



# Credit Application

## Cavrent Pty Ltd

### ABN 12 082 028 082

#### **Regency Park**

541 South Rd  
Regency Park SA 5010  
Ph 08 8139 4400  
Fax 08 8139 4498

#### **Olympic Dam**

C/O Cavpower  
6 Charlton RD  
Olympic Dam SA 5725  
Ph 08 8671 5000

#### **Broken Hill**

1 Kanandah Rd  
Broken Hill NSW 2880  
Ph 08 8082 8300  
Fax 08 8082 8398

#### **Moomba**

Lot 20a Main Contractors  
Compound  
Ph 08 8675 6603  
Fax 08 8675 6197

<http://www.catrentalstore.com/en-AU/cavpower>

Please return to: [receivable@cavpower.com](mailto:receivable@cavpower.com)  
Fax: 08 8269 3078



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 \$ .....

Order No. required? Yes  No

**If rental protection is not required please provide the following information:**

Insurance Provider: ..... Expiry Date: .....  
Policy Number and Type: .....

**Please attach a current certificate of currency that covers damage to hired in plant whilst the Applicant's care, custody and control.**

Purchasing Officer and Accounts Contact	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 Cavrent. The Applicant acknowledges and agrees that Cavrent 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. Cavrent may accept or reject this application in its absolute discretion. Nothing in this application nor the acceptance by Cavrent of this application compels Cavrent to provide goods or services to the Applicant on credit terms or otherwise.
2. If the Applicant is not an individual or sole trader, the Applicant specifically authorises Cavrent 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 Cavrent 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 Cavrent to the Applicant of time to pay will not constitute a waiver by Cavrent of any of these terms nor be construed as Cavrent granting credit facilities to the Applicant. No credit facility will be granted to the Applicant unless so stated by Cavrent in writing.
5. The Applicant acknowledges having received a copy of Cavrent's Credit Terms and Rental Terms and Conditions. The Applicant agrees to be bound by those terms, as may be amended or replaced by Cavrent from time to time. To the extent of any inconsistency between this application, Cavrent's Credit Terms and Rental Terms and Conditions, the Rental Terms and Conditions will apply.
6. If Cavrent grants credit facilities to the Applicant, all accounts must be paid in full within 30 days from end of month. Each hire by Cavrent and the related account is a separate contract incorporating these terms, Cavrent's Credit Terms and Rental Terms and Conditions.
7. Cavrent may at any time without notice to the Applicant terminate any credit arrangement with the Applicant.
8. The Applicant must immediately notify Cavrent 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. Cavrent will only use the information provided in this application in accordance with its privacy policy available at [www.cavpower.com](http://www.cavpower.com). By executing this application, the Applicant consents to Cavrent's use of the Applicant's information to directly market its goods or services to the Applicant. The Applicant will notify Cavrent at the details listed at the top of this application if the Applicant no longer consents to receiving direct marketing from Cavrent.

Signature: ..... Date .....

Title/Position: .....

