

**STANDARD TERMS OF TRADE (“Terms”)**

**CAVPOWER PTY LTD ABN 22 007 735 300**

**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. Unless advised otherwise by Cavpower, 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. Cavpower may adjust the quoted price of any parts to pass on any actual cost increase in the parts or their constituent components. Supplies ordered 30 days after the quote date may be subject to price changes.
4. Cavpower may charge for shipment packaging provided by Cavpower.
5. Unless Cavpower has agreed to grant credit to the Customer in writing, the Customer must pay the total amount payable for Supplies inclusive of GST to Cavpower without deduction cash on delivery (**“COD”**). If Cavpower has agreed to grant credit to the Customer in writing, the Customer must pay the total amount payable within 30 days after the end of the month in which the Supplies are supplied to the Customer. Cavpower may require a deposit to be paid by the Customer on placement of an order for Supplies.
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% 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.** 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 (whichever occurs earlier). 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 vary from time to time due to changes in manufacturing or in raw materials. Any such changes will be notified to the Customer.
11. To the maximum extent permitted by law, Cavpower will in no way be liable for any claim or cost resulting from non delivery or delayed delivery or from any fault in Supplies which are beyond Cavpower’s control. The Customer will release Cavpower from such claims or costs.
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 purchase money 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. Without affecting any other indemnity or rights under these Terms, if the Customer is in breach of any of its obligations under clause 14, the Customer must indemnify Cavpower against all loss or expense suffered

by Cavpower as a consequence of that breach.

16. 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.
17. 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.
18. If the Customer is in default under these Terms, the Customer appoints Cavpower as its attorney to sign in the Customer’s name all documents which Cavpower reasonably considers necessary to enforce or protect its 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 created by these Terms.
19. 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:
  - a) section 95 (notice of removal of accession);
  - b) section 118 (enforcement of security interest in accordance with land law decisions);
  - c) section 123 (secured party may seize collateral);
  - d) section 125 (obligation to dispose or retain collateral);
  - e) section 128 (secured party may dispose of collateral);
  - f) section 129 (notice of purchase);
  - g) section 130 (notice of disposal);
  - h) sections 132(1) and (4) (right to receive a statement of account);
  - i) section 135 (notice of retention);
  - j) section 142 (redemption of collateral); and
  - k) section 143 (reinstatement of security agreement).
20. 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.
21. 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.
22. 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 plant or equipment serviced by Cavpower 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 Supply and during normal and proper use of the relevant plant or equipment by the Customer. If Cavpower otherwise agrees to repair plant or equipment serviced as part of the Supplies, the Customer at its cost must deliver the plant or equipment to Cavpower’s nominated workshop and collect the plant or equipment after repair. Other than as stated in this clause or to the maximum extent permitted by law, Cavpower gives no guarantee in relation to the Supplies.
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 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, 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. 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. To the maximum extent permitted by law, Cavpower will have no liability for any consequential loss, injury, damages or expenses suffered or incurred directly or indirectly by the Customer or any of the Customer’s agents or employees or any other person in connection with the supply of the Supplies by Cavpower or any delay in or the inability of Cavpower to supply the Supplies.
26. Cavpower may amend these Terms by giving notice to the Customer. However, any variation to the Terms of a current order must be in writing signed by Cavpower and the Customer.
27. Any of the Supplies replaced during the repair will be disposed of unless otherwise instructed by the Customer.

28. Any notice, invoice or document to be given to the Customer will be sufficiently given if posted by ordinary prepaid post, email or faxed to the Customer at the Customer's last known physical or email address or fax number respectively or emailed to the address provided to Cavpower.
29. The Customer acknowledges that any personal information or credit related personal information collected by Cavpower is subject to Cavpower's privacy policy available at [www.cavpower.com](http://www.cavpower.com). Cavpower's privacy policy sets out the purpose for which the Customer's personal information is collected, the consequences if the Customer's personal information is not provided to Cavpower, the third parties to which Cavpower may disclose the Customer's information, whether Cavpower is likely to disclose the Customer's information to an overseas entity and how the Customer may complain about a breach of Cavpower's obligations in respect of the Customer's information and how such a complaint will be dealt with.
30. These Terms are to be governed and interpreted in accordance with the laws of South Australia and the parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts