What you need to do:
Phone or Laptop
Slido.com

Enter code:

MarchCRF

Credit Research Foundation

CRF - Proprietary

0

slido

Of the following topics which one is most concerning to me and the success of my team?

ⓘ Start presenting to display the poll results on this slide.

1

Down To The Last Detail:
The Nuts and Bolts of B2B Credit Applications and Terms and Conditions of Sale*

March 2023 Credit Research Foundation Accounts Receivable Forum

JW Marriott
New Orleans, LA

March 14, 2023

Presented By:

Bruce S. Nathan
(212) 204-8686
bnathan@lowenstein.com

Andrew Behlmann
(973) 597-2332
abehlmann@lowenstein.com

The Model Business Credit Application and Terms and Conditions of Sale were prepared by Bruce Nathan, Andrew Behlmann, and Michael Papandrea of Lowenstein Sandler LLP for publication by The Credit Research Foundation

Lowenstein Sandler

Credit Research Foundation

58791633.1

2



3

The Credit Application

- **KNOW YOUR CUSTOMER!**
- Obtaining a properly completed credit application from a customer at the inception of the creditor-customer relationship (and supplementing that information periodically) will set the foundation for the relationship by:
  - Assisting in **initial credit decision**
  - Assisting in **evaluating** future requests for additional **extensions of credit** or **increases in a customer's credit line**
  - Aiding in **collection efforts**
  - Increasing the effectiveness of **risk mitigation tools**
- The credit application process also provides an opportunity to set forth, and bind a customer to, a creditor's **terms and conditions of sale – i.e., the "Ts and Cs"** (more on that later . . .)
- Why at the beginning of the relationship? ***Because that is when the customer is most cooperative!***

The Credit Application: *The Contents*

- The credit application should be dated and include, among other things, a combination of some or all of the following about the customer:
  - Correct legal name
  - Primary address and contact information
  - Business form (if customer is not an individual)
  - Officers and key personnel/contacts
  - Parents and affiliates (if customer is not an individual)
  - Banking and loan information
  - Trade references
  - Business history and financial information
  - Equal Credit Opportunity Act ("ECOA") notification
  - Consent to obtain consumer credit report
  - Representations, authorization, and signature
  - Guaranty

The Credit Application: *Examining the Contents*



Lowenstein Sandler

Credit Research Foundation

6

Customer Information

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?	

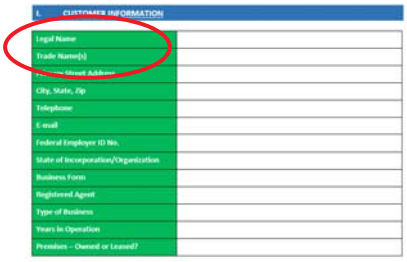
Lowenstein Sandler

Credit Research Foundation | 7

7

Customer Information: *Correct Legal Name*

- Getting the customer's legal name right is critical!
  - Verify on website of Secretary of State in state of formation
- Affiliated entities may have similar names – the creditor must know which entity it is doing business with
- Division names are not the correct legal name
- Beware of "DBAs"! A d/b/a or fictitious name is not necessarily (and often isn't) the correct legal name



Customer Information: *Correct Legal Name*

- "What's in a name?" Well, a lot is!
  - Enforceability of Ts and Cs
  - Collecting claim and/or enforcing judgment vs. customer
  - Obtaining perfected security/consignment interest
    - Need debtor's correct legal name for effective UCC-1 filing
    - Need to amend UCC-1 within four months of customer's name change
  - UCC, tax, and other lien searches
  - Obtaining payment on guaranty
  - Obtaining payment on letter of credit
    - Name of beneficiary/applicant
  - Obtaining payment on credit insurance/put
  - Filing a proof of claim in bankruptcy



Customer Information: *Correct Legal Name*

- Having a customer's correct legal name isn't only important at the inception of the business relationship – it's a continuing issue!
  - Customer's names may change for a variety of reasons (merger, divestiture, restructuring, etc.)
- Information sources indicating a customer's name may have changed
  - Check, ACH remittance advice, or wire receipt
  - Purchase order
  - Shipping documents
  - State sales/use tax exemption certificate
  - Letterhead
  - E-mail
  - Signature block
- <u>But beware</u>: these sources do not necessarily govern!