# CAVRENT 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 Moneys 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 notified by the Supplier to the Applicant from time-to-time;
    - 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 Goods are supplied on these Terms and any such other date which the Supplier informs the Applicant in writing is the Due Date.
    - 1.7 "Goods" means goods and/or services supplied or to be supplied by the Supplier to the Applicant on Account;
    - 1.8 "Moneys" means all moneys now or in the future actually or contingently owing by the Applicant to the Supplier on any account and includes any part of those moneys 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 or such other rate as the Supplier notifies the Applicant;
    - 1.12 "Supplier" means Cavrent Pty Ltd ACN 082 028 082; 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 Rental Terms ("**Rental Terms**") and that the Rental 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 Goods supplied on or before the Due Date despite the date on which the Applicant receives any invoice or statement in respect of the Goods and irrespective of any dispute in respect of the Goods. Each payment must be made in cash or by cheque or in such manner as the Supplier may approve from time-to-time.
  5. Moneys owing on the Account must not at any time exceed the Credit Limit.
  6. Interest accrues at the Rate on the balance of overdue Moneys and the Supplier may apply payments in satisfaction of interest first and then to the balance of overdue Moneys.
  7. The Applicant authorises the Supplier (in its absolute discretion) to set off any credits in any Account against any Moneys owing.
  8. A Default Event occurs if:
    - 8.1 at any time the debit balance of the Account exceeds the Credit Limit;
    - 8.2 Moneys 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 Rental Terms.
  9. If a Default Event occurs:
    - 9.1 the Supplier may terminate the supply of Goods on credit;
    - 9.2 all Moneys in respect of the Goods become immediately due and payable; and
    - 9.3 the Supplier may exercise its right under clause 13.3.
  10. The Supplier may in its absolute discretion from time-to-time:
    - 10.1 vary or withdraw the Credit Limit or cease to supply Goods on these Terms without prior notice to the Applicant; and
    - 10.2 vary these Terms by notice to the Applicant provided that the Supplier is not required to give advance notice of any change it deems necessary for security reasons, and any such variations will apply in respect of the continued order and supply of Goods after such notification.
  11. The Applicant acknowledges and agrees that:
    - 11.1 these Terms constitute a Security Agreement for the purposes of the PPSA;
    - 11.2 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;
    - 11.3 the Supplier may register the Security Interest on the PPSR under the PPSA;
    - 11.4 the Applicant will:
      - 11.4.1 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;
      - 11.4.2 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;
      - 11.4.3 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
  - 11.4.4 not change its name in any form or other details on the PPSR without first notifying the Supplier;
  - 11.5 the Supplier need not give any notice under the PPSA (including a verification statement or a financing charge statement) unless the notice is required by the PPSA and cannot be excluded;
  - 11.6 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;
  - 11.7 the Applicant appoints the Supplier as their attorney to sign in the Applicant's name all documents which the Supplier consider necessary to enforce or protect their rights and powers under these Terms and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Terms and the Security Interest;
  - 11.8 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:
    - 11.8.1 section 95 (notice of removal of accession);
    - 11.8.2 section 118 (enforcement of security interest in accordance with land law decisions);
    - 11.8.3 section 123 (secured party may seize collateral);
    - 11.8.4 section 125 (obligation to dispose or retain collateral);
    - 11.8.5 section 128 (secured party may dispose of collateral);
    - 11.8.6 section 129 (notice of purchase);
    - 11.8.7 section 130 (notice of disposal);
    - 11.8.8 sections 132(1) and (4) (right to receive a statement of account);
    - 11.8.9 section 135 (notice of retention);
    - 11.8.10 section 142 (redemption of collateral); and
    - 11.8.11 section 143 (reinstatement of security agreement);
  - 11.9 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;
  - 11.10 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
  - 11.11 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.
12. 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:
  - 12.1 that the Supplier may register a general security interest against the Applicant (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
  - 12.2 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 Moneys 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, and appoints each officer of the Supplier as its attorney to do all things necessary to create and register such charges.
13. At all times:
  - 13.1 the ownership of the Goods remains with the Supplier;
  - 13.2 the Applicant:
    - 13.2.1 holds the Goods as the Supplier's bailee;
    - 13.2.2 must properly store the Goods separately from any other goods and in a manner which clearly shows the Supplier as the owner of the Goods;
    - 13.2.3 must insure the Goods;
    - 13.2.4 must account to the Supplier for all proceeds of the Goods, including insurance proceeds; and
    - 13.2.5 must permit the Supplier reasonable access to the Applicant's premises at any time to inspect the Goods; and
  - 13.3 if a Default Event occurs; the Supplier may:
    - 13.3.1 retake possession of any Goods;
    - 13.3.2 retain all moneys paid on account; or
    - 13.3.3 if it notifies the Applicant that Moneys in respect of the Goods are recoverable as a debt, sue for those Moneys.
14. Despite clause 13 risk passes to the Applicant on the earlier of either despatch or collection of the Goods and remains with the Applicant until the Goods are returned to the Supplier.
15. If the Applicant makes an Application in its capacity as a trustee of any Trust, the Applicant warrants that:
  - 15.1 these Terms are lawful, binding and enforceable against the Trust property; and
  - 15.2 such Application is made within the full authority and power under the relevant Trust instrument.
