

Evolve Lubricants (Pty)Ltd Service Agreement

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1. INTRODUCTION

- 1.1. This website can be accessed at www.evolveengineer.com related mobi-sites and software applications (the "Website") and is owned and operated by Evolve Lubricants (Pty)Ltd ("Evolve Lubricants").
- 1.2. These Website Terms and Conditions ("Terms and Conditions") govern the ordering, sale and delivery of goods, and the use of the Website.
- 1.3. By using the Website you acknowledge that you have read and agree to be bound by these Terms and Conditions.
- 1.4. All products supplied, and services offered by Evolve Lubricants to the Customer shall be governed strictly and exclusively on the basis of these terms and conditions of sale. These terms and conditions supersede any terms and conditions stipulated by Customer irrespective of that stipulated on a Customer's order.
- 1.5. If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask Evolve Lubricants to explain it to you before you accept the Terms and Conditions or continue using the Website.

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2. THE GOODS

- 2.1. Goods are defined as the subject matter of any order placed by the Customer and accepted by Evolve Lubricants in writing.

3. PRODUCT QUALITY, SPECIMENS & SAMPLES

- 3.1. Unless otherwise specifically agreed between the parties in writing, the quality of the goods is determined strictly and exclusively in accordance with Evolve Lubricants' product specifications, as updated by Evolve Lubricants from time to time and which have been made available to the customer and further copies of which may be requested from Evolve Lubricants at any time.
- 3.2. The description in respect of the properties and composition of specimens and samples are binding on Evolve Lubricants only insofar as they have been specifically agreed in writing by Evolve Lubricants to define the quality of goods.
- 3.3. Evolve Lubricants does not warrant the suitability for any specific purpose of the goods, and in so far as permitted under the Consumer Protection Act, any product specifications or other information provided by Evolve Lubricants shall not relieve the Customer of the need to conduct his own investigations and tests as to the suitability and application of the goods for any particular purpose and the Customer shall have no claim against Evolve Lubricants if the goods are provided in accordance with the product specifications thereof but are not suitable for any particular purpose not specifically agreed to in writing by Evolve Lubricants before the goods were supplied.

4. PRICE

- 4.1. The prices displayed are exclusive of VAT. Delivery costs and VAT are charged separately on check out and do not form part of the product price displayed.
- 4.2. Though Evolve Lubricants endeavour to ensure that the prices displayed on the website are accurate, Evolve Lubricants is reliant on its suppliers for providing accurate pricing information and as a result it is possible that erroneous prices may be displayed from time to time. In such cases, Evolve Lubricants shall not be obliged to sell the product at the erroneous price and will correct erroneous prices as soon as Evolve Lubricants become aware of them.
- 4.3. As Evolve Lubricants' products are primarily oil based products and the prices it displays for products will fluctuate with exchange rates and oil price fluctuation, the displayed price on the website does not constitute any undertaking by Evolve Lubricants to maintain that price for any length of time. Evolve Lubricants will always endeavour to complete the Customer's order at the price quoted at the time that the order was placed, but in cases of erroneous pricing or where Evolve Lubricants' suppliers deplete their reserves of specially priced stock, Evolve Lubricants may cancel all or a portion of the Customer's order and fully refund any advance payments that the Customer has made toward the affected products.

