

## 1. Definitions

1.1 "Evotec" shall mean Evotec Pty Ltd T/A EVOTEC its successors and assigns or any person acting on behalf of and with the authority of Evotec Pty Ltd T/A EVOTEC or Evotec (VIC) Pty Ltd or Evotec (QLD) Pty Ltd.

1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation, service agreement or any other form as provided by Evotec to the Customer.

1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.4 "Goods and Services" shall mean Goods and/or Services supplied by Evotec to the Customer, these Goods and Services may be described on the Invoices, Quote, Proposal, Work Authorisation or any other forms as provided by Evotec to the Customer, or they may be required or ordered by the Customer on a "Do and Charge" basis or during the Installation Process or at any time.

1.6 "Price" shall mean the price payable for the Goods and Services as agreed between Evotec and the Customer in accordance with clause 3 of this contract.

## 2. Acceptance

2.1 Any instructions received by Evotec from the Customer for the supply of Goods and Services and/or the Customer's acceptance of Goods and Services supplied by Evotec shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Evotec.

2.4 The Customer shall give Evotec not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Evotec as a result of the Customer's failure to comply with this clause.

2.5 These terms and conditions are meant to be read in conjunction with the terms and conditions contained in the customer's EVOTEC PRIORITEL Agreement, and/or their preferred Carrier's agreement (where applicable). If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

2.6 The terms and conditions of trade herein and the terms and conditions contained in the EVOTEC PRIORITEL Agreement (if applicable) shall prevail over any terms and conditions proposed by the Customer or implied by trade customs or practice and this agreement will only be concluded on that condition. The failure of Evotec to object to any other terms proposed by the Customer shall not be deemed a waiver of these conditions.

## 3. Price and Payment

3.1 At Evotec's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Evotec to the Customer in respect of Goods and Services supplied; or
- (b) Evotec's quoted Price (subject to clause 3.2) which shall be binding upon Evotec provided that the Customer shall accept Evotec's quotation in writing within thirty (30) days; or
- (c) as stated in the customer's EVOTEC PRIORITEL Agreement

3.2 Evotec reserves the right to change the Price in the event of a variation to Evotec's quotation or if the Customer requests additional Services or support not already included the customer's EVOTEC PRIORITEL Agreement.

3.3 At Evotec's sole discretion a deposit will be required in order to begin the delivery of Goods and Services.

3.4 Evotec shall charge for ongoing the customer's EVOTEC PRIORITEL Agreements either annually, six monthly, quarterly or monthly in advance.

3.5 At Evotec's discretion, a customer's payments will be applied to the oldest invoice first, except where an invoice is subject to a Defect (see clause 8) or a Dispute (clause 9). This includes payments a customer makes on EVOTEC PRIORITEL Agreements. This means that a customer must pay all invoices on time, or risk losing the support and maintenance coverage in their EVOTEC PRIORITEL Agreement.

3.6 Time for payment for the Goods and Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.7 Payment is payable at 'practical completion' which is defined as the Customer having practical use of the equipment or services.

3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card or by direct credit, or by any other method as agreed to between the Customer and Evotec. Where payment is made by credit card, a surcharge of up to four percent (4%) of the Price will be applied, depending on the type of credit card used.

3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4. Delivery Of Goods and Services**

4.1 At Evotec's sole discretion delivery of the Goods and Services shall take place when:

- (a) the Customer takes possession of the Goods and Services at the Customer's address (in the event that the Goods and Services are delivered by Evotec or Evotec's nominated carrier); or
- (b) the Customer's nominated carrier takes possession of the Goods and Services in which event the carrier shall be deemed to be the Customer's agent.

4.2 Installation shall be deemed to be completed when the Customer has Practical Use of the equipment or services as detailed in the Proposal or Quote. Upon Practical Completion, Evotec will provide the customer with a "Customer Acceptance Form". Upon signing this form the Goods and Services delivery will be deemed to be completed and the Customer is required to pay the subsequent Invoice within the period agreed to in the quote or proposal. Should the customer fail to sign the form within 7 days for any reason other than a Defect (see clause 8) or a Dispute (clause 9), the delivery will be deemed to be completed and payment will be due.

4.3 Any additional Goods and Services not listed in the Proposal or Quote that were required and agreed to by the customer during or after the delivery of the Goods and Services will be in addition to the Price and payable by the Customer unless covered under a current EVOTEC PRIORITEL maintenance agreement. .

4.4 At Evotec's sole discretion the costs of delivery and transportation are included in the Price, unless stated otherwise in the Quote or Proposal.

4.5 The Customer shall make all arrangements necessary to take delivery of the Goods and Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and Services as arranged then Evotec shall be entitled to charge a reasonable fee for redelivery.

