



Credit Application
Cavpower Pty Ltd
ABN 22 007 735 300

www.cavpower.com

Please return to: receivable@cavpower.com

CAVPOWER PTY LTD ABN 22 007 735 300

("Cavpower")

589 Grand Junction Road, Gepps Cross SA 5094. Ph: (08) 8343 1600 Fax: (08) 8269 3078

CONFIDENTIAL CREDIT ACCOUNT APPLICATION FORM

Full company and/or trading name ("Applicant"):

ABN: ACN:

Business Address:

Postal Address:

Telephone: Facsimile:

Mobile: Email:

Business Entity (Please circle):

Sole Proprietor

Partnership

Company

Trust

Incorporated Association

Unincorporated Association

Statutory Authority

Trustee of trust (Specify trust):

Trustee Company ABN (if applicable):

Sole Proprietor Full Name & Date of Birth.....

Principal business activities:

Number of employees:

Years established:

Associated business name(s):

Address:

Registered for GST? Yes No Annual turnover (Average of last 3 years): \$.....

Name(s) and residential address(es) of director(s) of private company or proprietor(s) of other organisations (attach list if necessary).

Each of the directors of the Applicant are required to personally guarantee all amounts owed by the Applicant to Cavpower on the terms of the Guarantee and Indemnity as annexed to this application.

CREDIT REFERENCES

Name	Company/ Business	Phone No	Email

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Bank	Branch	Contact name and Telephone No.

PREMISES

Do you own your own residence? Yes No

Do you own your own premises? Yes No

If mortgaged, specify Mortgagee, contact name and phone number below for each. If leased, specify Lessor, contact name and phone number below for each.

.....

Caterpillar equipment owned:

Model	Serial No.	Encumbered (Y/N)

Estimated monthly purchases \$

Monthly credit requested \$Purchasing Officer	Email	Phone No.(s)	Facsimile(s)
Accounts Payable	Email	Phone No.(s)	Facsimile(s)

1. The Applicant certifies that the above information in this application is complete, accurate and not misleading and is provided for the purpose of obtaining credit from Cavpower. The Applicant acknowledges and agrees that Cavpower is relying on the information contained in this application. If the Applicant does not provide all or part of the information requested, the application may not be successful. Cavpower may accept or reject this application in its absolute discretion. Nothing in this application nor the acceptance by Cavpower of this application compels Cavpower to provide goods or services to the Applicant on credit terms or otherwise if there is a change in the Applicant's circumstances.
2. If the Applicant is not an individual or sole trader, the Applicant specifically authorises Cavpower to make enquiries and to exchange with or provide to any credit provider or credit reporting body information regarding the creditworthiness of the Applicant as Cavpower considers necessary.
3. The Applicant warrants that the signature(s) of the person(s) appearing on this application is/are duly authorised by the Applicant to apply for credit and execute this application on behalf of and bind the Applicant.
4. Allowance by Cavpower to the Applicant of time to pay will not constitute a waiver by Cavpower of any of these terms nor be construed as Cavpower granting credit facilities to the Applicant. No credit facility will be granted to the Applicant unless so stated by Cavpower in writing.
5. The Applicant acknowledges having received a copy of Cavpower's Credit Terms and Standard Terms of Trade attached to or otherwise provided with this application. The Applicant agrees to be bound by those terms, as may be amended from time to time. To the extent of any inconsistency between this application, Cavpower's Credit Terms and Standard Terms of Trade, the Standard Terms of Trade will apply.

6. If Cavpower grants credit facilities to the Applicant, all accounts must be paid in full within 30 days from the end of month of Cavpower's invoice date. Each sale by Cavpower and the related account is a separate contract incorporating these terms, Cavpower's Credit Terms and Standard Terms of Trade.
7. Cavpower may at any time terminate any credit arrangement with the Applicant if the Applicant is in breach (or Cavpower reasonably believes that the Applicant will breach) of the Cavpower Credit Terms or Standard Terms of Trade or Cavpower. Cavpower will endeavour to provide reasonable prior notice to the Applicant of any such termination, circumstances permitting.
8. The Applicant must promptly notify Cavpower of changes in its officers, shareholders or partners (as applicable) or any change of address of the Applicant or any of those officers, shareholders or partners.
9. Cavpower will only use the information provided in this application in accordance with its privacy policy available at www.cavpower.com. By executing this application, the Applicant consents to Cavpower's use of the Applicant's information to directly market its goods or services to the Applicant. The Applicant will notify Cavpower at the details listed at the top of this application if the Applicant no longer consents to receiving direct marketing from Cavpower.

