

# CREDIT APPLICATION



## OmniDuct AZ, LLC

**Company Headquarters Office:**

**6400 Artesia Boulevard**

**Buena Park, CA 90620**

**(714) 385-8900 - (888) 444-3828**

**Credit Department:**

**(714) 385-5218 - FAX (714) 769-1694**

# Open Account Credit Application and Agreement

Please Check One: ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ LLC

Name of Business ("Customer"): \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: (    ) \_\_\_\_\_ Fax No.: (    ) \_\_\_\_\_ Email : \_\_\_\_\_

Type of Business: \_\_\_\_\_ Date Business Started: \_\_\_\_\_

Federal Tax No.: \_\_\_\_\_ Contractor's License No: \_\_\_\_\_ Number of Employees: \_\_\_\_\_

Other Trade Names/Styles (DBAs), if any: \_\_\_\_\_

All Additional Locations (Including Warehouse/Storage): \_\_\_\_\_

Email (Billing): \_\_\_\_\_ Accounting Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_

**Owners, Partners, Officers** (all owners, partners, officers to complete section) (Attach additional sheets as necessary):

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Birth Date: \_\_\_\_\_

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

Telephone Number.: \_\_\_\_\_ Social Security Number.: \_\_\_\_\_ Driver's License Number.: \_\_\_\_\_

Percentage of Shares Owned (if corporation): \_\_\_\_\_

Spouse's Name: \_\_\_\_\_ Spouse's Social Security No.: \_\_\_\_\_

Bank Reference	Branch Address	Account Number & Telephone Number
_____	_____	_____
<b>Open Account References</b>	<b>Address</b>	<b>Telephone Number</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

If this Application and Agreement is signed by or on behalf of a corporation, the corporation and the officers signing the Agreement warrant and represent that they have been duly authorized and directed to enter into this Agreement by a resolution of its Board of Directors, duly passed and adopted by a majority of said Board at a meeting thereof duly called, noticed, and held.

By signing this Agreement each of you agree to all of the terms, covenants, and conditions contained in this Agreement including the Terms and Conditions of Open Account Agreement on the following pages.

