



Seven Ways to Manage the Credit Risk of a New Customer in Construction and Oil and Gas

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1. Get the Project Information Up Front

You should ask your customer for the owner's name and address, the location of the project, a copy of the payment bond (if any) and the general contractor's name and address (if you are a second tier subcontractor or supplier). Having this information at the outset will help you quickly send out bond and lien notices if the new customer falls behind on making payments.

2. Require a Credit Application

Request that the customer sign a credit application. The credit application should include the contact information of the customer, references, the name of the customer's bank, and favorable terms and conditions governing future sales. The credit application should also include the information necessary for you to run a credit check. Make sure the credit application is signed by an officer of the customer or someone else authorized to bind the company.

3. Get a Personal Guaranty

Request a personal guaranty from an officer or equity owner of your customer. The most opportune time to acquire a personal guaranty is on the front end when the customer is applying for credit. You should consider attaching the guaranty to the credit application or incorporating the personal guaranty therein.

Strike or modify clauses that weaken your right to payment.

4. Read (and Revise) the Subcontract or Purchase Order Carefully

Strike or modify clauses that weaken your right to payment, such as contingent payment clauses, lien waivers and broad termination clauses, and make sure the indemnity clauses are even handed.

5. Ask for a Joint Check Agreement

Joint Check Agreements are common in the construction industry (though not so in the oil and gas industry). A typical joint check agreement provides that the customer's customer (e.g., general contractor or the owner) will issue a check jointly made to you and your



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customer. This ensures that the customer uses the funds to pay you rather than another bill.

6. Draft and Use Invoices with Favorable Terms and Conditions

Draft invoices with favorable and clear terms and conditions. Such terms and conditions may not preempt your subcontract, but it may still be beneficial to have favorable terms and conditions in your transactional documents. This is especially so if you are a supplier because suppliers often do not have a formal contract with a subcontractor or general contractor.

7. Watch Your Notice Deadlines

If you fear non-payment and the amount justifies the legal expense, then contact an attorney *immediately*. Perfecting a lien or bond claim is the best way to get paid. These deadlines, however, pass quickly and are often difficult to calculate. As a general rule of thumb under Texas law, you should contact counsel well before the 15th day of the second month after you furnished the labor or materials related to the unpaid invoices. For example, if you were not paid for labor and materials provided to a Texas project in March, it may be too late to perfect your lien and/or bond rights after May 15. ▀

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