



Continental Power

Distributor Agreement

COMPANY NAME _____ FEDERAL ID NUMBER _____

DOING BUSINESS AS (DBA) IF DIFFERENT _____ STATE TAX ID NUMBER _____

LAST NAME (PRINCIPLE) _____ FIRST NAME _____ M.I. _____ SOCIAL SECURITY NUMBER _____

MAILING ADDRESS _____ BUSINESS NUMBER _____

CITY _____ STATE _____ ZIP CODE _____ FAX NUMBER _____

SHIPPING ADDRESS (IF DIFFERENT THAN MAILING ADDRESS) _____ CELL NUMBER _____

CITY _____ STATE _____ ZIP CODE _____ ALTERNATIVE NUMBER _____

EMAIL (PRINCIPLE) _____ STATE(S) YOU ARE A LIC. ELECTRICIAN IN (OPTIONAL) _____

ADDITIONAL PERSON AUTHORIZED TO ORDER (OPTIONAL) _____ EMAIL (IF YOU'D LIKE US TO KEEP THIS PERSON INFORMED) _____

ADDITIONAL PERSON AUTHORIZED TO ORDER (OPTIONAL) _____ EMAIL (IF YOU'D LIKE US TO KEEP THIS PERSON INFORMED) _____

ADDITIONAL PERSON AUTHORIZED TO ORDER (OPTIONAL) _____ EMAIL (IF YOU'D LIKE US TO KEEP THIS PERSON INFORMED) _____

CONTINENTAL POWER ACCOUNT MANAGER'S NAME _____

CREDIT CARD INFORMATION (OPTIONAL)

PLEASE INCLUDE YOUR CREDIT CARD INFORMATION IF YOU WOULD LIKE US TO KEEP IT ON FILE IN ORDER TO EXPEDITE THE ORDER FULFILLMENT PROCESS.

VISA MASTERCARD AMEX

CARDHOLDER'S NAME

CREDIT CARD NUMBER

EXPIRATION DATE

CID#

READ AND SIGN APPLICATION BEFORE SUBMITTING

BY SIGNING BELOW, THE DISTRIBUTOR ACKNOWLEDGES THAT HE/SHE HAS READ AND AGREES TO COMPLY WITH THE CONTINENTAL POWER CORPORATION DISTRIBUTOR POLICIES WHICH ARE INCORPORATED INTO AND MADE A PART OF THIS DISTRIBUTOR AGREEMENT. THE DISTRIBUTOR AGREES THAT THE TERMS AND CONDITIONS OF THE DISTRIBUTOR AGREEMENT AND THE POLICIES OF CONTINENTAL POWER CORPORATION MAY BE AMENDED AT ANY TIME UNDER THE SOLE DISCRETION OF CONTINENTAL POWER CORPORATION, AND AGREES TO ABIDE BY ALL SUCH AMENDMENTS. NOTIFICATION OF AMENDMENTS SHALL BE GIVEN AS PROVIDED IN THE POLICIES.

X _____
SIGNATURE (REQUIRED TO PROCESS APPLICATION)

DATE

Continental Power Corporation Distributor Agreement

The Distributor Policies herein are designed to provide you - the authorized Distributor (hereafter referred to as Distributor) with information necessary to represent Continental Power Corporation (hereafter referred to as the Company) name and to sell and service energy management products to customers as an Independent Contractor. The Distributor Policy is incorporated into, and forms an integral part of, the Distributor Agreement. The Company reserves the right to amend the Distributor Agreement (including these Distributor Policies) and its prices in its sole and absolute discretion. By entering into the Distributor Agreement, you agree to abide by all amendments that the Company elects to make. Amendments shall be effective upon notice to all Distributors that the Distributor Agreement has been modified. Notification of amendments shall be given to all Distributors by one or more of the following methods:

1. Posting on the Business Owner Login section of the Company's official web site;
2. Electronic mail (e-mail);
3. Inclusion in Company periodicals; or
4. Special mailings.

Your continuation as a Distributor and failure to cancel your Distributor Agreement following such notification constitutes your acceptance of any and all amendments.

