

## APPLICATION FOR CREDIT

### PLEASE PRINT OR TYPE

Business Name: \_\_\_\_\_  
DBA or Assumed Name: \_\_\_\_\_  
Billing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Shipping Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Business Tel. #: \_\_\_\_\_ Fax #: \_\_\_\_\_ Email: \_\_\_\_\_  
☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Government Agency  
State of Incorporation: \_\_\_\_\_ Date Established: \_\_\_\_\_ Credit Limit Amt.: \$ \_\_\_\_\_  
Type of Business: \_\_\_\_\_ No. of Employees: \_\_\_\_\_ Contractor License: \_\_\_\_\_  
State Issued: \_\_\_\_\_ AP Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Email: \_\_\_\_\_ Invoice/Statement Preference: Email: \_\_\_\_\_ Mail: \_\_\_\_\_  
☐ CHARGE SALES TAX ☐ DO NOT CHARGE SALES TAX (**ATTACHED EXEMPTION CERT; Tax will be charged without valid certificate on file**)  
☐ PURCHASE ORDER REQUIRED ☐ PURCHASE ORDER NOT REQUIRED ☐ JOB NAME REQUIRED ☐ JOB NUMBER REQUIRED

### BUSINESS & BONDING INFORMATION

Years in Business: \_\_\_\_\_ Federal ID #: \_\_\_\_\_ Contractor Bond #: \_\_\_\_\_  
Bonding Agency: \_\_\_\_\_ Address: \_\_\_\_\_

### OWNER/OFFICERS (If sole proprietorship or partnership complete the entire section below. If a corporation complete NAME and TITLE section.)

Name: \_\_\_\_\_ Title: \_\_\_\_\_ SS #: \_\_\_\_\_ CA Driver's License: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ SS #: \_\_\_\_\_ CA Driver's License: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

### TRADE REFERENCE \*MUST PROVIDE EMAIL ADDRESS\*

Company: \_\_\_\_\_ Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

### BANK REFERENCE

Name: \_\_\_\_\_ Account #: \_\_\_\_\_ Routing #: \_\_\_\_\_  
Address: \_\_\_\_\_ Contact Name: \_\_\_\_\_

**ANY MISREPRESENTATION IN THIS APPLICATION WILL BE CONSIDERED EVIDENCE OF FRAUD, SINCE THIS INFORMATION IS THE BASIS FOR EXTENDING OF CREDIT.**

As an inducement to grant credit, the undersigned warrants that the information submitted is true and correct. Authorization is granted by the undersigned to Apex Power to investigate the credit references and principals listed. The undersigned warrants that he/she has the authority to execute this credit application on behalf of the business identified.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

## **CREDIT AGREEMENT AND TERMS OF SALE: PLEASE READ AND SIGN BELOW**

**1. PAYMENT TERMS; SERVICE CHARGES:** All amounts due under this Credit Agreement shall be billed and paid for in the following manner: Apex Power Electrical Supply & Solutions (hereafter "Company") will invoice the undersigned (hereafter "Customer") on a monthly basis for all Services that such Company delivered or caused to be delivered during the preceding month. Each invoice shall be payable within 30 days after the date of the invoice and payment of all invoices in respect of the Services provided hereunder shall be made in U.S. Dollars. Should payment for any billing sent by Company to Customer not be received within the invoice terms, Customer agrees to pay as a service charge a payment equal to 1.5% per month (18% annual rate) on all principal balances outstanding. Pending credits from product returns, exchange or otherwise shall not be deemed payment unless and until such credits have been approved and are reflected on Customer's invoice or statement.

**2. DEFAULT:** If Customer defaults under this Agreement or any other lending agreement between Customer and the Company by not paying any payment when due, exceeding Customer's credit line, or breaching any other term of this Agreement or any other lending agreement between Customer and the Company, then the Company may suspend your account(s), demand immediate payment of the entire unpaid balance and start a lawsuit for collection of the balance and/or enforcement of the security interests granted to Company hereunder. Company may also, in its reasonable commercial discretion, immediately revoke, suspend, or modify Customer's credit privileges upon the occurrence of any of the following events: (a) any material adverse change in Customer's financial condition; (b) any statement, representation, or warranty made by Customer to Company found to be false or misleading; (c) death or dissolution of Customer or any guarantor; (d) commencement of bankruptcy or insolvency proceedings by or against Customer; (e) any change in ownership or control of Customer's business; or (f) any other circumstances that Company reasonably believes may impair Customer's ability to perform its obligations under this Agreement. Company shall not be obligated to reinstate Customer's credit privileges even if the event(s) giving rise to credit revocation are cured or remedied. Any reinstatement of credit privileges shall be at Company's sole discretion. All rights and remedies available to Company shall be cumulative.