Lowenstein Sandler

Credit Research Foundation | 10

10

Customer Information: *Correct Legal Name*

- When should a creditor check a customer's legal name?
  - At the inception of the relationship (re: the credit application!)
  - If the creditor is given reason to believe the customer's name has changed (i.e., if the aforementioned information sources indicate a potential name change)
  - Periodically, by:
    - Checking in with the customer
    - Checking the Secretary of State's website in the state where the customer was formed
  - Recommend provision requiring customer to inform creditor of customer's name change



Lowenstein Sandler

Credit Research Foundation | 11

11

Customer Information: *Business Form*

- A successful creditor-customer relationship includes knowing the customer's legal form of business (assuming the customer is not an individual). This information allows the creditor to:
  - Know who is (and is not) liable for customer's indebtedness
  - Knowing who should be signing the credit application/terms and conditions



Lowenstein Sandler

Credit Research Foundation | 12

12

Customer Information: *Business Form*

- A customer's business form may potentially be a:
  - ***Sole proprietorship***
    - Owner is liable for the debts of the company
  - ***Partnership***
    - *General Partnership* – each partner is liable for partnership's debts
    - *Limited Partnership* – only the general partner is liable for the partnership's debts
  - ***Limited Liability Partnership***
    - *Partners are liable for their own conduct, but not for the conduct of other partners*



Lowenstein Sandler

Credit Research Foundation | 13

13

Customer Information: *Business Form*

- More potential business forms:
  - ***Limited Liability Company***
    - Members/managers are generally shielded from personal liability
  - ***Corporation***
    - Officers, directors and shareholders are generally shielded from personal liability



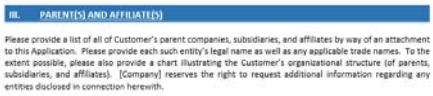
Customer Information: *Business Form*

- Verify legal status
  - Determine state of incorporation/organization
  - Confirm no change in legal form of business
  - Check appropriate state or local office
- Recommend provision requiring customer to inform creditor of change in legal status
- Will need new credit application with terms and conditions if customer changes legal status



Parents and Affiliates

- Confirm if customer is part of a group of affiliated companies
  - Parent
  - Subsidiary
  - Affiliates
- Confirm which entity will be pursued for payment
  - Risk of payment from affiliate with whom creditor isn't doing business
  - Consider setoff issues
  - Consider if guaranty is necessary/warranted

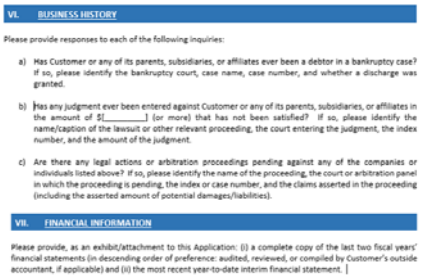


III. PARENT(S) AND AFFILIATE(S)

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.

Business History and Financial Information

- Key pieces of information help to understand the customer's credit-worthiness:
  - Bankruptcy filings by the customer, its principal, or a predecessor company
  - Judgments
  - Pending legal actions
  - Financial records (past and present)



VI. BUSINESS HISTORY

Please provide responses to each of the following inquiries:

a) 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.

b) 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.

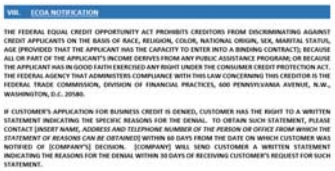
c) Are there any legal actions or arbitration proceedings pending against any of the companies or individuals listed above? If so, please identify the name of the proceeding, the court or arbitration panel in which the proceeding is pending, the index or case number, and the claims asserted in the proceeding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

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.

ECOA Notification
A Brief Overview of ECOA

- Equal Credit Opportunity Act was implemented by Regulation B (12 CFR § 1002)
- ECOA prohibits discrimination with respect to credit extensions and renewals on the basis of:
  - Gender, marital status, race, color, religion, national origin, age, and welfare assistance
- Adverse action notices
  - Refusal to extend credit
  - Termination of account
  - Denial of increase in credit line



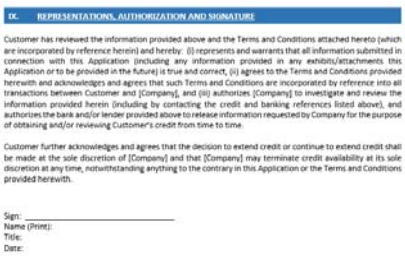
VIII. ECOA NOTIFICATION

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.

