

Door 2, 76-92 Station Street,
Nunawading VIC 3131
T: 1300 093 003
E: sales@maximumpoweraustralia.com.au
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APPLICATION FOR CREDIT ACCOUNT



Customer Legal Entity (Applicant): _____

Trading Name (if different): _____

If a trustee, name of trust: _____

ABN: _____ Date Established: _____
(if a trustee, provide ABN of trust)

Description of Business: _____

Registered Address: _____

Postal Address (if different): _____

Telephone Number: _____ Email: _____

Contact Name (operations): _____

Contact Name (accounts): _____

Email Address (accounts): _____

Email Address (invoices): _____
(up to 3 email addresses)

| Directors/Partners | Addresses |
|--------------------|-----------|
| 1 | _____ |
| 2 | _____ |
| 3 | _____ |

Trade References (include full name, address and contact details)

1 _____ Phone: _____ Fax: _____

2 _____ Phone: _____ Fax: _____

3 _____ Phone: _____ Fax: _____

Estimated level of credit required per month: \$ _____

TERMS & CONDITIONS

1. Definitions and interpretation

a) In these terms and conditions, unless the contrary intention appears:

Account means any business credit account made available by Us to You in connection with the supply of Goods and Services;

Application means an application by You to establish an Account;

Corporations Act means the Corporations Act 2001 (Cth);

Goods means inventory and other goods supplied by Us to You;

Guarantor means a person named as a Guarantor in this document;

Loss includes any cost, expense or damage of any kind and includes consequential, special or indirect loss or damage or any fine or penalty imposed by a statutory or other authority;

Personal Information has the meaning given to that term by the Privacy Law;

PPSA means the Personal Property Securities Act 2009 (Cth);

Privacy Law means the Privacy Act 1988 (Cth) and all associated subordinated legislation as amended from time to time;

Services means services supplied by Us to You;

We or **Us** means Maximum Power Australia Pty Ltd ABN 56 613 240 412 and its related bodies corporate;

You means the customer making an Application and/or requesting the supply of Goods or Services from Us.

b) Singular words include the plural and vice versa. If a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning. A reference to a document includes a reference to that document

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as amended, novated, supplemented, varied or replaced. A reference to a party includes a reference to that party's successors and permitted assigns. A reference to a statute or regulation or a provision of a statute or regulation is a reference to that statute, regulation or provision as amended or a statute, regulation or provision replacing it. A word or term defined in the PPSA has the same meaning in these terms and conditions and a word or term defined in the Corporations Act that is not also defined in the PPSA has the same meaning in these terms and conditions. A word or term defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning where used in connection with the GST imposed under that Act.

2. Application of these terms and conditions

- a) These terms and conditions govern the supply by Us of Goods and Services to You and the establishment, operation and use by You of any Account, and the obligations of any Guarantor named in an Application.
- b) Your Application or Your request for Goods or Services constitutes an offer by You and each Guarantor for Us to provide You with an Account and to supply You with Goods and Services on these terms and conditions which may be accepted by Us establishing an Account or providing You with those Goods or Services.
- c) These terms and conditions will apply to any Account established and Goods and Services that We provide to You following the notification of these terms and conditions to You (and, unless otherwise agreed with You in writing, will apply to the exclusion of any other terms and conditions notified to or agreed with You or any Guarantor, or any terms and conditions proposed or notified by You or any Guarantor to Us).
- d) We may vary these terms and conditions by written notice to You. The continued use of the Account by You or any request for Goods or Services by You following delivery of such a notice will constitute Your and each Guarantor's acceptance of that variation.

3. Credit enquiries

- a) In considering any Application and at any time during which an Account is outstanding, You and each Guarantor authorise Us to make any enquiries We require to be satisfied as to Your and each Guarantor's creditworthiness, Your and each Guarantor's compliance with, and enforcing Our rights under, the terms of any Application and these terms and conditions, and registering Our interests under the PPSA. This includes Us obtaining credit or other information (including Personal Information) about You and each Guarantor from any credit provider, reporting agency or other persons, and collecting, storing, using, exchanging and disclosing that information, and any information that You or any Guarantor have provided to Us, as we reasonably require for this purpose (including disclosure on the Personal Property Security Register).
- b) You and each Guarantor must provide any authorisations or information We require from time to time to assist us in relation to this. If you do not provide the authorisations or information then We may be unable to process any Application.
- c) We will deal with any Personal Information about You or any Guarantor that we obtain in connection with this Application or the supply of Goods to You in accordance with all applicable legislative requirements including without limitation the Privacy Law. For further information on the way we use, disclose, store and manage personal information please refer to Our privacy policy available on our website.

