

The Credit Application: Providing an Effective Structure for the Relationship

**Developing or revising your
company's credit application**

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Updated 1-15-2019

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Purposes

The purposes of the credit application include obtaining:

- information for credit review and approval purposes;
- information for ordering and delivery of products/services;
- an acknowledgment of the Seller's terms and conditions of sale; and,
- information for the collection effort.

The credit application contains information the Seller, who may provide a credit accommodation and become a creditor, needs or desires to know about the Buyer, who may purchase and become a customer and debtor.

Information received on the application should be regarded as unverified fact. Confirming the information provided takes place in the credit investigation process. Often, the prospect or customer provides the best credit information you receive.

The application provides information used to assess the creditworthiness of the applicant. At the same time, the application should inform the applicant of terms, expectations, and conditions of sale, and provide information for the collection effort. Properly written, the application creates a contract between the Seller and the Buyer.

Consistently use your application for every prospect and, as appropriate, for periodic review of existing accounts. Whenever you become aware of any substantive change in the structure or organization of the customer, a new application should be required and subject to your usual credit review procedures.

*Practice tip: Keep your application simple and direct. Keep in mind the very best time to gain information and assent to your terms and conditions of sale is when the Buyer is completing the application. If it is too complex and full of small print and legalese, the applicant may hesitate and not complete the process.

Design

The credit application must be properly designed for your company and industry, with at least five parts:

1. The **heading or banner**, including your company's logo, name, address, telephone and fax numbers, email, and, if appropriate, a theme, e.g., "Quality through the Ages" or "Five Generations of Service."

The application should clearly state the purpose of the document, e.g., "Application for Credit" or "Credit Application" or "Credit Agreement." The application and especially the banner are important reflections of your company and should communicate the quality and the strength of the brand.

If it's a paper document, **always** use an original: The use of a third-generation copy denigrates the importance your company attaches to its image and the credit process. Ideally, the application should be available online

2. **Detailed information about the customer** – Information you need to know to accomplish the sales and credit tasks may include the following demographic and legal information.
 - Customer legal name
 - Assumed business name(s), tradestyle(s), division, branch, or subsidiary
 - Federal employer identification number (EIN)
 - Street address of office handling Accounts Payable
 - Shipping address(es) if different

- Billing address if different from the street address
 - Form of business organization – proprietorship, partnership, corporation, LLC, or a hybrid
 - If proprietorship or partnership, name(s) and social security number(s) of owner(s)
 - If LLC, name(s) and social security number(s) of member(s)
 - If corporation, name(s) and business title(s) of corporate officers or managers
 - If other hybrid form, relevant information about party(ies) in control
 - Date business established or years in business
 - Accounts payable contact information, including supervisor name, direct telephone, and email
 - Names and titles of persons authorized to order
 - State professional licensing information as appropriate
 - Specific industries may require additional information.
 - Depending on company policy regarding the use of financial statements, you may want to add another section addressing such information. If this is part of your credit review process, you will need fiscal year-end and the name and contact information for the responsible internal party or the accounting firm.
3. **References** – Those with whom the applicant has established credit relationships.
- Trade suppliers (usually three) – contact name, telephone, and email for each
 - Financial resources – bank(s), lenders, credit card companies; branch(es), contact names, account numbers, and authorization for release of information
- Keep in mind the applicant will always attempt to provide the best available references, and they are not necessarily representative of payment history.
4. The **terms and conditions** section — Given the prospect information and evaluation of creditworthiness meets company requirements, you will accept orders subject to the terms and conditions stated in this section of the application. You should consider at least the following.
- Statement in which Buyer certifies the extension of credit is for commercial purposes and not for personal, household, or family use.
 - Representations are complete, true, and accurate.
 - Applicant understands the information provided will be relied upon in evaluating and extending credit.
 - Other creditors are authorized to release information about their experience with the prospect. You may want a separate sentence regarding the release of a bank reference.
 - The Buyer agrees to pay according to terms of sale, which are clearly stated, including any discounts, and will include such service charges as may be listed.
 - Buyer agrees to pay all costs of collection, including collection agency fees and costs, attorney fees and costs, and any legal and court costs.
 - Buyer agrees to venue in the state and county of creditor's choice. Buyer agrees to creditor's choice of law (which state's laws apply).
 - Buyer agrees to waive trial by jury.
 - Buyer agrees to maintain professional licensing and required insurance, bonding, renewals, etc.
 - You may want to consider a mediation or arbitration clause.
5. The **signature block** includes acknowledgement by the applicant, the date, and any other information required for verification. The importance of this acknowledgement cannot be understated: Properly signed by the Buyer, the document will be a resource should it be necessary to litigate unpaid invoices or claims. Improperly signed and the document and its provisions may be unenforceable.