5. ORDERS

- 5.1. Orders placed by the Customer for Evolve Lubricants' goods or services, shall be made in writing to the nominated domicilium of Evolve Lubricants.
- 5.2. Orders shall constitute offers to obtain Evolve Lubricants' services at Evolve Lubricants' prevailing fee and/or to purchase the goods in question at the prevailing prices of Evolve Lubricants and shall be capable of acceptance by Evolve Lubricants through the delivery of goods and/or provision of the services or by the written acceptance or confirmation of the order.
- 5.3. Evolve Lubricants shall not accept orders that are not written.
- 5.4. In the event that Evolve Lubricants makes delivery of the Product to the Customer in instalments, each instalment shall be deemed to be the subject of a separate contract and no delivery or delay in delivery of any such instalment shall not affect the balance of the contract or entitle the Customer to cancel the contract.
- 5.5. When goods are delivered in accordance with 5.4 above, payments relating to separate deliveries shall be paid on terms as contained in the credit and payment by the Customer shall not be postponed until such times as all the goods ordered have been delivered.
- 5.6. Should Evolve Lubricants at its own election and with agreement from the Customer or at the Customer's request agree to engage a carrier to transport goods to the Customer, such carrier shall be the Customer's agent and Evolve Lubricants shall engage the carrier of fair, just, and reasonable terms and conditions. The Customer indemnifies Evolve Lubricants against all and any demands and/or claims and/or liability which may arise or be made against Evolve Lubricants by the aforesaid carrier or which may be claimed by the Customer out of the transportation of the goods by the aforesaid carrier.
- 5.7. The Customer will be liable for payment of all fees, charges, expenses which will be invoiced by Evolve Lubricants to the client.
- 5.8. If the Customer fails to take delivery of the goods ordered due to a direct /indirect act/omission by the Customer, its employees or agents, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay Evolve Lubricants the reasonable costs of storing, insuring and the handling of goods, until delivery takes place.
 - 5.8.1. The customer accepts a re-delivery fee if the Customer fails to accept the goods at initial delivery.
 - 5.8.2. The Customer will be invoiced the storage, insurance fees, handling of goods and re-delivery fee by Evolve Lubricants, upon payment of the afore mentioned invoice the goods will be re-dispatched for secondary delivery to the Customer.
- 5.9. By using the Website the Customer warrant that the Customer is 18 (eighteen) years of age or older and of full legal capacity. If the Customer is under the age of 18 (eighteen) or if the Customer is not legally permitted to enter into a binding agreement, then the Customer may not use the Website to place any orders.

6. PAYMENT

- 6.1. Payment in full is to be made in accordance with agreed payment terms.
- 6.2. In all cases where the Customer uses a postal banking, electronic or similar service to effect payment, such services shall be deemed to be the agent of the Customer.
- 6.3. Where payment is made by debit card or credit card, Evolve Lubricants may require additional information in order to authorise and/or verify the validity of payment. In such cases Evolve Lubricants is entitled to withhold delivery until such time as the additional information is received by Evolve Lubricants and authorisation is obtained by Evolve Lubricants for the amounts. If Evolve Lubricants do not receive authorisation the order for the Goods will be cancelled. The Customer warrant that the Customer is fully authorised to use the payment method for purposes of paying the Goods. The Customer also warrant that the payment method has sufficient available funds to cover all the costs incurred as a result of the services used on the Website.
- 6.4. Where payment is made by direct bank deposit or electronic funds transfer, payment must be made within 5 (five) days of placing the order, failing which the order will lapse. Evolve Lubricants will not accept the order if payment has not been received.
- 6.5. The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to Evolve Lubricants for goods or services supplied.
- 6.6. Evolve Lubricants may allocate all payments made by the Customer at the discretion of Evolve Lubricants.

7. OWNERSHIP & RISK

- 7.1. Notwithstanding that all risk in and to all goods sold by Evolve Lubricants shall pass on delivery (as set forth in clause 8) and irrespective of whether Evolve Lubricants may not be the distributor of the goods, ownership of all goods sold and delivered shall remain vested in Evolve Lubricants until the purchase price has been paid in full. In the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 days of the date of judgment or changes the structure of its ownership, Evolve Lubricants shall be entitled to take possession of the goods without prejudice to any further rights vested in Evolve Lubricants, and is hereby irrevocably authorized to enter upon the Customer's premises to take possession of such goods without an order of court.
- 7.2. The Customer shall have no claim against Evolve Lubricants for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without an order of court.
- 7.3. Goods in possession of the Customer bearing Evolve Lubricants' name, trademarks and labels, shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by Evolve Lubricants as set forth in paragraph 8.1.
- 7.4. The Customer shall fully insure the goods purchased from Evolve Lubricants against loss or damage, until the purchase price has been paid in full by the Customer. Pending payment to Evolve Lubricants for goods purchased, all benefits in terms of the insurance relating to such goods are ceded to Evolve Lubricants.

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- 7.5. Evolve Lubricants shall be entitled to identify its goods merely by way of packaging and for other distinguishing features. Evolve Lubricants shall not be obliged to identify the goods by way of serial numbers or any other form of intricate identification.
- 7.6. In the event of Customer processing the goods before payment is made in full, Evolve Lubricants shall be considered a manufacturer and shall directly acquire sole title to the newly produced product. If the processing involves other materials, Evolve Lubricants shall acquire joint title to the newly produced product in the proportion to the value of the goods, as invoiced.
- 7.7. Before payment is made in full and upon request by Evolve Lubricants, Customer shall provide all necessary information regarding the inventory of the goods. Furthermore, upon request by Evolve Lubricants, the Customer shall identify on the packaging Evolve Lubricants' title of ownership of the goods and shall notify its customers of assignment of its claims to Evolve Lubricants.

