

# CREDIT APPLICATIONS: Goldilocks (Too Much, Too Little, Just Right)



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## Where is this presentation going?

- Into the Woods – An overview of initial considerations
- Into the Bears' house – Information Page
- Too much, too little, just right – Terms and Condition considerations



## PURPOSE OF THE CREDIT APPLICATION

- Before heading into the weeds, help answer this fundamental question: Why do you want or need a credit application? (And, yes, there is a difference between “want” and “need”).



# INTO THE WOODS

INITIAL CONSIDERATIONS FOR ANY CREDIT APPLICATION

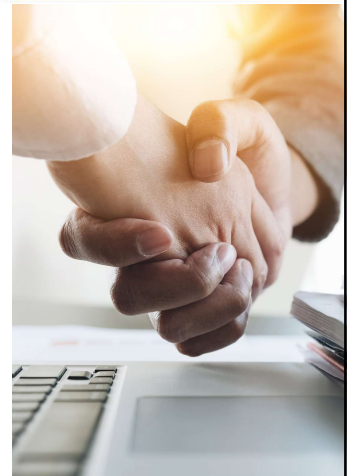
## Initial Considerations – What to think about

- Length – How long is acceptable?
- Font Size
  - Legibility
  - Adhesion concerns (And, what is an “adhesion contract”)
- Consumer or Commercial – Why distinguished?
- Do you require a financial statement?
- Credit Limit – include on face or not?



## Terms and Conditions – Initial thoughts

- What T&C's are critical in your industry?
- What T&C's are important to your specific business?
- What T&C's do the lawyers think are critical?



## How do you link your documents?

- Credit Application
- Invoices
- Delivery Tickets
- Statement
- Purchase Orders



## Business Specific Concerns

- Single State or Multi-State – Where are your branches/offices/locations?
- Does that make a difference?
- Do you use trade names or have multiple corporate entities?



## Red Flags?

- Do you have Red Flag policies?
- How do you guard your customer's sensitive information?



## Signatures

- Electronic/Digital
- Wet Ink
- The story of the left-handed husband – Forgery Protection



## Guarantors

- Who?
- Why?
- How many?



## Credit Analysis

- What is the purpose of the information you will gather?
- How deep do you dive?
- Sales v. Credit – Who controls this process?



## INTO THE BEARS' HOUSE

THE INFORMATION PAGE

## Basic Information

- Date of Contract
  - Top of Page?
  - Adjacent to Signature?
  - Significance?
- Customer's Name
  - Legal Corporate Name
  - Individual d/b/a
  - Do you verify?
- Legal Status
  - Type of entity
  - Active, Inactive, Dissolved, Suspended –  
What do these terms mean?



## Basic Information (Continued)

- Federal Tax ID/Social Security Number (Red Flags consideration)
- Are purchase orders required?
  - Yes or No
  - Impact on the “battle of the forms”?
- Who is authorized to order on the account?
- How much (estimate) does customer anticipate ordering per month?
- Is applicant a certified Minority, Women, and Disadvantaged Business Enterprise (MWDDBE)?
- Sales Tax Exempt (yes or no) – If yes, how do you verify?





## Basic Information (Continued)

- Date entity organized or business opened
  - Why does this matter?
- Licensed?
  - Depends upon the industry whether this is necessary
  - If so, license number and state?
- Has either the entity or any principal filed bankruptcy?
  - If so, when?
  - What chapter?
  - Discharged or dismissed (and what is the difference)



## Basic Information (Continued)

- Addresses:
  - Invoices/Statements (Main office)
    - Include telephone number and email address
  - Shipping Address
    - Will this account be project based?
    - Is this an industry specific consideration?
- Accounts Payable Contact Person
  - Name
  - Telephone/Email
- Authorized Purchasers (who can order on the account)



## Basic Information - Personal

- Principal(s) contact information (Red Flags)
  - Name
  - Title
  - Address
  - All telephone numbers/email address
  - Social Security Number/Date of Birth/Driver's License Number
    - Why?



## Basic Information: References

- Bank
- Trade
- What else might you want?
- Information:
  - Referring Party's name
  - Address
  - Telephone/Email
  - Account Number (Red Flag)

## References

References for  
the end of the



## Disclosure Statements

- Fair Debt Reporting Act:

*The undersigned authorize(s) and instruct(s) [CREDITOR'S NAME] to obtain a consumer credit report on proprietor, partners, and/or personal guarantors for the purpose of evaluating the creditworthiness of the Applicant, in connection with this Application. The undersigned as (an) individual(s) hereby acknowledge(s) consent to the use of such credit report consistent with the Fair Credit Reporting Act. This shall be a continuing authorization authorizing [CREDITOR] to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this credit application.*



## Equal Credit Opportunity Act

### Disclosure:

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); or 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 protecting the customer is the Office of the Bureau of Consumer Financial Protection 1700 G. Street, NW, Washington, DC 20006 and the Federal Trade Commission, Equal Credit Opportunity, Pennsylvania Ave. at 6th Street NW, Washington, D.C. 20580.