Personal/Corporate Guaranty

- In many states, a personal guarantor must actively participate in the business operations in at least a minimal way, or be an owner, officer or shareholder.
- The guaranty may be printed on reverse side of application or as a separate document. The guaranty requires a separate signature for each guarantor.
- Personal or corporate financial statements and/or tax filings demonstrating creditworthiness of guarantor must be provided.
- The guarantor must authorize the creditor to perform a thorough credit investigation, including the review of the personal guarantor's personal credit report.
- The guarantor must provide social security number(s) and home address(es) for each personal guarantor(s) and any signer should be "as an individual" and not as an officer.
- The guarantor's signature should be witnessed or notarized.
- A corporate guarantor must provide a Board of Directors resolution in support of the guaranty.

Other Considerations

The **Equal Credit Opportunity Act (ECOA)** applies to all consumer and commercial business transactions and **prohibits creditors from discriminating** on the basis of race, color, religion, national origin, sex, marital status, receipt of income from any public assistance program, or reporting of a violation of the Consumer Credit Protection Act by the individual.

ECOA also requires **Sellers to provide notice of action taken** on a credit application and the applicant's right to a statement of reasons why the application was not accepted within 30 days of receipt of the application.

The **Fair Credit Reporting Act (FCRA)** – Limits and conditions the use of **consumer credit reports**. Every party accessing a consumer credit report must have a **permissible purpose and authorization by the consumer** to access such a report.

Business creditors selling to proprietors or partners or relying on a personal guarantor have a permissible purpose; however, conservative practice dictates a separate section of the application/guaranty indicating the intent to access a consumer credit report, with a separate signature line for the applicant/guarantor.

Your attorney should approve the final credit application draft and any related documents, such as an information sheet or a guaranty, or any changes to the existing documents.

Note: The credit application and other forms included in this guide are intended for reference only and are not meant for duplication. The articles are intended for reference and are not meant to provide legal advice. Companies should refer to this guide and consult with an attorney to develop or modify a credit application and supporting materials to best meet the needs of the company and its customers.

Everything You Always Wanted to Know About Credit Applications ... but were afraid to ask!

By Charles M. Tatelbaum, Cummings & Lockwood, presented at Credit Congress, September 2001

[These are selections from Tatelbaum's handout which provide a series of clauses for use in the terms and conditions section of the Application as appropriate to the particular company and industry. Although it's nearly two decades in print, it has many clauses worthy of consideration. RBW]

1. Acceptance of terms

The undersigned ("Applicant") hereby makes this Credit Application ("Application") for credit to AMANDA B. RECKINDWITH, INC. ("Seller"), and in making this Application the Applicant agrees to be bound by all of the terms and conditions contained in this Application, any documents referenced by this Application or any supplements to this Application.

2. Acceptance of terms of sale and definition of delinquency

With respect to any sales of goods or services by Seller to the Applicant on credit, the Applicant agrees that all amounts payable on or before the net due date as shown on each of the Seller's invoices will be paid by the said due date, and, if not paid on or before said due date, are then to be deemed to be delinquent (a "Delinquency").

3. Sellers rights regarding credit

As a result of this Application or otherwise, should a credit availability be granted by Seller to the Applicant, all decisions with respect to the extension or continuation of credit shall be in the sole discretion of the Seller, and the Applicant shall be bound by all of the terms set forth in this Application and payment terms on any invoice. The Seller may terminate or modify any credit availability at any time within its sole discretion.

4. Application for commercial or B2B credit

In the event that this Application is made by individuals, or a partnership, or at any time the obligations referenced by this Application are guaranteed by individuals, the Applicant and any guarantors acknowledge and agree that any credit to be extended by the Seller to the Applicant will be business or trade debt, and any goods or services provided by the Seller to the Applicant on credit shall not be for personal, family, or household use.

5. Information is true and complete

The persons signing this Application certify that all of the information contained in this Application and any attachment or amendment is true, correct, and complete to the best of their information, knowledge, and belief.

6. Use of credit reports

The Applicant acknowledges and agrees that the Seller may utilize outside credit reporting services to obtain information in order for the Seller to evaluate the initial credit decisions with respect to the Applicant and all ongoing credit decisions thereafter.