16. 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.
17. 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.
18. 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.
19. The Applicant agrees that, in respect of an Applicant who is not an individual or sole trader:
  - 19.1 the Supplier may use and seek information from credit reporting bodies including:
    - 19.1.1 a commercial credit report in order to assess an Applicant; and
    - 19.1.2 a commercial credit report for the purpose of assisting in the collection of Moneys owing;
  - 19.2 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
  - 19.3 the Supplier may disclose personal information concerning the Applicant to another credit provider for any purpose listed in clause 19.2, subject to any restrictions in the Privacy Act
20. 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](http://www.cavpower.com)
21. The Supplier's Privacy Policy sets out:
  - 21.1 the purposes for which the Applicant's personal information is collected by the Supplier;
  - 21.2 the consequences if the Applicant's personal information is not collected by the Supplier;
  - 21.3 the third parties to which the Supplier discloses the Applicant's personal information;
  - 21.4 how the Applicant may seek access or correction of their personal information;
  - 21.5 whether the Applicant's personal information is likely to be disclosed to overseas entities and in which countries; and
  - 21.6 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.
22. 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.
23. 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.
24. The Supplier reserves the right to vary these Terms from time to time in its sole discretion. 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 30 days of receipt of the variation, otherwise the Applicant will be deemed to have accepted the varied terms.
25. Any notice, demand, consent, approval or other communication from any party to the other must be in writing and may be sent to:
  - 25.1 the Supplier, at PO Box 84, ENFIELD PLAZA SA 5085, or Fax 08 8269 6086 or [arreceivable@cavpower.com](mailto:arreceivable@cavpower.com)
  - 25.2 The Applicant, at its business address or facsimile number mentioned in this Application.
26. These Terms are governed by the laws of South Australia. The Applicant submits to the non-exclusive jurisdiction of the courts of South Australia or such State as may otherwise be nominated by the Supplier.
27. A signed certificate from the Supplier stating the amount of the Moneys owing or any other matter or fact in the absence of manifest error will be conclusive and binding on the Applicant.
28. The Supplier may transfer its rights under these Terms to a third party without the Applicant's consent.
29. The Applicant and any person signing the Application on behalf of the Applicant jointly and severally warrant that:
  - 29.1 such person and the Applicant are each authorised to make the Application;
  - 29.2 all information in the Application is complete, accurate and not misleading;
  - 29.3 the Applicant is able to pay its debts when due;
  - 29.4 these Terms are binding; and
  - 29.5 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 Cavrent Pty Ltd ABN 12 082 028 082 (“**Cavrent**”) agreeing to supply or continuing to supply equipment pursuant to a Credit Application to the Applicant and forbearing to sue the Applicant (except where provided for by any statutory provision) for any payment currently due to Cavrent, each guarantor named below (“**Guarantor**”) unconditionally and irrevocably guarantees on demand to Cavrent 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 Cavrent or any related body corporate on any account and in any capacity (“**Guaranteed Moneys**”) and, as a separate and independent obligation, agrees to indemnify and keep Cavrent 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 Cavrent or such related body corporate in relation to the non-payment or non-recovery of the Guaranteed Moneys or as a result of any breach by the Applicant of Cavrent’s Credit Terms and Rental Terms and Conditions attached to the Credit Application.
2. The Guarantor hereby agrees with Cavrent 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 Cavrent has received all of the Guaranteed Moneys, the Guarantor agrees:
  - (a) 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 Cavrent, 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 Cavrent;
  - (b) if requested by Cavrent, 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 Cavrent may require to enable Cavrent to have and receive the benefit of or arising from any such proof, claim or security;
  - (c) not to attempt or purport to be subrogated to Cavrent; and
  - (d) that the Guarantor’s liability under this Guarantee shall be that of principal debtor.
4. The Guarantor further agrees that:
  - (a) the Guarantor has signed this Guarantee voluntarily;
  - (b) before entering this Guarantee, the Guarantor was advised by Cavrent 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 Cavrent;
  - (c) 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 Cavrent and any related body corporate and all amounts that the Applicant may in the future owe to Cavrent and any related body corporate and has also agreed, as a separate and independent obligation, to provide an indemnity to Cavrent and any related body corporate if any of the Guaranteed Moneys are not paid to, or recovered by, Cavrent; and
  - (d) it has not entered into this Guarantee on reliance on any representation, warranty, promise or statement of Cavrent or any person on behalf of Cavrent or any related body corporate.
5. The Guarantor agrees that a notice issued by Cavrent stating any moneys owed by the Applicant or Guarantor to Cavrent or any related body corporate or under this Guarantee shall be conclusive evidence of such amounts owing by the Applicant and Guarantor.
6. 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.
7. 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.
8. The guarantee and indemnity contained in this Guarantee are separate and independent obligations of the Guarantor and neither limits the generality of the other.
9. 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 Cavrent.
10. 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.
11. The Guarantor must fully indemnify Cavrent for all expenses and legal costs that Cavrent incurs in enforcing this Guarantee.
12. 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

