

# MODEL BUSINESS CREDIT APPLICATION AND TERMS AND CONDITIONS OF SALE

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# I OVERVIEW

## **A properly completed and executed credit application is vitally important to trade creditors.**

The best time to request this information is at the inception of the trade credit relationship—when the customer is usually the most cooperative. Obtaining all of the requested information in a thorough credit application as a foundation, and then updating and supplementing a customer's information from time to time, is just plain old best practice.

The information a customer provides in a credit application plays a critical role in the decision to extend trade credit, but the importance of a credit application does not end there. Gathering vital information about the customer up front helps prevent headaches throughout the trade credit relationship. Having this information aids in collection efforts, assists in evaluating future requests for additional extensions of credit or increases in a customer's credit line, and also increases the effectiveness of risk mitigation tools (such as letters of credit, guaranties, consignments and purchase money security interests, and credit insurance) that are intended to support an increased credit line or assure payment from a financially distressed customer.

A credit application also provides the initial and best opportunity to secure a customer's formal agreement to a trade creditor's Terms and Conditions—because the customer is most eager to please the creditor at the inception of the parties' relationship. The "Ts and Cs" form the core of a creditor's contractual relationship with its customer. Properly drafted Ts and Cs can help maximize the likelihood of collecting a claim against a delinquent or defaulting customer, while minimizing the creditor's risk of potential liability to the customer.

The final step of a well-constructed credit application process is execution. It is critical to ensure that a properly authorized person executes the credit application on behalf of corporate or limited liability company customer. Otherwise, a creditor runs the risk of future litigation over the signatory's authority to submit the application and bind the customer to the creditor's Terms and Conditions. Where the customer is an individual or sole proprietorship, or where the customer is a business entity and the creditor has obtained a personal guaranty, best practice is making sure that the creditor can prove execution in any subsequent litigation, such as arranging for execution in the presence of a notary.

This Model Business Credit Application and Terms and Conditions of Sale is intended to provide a framework to consider when a creditor prepares its own form credit application and Terms and Conditions. While they are a great initial resource, each creditor-customer relationship is its own, with its own particular facts and circumstances. Therefore, each company should prepare its credit application and Terms and Conditions, and, where appropriate, negotiate terms and request additional information, on a customer-by-customer basis and consult counsel where appropriate.

## MODEL CREDIT APPLICATION

**[INSERT COMPANY NAME]**

[Insert Company address, contact information, e-mail address, etc.]

Dear prospective business partner:

Please review and complete the information requested below (the "Application"). Please also review the Terms and Conditions attached herewith, which will be incorporated by reference into any future business dealings between your company (i.e., "Customer") and [Company]. Once this Application is completed, please have an officer of your company sign and date this Application, and send the completed and signed Application to [Company] at [the e-mail address provided above]. Please contact [Company] at [the e-mail address or phone number provided above] if you have any questions regarding this Application.

Thank you.

### I. CUSTOMER INFORMATION

Legal Name \_\_\_\_\_

Trade Name(s) \_\_\_\_\_

Primary Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

Federal Employer ID No. \_\_\_\_\_

State of Incorporation/Organization \_\_\_\_\_

Business Form \_\_\_\_\_

Registered Agent \_\_\_\_\_

Type of Business \_\_\_\_\_

Years in Operation \_\_\_\_\_

Premises – Owned or Leased? \_\_\_\_\_

## II. OFFICERS, PARTNERS, KEY PERSONNEL AND RELATIONSHIP CONTACT(S)

Please provide a list of Customer's owners, principals, directors, CEO and CFO (each to the extent applicable) by way of an exhibit/attachment to this Application.

Please also identify the individual(s) who will serve as the primary contact regarding Customer's business relationship with [Company] (i.e., with respect to purchase orders, invoices, and related matters).

### CONTACT 1

Name \_\_\_\_\_

Title \_\_\_\_\_

Direct Phone \_\_\_\_\_

E-mail \_\_\_\_\_

### CONTACT 2 (if applicable)

Name \_\_\_\_\_

Title \_\_\_\_\_

Direct Phone \_\_\_\_\_

E-mail \_\_\_\_\_

## III. PARENT(S) AND AFFILIATE(S)

Please provide a list of all of Customer's parent companies, subsidiaries, and affiliates by way of an attachment to this Application. Please provide each such entity's legal name as well as any applicable trade names. To the extent possible, please also provide a chart illustrating the Customer's organizational structure (of parents, subsidiaries, and affiliates). [Company] reserves the right to request additional information regarding any entities disclosed in connection herewith.