**OFFICER'S/OWNER'S Signature**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**OFFICER'S/OWNER'S Signature**

By: \_\_\_\_\_

Title: \_\_\_\_\_

# TERMS AND CONDITIONS OF OPEN ACCOUNT AGREEMENT

1. It is hereby agreed by and between CUSTOMER and OmniDuct AZ, LLC (OmniDuct AZ), that all invoices provided by OMNIDUCT AZ to CUSTOMER pursuant to the terms of this Agreement are due and payable within thirty (30) days of the date of said invoice. If payment is not made when due, this agreement shall be deemed breached. Should any invoice not be paid within the time set forth herein, OMNIDUCT AZ will incur damages including but not limited to, administration costs for billing, accounting for and collecting past due payments as well as carrying charges and attorney fees and costs on amounts past due from CUSTOMER. CUSTOMER agrees to pay OMNIDUCT AZ service charges on all amounts past due at the rate of 1 ½ % per month (18% per annum), until paid.
2. All invoices and statements provided by OMNIDUCT AZ shall be sent via email or similar electronic means unless other arrangements are requested by CUSTOMER. The balance of any credit memo issued by OMNIDUCT AZ expires 24 months following issuance.
3. CUSTOMER hereby grants and transfers to OMNIDUCT AZ a security interest in any and all goods and materials and the proceeds thereof, as defined in Section 47-9315 of the Arizona Revised Statutes, in all goods sold by OMNIDUCT AZ to CUSTOMER (as described in OMNIDUCT AZ's invoices to CUSTOMER). Until all indebtedness of CUSTOMER to OMNIDUCT AZ is paid in full, OMNIDUCT AZ shall have all the rights of a secured party as provided in the applicable Arizona Commercial Code, including the right to collect any deficiency. This is a purchase money security interest.
4. In the event any action at law or in equity is commenced to enforce or to interpret the terms of this Agreement, the prevailing party shall be entitled to actual attorney's fees and costs incurred.
5. It is hereby agreed by and between the parties hereto that this Agreement is being made and entered into in the city, county and State in which the company office of OMNIDUCT AZ is located, and that this Agreement shall be governed by and construed according to the laws of the State of California. Any and all actions initiated to enforce or interpret this Agreement shall be brought in the county in which the company office is located.
6. It is hereby agreed by and between the parties hereto that this Agreement will be effective only after it has been accepted by OMNIDUCT AZ at its company address.
7. The parties hereto acknowledge that this transaction, and all future transactions, is commercial in nature and not for personal, family or household purposes.
8. CUSTOMER hereby authorizes OMNIDUCT AZ to contact credit reporting organizations and any and all of the financial institutions and businesses provided regarding CUSTOMER'S credit.
9. CUSTOMER hereby acknowledges and agrees that the information as set forth in this Application and Agreement as well as any tax returns and/or financial statements that may be given to OMNIDUCT AZ in connection with it, is true and correct as of the date presented to OMNIDUCT AZ and is made in order to induce OMNIDUCT AZ to provide credit to CUSTOMER.
10. LIQUIDATED DAMAGES: BECAUSE OF THE NATURE OF THE PROPERTY AND/OR SERVICES TO BE PROVIDED BY OMNIDUCT AZ PURSUANT TO THIS AGREEMENT, IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY PROXIMATELY RESULT FROM OMNIDUCT AZ'S FAILURE TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR FROM THE FAILURE OF THE PROPERTY TO OPERATE PROPERLY. THEREFORE, IF THERE SHALL AT ANY TIME BE OR ARISE ANY LIABILITY ON THE PART OF OMNIDUCT AZ BY VIRTUE OF THIS AGREEMENT, WHETHER DUE TO THE NEGLIGENCE OF OMNIDUCT AZ OR OTHERWISE, SUCH LIABILITY SHALL BE LIMITED TO AN AGGREGATE AMOUNT OF FIVE HUNDRED DOLLARS (\$500.00). THIS SUM SHALL BE PAID AND RECEIVED AS LIQUIDATED DAMAGES AND NOT AS A PENALTY. THIS LIABILITY SHALL BE COMPLETE AND EXCLUSIVE.
11. CUSTOMER shall indemnify and hold OMNIDUCT AZ harmless from all liability from all losses, claims, fines, penalties, assessments, costs (including attorneys' fees and costs), damages or injuries to persons or property (real or personal) resulting from the negligence, use or misuse of the property sold to CUSTOMER.
12. CUSTOMER acknowledges reading and understanding this Agreement, receiving a copy, and accepts all of its terms and conditions. If more than one person signs this Agreement, each of you understands that you are jointly and severally liable under this Agreement.
13. The risk of loss of the goods shall pass to CUSTOMER as soon as the goods are ready for delivery, and without regard to any notice that they are ready for delivery.
14. All orders are shipped F.O.B. point of shipment. OMNIDUCT AZ shall not be liable for any loss or damaged sustained in transit and CUSTOMER shall not be entitled to any offset or deduction for any such loss or damage. Claims for damage in transit must be asserted by CUSTOMER against the carrier.
15. Any objection for shortages, damage or that goods are defective or non-conforming in any manner shall be deemed waived if not made in writing and delivered to OMNIDUCT AZ within ten (10) days of delivery of the goods. No claims will be allowed unless goods are held intact and subject to inspection by OMNIDUCT AZ.
16. OMNIDUCT AZ may at any time decline to make any shipment, delivery or perform any work except upon receipt of full cash payment.
17. All custom or special orders are final. Orders cannot be canceled except upon mutual agreement of the parties.
18. All notices to OMNIDUCT AZ under this Agreement shall be made to the Credit Department at its company address.
19. This Agreement, including the Terms and Conditions of the Continuing Personal Guaranty set forth on page 3, is intended to represent the entire agreement of the parties with respect to its subject matter, and it supersedes and merges all prior and contemporaneous negotiations, agreements, promises and representations. This Agreement may be updated from time to time by OMNIDUCT AZ. The latest Agreement is available at [www.omniduct.com](http://www.omniduct.com).
20. THIS AGREEMENT MAY ONLY BE MODIFIED IN WRITING AND SIGNED BY THE PARTIES TO BE CHARGED WITH THE MODIFICATION, AND IT MAY NOT BE MODIFIED OR AMENDED ORALLY. CUSTOMER ACKNOWLEDGES AND AGREES THAT OMNIDUCT AZ IS NOT BOUND BY ANY TERMS AND CONDITIONS SET FORTH IN ANY WRITING WHICH HAS NOT BEEN DULY SIGNED AND ACCEPTED BY A COMPANY OFFICER OF OMNIDUCT AZ.

(Initials)

(Initials)
21. If any term of this agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms shall remain in full force and effect
22. In the event a dispute arises among the parties, CUSTOMER agrees to make payment on all goods not subject to said dispute, and hereby waives any and all rights to offset and will not offset sums due and payable on non-disputed sales against those sums involving separate transactions which remain disputed.
23. CUSTOMER agrees to pay the current service charge of \$35.00 for each returned check.
24. CUSTOMER consents to OMNIDUCT AZ's recording of phone calls for quality assurance.

