

## 1. Definitions

- 1.1. **'Buyer'** means the person or business who buys or agrees to buy the services of the Seller.
- 1.2. **'Client'** means the person or business for whom the services of the Seller are purchased.
- 1.3. **'Conditions'** means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.4. **'Delivery Date'** means the date specified by the Seller when the services are to be delivered.
- 1.5. **'Goods'** means the services and associated parts product, merchantable or otherwise, which the Buyer agrees to buy from the Seller.
- 1.6. **'Price'** means the price for the Goods, excluding carriage and VAT where applicable.
- 1.7. **'Seller'** means www.evolvparts.com, evolvparts.co.uk, Evolv Parts and their sub-contracted partner suppliers where appropriate.

## 2. Conditions applicable

- 2.1. These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer or Client may purport to apply under any purchase order confirmation of order or similar document.
- 2.2. All orders for Goods, be they verbal or written, shall be deemed to be an offer by the Buyer and Client to purchase Goods pursuant to these Conditions.
- 2.3. Acceptance of delivery of the Goods shall be deemed conclusive evidence of both Buyer and Client's acceptance of these Conditions.
- 2.4. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5. The Seller reserves the right to amend or alter these Terms and Conditions of site use and sale.

## 3. The Price and payment

- 3.1. The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2. Subsequently, cleared payment of the Price, VAT and associated shipment costs shall be due at the time of purchase and in any case no later than 14 days of the date of invoice (time for payment shall be of the essence) and before Delivery Date unless otherwise agreed in writing by the Seller.
- 3.3. Interest on overdue invoices shall accrue from the date when payment becomes due until the date of cleared payment at a rate of 2% above the Bank of England's base rate from time to time in force, and shall accrue at such a rate after as well as before any judgement.
- 3.4. If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
  - 3.4.1. suspend any work in progress or cancel delivery of due Goods to the Buyer and Client; and/or
  - 3.4.2. appropriate any payment made by the Buyer to such of the Goods or Goods supplied under any other contract with the Buyer as the Seller may in its sole discretion think fit.
- 3.5. Cancellation of order by Buyer or Client will incur penalty charges equivalent to all direct costs incurred by the Seller in relation to cancelled order including standard labour hourly rate of £50 per hour or part thereof, plus administration fee equivalent to 20% of order value.
- 3.6. The Seller may refuse an order if:
  - 3.6.1. the Goods were incorrectly described or priced at the time of order
  - 3.6.2. pre-ordered Goods are out of stock and unobtainable
  - 3.6.3. the Buyer's chosen payment method remains unauthorised for a period no less than 48 hours

## 4. The Goods

The description of the Goods shall be

- 4.1. as set out in the Seller's written or verbal quotation and/or order acceptance confirmation.
- 4.2. as additionally instructed by any written or verbal means by the Buyer or Client.

## 5. Warranties and liability

- 5.1. The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller and will have been tested prior to shipment.
- 5.2. Goods warranty is given on defective parts items:
  - 5.2.1. New unused parts 12 months from date of shipment
  - 5.2.2. Used and reconditioned parts 3 months from date of shipment excluding:
    - 5.2.2.1. reasonable wear and tear
- 5.3. The Seller's warranty shall be considered void if the part has been incorrectly handled, fitted or otherwise abused by the Buyer/Client
- 5.4. All other warranties, conditions or terms whether implied or expressly made relating to quality, fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 5.5 All accident damaged cars are sold without warranty unless specifically written on the purchase receipt.

## 6. Delivery of the Goods

- 6.1. Delivery of the Goods shall be made to the specified Buyer address that corresponds with payment method records on the Delivery date.
- 6.2. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - 6.2.1 The Seller reserves the right to levy additional delivery charges resulting from failed delivery attempts at the Buyer's given delivery address.
- 6.3. The Seller shall not be liable to the Buyer/Client for late delivery or short delivery of the Goods.

