

Terms of Trade – Evolution Design

1. DEFINITIONS

- 1.1 “Evolution” shall mean Evolution Ltd, or any agents or employees thereof
- 1.2 Customer shall mean the customer, any person acting on behalf of any with the authority of the customer, or any person purchasing such services from Evolution.
- 1.3 Publications shall mean:
 - 1.3.1 all publications of the general description specified on the front of this agreement and supplied by Evolution to the customer; and
 - 1.3.2 all publications supplied by Evolution to the customer and
 - 1.3.3 all publications supplied by Evolution and further identified in any invoice issued by Evolution to the customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.4 all publications that are marked as having been supplied by Evolution or that have performed, worn on or to, or in which goods or materials have been supplied or financed by Evolution have been attached or incorporated.
 - 1.3.5 the above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 “Such services” shall mean all publications, goods, services and advice provided by Evolution to the customer and shall include without limitation the supply of such the provision of advertising space and all changes from time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of such services by Evolution to the customer.
- 1.5 “Price” shall mean the cost of such services as agreed by Evolution and the customer and includes all disbursements, e.g. charges Evolution pay to others on the customers behalf subject to clause 1.4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Evolution from the customer for the supply of such services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION + USE OF INFORMATION

- 3.1 The Customer authorises Evolution to collect, retain and use and information about the customer, for the purpose of assessing the customers credit worthiness, enforcing any rights under this contract, or marketing and such services provided by Evolution to any other party including on the Evolution website and social media channels.
- 3.2 The Customer authorises Evolution to disclose any information obtained to any person for the purpose set out in clause 3.1
- 3.3 Where the customer is a natural person the authorities under clause 3.1 and 3.2 are authorities or consents for the purpose of the privacy act 1993.

4. QUOTATION

- 4.1 Where a quotation is given by Evolution for such services:
 - 4.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 4.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary.
 - 4.1.3 Evolution reserves the right to alter the quotation because of circumstances beyond its control.
- 4.2 Where such services are required in addition to the quotation the customer agrees to pay for the additional cost of such services.
- 4.3 Customers are therefore advised to carefully check quotations before accepting them. For the purpose of these Terms of Trade “quotations” includes “estimates”.

5. GST

- 5.1 All quotations are exclusive of GST.

6. COLOUR PROOFS

- 6.1 There is no guarantee that production prints will exactly match colour proofs because of variations in proof preparation methods and substrates. The supplier will however use its best endeavours to provide a commercially acceptable finished product.

7. PROOF APPROVAL

- 7.1 The supplier is not liable for errors in the finished work where a proof has been submitted to and approved by the customer.

8. INTERMEDIATE MATERIAL

- 8.1 Ownership of intermediate materials will pass when it has been paid for. Charges for intermediate material will be determined at the time of quoting.

9. DIGITAL MATERIAL SPECIFICATIONS

- 9.1 All disks should be supplied as per the technical specifications required by Evolution. No responsibility will be taken for any files supplied that do not meet the required specifications. Unless specifically agreed with the customers at the time of submission, the company does not undertake to return or accept damage or loss of material supplied for the purpose of making up advertisements, or processing printed material. It is the customers responsibility to retain a copy of any image or file supplied. The supplier is not responsible for accidental damage to any material supplied. Any additional translating, editing or programming needed to utilise customer supplied files or images will be charged.

10. RISK AND DELIVERY

- 10.1 The goods shall remain at the risk of the supplier until the point of delivery. Unless otherwise deemed to have taken place when agreed the point of delivery shall be at the point at which the customer takes physical possession of the goods.

11. CLAIMS

- 11.1 Complaints regarding finished goods must be received by the supplier within a reasonable time. What is a “reasonable time” will depend on the circumstances of each case.

12. ILLEGAL OR LIBELOUS MATERIAL

- 12.1 The supplier is not required to reproduce any material that is, in the suppliers opinion, illegal or libellous in nature or that is in breach of any statute. The supplier will be indemnified by the customer in respect of any and all claims, costs, and/or expenses arising out of any libel or breach of statute or infringement of copyright, patent or design.

13. ADVERTISEMENT CONTENT

- 13.1 The advertiser guarantees that the material supplied for display print or publication contains no false or unwarranted claims for any product or service, does not infringe the copyright, privacy or the rights of any person or organisation of The Fair Trading Act. Contains no defamatory statements or matter, complies with The Advertising Codes of Practice, and may be published without the Publisher incurring any liability of any nature whatsoever.

14. MEDIA BOOKINGS

- 14.1 Where media bookings are placed on behalf of the customer, Evolution expects that payment would be made in accordance with the Trade Terms and Conditions agreed on page 2 of this document. Evolution reserves the right to cancel bookings where it deems the customer has not met its payment trading terms.