8. DELIVERY

- 8.1. Delivery shall be affected as specifically agreed between the parties in writing. General commercial terms shall be interpreted in accordance with the INCOTERMS in force on the date the agreement is concluded.
- 8.2. Evolve Lubricants shall have the right to defer delivery under this Agreement or any other supply agreement entered into with the Customer if and for as long as the Customer fails to pay any invoice under one or more of the supply agreements entered into with Evolve Lubricants when due.
- 8.3. Further Terms and conditions on the subject of delivery found in a separate Shipping/Delivery document available on the Website and as separate document on request

9. DAMAGE IN TRANSIT

- 9.1. Notice of claims arising out of damage in transit must be lodged by Customer directly with the carrier within the notification period specified in the contract of carriage and Evolve Lubricants shall be provided with a copy of the notice.

10. BUYER'S COMPLIANCE WITH LEGAL REQUIREMENTS

- 10.1. The Customer shall comply with all laws and regulations regarding import, transport, storage and use of the goods.

11. LIABILITY

- 11.1. Evolve Lubricants shall not be liable to the Customer in any manner in the event of impossibility or delay of Evolve Lubricants supply due to circumstances entirely beyond the control of Evolve Lubricants, such as but not limited to those described below, and where Evolve Lubricants informed the Customer as soon as it became aware of impossibility or delay in the supply.
- 11.2. Evolve Lubricants shall not be liable to the Customer for goods delivered in good order and thereafter damaged in the possession of the Customer due to improper care or storage, use or application, contrary to any instructions and/or warnings provided or available for the goods, or any other direct or indirect act or omission by the Customer, its employees or agents resulting in the goods being damaged or causing harm to any person or damage to any property.

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- 11.3. Evolve Lubricants shall not be liable for any harm caused by the goods to a third party if the harm caused to the third party is due to the Customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.

12. NEGOTIABLE INSTRUMENTS

- 12.1. Acceptance of any negotiable instrument by Evolve Lubricants shall not be deemed to be a waiver of Evolve Lubricants' rights under this agreement. In relation to a cheque furnished by the Customer, it waives its right to insist on notice of dishonour or protests being given to it in the event that the cheque is dishonoured.

13. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS

- 13.1. The Customer must notify Evolve Lubricants in writing of any
- 13.1.1. unsuitable goods within 7 (seven) days of delivery of the goods; or
 - 13.1.2. allegations of defective goods within 7 days of delivery of the goods or prior to the expiry of any durability dating provided thereon, whichever is earlier.
- 13.2. If the goods are defective and the Customer has duly notified Evolve Lubricants in writing in accordance with 13.1 above, then Evolve Lubricants has the right to either remedy the defective goods and supply the Customer with replacement goods, without accepting any liability arising out of such defective good.

14. RETURNED GOODS

- 14.1. The goods sold by Evolve Lubricants are only returnable, at Evolve Lubricants' sole discretion or where the incorrect goods have been supplied, the goods are unsuitable for a purpose stated by the Customer in writing to Evolve Lubricants and confirmed in writing by Evolve Lubricants to the Customer, substantially as intended in terms of Section 20 of the Consumer Protection Act, or in terms of Clause 13 above, and in such an instance the following shall apply:
- 14.2. Unless alleged to be unsuitable or defective at time of use as contemplated in Clause 13 above, all goods returned must be complete, clean, sealed, undamaged and in their original packaging.
- 14.3. The value of credit or refund for any returned goods will be calculated as per original invoice.
- 14.4. Evolve Lubricants must be notified of relevant, packing slip and batch numbers before any claim will be considered.
- 14.5. All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the goods are received by Evolve Lubricants. The Customer shall be liable for a fee of 20% of the value of the invoice for all goods returned.
- 14.6. Further Terms and conditions on the subject of returns/refunds found in a separate Returns Policy document available on the Website and as separate document on request

15. BREACH

- 15.1. Should the Customer fail to make any payment of any amount due on due date, or breach any of the other terms and conditions contained herein (all of which are deemed material) or commit an act of insolvency, or allow a judgment to be entered against it, or be provisionally or finally liquidated or sequestered, or in the opinion of Evolve Lubricants has a cash flow problem or other financial or commercial difficulty which may in any way whatsoever negatively impact upon the ability of the Customer to comply with any of its current or future obligations in terms of this or any other contract of the Customer with Evolve Lubricants, then Evolve Lubricants without prejudice to and in addition to its other legal remedies shall be entitled to cancel this contract or any unfulfilled part thereof, or to claim payment of the full price or the balance thereof as the case may be, and failing such payment, Evolve Lubricants is specifically authorised to repossess all unpaid for goods in the possession of the Customer.