## IV. BANKING AND LOAN INFORMATION

Please provide the information requested below with respect to Customer's primary banking and/or lending institution. If Customer has any additional banking/lending institutions, please disclose such institutions (including the same information as requested below) by way of a separate addendum/attachment to this Application.

Bank Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Years with Bank \_\_\_\_\_

Account Number \_\_\_\_\_

Account Type \_\_\_\_\_

Primary Contact Person \_\_\_\_\_

Primary Contact's Information (Address, Phone, and E-mail) \_\_\_\_\_

Loan Number (if applicable) \_\_\_\_\_

*If a loan is presently outstanding, please provide the following:*

Name of lender (if different from above) \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

*Primary contact person and contact information:*

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

Loan No. \_\_\_\_\_

Is it a revolving line of credit? [ ☐ ] Yes [ ☐ ] No

If the answer above is "yes", please provide the total balance of the loan presently due [\$ \_\_\_\_\_] and the monthly payments due on such balance [\$ \_\_\_\_\_]

Expiration date of line of credit \_\_\_\_\_

*If the loan is a term loan, please specify:*

Date loan originated \$ \_\_\_\_\_

Original principal amount of loan \$ \_\_\_\_\_

Interest rate \_\_\_\_\_ %

Outstanding interest \$ \_\_\_\_\_

Maturity date \_\_\_\_\_

Monthly payment \$ \_\_\_\_\_

Is the loan secured? [ ☐ ] Yes [ ☐ ] No

If secured, please indicate the assets covered by the applicable security agreement(s): \_\_\_\_\_

*If there are any guarantors of the above-referenced indebtedness, please provide the following information for each such guarantor (if none, please leave the below blank):*

**Guarantor #1**

Correct Legal Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

Business Form (if corporate entity) \_\_\_\_\_

State of Incorporation/Organization (if corporate entity) \_\_\_\_\_

**Guarantor #2**

Correct Legal Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

Business Form (if corporate entity) \_\_\_\_\_

State of Incorporation/Organization (if corporate entity) \_\_\_\_\_

\*If any additional guarantors, please provide the above information for such guarantors by way of an addendum/attachment to this Application.

## V. TRADE REFERENCES

Please provide the following information for any trade references. If necessary, please set forth any additional references by way of an addendum/attachment to this Application.

### REFERENCE 1

Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

Direct Phone \_\_\_\_\_

E-mail \_\_\_\_\_

### REFERENCE 2

Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

Direct Phone \_\_\_\_\_

E-mail \_\_\_\_\_

### REFERENCE 3

Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

Direct Phone \_\_\_\_\_

E-mail \_\_\_\_\_

## VI. BUSINESS HISTORY

Please provide responses to each of the following inquiries:

Has Customer or any of its parents, subsidiaries, or affiliates ever been a debtor in a bankruptcy case? If so, please identify the bankruptcy court, case name, case number, and whether a discharge was granted.

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Has any judgment ever been entered against Customer or any of its parents, subsidiaries, or affiliates in the amount of \$[ \_\_\_\_\_ ] (or more) that has not been satisfied? If so, please identify the name/caption of the lawsuit or other relevant proceeding, the court entering the judgment, the index number, and the amount of the judgment.

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Are there any legal actions or arbitration proceedings pending against any of the companies or individuals listed above? If so, please identify the name of the proceeding, the court or arbitration panel in which the proceeding is pending, the index or case number, and the claims asserted in the proceeding (including the asserted amount of potential damages/liabilities).

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## VII. FINANCIAL INFORMATION

Please provide, as an exhibit/attachment to this Application: (i) a complete copy of the last two fiscal years' financial statements (in descending order of preference: audited, reviewed, or compiled by Customer's outside accountant, if applicable) and (ii) the most recent year-to-date interim financial statement.



## VIII. ECOA NOTIFICATION

THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT PROHIBITS CREDITORS FROM DISCRIMINATING AGAINST CREDIT APPLICANTS ON THE BASIS OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, MARITAL STATUS, AGE (PROVIDED THAT THE APPLICANT HAS THE CAPACITY TO ENTER INTO A BINDING CONTRACT); 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 THAT ADMINISTERS COMPLIANCE WITH THIS LAW CONCERNING THIS CREDITOR IS THE FEDERAL TRADE COMMISSION, DIVISION OF FINANCIAL PRACTICES, 600 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. 20580.