Authorised Officer Signature: Date

Title/Position:

NOTE TO APPLICANT:

Please read the attached Cavpower Credit Terms and Standard Terms of Trade very carefully. They contain important terms and conditions that you should ensure that you understand before agreeing to be bound by them. These include:

1. Customers may be required to provide differing levels of security to secure all amounts owing to Cavpower (see **clauses 10 and 11** of the Credit Terms and **clause 17** of the Standard Terms of Trade).
2. The liability of Cavpower to Customers is limited in some circumstances (see **clause 15** of the Credit Terms and **clauses 20 to 26** of the Standard Terms of Trade).
3. Customers cannot cancel a purchase order accepted by Cavpower (see **clause 2** of the Standard Terms of Trade).
4. Your credit account may be suspended if invoices are overdue for more than 14 days (see **clause 4** of the Credit Terms).

CAVPOWER PTY LTD
COMMERCIAL CREDIT TERMS ("Credit Terms")

1. In these Credit Terms:
 - 1.1 **"Account"** means each account of the Applicant with the Supplier for Monies owing in relation to the supply of Goods;
 - 1.2 **"Applicant"** means the applicant for commercial credit on these Credit Terms and if more than one person, all such persons collectively and each of them individually in which case the obligations and liabilities of the Applicant in these Credit Terms apply to all such persons jointly and each of them severally;
 - 1.3 **"Application"** means an application for commercial credit on these Credit Terms;
 - 1.4 **"Credit Limit"** means the credit limit approved by the Supplier upon acceptance of an Application or such other limit notified to the Applicant from time-to-time by the Supplier in accordance with these Credit Terms. The Credit Limit includes the Supplier work in progress as well as invoiced amounts;
 - 1.5 **"Default Event"** means an event specified as a Default Event in clause 8;
 - 1.6 **"Due Date"** means the later of the last business day of the month following the month in which an invoice is rendered to the Applicant and any such other date which the Supplier informs the Applicant in writing is the Due Date (or as otherwise agreed in writing by the parties).
 - 1.7 **"Goods"** means goods and/or services supplied or to be supplied by the Supplier to the Applicant on Account;
 - 1.8 **"Monies"** means all Monies now or in the future owing by the Applicant to the Supplier on any account and includes any part of those Monies and interest;
 - 1.9 **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
 - 1.10 **"PPSR"** means the Personal Property Securities Register established under the PPS Act;
 - 1.11 **"Rate"** means a rate 4% per annum greater than the rate published by the Commonwealth Bank of Australia from time to time on commercial overdraft finance facilities in excess of \$100,000 accruing daily and capitalised monthly;
 - 1.12 **"Supplier"** means Cavpower Pty Ltd ABN 22 007 735 300; and
 - 1.13 **"Trust"** means each trust in respect of which the Applicant acts as trustee.
2. The Applicant agrees that all Goods are supplied subject to the Cavpower Standard Terms of Trade (Terms) and that the Terms will prevail to the extent of any inconsistency. Except as explicitly agreed by the Supplier in writing, no terms offered by or implied on behalf of the Applicant will be of any effect.
3. The Supplier may require the Applicant to use such purchase order form as is notified by the Supplier from time to time for the supply of Goods on credit.