16. LEGAL PROCEEDINGS

- 16.1. Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.
- 16.2. The Customer hereby submits to the jurisdiction of Magistrates Court, notwithstanding that the amount of Evolve Lubricants' claim may exceed the jurisdiction of the Magistrates Court.
- 16.3. A certificate issued and signed by any member or manager of Evolve Lubricants, whose authority need not be proved, in respect of any indebtedness of the Customer to Evolve Lubricants or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to Evolve Lubricants and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 16.4. The Customer's physical address as given on any order, shall be recognized as the Customer's address for receipt of notices and execution of legal documents for all purposes in terms of this agreement whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature. Evolve Lubricants' chooses its domicilium as 9 Beverley street, The Reeds, Centurion, 0157.
- 16.5. The Customer is liable for all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which Evolve Lubricants may incur in taking any steps pursuant to any breach by the or enforcement of these terms and conditions.

17. ALTERNATIVE DISPUTE RESOLUTION

- 17.1. Evolve Lubricants and the Customer may agree to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall be final and binding on both Evolve Lubricants and the Customer and shall only be subject to Review by the High Court if one of the established grounds for review exist.

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- 17.2. When Evolve Lubricants and the Customer have agreed to refer the matter to arbitration in terms of 17.1 above, in the interests of a speedy and cost effective resolution of the dispute, a short form or expedited form of arbitration shall be adopted and the rules of the arbitration shall not require that any party prepare and file any documents in a form identical to or similar to that of Court pleadings and Heads of Argument. This informality shall not detract from the onus to commence and the burden of proof which shall follow the High Court practice in this respect.
- 17.3. The arbitrator must be a person agreed upon by the parties and shall at least hold a tertiary qualification in the technical field of the dispute, except where the dispute relates predominantly to the interpretation of this agreement or any law, regulation, or by-law, in which case the appointed arbitrator shall have at least 20 years practical experience as an attorney in private practice or as an advocate of the High Court
- 17.4. Failing the agreement on the appointment of an arbitrator or the rules of the arbitration, an arbitrator must be appointed by the Arbitration Foundation of South Africa, who shall then finally resolve the dispute in accordance with the rules of the Arbitration Foundation of South Africa.

18. GENERAL

- 18.1. This contract represents the entire agreement between Evolve Lubricants and the Customer and shall govern all future contractual relationships between Evolve Lubricants and the Customer and shall also be applicable to all debts which the Customer may owe to Evolve Lubricants prior to the Customer entering this agreement.
- 18.2. The Customer acknowledges that it is aware that Evolve Lubricants' dealers and sales persons have no authority to vary these terms and conditions of sale, and Evolve Lubricants assumes no liability and shall not be bound by any statements, warranties or representations made by such dealers and or sales persons, save as expressly stated in writing and signed by a manager or a director of Evolve Lubricants duly authorized thereto whose names are available on request.
- 18.3. No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, shall be of any force or effect unless expressly stated by a director of Evolve Lubricants. No agreement purporting to obligate Evolve Lubricants to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions, shall be of any force or effect, unless reduce to writing and signed by the Customer, and a director of Evolve Lubricants.
- 18.4. The Customer acknowledges that no warranties, representations or guarantees have been made by Evolve Lubricants or on behalf of Evolve Lubricants which may have induced the Customer to enter this agreement.
- 18.5. No relaxation or indulgence which Evolve Lubricants may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of Evolve Lubricants' right in terms of this agreement.
- 18.6. The Customer shall not cede its rights nor assign its obligation in terms hereof without Evolve Lubricants' prior written consent thereto.
- 18.7. Evolve Lubricants shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party with prior notice to the Customer.

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- 18.8. The Customer undertakes to notify Evolve Lubricants in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out in this agreement and shall likewise inform the Customer of any such changes affecting Evolve Lubricants.
- 18.9. The headings in this document are included for convenience only and are not to be taken into account for the purpose of interpreting this agreement.
- 18.10. Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then the term shall be severable and shall not affect the validity of the other terms.
- 18.11. Provided that they do not conflict with any of the terms and conditions contained herein, such as general practices, terms and conditions applicable to the industry in which Evolve Lubricants conducts business shall be applicable to all dealings between Evolve Lubricants and the Customer.

