

## Terms and Conditions of Sale – Australia

### 1. Agreement

These Terms and Conditions (Conditions) constitute the entire agreement between EVO Power Pty Ltd (Company) and the Customer in relation to the sale and purchase of Goods. Additional terms and conditions apply to purchases made on credit. Every order for the supply of Goods (Order) submitted to the Company by or on behalf of the Customer will be subject to these Conditions. Individual terms contained in an Invoice or Company generated Sales Order will amend or override the relevant term in these Conditions with all other terms in these Conditions remaining enforceable. In these Conditions, "Goods" refers to any goods supplied, or to be supplied, by the Company to the Customer. By definition contained within Australian Consumer Law, Customer is not a Consumer. The Customer acknowledges that these Conditions are not intended to apply to Customers who would fall within the definition of a "consumer" under the Competition and Consumer Act 2010 (Cth). The Customer acknowledges and agrees that the Goods are for the purpose of re-supply or for the purpose of using them or transforming them, in trade or commerce, during a process of installation on third party property.

### 2. Pricing

The prices payable by the Customer for Goods are as agreed between the Company and the Customer. The Company reserves the right at any time without notice to the Customer to vary the prices of Goods where the cost of supply of the Goods is affected due to circumstances beyond the Company's control (including variations in the Company's purchase contracts, currency exchange rates, labour and material costs, transport costs, taxes, levies, imposts, duties, premiums, fees or charges however designated and the correction of errors and omissions). The Company's terms are strictly net and prices quoted for the Goods are exclusive of freight, delivery, insurance, handling and any other expenses relating to the Goods, which will be charged to and paid by the Customer.

All prices for the Goods are in Australian currency and are exclusive of GST and any other government taxes, levies, or similar charges, which are the responsibility of the Customer. The Customer must pay any applicable GST at the same time and in the same manner as payment of the price for the Goods.

### 3. Payment

Unless the Customer has a credit account with the Company, the Customer must make payment in full to the Company after receipt of the invoice for the Order that has been placed. The Company will accept payment in accordance with the terms set out in the Invoice. Goods will not be shipped until full payment has been made.

The Company charges a 1.5% surcharge in respect of all payments made by credit card. The Customer agrees to pay this surcharge for all credit card payments made to the Company. The surcharge must be paid at the same time as payment for the Goods is processed on the credit card. A late payment charge will be paid by the Customer to the Company at the rate specified in the Penalty Interest Rates Act 1983 plus 2% on any amount that remains unpaid by the Customer from the date payment is due until the date such amount and any associated default costs are paid to the Company in full.

### 4. Orders

All Orders must be placed by the Customer via the Company's website or in writing (by email)) and are subject to review and acceptance by the Company. The Customer acknowledges that in placing an Order with the Company it has entered into a legally binding contract with the Company on the basis of these Conditions. An Order will be binding on the Company and the Customer if:

1. Written acknowledgment and acceptance of the Order is provided by the Company to the Customer; or
  2. The Goods that are subject of the Order are delivered to the Customer, its servants, agents or carrier; or
  3. The Company has taken steps to procure the Goods for the Customer; or
  4. The Company accepts payment from the Customer in part or whole for the Goods.
- No Order may be cancelled or altered by the Customer in any way without the Company's prior written consent.

### 5. Delivery

The Company will deliver, or procure the delivery of, the Goods to or make them available for collection at the location agreed between the parties in writing, and if there is no agreement then at the location determined by the Company. The Company will use reasonable endeavours to meet its delivery schedule. It is the company's aim to deliver the Goods within 3-5 working days, however any projected delivery dates are

estimates only and the Company will not be liable for any loss or damage caused by late delivery. Delayed delivery of Goods does not constitute grounds for cancellation of the Order by the Customer. The Company reserves the right to make deliveries by instalments and the Order will be applicable as to any such instalment. Delay in delivery or other fault or defect in any instalment will not relieve the Customer of its obligation to accept and pay for deliveries remaining under the Order. If the Customer fails to collect or accept delivery of Goods then the risk in those Goods passes to the Customer from the time of that failure as determined by the Company. If this occurs, the Company will be entitled to the price of the Goods as if they had been delivered.

Any claims by the Customer for shortfall in delivery must be made in writing within three business days after the date on which the Goods are delivered.

## 6. Risk and Title

Title in the Goods will only pass from the Company to the Customer upon receipt in full by the Company of all amounts owing to the Company by the Customer. Until such time, the Customer holds the Goods as Bailee for the Company.