4. The Applicant must pay for all supplied Goods on or before the Due Date, except as provided for in clause 5 of the Cavpower Standard Terms of Trade. Each payment must be made by electronic funds transfer or in such manner as the Supplier may approve from time-to-time. Cat Credits cannot be used to reduce debt owed by the Applicant to the Supplier. **If an invoice is more than 14 days overdue, the Applicant's credit account may be suspended until all outstanding Monies are paid.**
5. Monies owing on the Account must not at any time exceed the Credit Limit unless otherwise agreed in writing by the Supplier's credit manager.
6. Interest accrues at the Rate on the balance of overdue Monies and the Supplier may apply payments in satisfaction of interest first and then to the balance of overdue Monies.
7. The Applicant authorises the Supplier (in its absolute discretion) to set off any credits in any Account against any Monies owing.
8. A Default Event occurs if:
 - 8.1 at any time the debit balance of the Account exceeds the Credit Limit without the express written approval of the Supplier's credit manager;
 - 8.2 Monies are unpaid after the Due Date;
 - 8.3 the Applicant fails to notify the Supplier no later than 14 days prior to any proposed change of address, ownership, shareholding, effective control or directors of the Applicant; or
 - 8.4 the Applicant is in breach of these Terms or the Standard Terms of Trade.
9. If a Default Event occurs, without limiting clause 4, the Supplier may issue a notice of default to the Applicant specifying a period within which the Default Event must be remedied. If the Applicant fails to remedy the Default Event within the specified period or if the Default Event is otherwise incapable of remedy:
 - 9.1 the Supplier may terminate the supply of Goods on credit or otherwise reduce the agreed payment terms;
 - 9.2 the Supplier may vary or withdraw the Credit Limit and any such variations will apply in respect of the continued order and supply of Goods after such notification;
 - 9.3 all Monies in respect of the Goods become immediately due and payable;
 - 9.4 the Supplier may retake possession of the Goods;
 - 9.5 the Supplier may retain all moneys paid on account; and
 - 9.6 the Supplier may, if it notifies the Applicant that Monies in respect of the Goods are recoverable as a debt, sue for those Monies
10. The Applicant acknowledges and agrees that:
 - 10.1 these Terms constitute a Security Agreement for the purposes of the PPSA;
 - 10.2 the Applicant will grant the Supplier a purchase money security interest ("**Security Interest**") under the PPSA in the Goods and their proceeds to secure all amounts owed to the Supplier by the Applicant;
 - 10.3 the Supplier may register the Security Interest on the PPSR under the PPSA;
 - 10.4 the Applicant will:
 - 10.4.1 do all things necessary and provide the Supplier on request all information the Supplier may require to register a financing statement or financing charge statement on the PPSR;
 - 10.4.2 not take possession of Goods by way of, or transfer the Goods to (other than in the sale of the Goods in the ordinary course of business), any enterprise other than the one acknowledged above without first notifying the Supplier;
 - 10.4.3 if requested by the Supplier, the Applicant must pay the Supplier the cost of registering and maintaining registration of the Security Interest on the PPSR, within 14 days of that request; and
 - 10.4.4 not change its name in any form or other details on the PPSR without first notifying the Supplier;

