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## **NACM Webinar**

# Explanation of Common Credit Application Terms and Conditions

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# Credit Applications: Common T&C

- Interest
- Expenses of Collection
- Choice of Law / Venue
- Limitation of Liability
- Merger Clause



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# Credit Applications: Common T&C Interest

# Common T&C: Interest

- Encourages payment and discourages delays.
- Usury – the charging of an unlawful/excessive rate of interest.
- Make sure you have something in writing signed by your customer.



# Common T&C: Interest

If no agreement regarding interest:

- In Texas, when no specific rate of interest is agreed upon by the parties, an interest rate of 6% is allowed on accounts beginning on the 30th day after the date on which the amount is due and payable. *See* Texas Finance Code § 302.002.

If you do have an agreement to charge interest:

- If the parties have agreed on an interest rate in writing, the maximum rate is 18% per year (1.5% per month). *See* Texas Finance Code § 304.002.



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# Common T&C: Interest

Example: All past due accounts will be charged interest at the maximum rate allowed by state law.



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Credit Applications: Common T&C  
Expenses of Collection

# Common T&C: Expenses of Collection

If you have to file a lawsuit, then you want to have the ability to recover your costs of collection.

- Court Costs
- NSF charges
- Attorney's Fees



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# Common T&C: Expenses of Collection

Example: Applicant agrees to reimburse Seller for all costs or expenses of collection of past due accounts including court costs, attorney's fees and other expenses incurred by Seller in collecting the account.



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Credit Applications: Common T&C

Choice of Law/Venue

# Common T&C: Interest

## Choice of Law

- Every state has different laws.
- You need to know what rules are in place.
- Parties can agree that any dispute arising between them will be governed by a particular state's laws (ex: Texas law will apply).



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# Common T&C: Choice of Law/Venue

## Venue

- Venue is the location of where the court proceedings will take place
  - Example – Dallas versus Houston
- Default venue is usually here the debtor is located
- Debtor may be located in an unfavorable venue
  - “Home Cooking”
  - Difficult for witnesses to travel to court
  - Increase in expense of collection



# Common T&C: Choice of Law/Venue

Example: The construction, performance and enforcement of this agreement shall be governed by the laws of the state of Texas. The venue for all suits, counterclaims, causes of action and/or legal proceedings arising from or related to this agreement shall be maintained in any court of competent jurisdiction in Dallas County, Texas or in any other county at Seller's discretion.



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Credit Applications: Common T&C

Limitation of Liability

# Common T&C: Limitation of Liability

- Creditors can use terms and conditions to limit potential liability.
- Avoid consequential damages (lost profits).
- Limit liability to total amount actually paid.



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# Common T&C: Limitation of Liability

Example: SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OF APPLICANT. THE MAXIMUM LIABILITY IN DAMAGES RECOVERABLE AGAINST SELLER SHALL NOT EXCEED THE AMOUNT ACTUALLY RECEIVED BY SELLER FOR THE TRANSACTION THAT FORMS THE BASIS OF APPLICANT'S COMPLAINT.



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Credit Applications: Common T&C  
Merger Clause

# Common T&C: Merger Clause

- Protection from your salesman!
- Make sure your terms and conditions are all that matters.
- No changes are valid unless they are in writing.



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# Common T&C: Merger Clause

Example: These terms and conditions constitute the sole and entire agreement of the parties with respect to the subject matter contained herein [and therein], and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. These terms and conditions may not be modified except by prior written consent of the Seller.



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# Questions?



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