

Evolve FM Terms & Conditions

1 Agreement

- 1.1 The Principal is relying on the Vendor's skill and judgement in carrying out the Services.
- 1.2 This Agreement applies to any Purchase Order provided by the Vendor and accepted by the Principal in writing.
- 1.3 This Agreement applies to the Services whether the Vendor commenced them before or after execution of the Agreement.
- 1.4 This Agreement does not constitute a relationship of employment, agency or partnership, but is a contract for the provision of Services only.

2 Vendor obligations

The Vendor must:

- 2.1 use all reasonable endeavours to inform itself of the Principal's requirements for the Services;
- 2.2 ensure that the Services comply with all Laws and requirements by an Authority that apply or relate to the Services;
- 2.3 carry out and complete the Services in accordance with this Agreement and all Laws and otherwise to the Principal's reasonable satisfaction in a competent manner, with due diligence by the Date of Completion;
- 2.4 procure any equipment required for the carrying out of the Services
- 2.5 comply with the directions of the Principal's representative;

3 Warranties

The Vendor warrants that:

- 3.1 the goods materials, workmanship and methods supplied and used by the Vendor are of a kind suitable for their intended purpose and that they and the Services will be free of defects and comply with the requirements of the Agreement and all Laws;
- 3.2 the Vendor will be, and will ensure that the Vendor's staff and sub-Contractors are, appropriately qualified and if applicable, registered, accredited and/or licensed;
- 3.3 the Vendor will at all times perform the Services with the standard of professional skill, care and diligence and all professional attention and judgement, which may be expected of a Vendor engaged to perform similar professional services for a project of a similar value, importance and complexity in a similar industry;
- 3.4 the Vendor will take all reasonable precautions to prevent injury (including illness) to any person or damage to any property;

4 Liability

The Vendor remains fully liable for the Services despite:

- 4.1 the Vendor subcontracting any part of the Services;
- 4.2 the Principal's review or approval of or comment on the Services or any documents other deliverables provided as part of the Services; or

- 4.3 any insurances the Vendor effects.

5 Personnel & work on site

- 5.1 The Vendor must appoint a representative acceptable to the Principal for the duration of the Agreement, to accept directions from the Principal as to the carrying out of the Services. Any directions given by the Principal to the representative will be deemed within the Vendor's knowledge.
- 5.2 The Key Personnel must be engaged by the Vendor in the performance of the Services for the term of this Agreement.
- 5.3 If the Vendor wishes to substitute alternate personnel to those nominated in the Purchase Order, the Vendor must first obtain the Principal's written approval.
- 5.4 The Vendor will be responsible for industrial relations with the Vendor's employees, sub-Contractors and agents and ensure that such persons are professional, courteous and well behaved when providing the Services.
- 5.5 If in the Principal considers that any person engaged by the Vendor to carry out the Services is:
 - (1) not behaving in a manner consistent with the Principal's principles or security requirements; or
 - (2) incompetent or negligent,
 the Principal may direct the Vendor to immediately remove that person from carrying out of the Services.
- 5.6 The Vendor must comply with all Laws and any directions by the Principal relating to workplace health and safety and ensure that the Vendor's personnel adopt safe work practices when completing the Services
- 5.7 The Vendor must not subcontract any part of the Services except with the Principal's prior written consent.. Any subcontract must be on terms consistent with this Agreement.

6 Insurance

- 6.1 The Vendor must effect and maintain:
 - (1) public liability insurance which notes the Principal's interests, to the value stated in the Purchase Order for the duration of the Services;
 - (2) worker's compensation insurance as required by Laws for the duration of the Services,
 on terms and with insurers which are reasonably acceptable to the Principal. The Vendor must provide evidence of currency of insurance and copies of insurance policies whenever the Principal requests.

7 Intellectual property

- 7.1 The Vendor acknowledges that the Principal owns all intellectual property that the Vendor develops in the course of or in connection with the performance of the Services for any purpose associated with the Services. The Vendor assigns any such intellectual property developed to the Principal.