4.6 Evotec may deliver the Goods and Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

4.7 The failure of Evotec to deliver shall not entitle either party to treat this contract as repudiated.

4.8 Evotec shall not be liable for any loss or damage whatever due to failure by Evotec to deliver the Goods and Services (or any of them) promptly or at all.

#### **5. Risk**

5.1 If Evotec retains ownership of the Goods and Services nonetheless, all risk for the Goods and Services passes to the Customer on delivery.

5.2 If any of the Goods and Services are damaged or destroyed following delivery but prior to ownership passing to the Customer, Evotec is entitled to receive all insurance proceeds payable for the Goods and Services. The production of these Terms and Conditions by Evotec is sufficient evidence of Evotec's rights to receive the insurance proceeds without the need for any person dealing with Evotec to make further enquiries.

5.3 Whilst Evotec will make every endeavour to optimise the quality of Voice over Internet Protocol (VOIP) at installation the Customer acknowledges that as Evotec does not have absolute control over the internet protocol (IP) pathway or network that Evotec shall not be liable to the Customer in any way for ensuring the ongoing quality of VOIP.

5.4 Where wireless applications and technology are provided by Evotec the Customer acknowledges that Evotec's obligations shall be limited to the site conditions prevailing at the time of installation. Wireless technology is subject to interference from other technology and external influences therefore Evotec shall not be liable in any way whatsoever where such interference occurs after the date of installation. In the event a site survey is required then any costs incurred by Evotec in providing the survey shall be payable by the Customer and shall be in addition to the Price.

#### **6. Title**

6.1 Evotec and Customer agree that ownership of the Goods and Services shall not pass until:

- (a) the Customer has paid Evotec all amounts owing for the particular Goods and Services; and
- (b) the Customer has met all other obligations due by the Customer to Evotec in respect of all contracts between Evotec and the

Customer.

6.2 Receipt by Evotec of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Evotec's ownership or rights in respect of the Goods and Services shall continue.

6.3 It is further agreed that:

- (a) where practicable the Goods and Services shall be kept separate and identifiable until Evotec shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods and Services shall pass from Evotec to the Customer Evotec may give notice in writing to the Customer to return the Goods and Services or any of them to Evotec. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods and Services shall cease; and
- (c) Evotec shall have the right of stopping the Goods and Services in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods and Services to Evotec then Evotec or Evotec's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods and Services are situated and take possession of the Goods and Services; and
- (e) the Customer is only a bailee of the Goods and Services and until such time as Evotec has received payment in full for the Goods and Services then the Customer shall hold any proceeds from the sale or disposal of the Goods and Services on trust for Evotec; and
- (f) the Customer shall not deal with the money of Evotec in any way which may be adverse to Evotec; and
- (g) the Customer shall not charge the Goods and Services in any way nor grant nor otherwise give any interest in the Goods and Services while they remain the property of Evotec; and
- (h) Evotec can issue proceedings to recover the Price of the Goods and Services sold notwithstanding that ownership of the Goods and Services may not have passed to the Customer; and
- (i) until such time that ownership in the Goods and Services passes to the Customer, if the Goods and Services are converted into other products, the parties agree that Evotec will be the owner of the end products.

## 7. Customer's Disclaimer

7.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Evotec or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by Evotec and the Customer acknowledges that the Goods and Services are bought relying solely upon the Customer's skill and judgement.

## 8. Defects

8.1 The Customer shall inspect the Goods and Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify Evotec of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Evotec an opportunity to inspect the Goods and Services within a reasonable time following delivery if the Customer believes the Goods and Services are defective in any way. If the Customer shall fail to comply with these provisions the Goods and Services shall be presumed to be free from any defect or damage. For defective Goods and Services, which Evotec has agreed in writing that the Customer is entitled to reject, Evotec's liability is limited to either (at Evotec's discretion) replacing the Goods and Services or repairing the Goods and Services. Where the Customer is a consumer as defined in the TPA then the client shall also be entitled to a refund.

8.2 Any failure or malfunction or loss of quality or missing features that has been caused directly or indirectly by factors outside of Evotec's control cannot be used as a cause for raising a Defect or Dispute.

## 9. Disputing an Invoice

9.1 If the Customer wishes to dispute an invoice, the full invoice amount must be paid by the invoice Due Date. The Customer must set out the details of their dispute in writing as per clause 8 and submit this by post or email to [accounts@evotec.com.au](mailto:accounts@evotec.com.au) within seven (7) days of the invoice date. If Evotec accepts the claim, a credit will be processed.

