	[Policies]
	<b>Terms &amp; Conditions</b>
	Standard Statement

# TERMS & CONDITIONS

## Definitions

1. The following definitions shall apply;

- "Company" means Evolved IT Solutions Ltd.
- "Contract" means the legally binding agreement between the Company and the Customer to which on any particular occasion these terms and conditions relate.
- "Customer" means the client of the Company under the Contract.
- "Goods" means the items provided by the Company by virtue of the transaction to which the Contract relates.
- "Equipment" means Goods that are not Software, including any materials or tools the use of which might reasonably be required by the Company for the purposes of installing Goods.
- "Special Condition" means only a special condition or term which has been agreed by the Company and which is set out in the part of the Contract signed on behalf of the Company.
- "Standard Charges" indicates the charges normally made by the Company from time to time for services rendered

## General

2. These terms and conditions shall apply to all contracts made between the Company and the Customer, whether written or verbal, and whether expressly mentioned or not, that contracts made after the Company has notified the Customer of the issue of a later edition, shall be subject to such later edition.

3. These terms and conditions shall apply to the Contract so far as varied by, or inconsistent with any Special Condition. No other term or condition shall have any effect whatsoever and, if after the existence of these terms and conditions has become known to the Customer, the Customer makes or gives to the Company any conditional offer order or acceptance, the Company shall have the right (but shall not be bound) to treat the same as unconditional, either in whole or in part, as it shall in its absolute discretion see fit to do so.


4. The Customer shall have no right to modify, cancel or change the delivery date applicable to the Contract, without the prior written consent of the Company.

5. Neither the Contract nor any document forming part of the Contract shall be binding on the Company, unless it has been accepted by the Company under the signature of one of its Directors or other authorised signatory, save that the Company may at its discretion accept any order placed by the Customer by taking any step to fulfil such order, in which case the taking of such step shall be deemed to be sufficient acceptance of the order by the Company, but with the right of the Customer at any time after submitting its order to the Company, to request the Company to give written acceptance of such order within fourteen days after such request, to treat the order as having been refused by the Company if written confirmation of acceptance by the Company is not given within such time.

6. No quotation or estimate given by the Company shall be deemed to be an offer by the Company, unless expressed, to be a "fixed quotation" and valid until a given date in which case it shall be open to acceptance by the Customer, but only by written acceptance delivered to the Company by such date.

7. The headings appearing in these terms and conditions are for guidance only and shall not in any way be deemed to affect or prejudice the interpretation or effect thereof, and those which appear under the heading "Installation" shall only apply if the Contract provides for installation of pre-agreed Equipment 'either supplied or on free issue' by the Company.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 1 of 7

	[Policies]
	<b>Terms &amp; Conditions</b>
	Standard Statement

**8.** It is intended that these terms and conditions and any Special Conditions shall be reasonable as between the Company and the Customer having regard to the nature of the Contract, but if at any time any of them is either unenforceable or void at law, it shall not adversely affect or prejudice the remainder of them or the Contract and it shall be deemed to be excluded from these terms and conditions and (where possible) to be replaced by such other enforceable and valid term or condition, as shall be as near as may be to the original in both form and effect.

## Price

**9.** Unless the Customer accepts a "fixed quotation" as mentioned above or unless the part of the Contract signed on behalf of the Company states that the price is fixed, the Company reserves the right to increase any price in accordance with its Standard Charges at the date of delivery to the Customer

**10.** A "fixed quotation" takes into account freight rates, currency exchange rates, import and other duties and taxes of whatever kind (other than VAT) deemed by the Company applicable at the date of the Contract. It may be adjusted in accordance with the amount of any changes beyond the control of the Company in such rates, duties or taxes payable or collectable by the Company, including those payable by the Company in obtaining a supply from overseas, but if so requested by the Customer the Company shall produce proof of such changes to the Customer.

**11.** The Customer shall pay VAT on any sum payable by the Customer to which it applies at the rate prevailing at the appropriate time.

**12.** For the purposes of the remainder of these terms and conditions "the price" shall be deemed to be the basic price payable by the Customer plus the amount of any such charges as afore mentioned plus VAT.

**13.** Unless otherwise expressly agreed, the price does not include installation, operator training, travelling or hotel expenses and if any such are provided or carried out by the Company the Customer shall pay the Company its Standard Charges for them which are to be agreed in advance of works carried completed.