## Where do signatures go?

- End of Information Page (front page)
- End of Terms and Conditions?
- Do you require initials on each page? (Why or why not?)



## Guaranty

- Separate form
  - If so, full terms and conditions?
  - How do you link the documents?
  - Importance of identifying principal entity
- Part of credit application
  - Signature(s)
  - Date
  - What information gathered and where?
- Corporate Guaranty
- Incorporating Terms and Conditions



# TOO LITTLE, TOO MUCH OR JUST RIGHT?

TERMS AND CONDITIONS

## Structure, Terms and Conditions

- Introduction
  - May be a sentence or may be a paragraph
  - Identify “Seller” and “Buyer” or “Your Company Name” and “Customer”
- Payment Terms
- Disclaimer Regarding Competing Terms – “This Agreement supersedes any terms of any purchase order or subsequent document not pre-approved by Seller”



## Interest and Attorney's Fees

- Interest Rate:
  - Know your state's maximum
  - If multi-state, beware usury
    - How to deal with varying rates
  - Does your state allow contract rate post-judgment?
    - North Carolina General Statute sec. 24-5
  - If account is secured, does that limit the interest rate?
- Attorney's Fees:
  - Allowed in your state?
  - Statutory percentage of balance; Actual attorney's fees
  - Require that fees provisions be reciprocal?



## Warranties

- Express
  - “Guaranteed for 60 months or 60,000 miles”
  - Manufacturer's warranty
- Implied
  - Merchantability
  - Fitness for a Particular Purpose
- **SAMPLE WAIVER: THE WARRANTY EXPRESSED IN THIS PARAGRAPH 3, AND THE OBLIGATIONS AND LIABILITIES OF SELLER HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND BUYER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES OR LIABILITIES WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER.**



## Consequential, Special, Liquidated Damages

- Consequential:
  - Dollar for dollar damages for cost of remedying errors by Seller (common in construction industry)
- Special:
  - Damages not remedied by Consequential Damages
- Liquidated:
  - Amount set for damages where determining dollar for dollar amount would be difficult
  - Ex. Road construction process, major road supposed to be re-opened no later than 6:00 a.m., work takes longer than anticipated, so road does not open until noon – damages set in contract at \$10,000/hour.



## Amount of Credit Extended

- Why you should not put the credit limit on the face of the application
- Provision providing that Seller may alter credit limit up or down at Seller's sole discretion



## Jurisdiction/Venue

- Jurisdiction – What state’s laws control?
  - Generally honored unless there is a specific state law that supersedes
- Venue – Where a case may be brought
  - Ex. If corporate home office is in Alaska, your credit application might call for all legal action to be decided based upon the laws of the State of Alaska and also designate where in Alaska the action is to be brought, unless other laws control
  - Translation: Straight breach of contract would be proper in Alaska unless Alaska does not have jurisdiction over the individual or corporate entity
    - Actions involving real property will almost always have to be brought in state where real property is located
    - Practicality questions – to be discussed
  - Law of Alaska will still be used wherever the case is brought



## Termination

- How can Seller cancel the contract?
- How can Buyer cancel the contract?
- How can a guarantor cancel his/her guaranty?





## Boilerplate

- Address for notices to Seller and/or buyer
- Incorporation of all credit related documents
  - Invoices
  - Delivery Tickets
  - Statements
  - Purchase Orders
- Information is true and accurate
- Signer is authorized
- Duty to update information
- Assuming a “commercial credit application”, then “use for commercial purposes only, not personal, family or household transactions.”



## Variables (Items to consider)

- Delivery - Who, what, when, where and how (leave it or sign)
- Acceptance/Rejection of Goods
- Mediation/Arbitration/Trial Court
- Taxes
- Returns
- Time is of the Essence
- Assignment of Rights
- Cancellation of Orders



## Variables (Continued)

- Security Interest/Financing Statement
  - Requires Power of Attorney
    - Including Power of Attorney in credit application, likely unenforceable unless signature notarized
- Third Party Contract Obligations
  - Disclaimer
  - Example in construction industry, plans, specifications, Owner-Contractor contract



## Post-COVID Considerations

Supply Chain Issues  
Flexible payment terms  
Force Majeure clauses



## What Did I Miss?

- Questions?
- Answers?
- Comments?
- Suggestions?



# THANK YOU!

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