1. Terms and Conditions

- a. The Distributor agrees to conduct business in a professional, businesslike manner at all times while marketing and selling the Company equipment and systems or conducting installations and service for the Company customers.
- b. *The Distributor may make no representations with regard to the performance of any product acquired from the Company other than those representations expressly authorized by the Company, in writing.* The Company shall not be responsible for any claims arising out of any advertising, verbal statements or representations by Distributor that are not officially approved by the Company in writing. The Distributor shall hold harmless and indemnify the Company for any damages or expenses caused as a result of any such unapproved communications. Any untrue, unsubstantiated or any otherwise unauthorized statements, claims or representations made by Distributor pertaining to product performance shall be grounds for immediate termination of this agreement. Distributor will use only sales, promotional, marketing and technical material provided by company and will not publish, print, offer or provide any other documents, material, or information in the marketing and sale of Company's products without the express, written consent of the Company. Distributor will present no test results, data or evaluations of the Company's products other than those provided by the Company without the express, written consent of the Company.
- c. No Distributor has the power or authority to bind the Company or make promises or representations on behalf of the Company to third parties without the prior written consent of the Company.
- d. The Company reserves the right to deny any prospective Distributor's application herein and to suspend immediately and terminate permanently any Distributor upon 30 days prior written notice should the Distributor violate any of the terms, conditions, or any policies stated herein.
- e. The Distributor Agreement between the Company and Distributor does not create an employer/employee relationship, agency, partnership, or joint venture between the Company and Distributor. Distributor shall not be treated as an employee for Distributor's services or for Federal or State tax purposes. Distributor shall make no representations, expressed or implied that Distributor is other than an independent contractor of the Company or that Distributor has any authority to bind the Company in any fashion whatsoever.
- f. The Distributor will obey all laws pertaining to the operation of its business including any applicable licensing fees or taxes required by local, state, or federal agencies. Distributor is responsible for paying local, state and federal taxes on any income generated as a Distributor. Every year, the Company will provide an IRS Form 1099 MISC (Non-employee Compensation) earnings statement to each Distributor who:
 - i. Had earnings of over \$600 in the previous calendar year (Earnings typically come from large commercial system sale commissions.); or
 - ii. Made purchases during the previous calendar year in excess of \$5000.
- g. Notwithstanding any other provision herein to the contrary, the Company hereby reserves the right to immediately terminate this Distributor Agreement for Distributor's failure to comply with any of the requirements itemized above.
- h. In order to participate in this market, you may need to make an investment in testing equipment to evaluate certain types of electrical distribution systems. There is no fee to become a Distributor.
- i. The distributor agrees to keep confidential, both during the term of this Agreement and after its termination.
 - i. Information obtained from the Company with respect to commercial proposals developed for the distributor for presentation to the customer on behalf of Continental Power.
 - ii. Programs, spreadsheets, algorithms and formulas provided to the distributor to enable calculation of capacitance or KVAR

2. Product Pricing will be mandated per the Company's latest published pricing guide.

- a. The Company reserves the right to amend this pricing structure at any time without prior notification to Distributors.
- b. It is understood that large accounts may require more favorable pricing based upon volume commitments. All volume pricing schedules must be agreed to in writing. All large account pricing schedules are considered confidential and must not be published, posted or communicated to others in any way.
- c. The Company publishes the Mandatory Retail Price (MRP) of all its products and no Distributor may undersell that price without prior written approval of the Company in its sole discretion.

3. Training

- a. The company encourages training and will offer training periodically via conference calls and in-person training. Proper training is vital for proper representation of the Company's products. The distributor agrees to participate in trainings to insure adequate knowledge on the products and business procedures.
- b. The Distributor will maintain the strict confidence of all material acquired and information learned during the course of product training which has been designated by the Company as proprietary or confidential.

4. Shipping and Freight

- a. All freight will be shipped prepaid or UPS Ground unless otherwise agreed to in writing by the contracting parties. The price quoted and charged for freight is based on estimated weight and current carrier listing and may be subject to changes.
- b. Notwithstanding any other terms herein, the risk of loss to the systems shall be upon the carrier until said product is received and inspected by the purchaser/deliverer.
- c. If shipment is received with damaged or missing parts, the purchaser/deliverer should contact the Company for further instructions in order to rectify the problem.

5. Service and Installation

- a. The Distributor is required to provide installation and ongoing service, if required, to customers. Distributor should have a trained service technician to conduct periodic service calls or installations when required for the products.
- b. The Distributor agrees to train in accordance with the Company's instructions and procedures the personnel designated by the Distributor concerning the proper installation and service of the products when necessary.
- c. The Distributor will not alter or otherwise modify any aspect of the design, installation, function, or operation of any product acquired from the Company without the express, written consent of the Company.

6. Warranty, Performance Guarantee, and Returns

- a. The Company offers a Limited Warranty on all products. Warranty periods vary based on products and therefore current published literature specific to that product should be consulted.
- b. It is the customer's responsibility to return warranty items to the Company and the Company will pay for the shipping back to the customer for warranty returns.
- c. Requests to return unused products after 90 days for whatever reason must be preceded by a written request submitted to the Company. The return may be implemented upon an acknowledgment and consent of return signed by the Company.
- d. These returns will be at the sole discretion of the Company and are subject to a minimum 10% restocking fee:
 - i. All items returned must be currently offered in the latest published catalog or on the web site, and;
 - ii. Products must be returned in salable condition.
 - iii. The distributor is responsible for all shipping fees.
 - iv. If products are received and deemed to have been used, the products may be depreciated based on Continental Power Corporation's evaluation.
- e. If a Distributor voluntarily terminates this Distributorship Agreement or this agreement is terminated for any reason, the Distributor may return all products

purchased within the past 12 months for a full refund less a 10% restocking fee.

i. Only product in resalable condition may be returned.

ii. An RMA (Return Material Authorization) must be obtained before shipping items back to the Company. You may obtain an RMA by calling Continental Power Customer Service at 888.6POWER4 (888.676.9374).