**14.** Where installation is to be carried out by the Company, the Customer will pay the Company any delivery charges incurred by the Company, if the Company arranges for delivery to or on behalf of the Customer.

## Payment

**15.** In respect of installation (see paragraphs 43.8) the price (less any deposit paid) shall be paid within the period identified, or the date marked on the invoice sent by the Company to the Customer, or (if later) within thirty days of the date on which the Goods are ready for collection by or delivery to the Customer, or as agreed terms prior to the agreement taking place. The date of payment by the Customer shall be the essence of the contract.

**16.** If any sum payable by the Customer to the Company is not paid within Ten days of the due date, the Company shall have the right to charge interest on the balance from time to time outstanding at such rate as shall be 1% of the Invoiced Net amount, calculated on a daily basis from the date on which such sum became due, until (and including) weekends, bank Holidays & the date of payment. Upon the failure to make any due payment the Company shall be entitled to cancel the contract, and suspend any further deliveries, and to appropriate any payments made as the Company thinks fit and notwithstanding any purported appropriation by the Customer.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 2 of 7

	[Policies]
	<b>Terms &amp; Conditions</b>
	Standard Statement

## Delivery and Acceptance

**17.** Delivery dates quoted are estimates only, and the Company shall not be responsible for any delays due to causes beyond its control.

**18.** The Company reserves the right to make delivery by instalments if the works to be completed lend itself in such a way. In that event these terms and conditions shall apply to each delivery, as though it was the subject of a separate Contract.

**19.** As mentioned below, the Customer shall take delivery at the Company's premises within three days of the Company serving written notice to the Customer that the goods are ready for collection.

**20.** If the Company agrees to make delivery to the Customer, such delivery shall be affected to the address of the Customer as shown in the Contract, unless otherwise agreed. Even in such cases, the Company reserves the right to request the Customer to nominate or appoint its own carrier for the purposes of affecting such delivery, and in that case if delivery charges are included in the price the Company will reimburse the Customer with the amount of such charges as applicable

**21.** Delivery shall be deemed to be effected at the time when the Customer effects collection from the Company, or in cases where collection is not effected by the Customer or on its behalf, when delivery is made to the address of the Customer. Unless the Customer shall deliver written notice to the Company within three days of delivery to the effect that the Goods are damaged or subject to shortage and unless the Customer shall in all respects comply with the terms and conditions of the Contract with the carrier (if any) the Customer shall be deemed to accept that the Goods have been delivered, in accordance with the terms of the Contract and shall not hereafter make any claim against the Company in respect of any such damage or shortage.


**22.** If the Company agrees to arrange for delivery of the Goods the Customer shall give verbal and written notice to the Company forthwith, if the Goods are not received within three days of the expected delivery date or within a lesser period within which such notice is required to be given by the carrier (if any) and if the Customer fails so to do delivery shall be deemed to have been effected whether or not it has actually been effected.

## Property Risk and Insurance

**23.** Until the price payable has been paid to the Company in full, and the Customer has complied with all its obligations under the Contract, the Goods shall remain the property of the Company. The Company shall have the right at any time prior to the price being paid in full, to repossess the Goods whether they be at the premises of the Customer or elsewhere and without prejudice to the other rights and remedies of the Company under this Contract, the Customer shall be liable for all transport and other costs and expenses of recovering the same.

**24.** If the Customer should sell or otherwise dispose of the Goods to a Third Party at any time before the Company has received full payment for the same, the Customer shall hold and keep the proceeds of sale on constructive trust in a fiduciary capacity for the Company, and the said proceeds of sale shall be and remain the property of the Company, including any profits that may arise from any investment of such consideration. For the avoidance of doubt, the Customer shall place the said proceeds of sale in a separate bank account in the name of the Company, in order to be identifiable as the Company's property. Failure to do so shall not prejudice the Company's rights in the property.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 3 of 7

	[Policies]
	<b>Terms &amp; Conditions</b>
	Standard Statement

**25.** Notwithstanding the foregoing, the Goods shall be entirely at the risk of the Customer in all respects from the time of leaving the premises of the Company whether collected by the Customer or not.

