



EVO AUSTRALIA GENERAL TERMS AND CONDITIONS

You must read carefully and agree with and accept all of the terms and conditions including any credit limit set by EVO Australia and the Privacy Policy before you may trade with EVO Australia.

1. TERMS:

- a) These terms and conditions are effective from the date of acceptance by the Customer.
- b) These terms and conditions shall without further notice apply to all transactions between EVO Australia and the Customer in relation to sale and purchase of goods.
- c) Subject to any Prescribed Terms, these terms and conditions apply to all sales affected by EVO Australia to the exclusion of any terms and conditions contained in any communication from the Customer. Any variation or waiver of these terms and conditions must be expressly amended in writing by EVO Australia.
- d) For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Customer shall apply to form part of the Agreement except and to the extent otherwise agreed in writing by EVO Australia.

2. Acceptance of Customers Orders

An Agreement shall only be or be deemed to be have been entered into between EVO Australia and the Customer for the supply of goods when, upon an order having been placed upon CodaCare for goods, that order has been accepted by EVO Australia. Such acceptances of order may be made and communicated by EVO Australia in writing or by an overt act of acceptance. The provision of this Clause shall apply to every quotation or offer by EVO Australia for the supply of goods.

3. Products

EVO Australia reserves the right to discontinue, replace or change a product or replacement parts without prior notice.

4. Quotations

- a) Quotations are to be treated as estimates only and subject to withdrawal, correction or alteration at any time before the acceptance of Customer's order by EVO Australia.
- b) Quotations are provided based on the information the Customer provides and may vary if quantity, materials or delivery date is varied.
- c) Minimum orders may apply to certain products.

5. Price of Goods

All EVO Australia prices are subject to change without prior notice. EVO Australia reserve the right to change, amend or update any prices as necessary. EVO Australia shall not be liable any loss of profits or contracts suffered by the Customer.

6. Goods and Services Tax

- a) Goods and Services tax will be applicable to all sales and purchases as provided for in Australian taxation legislation and regulations.
- b) All prices are quoted in Australian dollars.

7. Insurance

Customer is responsible to effect whatever insurance cover he requires at his expense including public liability insurances.

1. Payment

- a) EVO Australia requires a fifty percent (50%) down payment for all orders. Deposits are necessary to secure orders and work on the order shall not commence until the deposit is received.
- b) The remaining balance payable within thirty (30) days from the day of delivery.
- c) If the Customer fails to pay on the due date, account-keeping fees will be applied.

- d) Time for payment of the price of goods or deposit shall be of the essence of the Agreement and if the EVO Australia fails to pay the purchase price or deposit when due, EVO Australia may treat the Agreement as repudiated or may suspend delivery of goods subject of the Agreement and any goods the subject of any other Agreement with the Customer without incurring the liability whatsoever to the Customer in respect thereof.
- e) The Customer acknowledges, and shall not be entitled to withhold payment for any of the following reasons: the making of an insurance claim by the Customer, the making of a warranty claim by the Customer or where the order was made on behalf of a third party and there is a delay of payment.
- f) EVO Australia, at its option, may forward any amount not recovered from the Customer by the due date payable under the Agreement to a recovery service. In such case, the Customer will be liable to indemnify EVO Australia for all expenses incurred in recovering any amounts which the Customer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).

2. Defects

- a) The Customer shall inspect the Goods upon delivery and will within twenty-four (24) hours, notify EVO Australia in writing of any defects, short deliveries or any failure to fulfil any quotation or order.
- b) The Customer will, within a reasonable time following delivery, grant EVO Australia access to the Goods in order to inspect for any alleged defects.
- c) Failure to notify EVO Australia of within the specified period shall deem the Goods to be in compliance with the order and free from defect whatsoever.

3. Capacity to Trade

By agreeing to these terms and conditions, the Customer give personal guarantee that they are capable of trade must operate a legitimate business and be registered in Australia providing a valid ABN and have public liability insurance.

4. Credit Account Management

The Customer is responsible for updating their personal or business details including their addresses and where applicable details of their place of business.

5. Retention of Title

- a) All goods supplied will remain the property of EVO Australia and shall not pass to the Customer until full invoice payment together with collection, repossession and/or legal costs have been received by EVO Australia.
- b) EVO Australia reserves the right to take possession of the goods if payment cannot be made and in the event the Customer has on-sold the goods prior to final payment, the Customer must remunerate EVO Australia equal to the purchase price in place of the goods.

6. Risk

- a) Notwithstanding the 'Retention of Title' provisions as per Clause 11 hereof, the risk in Goods sold shall pass to the Customer immediately at the point of delivery to the Customer, or it agent or a carrier nominated by the Customer.
- b) If any of the Goods are damaged or destroyed prior to the title passing to the Customer, EVO Australia is entitled, without affecting any other rights and remedies under this agreement, to any insurance proceeds payable for the goods.