Representations, Authorization and Signature

- Representation as to the accuracy of information provided in credit application
- Binds customer to terms and conditions (if included)
- ***We've said it before and we'll say it again: it is critical to ensure that the signatory is a duly authorized representative!***



IX. REPRESENTATIONS, AUTHORIZATION AND SIGNATURE

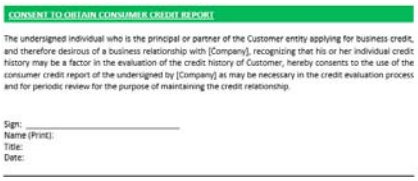
Customer has reviewed the information provided above and the Terms and Conditions attached hereto (which are incorporated by reference herein) and hereby: (i) represents and warrants that all information submitted in connection with this Application (including any information provided in any exhibits/attachments 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
A Brief Overview of the FCRA

- Fair Credit Reporting Act ("FCRA"):
  - Regulates issuers of "consumer credit reports" on individuals
  - Establishes criteria for business entities to obtain and use consumer credit reports on individuals
  - Is it a permissible purpose for a business credit grantor to obtain consumer credit report on individual affiliated with customer as part of credit extension/renewal?
  - If no permissible purpose, need individual's executed written authorization to obtain/use consumer credit reports dealing with individual



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:

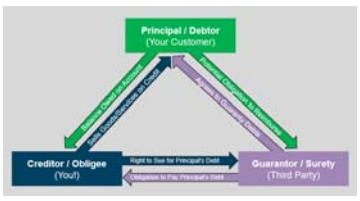
Lowenstein Sandler

Credit Research Foundation | 20

20

Guaranty

- The beginning of the relationship is the best time to seek a guaranty
- What is a guaranty?
  - An agreement by a third party (guarantor) to be liable for the debts of the debtor/customer
  - Proof of execution (individual) or authorization (company)
  - Guaranty of payment, not collection
- Downstream, cross-stream, and upstream affiliate guaranties



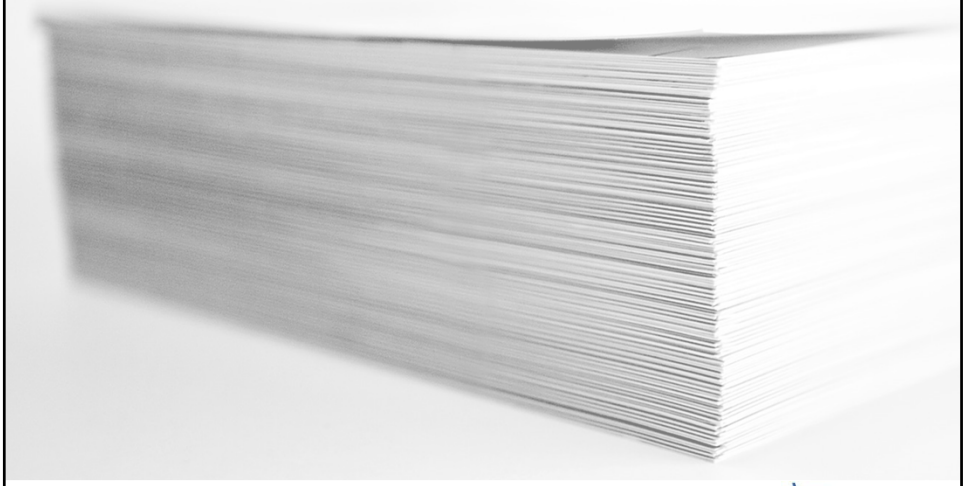


Lowenstein Sandler

Credit Research Foundation | 21

21

Terms and Conditions of Sale: *An Introduction*



Lowenstein Sandler

Credit Research Foundation

22

The Terms and Conditions of Sale: An Introduction

- A credit application provides the initial and best opportunity to secure a customer's agreement to a trade creditor's "terms and conditions"
  - Again, a customer is most eager to please the creditor at the inception of the parties' relationship!
- The "Ts and Cs" can form the core of a creditor's contract with its customer
  - Properly executed Ts and Cs (and a Credit Application) create a **binding contract** with the customer!
- 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

Lowenstein Sandler

Credit Research Foundation | 23

23

Uniform Commercial Code (UCC) Article 2 – Sales *Brief Overview*

- Applies to domestic sales of goods
- Contains uniform provisions for:
  - Formation of contracts
  - Terms
  - Warranties – protection for customer
  - Remedies
  - State, not federal, law
    - And may vary by state!

