

# THE CREDIT APPLICATION AND VENDOR CONTRACT: WHAT THEY ARE, WHAT THEY DO AND KEY TERMS AND CONDITIONS THAT MAY PROTECT YOU FROM CREDIT LOSSES AND CUSTOMER TERMS PUSHBACK

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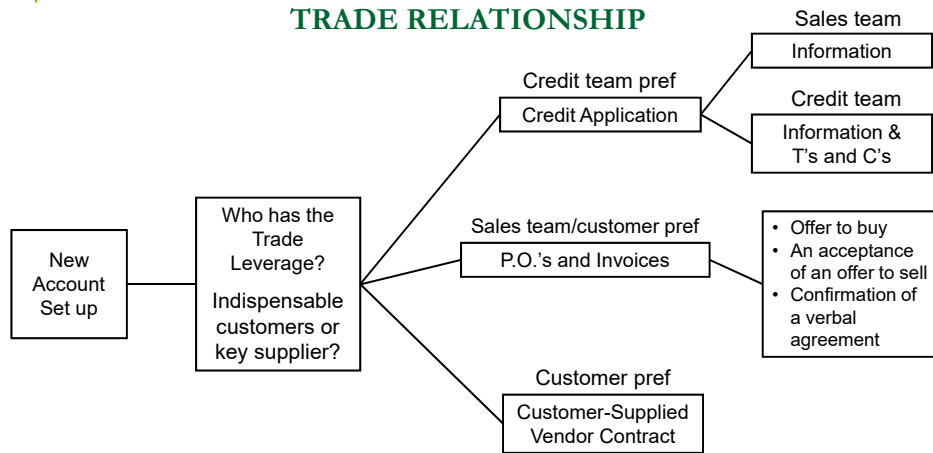
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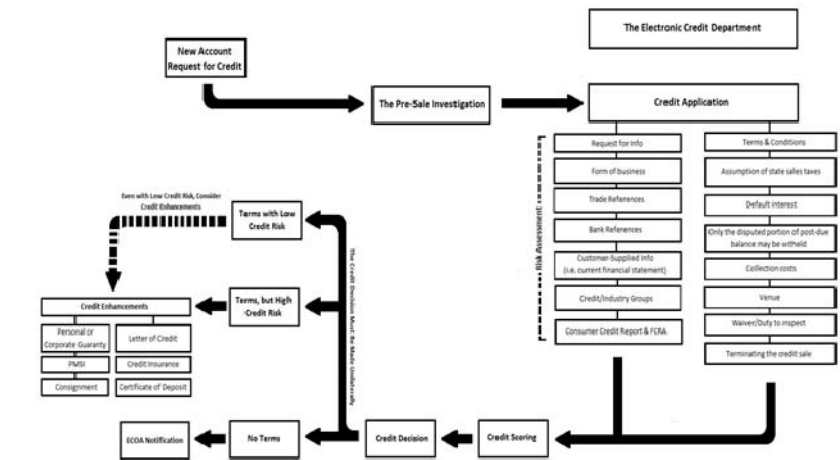
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## WHAT CONTRACTUAL DOCUMENTS GOVERN THE TRADE RELATIONSHIP



## USING THE CREDIT APPLICATION TO DOCUMENT THE CREDIT SALE



## THE CREDIT APPLICATION AND VENDOR CONTRACT

- Request for Information
  - Entity name, affiliated entities, corporate form, state of incorporation, address and officers
  - Bank references
  - Trade references
  - Customer-supplied financial information
  - UCC search
  - Social media

## The Credit Team's use of SM at the New Account Stage

- Sites to consider
  - Must supplier disclose to customer that SM used as a factor to approve B2B credit request?
  - Must customer consent to SM use?
  - May supplier decline credit based on SM grounds?
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## THE CREDIT APPLICATION AND VENDOR CONTRACT

- Terms and Conditions
    - Applicant will not withhold payment when disputes arise. Only the disputed portion of a past-due balance may be withheld
    - Applicant agrees to pay all collection costs (attorneys' fees, collection agency and court costs)
    - Applicant agrees to the specified governing law and forum selection clause
    - Waiver/duty to inspect within fixed time period
    - Default interest
    - Unilateral right to terminate credit sale
    - Unilateral right to arbitrate
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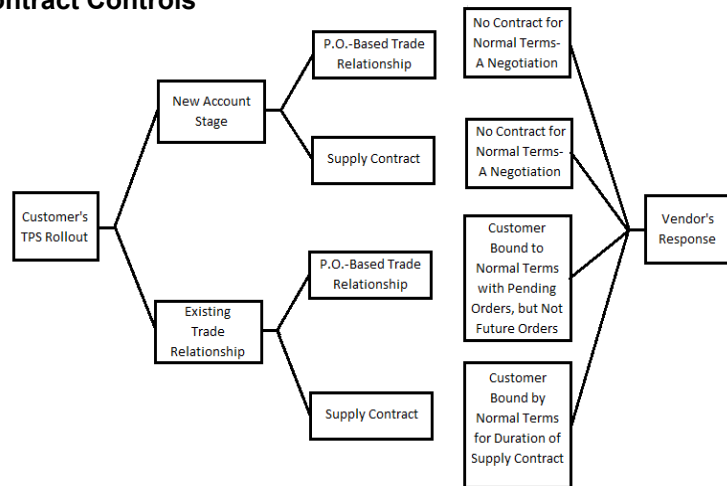
## THE CREDIT APPLICATION AND VENDOR CONTRACT

- Terms and Conditions (cont.)
  - Waiver of counterclaims
  - Waiver of consequential damages
  - Notice of change of ownership and sale or disposition of assets
  - TPS / Battle of the Forms / Amendment of credit application



## Vendor Strategy for Dealing with TPS

### Contract Controls

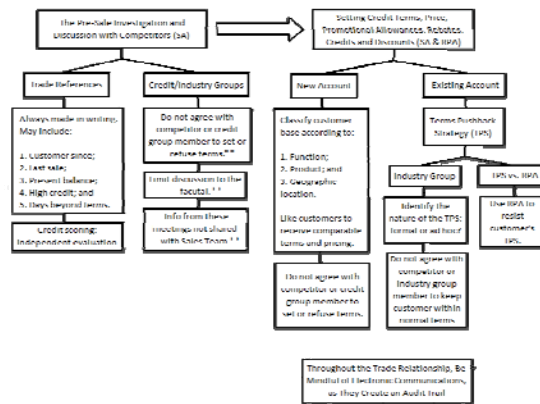


## THE CREDIT APPLICATION AND VENDOR CONTRACT

### ■ Legal Considerations

- The Electronic Signature in Global and National Commerce Act (E-SIGN)
- The Equal Credit Opportunity Act (ECOA)
- The Fair Credit Reporting Act (FCRA)
- Sarbanes-Oxley Act (SOX)

## THE ANTITRUST LAWS AND THE NEW ACCOUNT SET UP



**THE CREDIT APPLICATION AND VENDOR CONTRACT**

- **Antitrust**
    - Sharing and receiving credit information from third parties falls under the Sherman Act
    - Setting pricing/credit terms falls under the Robinson-Patman Act
  - **Privacy Rights and the Credit Application**
    - Purpose
    - Key terms
    - Notice requirement
    - Complying
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**THE CREDIT APPLICATION AND VENDOR CONTRACT**

- **Disposing of the Credit Application**
    - Holding period
    - Destroying the credit application and information
  - **Confidentiality Agreement**
    - For financial purposes- considered to be “trade secrets”
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