# Collection Factoring Agreement

by Practical Law Finance

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Related Content

*A standard form of collection factoring agreement to be used for a factoring arrangement between a factor and, typically, a retail business. This Standard Document has integrated notes with important explanations and drafting and negotiating tips.*

## READ THIS BEFORE USING DOCUMENT

**Factoring** is an ongoing arrangement in which a **factor** purchases the **accounts receivable** of its client, and is paid a commission by its client for accepting the **credit risk** on the purchased receivables. The factor is often a bank or other financial institution, although there are many firms whose principal or even sole business is factoring. The client is a business that sells goods or services on **open account**, which means that its customers might not pay for 30 to 90 days or even longer. The factoring transaction itself is a true sale in which title to the receivables passes from the client to the factor.

In a factoring arrangement, a factor provides the following services to its client:

- It alleviates the uncertainty of the client's cash flow with a stable, predictable payment schedule.
- It provides its client several important administrative services, relieving the client of the burden and cost of performing these functions itself:
  - it performs credit investigations on all of the client's prospective customers;
  - it takes over the task of collecting the client's accounts receivable;
  - it maintains detailed records of transactions between the client and its customers, including credit memoranda and adjustments to payment terms; and
  - it provides bookkeeping services related to the aging and collection of the client's accounts receivable.
- It assumes the credit risk associated with accounts receivable it approves as creditworthy. That is, if a customer is financially unable to pay, the factor absorbs the loss.
- Sometimes, factors also provide advisory services, including market studies and production counseling.
- In an **advance factoring** arrangement, a factor provides short-term credit to its client.

Accounts receivable typically represent a significant portion of the operating assets of a company. By purchasing the receivables from its client, the factor converts this unproductive asset into cash. For a detailed discussion of factoring, see Practice Note, Fundamentals of Factoring.

There are three principal types of factoring facilities:

- **Maturity factoring**, or wholesale factoring, in which the factor pays for purchased accounts receivable on a fixed date tied to the average maturity date of all the receivables purchased during the month. In maturity factoring, the client's customers are typically distributors and other companies that operate at the wholesale level of the market. See Practice Note, Fundamentals of Factoring: Maturity Factoring and Standard Document, Maturity Factoring Agreement.

- **Collection factoring**, or retail factoring, in which the factor pays for purchased accounts receivable only after it collects the receivables. In collection factoring, the client's customers are typically retailers. If an approved receivable remains unpaid after it matures, the factor must pay the client for the receivable after the factor determines that the customer is financially unable to pay. See Practice Note, Fundamentals of Factoring: Collection Factoring. This Standard Document is a collection factoring agreement.
- **Advance factoring**, in which the factor provides a short-term credit facility for the client. An advance factoring facility can be provided in connection with both maturity factoring and collection factoring. When the client needs funds before payment is otherwise due from the factor, the factor can advance the funds as a short-term loan, which is then repaid by the client by netting the loan against the factor's regular payment to the client. These advances are secured by the factor's obligation to pay for the receivables in the future. See Practice Note, Fundamentals of Factoring: Advance Factoring. For an example of an advance factoring facility in a maturity factoring agreement, see Standard Document, Advance Factoring Agreement.

### Assumptions

This Standard Document assumes that:

- The parties wish to enter into a collection factoring arrangement, also known as retail factoring. The client's customers are retailers and the client sells goods, not services, to its customers. The factor agrees to pay the client as the factor collects the accounts receivable, generally on a weekly basis.
- The parties do not intend this to be a maturity factoring agreement, in which the client's customers are typically manufacturers and distributors, operating at the wholesale level.
- The parties do not intend this to be an advance factoring agreement, in which the factor, in addition to purchasing the client's accounts receivable, provides short-term financing to its client.
- This is a transaction between a US factor and a US client.
- The client's customers are typically US retailers. It is unusual for US businesses to sell directly to retailers outside the US. Retailers are also generally viewed by factors as riskier customers than wholesalers. Factors are reluctant to compound their risk by purchasing accounts receivable generated by retail customers outside the US. For a discussion of factoring involving foreign accounts receivable, see Standard Document, Maturity Factoring Agreement: Drafting Note, Foreign Accounts Receivable.

### Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the collection factoring transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices to be selected, added, or deleted at the drafter's discretion.

## COLLECTION FACTORING AGREEMENT

This Factoring Agreement (this "**Agreement**"), dated as of [DATE], is entered into between [CLIENT NAME], a [STATE OF ORGANIZATION/TYPE OF ENTITY] ("**Client**"), and [FACTOR NAME], a [STATE OF ORGANIZATION/TYPE OF ENTITY] ("**Factor**").