## 7. Return of Goods

- 7.1. The sale of goods unseen are covered by The Consumer Protection (Distance Selling) Regulations 2000. Under these regulations the Buyer is entitled to cancel their order within 7 days of placing the order without giving a reason. The ordered part must be returned unopened at Buyer cost and the Seller will refund the cost of the part excluding any delivery charges.
- 7.2. No Goods delivered to the Buyer or Client which are in accordance with the contract will be accepted for return without the prior written approval of the Seller in accordance with the Seller's returns authorisation procedure and on terms to be determined at the absolute discretion of the Seller.
- 7.3. If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay in full any costs directly incurred to the purchase of Goods on behalf of the Buyer/Client plus a handling charge of 10% of the invoice price. Such Goods must be returned unused by the Buyer carriage-paid to the Seller in clean & saleable condition including original packaging where appropriate, using their original shipping carton or equivalent structurally appropriate carton.
- 7.4. Goods returned without the prior written approval of the Seller may, at the Seller's absolute discretion, be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.
- 7.5. No Goods shall be accepted for return as a result of the Buyer's failure to sell or utilise to their potential.
- 7.6. No Goods shall be accepted for return after 14 days from shipment unless under warranty.

## 8. Sellers Clause relating to claims for defects, damage, loss or non-delivery of merchantable Goods

- 8.1. The Buyer/Client shall inspect the Goods on delivery and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to

comply with description or sample. The Buyer/Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer/Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.

**8.2.** The Buyer shall notify the Seller of any non-delivery of a whole consignment of complete cartons within 14 days of the date of dispatch (as stated in the invoice).

Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons indicated on the advice sheet.

**8.3.** If the Goods are not in accordance with the contract for any reason, the Buyer/Client's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.

**8.4.** The Seller's liability to the Buyer/Client whether for any breach of contract or otherwise, shall not in any event exceed the Price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer/Client or liability to third parties incurred by the Buyer/Client.

**8.5.** All warranties and conditions whether implied by statute or otherwise are excluded from this contract provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer.

#### **9. Seller's retention of physical or merchantable Goods**

**9.1** The Goods shall be at the Buyer and/or Client's risk as from delivery.

**9.2** In spite of delivery having been made, property in the Goods shall not pass from the Seller until;

**9.2.1.** the Buyer shall have paid the Price plus applicable VAT in full and

**9.2.2.** no other sums whatever shall be due from the Buyer or Client to the Seller

**9.3.** Until property in the Goods passes to the Buyer in accordance with clause 9.2 the Buyer or Client shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer or Client shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

**9.4.** Notwithstanding that the Goods (or any of them) remain the property of the Seller, the Buyer/Client may sell or use the Goods in the ordinary course of the Buyer/Client business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

**9.5.** The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.

**9.6.** Until such time as property in the Goods passes from the Seller the Buyer shall upon request delivery up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 9.4 shall cease.

**9.7.** The Buyer/Client shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer/Client does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

**9.8.** The Buyer/Client shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer/Client fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

#### **10. Insolvency or other default of Buyer or Client**

**10.1.** If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer/Client offers to make any arrangements with its creditors or commits any act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have;

**10.1.1.** suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or

**10.1.2.** exercise any of its rights pursuant to Clause 9.

#### **11. Set off and Counterclaim**

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer or Client may have or allege to have or for any reason whatever.

#### **12. Headings**

All headings are for ease of reference only and shall not affect the construction of this contract.

#### **13. Intellectual Property**

**13.1** The content and essence of website [www.evolvparts.com](http://www.evolvparts.com) and all associated sites operated by the Seller remains the property of the Seller at all times.

**13.2** The Buyer/Client will in no way harm the Intellectual Property of the Seller through social or business conduct or the display and representation of Seller-associated creation and affairs.

#### **14. Proper law of contract**

This contract is subject to the law of England. Statutory rights remain unaffected.

#### **15. Waiver**

No waiver or forbearance by the Seller or Buyer (whether express or implied) enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

#### **16. Severance**

Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.

#### **18. Contract**

These terms and conditions alone will form the basis of sales contract between Seller, Buyer and any associated Client third parties.

#### **19. Change**

The Seller reserves the right to change terms and conditions of sale at any time without prior notice.