15. ALTERATIONS OR CANCELLATIONS

- 15.1 All orders, cancellations or alterations are to be made in writing. No responsibility will be taken for errors or omissions caused by misinterpretation or oversight in verbal communications or instructions. Cancellations must be in writing and received prior to the commencement of production. Late cancellations will result in a cancellation fee equal to the time and expenses already incurred.

16. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 16.1 Title in any Such Services supplied by Evolution passes to the Customer only when the Customer has made payment in full for all Such Services provided by Evolution and of all other sums due to Evolution by the Customer on any account whatsoever. Until all sums due to Evolution by the Customer have been paid in full, Evolution has a security interest in all Such Services.
- 16.2 If Such Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Such Services shall remain with Evolution until the Customer has made payment for all Such Services, and where those Such Services are mixed with other property so as to be part of or a constituent of any new Such Services, title to these new Such Services shall be assigned to Evolution as security for the full satisfaction by the Customer of the full amount owing between Evolution and the Customer.
- 16.3 The Customer gives irrevocable authority to Evolution to enter any premises occupied by the Customer or on which Such Services are situated at any reasonable time after default by the Customer or before default if Evolution believes a default is likely and to remove and repossess any Such Services and any other property to which Such Services are attached or in which Such Services are incorporated. Evolution shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Evolution may either resell any repossessed Such Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Such Services and credit the Customer's account with the invoice value thereof less such sum as Evolution reasonably determines on account of wear and tear, depreciation, obsolescence, loss or pro t and costs.

- 16.4 Where Such Services are retained by Evolution pursuant to clause 10.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 16.5 The following shall constitute defaults by the Customer:
- 16.5.1 Non payment of any sum by the due date.
 - 16.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 16.5.3 Any Such Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Such Services.
 - 16.5.4 Any Such Services in the possession of the Customer are materially damaged while any sum due from the Customer to Evolution remains unpaid.
 - 16.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 16.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 16.5.7 Any material adverse change in the financial position of the Customer.
- 16.6 If the Credit Repossession Act applies to any transaction between the Customer and Evolution, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

17. PAYMENT ALLOCATION

- 17.1 Evolution may in its discretion allocate any payment received from the Customer towards any invoice that Evolution determines and may do so at the time of receipt or at anytime afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Evolution, payment shall be deemed to be allocated in such manner as preserves the maximum value of Evolution's purchase money security interest in the Such Services.
- 17.2 Payment is due in full 7 days from the date of the invoice. For Account Holders payment is the 20th of the following month or how it is negotiated under any separate contract.
- 17.3 If payment is not made by the due date, Evolution reserves the right to add interest of 5% to any outstanding amount.

18. LIABILITY

- 18.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Evolution which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Evolution, Evolution's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 18.2 Except as otherwise provided by clause 18.1 Evolution shall not be liable for:
- 18.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Such Services by Evolution to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Such Services provided by Evolution to the Customer; and
 - 18.2.2 The Customer shall indemnify Evolution against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Evolution or otherwise, brought by any person in connection with any matter, act, omission, or error by Evolution, its agents or employees, in connection with the Such Services.
- 18.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade Evolution is deemed to be liable to the Customer, following and arising from the supply of Products and Services by it to the Customer, then it is agreed between Evolution and the Customer that such liability is limited in its aggregate to \$500.00.

19. COST OF DEBT RECOVERY

- 19.1 The customer and guarantors agree to reimburse Evolution for all costs reasonably incurred by Evolution in recovering payments due from the customer and/or guarantors including but not limited to legal costs assessed on a solicitor and client basis.

20. DISPUTE RESOLUTION

- 20.1 In the first instance any dispute between the parties must be discussed between them to attempt to settle the dispute. Where the parties cannot reach a settlement between themselves external mediation may be sought. This clause does not remove the customer's right to refer any dispute to any other body or organisation, or impose any requirement that the customer attend any mediation or arbitration.

21. CONSUMER GUARANTEES ACT

- 21.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Such Services from Evolution for the purposes of a business in terms of section 2 and 43 of that Act.

22. MISCELLANEOUS

- 22.1 Evolution shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 22.2 Failure by Evolution to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Evolution has under this contract.
- 22.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.4 Evolution websites are a low cost web solution offered by Evolution in conjunction with AgencyFrank.
- 22.5 The pricing platform for Evolution web services includes an entry level site with a maximum of 5 pages. Any additional purchased imagery, functionality or e-commerce platform will be quoted prior to the commencement of the job.
- 22.6 Websites are created through WIX online software solutions.
- 22.7 Evolution or AgencyFrank cannot guarantee the stability and longevity of the WIX online platform and while we will make every endeavor within our skillset to ensure a consistent live supply of the site, however as this platform is provided by a third party, these outages, be they permanent or temporary are out of our control.
- 22.8 Wix websites are not transferable to another web based platform.
- 22.9 Evolution or AgencyFrank take no responsibility for the content, or accuracy of the content, or legality of the content provided by the customer.