IF CUSTOMER'S APPLICATION FOR BUSINESS CREDIT IS DENIED, CUSTOMER HAS THE RIGHT TO A WRITTEN STATEMENT INDICATING THE SPECIFIC REASONS FOR THE DENIAL. TO OBTAIN SUCH STATEMENT, PLEASE CONTACT *[INSERT NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON OR OFFICE FROM WHICH THE STATEMENT OF REASONS CAN BE OBTAINED]* WITHIN 60 DAYS FROM THE DATE ON WHICH CUSTOMER WAS NOTIFIED OF [COMPANY]'S DECISION. [COMPANY] WILL SEND CUSTOMER A WRITTEN STATEMENT INDICATING THE REASONS FOR THE DENIAL WITHIN 30 DAYS OF RECEIVING CUSTOMER'S REQUEST FOR SUCH STATEMENT.

## IX. REPRESENTATIONS, AUTHORIZATION, AND SIGNATURE

Customer has reviewed the information provided above and the Terms and Conditions attached hereto (which are incorporated by reference herein) and hereby: (i) represents and warrants that all information submitted in connection with this Application (including any information provided in any exhibits/attachments this Application or to be provided in the future) is true and correct, (ii) agrees to the Terms and Conditions provided herewith and acknowledges and agrees that such Terms and Conditions are incorporated by reference into all transactions between Customer and [Company], and (iii) authorizes [Company] to investigate and review the information provided herein (including by contacting the credit and banking references listed above), and authorizes the bank and/or lender provided above to release information requested by Company for the purpose of obtaining and/or reviewing Customer's credit from time to time.

Customer further acknowledges and agrees that the decision to extend credit or continue to extend credit shall be made at the sole discretion of [Company] and that [Company] may terminate credit availability at its sole discretion at any time, notwithstanding anything to the contrary in this Application or the Terms and Conditions provided herewith.

Sign \_\_\_\_\_

Name (Print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## CONSENT TO OBTAIN CONSUMER CREDIT REPORT

The undersigned individual who is the principal or partner of the Customer entity applying for business credit, and therefore desirous of a business relationship with [Company], recognizing that his or her individual credit history may be a factor in the evaluation of the credit history of Customer, hereby consents to the use of the consumer credit report of the undersigned by [Company] as may be necessary in the credit evaluation process and for periodic review for the purpose of maintaining the credit relationship.

Sign \_\_\_\_\_

Name (Print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## GUARANTY

For valuable consideration, the receipt of which is acknowledged, including but not limited to the extension of credit by [Company] to Customer, the undersigned Guarantor(s) in this Section VII, personally and individually (and jointly and severally if more than one Guarantor) unconditionally guarantee(s) to [Company] the full and prompt payment of all obligations which Customer presently or hereafter may have to [Company]. Guarantor(s) agree to indemnify [Company] against any losses [Company] may sustain and expenses it may incur as a result of any failure of Customer to perform its obligations to [Company], including reasonable attorneys' fees and all costs and other expenses incurred in collecting or compromising any indebtedness owing by Customer to [Company] or in enforcing this Guaranty against Guarantor(s). Guarantor(s) hereby waive(s) diligence, demand, protest, or notice of any kind. [Guarantor(s) agree(s) that the guaranties and covenants of this signed Guaranty are incorporated by reference into any subsequent and/or amended applications for credit by Customer or agreement(s) between Customer and [Company] signed by Guarantor(s).]

This Guaranty shall be a continuing guaranty and shall remain in full force and effect until Guarantor(s) deliver(s) to [Company], at *[insert e-mail or other address for credit department contact at Company to whom notice should be sent]*, written notice revoking this Guaranty as to any indebtedness incurred subsequent to [Company]'s receipt of such written notice. For the avoidance of doubt, such notice shall not affect any of Guarantor(s) obligations and guaranties of indebtedness that arose prior to [Company]'s receipt of such written notice.

The undersigned Guarantor(s) (each) recognize that his or her individual credit history may be a necessary factor in the evaluation of this Guaranty (and this Application), and hereby consent to the use of a consumer credit report on the undersigned by [Company] from time to time as determined to be necessary in the sole discretion of [Company] in connection with decisions to extend credit to Customer.