**26.** The Customer shall adequately insure the Goods with reputable insurers against all insurable risks from not later than the time of their leaving the premises of the Company and at the same time shall also insure them for the benefit of the Company and the Customer and all persons in any way connected with the Goods, against all known and insurable risks to persons and property which might in any way arise out of the Goods or their use, and such insurance shall be for the sum of one hundred thousand pounds at least on terms whereby the insurers shall be precluded from any rights of subrogation, or other rights whereby they would be capable of claiming against the Company or any of its employees or other persons in any way connected with it.

## Copyright

**27.** The Customer shall not be entitled to any rights of copyright or design, or any similar rights in respect of any of the Goods and the Company shall be free to prepare and produce similar goods, then sell them to other parties without any restriction whatsoever.

**28.** The Customer warrants that any specifications or plans which it produces to the Company are not in breach of any rights or copyright or design, or other similar rights in favour of any other party and shall indemnify the Company against all liability whatsoever, including expenses and legal costs reasonably incurred by the Company in respect of any claim undertaking or condition, not expressly incorporated herein and any such as might be implied in statute or otherwise is hereby expressly excluded.

## Force Majeure

**29.** The Company shall be under no liability for any failure to perform all, or any part of its obligations under the Contract, if such failure shall be due to an Act of God or uncontrollable events such as, strikes, lock-outs, labour disturbances, statute, order or any regulation of any Government, public or local or other Authority, delays or defaults of suppliers or sub-contractors, or (without prejudice to the generality of the foregoing) any other causes beyond the reasonable control of the Company, and this Condition shall apply notwithstanding that it may conflict with any Special Condition.


## Default of Customer

**30.** The rights of the Company as set out in these conditions shall apply in addition and without prejudice to all rights that the Company may have by common law, statute or otherwise in respect of any default by the Customer.

**31.** If the Customer fails to take delivery of any part of the Goods at the time or place required under the Contract, the Company shall have the right (i) to charge the Customer with reasonable storage charges until such time as delivery is taken; and/or (ii) at any time thereafter to give written notice to the Customer requiring the Customer to take delivery of the Goods in conformity with the Contract within a period of twenty-eight days from the date of sending such notice and in the event of the Customer Failing to take delivery within such period the Company may, by sending further written notice to the Customer, treat the Contract as having been repudiated by the Customer and recover from the Customer all losses, damages and costs occasioned to the Company by virtue of such repudiation.

**32.** If the Customer fails to pay any monies due under the Contract within thirty days of the due date the Company shall have the right (i) to treat the Contract as having been repudiated by the Customer on the same terms as set out in the foregoing paragraph; and/or (ii) to enter any premises of the Customer and recover any part of the Goods which have been delivered to the Customer.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 4 of 7

	[Policies]
	<b>Terms &amp; Conditions</b>
	Standard Statement

**33.** The Company shall also have the right to treat the Contract as repudiated by the Customer forthwith and without notice should the Customer become bankrupt or insolvent, or make any arrangement to compound with its creditors or should any receiver be appointed in respect of its undertaking, or any of its assets or should a judgement be obtained against it and remain unpaid for a period in excess of twenty-eight days.

## Maintenance and Warranty

**34.** The Company and the Customer have freely and openly negotiated the Contract in the knowledge that the liability of the Company is to be limited, in accordance with these terms and conditions and the price has been calculated accordingly. The Customer acknowledges that a higher price would be payable but for such limitation.

**35.** As expressly stated in these terms and conditions, the Company shall have no liability whatsoever in respect of any representation.

**36.** The Company shall not be liable for any loss of use of the Goods or any consequential loss arising out of any defect in the Goods or otherwise.

**37.** The Customer shall indemnify the Company against all liability whatsoever, in respect of any claim which may be made against the Company by any third party or damage to person or property alleged to arise out of or in respect of the Goods or their use.

**38.** Under no circumstances shall the Company have any liability under the foregoing obligation or otherwise for normal wear and tear, or if (other than by the Company) any part of the Goods is modified or repaired, improperly stored or used, damaged by accident or neglect or maintained otherwise than or not maintained in accordance with the maintenance requirements specified by the Company to the Customer.

**39.** The Company represents that to the best of its knowledge and belief the information contained in its published Engineering Specifications and Manuals is correct but any warranty, implied or otherwise, that the Goods are suitable for the purposes of the Customer or may be integrated with other equipment is hereby expressly excluded.

**40.** These terms and conditions and the Special Conditions (if any) constitute the entire agreement between the Company and the Customer and may not be modified, waived or supplemented except by written agreement between them signed on behalf of the Company as mentioned above.


