

PROVISIONS TO CONSIDER IN A CREDIT APPLICATION

The listed provisions are offered as possible inclusions in a credit grantor's credit application. Please note our following comments about the merits of the provisions:

- Legal Name – of the company.
- All D/B/A'S – of the company.
- Company Information – Address, Phone #, Fax #, Cell Phone #.
- Ownership Configuration – Is the company a __Corporation, __Limited Liability Company (LLC), __Partnership, __Proprietorship, __Husband/Wife Proprietorship
- Three Principals – with home addresses and home phone numbers.
- Two Bank References – with addresses and contacts.
- Three Credit References – with contact name and phone number.
- Interest, Collection Costs and Attorney Fee Provisions – “Past due charges are subject to interest of 1 ½% per month, collection costs and attorney fees.”
- Invoice Terms – “Applicant agrees to all invoice terms.”
- Disclaimer – “All claims are void unless submitted in writing within ten days of delivery. Buyer must submit all freight claims to carrier.”
- History – Number of years in business _____.
- Product/Service Disclaimer – “Seller's liability is limited to replacement or credit from authorized/returned, unused, unadulterated product. The onus is upon the buyer to determine specific purpose and suitability.”
- (Optional) Personal Guaranty – built into the credit application or separate.
- (Optional) Financials – Enclose a recent Balance Sheet and Operating Statement.
- (Optional) Please fill out the attached brief Financial Statement.
- (Optional) Building Ownership – Is building owned or leased?
- (Optional) Leases – List all leases and year in which each lease expires.
- (Optional) Federal ID Number.
- (Optional) Please enclose Tax Exemption Certificate.
- (Optional) What is your Forecasted Sales Volume for the next twelve months _____?
- (Optional) Credit Line – Maximum amount of credit being requested _____.
- (Optional) Conditional Personal Guaranty – “Applicant will become individually and personally liable if creditor is not provided a 30-day advanced written notice of changes outside of the normal day-to-day operations of the company, including but not limited to the transfer of assets, liquidation of assets, GOB sale, foreclosure, legal composition.” See provision at the FORMS & TOOLS web page.
- (Optional) Product/Service Disclaimer – “Seller warrants goods and services to the extent of credit or replacement without liability for consequential damages.”
- (Optional) Applicant Grants Creditor a Security Interest – “Applicant grants creditor the option to acquire a security interest in creditor's products and proceeds thereof in which this application or copy thereof may be used as a security agreement.” See HOW TO BECOME A SECURED CREDITOR • WWI RECOMMENDED PROCEDURE FOR FINALIZING A PURCHASE MONEY SECURITY INTEREST both of which can be found at the FORMS & TOOLS web page.

Legal Name – of the company. This is the registered name of a Corporation, Limited Liability Company, etc. The legal name and the d/b/a can be one and the same. Typically, Corporations and LLC's usually have registered d/b/a's and fictitious trade names that may be similar or distinctly different from the legal name.

All D/B/A's – of the company. This is the name that a business calls itself. It can be thought of as a nickname of the legal name. It is the name the general public is familiar with.

Company Information – Please observe that we mention a cell phone number. This allows instant access and if employees are running interference on behalf of the decision maker, this is an important piece of information to have. Having the fax number is as equally effective.

Ownership Configuration – This determines what your legal options are. With a Corporation and Limited Liability Company, your legal remedies are limited to the pursuit of the assets of the corporation or assets of the company. There is no personal liability with these two entities. In a Partnership, one signature binds all partners and the same holds true for a Husband/Wife Proprietorship. The principals of a partnership and proprietorship are personally liable for any indebtedness.

Three Principals – Home addresses and home phone numbers of the principals are important, as when cash flow is tight, they run, hide and make themselves “unavailable.”

Two Bank References – If a bank reference is given, this means you are entitled to contact the bank. You could expound upon this and ask for comments about banking arrangements, i.e. if there is a loan relationship, banking account number, etc. Next to a principal, the banker usually knows more about a company than anyone else.

Three Credit References – Typically, a debtor is going to give you their best credit references. Sometimes a company in financial trouble will list three creditors with average small balances that they pay like clockwork. In any event, by listing such credit references, you have the right to contact those companies to discuss track record-paying history, etc. Always obtain a trade/credit report. A current Balance Sheet and Operating Statement is needed for a better picture, especially on a business less than five years old.