7. Consumer credit reports

In the event that the Applicant(s) is/are individual(s) or is a partnership, the signing of this Agreement shall constitute authorization under the Fair Credit Reporting Act for the Seller to utilize consumer credit reporting agencies to provide reports on said individual(s) or partners in order to permit the Seller to appropriately evaluate the extension of any business credit to the Applicant. Additionally, should any individual(s) guarantee the debt of the Applicant, said individual(s) shall be provided with a copy of this Application, and upon the signing of said guarantee, shall consent to the Seller's use of consumer credit reporting agency reports to assist in the evaluation of the credit of said guarantor(s) for the extension of business credit to the Applicant.

8. Provision of financial information and updates

As a condition of the continued extension of credit by the Seller, the Applicant agrees at the Seller's request to provide to the Seller updated financial information, and if requested, to timely provide an annual financial statement to Seller. The Applicant further agrees to provide the Seller with an updated Credit Application on request as a condition for the continued extension of credit.

9. Secured creditors

The following is a list of all creditors of the Applicant who hold liens or security interests in assets of the Applicant (please list name of creditor, brief description of secured assets, and amount of debt):

10. Acceptance of terms of sale

The Applicant agrees to pay for all charges in connection with the purchase of goods and/or services from the Seller according to the terms of Seller, which may be listed on invoices or otherwise.

OR

Requirement of acceptance of terms of sale

No terms or conditions of purchase orders that are different from the terms of the Seller will become part of any sales agreement, purchase order, or other document unless specifically approved in writing by the Seller.

11. Solvency

The Applicant agrees that the continued solvency of the Applicant is a precondition to any extension of credit made by the Seller to the Applicant. On request, the Applicant agrees to provide the Seller a statement representing that the Applicant is and remains solvent.

12. Returns

No credits will be issued without the Seller's prior written approval, and all returns may be subject to a restocking charge.

13. Payment application

All payments may be applied as against open charges in the sole discretion of the Seller; except against those open charges for which there is a good faith dispute.

14. Declination

If the Applicant's Application for business credit is denied or there is a denial of a request for an increase in business credit, the Applicant has the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact the Seller [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 the Applicant is notified of the Seller's decision. The Seller will send the Applicant a written statement of reasons for the denial within 30 days of receiving the Applicant's request for the statement.

Notice: 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 credit is the Federal Trade Commission, Division of Credit Practices, 6 Pennsylvania Avenue NW, Washington, DC 20580.

15. Right of offset

In the event that from time to time the Seller may owe credits, refunds, reserves, or other monies to the Applicant, such indebtedness shall be deemed to be created from this Agreement, and the Seller shall have the right of recoupment of such credits or refunds within its sole discretion.

16. Finance charges

It is understood that the Seller may impose and collect finance charges on any Delinquency of one and one-half percent (1½%) per month or 18% annually. Additionally, the Applicant agrees to be liable for all internal and external collection costs, including collection agency fees and attorney fees in connection with any Delinquency placed for collection by the Seller.

17. Venue

The laws of the State of [your choice] shall be applicable to all actions arising under this and any other agreement between the Applicant and the Seller. All accounts shall be due and payable in [your city and state]. In the event of litigation, venue and jurisdiction shall be in [your city and state].

18. Trial

THE PARTIES HERETO KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE OR DISPUTE THAT MAY ARISE BETWEEN THEM.

19. Addenda

[Add here any other terms or conditions that are unique or particular to a business or industry. Also, here is the place to add documents, catalogues, specifications, etc. that are to be incorporated by reference.]

Recommended Signature Block

NAME OF ENTITY

DATED: _____

("Undersigned")

Witness

By: _____
Owner/Partner/President

Print name of above

Print name of above

NAME OF CREDITOR

DATED: _____

("Undersigned")

Witness

By: _____
Owner/Partner/President

Print name of above

Print name of above

SAMPLE

ABC WIDGET CO.

Credit Application

1. Business Data

Legal name of company (hereafter "Company") _____ D/B/A(s) or Tradestyle(s) _____

_____ Mailing address _____

_____ City _____ County _____

_____ State _____ Zip _____

Street address _____ City _____

County _____ State _____ Zip _____

Business phone _____ Fax _____ Website _____

Company is a Corporation* LLC* Partnership Proprietorship

Other: _____

*State and date of incorporation / formation _____ FEI Number _____

Owner(s)/officers/managers:

Name _____ Title _____

Home address _____ SS# _____

Type of business _____ Years in business _____

Related previous business ventures _____

Accounts payable—contact name _____ Phone _____

Email _____ Fax _____

2. Trade References

Name _____

Name _____

Address _____

Address _____

City/State/Zip _____

City/State/Zip _____

Account Number _____

Account Number _____

Contact _____

Contact _____

Phone _____

Phone _____

Average or high monthly purchases: \$ _____

Average or high monthly purchases: \$ _____

3. Bank References

Name of Bank(s) _____

Address _____ City/State/Zip _____

Contact _____ DDAs – Y N Loans – Y N

Phone _____ Fax _____ Email _____

Does a bank, insurance company, or other creditor hold a security interest in your accounts receivable and/or inventory for loans advanced? _____ Yes ___ No

If yes, please state names of security interest holder(s): _____

The Company hereby authorizes the above bank(s) to release all information requested. It is understood that all information will be kept confidential.