**RECITALS**

**WHEREAS,** Client is engaged in the business of [DESCRIBE BUSINESS] and sells and delivers merchandise to retail customers on trade credit that generates accounts receivable;

**WHEREAS,** Client wishes to sell its accounts receivable to obtain operating capital for its business and for other purposes; and

**WHEREAS,** Factor is willing to purchase Client's accounts receivable according to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purchase and Sale of Accounts Receivable.**

(a) Client agrees to assign and sell to Factor as absolute owner (i) all of its present and future Accounts Receivable (as defined in Section 1(b)), (ii) all of its interest in the goods represented by the Accounts Receivable, including goods that may be returned by Client's customers ("**Customers**"), and (iii) all of its rights against third parties with respect to the Accounts Receivable. Factor agrees to purchase all of the Accounts Receivable which are Approved Receivables (as defined in Section 2(b)).

(b) "**Accounts Receivable**" means all accounts (as that term is defined in the Uniform Commercial Code in effect from time to time in the State of [New York]/[OTHER STATE] ("**UCC**")), contract rights, documents, notes, drafts, and other obligations owed to or owned by Client arising from the sale of goods by Client, all general intangibles relating to these obligations, all proceeds of these obligations, all guaranties for these obligations, and all goods and rights represented by these obligations.

(c) Factor agrees to purchase all Approved Receivables from Client without recourse, except as otherwise provided in Section 2(a).

## PURCHASE AND SALE OF ACCOUNTS RECEIVABLE

Although factoring is often referred to as a type of receivables financing, it is not a loan transaction. Instead, the factor purchases the client's accounts receivable in a true sale transaction and retains only limited recourse against the client.

The arrangement between factor and client is exclusive:

- The client agrees to sell all of its accounts receivable to the factor (Section 1(a)(i)).
- The factor agrees to purchase all of the receivables whose creditworthiness it approves (Section 1(c)).

Once title passes to the factor, it is the factor that collects the receivables from the client's customers. Therefore, the sale encompasses not only the receivable, but all of the client's rights associated with the receivable, including the goods represented by the receivable and rights against third parties.

2. **Factor's Assumption of Credit Risk.**

(a) Client shall submit to Factor for its prior approval the amount, payment terms, manner of delivery, and all other terms of each prospective sale. Factor shall notify Client in writing to Client whether it approves or disapproves the extension of credit to such proposed Customer on such terms. Factor may withdraw its approval, in writing, at any time before shipment of the goods to the Customer. Factor's approval shall be automatically withdrawn if any sales terms are changed without Factor's approval or if delivery is made more than thirty (30) days after the approved delivery date; *provided*, *however*, if the amount of the sale is increased without Factor's prior written approval, Factor's approval shall be limited to the original amount approved.

(b) "**Approved Receivables**" means Accounts Receivable arising from sales (i) which shall have been submitted to Factor for its prior approval as to Customer, amount, payment terms, manner of delivery, and other terms in accordance with Section 2(a), (ii) which have been approved by Factor in writing, (iii) as to which, Factor's approval has not been withdrawn, and (iv) which sales shall have been made only in accordance with such approval.

(c) With respect to all Approved Receivables, Factor agrees to assume the risk of nonpayment for any of the following reasons (collectively, the "**Credit Risk**"):

(i) the Customer shall have made an assignment for the benefit of creditors;

(ii) the Customer shall have commenced, or there shall be commenced against the Customer, any case or proceeding under any existing or future bankruptcy or insolvency law;

(iii) the Customer shall have called a general meeting of creditors to compromise, compose, or adjust its debts; or

(iv) the Customer shall be financially unable to pay at maturity any invoice rendered by Client, as reasonably determined by Factor on the basis of evidence submitted by Client or otherwise;

*provided*, that the Customer has received and accepted the goods to which the Approved Receivable relates without Dispute (as defined in Section 2(d)). Upon the occurrence of any Dispute, the Credit Risk on such Account Receivable shall automatically revert to Client. Factor will not assume the Credit Risk of Accounts Receivable which are not Approved Receivables.

(d) "**Dispute**" means any dispute, deduction, setoff, defense, claim, or counterclaim of any kind (including, without limitation, any dispute or claim as to price, terms, quantity, quality, or late delivery, and all returns or rejections of merchandise) by a Customer against Client relating to an Account Receivable.

## FACTOR'S ASSUMPTION OF CREDIT RISK

The client must submit the terms of each sale to the factor for it prior approval (see Section 2(a)). This allows the factor to assess not only the creditworthiness of the customer, but also the payment terms of the sale, including any discounts, and the manner of delivery. For example, an invoice might state that it is payable 60 days from delivery, but also offer the customer a discount of three percent (3%) if the invoice is paid within ten (10) days. These payment terms are commonly referred to as "trade terms" or "terms."