Interest, Collection Costs and Attorney Fee Provisions – This gives you built-in protection to where the debtor finances litigation – alleviating you of that burden. These provisions are in all credit applications and should be mandatory if your company is going to grant credit.

Invoice Terms – If during the course of a business relationship, your company decides to change invoice terms, should this provision be in the signed credit application, the applicant is bound to whatever invoice terms are stated on the invoice at the time of the sale.

Disclaimer – The burden is placed upon the buyer to detail in writing any non-conforming claims. You have the right to demand this under the Uniform Commercial Code. The

number one excuse for not paying a justified debt is a bogus dispute. See “CUSTOMER DISPUTES – REAL OR BOGUS” at the FORMS & TOOLS web page. Also newly formed companies tend to be negligent in reporting visual and concealed freight damage. Freight claim responsibility should always be a buyer burden.

History – It is important to know if a company is an upstart. Typically, if a business is only one-year old, chances are it is going to fail. Many credit grantors require personal guaranties if a company is less than five years old. If a company makes it past three years, there is still a high probability that it could fail. If a company has been in business for five years, it will probably survive.

Product/Service Disclaimer – Increasingly, when buyers are inconvenienced, they fail to realize that “inconvenience costs” are a part of doing business. Buyers arbitrarily attempt to offset or take an unauthorized deduction. The Uniform Commercial Code, which is the governing body of open account transactions, specifically states that damages of a consequential nature cannot be assessed unless previously agreed to in writing as a part of the Terms & Conditions of the transaction. Further, buyers will complain and arbitrarily seek damages if their perception of a product or service is different than what they actually received. In many instances, a product or service will be utilized or altered by the buyer with the buyer still expecting a deduction.

Personal Guaranty – We have assisted clients with built-in hidden personal guaranties and guaranties that are separate and distinct documents. We are happy to discuss those situations where a guaranty is something a client wants to consider as a condition for granting credit. A guaranty can be constructed to expire on a future date in time, i.e. “at the 2-year anniversary date of this credit application/guaranty.”

Financials – Most credit grantors require a Balance Sheet and Operating Statement, together with a Financial Statement, especially if a company is less than five years old. There are two approaches – asking for the applicant’s most current Balance Sheet and Operating Statement from their accountant or formulating your own Financial Statement, which is a part of the credit application. See “FINANCIAL STATEMENT AS PAGE 2 OF A CREDIT APPLICATION” at the FORMS & TOOLS web page.

Building Ownership – Real Estate ownership demonstrates equity. This is a source of borrowing. It is important to know whether or not the business building is a business asset or a separate entity. It is quite common for the principals to own real estate in a different legal configuration, which means if the real estate is not tied to the business then the real estate is protected from creditor pursuit.

Leases – Amazingly enough, we see a lot of businesses deciding to cease operating at the end of a lease. Some leases require personal guaranties.

Federal I.D. Number – In some instances a Federal ID Number is necessary. You have to evaluate as to whether your Accounting Department needs this information.

Tax Exemption Certificate – This is a must if you are not collecting sales tax. If you do not have a Tax Exemption Certificate from your customer then, by law, you are required to assess and collect sales tax.

Forecasted Sales Volume – This is important, especially with upstart companies that do not have any type of financial record.

Credit Line – Typically, a debtor will ask for a credit line in an amount much larger than what is typically granted. In many instances, the applicant can be informed that the credit line will expand based on favorable experiences.

Conditional Personal Guaranty – Some clients are concerned when a company transfers or sells assets, conducts a GOB sale or simply liquidates. In most cases, the debtor starts insolvency proceedings from one to four months before a creditor learns of such action. It is never something that is decided on the spur of the moment. If an out-of-business corporation has recently transferred assets to another company and if there are no personal guaranties, consider your balance as uncollectable. The same holds true for a Limited Liability Company (LLC).

Product/Service Disclaimer – This is merely a possible substitute for the earlier Product/Service Disclaimer, using a different text.

Applicant Grants Creditor a Security Interest – If stated as a provision, a signed credit application can be used as a Security Agreement. A Security Agreement must be filed with a Financing Statement UCC-1. It is no longer necessary to obtain a debtor's signature on a Financing Statement UCC-1. A signed credit app with a Security Agreement sent to the Secretary of State's office completes the requirements of becoming a "secured party." For more information on how to become a Secured Creditor, go to our FORMS & TOOLS web page and click "HOW TO BECOME A SECURED CREDITOR."