UCC Article 2 – Sales *Contract Formation*

- Offer
  - Purchase order
  - E-mail
  - Fax
  - Telephone call
  - Supply agreement



UCC Article 2 – Sales
Contract Formation

- Acceptance
  - Performance – e.g., shipment
  - Promise to perform (e.g., ship) by certain date
  - Sales confirmation/terms and conditions
  - Signed credit application with terms and conditions
  - Signed supply agreement
  - Other action evidencing acceptance
  - Compliant electronic transaction
- Similar for service contracts (though UCC Art. 2 doesn't apply)
- **Again, when it comes to Ts and Cs, obtaining the signature of a duly authorized representative is key!**

UCC Article 2 – Sales
Contract Formation: *Statute of Frauds*

- Enforceability of contracts is usually subject to some form of statute of frauds requiring a writing
- UCC Article 2 Statute of Frauds re Sale of Goods, UCC §2-201
  - (1) Except as otherwise provided in this section, a contract for the sale of goods for a price of $500 or more is not enforceable…unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.
  - **(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.**

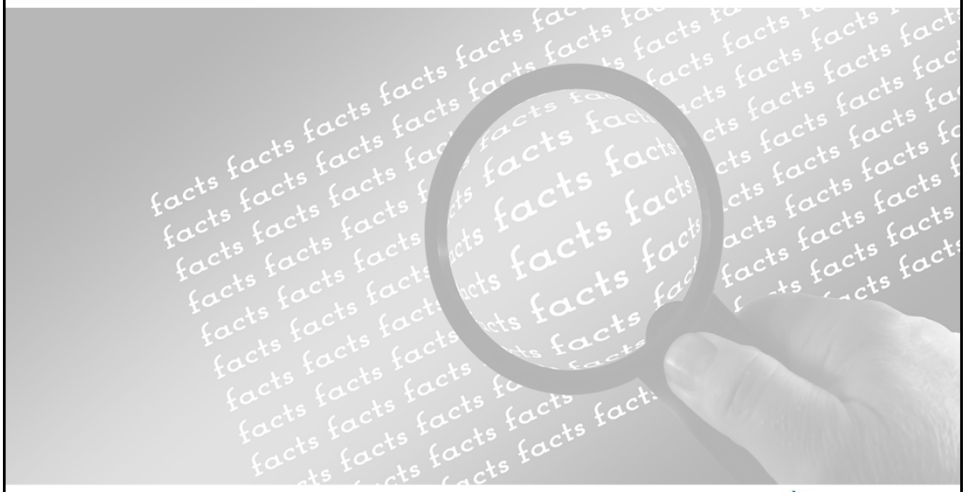
Battle of the Forms Risk

- Customer's failure to execute the Ts and Cs opens the door to a "battle of the forms"
  - E.g., agreement first reached either orally or by exchange of correspondence or e-mails containing certain terms, followed by one or both parties sending a response containing additional or different terms
  - **Warning: a battle of the forms risks the creditor's inability to enforce all of its Ts and Cs and/or being bound to terms the creditor hadn't intended!**
- UCC § 2-207
  - (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms *additional to* or *different from* those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms
  - (2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless.
    - (a) the offer expressly limits acceptance to the terms of the offer;
    - (b) they *materially alter it*; or
    - (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received

The Bottom Line: Credit Application With Terms and Conditions As A Contract

- Should include all **key terms** sought by the creditor
- Should be "signed" by the customer to be a binding contract
  - Make sure party signing credit application is duly authorized to bind customer
- Should be dated
- Avoids battle of the forms

Terms and Conditions of Sale: *Examining the Key Terms*



Lowenstein Sandler

Credit Research Foundation

30

Terms and Conditions

- Credit terms; customer's agreement to be bound by terms set forth elsewhere; or payment due according to invoice terms

  "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]. Neither these Terms and Conditions nor any Terms of Sale can be altered absent the 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 expressly accepted in writing by [Company] in its sole discretion."