In collection factoring, the only accounts receivable that are purchased by the factor are those it has approved in writing (Section 2(b)). For approved receivables, the factor agrees to assume the "Credit Risk," defined as the risk of nonpayment by the customer for any of the four reasons specified in Section 2(c). With respect to approved receivables, the factor also agrees that it has no recourse against the client (Section 1(c)). However, if an approved receivable becomes the subject of a "Dispute" (defined in Section 2(d)), the credit risk automatically reverts to the client (Section 2(c)). This is because in a typical dispute the client, not the factor, is in the best position to address the merits of the customer's claim. In addition, if the goods are sold in a manner that falls outside the scope of the factor's approval, such as a larger quantity of goods for a higher price, the factor's credit risk is limited to the original amount approved (Section 2(a)).

For proposed sales that are not approved, nothing in the agreement prevents the client from proceeding with these sales. However, the accounts receivable generated by these non-approved sales generally fall outside the scope of the collection factoring agreement:

- These accounts receivable are not purchased by the factor.
- The factor does not assume the credit risk that accompanies these accounts receivable.
- The factor performs none of its typical services regarding these accounts receivable, including collection and monitoring.

These non-approved accounts receivable are important in one respect. The security interest the client grants the factor includes all of its accounts receivable, whether or not they were approved by the factor (Section 7(a)(i)).

3. **Sales Giving Rise to Accounts Receivable.**

(a) Client shall mail [or email] invoices to Customers, with a copy to Factor. The issuance of the invoice to Customer shall constitute the assignment to Factor under Section 1(a) of the Approved Receivable associated with such invoice.

(b) Each invoice shall bear on its face the following legend:

"This invoice has been sold and assigned to, is owned by, and is payable only in United States dollars to:

[FACTOR NAME]

[ADDRESS]

[EMAIL ADDRESS]

[TELEPHONE]

to whom any objection to this invoice or its terms must be reported upon receipt of same."

(c) Client shall not agree to any compromise, settlement, allowance, or credit with any Customer in respect of any Approved Receivable unless the same shall have been approved by Factor in writing.

(d) If any Approved Receivables are paid to Client, Client shall hold such remittances as Factor's property and shall immediately deliver them to Factor in the form in which they were received. Factor shall have the right to endorse Client's name on all such remittances.

(e) Client shall maintain at its office complete and accurate records of all sales to Customers, including copies of invoices and shipping receipts. Such records shall reflect the sale of Accounts Receivable to Factor and Factor's ownership of Accounts Receivable. Such records shall be available for Factor's inspection and copying on reasonable request.

## SALES GIVING RISE TO ACCOUNTS RECEIVABLE

US factoring agreements typically require the client to notify its customers that their accounts receivable have been assigned to the factor. This is accomplished with a legend on the face of the invoice:

- Stating that the account receivable associated with the invoice has been assigned to and is owned by the factor.
- Instructing the customer to make payment only to the factor.
- Instructing the customer to report any objections to the invoice to the factor, as well as the client.

In contrast, UK factoring agreements typically do not require the client to notify its customers of the assignment of the accounts receivable.

4. **Factoring Commission.**

(a) Client shall pay Factor for all Accounts Receivable purchased by Factor a commission ("**Commission**") equal to a percentage of (i) the face amount of invoices giving rise to such Accounts Receivable *less* (ii) discounts, credits, and allowances granted to Customers in respect of such Accounts Receivable.

(b) The percent amount of such Commission shall be determined as follows:

(i) for Accounts Receivable payable on terms up to and including [sixty (60)] days, the Commission shall be [NUMBER] percent ([NUMBER]%); and

(ii) for Accounts Receivable payable on terms longer than [sixty (60)] days, the Commission shall be increased by one-quarter of one percent (0.25%) for each additional thirty (30) days or part thereof.

(c) The minimum Commission on any invoice shall be [NUMBER] Dollars ($[NUMBER]).

## FACTORING COMMISSION

The factor is compensated for its services with a factoring commission. It is calculated as a percentage of the face amount of the accounts receivable it purchases, but reflects the value of any discounts taken by the customer. The amount of the commission is usually between four-tenths of one percent (0.4%) and two-and-one-half percent (2.5%), but is negotiable.

For example,

- The face amount of an invoice is $10,000.
- The invoice states that it is payable 60 days from delivery.
- The invoice offers the customer a discount of three percent (3%) if it is paid within ten (10) days.
- The factoring commission is one percent (1%).

If the customer paid the invoice in more than ten days, but within 60 days, the amount of its payment would be $10,000 and the amount of the factoring commission would be $100. If, instead, the customer paid within the ten days, its discounted payment would be $9,700 and the factoring commission would be $97.