.....  
Signature of Guarantor

Address of Guarantor.....

.....

**SIGNED by:**

.....  
Name of Guarantor

.....  
Signature of Guarantor

Address of Guarantor.....

# RENTAL TERMS AND CONDITIONS

## 1 Definitions

"Agreement" has the meaning specified in clause 2.

"Customer" means the customer identified in the Rental Agreement and includes the Customer's employees, executors, administrators and representatives.

"Date Out" means the date on which the Equipment is rented as specified in the Rental Agreement.

"Dealer" means the dealer specified in the Rental Agreement and includes its officers, employees, agents, successors and related parties.

"Equipment" means the equipment rented by the Dealer to the Customer from time to time and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in these Rental Terms.

"Location" means the Location of the Equipment as specified in the Rental Agreement or such other location as agreed by the Dealer.

"Off-Rent Number" means the number provided by the Dealer to the Customer when the Customer notifies the Dealer that the rental of the Equipment has ended.

"Rental Account Application" means the application identified as the Rental Account Application.

"Rental Agreement" means the express terms identified as the Rental Agreement.

"Rental Charges" means the rental charges charged by the Dealer to the Customer for the rent of the Equipment and identified in the invoice provided by the Dealer to the Customer.

"Rental Period" means the period set out in the Rental Agreement.

"Renter Protection" means an amount paid by the Customer to reduce the Customer's financial liability in the event of loss or damage to the Equipment.

## 2 Agreement

- (a) The Dealer rents the Equipment to the Customer on the terms of the Rental Agreement, these Rental Terms and, where applicable, the Rental Account Application (collectively, "the Agreement"). The Agreement constitutes the entire agreement between the parties.
- (b) The Dealer may amend or replace the Agreement (including Rental Charges) by written notice to the Customer. Any and all subsequent rental of Equipment will be on the amended or replaced terms.