### Guarantor #1

Sign \_\_\_\_\_

Name (Print) \_\_\_\_\_

Date \_\_\_\_\_

\*To be signed in the presence of a notary

\*\*Please provide a photocopy of state issued driver's license and/or picture ID

### Guarantor #2

Sign \_\_\_\_\_

Name (Print) \_\_\_\_\_

Date \_\_\_\_\_

\*To be signed in the presence of a notary

\*\*Please provide a photocopy of state issued driver's license and/or picture ID

### NOTE

To the extent that any entities may be providing a corporate guaranty of Customer's indebtedness to [Company], please utilize [Customer]'s corporate guaranty form.

## MODEL TERMS AND CONDITIONS<sup>1</sup>

1. These Terms and Conditions are incorporated by reference into, and form an integral part of, all contracts or agreements between Customer and [Company], together with the terms of sale (the “Terms of Sale”) in the invoices issued by [Company] for goods and services [Company] purchased by Customer from [Company], without regard to whether these Terms and Conditions or the Terms of Sale are expressly referenced therein. Neither these Terms and Conditions nor any Terms of Sale can be altered absent the signed written agreement of [Company] in its sole discretion. [Company] rejects any additional or conflicting terms contained in any purchase order or other document or communication previously or hereafter provided by Customer to [Company], and [Company]’s acceptance of any order shall not be construed as an acceptance of any such additional or conflicting terms unless such terms are expressly accepted in writing by [Company] in its sole discretion.
2. Any decisions with respect to the extension or continuation of credit availability to Customer shall be at the sole discretion of [Company]. Notwithstanding anything to the contrary herein or in the Application or any other document, [Company] may terminate credit availability at its sole discretion.
3. Customer shall pay all amounts payable to [Company] on or before the due date indicated on each invoice, as applicable. In addition, Customer shall be responsible for and shall pay and reimburse Company for all costs associated with the importation of goods and/or services that Company is selling or providing to the Customer or are being incorporated into finished goods that Company sells Customer at any time, including without limitation, customs duties, tariffs, taxes, duties, and all other similar charges and fees that may now or hereafter be applicable to or imposed or incurred with respect to any of the foregoing (collectively, “Goods Taxes”).
4. Orders placed by Customer may be cancelled by Customer only if agreed to by [Company] in writing and upon payment of reasonable charges based on expenses incurred and commitments made by [Company] prior to [Company]’s receipt of notice of such cancellation.<sup>2</sup>
5. Definition of Receipt / Drop Shipment. Customer’s receipt of goods shall immediately occur when Customer or Customer’s bailee or other agent or designee (including, without limitation, any customer of Customer to whom the goods are delivered) receives either actual or constructive possession of the goods. Constructive possession shall include, without limitation, receipt by an entity or individual (including, without limitation, Customer’s customer) pursuant to a drop ship instruction or other delivery instructions from Customer. Constructive possession specifically does not require actual possession by Customer.
6. Default / Adequate Assurance.
  - a. If Customer fails to pay or perform any obligation due to [Company] when due, [Company], in its sole discretion, may declare all outstanding invoices issued to Customer to be immediately due and payable and [Company] may withhold further deliveries to Customer and/or cancel all agreements (including but not limited to contracts and open purchase orders) between Customer and [Company].
  - b. If Customer fails to pay or perform any obligation due to [Company] when due, Company may charge Customer a finance or delinquency charge at the highest rate allowed by law (or, in the sole discretion of the Company, at the rate indicated on the invoice or any other written agreement between the Company and Customer).
  - c. All costs incurred by [Company] in enforcing any contract or agreement between Customer and Company, including but not limited to attorneys’ fees and costs of collection, will be added to Customer’s account as and when incurred and will be due and payable immediately.

<sup>1</sup> Note to Form: Companies may want to consider attaching the Terms and Conditions (to the extent that they seek to utilize the Terms and Conditions) to the back of each applicable invoice.

<sup>2</sup> Note to Form: This provision is particularly applicable to custom-made goods, but may be included as part of Terms and Conditions in companies’ discretion.