4. No obligation to provide credit or supply Goods or Services

We may refuse any Application in our absolute discretion and refuse to supply Goods or Services to You (whether on credit using an approved Account or otherwise, and notwithstanding that We may have previously supplied You with Goods or Service on credit using an approved Account or otherwise). We will not be responsible for any Loss arising out of or in connection with Our refusal.

5. Terms of payment and supply

- a) You agree to pay Us by the date set out in each tax invoice/adjustment note from Us (or where no date is specified within 30 days from the date of issue of the tax invoice/adjustment note) the amounts set out in that tax invoice/adjustment note. All payments must be made in

Australian dollars and in immediately available funds and without any deduction or setoff.

- b) If any amount is not paid within the agreed period, then all amounts invoiced will be due and payable immediately.
- c) We reserve the right to suspend the Account where payment terms have not been met until such time as the Account is brought in line with payment terms.
- d) GST is payable in addition to any price for the Goods and Services provided by Us and must be paid at the same time as the relevant tax invoice/ adjustment note.
- e) If any amount is unpaid by the due date then, without prejudice to any other right or remedy We may have, We may charge You a late fee of 2% per annum above Our corporate overdraft rate from time to time calculated on the daily balance of the unpaid amount from the due date until the date of payment in full.
- f) We will not be responsible for any delay in supply of any Goods or Services due to causes beyond Our control.
- g) The supply of any Goods by Us does not confer on You any intellectual property rights in the Goods held by Us or any other person.

6. Orders

- a) You must place written orders for Goods with Us in the form specified by Us. We will not accept telephone orders.
- b) We may in Our discretion accept or reject any order You place for Goods with Us.
- c) You cannot cancel any order without Our prior written consent, which We may or may not grant at our discretion.

7. Delivery of Goods

- a) Any time or date or month stated by Us for anticipated or promised delivery of any Goods is a bona fide estimate only and not a contractual commitment.
- b) We will use reasonable endeavours to meet any estimated dates for delivery of Goods but will not be liable for any loss or damage suffered by You or any third party for failure to meet any estimated date.
- c) Upon delivery of Goods, You must check the invoice or other documentation provided by Us against the Goods delivered and ensure that all Goods have been received and that they are in good order

8. Returns for credit

- a) Subject to clause 12, unless otherwise agreed in writing, We will not accept any Goods returned for credit for reasons other than incorrect supply by Us or damage. If We accept damaged or faulty Goods returned for credit, We may, at our option, replace the Goods, or refund the price of the Goods.

9. Ownership of Goods

- a) Notwithstanding delivery of any Goods by Us to You, We retain ownership of all Goods until those Goods have been paid for in full and You have paid all other outstanding amounts owed by You to Us (whether owing under the Account or otherwise). You may supply the Goods to your customers or use the Goods in a manufacturing or construction process in the ordinary course of Your business before all outstanding amounts have been paid by You to Us. If You do supply the Goods to any of Your customers, You supply those Goods as principal and not as Our agent, however You agree that you hold the proceeds of the supply of the Goods on trust for and as agent for Us immediately when they are receivable or received. The creation of, or any failure of, any such trust will not in any way limit Your other obligations to Us in respect of those Goods (including any payment obligations).
- b) Until the Goods are supplied by You to any of Your customers or used by You in a manufacturing or construction process, You must maintain possession and control of the Goods, keep the Goods separate from all other goods, maintain the original labelling and packaging of the Goods, keep the Goods safe from damage or deterioration, and keep full and proper records in respect of the Goods.
- c) At any time until title passes, We are irrevocably entitled to inspect or to recover and retake possession of any Goods. You irrevocably authorise us to enter any premises or vehicles where We reasonably believe the Goods are located and You indemnify Us in respect of any liability arising from such entry.
- d) Our reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or

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comingled with any other goods and constitutes the grant of a purchase money security interest by You to Us in respect of all present and after acquired Goods supplied by Us to You and the proceeds of any Goods.

- e) Risk in any Goods supplied by Us to You passes to You on delivery of those Goods to You or Your agent.

10. Our security interest and the PPSA

- a) You and each Guarantor must (and must procure any other person to), if requested by Us, sign all documents, provide all necessary information and do any thing else required by Us to ensure that Our purchase money security interest is a perfected security interest and to otherwise give effect to these terms and conditions.
- b) You must not enter into any security agreement that permits any other person to have or to register any security interest in respect of any Goods or any proceeds from any Goods until We have perfected Our purchase money security interest.
- c) In addition to and without prejudice and in addition to Our other rights and remedies under the PPSA or otherwise, We (or Our agents) may without notice and at any time enter and inspect or recover possession of all Goods that have not been paid for in full from any site owned, possessed or controlled by You and You agree that We have an irrevocable licence to do so without incurring any liability to You. We will be entitled to deal with any Goods We recover in our absolute discretion.
- d) You agree that to the extent permitted by the PPSA, You waive any rights to receive the notifications, verifications, disclosures and other information specified under sections 95, 118, 121, 130, 132, 135 or 157 of the PPSA and agree that the provisions of Chapter 4 of the PPSA are excluded in relation to the Goods.
- e) You agree that the information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by You except where required by section 275(7) of the PPSA.