  "Customer shall pay all amounts payable on or before the due date indicated on each invoice, as applicable."

Lowenstein Sandler

Credit Research Foundation | 31

31

Terms and Conditions

- Obligation to inform creditor of material change in information provided in credit application
- Customer must provide financial statements at periodic intervals

"Customer agrees to promptly notify [Company] of any material change in the information contained in the Application, and, if requested by [Company] from time to time, Customer shall provide its current financial statements and other information requested by [Company]."

Terms and Conditions

- Shipping/Delivery Terms

"Definition of Receipt / Drop Shipment. Customer's receipt of goods shall immediately occur when Customer, 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."

Terms and Conditions

- Manner of payments

"Credit Card Payments. [Company] may agree to accept payments via credit or debit card, consistent with all applicable payment network rules. In the event [Company] accepts payments via credit card, [Company] will impose a surcharge at the time of payment not to exceed 4% or [Company]'s cost of acceptance of such credit card payments, whichever is less, and Customer agrees to pay the applicable surcharge at the time of payment irrespective of whether such surcharge is referenced in Customer's purchase order. Payments made by credit card are deemed to occur in the State of [State]."

Terms and Conditions

- Warranty Limitations

"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."

Terms and Conditions

- Deadline for customer's assertion of claim

"Any claim of non-conformity with respect to goods sold by [Company] to Customer is waived by Customer unless a writing stating the details of any such non-conformity is sent by Customer to [Company] within a reasonable time not to exceed thirty (30) days after Customer received such goods. In the event [Company] receives timely notice 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."

Terms and Conditions

- Reduced statute of limitations for customer to commence lawsuit against creditor

"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."

Terms and Conditions

- Creditor Liability/Damage Limitations

  "[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)."

Terms and Conditions

- Setoff involving transactions between creditor and customer

  "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 set-off, counterclaim, recoupment and/or other similar rights that Customer may have against [Company]."

Terms and Conditions

- Triangular setoff
  - Right of creditor dealing with multiple affiliated entities to setoff debt it owes to one affiliate against creditor's claim against another affiliate
  - Generally unenforceable due to lack of mutuality
    - Parties may agree otherwise under state law . . . but likely not enforceable in bankruptcy in any event!
- Triangular Setoff Language

  "[Company] and each of its direct and indirect parents, subsidiaries, and other affiliates (the "Company Parties" and each a "Company Party") and Customer 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."

Terms and Conditions

- Merger clause; customer's agreement not to change terms unless creditor agrees in writing

  "Entire Agreement / Severability. These Terms and Conditions represent the entire agreement between Customer and Company and supersedes 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."
- Potential alternative: Customer's agreement to be bound by Ts and Cs included as part of credit application or another document

Terms and Conditions

- Creditor's ability to terminate credit terms
  - At creditor's discretion:

    "Any decisions with respect to the extension or continuation of credit availability 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."
  - Upon determination of customer's financial insecurity
  - Adequate Assurance
  - Upon customer's default:

    "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 between Customer and [Company]."

Terms and Conditions

- Other default provisions:
  - Interest and other delinquency charges

    "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)."
  - Attorneys' fees and other collection costs

    "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."

Other Terms and Conditions

- Claims and Returns
- Solvency Representation
- Anti-assignment Provision
- Force Majeure
- Jury Trial Waiver
- Consent to Jurisdiction
- Choice of Law
- Customer Authorization to Release Information
- Electronic Signature Authorization

Questions?



Bruce S. Nathan

Partner, Bankruptcy & Restructuring Department

212.204.8686 | bnathan@lowenstein.com

With more than 40 years of experience in the bankruptcy and insolvency field, Bruce is a recognized leader nationwide 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, and other agreements and legal credit issues for the credit departments of institutional clients.

Among his various legal recognitions, Bruce received the Top Hat Award in 2011, a prestigious annual award honoring extraordinary executives and professionals in the credit industry. He was co-chair of the Avoiding Powers Committee that worked with the American Bankruptcy Institute's (ABI) Commission to Study the Reform of Chapter 11, participated in ABI's Great Debates at their 2010 Annual Spring Meeting–arguing against repeal of the special BAPCPA protections for goods providers and commercial lessors–and was a panelist for a session sponsored by ABI. He is a frequent presenter at industry conferences throughout the country, as well as a prolific author regarding bankruptcy and creditors' rights topics in various legal and trade publications.

