



TERMS & CONDITIONS OF SALE

Unless otherwise agreed to in writing, all goods (“Goods”) sold or offered for sale by Evolt Pty. Ltd ACN 112 123 529 ABN 83 112 123 529 (hereinafter referred to as “Evolt”) are done so subject to the following conditions:

PRICES

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All prices are quoted excluding GST, and any GST applicable will be charged to the Buyer on a Tax Invoice (as defined in the GST Act).

QUOTATIONS:

Quotation pricing is valid for three (3) months.

DELIVERY

Late delivery or non-delivery due to any circumstances or events beyond Evolt’s control shall not constitute a breach of contract by Evolt and Evolt shall not be liable for any loss or damage howsoever arising through such late delivery or non-delivery. The choice of the carrier and method of transport remains with Evolt, unless transport is paid for by the Buyer.

WARRANTIES

THE WARRANTIES:

Subject to paragraphs 4 and 5, unless otherwise agreed between the parties in writing, Goods manufactured, or sold, by Evolt under any of its’ Brand Names, are warranted against faulty materials and/or workmanship for (1) one year from date of delivery.

CONDITIONS OF WARRANTY

The warranties set out in paragraph 3 are subject to compliance with the following conditions:

Goods must be used and handled with due care, under normal operating conditions and in accordance with the Relevant Standards and good practices.

Goods must be mounted, installed and connected with due care and in accordance with the Relevant Standards and good practices.

Goods must be returned to Evolt’s local office within 14 days of the detection of the alleged fault in their then current condition. Wilfully damaged or defaced Goods are excluded from this warranty.

Evolt reserves the right to request that the complete piece of equipment containing the allegedly faulty component be returned to Evolt for inspection and testing.

In the case of any dispute under this warranty, Evolt reserves the right to obtain the opinion of a suitably qualified independent expert whose opinion as to any question of fact under this warranty shall be binding on the parties.

LIMITATION OF LIABILITY

Evolt will not be liable for any loss or damage incurred by the Buyer or End User for Goods damaged as a result of negligence, alteration, accident, use of the Goods in a way which is not in compliance with the Relevant Standards or use of the Goods in any way for which the Goods were not designed or approved by Evolt or as a result of improper fitting, repair or replacement.

The liability of Evolt in respect of faulty materials or workmanship shall, at the option of Evolt, be limited to one of the following:

the replacement of the Goods;

the supply of equivalent Goods;

the repair of the Goods; or

the payment of the cost of having the Goods repaired.

Evolt will not be liable for any special indirect or consequential damage arising out of the supply of the Goods.

If a claim is made by a Buyer or End User under one of the warranties set out in paragraph 4, Evolt will not accept any claim for costs, charges or expenses incurred by the Buyer or End User in relation to replacement, supply or repair of the Goods.

Except for any warranties and conditions which cannot be excluded under any Act, all warranties and conditions with regard to the Goods sold which are implied by common law, statute or trade usage are excluded to the full extent legally permissible.

PAYMENTS

Unless otherwise agreed to in writing, all invoices are net payable thirty (30) days following the month of delivery to Evolt’s head office. All payments received by Evolt must, in all cases, be allocated to the oldest account due for payment.

RETURN OF GOODS

Goods will not be accepted for return without prior written consent from Evolt. Goods manufactured to Buyer’s requirements and/or specification cannot be returned for credit. Please see attachment for more details.

LOCATION OF CONTRACT (LEGAL DOMICILE)

Any contract with Evolt shall be deemed to have been executed and entered into in the State of New South Wales, Australia and the same shall be construed enforced and performed in accordance with the laws thereof. Any proceedings shall be brought and heard in the courts of the State of New South Wales.



TITLE AND RISK

Evolt supplies Goods on condition that, property in the Goods does not pass to the Buyer until they have been paid in full and Evolt has been paid for all other moneys then owing to Evolt by the Buyer.

notwithstanding paragraph 11.1, the Goods are at the risk of the Buyer as soon as they have been delivered to or into the custody of the Buyer or the Buyer's agent.

until property in the Goods passes to the Buyer under paragraph 11.1, the Goods are merely entrusted to the Buyer as fiduciary and Evolt remains the legal and beneficial owner of the Goods with full power to re-sell and regain possession of them if the Buyer defaults in payment of the purchase price.

if the Buyer defaults in payment of the purchase price or if the Buyer becomes insolvent, Evolt and/or its authorised agents may at any time without notice to the Buyer enter onto the Buyer's premises and any other premises at which the Goods are situated including but not limited to the Buyers premises or the End Users Premises for the purpose of recovering possession of them. The Buyer agrees to indemnify the Seller against all costs, losses and expenses (including without limitation legal costs) incurred by the Seller as a result of or in connection with any default or breach of these Terms and Conditions of Sale by the Buyer.

if the Buyer receives any proceeds from the sale of the Goods from any other party, the Buyer receives those proceeds on trust for Evolt to be applied in payment of the purchase price for the Goods and shall remit such sum forthwith to Evolt. All such payments received by Evolt shall be allocated to the oldest account due for payment.

CONFLICT WITH BUYER'S TERMS

If any purchase order or other trading terms of the Buyer conflict with or are inconsistent with any of Evolt's terms and conditions of sale, then Evolt's terms and conditions of sale as amended from time to time prevail and will apply notwithstanding any conflicting or inconsistent terms of the Buyer. The Buyer acknowledges that the sale by Evolt of any Goods will not constitute acceptance of any conditions of purchase of the Buyer which conflict or are inconsistent with any of Evolt's terms and conditions of sale, even where Evolt acknowledges the Buyer's conditions prior to, upon or by delivery of Goods.

NON-WAIVER

A waiver by Evolt with respect to any breach or default by the Buyer shall not constitute a continuing waiver of any other breach or default or of any other right or remedy. A failure or delay by Evolt in exercising a right or remedy does not operate as a waiver of that right or remedy

VARIATION

A variation of these Terms and Conditions of Sale shall be ineffective unless it is in writing and signed by Evolt.

SEVERABILITY

If a Court determines that a condition or part of these conditions is unenforceable, illegal or void then it shall be severed and the remainder of these Terms and Conditions of Sale shall remain operative.

DEFINITIONS

In these Terms and Conditions of Sale the following terms shall have the following meanings:

"Brand Names" means "Evolt", "Ektor"; "Atom", **"WiZ"**.

"Buyer" means the buyer of the Goods;

"End User" means a person or business which purchases or uses Goods supplied directly or indirectly by the Buyer;

"Goods and Services Tax" or **"GST"** has the same meaning as given in the GST Act;

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth);

"Relevant Standards" means the relevant International Organisation for Standardisation ("ISO") standard and the relevant International Electro technical Commission ("IEC") standard applicable to the Goods.

ACKNOWLEDGMENT & INDEMNITY

The Buyer shall, in every instance where the Goods are being purchased from Evolt for an End User or the Goods are on sold to an End User,;

ensure either by inclusion into any contract between the Buyer and the End User or otherwise that the End User is aware of and agrees to these Terms and Conditions upon which Evolt supplies the Goods, and

indemnifies and agrees to keep indemnified Evolt from all claims, demands, suits and liabilities whatsoever and howsoever arising whether in tort or in contract that may be made by End Users regarding the Goods.