11. Indemnity

You indemnify Us against all Loss and liability We suffer or incur (either directly or indirectly) in connection with the establishment, operation and use (including any unauthorised use) of the Account, Your or any Guarantor's breach of these terms and conditions or any Application or any other act or omission by You or any Guarantor, or any amounts incurred or expended by Us in exercising or enforcing Our rights under these terms and conditions or any Application.

12. Exclusions and limitation of liability

- a) We only accept liability to You in connection with the supply of Goods and Services and the operation of the Account and any other agreement arising out of or in connection with their subject matter to the extent expressly provided in these terms and conditions. We exclude any other liability We might otherwise have to You or any Guarantor (whether based in contract, tort (including negligence), statute or otherwise).
- b) We accept liability to You to the extent that we have acted fraudulently or in wilful default of these terms and conditions. We accept liability to You under the Competition and Consumer Act 2010 (Cth) and other laws, to the extent not to do so would be illegal, or would make any part of these terms and conditions void or unenforceable. If We are liable for any non-excludable conditions, warranties or guarantees, and where permitted by law to do so, Our liability is limited to (at Our option) repairing or replacing the relevant Goods, resupplying the relevant or equivalent Services or, in either case, paying for the cost of doing so.

- c) Our maximum liability to You and any Guarantor for any Loss or liability You or any Guarantor or any other person may suffer or incur in connection with the establishment, operation and use by You of any Account and the supply by Us to You of any Goods or Services or any other agreement arising out of or in connection with the subject matter of these terms and conditions and any Application (whether based in contract, tort (including negligence), statute or otherwise) is, to the extent permitted by law, limited to a maximum amount equal to the amount You have paid to Us for the relevant Goods or Services pursuant to these terms and conditions.

13. Changes in address and other particulars

You must provide Us with written notice at least 14 days prior to any change in Your ownership, membership or control, or any change or proposed change in Your address or other details or those of any Guarantor or any insolvency event occurring in respect of You or any Guarantor. Notwithstanding any such changes, Your and each Guarantor's obligations under these terms and conditions and any Application continue and nothing in this clause effects Our rights to terminate or suspend the Account under clause 14.

14. Termination

- a) We may, in our absolute discretion, terminate an Account on written notice to You at any time.
- b) Unless We agree in writing, an Account will terminate automatically if You or any Guarantor become subject to any form of insolvency or You or any Guarantor are in breach of these terms and conditions or the Application, or You or any Guarantor makes any misrepresentation to Us.
- c) On termination of an Account, the balance of the Account is immediately due and payable by You.

15. General

- a) These terms and conditions and each Application are governed by the laws of Victoria and You and each Guarantor irrevocably submit to the jurisdiction of the courts exercising jurisdiction in Victoria.
- b) Failure by Us to enforce any of our rights under these terms and conditions or any Application does not constitute waiver of any of Our rights or Your or any Guarantor's obligations unless We agree in writing.
- c) The rights and remedies provided in these terms and conditions are cumulative with and not exclusive of the rights and remedies provided by law independently of these terms and conditions.
- d) These terms and conditions may only be varied by notice from Us to You in writing.
- e) You may not assign or transfer any of Your rights or obligations under these terms and conditions. We may assign our rights and obligations without Your consent.
- f) Unless We agree in writing, Your Application and these terms and conditions comprise the entire agreement between You, Us and each Guarantor in respect of any Account and the supply of any Goods and Services by Us to You.
- g) If a provision of these terms and conditions or any Application is void, voidable or unenforceable, it will be severed and the remainder of the terms and conditions will not be affected.
- h) You must pay any stamp duty assessed on any Account, Application or these terms and conditions and You must pay any fee to register or maintain any security interest that We hold in respect of the Goods supplied to You.

PLEASE READ THE FOLLOWING CAREFULLY. IF YOU DO NOT UNDERSTAND THIS DOCUMENT, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.

1. The Applicant has read and agrees to comply with and be bound by the above terms and conditions for the operation, establishment and use of a credit account with, and the order of goods and services from, Maximum Power Australia Pty Ltd ABN 56 613 240 412 (**Company**) and hereby applies for the establishment of a credit account and to commence trading with the Company in accordance with the above terms and conditions.
2. The Applicant represents and warrants to the Company that:
 - a. all statements made and documents provided by the Applicant are and will remain true and correct;

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- b. the credit account and goods or services are required by the Applicant for business or commercial purposes and will not be used for personal, domestic or household purposes;
- c. the Applicant has the power and capacity to enter into and perform the above terms and conditions;
- d. the signatory has the power and authority to, and will by signing this application, bind the Applicant to the above terms and conditions;
- e. the Applicant is able to pay its debts as and when they fall due; and
- f. the Applicant applies for the credit account and to trade with the Company in its own capacity and not as trustee, partner or agent or in any other capacity (unless disclosed on this application).