Bruce is a co-author of "Trade Creditor's Risk-Mitigation Tools and Remedies Manual," published by ABI in 2019. He has also contributed to ***ABI Journal*** and is a former member of ABI's Board of Directors and former co-chair of ABI's Unsecured Trade Creditors Committee.



Education

- University of Pennsylvania Law School (J.D. 1980)
- Wharton School of Finance and Business (M.B.A. 1980)
- University of Rochester (B.A. 1976), Phi Beta Kappa

Bar Admissions

- New York

Lowenstein Sandler

Credit Research Foundation

46

Andrew Behlmann

Partner, Bankruptcy & Restructuring Department

973.597.2332 (office) | 908.235.1040 (mobile) | abehlmann@lowenstein.com

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.

Andrew writes and speaks frequently about bankruptcy matters and financial issues. Before becoming a lawyer, he worked in senior financial management at a midsize, privately held company.



Education

- Seton Hall University School of Law (J.D. 2009), magna cum laude; Order of the Coif
- University of Missouri-Saint Louis (B.S. 2005), Business Administration-Finance and Accounting; *Beta Gamma Sigma*

Bar Admissions

- New Jersey

Lowenstein Sandler

Credit Research Foundation

47

Recent Publications and Insights

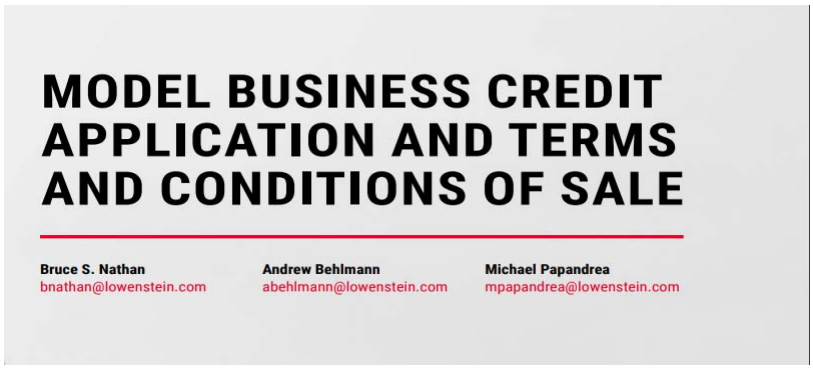
- January 2023
  UCC Financing Statement Mistakes Can Be Deadly, *Business Credit*
  Bruce S. Nathan, Michael Papandrea
- December 2022
  Circuit Ruling Expands Subsequent New-Value Preference Defense, *ABI Journal*
  Bruce S. Nathan, Scott Cargill
- November/December 2022
  A Victory for the Trade: Décor Holdings Decisions Uphold Applicability of Subjective Ordinary Course of Business Defense to Preference Liability, *Business Credit*
  Bruce S. Nathan, Michael Papandrea
- October 26, 2022
  Client Alert: The Role of a Creditors' Committee to Investigate, Preserve, and Pursue Causes of Action in Crypto Bankruptcies, *Bankruptcy & Restructuring Department Client Alert*
  Jeffrey Cohen, Andrew Behlmann, Phillip Khezri
- October 24, 2022
  Video: The Obligations and Responsibilities of Creditors' Committees in Crypto Bankruptcies
  Andrew Behlmann, Phillip Khezri
- September/October 2022
  Trade Creditors Have Their Cake and Eat It Too!, *Business Credit*
  Bruce S. Nathan, Michael Papandrea
- September 13, 2022
  Video: Part 2: Additional Implications for Cryptocurrency Companies in Bankruptcy
  Andrew Behlmann, Phillip Khezri
- September 7, 2022
  Video: Crypto Considerations in Bankruptcy Plans of Reorganization, *Bankruptcy & Restructuring Department Client Alert*
  Jeffrey Cohen, Andrew Behlmann, Phillip Khezri

Lowenstein Sandler

Credit Research Foundation

48

Terms & Conditions Resource:



https://www.crfonline.org/resources/

lowenstein.com

© 2023 Lowenstein Sandler LLP

49

Stay Connected



lowenstein.com

© 2023 Lowenstein Sandler LLP

50