



## TERMS AND CONDITIONS

### 1. Definitions:

- (a) "ACL" means the Australian Consumer Law. Information about the Australian Consumer Law, when it applies and what it means can be found at <http://www.consumerlaw.gov.au>.
- (b) "Agreement" means this Wholesale & Reseller Agreement agreed between the Parties;
- (c) "Claim" includes any claim, demand, proceeding, action or similar event.
- (d) "Credit Limit" means \$0, unless a higher credit limit is set out in Schedule 2.
- (e) "Increased Customer Risk" means that any circumstances or events arise (whether from your actions, omissions or negligence or from other causes, whether those causes are within your control or are independent of you), or you enter into any arrangements which we reasonably, on the basis of the information available to us, consider may cause any deterioration in our financial, credit or security position, or you cease to carry on business or experience any relevant change in the nature or operations of or risk relating to you or your business (including any change in control of you or of your business, for example:
  - (i) (for a company) by a change of directors or a change in the status or capacity of directors;
  - (ii) by formal or informal appointment of an external party such as a financier or another person, in a way which exercises direct or indirect control over you or your business; or
  - (iii) as a result of illness or incapacity of, or a change in, senior management of you or your business.);
- (f) "Loss" means any loss, damage, cost, expense or other adverse financial or other consequence.
- (g) "Parties" means the Supplier and the Reseller.
- (h) "Products" means the products listed in Schedule 1, or such other products provided by the Supplier to the Reseller from time to time.
- (i) "Purpose" means either:
  - i. for wholesale sale, through its own Stores, to qualified and licenced electricians not engaged by the Reseller, for use and installation by them; or
  - ii. for use and installation by qualified and licenced electricians engaged by the Reseller.
- (j) "Store" means any physical or online store operated by the Reseller, which is clearly identified as being controlled by the Reseller.

### 2. Reseller rights:

The Supplier grants to the Reseller the non-exclusive right to buy Products from the Supplier for the Purpose.

### 3. Reseller's obligations:

The Reseller agrees:

- (a) to comply with its obligations under this Agreement;
- (b) to use Products acquired from the Supplier in accordance with the Purpose, in order to allow the Supplier to assess its

- likely risk exposure in supplying the Products;
- (c) to act with the utmost good faith in all matters toward the Supplier;
- (d) to actively and diligently promote the Products for sale within any Store operated by the Reseller;
- (e) not to alter or in any way modify the Products or their packaging;
- (f) not to purchase any Products in order to use any of them as a 'loss leader' – for example, you may not acquire any Products with the intention of selling them below their cost, in order to promote your business and to attract customers who are likely to purchase other goods or services from you;
- (g) not to use or resell the Products in any way which is inconsistent with the Purpose;
- (h) that all of the information which you have supplied and will supply to us in the course of our dealings, including information which has been provided or will be provided to us for the purpose of assessing your request for credit or for the purpose of assessing whether to continue any credit arrangements, is and will be complete, accurate and not misleading;
- (i) that you have completely and accurately disclosed (and will in future completely and accurately disclose) all of your financial arrangements with financiers (whether secured or unsecured, and whether related parties or third parties), suppliers and other parties who have provided you with (or will in future provide you with) finance or credit to us, in a way which is not misleading;
- (j) that you have no financial arrangements with financiers (whether secured or unsecured, and whether related parties or third parties), suppliers or other parties which are in the nature of invoice financing, factoring, discounting, or which involve the sale, assignment or creation of security over your book debts, including any situation where a security interest is granted in an account as defined in the Personal Property Securities Act 2009 for new value, or any similar arrangement (together all called 'invoice financing') except for those financial arrangements specifically disclosed in writing to us;
- (k) that you will not enter into any invoice financing financial arrangements without first obtaining our permission in advance (and without providing us with at least 30 days' advance notice of your intention to enter into any such invoice financing financial arrangements); and you agree that any invoice financing financial arrangements will result in Increased Customer Risk; and
- (l) to indemnify and keep indemnified the Supplier from and against any and all loss, damage or liability suffered by the Supplier resulting from any breach of this Agreement by the Reseller or any act, omission, neglect or default of the Reseller or its agents, employees, or licensees.

- ### 4. Advertising or promotion:
- The Reseller must comply with any guidelines issued by the Supplier from time to time, and with any reasonable directions of the Supplier in relation to the font, colour, branding, claims in relation to, and other presentation of the Products and their packaging, including in connection with promotional materials used in connection with the Products. If the Supplier has supplied any promotional materials, then the Reseller must not alter them in any way.