The Company reserves the following rights in relation to the Goods until all accounts and moneys owed by the Customer to the Company are paid to the Company in full:

1. Legal ownership;

2. To enter the Customer's premises (or the premises of any associated company or agent) where the Company reasonably believes the Goods to be located, without liability for trespass or any resulting damage and re-take possession of the Goods; and

3. To keep or re-sell the Goods repossessed pursuant to this clause.

The Customer must insure all Goods that the Customer holds as Bailee for the Company against damage and theft for an amount not less than the price paid by the Customer for the Goods. Risk of loss or damage to the Goods passes from the Company to the Customer on the earliest of the following events:

1. The Customer taking possession of the Goods; or

2. Completion of the loading of the Goods onto a transportation vehicle provided by the Customer; or

3. Delivery by the Company to the location agreed between the parties in writing or, if there is no agreement, then at the location determined by the Company.

## 7. Return of Goods

Except as required by law, the Company will not be under any obligation to accept Goods returned by the Customer and will do so only on terms agreed by the Company in writing on a case by case basis or in accordance with any published returns policy that the Company may from time to time have in place. The Company requires proof of purchase to be provided for all refund requests. The Company is not obliged to accept a return of Goods or to provide a refund if the Customer changes their mind or makes a wrong decision about the Goods but may do so in the Company's absolute discretion. If the Company does accept a return of the Goods where the Customer has changed their mind or made a wrong decision about the Goods, then the Company may deduct a handling and restocking fee equal to 15% of the purchase price for the Goods and then refund the balance of the purchase price to the Customer.

## 8. Intellectual Property

All rights pertaining to industrial or intellectual property in connection with the Goods (including to documents, designs, plans and specifications and the like) are expressly reserved. The Customer will not do or cause or permit to be done anything in contravention of such rights subsisting in the Goods or any components or parts of them.

## 9. Warranty

The "Company" warrants that all Goods supplied by it to the Customer:  
(a) are free from any encumbrance, other than any encumbrance created under these Terms; and (b) are of merchantable quality and are fit for their intended purpose.

9.1. If any of the Goods delivered to the Customer do not meet the standards set out in clause 9, the Customer must notify the Company in writing within seven days of delivery and the Company's responsibility for any non-compliant Goods will be determined in accordance with clause 10.1. Any claims not made within this timeframe will be invalid and the Company will have no liability whatsoever in respect of such claims.

9.2. Except for the warranties provided in clause 9.1 and subject to any warranties which may be provided by the manufacturer of specific Goods, to the extent permitted by

law the "Company" excludes all warranties of whatsoever kind or nature, either express or implied in connection with the supply of Goods by the "Company" to the Customer.

## 10. Limitations of Liability

10.1. In respect of the express warranties in clause 9. and any non-excludable warranties, the "Company's" liability for breach of such conditions or warranties and the Customer's sole and exclusive remedy in relation to such breaches shall be limited, at the "Company's" discretion, to either:

- (a) replacing the Goods;
- (b) repairing the Goods; or
- (c) refunding the Price paid for the relevant Goods.

10.2. The warranties provided by the "Company" and a manufacturer of Goods are subject to the Warranty policy document that the company has in place.

10.3. Notwithstanding any provision in these Terms, the Customer must not make a claim or demand against the "Company" or its agents for consequential, indirect, special, incidental, exemplary or economic damage or loss (including loss of use, loss of revenue, loss of profit, business interruption, costs of procurement or substitution of goods, technology or services or loss of information) arising in connection with the supply of Goods pursuant to these Terms (including any claim in negligence, equity or otherwise).

10.4. The Customer indemnifies the "Company" from and against any damages that it or its related bodies corporate suffer, incur or are liable for as a direct or indirect result of any breach of these Terms, or any conduct which may be considered misleading or deceptive, by the Customer or its agents.

## 11. Indemnity

To the full extent permitted by law, the Customer will indemnify and at all times keep indemnified and hold the Company, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the Customer's use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party, of the Goods or any part of the Goods whether separately or in combination with any other equipment or material. The Customer indemnifies the Company against all loss, expense or damage incurred or sustained by the Company as a result, directly or indirectly, of the Customer failing to comply with any of its obligations under these Conditions.

This indemnity will survive the termination or expiration of the contract between the Customer and the Company and will extend to cover all alleged faults or defects in the Goods or part thereof or instructions supplied for use in connection with them or out of any failure of the Goods to perform a particular task or achieve a particular result or to comply with any particular specification.