**3. CREDIT WITHDRAWAL:** Accounts may be placed on hold or on a COD/cash only basis at the Company's option without advance notice. In no event shall the Company be liable for any consequential damages or other loss which may result from the exercise of its option under this clause.

**4. SECURITY AGREEMENT:** In order to provide security for the payment of the full price of goods furnished hereunder, Customer grants Company a first priority purchase money security interest in and to said goods (and all products and proceeds thereof) until paid in full. "Goods" shall be defined as any electrical equipment, components, fixtures, materials, or other items sold by Company to Customer, regardless of whether such goods have been installed, incorporated into other products, or otherwise altered. Customer acknowledges that Company's security interest extends to all proceeds of the goods, including insurance proceeds, and to any products or items into which the goods may be incorporated or installed. Customer authorizes Company to file a UCC financing statement and any amendments or continuations thereof to perfect this security interest without Customer's signature. Customer agrees to cooperate fully with Company to execute any documents necessary to perfect, maintain, or enforce Company's security interest. Upon payment in full for the goods, Company shall release its security interest within a commercially reasonable time period after receiving Customer's written request for such release.

**5. COSTS AND ATTORNEY FEES:** Customer will pay such costs, collection agency commissions, expenses, and reasonable attorney fees (including at trial and on appeal) as the Company may incur in any manner of collection of any sums past due. If this Agreement becomes the subject of any suit, arbitration or other proceeding or if Customer becomes the subject of any bankruptcy proceeding (including with respect to any motion for relief from the automatic stay, objection to a plan or reorganization or confirmation or other similar proceeding), the prevailing party will be entitled to its costs and attorneys' fees, whether incurred in such proceeding or in any post judgment proceeding.

**6. LIMITED WARRANTY:** COMPANY PASSES ON THE MANUFACTURER'S WARRANTY, IF ANY, FOR ALL GOODS SOLD TO CUSTOMER. SAID MANUFACTURER'S WARRANTY, IF ANY, IS EXCLUSIVE AND GIVEN IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH EVERY SALE OF GOODS, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXCLUDED AND DISCLAIMED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER MAKES NO REPRESENTATION, WARRANTY, OR PROMISE THAT THE MATERIALS (OR RELATED SERVICES OFFERED BY SELLER) WILL CONFORM TO ANY APPLICABLE LAWS, ORDINANCES, REGULATIONS, CODES OR STANDARDS. THIS DISCLAIMER SHALL IN NO EVENT BE CONSTRUED TO DISCLAIM SUCH WARRANTIES TO A GREATER EXTENT THAN PERMITTED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

**7. DAMAGES AND LIMITATION OF LIABILITY:** IN NO EVENT SHALL CUSTOMER OR ANY THIRD PARTY HAVE THE RIGHT TO RECOVER FROM COMPANY FOR ANY LOSS, DAMAGE, COST OF REPAIR, OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR DAMAGES FOR LOSS OF EFFICIENCY OR DELAY TO ANY PROJECT ON WHICH THE GOODS ARE USED OR ORDERED OR INTENDED FOR USE), WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSES OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE, OR REPAIR OF THE GOODS SOLD BY COMPANY. NOTWITHSTANDING THE FOREGOING, CUSTOMER AGREES THAT COMPANY'S SOLE LIABILITY, IF ANY, SHALL BE EXCLUSIVELY LIMITED TO, AT COMPANY'S OPTION, REPAIR OR REPLACEMENT OF ANY NON-CONFORMING GOODS OR REFUND OF THE PURCHASE PRICE PAID FOR SUCH NON-CONFORMING GOODS.