7. Trade Shows, Marketing Materials, Distributor Websites

- a. The Distributor is permitted to display Company products at regional trade shows for industry sectors in which they are primarily focused. However, the Company permits only one Distributor to participate in any such trade show. Approval will typically be granted to the first Distributor who submits an official advertisement of the event, a copy of the contract signed by both the Distributor and the event official, and a receipt indicating that a deposit for the booth has been paid. Approval is given only for the event specified. To insure approval for a show has not already been issued, the Distributor should contact the Company in writing for conditional approval prior to submitting a deposit to the event promoter.
- b. The Company cannot guarantee referrals back to Distributor when a lead is generated from a trade show. The Company will use best efforts to send leads and inquiries back to the appropriate Distributor.
- c. The Distributor is granted the right to use the Company's trademarks, trade names, and logos in printed materials unless the Company notifies the Distributor otherwise. All marketing materials must be submitted to the Company for approval to ensure accurate content.
- d. The Distributor may create marketing materials using approved images and graphics which can be found on the Distributor area of the Company website. All marketing materials must be submitted to the Company for approval to ensure accurate content.
- e. The Distributor is permitted to include company products on the Distributor's website. No pricing information is to be included to protect individual distributor's pricing structures. No trade names including PowerwoRx and Continental Power Corporation are to be used in the distributor website. All website content must be submitted to the company for approval to ensure accuracy.

8. Notices, Arbitration, Governing Law Delaware, Jurisdiction and Venue

- a. Any notices to the Continental Power Corporation shall be sent to the Company's corporate offices at 2220 Ridgeview Drive, Greensburg, PA 15601. Notices to Distributor shall be sent to the Distributor's address on file with the Company.
- b. Any controversy or claim arising out of or relating to the Distributor Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Distributor waives all rights to trial by jury or by any court. All arbitration proceedings shall be held in the city of Wilmington, Delaware. There shall be one arbitrator, an attorney at law, who shall have expertise in business law transactions with a strong preference being an attorney knowledgeable in the direct selling industry, selected from the panel which the American Arbitration Association provides. The prevailing party shall be entitled to receive from the losing party **OR** each party to the arbitration shall be responsible for its own costs and expenses of arbitration, including legal and filing fees. The decision of the arbitrator shall be final and binding on the parties and may, if necessary, be reduced to a judgment in any court of competent jurisdiction. This agreement to arbitration shall survive any termination or expiration of the Agreement.
- c. Nothing in the Distributor Agreement or these Policies shall prevent the Company from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, preliminary injunction, permanent injunction or other relief available to safeguard and protect the Company's interest prior to, during or following the filing of any arbitration or other proceeding or pending the rendition of a decision or award in connection with any arbitration or other proceeding.
- d. Jurisdiction and venue of any matter not subject to arbitration shall reside exclusively in New Castle County, State of Delaware. The Federal Arbitration Act shall govern all matters relating to arbitration. The law of the State of Delaware shall govern all other matters relating to or arising from the Distributor Agreement.

9. Exclusive Territories and Customers

- a. There are no exclusive territories granted to any Distributor. No franchise fees are required.
- b. The Company, in its sole discretion, may grant exclusive rights to a Distributor to conduct all business with a particular customer or market segment, and each Distributor will not attempt to transact business with any third party so designated. All "protected" and "exclusive" customer designations are listed on the authorized distributor section of the company website.

10. Delays

The Company shall not be responsible for delays or failures in performance of its obligations when performance is made commercially impracticable due to circumstances beyond its reasonable control. This includes, without limitation, strikes, labor difficulties, riot, war, fire, death, curtailment of a party's source of supply, or government decrees or orders.

11. Waiver

The Company never gives up its right to insist on compliance with the Agreement and with the applicable laws governing the conduct of a business. No ailure of the Company to exercise any right or power under the Agreement or to insist upon strict compliance by the Distributor with any obligation or provision of the Agreement, and no custom or practice of the parties at variance with the terms of the Agreement, shall constitute a waiver of the Company's right to demand exact compliance with the Agreement. Waiver by the Company can be effectuated only in writing by an authorized officer of the Company. The Company's waiver of any particular breach by Distributor shall not affect or impair the Company's rights with respect to any subsequent breach, nor shall it affect in any way the rights or obligations of any other Distributor. Nor shall any delay or omission by the Company to exercise any right arising from a breach affect or impair the Company's rights as to that or any subsequent breach. The existence of any claim or cause of action of Distributor against the Company shall not constitute a defense to the Company's enforcement of any term or provision of the Agreement.

12. Severability

If any provision of the Agreement, in its current form or as may be amended, is found to be invalid or unenforceable for any reason, only the invalid portion(s) if the provision shall be severed and the remaining terms and provisions shall remain in full force and effect. The severed provision, or portion thereof, shall be reformed to reflect the purpose of the provision as closely as possible.

13. Errors or Questions

If Distributor has questions about or believes any errors have been made regarding commissions, orders, or charges, Distributor must notify the Company in writing within 60 days of the date of the purported error or incident in question. The Company will not be responsible for any errors, omissions or problems not reported to the Company within 60 days.