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7.2 The Vendor must do all acts and things, and execute all documents, that the Principal may reasonably request to secure any of the Principal's ownership of rights in the intellectual property (including any assignment)

8 Confidentiality

8.1 The Vendor must keep confidential, details of this Agreement, the Services and all information provided to, or by, the Vendor relating to the Services or the Agreement (**Confidential Information**) and not provide, disclose or use such Confidential Information or documents except:

- (1) to the Principal, or with the Principal's prior written consent;
- (2) for the purposes of performing the Vendor's obligations under this Agreement or as otherwise permitted by this Agreement;
- (3) where required by law or to obtain legal advice on this Agreement; or
- (4) to the extent the Confidential Information is in the public domain (other than as a consequence of the Vendor's breach of this Agreement).

8.2 This obligation survives completion of the Services or the termination of this Agreement.

9 Variation of the Services

9.1 The Principal may vary the Services at any time by written notice.

9.2 If the variation changes the Fee or the Date for Completion, the Vendor may notify the Principal of a proposed new Fee and/or Date of Completion, which the Principal may accept or reject.

9.3 If accepted, any change to the Services will be subject to the same terms and conditions as this Agreement. Any other variation to this Agreement must be agreed by the parties in writing.

10 Indemnity

10.1 The Vendor indemnifies the Principal and the Principal's employees, directors and agents against all losses, liabilities, legal costs and expenses arising out of or in connection with:

- (1) the Vendor failing to comply with any of its obligations under this Agreement;
- (2) the Vendor's negligence; or
- (3) any act, omission or default of the Vendor or any of the Vendor's employees, agents, subVendors, suppliers or any other party for whom the Vendor is responsible.

10.2 This indemnity will be reduced to the extent that a wrongful act or omission or breach of this Agreement by the Principal contributed to the losses, liabilities, costs or expenses.

11 Defective Services

11.1 If the Principal considers that the Services are defective, the Principal will notify the Vendor and the

Vendor must rectify the defective Services within 5 Business Days, or such other period as the Principal allows.

11.2 The Vendor is not entitled to any payment in respect of that part of the Services which are defective until the defective part is rectified.

11.3 If the Vendor does not comply with subclause 11.1, the Principal may arrange for others to rectify or carry out the defective Services at the Vendor's cost as a debt due from the Vendor to the Principal.

12 Payment

12.1 In consideration of the Vendor completing the Services, the Principal will pay the Vendor the Fee.

12.2 The obligation to pay is subject to the Vendor submitting an invoice to the Principal in a format approved by the Principal,

12.3 The Principal will pay a valid invoice within 30 Business Days.

12.4 In consideration of the Principal making the final payment to the Vendor, the Vendor releases the Principal from all claims and actions arising out of or in connection with this Agreement or the Services.

13 GST

13.1 In this clause **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) as amended or replaced. Words and expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.

13.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

13.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided, subject to receipt of a tax invoice.

13.4 If an adjustment event occurs in relation to a supply under or in connection with this Agreement, the amount payable under subclause 13.3 will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties within 10 Business Days of an adjustment note being issued.

13.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

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14 Termination

14.1 The Principal may, at any time, immediately terminate the Agreement by giving not less than 14 days written notice to the Vendor (whether or not the Vendor has breached this Agreement) and may then complete the Services itself or by others.

14.2 The Principal may terminate this Agreement if

- (1) the Vendor breaches this Agreement and fails to remedy such breach within 7 days of being notified by the Principal;
- (2) the Vendor is insolvent, becomes externally administered, has a receiver, administrator or receiver and manager or controller (as defined in the Corporations Act 2001 (Cth)) appointed in respect of all or substantially all of its assets, has a liquidator appointed, is unable to pay its debts, suspend payment of its debts, commit an act of bankruptcy, is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001 (Cth) or an order for payment is made or a judgment is entered or signed against the Vendor which is not satisfied within 10 Business Days
- (3) the Principal determines that the Vendor's performance of any of the Services or obligations under this Agreement is unacceptable

15 Assignment and novation

15.1 The Vendor must not assign, novate, transfer or otherwise deal with any of the Vendor's rights or interests in this Agreement without prior written consent (which may be withheld or subject to conditions).