7. Cancellation

- a) Orders that have been accepted can only be cancelled with the agreement of EVO Australia with or without conditions.
- b) Cancellations may incur reasonable liability for costs incurred by EVO Australia up to the time of the cancellation not including, but not limited to, any re-stocking fees incurred by EVO Australia.

8. Delivery

- a) EVO Australia will deliver to all States and Territories within mainland Australia and Tasmania using its standard transport road carrier or contracted courier express freight company and will charge a delivery/freight charge per order.
- b) The Customer acknowledges that the delivery rates are not fixed for any period of time and may rise from time to time in accordance with industry customs, external influences or according to the rate schedule of independent courier and freight transport contractors.
- c) Anytime or date named and accepted by Coda for completion, delivery, dispatch, shipment or arrival of the goods or for tender of any documents is an estimate and does not constitute a condition of the Agreement and is not an essence of the Agreement.
- d) Delivery is subject at all times to factors outside our control, holidays, fire, strikes, lockouts, other contingencies and in all cases subject to confirmation or alteration of and when offered, order is accepted by EVO Australia. EVO Australia accepts no responsibility for any loss or damage resulting from any delay however caused.
- e) EVO Australia may charge for frustrated delivery to cover EVO Australia's costs and expenses thereof.
- f) EVO Australia reserves the right to deliver the goods by instalments or partial shipments which will be separately invoiced. Requirement of Customer shall not be a condition of or the essence of the contract.
- g) The Customer is liable for all chargers arising from failed delivery or re-delivery and expenses associated with delays in loading or unloading, labour to load or unload a vehicle (with same being the responsibility of the Customer).
- h) The Customer must advise EVO Australia of loading and unloading facilities such as availability of forklifts, labourers, loading areas and truck access.

9. Intellectual Property

- a) The customer warrants to EVO Australia that all documents provided by the Customer are accurate and that EVO Australia is entitled to use all such documents for the purposes of the Agreement that such use does not infringe any third parties rights.
- b) The customer indemnifies EVO Australia against all claims and all losses and damages incurred by EVO Australia as a result of documents, representations or statements made by the Customer to EVO Australia for the purposes of or in the course of supply of the Goods breaching a third parties intellectual property rights.
- c) If the customer receives confidential information from EVO Australia, the customer may not use or disclose such information unless it receives the prior written consent from EVO Australia, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

10. Jurisdiction

These terms and conditions shall be construed in accordance with the laws of the State of Victoria and where applicable the Commonwealth of Australia and any Customer of EVO Australia submit to the non-exclusive right to the jurisdiction of the courts of Victoria. If any of the Terms are invalid, unenforceable or illegal, those terms will be struck out and the remaining terms will remain in force.

11. Force Majeure

EVO Australia is not liable for failure to function as a manufacturer, supplier or perform the Agreement to the extent and for so long as its performance is prevented and delayed because of circumstances outside EVO Australia's control, failure or errors occurring by EVO Australia's machinery or failure by a third party or supplier to EVO Australia.

12. Health and Safety

It is the Customers responsibilities ensure that all applicable health and safety regulations are observed and other appropriate steps are taken in relation to storage, handling and the use of goods and, where information is supplied to the Customer on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, sub-contractors, visitors and Customers.

13. Exclusions Liability

To the extent permitted by law, EVO Australia will have no liability to our purchasers or consumers, however rising and under any cause of action in theory or liability, in respect to special, indirect or consequential damages, loss of profits (weather direct or indirect), goodwill, use, data or other intangible losses resulting from the use of or inability to use goods and service or loss of business opportunity out of or in connection with the supply of goods and services or connection with EVO Australia site.

14. Privacy

EVO Australia will collect, use and disclose personal information in accordance with our Privacy Policy.

15. Change of terms

EVO Australia may be required to change their terms and conditions to reflect our changing business, or required by law, for security reasons or for technical infrastructure reasons. When a change has been made to the terms (including any policy incorporated into these terms) we will post the changes on our website at www.evoaustralia.com.au.

16. Waiver and Severability

- a) If EVO Australia fails to enforce any terms breached by you or fails to exercise its rights under these terms and conditions at any time, EVO Australia has not waived those rights with respect to that particular breach, subsequent or similar breaches.
- b) If a provision of these terms and conditions or any of its policies is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

17. Indemnity

You agree to indemnify and hold harmless EVO Australia, and its subsidiaries, affiliates, officers, directors, shareholders, employees and agents, from any claim or demand, made by any third party due to or arising directly or indirectly out of your conduct or in connection with your use of the products, any alleged contravention of these terms and conditions, any alleged contravention of any applicable law or regulation or the rights of a third party.