## 3 Rental Charges and Other Charges

- (a) Rental Charges will be incurred from the Date Out until and including the day on which the Customer receives an Off-Rent Number from the Dealer or the Rental Agreement is terminated in accordance with clause 11, whichever is the earlier unless the Off-Rent Number is issued before 8am, in which case there will be no Rental Charge for that day.
- (b) The Customer must not request an Off-Rent Number unless the Equipment is ready to be returned to, or to be collected by, the Dealer.
- (c) Additional Rental Charges may apply if Equipment hired on a daily basis is used for more than eight hours in any day or if the Equipment which has been hired for a week is used for more than five days.
- (d) The Customer must pay: (i) a charge for delivery of the Equipment and, if necessary, return of the Equipment; (ii) all Equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used, during the Rental Period; (iii) any taxes, duties (including stamp duty), levies, charges or imposts on or in connection with the Agreement; (iv) a sum equal to the amount of any Equipment and services tax (GST) payable by the Dealer on any supplies made by the Dealer under or in connection with the Agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate; (v) any costs or expenses reasonably incurred by the Dealer in enforcing the Agreement, as a result of the Customer's breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including cleaning costs); and (v) any Renter Protection payable under clause 9.
- (e) Where any amount payable under the Agreement becomes overdue by the Customer, all outstanding amounts whether due to the Dealer under the terms of the Agreement or under any other Rental Agreement between the Dealer and the Customer will become immediately due and payable by the Customer to the Dealer.
- (f) The Dealer may charge the Customer interest calculated on a daily basis and compounded monthly on overdue amounts from the due date of payment to the date of actual receipt of payment at an interest rate which is 4% greater than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment; and (ii) where the Equipment is hired in New Zealand, 2.5% greater than the published National Bank of New Zealand's commercial overdraft interest rate on finance facilities in excess of \$100,000.
- (g) The Customer must pay all amounts owing under the Agreement within 30 days from end of month.

## 4 Customer obligations

- (a) Except as provided in the Agreement, the Customer shall have no right, title, property or interest in the Equipment except as a bailee and must not sublet, transfer, dispose of grant a security interest over, permit a security interest to be registered over or otherwise deal with any rights or interest in the Equipment. The Customer must do everything necessary to protect the rights of the Dealer in the Equipment. A breach of this clause will entitle the Dealer to terminate this Agreement by written notice to the Customer and demand return of the Equipment immediately.
- (b) Risk in the Equipment passes to the Customer on delivery of the Equipment to the Customer and remains with the Customer until the Equipment is collected by or returned to the Dealer. Subject to clause 9 below, the Customer is liable to the Dealer for any and all loss or damage to, or caused by, the Equipment or its operation and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the full list price, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced.
- (c) The Customer must ensure that the Equipment is:
  - (i) operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated in accordance with the Operator's Manual and the Dealer's instructions;
  - (ii) returned to the Dealer in the same condition as at the Date Out (except for normal wear and tear) and returned with a full tank of fuel or the Customer will pay the Dealer the cost of filling that tank;
  - (iii) used for the purpose for which the Equipment was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
  - (iv) not removed from the Location without the Dealer's written consent;
  - (v) at all times stored safely and protected from theft, loss or damage.
- (d) If the Equipment breaks down or becomes unsafe to operate, the Customer shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.
- (e) The Customer must not repair or attempt to repair the Equipment without the Dealer's prior written consent.
- (f) The Customer must immediately notify and provide full details to the Dealer of any loss, theft, breakdown or damage to the Equipment. Subject to clause 12 of these Rental Terms, the Dealer will use reasonable endeavours to repair or replace the Equipment at the Dealer's discretion and at the Customer's expense after receiving such notification. Any equipment supplied as a replacement for the Equipment will be supplied for the unexpired balance of the Rental Period on the terms of the Agreement.
- (g) Any operator provided by the Dealer to operate the Equipment shall be under the sole direction and control of the Customer. The Customer is responsible for any and all claims, loss or damage whatsoever arising in connection with the operation of the Equipment by that person. Where an operator is provided by the Dealer, no other person shall operate the Equipment without the Dealer's prior written consent.
- (h) The Customer must: (i) ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment; (ii) maintain any safety signs supplied by the Dealer and ensure they are clearly legible and brought to the attention of any person using the Equipment; (iii) ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment; (iv) ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by the Dealer or the safety and operating instructions; (v) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment; and (vi) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the Dealer's instructions and the Operator's Manual.
- (i) The Customer must comply with all applicable laws and regulations.