- 10.5 the Supplier need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded;
- 10.6 neither the Applicant nor the Supplier may disclose information of the kind referred to in section 275(1) of the PPSA (except where the Applicant or the Supplier may do so where required due to the operation of section 275(7) of the PPSA) and the Applicant must not authorise the disclosure of such information without the Supplier's prior consent;
- 10.7 if Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interest, the following provisions of the PPSA will not apply, or are waived, as the context required:
- 10.7.1 section 95 (notice of removal of accession);
- 10.7.2 section 118 (enforcement of security interest in accordance with land law decisions);
- 10.7.3 section 123 (secured party may seize collateral);
- 10.7.4 section 125 (obligation to dispose or retain collateral);
- 10.7.5 section 128 (secured party may dispose of collateral);
- 10.7.6 section 129 (notice of purchase);
- 10.7.7 section 130 (notice of disposal);
- 10.7.8 sections 132(1) and (4) (right to receive a statement of account);
- 10.7.9 section 135 (notice of retention);
- 10.7.10 section 142 (redemption of collateral); and
- 10.7.11 section 143 (reinstatement of security agreement);
- 10.8 the Applicant will not grant to any third party, or allow anyone else to register, any security interest over the Goods, or any proceeds from the Goods, whilst there is still any money owing to the Supplier in connection with the supply of the Goods;
- 10.9 without affecting any other indemnity or rights under these Terms, if the Applicant is in breach of any of its obligations under this clause 11 the Applicant must indemnify the Supplier against all loss or expense suffered by the Applicant as a consequence of that breach; and
- 10.10 unless otherwise defined in these Terms, the Terms and expressions used in these Terms have the meanings given to them, or by virtue of, the PPSA.
11. **The Supplier may from time-to-time require security or further security as a condition of continuing the supply of Goods on credit. For the purposes of this clause "security" includes a guarantee and indemnity, mortgage or Security Agreement for the purposes of the PPSA granted by any person nominated by the Supplier. In addition, the Applicant agrees:**
- 11.1 **that the Supplier may register a general security interest against the Applicant's personal and after acquired property (and the individual partnership interests if the Applicant is a partnership) in any relevant personal property securities register in addition to the security interest created pursuant to clause 11; and**
- 11.2 **that the Applicant secures all property (and the individual partnership interests if the Applicant is a partnership) in favour of the Supplier so as to secure the payment of all Monies and the performance of the Applicant's obligations under these Terms and agrees that the Supplier may, at its option, register a caveat over the Applicant's real property so as to secure such a security interest.**
12. If the Applicant makes an Application in its capacity as a trustee of any Trust, the Applicant warrants that;
- 12.1 these Terms are lawful, binding and enforceable against the Trust property; and
- 12.2 such Application is made within the full authority and power under the relevant Trust instrument.
13. All reasonable costs, expenses and disbursements incurred by the Supplier (including debt collection agency fees and legal costs) arising from or incidental to the Supplier exercising a right under these Terms or from a Default Event, are payable by the Applicant upon demand.
14. The Applicant indemnifies and will keep indemnified the Supplier against any loss, damage, cost, expense or liability which the Supplier incurs because an entity (with or without the Supplier's knowledge) uses credit available to the Applicant under these Terms with the Applicant's authority or consent.
15. Except as otherwise explicitly required by law, the Supplier will not be liable for any loss or damage suffered by the Applicant, however arising, directly or indirectly, in relation to the provision by the Supplier of commercial credit in accordance with these Terms.
16. The Applicant agrees that, in respect of an Applicant who is not an individual or sole trader,:
- 16.1 the Supplier may use and seek information from credit reporting bodies including:
- 16.1.1 a commercial credit report in order to assess an Application; and
- 16.1.2 a commercial credit report for the purpose of assisting in the collection of Monies owing;
- 16.2 in accordance with the *Privacy Act 1988* (Cth) ("Privacy Act"), as amended from time to time, the Supplier in assessing an Application may use and seek from a credit provider named in an Application or in a commercial credit report (if applicable) personal information including (but not limited to) default information, repayment history or consumer credit liability information of the Applicant and any entity named in the Application; and
- 16.3 the Supplier may disclose personal information concerning the Applicant to another credit provider for any purpose listed in clause 16.2, subject to any restrictions in the Privacy Act
17. Personal information or credit related personal information collected, used and disclosed by the Supplier will be governed by the Supplier's Privacy Policy located at www.cavpower.com
18. The Supplier's Privacy Policy sets out :
- 18.1 the purposes for which the Applicant's personal information is collected by the Supplier;
- 18.2 the consequences if the Applicant's personal information is not collected by the Supplier;
- 18.3 the third parties to which the Supplier discloses the Applicant's personal information;
- 18.4 how the Applicant may seek access or correction of their personal information;
- 18.5 whether the Applicant's personal information is likely to be disclosed to overseas entities and in which countries; and
- 18.6 how the Applicant can complain about a breach of the Supplier's obligations in respect of the Applicant's personal information and how such a complaint will be dealt with by the Supplier.
19. If any part of these Terms or any related document is or becomes void or unenforceable that part is to be severed so that all remaining parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.
20. The Supplier's failure to exercise any right or power does not operate as a waiver and a partial exercise of a right or power including for example the acceptance of a part

