



Customer Signatures on the Web's Dotted Line - Are Digital Signatures On Credit Applications And Guarantees Binding?

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The Internet has revolutionized how the credit department documents credit sales. Credit departments are loading their Web sites with form credit application (including vendor-friendly terms and conditions) and personal and corporate guarantees, invoices and proofs of delivery for retrieval by their customers. The credit department is going "electronic" for a variety of reasons, including faster payments, reducing discrepancies with the customer, lower administrative costs, competition and customer requirements. But does having your customer complete a credit application guarantees on-line and agreed to with a digital signature have the same legal effect as a handwritten signature from your customer?

The federal law, The E-Signature Act, governs digital signatures, documenting your credit sales electronically. The E-Sign Act makes an electronic signature (e-signature) as legally binding as ink-and-paper signatures, and can be used in legal proceedings. An e-signature is defined as a form of technology, including fingerprint readers, stylus pads and encrypted smart cards, used to verify a party's identity so as to certify contracts that are agreed to over the Internet.

Some of the relevant provisions of The E-Sign Act for the vendor include: (1) parties to the contract decide on the form of digital signature technology to validate the contract; (2) vendors may use e-signatures on checks; (3) vendors must require parties to the contract to make at least two clicks of a computer to complete a transaction and (4) records of e-contracts may be stored electronically.

A key question for the vendor considering using e-signatures on credit applications and guarantees, however, is having a reliable way to certify an e-contract, or authenticate an e-signature, to reduce the risk that the customer disputes the enforceability of the terms of the credit application or guaranty. Technology to verify a person's identity, so-called digital identification devices, is solving these concerns.

Article 2 of the Uniform Commercial Code provides that with the sale of goods over \$500, there must be a signed writing. A signature is to certify the writing for the sale of goods. With the traditional sale of goods over \$500, the credit professional memorializes the sale agreement with a signed credit application and signed invoices.

With the E-Sign Act, a credit professional may accept a completed credit application electronically, with e-signature, to form a binding contract, as opposed to the customer downloading the application from the vendor's web page, filling it out and signing it and faxing or mailing the completed credit application with handwritten signature. The credit professional may also receive completed guarantees in the same manner and form a binding contract. The electronic credit department continues to expand.

Tags: [E-Sign Act](#), [E-Signature Act](#)

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