15.2 The Principal may at any time and from time to time assign, novate or otherwise deal with any part or all of the Principal's rights or interests under this Agreement at the Principal's discretion and without the Vendor's consent. The Vendor will execute any document the Principal reasonably requires to give effect to such dealing.

15.3 If this Agreement is terminated by the Principal under clause 14, the Vendor must within 3 Business Days of receiving an instruction by the Principal to do so, assign or novate to the Principal (or any other person nominated by the Principal in writing) without payment the benefit of any agreement for the execution of any part of the Services, including any agreement with a subVendor.

16 Governing law and jurisdiction

16.1 The law governing this Agreement is the law of Australian Capital Territory.

16.2 The parties submit to the non-exclusive jurisdiction of the courts of Australian Capital Territory and of the Commonwealth of Australia.

17 Entire understanding

17.1 This Agreement is the entire agreement between the parties about the Services and supersedes any other agreement or negotiations between the parties. Any terms that would otherwise be implied or incorporated into this Agreement are excluded.

18 Severability

18.1 If anything in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.

19 Waiver

19.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

20 Definitions

20.1 Capitalised terms not defined in this clause 20 have the meaning given to them in the Purchase Order.

20.2 In this Agreement:

- (1) **Agreement** means these Standard Conditions and any relevant Purchase Order and any schedule or annexure to it;
- (2) **Business Day** means a day other than:
 - (a) a Saturday, Sunday or public holiday in the State of Western Australia; or
 - (b) a day in the period beginning on 25 December in a year and ending on 7 January in the following year;
- (3) **Complete** and **Completion** means that the Services have been completed and are fit for their intended purpose and in accordance with the requirements of the Agreement to the Principal's reasonable satisfaction;
- (4) **day** means a calendar day;
- (5) **Fee** means a fee stated in a Purchase Order;
- (6) **include** or **including** are not words of limitation;
- (7) **Laws** includes:
 - (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Services are provided;
 - (b) certificates, licences, consents, permits, approvals, industry codes of practice, and requirements of organisations having jurisdiction applicable to the Services; and

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- (c) fees and charges payable in connection with the above;
- (8) **Purchase Order** means a written order specifying the Services to be performed by the Vendor for the Fee in the form attached at Schedule 1; and
- (9) **Services** means the services described in a Purchase Order; and
- (10) **Vendor** means the Contractor/Consultant or party responsible for delivering the works under this Purchase Order.

to make any payment before enforcing a right of indemnity

21 Interpretation and operation

21.1 Reference to:

- (1) the singular includes the plural and the plural includes the singular;
- (2) a person includes a body corporate;
- (3) a party includes the party's executors, administrators, successors and permitted assigns;
- (4) a thing includes the whole and each part of it separately;
- (5) a statute, regulation, code or other law or a provision of any of them includes:
 - (a) any amendment or replacement of it; and
 - (b) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- (6) dollars or \$ means Australian dollars unless otherwise stated.

21.2 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

21.3 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

21.4 Unless expressly stated to the contrary in this Agreement, all of the Vendor's obligations under this Agreement must be carried out and completed at the Vendor's own cost.

21.5 The Principal's rights, powers and remedies provided in this Agreement are in addition to those provided by Law independently of this Agreement and each right, power and remedy (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this Agreement.

21.6 The Principal may conditionally or unconditionally give or withhold the Principal's approval or consent in the Principal's absolute discretion, unless this Agreement expressly provides otherwise.

21.7 All indemnities and warranties are continuing indemnities and warranties and inure in favour of the Principal despite any final payment or completion of the Services or the termination of this Agreement. It is not necessary for the Principal to incur expense or

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