- payment, does not preclude any further exercise of any right or power.
21. The Supplier reserves the right to vary these Terms from time to time. The Supplier will give the Applicant 30 days notice of any variation to these Terms. If the Applicant does not accept the variation to these Terms, the Applicant must advise the Supplier in writing within the 30 day notice period, otherwise the Applicant will be deemed to have accepted the varied terms.
 22. Any notice, demand, consent, approval or other communication from any party to the other must be in writing and may be sent to:
 - 22.1 the Supplier, at PO Box 84, ENFIELD PLAZA SA 5085, or Fax 08 8269 3078 or areceivable@cavpower.com
 - 22.2 The Applicant, at its business address or facsimile number mentioned in this Application.
 23. These Terms are governed by the laws of South Australia. The Applicant submits to the non-exclusive jurisdiction of the courts of South Australia.
 24. A signed certificate from the Supplier stating the amount of the Monies owing t in the absence of manifest error will be conclusive and binding on the Applicant.
 25. The Supplier may transfer its rights under these Terms to a related third party or as part of a group consolidation or restructure without the Applicant's consent.
 26. The Applicant and any person signing the Application on behalf of the Applicant jointly and severally warrant that:
 - 26.1 such person and the Applicant are each authorised to make the Application;
 - 26.2 all information in the Application is complete, accurate and not misleading;
 - 26.3 the Applicant is able to pay its debts when due;
 - 26.4 these Terms are binding; and
 - 26.5 the Application relates solely to and the Applicant will only use the Account for commercial credit purposes.