## CONTINUING PERSONAL GUARANTY

I/We (GUARANTOR) personally, jointly and severally, guarantee payment of all indebtedness now due OmniDuct AZ, LLC (OMNIDUCT AZ), and all future indebtedness due OMNIDUCT AZ by CUSTOMER and I/We unconditionally promise to pay said indebtedness to OMNIDUCT AZ immediately upon demand and agree to the terms, covenants and conditions contained in this Continuing Personal Guaranty agreement. Upon any default of the CUSTOMER, OMNIDUCT AZ may, at its option, proceed directly and at once, without notice, against the undersigned to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against the CUSTOMER or any other person.

The undersigned assumes the responsibility for being and keeping themselves informed on the financial condition of the above applicant and of all other circumstances bearing upon the risk of non-payment of the indebtedness which diligent inquiry would reveal, and that absent a request for such information by the undersigned, OMNIDUCT AZ shall have no duty to advise the undersigned of information known to it regarding such condition or any such circumstance.

Guarantor's Address: \_\_\_\_\_

Guarantor's Phone Number.(    ) \_\_\_\_\_ Social Security Number.: \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

Date: \_\_\_\_\_  
Type or Print Name Signature of Guarantor

Guarantor's Address: \_\_\_\_\_

Guarantor's Phone Number.(    ) \_\_\_\_\_ Social Security Number.: \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

Date: \_\_\_\_\_  
Type or Print Name Signature of Guarantor

Approved and Accepted By OMNIDUCT AZ On: \_\_\_\_\_

A. Paragraphs 3 through 6, inclusive, hereinabove, are incorporated by reference herein.

B. The word "indebtedness" is used herein in its most comprehensive and broadest sense and includes any and all advances, debts, obligations and liabilities of CUSTOMER heretofore, now, or hereafter made, incurred or created, whether voluntary or involuntary, and however arising whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether CUSTOMER may be liable individually or jointly with others, or whether recovery upon such indebtedness may be, or hereafter become barred by any statute of limitations or whether such indebtedness may be or hereafter become otherwise unenforceable.

C. The liability of GUARANTOR shall be unlimited. This guaranty shall not apply to any indebtedness created after actual receipt via Certified Mail by OMNI's Credit Department of written notice of its revocation as to future transactions. Any payment by GUARANTOR shall not reduce the maximum obligation hereunder, unless written notice to that effect is actually received by OMNIDUCT AZ at or prior to the time of such payment.

D. GUARANTOR specifically authorizes OMNIDUCT AZ, without notice or demand, and without affecting GUARANTOR's liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate or otherwise change from time-to-time the time for payment of the terms, including increase or decrease of the service charge thereon; (b) the taking and holding of security for the payment of this guaranty or the indebtedness guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order and manner of sale thereof as OMNIDUCT AZ, in its sole and exclusive discretion, may determine; (d) release or substitute any one or more of the GUARANTORS.

E. No exercise or non-exercise by OMNIDUCT AZ of any right given to OMNIDUCT AZ, no dealing by OMNIDUCT AZ with CUSTOMER or any GUARANTORS or endorsers and no change, impairment, or suspension or any right or remedy of OMNIDUCT AZ shall in any way affect any of GUARANTOR's obligations hereunder or any security furnished by GUARANTOR or CUSTOMER or give GUARANTOR any recourse against OMNIDUCT AZ.

F. The obligations hereunder are joint and several, and independent of the obligations of CUSTOMER, and a separate action or actions may be brought and prosecuted against GUARANTOR whether an action is brought against CUSTOMER or whether CUSTOMER be joined in any such action or actions.

G. GUARANTOR specifically waives any right to require OMNIDUCT AZ to: (a) proceed against CUSTOMER; (b) proceed against or exhaust any security held from CUSTOMER; or (c) pursue any other remedy in OMNIDUCT AZ's power whatsoever. GUARANTOR specifically waives any defense arising by reason of any disability or other defense of CUSTOMER or by reason of the cessation from any cause whatsoever of the liability of CUSTOMER. GUARANTOR specifically waives any presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, and notices of acceptance of this guaranty and of the existence, creation or incurring of new or additional indebtedness.

H. Any indebtedness of CUSTOMER now or hereafter owed to GUARANTOR is hereby subordinated to the indebtedness of CUSTOMER to OMNIDUCT AZ; and such indebtedness of CUSTOMER to GUARANTOR, if OMNIDUCT AZ so requests, shall be collected, enforced, and received by GUARANTOR as trustee for OMNIDUCT AZ and be paid over to OMNIDUCT AZ on account of the indebtedness of CUSTOMER to OMNIDUCT AZ but without reducing or affecting in any manner the liability of GUARANTOR under the provisions of this guaranty.