5. **Prices:** Refer to Schedule 1 of this Agreement. The Supplier has discretion to change any and all prices at any time by providing reasonable notice (typically, 30 days' notice) to the Reseller.
6. **Payment Terms:** Refer to Schedule 2 of this Agreement. If nothing is recorded in Schedule 2, then full payment in cleared funds is required before dispatch of any Products by the Supplier to the Reseller.
7. **Supply of Products:** If:
- the Reseller has complied with all of its obligations under this Agreement and continues to be compliant at the time of placing an order;
  - there is no Increased Customer Risk, and the value of the order placed by the Reseller would not cause the Credit Limit applying to the Reseller to be exceeded; and
  - the Products ordered by the Reseller are available;
- then the Supplier may supply, to the Reseller, Products in accordance with orders received in writing from time to time from the Reseller. The Reseller may not cancel an order without the written consent of the Supplier.
8. **Delivery times:** The Supplier will use all reasonable endeavors to meet delivery times but delivery times are approximate only and are not guaranteed.
9. **Delivery and risk:** Delivery will be deemed to have been completed, and the risk of any loss or damage to or deterioration of the Products due to any cause whatsoever is borne by the Reseller, from the time that the Products arrive at the Reseller.
10. **Ownership:** Ownership and title in the Products will pass from the Supplier to the Reseller upon payment in full by the Reseller.

## 11. Personal Property Securities

- "PPS Act" means the Personal Property Securities Act 2009 (Cth);
- "collateral" has the meaning contemplated by s.10 of the PPS Act and specifically includes all goods (or the proceeds of any sale by you of such goods) in respect of which we have a security interest, as contemplated below;
- Where terms are used in this clause 11 and they are terms defined by the PPS Act, then those terms are intended to have the meaning defined in the PPS Act. This is the case whether or not the terms are indicated as being defined in the PPS Act in the text of this clause 11.

You acknowledge that:

- all goods supplied by us to you are acquired in the course or furtherance of an enterprise of re-supply by you, and are commercial property (as defined in s.10 of the PPS Act);
- we will have a security interest (as defined in s.12 of the PPS Act) in goods purchased by you, and in the proceeds of any sale by you of such goods, until title to the goods passes to you in accordance with clause 10 of this Agreement;
- the security interest secures the purchase price for all goods supplied by us to you;
- the security interest attaches to goods purchased by you from us as soon as you have rights in the goods as

contemplated by s.19(5) of the PPS Act; and

- the security interest comprises a purchase money security interest (as defined in s.14 of the PPS Act) to the extent it secures purchase money obligations (as defined in s.14(7) of the PPS Act).

In addition, you acknowledge that:

- all of your present and after-acquired property is used in the course or furtherance of an enterprise by you, and is commercial property (as defined in s.10 of the PPS Act);
- you charge all of your present and after-acquired property (and proceeds thereof) with the performance of all of your obligations to us under the Agreement;
- in doing so you grant us a security interest in (and we take a security interest in) all of your present and after-acquired property (and proceeds thereof);
- that security interest described in clause 11(k) secures the payment of all money owed to us by you under the Agreement and the performance of all of your obligations to us under the Agreement; and
- except to the extent that the security interest described in clause 11(e) may apply to certain elements of your present and after-acquired property, the security interest described in clause 11(k) does not comprise a purchase money security interest.

We are entitled to register our security interests pursuant to the PPS Act, and you must do everything (such as obtaining consents, completing, signing and supplying signed copies of documents, and supplying information), which we require to be done for the purpose of ensuring that each security interest of ours is enforceable, perfected, has the required and intended priority, is otherwise effective, and can be practically and lawfully enforced by us against you (and against third parties as relevant).

You hereby waive, as permitted by s.157(3) of the PPS Act, any right to receive a verification statement or any other notice in relation to a registration event (for example, any right under s.157(1) of the PPS Act).

We and you hereby enter into a confidentiality agreement (as contemplated by s.275(6)(a) of the PPS Act) and agree that (subject to section 275(7) of the PPS Act) neither you nor we will disclose information of the kind mentioned in section 275(1) of the PPS Act.

Payments made by you to us will be applied in the order contemplated by s.14(6)(c) of the PPS Act.