## 10. Returns

10.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 8.1; and
- (b) Evotec has agreed in writing to accept the return of the Goods and Services; and
- (c) the Goods and Services are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) Evotec will not be liable for Goods and Services which have not been stored or used in a proper manner, and

(e) the Goods and Services are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.2 Evotec will not accept the return of Goods and Services for credit.

## **11. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **12. Warranty**

12.1 For Goods and Services not manufactured by Evotec, the warranty shall be the current warranty provided by the manufacturer of the Goods and Services. Evotec shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods and Services.

## **13. Intellectual Property**

13.1 Where Evotec has designed, drawn or written Goods and Services for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Evotec, and shall only be used by the Customer at Evotec's discretion.

13.2 The Customer warrants that all designs or instructions to Evotec will not cause Evotec to infringe any patent, registered design or trademark in the execution of the Customer's order and the Client agrees to indemnify Evotec against any action taken by a third party against Evotec in respect of any such infringement.

## **14. Default & Consequences of Default**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

14.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Evotec from and against all costs and disbursements incurred by Evotec in pursuing the debt including legal costs on a solicitor and own client basis and Evotec's collection agency costs.

14.3 Without prejudice to any other remedies Evotec may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Evotec may suspend or terminate the supply of Goods and Services to the Customer and any of its other obligations under the terms and conditions. Evotec will not be liable to the Customer for any loss or damage the Customer suffers because Evotec has exercised its rights under this clause.

14.4 If any account becomes overdue (i.e. beyond the payment period specified on the invoice or the period specified in clause 3.6 above) then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.5. If any account becomes overdue (i.e. beyond the payment period specified on the invoice or the period specified in clause 3.6 above), Evotec reserves the right to withhold services covered under any EVOTEC PRIORITEL Agreement with the customer, until such time as the account is brought up to date.

14.5 Without prejudice to Evotec's other remedies at law Evotec shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Evotec shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to Evotec becomes overdue, or in Evotec's opinion the Customer will be unable to meet its payments as they fall due; or

(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **15. Security And Charge**

15.1 Despite anything to the contrary contained herein or any other rights which Evotec may have howsoever:

(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Evotec or Evotec's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Evotec (or Evotec's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable

hereunder have been met.

(b) should Evotec elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Evotec from and against all Evotec's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Evotec or Evotec's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

## **16. Cancellation**

16.1 Evotec may cancel any contract to which these terms and conditions apply or cancel delivery of Goods and Services at any time before the Goods and Services are delivered by giving written notice to the Customer. On giving such notice Evotec shall repay to the Customer any sums paid in respect of the Price. Evotec shall not be liable for any loss or damage whatever arising from such cancellation.

16.2 In the event that the Customer cancels delivery of Goods and Services the Customer shall be liable for any loss incurred by Evotec (including, but not limited to, any loss of profits) up to the time of cancellation.

16.3 In the event that the Customer cancels an ongoing maintenance agreement then Evotec will honour the remaining term of the agreement and the Customer shall not be entitled to any form of refund.

## **17. Privacy Act 1988**

17.1 The Customer and/or the Guarantor/s agree for Evotec to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Evotec.

17.2 The Customer and/or the Guarantor/s agree that Evotec may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Customer and/or Guarantor/s.

17.3 The Customer consents to Evotec being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

17.4 The Customer agrees that personal credit information provided may be used and retained by Evotec for the following purposes and for other purposes as shall be agreed between the Customer and Agent or required by law from time to time:

- (a) provision of Goods and Services; and/or
- (b) marketing of Goods and Services by Evotec, its agents or distributors in relation to the Goods and Services; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and Services.

17.5 Evotec may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

## **18. Unpaid Agent's Rights**

18.1 Where the Customer has left any item with Evotec for repair, modification, exchange or for Evotec to perform any other Service in relation to the item and Evotec has not received or been tendered the whole of the Price, or the payment has been dishonoured, Evotec shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Evotec is in possession of the item;
- (c) a right to sell the item.

18.2 The lien of Evotec shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

## 19. General

19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

19.3 Evotec shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Evotec of these terms and conditions or those contained in Evotec's Maintenance and Software Support of Telecommunications Agreement.

19.4 In the event of any breach of this contract by Evotec the remedies of the Customer shall be limited to the amount specified in the warranty clause contained in any current EVOTEC PRIORITEL maintenance agreement (where applicable), or for any other claim damages which under no circumstances shall exceed the Price of the Goods and Services.

19.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Evotec.

19.6 Evotec may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

19.7 Evotec reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Evotec notifies the Customer of such change.

19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

19.9 The failure by Evotec to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Evotec's right to subsequently enforce that provision.