**8. COMPLIANCE WITH ELECTRICAL CODES AND STANDARDS:** Customer acknowledges and agrees that all electrical equipment and components purchased from Company must be installed, used, and maintained in accordance with applicable electrical codes and standards. Customer assumes sole and complete responsibility for ensuring that any installation, use, or application of products purchased from Company complies with all applicable codes, regulations, and industry standards. Company makes no warranties or representations and expressly disclaims any liability related to code compliance or the installation, use, or application of products. Customer shall indemnify, defend, and hold Company harmless from any claims, damages, liabilities, costs, or expenses (including reasonable attorneys' fees) arising from Customer's failure to comply with applicable codes, standards, or regulations, or from the improper installation, use, or application of products purchased from Company.

**9. CANCELLATIONS AND RETURNS:** Customer may not cancel any order of goods without Company's express written consent. Any cancellation so authorized shall be subject to a cancellation/restocking charge of at least 15%, plus all applicable freight. Unused goods, processed goods, or specially manufactured materials not normally carried in Company's inventory may not, under any circumstances, be returned. The amount of credit, if any, allowed to Customer for returned goods shall be at the sole discretion of Company.

**10. RISK OF LOSS:** Risk of loss shall pass to Customer when the product ships from the manufacturer's warehouse (**F.O.B. Shipping Point**).

**11. INSPECTION; CLAIMS:** Customer shall carefully inspect all goods and shipping documents promptly upon delivery. No claim for shortages or products damaged during delivery will be valid or enforceable against Company unless (a) Customer notifies Company in writing specifying in detail the shortage or damage within five (5) days from the date of delivery; (b) Customer returns the damaged goods within ten (10) days following delivery; (c) upon return, Company confirms such damage; and (d) Customer has fulfilled all of the payment terms. Customer's notice must be accompanied by the original freight bill, with notation on the face thereof by an authorized agent for the carrier as to the goods claimed to be short or damaged during transit. Customer shall be deemed to have waived any claim for shortages or goods damaged in transit if

Customer fails to so notify Company within five (5) days following delivery. Any processing or use of the goods by Customer shall be conclusive as to Customer's acceptance of the goods as being satisfactory.

**12. FORCE MAJEURE:** The Company shall not be liable for delay in delivery (or inability to deliver) due to causes beyond the Company's reasonable control including but not limited to: acts of God; acts of the Customer; acts of civil or military authority; fires; strikes; picketing or boycotts; floods; epidemics; pandemics; quarantine restrictions; war; insurrection or riot; embargoes; cybersecurity incidents; supply chain disruptions; disturbances of production or supply with Company's manufacturer/supplier; trucking or transit shortages; wrecks or delays in transportation; unusually severe weather; or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time determined solely by Company in its reasonable business judgment, and Company shall have no liability for any damages, consequential or otherwise, resulting from such delay. Company will make commercially reasonable efforts to notify Customer of known delays, but failure to provide such notice shall not constitute a breach of this Agreement. Customer expressly waives any right to cancel any order due to delays caused by force majeure events.

**13. WAIVER:** The failure of the Company to insist upon the strict performance of any of these terms and conditions of sale will not be deemed to be a waiver of any of the rights or remedies of the Company, nor of its right to insist upon strict performance of such term or of any other term in the future. No waiver of any of these terms and conditions of sale will be valid unless in writing signed by a duly authorized representative of the Company.

**14. ENTIRE AGREEMENT:** This Agreement and the Application, any other written agreements that secure or guaranty your obligations under this Agreement, any electronic payment agreement, enrollment forms and any written amendments, modifications, substitutions, or replacements thereof or thereto, is a final expression of the credit agreement between us and you and may not be contradicted by evidence of any alleged oral agreement or amendment. Any terms different from this Agreement or contradictory to this Agreement that are set forth in a purchase order or other communication are expressly rejected and shall under no circumstances modify the terms of this Agreement.