GUARANTEE AND INDEMNITY ("Guarantee")

1. In consideration of Cavpower Pty Ltd ABN 22 007 735 300 ("**Cavpower**") agreeing to supply or continuing to supply equipment pursuant to a Credit Application to the Applicant, each guarantor named below ("**Guarantor**") unconditionally and irrevocably guarantees on demand to Cavpower the due and punctual payment of all debts and monetary liabilities, including without limitation costs and expenses which are or which may become payable by the Applicant to Cavpower or any related body corporate on any account and in any capacity ("**Guaranteed Monies**") and, as a separate and independent obligation, agrees to indemnify and keep Cavpower and any related body corporate indemnified from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by Cavpower or such related body corporate in relation to the non-payment or non-recovery of the Guaranteed Monies or as a result of any breach by the Applicant of Cavpower's Credit Terms and Standard Terms of Trade and Conditions attached to the Credit Application.
2. The Guarantor hereby agrees with Cavpower that this Guarantee shall be a continuing obligation of the Guarantor and that the Guarantor's obligations under this Guarantee are principal obligations and are not released, discharged or otherwise affected by anything which, but for this provision, might have that effect.
3. Until such time that Cavpower has received all of the Guaranteed Monies, the Guarantor agrees:
 - 3.1 that, in the event of any bankruptcy or other administration of the Applicant's estate or any winding up or scheme of arrangement of the Applicant, that the Guarantor will not, without the prior consent of Cavpower, lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Applicant and shall hold any such debt, liability or security, and any rights or benefits in respect thereof, on trust for Cavpower;
 - 3.2 if requested by Cavpower, to lodge a proof of debt or similar claim in any such administration and enforce any such security and to execute all such documents and do all such things as Cavpower may require to enable Cavpower to have and receive the benefit of or arising from any such proof, claim or security;
 - 3.3 not to attempt or purport to be subrogated to Cavpower; and
 - 3.4 that the Guarantor's liability under this Guarantee shall be that of principal debtor.
4. The Guarantor further agrees that:
 - 4.1 the Guarantor has signed this Guarantee voluntarily;
 - 4.2 before entering this Guarantee, the Guarantor had the opportunity to consult and receive advice as to the purpose, effect and consequences of, and obligations created by, this Guarantee from a legal adviser independent of Cavpower;
 - 4.3 the Guarantor understands the nature and effect of this Guarantee, in particular that the Guarantor has agreed to guarantee all amounts presently owed by the Applicant to Cavpower and any related body corporate and all amounts that the Applicant may in the future owe to Cavpower and any related body corporate and has also agreed, as a separate and independent obligation, to provide an indemnity to Cavpower and any related body corporate if any of the Guaranteed Monies are not paid to, or recovered by, Cavpower; and
 - 4.4 it has not entered into this Guarantee on reliance on any representation, warranty, promise or statement of Cavpower or any person on behalf of Cavpower or any related body corporate.
5. The Guarantor hereby charges all of the Guarantor's present and after acquired personal property and all present and future beneficial interests of the Guarantor in any real property in favour of Cavpower to secure the performance of all obligations of the Guarantor and the payment of all monies owed or payable to Cavpower pursuant to this Guarantee. The Guarantor waives its right to receive all notices which sections 144(b) and 157(3) of the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") permit the Guarantor to waive. The Guarantor consents to Cavpower creating a registration on the PPSR (in any manner Cavpower deems appropriate) in relation to any security interest arising under, in connection with or contemplated by this Guarantee. The Guarantor acknowledges and agrees that, pursuant to section 115 of the PPSA, Cavpower need not comply with sections 95, 118, 123, 125, 128, 129, 130, 132(1) and (4), 135, 142 and 143 of the PPSA. Notices or documents required or permitted to be given to Cavpower for the purposes of the PPSA must be given in accordance with the PPSA. The Guarantor agrees to promptly execute any documents, provide all relevant information, fully cooperate with Cavpower and do any other act or thing that Cavpower requires to ensure that any security granted pursuant to this Guarantee is duly perfected and has the priority as required by Cavpower. In this paragraph, the following words have the respective meanings given to them in the PPSA: PPSR, registration, security interest.
6. The Guarantor agrees that a notice issued by Cavpower stating any Monies owed by the Applicant or Guarantor to Cavpower or any related body corporate or under this Guarantee shall be conclusive evidence of such amounts owing by the Applicant and Guarantor absent manifest error.
7. No payment shall operate to discharge or reduce a liability of the Guarantor if such payment is or becomes voidable under any law relating to bankruptcy or the winding up of companies, and no discharge or release consequent upon such payment shall discharge the liability of the Guarantor under this Guarantee.
8. Where any provision or application of any provision of this Guarantee is rendered ineffective by operation of law in any jurisdiction, that shall not affect the validity, legality, enforceability or effectiveness of the remaining provisions or of that provision in any jurisdiction other than the jurisdiction where the provision is rendered ineffective.
9. The guarantee and indemnity contained in this Guarantee are separate and independent obligations of the Guarantor and neither limits the generality of the other.
10. All payments which the Guarantor is required to make under this Guarantee must be made without any set off, counterclaim, condition or deduction and are payable on demand by Cavpower.
11. Any demand or notice may be served on the Guarantor by delivering it to the Guarantor personally or by sending it by post to the Guarantor's last address.
12. The Guarantor must fully indemnify Cavpower for all expenses and legal costs that Cavpower incurs in enforcing this Guarantee.
13. This Guarantee is governed by the laws of South Australia and the Guarantor irrevocably submits to the non exclusive jurisdiction of the courts of South Australia.