**41.** Notwithstanding the exclusion of liability in these terms and conditions, the Company will deal with Goods which are inherently faulty or defective, at the Company's discretion, as follows:

**41.1** Goods discovered to be inherently faulty or defective within seven days of the date of delivery will be replaced or repaired immediately, or as soon as is reasonably possible having regard to the location of the Customer and the stock available.

**41.2** Goods notified as being inherently faulty or defective within eight to thirty days of the date of delivery will have a replacement provided, upon receipt by the Company of the unit to be exchanged and after the test report referred to below has been carried out and which confirms that the goods were faulty or defective. The unit returned by the Customer will be tested and a test report provided. If the unit returned proves not to be inherently faulty or defective then the Company will charge a handling and testing fee. If goods returned for exchange are incomplete the Company, at its discretion, may reject them. A test report which shows that the goods were inherently faulty or defective will result in the Customer being provided with a replacement.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 5 of 7



	[Policies]
	Terms & Conditions
	Standard Statement

**41.3** Goods found to be inherently faulty or defective within thirty-one days to twelve months of the date of delivery must be returned to the Company. The Company will arrange for a repair and the repaired unit will be returned to the Customer as soon as the Company is able to arrange the same.

**42.** It is essential, when returning goods at any time, for the Customer to contact the Company's Technical Support Team with a view to obtaining a return authorisation by means of a defect / returns ID. Such a number will be given by the Company having checked the Customer's account number, invoice number and picking note number. The returns number given must be clearly marked on the goods returned. All goods returned must be properly packed, having regard to the nature of the particular items. Goods returned in unsuitable packaging may be rejected at the Company's discretion. When a returns number is provided, it will be valid for fourteen days from the date that it is given and goods must be received by the Company duly marked with the number within that period for the returns policy to take effect.

## Installation

**43.1** Where the Contract includes installation by the Company, it shall be responsible for delivery of the Equipment to be installed and shall notify the Customer when the Equipment is ready for delivery. The Company shall give at least seven days notice to The Customer of the date on which it intends to effect delivery.

**43.2** The Customer shall make available the installation site for each project in accordance with the specifications previously furnished by the Company. The Customer shall in all such respects and otherwise ensure that delivery is capable of being made on the intended delivery date, as notified by the Company although the Company gives no warranty that delivery will actually be made on such date, but will ensure a progress report is issued as necessary to keep all parties updated.

**43.3** As aforementioned, the Company reserves the right to conduct installations in stages, or as previously agreed in advance of accepting any projected works.

**43.4** The Customer shall permit the Company to have access to the installation site at all reasonable times for the purposes of checking its suitability, and ultimately for the purposes of delivering and installing the Goods.

**43.5** Following delivery, the Company shall carry out the installation but gives no warranty as to the time that such will require or any inconvenience that may thereby be caused to the Customer.

**43.6** On completion, the Company will conduct tests to ensure that the installation is in full working order and when such tests are satisfactory the Customer will be deemed to have accepted the project as completed, and will confirm acceptance in writing if so requested by the Company, by way on a completion certificate or work instruction.

**43.7** Unless otherwise agreed in the Special Conditions (if any) the obligation of the Company to install shall not imply any obligation on the part of the Company to train operators in the use of the items installed.

**43.8** So far as varied by, or inconsistent with the foregoing paragraphs relating to installation, all other items of these terms and conditions shall also apply to installation.

Series:	T&C	Series & Number	POL-T&C-12	Updated:	January 2012
Revision Number		V.03	Revision Date	TBC	Page 6 of 7

## Assignment

**45.** The benefit and obligations of the Contract shall not be assigned or sublet by the Customer without the prior written consent of the Company. The benefit and obligations of the Contract may however be assigned or sublet by the Company, providing that it shall remain responsible to the Customer for its obligations hereunder.

**46.** The Contract shall be governed by and interpreted in all respects in accordance with the Laws of England and Wales, and any dispute or difference whatsoever in connection with or arising out of the Contract shall be referred to a Court of competent jurisdiction within England and Wales.

**Accepted and agreed for and on behalf of  
Evolved IT Solutions Ltd, by**

**Name:** Alan Evans

**Signature:**



**Position:** Managing Director

**Date:**

**Accepted and agreed for and on behalf of  
Client, "(TBC)" , by**

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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**END OF DOCUMENT**

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