*This document was originally published in March 2023 and updated in October 2025 to reflect recent developments.*

## MODEL TERMS AND CONDITIONS<sup>1</sup>

- d. If [Company] anticipates, in its discretion, that Customer will not or cannot, or may in the future become unable to, perform any of its obligations to [Company], Customer shall, upon request by [Company], provide adequate assurance, satisfactory to [Company] in its sole discretion, of the due and future performance by Customer, and [Company], at its sole discretion, may suspend the performance of any of its obligations until such assurance is given by Customer and accepted by [Company]. If (i) Customer fails to give such assurance to [Company] within seven business days or such other time as [Company] may specify, (ii) proceedings in bankruptcy or insolvency or similar proceedings are instituted by or against Customer, (iii) a trustee or receiver for Customer is appointed, or (iv) Customer goes into dissolution or liquidation or assigns a substantial part of its assets for the benefit of creditors, [Company] may treat any such event as Customer's breach of any contracts or agreements between [Company] and Customer, and [Company] shall be entitled to all remedies stipulated in these Terms and Conditions, any Terms of Sale, any other applicable agreement between Customer and [Company], and applicable law or in equity.
- e. The exercise by [Company] of any remedy available under these Terms and Conditions, any Terms of Sale, or any other agreement between Customer and [Company], at law, or in equity shall not constitute an election of remedies or a waiver of any other rights or remedies to which [Company] is or may be entitled, and is without prejudice to any other remedies available to [Company].

### 7. Security Interests.<sup>3</sup>

### 8. Setoff, Rebates, Recoupment and Counterclaims (and Limitation Thereof).

- a. Any rebate, refund or other indebtedness owed by [Company] to Customer is due only with respect to invoices that are paid according to terms.<sup>4</sup>
- b. Any rebate, refund, or other indebtedness owed by [Company] to Customer may be recouped and/or setoff and applied by [Company] against any indebtedness or liability owed by Customer to [Company] at any time and without notice to the undersigned. Notwithstanding the foregoing, and for the avoidance of doubt, Customer must pay for any goods or services in full, notwithstanding and without application of any setoff, counterclaim, recoupment, or other similar rights that Customer may have against [Company].
- c. [Company], on behalf of itself and each of its direct and indirect parents, subsidiaries, and other affiliates (the "Company Parties" and each a "Company Party") and Customer, on behalf of itself and each of its direct or indirect parents, subsidiaries, and other affiliates (the "Customer Parties" and each a "Customer Party") agree that any Company Party may offset any debt owing by any Company Party to any Customer Party against any debt owing by any Customer Party to any Company Party.<sup>5</sup>

- 9. Claims and Returns: No deductions may be taken by Customer and no debit memoranda will be issued by Customer without the prior written approval of [Company]. Except to the extent set forth in these Terms and Conditions, no returns will be accepted by [Company] absent the written agreement for such return by [Company]. Any returns permitted by [Company] may be subject to a restocking charge.

<sup>3</sup> Note to Form: The grant of a security interest may be appropriate in certain contexts, but is highly fact-specific. The means of perfecting a security interest varies significantly by jurisdiction and type of collateral. Any vendor using these model Terms and Conditions is strongly encouraged to consult internal or outside counsel regarding the requirements for obtaining, enforcing, and perfecting security interests.

<sup>4</sup> Note to Form: If Customer does not agree to this provision as set forth above, consider proposing the provision be set forth as follows: "Any rebate, refund or other indebtedness owed by [Company] to Customer is due only with respect to invoices that are paid."

<sup>5</sup> Note to Form: This provision must be agreed to by or on behalf of each entity subject to the setoff agreement set forth therein. Also, please note that while this provision may be enforceable under applicable state law, there is a risk that a party may argue the provision is unenforceable in bankruptcy.

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## MODEL TERMS AND CONDITIONS<sup>1</sup>