*Contracting out of certain enforcement provisions:* As permitted by s.115(1) of the PPS Act, we and you hereby agree that:

- s.95 and s.130 of the PPS Act, to the extent that each of those sections require us to give notice to you, do not apply to our security interests;
- s.121(4) and s.132(4) of the PPS Act do not apply to our security interests;
- we may elect to give notice to you as contemplated by s.135(1)(a) of the PPS Act, but we are not obliged to do so; and
- if title to collateral has not passed to you in accordance with Clause 10 of this Agreement, and where we have seized such collateral as contemplated by Division 2 of Part 4.3 of the PPS Act (or have seized such collateral in another manner) then (noting that the collateral is in fact still our property because

title to the collateral has not passed to you) to the extent permissible under the PPS Act, nothing in s.125 or in s.134(1) or in other sections of the PPS Act is to be taken to prevent us from retaining such collateral, without any obligation to take any further step in relation to disposal of the collateral or any obligation to give notice to you in connection with such collateral. It is intended that if this clause 11(q) is unenforceable or illegal, then it is intended to be severed from this document without affecting the validity of other sections of this document.

- 12. Default interest:** Without limiting its other rights and remedies, the Supplier may charge default interest on any amount that is due and unpaid from the due date until the date of payment. Default interest may be charged at 2% above the standard contract default rate published by Queensland Law Society from time to time (which was 9.07% per annum effective from 1 July 2019, and which the parties agree is appropriate given the Supplier's cost of funds) on any overdue amount.
- 13. Suspension of credit/delivery:** If Increased Customer Risk occurs, then the Supplier is entitled to (and in its discretion may elect to) immediately withdraw any credit previously provided to the Reseller, and / or suspend any further supply to the Supplier, whether on credit or otherwise and / or reduce the Reseller's Credit Limit to zero, and / or require immediate payment of the balance owing to the Supplier. Also, if Increased Customer Risk occurs then the Supplier may, in its discretion, elect to require additional security for payment. In those circumstances, the Supplier may withhold delivery of any Products on order until all payments have been made in accordance with the Supplier's requirements.
- 14. Set-off:** The Reseller consents to any amount owed by the Reseller to the Supplier being deducted or set-off against any amount payable by the Supplier to the Reseller. However, the Reseller may not deduct or set-off any amounts owing or said to be owing to the Reseller by the Supplier against any amounts which the Reseller owes to the Supplier under this Agreement.
- 15. Defective Products:** Nothing in this Agreement reduces the ability of the Reseller to rely upon any relevant product warranties which the Supplier may offer. If the ACL applies to the relevant relationship between us and you, then we are not permitted to exclude our liability for consequential loss or damage and do not attempt to do so. Other than in relation to the relevant product warranties referred to above, to the extent permitted by the ACL and by law generally, we exclude all conditions and warranties to the full extent permitted by law (including in respect of merchantability or fitness for any purpose). To the extent permitted by the ACL and by law generally, we will be under no liability whatsoever to you and/or any third party for any indirect, special, consequential or exemplary Loss or Claim or personal injury suffered by you and/or any third party directly or indirectly in connection with the goods and services or directly or indirectly arising out of the Agreement or otherwise from the relationship between us and you and any third party, and whether actionable in contract, tort (including negligence), equity or otherwise. In addition to each other limitation which applies to the relationship between us and

you, we are only required to:

- (a) either replace or repair goods or reimburse you for the repair or replacement of the goods (at our election);
  - (b) either re-supply services or reimburse you for paying someone else to supply the services (at our election);
- and our liability is limited to those obligations. If the ACL applies to the relevant relationship between us and you, then this clause only applies in relation to goods and services which are not used for personal, domestic or household purposes. Any liability of the Supplier to the Reseller will also be reduced to the extent that the Reseller or any other person contributed to the Loss.
- Any Products that the Supplier agrees to replace or in respect of which the Supplier provides a refund must be returned to the Supplier (including packaging). Before returning any Products (including, for example, Products which may be defective), the Reseller must:
- (c) pack the Products properly in order to prevent any damage to them;
  - (d) ensure that relevant supporting documentation is provided to the Supplier;
  - (e) if the goods are being returned as defective, ensure that the goods really are defective before returning them; and
  - (f) bear transit risk in relation to the goods until they are actually received by the Supplier.

**16. Claims Process:**

If the Reseller considers any Products supplied by the Supplier are defective, then the Reseller should notify the Supplier in writing setting out details of the alleged defect and return a sample of the Products to the Supplier for its inspection and analysis. You agree to promptly inspect all Products delivered to ascertain whether there is any visible damage to the Products (including any wet Products) and to inform us within 7 days of delivery if there is any visible damage or any wet Products. If you do not inform us of any damage or any wet Products within 7 days of delivery of Products, then this may impact on your ability to make a credit claim. We will not be responsible for any loss or damage which you suffer as a result of our failure to deliver or delay in delivering Products which you have ordered. If the ACL applies to the relevant relationship between us and you, then this clause is intended to be read down or severed if necessary, to the extent to ensure that there is no breach of the ACL. If the ACL applies to the relevant relationship between the Supplier and the Reseller, then:

- (a) the Products supplied by the Supplier come with guarantees that cannot be excluded under the ACL;
- (b) the Reseller is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable Loss; and
- (c) the Reseller is also entitled to have Products supplied by the Supplier repaired or replaced if the Products fail to be of acceptable quality but the failure does not amount to a major failure.