19. FORCE MAJEURE

- 19.1. To the extent any incident or circumstance beyond Evolve Lubricants' control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government, pandemics), reduces the availability of goods from the plant from which Evolve Lubricants receives the goods such that Evolve Lubricants cannot fulfil its obligations under this agreement, and Evolve Lubricants has informed the Customer accordingly and without delay, Evolve Lubricants shall:
 - i. be relieved from its obligations under this agreement to the extent that Evolve Lubricants is prevented from performing such obligations and
 - ii. have no obligation to procure goods from other sources. If the aforementioned occurrences last for a period of more than 3 (three) months, Evolve Lubricants is entitled to withdraw from the agreement without the Customer having any right to compensation, except for a refund of payment for any product that has been paid by the Customer and which Evolve Lubricants cannot deliver to the Customer as a result of the aforementioned occurrences.

20. DISCLOSURE OF PERSONAL INFORMATION

- 20.1. The Customer understands that the personal information given in the application form is to be used by Evolve Lubricants for the purpose of assessing the Customer's credit worthiness. The Customer confirms that the information given is accurate and complete. The Customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which Evolve Lubricants will not be liable as a result of any inaccuracies or lack of completeness of information.
- 20.2. Evolve Lubricants has the Customer's consent at all times to contact and request information from any persons, credit bureaus or business, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time the Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.

- 20.3. The Customer agrees and understands that information given in confidence to Evolve Lubricants by a third party on the Customer will not be disclosed to the Customer.
- 20.4. The Customer hereby consents to and authorises Evolve Lubricants at all times to furnish credit information concerning the Customer's dealings with Evolve Lubricants to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with Evolve Lubricants.

21. NATIONAL CREDIT ACT

- 21.1. In the event that the National Credit Act ("the NCA") applies to any transaction between Evolve Lubricants and a Customer, then-
- 21.2. If any provision of these terms and conditions are in conflict with the NCA, such conflicting terms and conditions shall not apply;
- 21.3. Evolve Lubricants and the Customer shall conclude an agreement in compliance with the NCA and Evolve Lubricants shall not be obliged to deliver any goods or provide any services until such agreement is signed;
- 21.4. The costs and charges which Evolve Lubricants is entitled to recover from the Customer shall be the maximum allowed by the NCA and Evolve Lubricants shall be obliged to comply with the NCA before instituting any legal proceedings against the Customer.

22. CONSUMER PROTECTION ACT

- 22.1. Evolve Lubricants recognizes that its Customers may be consumers under the Consumer Protection Act and Regulations and in so far as any transactions are protected under the Consumer Protection Act, any clause in respect of such transaction in terms of these terms and conditions shall be interpreted in order to give effect to the Customer's rights. Likewise, the Customer recognizes and confirms that in so far as they are not in conflict with the Consumer Protection Act and Regulations, the Customer shall perform its obligations under these terms and conditions.

23. NOTICES

- 23.1. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee as stipulated in 23.2 and 23.3 below.
- 23.2. Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).
- 23.3. Any notice to a party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.

24. COMPLIANCE

- 24.1. In performing its obligations under this Agreement, the Customer undertakes to comply with all applicable laws and regulations (in particular, but not limited to, relating to antitrust and anti-corruption).

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25. PRIVACY POLICY

- 25.1. We respect your privacy. Your details are captured using the registration or contact form pages. This typically includes your name, email, contact details, company name, company location and company details. The information is used to contact you with relevant details. The information is stored in a database as well as backups of the site. We do collect statistics on the usage of the site. This includes the usage of cookies and other tracking services. Your details will not be shared with another party. If you want to change or delete your detail you can contact us to be removed. You can also login and un-subscribe from any communications and emails.

26. CHANGES AND ACCEPTANCE OF TERMS

- 26.1.** Evolve Lubricants may change the terms at any time and where this affects the Customer's rights and obligations, Evolve Lubricants will notify the Customer of any changes by placing a notice in a prominent place on Evolve Lubricants' website or by email. If the Customer do not agree with the change the Customer must stop using the services. If the Customer continue to use the services following notification of a change to the terms, the changed terms will apply to the Customer and the Customer will be deemed to have accepted such terms.