SIGNED by:

.....
Name of Guarantor (as shown on driver's licence)
**Cavpower may require a copy of driver's licence.*

.....
Date of Birth of Guarantor (as shown on driver's licence)

.....
Signature of Guarantor

.....
Address of Guarantor

.....
Name of Witness

.....
Signature of Witness

SIGNED by:

.....
Name of Guarantor (as shown on driver's licence)
**Cavpower may require a copy of driver's licence.*

.....
Date of Birth of Guarantor (as shown on driver's licence)

.....
Signature of Guarantor

.....
Address of Guarantor

.....
Name of Witness

.....
Signature of Witness

STANDARD TERMS OF TRADE

CAVPOWER PTY LTD ABN 22 007 735 300 ("**Cavpower**") and the party named as the Applicant in the accompanying credit application ("**the Customer**") agree as follows:-

1. Any quotation from Cavpower automatically expires after 30 days of its date of issue unless accepted verbally or in writing and a deposit paid by the Customer. Unless otherwise stated in Cavpower's price list, prices are exclusive of GST.
2. No cancellation of or variation to an order by the Customer after placement of the order will be effective unless agreed to in writing by Cavpower.
3. A quoted price will apply to quoted parts or services to be provided by Cavpower ("**the Supplies**") which are ordered within 30 days of the quote date. Supplies ordered after that time may be subject to price changes.
4. Cavpower may charge for shipment packaging provided by Cavpower.
5. Unless credit has been provided to the Customer for particular Supplies, the Customer must pay the total amount payable for Supplies inclusive of GST to Cavpower without deduction cash on delivery ("**COD**"). If credit has been provided to the Customer for particular Supplies then the COD provision will be superseded by a 30 days credit arrangement for those particular Supplies. Cavpower may require a deposit on placement of order.
6. **If the Customer fails to pay any amount due and receivable by Cavpower, Cavpower will issue a default notice in relation to any amount due and not paid and give the Customer not less than 14 days' within which to remedy the non-payment. If the Customer does not remedy the non-payment within the period stipulated within the notice issued in accordance with this clause, Cavpower may charge and the Customer will pay interest on all amounts not paid by the due date(s) at the rate of 4% per annum greater than the rate published by the Commonwealth Bank of Australia from time to time on commercial overdraft finance facilities in excess of \$100,000. Interest will be calculated daily and may be capitalised monthly until full payment is made.**
7. Allowance to the Customer of time to pay after a due date for payment, will not constitute a waiver by Cavpower of any of these terms nor be construed as Cavpower granting credit facilities to the Customer. No credit facility will be granted to the Customer unless stated by Cavpower in writing.
8. Risk in the Supplies will pass to the Customer immediately upon Cavpower's dispatch of the Supplies to the Customer or collection of the Supplies by the Customer. Any third party delivering the Supplies will be the Customer's agent and Cavpower will have no liability for the acts or omissions of that agent even if delivery was arranged by Cavpower.
9. Any reasonable expenses incurred by Cavpower in recovering any outstanding monies from the Customer including the cost of repossession and resale of the Supplies, debt collection agency fees and legal costs (full indemnity basis) will be paid by the Customer. All monies due from the Customer will become immediately payable to Cavpower upon the issue against or service on the Customer of any notice or proceedings in any way concerning the Customer's solvency or payment of its debts.
10. Supplies may incorporate changes from time to time made by Cavpower due to changes in manufacturing or in raw materials outside of the reasonable control of Cavpower. Any such changes will be notified to the Customer.
11. Cavpower will in no way be liable for any claim or cost resulting from non delivery or delayed delivery of the Supplies which are beyond Cavpower's control..
12. Title in the Supplies will not pass to the Customer until all amounts owing by the Customer to Cavpower have been paid in full for the Supplies. If the Customer has not fully paid for the Supplies but sells or otherwise disposes of them whether in the same form as supplied or incorporated into any plant or equipment or upon which work has been done or otherwise, the sale proceeds or monies received in respect of disposal or the amount attributable to the Supplies will upon receipt by the Customer be held by the Customer as trustee for Cavpower until all amounts owing have been paid.
13. The Customer acknowledges and agrees that to the extent that these terms provide for the retention of title of the Supplies in accordance with clause 12: a) these terms constitute a Security Agreement for the purposes of the Personal Properties Securities Act 2009 (Cth) ("**PPSA**"); b) the Customer grants Cavpower a security Interest in the Supplies and their proceeds to secure all amounts owed by the Customer to Cavpower at any time; and c) Cavpower may register its security interest in the Supplier and their proceeds on the Personal Properties Securities Register ("**PPSR**") as a Purchase Money Security Interest.
14. The Customer undertakes to: a) do all things necessary and provide Cavpower on request all information Cavpower requires to register a financing statement or financing charge statement on the PPSR; b) not to change its name in any form or other details on the PPSR without first notifying Cavpower; and c) if requested by Cavpower, pay to Cavpower the cost of registering and maintaining registration of the Cavpower's Security Interest on the PPSR, within 14 days of the request.
15. Cavpower need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
16. No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so where required due to the operation of section 275(7) of the PPSA) and the Customer must not authorise the disclosure of such information.
17. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest under these terms, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires:
 - 17.1 section 95 (notice of removal of accession);
 - 17.2 section 118 (enforcement of security interest in accordance with land law decisions);
 - 17.3 section 123 (secured party may seize collateral);
 - 17.4 section 125 (obligation to dispose or retain collateral);
 - 17.5 section 128 (secured party may dispose of collateral);
 - 17.6 section 129 (notice of purchase);
 - 17.7 section 130 (notice of disposal);
 - 17.8 sections 132(1) and (4) (right to receive a statement of account);
 - 17.9 section 135 (notice of retention);
 - 17.10 section 142 (redemption of collateral); and
 - 17.11 section 143 (reinstatement of security agreement).
18. Unless otherwise defined in these terms, the terms and expressions used in clauses 13 to 19 (inclusive) have the meanings given to them, or by virtue of, the PPSA.
19. Until Cavpower receives full payment or until the Supplies have been bona fide sold to a third party in good faith at full market value, Cavpower has the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove and/or resell any of the Supplies or any parts of the same description. For that purpose Cavpower's agents or employees may enter any place Cavpower believes the Supplies to be without committing a trespass.

