



Credit Crunch: Extending Credit to Produce Customers without Breaking the Bank

“Expect the economy to get worse before it gets worse....” or “This recession could last another five years....” This is rhetoric no longer attributed to just economic analysts. The economy is the topic of news and conversation everywhere. It seems that no one and no industry is immune to the economic crisis, including the produce industry. One dilemma the produce business faces – extending credit to produce customers without breaking the bank.

Dealing with highly perishable goods mandates that a produce business extend credit to its customers. Extending credit for produce transactions is contemplated under the Perishable Agricultural Commodities Act, and it allows companies to sell at higher volumes to increase business. On the other hand, executed improperly, this extension of credit can sink your business and force you to litigate to collect against a non-paying customer.

Rynn & Janowsky, LLP has pinpointed common mistakes made by produce companies and has developed an approach to protect your business against the financial risk of selling to a new customer. The key to minimizing your bad debts is to do all the work and information gathering at the beginning. The optimal method is by having the potential new client complete a credit application with key provisions. However, obtaining the information alone will not safeguard you against a non-paying produce customer; you must also take steps to confirm the information.

Every produce company must have these key provisions in its credit application, as follows:

1. *Name and address of customer applicant*
 - Obtain the full name, any “also known as,” “doing business as,” fictitious business names, and tradenames.
 - Obtain the legal status of the entity, i.e., a corporation, partnership, limited liability company, a sole proprietor, etc.
 - Verify information and status standing of the company by contacting the appropriate registering agency – a Secretary of State Office or a County Recorder’s Office, and/or contacting the USDA PACA licensing department.
2. *Names and addresses of the principals*
 - Obtain the full names and any aliases or former names.
 - Verify information by contacting the appropriate registering agency – a Secretary of State Office or a County Recorder’s Office (officer information is public information in some states) and/or by contacting the USDA PACA licensing department.
3. *Social Security Numbers, Federal Employer’s Identification Numbers, and Driver’s License Numbers*
4. *Customer applicant’s banking information*
 - Obtain bank name, branch location, and account numbers
 - Verify information by contacting the bank. Some banks provide merchant services and will confirm if an account is valid.

5. *Authorization to obtain full credit report on both the business and, if warranted, company principals, including disclosures and a release of liability in connection with obtaining the report.*
 - o Caution: when dealing with individuals, this provision must be tailored to comply with federal and state consumer protection laws.
6. *Personal guarantee provision*
 - o This provision will add a potential source of collection in the event of nonpayment by the produce customer. A personal guarantee can be executed by an individual, an incorporated entity or an unincorporated entity.
7. *Attorney's fees provisions*
 - o This provision establishes the foundation to allow your business the reimbursement of attorney's fees incurred in the event litigation must to be commenced to collect any unpaid balance.
8. *Finance charge or interest provisions*
 - o Increase your leverage to collect interest charges or financing charges on delinquent accounts.
9. *Industry and/or credit references*
 - o Verify information by contacting the business references to confirm payment history, business relationship, etc.
10. *Authorization from customer to confirm information*
 - o With this provision, your customer will acknowledge and give you consent to confirm the information in the credit application.

Only after you obtain, confirm and evaluate the information contained in a credit application should a sales transaction commence. This may seem like a lot of information and when trying to sell perishable commodities quickly, it may create extra work. However, incorporating these provisions into your credit application will leverage your business into a better position if collection efforts have to be commenced to collect any unpaid balance.



RYNN & JANOWSKY, LLP
LAW OFFICES

Rynn & Janowsky LLP provides legal services for all aspects of your agribusiness. We are here to help support your growing produce business.



Newport Beach
California

T. 949.752.2911
F. 949.752.0953

Bay Area
California

T. 510.705.8894
F. 510.705.8737

Naples
Florida

T. 239.591.8417
F. 239.591.8437