

BUSINESS CREDIT MANAGEMENT ASSOCIATION

15755 West Rogers Drive, Suite 200, P.O. Box 510157 * New Berlin WI 53151-0157
(262) 827-2880 * FAX (262) 827-2899

www.wcacredit.org

Ten Tips Relating to the Use of a Personal Guaranty

A personal guaranty is a contract by one person to pay the debts of another in the event that the debtor defaults.

1. A personal guaranty does not guarantee that a creditor will be paid
2. If the guarantor does not pay voluntarily, the creditor may have no choice but to sue the guarantor to enforce the guaranty
3. Always look a gift horse in the mouth - meaning know the guarantor including their credit history, reputation, net worth and liquidity
4. Unless you know the financial strength and health of the guarantor, it makes no sense to proceed with obtaining a guaranty
5. It is difficult, time consuming and costly to try to verify the creditworthiness of the guarantor
6. Many companies simply request a signed personal financial statement from the guarantor and rely on this as the basis for accepting and relying on their guaranty
7. A personal guaranty must be signed by the guarantor and that signature should always be notarized
8. In community property states such as California, it is strongly advised that the creditor request the spouse's signature on a personal guaranty
9. However, if the spouse is not active in the business, the creditor may be legally prevented from requesting or requiring the spouse's signature. However, without that signature there is a real possibility that the creditor will find it difficult to enforce the guaranty even with a court judgment in the creditor company's favor
10. If the guarantor is the President of the corporation, there is a reasonable chance that the guarantor will file personal bankruptcy when the corporation files for bankruptcy. Doing so limits the creditor's options in collecting from the guarantor

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Personal Guaranty Example:

This guaranty is given by the undersigned to seller, in order to induce and extend credit to, sell goods to, or otherwise become the creditor of, the above-named sole proprietorship or corporation.

I hereby guaranty to seller, the prompt payment, in accordance with the terms of credit, of every claim of seller, including claims relating to goods sold, open accounts and accounts stated, against the above-named sole proprietorship, partnership or corporation. This is a continuing guaranty and shall remain in force until revoked by the written consent of seller. This obligation shall cover the renewal of any claims guaranteed by those affected by any surrender or release by the seller of any security held by it for any claim hereby guaranteed.

The undersigned additionally guarantees the payment of interest at the maximum lawful rate on all monies outstanding to seller, by the above-named sole proprietorship, partnership or corporation, together with costs and reasonable attorney fees whether suit be brought or not and any attorneys' fees on appeal, which the seller may incur in the collection of any claims. Further, the undersigned hereby submits himself (or herself) to the jurisdiction of the course of [STATE] in the event suit is brought in connection with any claims by seller regarding the guaranty of payment, and agrees that venue shall be in the county where seller has its principle place of business. It is understood and agreed by the undersigned that this personal guaranty shall remain in full force and effect regardless of whether the above-named corporation, partnership or sole proprietorship files bankruptcy, becomes insolvent or is otherwise dissolved.

The guarantor signature(s) below must be dated and witnessed.

Guarantor Signature

Print Name

OR



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PERSONAL GUARANTEE EXAMPLE

FOR VALUE RECEIVED, and in consideration of the credit which shall hereafter be extended by Name of Seller and Address ("Seller" or "Supplier"), to Name of Buyer and address ("Buyer"), the undersigned hereby guarantees to the Seller, its successors or assigns, the prompt payment at maturity of any liability or indebtedness now incurred, or which may hereafter be incurred by the Buyer, to the Seller, its successors or assigns, with interest after maturity at the agreed or legal rate.

Renewals or extensions of time of payment of any of the aforesaid liability or indebtedness are hereby agreed and consented to by the undersigned as is also any release, addition to or change of other security, also any change in the form of the liability or indebtedness, from open book account to notes or otherwise, and the said Seller, or its successors or assigns, shall not be required to in any way notify the undersigned when orders are received from or shipments made to Buyer or of defaults in payment, or to give notice to the undersigned of the acceptance of the guarantee, or to make demand for payment on the undersigned, nor shall it be necessary to Supplier before suit may be brought against the undersigned; it being the intent of the undersigned to guarantee and hold harmless the Seller.

Its successors or assigns, on any and all liability or indebtedness now incurred or hereafter incurred hereunder, including all costs and attorney's fees incurred in attempting to enforce payment thereof, and any judgment obtained against the Buyer for or on account of such liability or indebtedness, shall be conclusive evidence of the amount hereby guaranteed.

In the event of a default and without the necessity of demand on the primary obligor, and to secure payment of the indebtedness with interest, the undersigned and each of them does hereby jointly, severally and irrevocably, authorize any attorney of any Court of Record to appear for the undersigned, or any of them, in any such Court in term time or vacation, at any time hereafter, and confess judgment without process against the undersigned, or any of them, in favor of the payee or the holder of this guarantee, for such amount as may appear to be unpaid or owing hereon, together with costs and reasonable attorney's fees, and to waive and release all errors which may intervene in any such proceeding, and to consent to immediate execution upon any such judgment and that any execution that may be issued on any such judgment may be immediately levied upon and satisfied out of any personal property of the undersigned, or any of them, and waive all right of the undersigned, or any of them, to have personal property last taken and levied upon to satisfy any such execution; hereby ratifying and confirming all that said attorney may do by virtue hereof.

If this guarantee is signed by more than one person, they shall be liable jointly and severally hereunder, but the words "jointly" and "severally" as used in this guarantee shall be disregarded in case it is signed by only one person.

This guarantee is a continuing one, binding upon the undersigned and the heirs and legal representatives of the undersigned, and shall continue in force until written notice of revocation thereof shall be received by the Credit Department of Seller, its successors or assigns.

Dated at: _____ this _____ day of _____ 20____

NOTARIZATION REQUIRED