- Cavpower will have no obligation to make good any reasonable damage caused by such recovery, detachment or removal and Cavpower will not be liable for and the Customer will indemnify Cavpower against any costs, claims, damages or losses expended suffered by the Customer or a third party as a result.
20. If the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the Supplies which cannot be excluded. Nothing in these terms is intended to exclude, restrict or modify rights which the Customer may have under the Australian Consumer Law or otherwise which cannot be excluded, restricted or modified by agreement.
 21. The Supplies are supplied subject to Cavpower's standard warranties as made available to the Customer. Copies of the applicable warranty statements are available on request.
 22. Without limiting clause 20, where the Supplies are services, Cavpower warrants that it will repair or arrange to have repaired without charge to the Customer any fault in the Supplies proved to Cavpower's reasonable satisfaction to have occurred entirely as a result of Cavpower's poor workmanship. That fault must have occurred within 90 days after completion of the Service and during normal and proper use of the relevant plant or equipment by the Customer. If Cavpower accepts liability for repairs, the Customer at its cost (unless Cavpower is required to pay such costs at law) must deliver the plant or equipment to Cavpower's nominated workshop and collect the plant or equipment after repair. Other than as stated in these terms or as unavoidably required by law, Cavpower gives no guarantee in relation to the services.
 23. The Customer has relied entirely on its own skill and judgment in ordering the Supplies.
 24. To the maximum extent permitted by law, Cavpower will not accept returns of gaskets, seals, belts, hoses, opened kits, non-stocked parts specifically ordered to meet Customer requirements or any of the Supplies which are not defective after 28 days from the date of supply to the Customer ("**non-returnable parts**"). The Supplies or any part of the Supplies other than non-returnable parts which are not defective, may be returned provided they are unused, undamaged and returned in original unopened packaging. If returned within 14 days of delivery of the Supplies to the Customer, Cavpower will allow a full credit to the Customer upon provision of proof of purchase by the Customer. If returned between 15 days and 28 days after delivery, Cavpower will allow a credit of the invoiced price less 15%. The Customer must pay the cost of returning the Supplies unless they are defective and Cavpower is required to pay such costs at law. A copy of the original Cavpower invoice must accompany the returned Supplies. All returned Supplies are at the Customer's risk until accepted by Cavpower in good order. To the maximum extent permitted by law, Cavpower will not accept the return of any of the Supplies which have been used in any circumstances and gives no warranty whatever in respect of Supplies which have been used.
 25. If the Customer is in breach of any of its obligations under these terms the Customer must indemnify Cavpower against all loss or expense suffered by Cavpower as a consequence of that breach.
 26. To the maximum extent permitted by law, neither party will have any liability for any consequential loss.
 27. Cavpower may amend these terms by giving no less than 30 days prior written notice to the Customer. If the Customer does not accept the variation to these terms, the Customer must advise the Cavpower in writing within the 30 day notice period, otherwise the Customer will be deemed to have accepted the varied terms. However, any variation to the terms of a current order must be in writing signed by Cavpower and the Customer.
 28. Any of the Supplies replaced during the repair will be disposed of unless otherwise instructed by the Customer.
 29. Any notice, invoice or document to be given to the Customer will be sufficiently given if posted by ordinary prepaid post or faxed to the Customer at the Customer's last known address or fax number respectively or emailed to the address provided to Cavpower.
 30. Despite any contrary rule or implication of law, all contracts between the Customer and Cavpower will be deemed to be made in South Australia, pursuant to South Australian laws. Any dispute resolution procedures will take place in South Australia.