The Customer must pay the Company all of the Company's fees and expenses, including administration and legal fees on a solicitor / client basis of and incidental to the Company making a demand or bringing any legal proceeding against the Customer in respect of any amount that is owing by the Customer to the Company at any time for a period in excess of 30 days. Such fees and expenses will be due and payable by the Customer when they are incurred by the Company.

## 12. The Company's Rights

The Company reserves the right to cancel Orders or suspend any or all deliveries to the Customer where the Customer is in default of these Conditions. The Company reserves the right to alter product specifications relating to the Goods without notice, provided that such alterations do not materially affect the performance of the Goods.

## 13. Personal Property Securities Act

In these Conditions, 'PPSA' means the Personal Property Securities Act 2009 (Cth) and all regulations made under that Act.

The Customer acknowledges and agrees that:

1. The contract between the Customer and the Company constitutes a security agreement for the purposes of the PPSA; and
2. By accepting these Conditions the Customer grants a security interest (by virtue of the retention of title provisions of these Conditions) to the Company in all Goods previously supplied to the Customer by the Company (if any) and all goods and services that will be supplied in the future to the Customer by the Company.

The Customer undertakes to:

1. Sign any further documents and provide any further information) which the Company may reasonably require to enable registration of a financing statement or a financing

change statement on the Personal Property Securities Register (PPSR) to correct a defect in such a statement.

2. Not register a financing change statement or make an amendment demand in relation to any security interest created by these Conditions without the Company's prior written consent;

3. Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the Company's prior written consent;

4. Give the Company at least 10 business days' prior written notice of any proposed changes to any of the Customer's details; and

5. Upon demand reimburse the Company for all expenses incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Conditions. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA and its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4), 135 of the PPSA.

Unless otherwise agreed to in writing by the Company, the Customer waives its rights to receive a verification statement in accordance with section 157 of the PPSA. The Customer agrees that immediately on request by the Company the Customer will procure from any person considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time reasonably require.

## 14. Disclaimer

These Conditions supersede all previous representations and communications, whether written or oral. All descriptive specifications, performance figures, drawings, data, dimensions, and weights furnished by the Company or contained in its website, price lists, catalogues or advertisements are by way of general description only and do not form part of these Conditions. Any performance figures given by the Company are estimates only and the Company will be under no liability for damages for failure by the Goods to attain such figures unless specifically guaranteed in writing and any such written guarantee will be subject to the recognised tolerances applicable to such figures. Subject to these Conditions, any advice, recommendation, information or assistance provided by

the Company in relation to the Goods, whilst believed by the Company to be appropriate, is provided without liability or responsibility on the part of the Company.

## 15. Notices

Any notices or invoices to be given under these Conditions must be in writing and may be hand delivered, mailed or emailed and:

1. If addressed to the Customer, addressed to the address stated in the Order or otherwise advised by the Customer to the Company in writing; and
2. If addressed to the Company, addressed to the Company's address as stated in the Order or otherwise advised by the Company to the Customer in writing.

Such notices are deemed to have been received upon delivery if hand delivered, two business days after despatch if sent by mail, or the first business day after despatch if sent by email.

## 16. General

The Customer releases the Company from all and any liability for and in connection with or arising out of any failure in performance of its obligations under these Conditions due in whole or in part to any cause whatsoever beyond the Company's reasonable control. No forbearance or other indulgence granted to the Customer will in any way discharge the Customer from any of the Customer's obligations under these Conditions or otherwise affect any such obligation.

Any provision contained in these Conditions which is prohibited or unenforceable in any jurisdiction will be deemed to be ineffective to the extent of such prohibition or unenforceability and will not invalidate the remaining provisions nor affect the validity or enforceability of that provision in any other jurisdiction.

The Customer must not assign or transfer its rights or obligations under these Conditions without the prior written consent of the Company. These Conditions may only be varied in writing and signed by both parties. These Conditions will be governed and construed in accordance with the laws of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria.



## 17. Privacy

The Company will adhere to its Privacy Collection Statement and the Customer agrees to the collection of personal information by the Company for the purposes set out in the Privacy Collection Statement and in accordance with the Privacy Act 1988 (Cth).

## 18. Severance

Should any part of these Terms be held to be void or unlawful, these Terms will be read and enforced as if the void or unlawful provisions have been deleted.

