or a Party.

**Contract** means this document together with all particulars, schedules and annexures.

**Defects Liability Period** means the period specified in Schedule 1.

**Goods** means the provision of the Scope of Goods detailed in the particulars in Schedule 1 and any other Goods agreed or provided from time to time.

**Laws** includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Goods or this Contract and its subject matter;
- (b) certificates, licences, consents, permits, approvals and other requirements of organisations having jurisdiction applicable to the Goods or this Contract and its subject matter;
- (c) Australian Standards and any other relevant standards;
- (d) the Codes of Practice of the State or Territory applicable to the Goods or work to be performed by for

- the Client and other appropriate codes for the industries in which Evolve Surplus operates; and
- (e) fees and charges payable in connection with the foregoing.

**Liabilities** includes losses, damages, costs, charges, expenses (including legal costs on a full indemnity basis), outgoing, penalties, interest and fines of whatever description, including those arising as a result of Claims.

**Party and Parties** means Evolve Surplus and/or the Customer, as the case may be.

**Price** means the price detailed in the Particulars in Schedule 1.

**Sanctions** means all applicable Laws and/or regulations concerning economic sanctions (including embargoes, export controls, restrictions on the ability to make or receive international payments, freezing or blocking of assets of targeted persons, or the ability to engage in transactions with or involving specified persons or countries, or any applicable Laws and/or regulations that threatens to impose economic sanctions on any person for engaging in targeted behaviour) of any jurisdictions including:-

- (a) the United Nations;
- (b) Malaysia;
- (c) the European Union;
- (d) the United Kingdom (including those administered by HM Treasury);
- (e) the United States (including those administered by the Office of Foreign Assets Control of the Department of the Treasury, the Bureau of Industry and Security of the Department of Commerce, or the Department of State); and
- (f) Australia;
- (g) Brazil;

**Special Conditions** means the special conditions set out in Schedule 1 (Particulars).

**Worker** means any person engaged or employed by the Customer (including apprentices, trainees, employees, agents and contracto