- 17. Claims about Products:** The Reseller is not authorised to make any claims or warranties about the Products except for such claims as are expressly authorised in writing by the Supplier.
- 18. Reseller to take due care:** The Reseller must, when supplying any Product to a customer who is the end-user, take due care to ensure that (as far as possible) the customer complies with any guidelines for use of the Product.
- 19. Matters beyond the Supplier's control:** The Supplier is not responsible for any defect, failure or delay in relation to the supply of Products where the same arises due to a cause beyond the reasonable control of the Supplier.
- 20. Intellectual Property:** All intellectual property in the Products and the name "CAVIUS Australia" and "CAVIUS", including, brands, trademarks, patents, designs, copyright and logos used in relation to the Products are the property of the Supplier or CAVIUS ApS. The Reseller must not use any such intellectual property except with the prior written consent of the Supplier.
- 21. Termination for convenience:** Either the Supplier or the Reseller may terminate this agreement at any time, by giving 7 days' notice to the other party, without there being any requirement for a breach of this Agreement by the other party.
- (a) *Consequences of Termination:* Upon termination of this Agreement for any reason, the Reseller must cease selling the Products except to the extent necessary to sell any stock of Products then on hand.
- (b) *Termination without prejudice:* Termination of this Agreement is without prejudice to any rights or obligations that have accrued at the date of termination.
- (c) *Notices:* Any notice to be served on either of the parties by the other may be sent by prepaid post or by facsimile or email and will be deemed to have been received by the addressee within four business days of posting or within 24 hours if sent by facsimile or email to the correct facsimile number or email address notified to the other party from time to time.
- 22. Miscellaneous:**
- (a) If any payment issued by the Reseller in payment for Products is dishonoured, rejected or otherwise fails to achieve the actual and permanent transfer of actual funds to the Supplier, then the Supplier may refuse to supply any further goods and services until satisfactory payment is received in full. Any dishonour or rejection or similar fee(s) charged to the Supplier will be recoverable in full from the Reseller.
- (b) Any costs incurred by the Supplier in connection with collecting monies due and payable by the Reseller (including, without limitation, the fee of any mercantile agencies or solicitors appointed by the Supplier on a full indemnity basis) will be recoverable in full from the Reseller.
- (c) The Supplier is not responsible for any delays in funds being received to the account nominated by the Supplier, nor is the Supplier responsible for banking errors or accounting, administrative or similar errors by the Reseller. The Reseller must take care to ensure that all transfers or remittances of funds to the Supplier are processed promptly and accurately.
- (d) If the Reseller disputes the whole or any part of the amount claimed in an invoice issued by the Supplier, then the Reseller must pay that part of the account that is not in dispute and must promptly provide the Supplier with the Reseller's written reasons for disputing the unpaid amount of the invoice.
- (e) If after the relevant date of an order there is any change to relevant laws, by-laws, regulations or ordinances of any government or statutory authority, or if there is any significant change in economic or other relevant circumstances, and that change directly or indirectly affects the costs incurred by the Supplier in providing the Products, then the Supplier may (acting reasonably) elect to vary the prices and amounts payable to the Supplier accordingly. If the Reseller does not wish to accept the varied price, then the Reseller is not obliged to proceed with the relevant order.
- (f) If by reason of any fact, circumstance, matter or thing beyond the reasonable control of a party, that party is unable to perform, in whole or in part, any obligation under the Agreement, then that party is relieved of that obligation under the Agreement (to the extent and for the period that it is so unable to perform) and is not liable to the other party in respect of such inability. This provision does not apply in relation to obligations to make payment to the other party.
- (g) *Assignment:* This Agreement is personal to the Reseller and the Agreement may not be directly or indirectly assigned (including by declaration or trust or by change in control of the Reseller) except with the prior written consent of the Supplier.
- (h) *No partnership:* The parties are not partners or joint venturers. No party may act or hold itself out as acting as agent of the other party except as authorised by this Agreement or any other agreement entered into between the parties.
- (i) *Further assurances:* Each party must promptly do every reasonable thing to complete its obligations under this Agreement and the intent of this Agreement.
- (j) *Governing law:* This Agreement is governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of that jurisdiction.
- (k)