10. Warranties / Limit Thereof. EXCEPT TO THE EXTENT OTHERWISE AGREED IN WRITING BY [COMPANY] IN ITS SOLE DISCRETION, [COMPANY] EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND GUARANTIES, EXPRESS OR IMPLIED, OR ARISING UNDER LAW OR EQUITY OR CUSTOM OF TRADE, INCLUDING, WITHOUT LIMITATION: WARRANTY OF MERCHANTABILITY, WARRANTY OF PERFORMANCE, AND WARRANTY THAT THE GOODS ARE FIT FOR ANY PARTICULAR PURPOSE. CUSTOMER HEREBY ACKNOWLEDGES THE FOREGOING DISCLAIMER.
11. Force Majeure. If performance by [Company] of its obligations under these Terms and Conditions or any other contract or agreement with Customer is prevented by force majeure (being an act, event, or circumstance, whether or not reasonably foreseeable, that directly or indirectly affects the activities of [Company] or any other person or entity connected with the sale, manufacture, supply, shipment, or delivery of any goods or services—including but not limited to acts of God, flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine restriction, perils of the sea; war or threat of the same, civil commotion, blockade, arrest or restraint of government, requisition of vessel or aircraft, acts or threats of terrorism; strike, lockout, sabotage, other labor dispute; explosion, accident, or breakdown in whole or in part of machinery, plant, transportation, or loading facility; contamination by radioactivity or chemical substances; governmental request, guidance, order, intervening law, or regulation, including without limitation the imposition of additional Goods Taxes as a result of any change in the law of the United States, any state thereof or the law of any other country; unavailability of transportation or loading facility; curtailment, shortage, or failure in the supply of fuel, electric current, other public utility, or any raw materials; bankruptcy, insolvency, interruption or cessation of operations of the manufacturer or supplier of goods (or any component part thereof), or supplier of services, that are the subject of such contract or agreement; boycotting of goods; substantial change of the present international monetary systems; or any other act, event, or circumstance whatsoever beyond the reasonable control of [Company]), then [Company] shall not be liable for loss or damage, or failure or delay in performing its obligations and may, at its sole discretion, extend the time of shipment or delivery of the goods or services or cancel unconditionally and without liability any unfulfilled purchase order or other contract for such goods or services.
12. No Assignment. Customer shall not assign its rights or delegate its obligations in connection with these Terms and Conditions or any other agreement between Customer and Company, unless otherwise agreed to in writing by [Company].
13. Claims Against [Company] / Non-Conforming Goods / Limitation of Liability.
- Any claim of non-conformity with respect to goods sold by [Company] to Customer is waived by Customer unless Customer sends a writing to [Company] stating the details of any such non-conformity within a reasonable time not to exceed thirty (30) days after Customer received such goods. In the event [Company] receives timely notice of non-conformity from Customer, [Company] shall, in [Company]'s sole discretion, replace the non-conforming goods with conforming goods, repair the non-conforming goods, or return the purchase price for the non-conforming goods, subject in each instance at [Company]'s request and the expense of Customer to Customer's return of the non-conforming goods in as-delivered condition.
  - [Company]'s liability for any and all claims of Customer shall in no event be greater than the purchase price of the goods and/or services with respect to which any damages are claimed. IN NO EVENT SHALL [COMPANY] BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND CUSTOMER WAIVES ANY AND ALL SUCH CLAIMS REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT (WHETHER IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE).
  - Any action or proceeding by Customer arising between the parties from any dispute, claim, or controversy relating to the Application, these Terms and Conditions, or any other agreement(s) between Customer and [Company] must be commenced within one (1) year after the date on which the claim to be asserted arose.

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## MODEL TERMS AND CONDITIONS<sup>1</sup>

14. Choice of Law. The Application, these Terms and Conditions, all Terms of Sale, and all other agreements between Customer and [Company] shall be governed by the internal laws of the [State of \_\_\_\_\_], without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby, and excluding the United Nations Convention on Contracts for the International Sales of Goods.
15. Jurisdiction. Customer hereby consents and submits to the jurisdiction of the state and federal courts located in the [State of \_\_\_\_\_] to resolve any dispute with respect to or arising out of the Application, these Terms and Conditions, any Terms of Sale, or any other agreements (irrespective of whether such agreements contain a similar consent) between Customer and Company (except to the extent otherwise agreed to in writing by [Company]).<sup>6</sup>
16. Waiver of Jury Trial. CUSTOMER AND [COMPANY] EACH IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW THE RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION, OR OTHER PROCEEDING OF ANY KIND OR NATURE IN ANY FORUM ARISING OUT OF OR OTHERWISE RELATING TO THE APPLICATION, THESE TERMS AND CONDITIONS, ANY TERMS OF SALE, OR ANY OTHER AGREEMENT(S) BETWEEN CUSTOMER AND [COMPANY].
17. Customer represents and warrants, as of the date of the Application and as of the date of each order placed with [Company] and other extension of credit by [Company], that Customer is solvent, is able to pay its debts as they come due, and has not filed, or been the subject of, any bankruptcy petition or other insolvency proceeding under federal or state law. If any of the foregoing representations become false at any time during the course of the business relationship between Customer and [Company] or while Customer owes any obligations to [Company], Customer agrees to immediately notify [Company] of the reason for which the foregoing representation has become false and all relevant facts in connection therewith.
18. Customer authorizes the release of all information needed to verify the contents of the Application or to otherwise process the Application, including but not limited to contacting third parties concerning the creditworthiness of Customer. Customer agrees that [Company] may rely entirely on the information provided in the Application in extending credit to Customer, and that [Company] is under no duty to secure or investigate credit reports, trade references, bank references, or other external information, but expressly authorizes [Company] to do so in [Company]'s sole discretion.
19. Customer agrees to promptly notify [Company] of any material change in the information contained in the Application (including, without limitation, any changes to the Customer's ownership, corporate form, domicile, or name), and, if requested by [Company] from time to time, Customer shall provide its current financial statements and other information requested by [Company].
20. Entire Agreement / Severability. These Terms and Conditions represent the entire agreement between Customer and Company and supersede all prior agreements or understandings between Customer and Company, except to the extent Company may agree otherwise in writing. Any headers set forth herein are for descriptive purposes only. No amendment or modification of any of the provisions hereof shall be effective unless set forth in writing and signed by Customer and [Company]. For the avoidance of doubt, these Terms and Conditions may not be amended or superseded by Customer unless expressly accepted in writing by Company, including through the submission or proposal of any competing terms and conditions in connection with any purchase order or other order submission.