Signature of authorised signatory

Signature of authorised signatory

Name & position of authorised signatory

Name & position of authorised signatory

Date

Date

PLEASE READ THE FOLLOWING CAREFULLY. IF YOU DO NOT UNDERSTAND THE FOLLOWING, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE. AS PART OF THIS APPLICATION FOR A CREDIT ACCOUNT, THIS PERSONAL GUARANTEE AND INDEMNITY MUST BE COMPLETED AND SIGNED BY ALL DIRECTORS, SOLE TRADERS OR PARTNERS IN THE PRESENCE OF INDEPENDENT WITNESSES (NOT SPOUSES/PARTNERS OR OTHER FAMILY MEMBERS)

Guarantors (including full name, address and contact details)

1 _____

2 _____

In consideration of Maximum Power Australia Pty Ltd ABN 56 613 240 412 (**Company**) providing the Applicant with a credit account and/or supplying the Applicant with goods and services as requested by or on behalf of the Applicant, each Guarantor unconditionally and irrevocably guarantees to the Company on demand and as a continuing obligation, the due and punctual performance of all of the Applicant's obligations in respect of this application and the above terms and conditions, and as a separate and additional liability, indemnifies the Company against all liability (including in tort or otherwise), loss, damage, cost, expense, actions, proceedings and judgments of any nature, incurred by, brought, made or recovered against Company or brought, made or recovered against the Applicant arising from any default or delay in the due and punctual performance of the Applicant's or any Guarantor's obligations under this application or the above terms and conditions and agrees that:

- a. this guarantee and indemnity is governed by the attached terms and conditions and the Guarantor agrees to comply with and is bound by the terms of this guarantee and indemnity and the above terms and conditions;
- b. this guarantee and indemnity will apply following acceptance by the Company of this application or the supply of any goods or services to the Applicant (whichever is the earlier) and that this may occur without further notice to the Guarantor;
- c. the liability of the Guarantor under this guarantee and indemnity is not affected by anything that might operate to release or exonerate the Guarantor in whole or in part from its obligations at law or in equity including, without limitation, the Applicant being granted any time, release, compromise or any other indulgence, any acquiescence, delay, acts, omissions or mistakes on the part of the Company, any novation of a right of the Company or the Applicant, any variation of the attached terms and conditions, or the invalidity or unenforceability of an obligation or liability of the Applicant or any Guarantor;
- d. this guarantee and indemnity and the liability of the Guarantor under this guarantee and indemnity is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover the Applicant's obligations as amended, varied, supplemented, renewed or replaced and the Guarantor waives any right it has of first requiring the Company to commence proceedings or enforce any other right against the Applicant or any other person before claiming under this guarantee and

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indemnity, and a notice by any officer of the Company to the Guarantor stating that any amounts are owing by the applicant or the Guarantor will be conclusive evidence of the amounts;

- e. this guarantee and indemnity and the liability of the Guarantor is a continuing obligation and remains in full force and effect for so long as the Applicant has any liability or obligation to the Company until all of those liabilities or obligations have been fully discharged;
- f. the Guarantor must make all payments that become due to the Company under this guarantee and indemnity, free and clear and the Guarantor has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this guarantee and indemnity;
- g. the Guarantor must not claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Company or prove in competition with the Company if a liquidator, provisional liquidator, receiver, official manager or trustee in bankruptcy is appointed in respect of the Applicant or if an insolvency event occurs in respect of the Applicant; and
- h. if a claim that a payment or transfer to the Company by the Applicant or any other person is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors) is upheld, conceded or compromised then the Company will be entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment or transfer had not occurred,

and each Guarantor represents and warrants to the Company that:

- i. the Guarantor has the power and capacity to enter into and perform this guarantee and indemnity;
- j. the Guarantor has the power and authority to, and will by signing this guarantee and indemnity, bind the Guarantor to this guarantee and indemnity;
- k. the Guarantor is able to pay its debts as and when they fall due; and
- l. the Guarantor gives this guarantee and indemnity in its own capacity and not as trustee, partner or agent or in any other capacity.

Signature of Guarantor

Signature of Guarantor

Name of Guarantor

Name of Guarantor

Date

Date

Signature of independent witness

Signature of independent witness

Name of independent witness

Name of independent witness

Date

Date

Please return this complete document to the below.

Attention – New Accounts – Maximum Power
Email: sales@maximumpoweraustralia.com.au