4. Financial Statements – Please attach a copy of your Company’s fiscal year-end financial statements.

5. Credit Application Terms and Conditions

The representations provided in this Application are complete and accurate. I understand the information provided will be relied upon in the evaluation and extension of credit terms. I authorize the release of information by creditors listed above as well as other suppliers. The terms and conditions of this Application shall, upon extension of credit by the Company, constitute an agreement of sale. The Applicant agrees to be bound to the terms and conditions stated in this Application. The payment for all sales of goods or services will be according to the terms stated on the Company’s invoice. The failure to pay on the due date of each invoice shall deem the debt to be delinquent. In the event of a delinquency, the Company may impose a late charge of one and one-half percent per month on the delinquent balance until paid. In the event of a delinquency, the Company may recoup any discounts to be applied to the Applicant’s debt. In the event of a delinquency, all collection expenses, including collection agency fees and costs, and attorney’s fees and costs in connection with the collection of the delinquent debt shall be due and payable by the Applicant. The interpretation of this agreement shall be subject to the laws of the state of [state], and any necessary legal action shall be brought in [county and state].

[Sample Arbitration Clause]

The Company and the Applicant agree that any claim or dispute between or among them, their agents, employees, successors, or assigns, related to this Application, the credit extended thereafter or otherwise (other than the exercise of rights under security interests created by purchases or otherwise), including disputes related to the applicability of this Agreement, regardless against whom made, shall be resolved by binding arbitration by and under either (a) the Code of Procedure of the National Arbitration Forum or (b) American Arbitration Association. This Agreement shall be subject to and interpreted under the Federal Arbitration Act.

SAMPLE

Signature _____ Date _____

Printed name of signer _____ Title _____

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SAMPLE

Authorization to Utilize a Consumer Credit Report

The undersigned hereby consent(s) to [*Company*] use of a nonbusiness, consumer credit report for the undersigned in order to further evaluate the credit worthiness as principal(s), proprietor(s), and/or guarantor(s) in connection with the extension of business credit as contemplated by this Credit Application.

The undersigned hereby authorizes [*Company*] to utilize a consumer credit report for the undersigned from time to time in connection with the extension or continuation of the business credit accommodation contemplated by this Application.

The undersigned as (an) individual(s) hereby knowingly consent(s) to the use of such credit report consistent with the Federal Fair Credit Reporting Act in 15 U.S.C.@1681 et.seq.

Signature _____ Date _____

Home Address _____

Social Security No. _____

Signature _____ Date _____

Home Address _____

Social Security No. _____

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SAMPLE

Individual Personal Guaranty

Date _____ 20_____

I, *(name)* _____ residing at *(address)* _____
 _____ for and in consideration of your extending credit at my request
 to _____ (hereinafter referred to as the "Company"), of which I am
(title) _____ hereby personally guarantee to you the payment at
 _____ in the state of _____ any obligation of the
 Company, and I hereby agree to bind myself to pay you on demand any sum which may become due to you by the
 Company whenever the Company shall fail to pay the same. It is understood that this guaranty shall be a
 continuing and irrevocable guaranty and indemnity for such indebtedness of the Company. I do hereby waive
 notice of default, nonpayment and notice thereof, and consent to any modification or renewal of the credit
 agreement hereby guaranteed.

SAMPLE

Signature _____ Social Security No. _____
As an individual

Home Address _____

City _____ State _____ Zip _____

Witness _____

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SAMPLE

Joint Personal Guaranty

Date _____ 20 _____

We, (name) _____ and (spouse) _____
_____, residing at (address) _____

for and in consideration of your extending credit at our request to _____
(hereinafter referred to as the "Company"), of which _____
is (title) _____ hereby personally guarantee to you the payment at
_____ in the state of _____
_____ any obligation of the Company and we hereby agree to

bind ourselves to pay you on demand any sum which may become due to you by the Company whenever the Company shall fail to pay the same. It is understood that this guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the Company. We hereby waive notice of default, nonpayment and notice thereof, and consent to any modification or renewal of the credit agreement hereby guaranteed.

SAMPLE

Signature _____ Social Security No. _____
As an individual

Signature _____ Social Security No. _____
As an individual

Home Address _____

City _____ State _____ Zip _____

Witness _____

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