Further, if any provision hereof is invalid or unenforceable under any statute, regulation, court or executive order, or any other applicable law, then such provision shall be deemed reformed or deleted solely to the extent necessary to comply with such applicable rule of law, without otherwise altering any other provisions hereof, which shall remain in full force and effect.

<sup>6</sup> Note to Form: Certain companies may wish to incorporate dispute resolution procedures into the Terms and Conditions. Any vendor using these model Terms and Conditions is strongly encouraged to consult with counsel in connection with the drafting of any dispute resolution provisions.

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## MODEL TERMS AND CONDITIONS<sup>1</sup>

21. Credit Card Payments. [Company] may agree, in its discretion, to accept payments via credit or debit card. If [Company] accepts payments via credit card, [Company] will impose a surcharge at the time of payment not to exceed [Company]'s cost of acceptance of such credit card payments or the maximum rate permitted under applicable payment card network rules, whichever is less, and Customer agrees to pay the applicable surcharge at the time of payment. Customer and [Company] hereby agree that all payments made by Customer to [Company] by credit card are deemed to have occurred in the [State of \_\_\_\_\_], irrespective of the state from which such payments are made or the billing address of the applicable credit card, and agree that all such payments will be governed by the laws and regulations of the [State of \_\_\_\_\_] without regard to any conflicts of laws rules or principles.
22. Customer represents and warrants that each representative of Customer executing the Application and these Terms and Conditions is duly authorized to bind the Customer Parties.
23. The Application and these Terms and Conditions may be executed in counterparts (including by electronic signature/submission), each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic means (including, without limitation, by facsimile or by attachment to an e-mail) shall be effective as delivery of a manually executed counterpart of this Agreement.

Sign \_\_\_\_\_

Name (Print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



# ABOUT THE AUTHORS



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With nearly 45 years of experience in the bankruptcy and insolvency space, Bruce Nathan is a recognized leader in trade creditor rights and the representation of trade creditors in bankruptcy and other legal matters. He has represented trade and other unsecured creditors, unsecured creditors' committees, secured creditors, and other interested parties in many of the larger Chapter 11 cases that have been filed. Bruce also handles letters of credit, guarantees, security, consignment, bailment, tolling, precious metals leases, and other agreements with financially distressed counterparties, as well as other credit-related legal issues for institutional clients.



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Andrew leverages his background in corporate finance and management to approach restructuring problems, both in and out of court, from a practical, results-oriented perspective. With a focus on building consensus among multiple parties that have competing priorities, Andrew is equally at home both in and out of the courtroom, and he has a track record of turning financial distress into positive business outcomes. Clients value his counsel in complex Chapter 11 cases, where he represents debtors, creditors' committees, purchasers, and investors.



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Mike provides counsel to debtors, creditors' committees, individual creditors, liquidating trustees, and other interested parties with respect to corporate bankruptcy and creditors' rights matters, including bankruptcy-related litigation. Reliable and efficient, Mike is appreciated for his innate ability to effectively apply and communicate his understanding of the law and general business principles with respect to complex issues, both while providing advice to clients and while aggressively advocating on their behalf. Mike works tirelessly to understand clients' needs and provide practical solutions that are reasonable, balanced, and favorable to the clients he serves.