

# Are You a Building Material Supplier or Are You a Bank?

If You Extend Credit to Customers You're Both

**Every time** you provide equipment or materials to a customer on credit, you are lending that customer money. Ask yourself: *"If I was a bank, would I provide this customer with a loan?"*

We all know that the construction industry is cyclical and the financial position of your customers is constantly changing. Regardless of whether or not you have an existing relationship with your customer, every credit-based transaction should require a quick analysis to determine that customer's credit worthiness at the time.

Questions to ask before extending credit:

- **Credit check** – How is the customer's credit? Many services will conduct a fast and relatively inexpensive credit search.
- **Recent history** – Has the customer been late on past payments?
- **Reputation** – Has this customer defaulted on contracts with others?

## Even Creditworthy Customers Can Harm Your Business

Credit applications are legally binding documents that will preserve your legal right to collect money should your customer default. Key provisions of the credit application should include:

① **Specific provisions related to how disputes regarding payment will be handled.**

In some cases it is more cost and time efficient to require that disputes be resolved through arbitration rather than litigation.

② **A representation that the person(s) signing the agreement has full authority to execute the agreement on behalf of the applicant.**

Many defaulting customers claim that the person who signed the agreement did not have the authority to act on its behalf and, therefore, the agreement is void. To prevent this defense from being raised, credit applications should always include an agency clause.

③ **Personal liability should the borrowing business fail to pay its debt.**

One of the most important terms to include in a credit application is a personal guaranty. Through a personal guaranty, the customer is acknowledging that he or she is personally liable if the borrowing business fails to pay its debts. This allows the lending business to levy against a borrower's personal assets in the event of non-payment. Personal guaranties are critical in situations where you are attempting to enforce a judgment, especially where an officer of the borrowing business has more assets than the business itself.



LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.  
Attorneys at Law



## Lindabury, McCormick, Estabrook & Cooper, P.C.

is a mid-sized general practice law firm, located in Central New Jersey. We provide litigation and transactional counsel to a broad spectrum of clients throughout New Jersey and the Mid-Atlantic region. We are committed to providing quality legal representation with a focus on personalized service.

The Construction Law Practice at Lindabury is comprised of some of the leading construction attorneys in New Jersey, nationally recognized for their capabilities and experience. We have represented clients in the construction industry in some of the largest construction disputes in New Jersey and have established some of the leading reported case law on issues arising out of public contract law.

Lindabury provides representations in all venues for disputes arising out of construction projects, including litigation, arbitration and mediation.

We represent a broad range of clients in all areas of construction law, including trade associations, owners, contractors, vendors, sureties and insurance companies. We are general counsel to the Mechanical Contractors Association of New Jersey and are recognized as special counsel for the Mechanical Contractors Association of America. We are also general counsel to the New Jersey Subcontractors Association and the New Jersey Chapter of Professional Women in Construction. Additionally, we have represented some of the major institutional owners and sureties and are experienced in all areas and disciplines involved in the construction process for both public and private projects.

Our Construction Law attorneys have provided extensive representation of entities in public construction projects, including construction of numerous projects under the Education Facilities Financing Act and the oversight of the New Jersey Schools Construction Corporation.

Lindabury, McCormick, Estabrook & Cooper's construction law team is comprised of leading New Jersey attorneys who have represented construction clients in some of the largest disputes in the state.



**GREG VITALI**  
gvitali@lindabury.com

- New Jersey Chapter of Professional Women in Construction, General Counsel
- New Jersey Subcontractors Association, General Counsel
- Attorneys' Council to the American Subcontractors Association, Past Chair
- Attorneys' Council for the National Subcontractors Alliance, Member



**ERIC LEVINE**  
elevine@lindabury.com

- "40 Under 40", New Jersey Law Journal (2006)
- "40 Under 40", NJBiz (2007)
- New Jersey Super Lawyers, Rising Star\*



### Representative Litigation & Transactional Matters

- Currently serving as local counsel in Morris County, New Jersey to a fire suppression contractor in the defense of a multi-million dollar construction defect claim brought by a condo association against the general and subcontractors.
- Currently serving as local counsel to a drilling company in a dispute with a general contractor over payment and delay impacts arising from a public project installing electrical cable beneath the Hudson River.
- Negotiated a \$1.2 million settlement with the School Development Authority for contract funds and change orders due, including a claim for general conditions due to project delays.
- Obtained a \$1 million settlement on behalf of a construction client for contract funds owed, including disputed work items.
- Represented owner/landlord in redevelopment/construction of 524,000 square foot warehouse.

### Business Associations to Which We Are Legal Counsel

- Mechanical Contractors Association of New Jersey
- National Subcontractors Alliance
- New Jersey Subcontractors Association
- New Jersey Chapter of Professional Women in Construction

### Nonprofit Boards on Which Attorneys Serve

- American Subcontractors Association
- Linden Industrial Association
- National Subcontractors Alliance