



# EFFECTIVE USE OF YOUR CREDIT APPLICATION

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- ▶ The credit application can be the creditor's best friend.
- ▶ Not only establish specific terms and conditions for the credit being extended, but also allow a creditor to acquire important information about the debtor
  - ▶ Legal identity – proprietorship, corporation, or LLC
    - ▶ Ensure the correct legal name has been provided
    - ▶ Federal Employer Identification Number (FEIN) or Tax Identification Number (TIN)

## THE CREDITOR'S BEST FRIEND

- Require banking information and trade references
- include specific information authorizing references to release information

SPECIFIC SECTIONS OF INTEREST

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# TERMS OF PAYMENT

Include so no confusion when the payment is due

Specify location of payment at the creditor's location

- Ensures that the contract is being performed at the seller's location

Reference that invoices are due in accordance with their terms contained on the fact of the invoice (i.e. Due within 30 days)

Service Charges should be specifically laid out with an agreed rate

Language prohibiting unauthorized discounts, credits or return of goods

# SPECIFIC AGREEMENT FOR PAYMENT OF INTEREST OR SERVICE CHARGES

Clearly recoverable on a liquidated amount of money from due date

Legal rate v. Contract rate

Written agreement trumps statutory/legal rate

1.5% (18% per annum) – 2.0% (24% per annum) are typical

# AGREEMENT TO PAY ATTORNEYS FEES AND COSTS OF COLLECTION

Not recoverable in most states without specific agreement

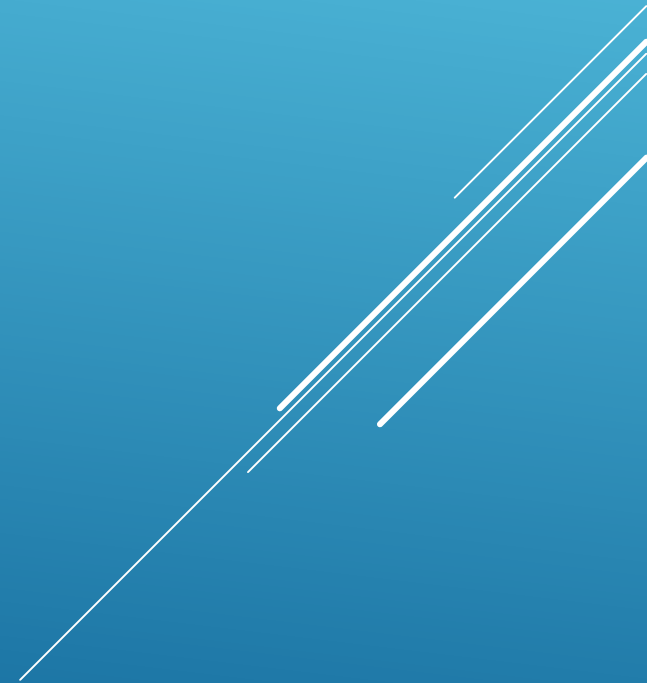
Generally a court will only award “reasonable” attorney fees

Not allows mirror the actual cost to creditor

# UNAUTHORIZED DEDUCTIONS, CREDITS, OR RETURNS WITHOUT PRIOR AUTHORIZATION

Agreement should include that no deductions, credits or offsets are allowed without prior written authorization

avoid debtor attempting to return unsold merchandise to pay overdue balance



# JURISDICTION AND VENUE

Attempt to preserve jurisdiction and venue in the creditor's home state and county

- Added leverage to avoid spurious disputes and defenses

- Avoid litigating an account a long distance in the debtor's "Home Court"

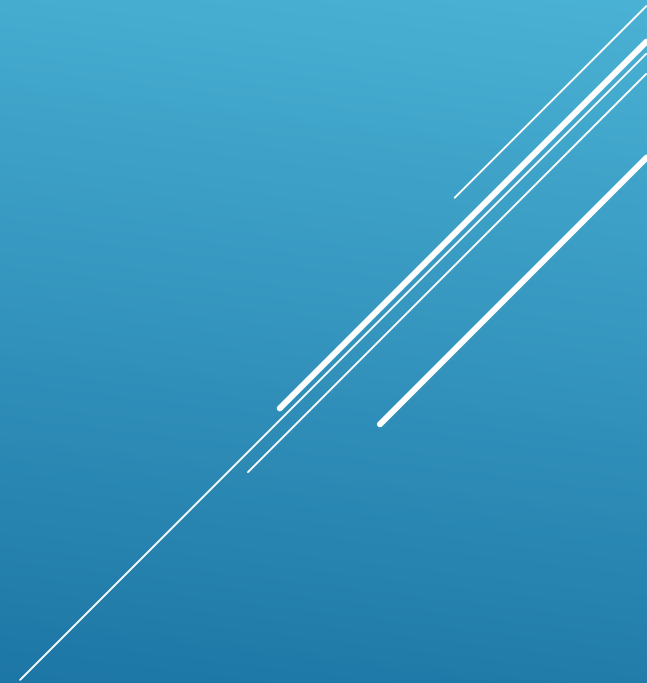
- Caution – subject to specific laws of each state and its respective jurisdictional statutes



# LIMITATIONS OF WARRANTIES

Intended to protect seller from any express or implied warranties

May only be able to avoid implied warranties such as fitness for a particular purpose



# CHANGE OF OWNERSHIP OR CHARACTER OF BUSINESS

Help protect against instances where substantive changes in ownership or nature of business

Utilized to affirmatively require the account to provide notice to creditor

# CHANGE OF ADDRESS, BILLING INQUIRIES AND DISPUTES

Affirmatively notify creditor of any change of address

This could signify problems with debtor's business

Also good idea to include requirement that any inquiries and disputes to be submitted in writing with 10 days of receipt

# WAIVER OF JURY TRIAL

Jury trials are more costly and time consuming

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# MERGER CLAUSE

Establishes that the terms and conditions, together with invoices, statements and sales confirmations represent the entire agreement between the parties

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# PERSONAL GUARANTIES

Principles for a corporate debtor or individual for another individual

Governed by KRS 371.065

Must include a (1) termination date and (2) maximum aggregate amount

Possible exemption for guaranties (1) “written on” the instrument being guaranteed, (2) terms specify state other than Kentucky governs, (3) incorporated into the credit application