## 5 Access and inspection

The Dealer and its representatives have the right to enter the Location at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment or to repossess the Equipment. The Customer must assist the Dealer and its representatives in exercising its rights under this clause.

## 6 Personal Property Securities Act 2009 (Cth) ("PPSA")

- (a) The Customer acknowledges and agrees that if the Rental Period is for a period of 24 months or longer, this Agreement constitutes a PPS Lease for the purposes of the PPSA.
- (b) If the Agreement is a PPS Lease, the Customer acknowledges and agrees that: i) the Agreement grants the Dealer a purchase money security interest ("PMSI") in the Equipment and their proceeds to secure all amounts owed by the Customer to the Dealer; ii) the Dealer may register its PMSI over the Equipment on the Personal Property Securities Register ("PPSR"); iii) it will do all things necessary and provide the Dealer on request all information the Dealer requires to register a financing statement or financing charge statement on the PPSR; iv) it will not to change its name in any form or other details on the PPSR without first notifying the Dealer; and v) it will, if requested by the Dealer, pay to the Dealer the cost of registering and maintaining registration of the Dealer's security interest on the PPSR, within 14 days of the request.
- (c) Without affecting any other indemnity or rights under the Agreement, if the Customer is in breach of any of its obligations under clause 6(b) of the Agreement, the Customer must indemnify the Dealer against all loss or expense suffered by the Dealer as a consequence of that breach.
- (d) The Dealer need not give any notice under the PPSA (including a verification statement or a financing charge statement) unless the notice is required by the PPSA and cannot be excluded.
- (e) 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.
- (f) The Customer appoints the Dealer as its attorney to sign in the Customer's name all documents which the Dealer considers necessary to enforce or protect its rights and powers under the Agreement and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to the Agreement and the PMSI created by the Agreement.
- (g) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the PMSI under this Agreement, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires:
  - (i) section 95 (notice of removal of accession);
  - (ii) section 118 (enforcement of security interest in accordance with land law decisions);
  - (iii) section 123 (secured party may seize collateral);
  - (iv) section 125 (obligation to dispose or retain collateral);
  - (v) section 128 (secured party may dispose of collateral);
  - (vi) section 129 (notice of purchase);
  - (vii) section 130 (notice of disposal);
  - (viii) sections 132(1) and (4) (right to receive a statement of account);
  - (ix) section 135 (notice of retention);
  - (x) section 142 (redemption of collateral); and
  - (xi) section 143 (reinstatement of security agreement).
- (h) Unless otherwise defined in this Agreement, the terms and expressions used in this clause 6 have the meanings given to them, or by virtue of, the PPSA.

## 7 Lessee leasing Equipment

- (a) Subject to clause 7(c), the Customer will not sell or offer for sale, assign, mortgage, pledge, underlet, grant or register a security interest over, lend or otherwise deal with the Equipment but will keep the Equipment in the Customer's own possession.
- (b) The Customer will not grant any lien over the Equipment whether the lien be granted for repairs or otherwise and will protect the Equipment against distress, execution or seizure.
- (c) In exceptional circumstances, the Dealer will allow the Customer to on-hire the Equipment to customers of the Customer pursuant to a hire agreement ("Customer On-Hire"). However, the Dealer must consent in writing to such on hire of the Equipment by the Customer.
- (d) Where the Dealer consents to a Customer On-Hire pursuant to clause 7(c), the Dealer further acknowledges and agrees that the Customer may register a PMSI over the Equipment against their customer ("Hiree") to secure the Hiree's obligations pursuant to the Customer On-Hire and in fact such registration may be a condition of the Dealer's consent. The Customer must provide evidence of this security interest registration to the Dealer within 2 days of registration on the PPSR.
- (e) The Customer acknowledges and agrees that it may only register a PMSI over the Equipment against the Hiree who has entered into the Customer On-Hire. The Customer may not grant a PMSI or a security interest of any kind in respect of the Equipment to any other third party.