**15. SEVERABILITY:** If any term, condition, or provision of this Agreement is found to be invalid or unenforceable, such term, condition, or provision shall be severed out and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**16. EQUAL CREDIT OPPORTUNITY ACT NOTICE:** The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**17. CALIFORNIA PRIVACY RIGHTS:** The Company complies with the California Consumer Privacy Act ("CCPA") because your privacy is important to us. The Company's Privacy Policy outlines how we gather, use, share, and protect personally identifiable information that can be used to contact or identify you ("Data") and how it relates to the CCPA. When your personal Data is used to apply for credit, complete a transaction, verify your credit card, place an order, open an account, arrange for a delivery, or return a purchase, it is implied that you consent to our collection of personal Data and use of it for that specific reason. The Company does not sell your Data under any circumstance. For more information about your rights under the CCPA and how we use your data, please visit our Privacy Policy at <https://apxpwr.com/privacy-policy/>, which is incorporated by reference herein.

**18. ELECTRONIC COMMUNICATIONS AND SIGNATURES:** Customer consents to receive communications from Company in electronic form, including emails, text messages, and electronic documents. Customer agrees that the Company may, at the Company's sole discretion, accept, utilize, and rely upon electronic communications, facsimile copies, electronic copies, or photocopies of this Agreement in lieu of original documents. Customer acknowledges that by transmitting electronic communications to the Company, Customer agrees to be bound by the terms and conditions contained in this Agreement to the same extent as if originals were transmitted. Customer agrees that electronic signatures will have the same force and effect as any original signatures. Customer waives any right to object to the use of electronic communications in place of paper communications and any right to require Company to subsequently produce originals.

**19. GOVERNING LAW AND VENUE:** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law or conflict of law provisions. The parties consent to the exclusive jurisdiction and venue of the state and federal courts located in San Mateo County, California for any action arising out of or relating to this Agreement. Customer waives any objection to venue in such courts and any claim that the forum is inconvenient.

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature \_\_\_\_\_

### PERSONAL GUARANTEE

In consideration for Apex Power Electrical Supply & Solutions (hereafter "Company") extending credit to the business identified below for any materials and/or services after this date at the request of applicants or its agents, the undersigned individual hereby personally guarantees unconditionally, irrevocably, and absolutely the prompt payment of any sums now or hereafter owed to the Company by the business identified below whether said sums are due under open account, contract or otherwise.

This is a continuing guaranty and shall remain in full force until canceled. The undersigned guarantor acknowledges and agrees that this guaranty shall be valid and enforceable, and the undersigned guarantor's liability hereunder shall not be exonerated, reduced or released, regardless of: (a) any extension, modification, or renewal of the business's credit agreement; (b) any change in the ownership structure of the business; (c) any bankruptcy, reorganization, insolvency proceeding, or similar proceeding involving the business; or (d) any other change in status or circumstances of the business.

It is understood and agreed that credit, if extended, is to be on a continuing basis and may exceed estimated maximum credit limit required as stated in the credit agreement between the Company and the above-named Customer. Company shall not be obligated to notify the undersigned of the dates or amounts of any such credit and the undersigned expressly waives demand, notice of default and any extension of time or any other forbearance which may be extended by the Company.

The undersigned individual further agree(s) to pay any and all reasonable collection agency, attorney, and/or courts costs whether or not action is instituted for collection thereof, and if action is instituted for collection, such reasonable attorney fees as the court may award, including any attorneys' fees on appeal.

This guaranty shall continue in force until notice in writing, sent by registered or certified mail, return receipt requested is received by the Company. Said notice shall specify the date on which this guaranty is to be terminated; said date not to be less than sixty (60) days after such notice is received. Such termination shall in no way release the undersigned as to any sum or debt incurred prior to such termination, including any fees, charges, or expenses that accrue after termination but relate to transactions entered into prior to termination.

The guaranty shall be governed by and construed in accordance with the laws of the State of California. The guarantor consents to the exclusive jurisdiction and venue of the courts located in San Mateo County, California for any disputes arising under this guaranty.

Print Name: \_\_\_\_\_  
(Name of person guaranteeing payment, NO TITLE)

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ SS#: \_\_\_\_\_

Signature of person guaranteeing payment: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Business whose account is guaranteed: \_\_\_\_\_

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### CREDIT DEPARTMENT USE ONLY

Date: \_\_\_\_\_

Line of Credit: Approved / Denied

Amount: \$ \_\_\_\_\_ Acct #: \_\_\_\_\_