## 8 Privacy

Personal information or credit related information collected, used and disclosed by the Dealer will be governed by the Dealer's Privacy Policy located at <https://www.cavpower.com/privacy-policy/>.

## 9 Renter Protection

- (a) The Renter Protection must be paid by the Customer where the full new replacement cost of the Equipment as determined by the Dealer exceeds \$200 unless it is waived and the appropriate insurance cover is verified (as per The CAT Rental Store Credit Application).
- (b) For the purposes of this clause, the term Equipment does not include any tools, accessories, parts, grease, guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks, tyres or glass.
- (c) If the Customer has acquired Renter Protection then, subject to this clause, the Customer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, or theft, is limited to \$200 or 10% of the full new replacement cost of the Equipment, whichever is the greater.
- (d) The Customer's liability will not be limited in accordance with clause 9(c) if, in the Dealer's reasonable opinion, the loss or damage to the Equipment arises from or is caused by: (i) a breach of the Agreement; (ii) the Customer's negligent acts or omissions; (iii) improper use of the Equipment; (iv) transporting, loading or unloading (except where transported by the Dealer), (v) lack of lubrication or other normal servicing of the Equipment; (vi) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment; (vii) artificial electrical current or exposure to any corrosive substance or environment; or (viii) use or location of the Equipment in, on or over water, on bridges, vessels or structures of any kind.
- (e) The Customer must promptly report any theft of the Equipment to the police and provide the Dealer with written evidence verifying that report.

## 10 Insurance

The Customer must at its cost take out and maintain during the term of the Agreement policies of insurance for: (i) indemnity cover of not less than the full new replacement cost of the Equipment; and (ii) third party and public liability indemnity cover of not less than \$20 million.

## 11 End of Rental Period & Termination

- (a) At the end of the Rental Period, the Customer must deliver the Equipment to the Dealer during normal working hours, or, if the Dealer agrees, the Equipment may be collected by the Dealer. The Customer irrevocably appoints the Dealer as its agent and authorises and licenses the Dealer to enter the Location and repossess the Equipment after the Customer receives an Off-Rent Number or upon termination of the Rental Agreement, whichever is the first to occur.
- (b) The Dealer may terminate any Rental Agreement or the Agreement as a whole and repossess the Equipment at any time by written notice to the Customer if the Customer is in breach of the Agreement and fails to remedy that breach within 7 days of receiving notice requiring the Customer to do so or the Customer becomes insolvent or otherwise is unable to pay its debts as they fall due.

## 12 Liability and indemnity

- (a) As far as the law permits, the Dealer excludes all warranties, conditions, rights and remedies the Customer would otherwise be entitled to by law.
- (b) The Dealer's liability for loss or damage (including consequential loss or loss of profit) incurred by the Customer or a person making a claim against the Customer is excluded as far as the law permits. To the extent it cannot be excluded, it is limited as far as the law permits to the repair or replacement of the Equipment.

- (c) The Dealer and its directors, employees or representatives are not liable to the Customer for negligent acts or omissions.
- (d) The Customer shall indemnify and shall continue to indemnify the Dealer against any liability, loss, damage, claim, action, demand, costs or expenses incurred or suffered by the Dealer howsoever arising out of the Customer's use or possession of the Equipment, including, but not limited to: (i) any breach of the Agreement, (ii) any breach of any laws (including environmental laws) by the Customer, (iii) or any act or omission (negligent or otherwise) by the Customer; (iv) any action or trespass resulting from the Dealer entering the Location in accordance with Clause 11(a).
- (e) These limitations and indemnities continue after the Agreement expires or terminates.

13 Miscellaneous

(a) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination. (b) Time is of the essence of all obligations of the Customer under the Agreement. (c) The Dealer may assign or sub contract all or any of its rights under the Agreement. The Customer must not assign or sub contract all or any of its rights under the Agreement. (d) The Agreement is governed by, if signed in Australia, the laws of the states or territories in which it is signed by the Dealer, or if signed in New Zealand, the laws of New Zealand.