The commission is usually based on trade terms of 60 days (the number of days within which the invoice is payable) and typically increases in increments of one-quarter of one percent (0.25%) for each additional 30 days, to compensate the factor for the higher risk inherent in longer trade terms.

To protect the factor against the nuisance of collecting many small accounts receivable, factoring agreements, particularly in retail factoring, typically provide a minimum dollar amount of commission per invoice (see Section 4(c)).

5. **Weekly Reports; Factor's Payment for Accounts Receivable.**

(a) On [Tuesday] of each week, Factor shall deliver to Client a report on the immediately preceding week, setting forth the following information:

(i) Approved Receivables assigned to Factor during the preceding week;

(ii) all collections on Accounts Receivable received during the preceding week, identified to specific invoices;

(iii) the Commission payable in respect of such collections;

(iv) a record of Customer activity in respect of Accounts Receivable, including aging of unpaid Accounts Receivable, payment history, Disputes, and returns, and discounts, credits, and allowances granted to Customers in respect of Accounts Receivable;

(v) the expenses incurred by Factor in collecting, or attempting to collect, Accounts Receivable other than Approved Receivables, including attorneys' fees; and

(vi) the amount of any Reserves (as defined in Section 5(c)) established by Factor during the preceding week.

(b) By [Friday] of each week, Factor shall remit to Client the payment reflecting the collections referred to in Section 5(a)(ii) and deductions referred to in Sections 5(a)(iii), (v), and (vi).

(c) Factor may, from time to time, establish and maintain such reserves ("**Reserves**") as Factor in its sole discretion deems advisable in respect of Client's Obligations (as defined in Section 7(b)). Reserves may be released to Client at the reasonable discretion of Factor.

(d) With respect to any Approved Receivable that remains unpaid after the occurrence of one of the events specified in Section 2(c), Factor shall pay Client the net unpaid amount due on the related invoice as follows:

(i) the net unpaid amount equals the face amount of the invoice;

(ii) the Commission payable in respect of such Approved Receivable shall be deducted from Factor's payment; and

(iii) Factor's payment shall be made within [fifteen (15)] business days after:

(A) Factor learns of the Customer nonpayment specified in Section 2(c)(i), (ii), or (iii), or

(B) Factor shall have made the determination that the Customer is financially unable to pay, specified in Section 2(c)(iv).

(e) With respect to any Approved Receivable paid by Factor in accordance with Section 5(d),

(i) Client, upon Factor's request, shall execute a specific assignment to Factor of all Client's right, title, and interest in and to the claim against the Customer related to such Approved Receivable and the goods or merchandise associated with such Approved Receivable, such assignment to be satisfactory to Factor in form and substance;

(ii) Client covenants and agrees from time to time to execute and deliver all documents deemed necessary by Factor in connection with such claim; and

(iii) Factor shall have the right, at its own expense, to:

(A) commence any proceeding against such Customer in the name of Client or Factor,

(B) file any claim in any bankruptcy or insolvency proceeding of such Customer in the name of Client or Factor, and

(C) settle or compromise any such proceeding or claim on such terms as are acceptable to Factor in its sole discretion.

(f) Client hereby appoints Factor as its attorney-in-fact with full power of substitution for the purposes set forth in Section 5(e)(iii) and for the purpose of executing any endorsement, instrument, or document relating to any Account Receivable or any proceeds thereof. The foregoing grant of authority is a power of attorney coupled with an interest, and is irrevocable for the term of this Agreement. Client hereby ratifies all that such attorney shall lawfully do by virtue of such grant of authority.

## WEEKLY REPORTS; FACTOR'S PAYMENT FOR ACCOUNTS RECEIVABLE; RESERVES

### Weekly Reports

Record-keeping and collections are important services under most factoring agreements. Factors can usually perform these services more thoroughly and efficiently than the client. By doing so, factors relieve the client of expensive and burdensome tasks. In collection factoring, the factor provides the client a weekly report (Section 5(a)) on collections, receivables aging, factoring commissions, collection expenses, and a statement of the amount of any reserves established by the factor under Section 5(c) to cover potential liabilities of the client to the factor.

This report is rendered weekly because, unlike maturity factoring, where the factor pays for accounts receivable once per month, in collection factoring this payment is made weekly, based on the prior week's collections.

### Factor's Payment for Accounts Receivable

The generally accepted formula for the purchase price of a client's account receivable is the face amount of the invoice giving rise to the receivable, *less*:

- All returns by the customer.
- All discounts, credits, or allowances granted to the customer.
- The factor's commission.

In collection factoring, in the ordinary course, the factor makes its payment only after it has collected the accounts receivable. The collections therefore already reflect reductions from face value caused by customer returns and discounts. The factor subtracts its commission, together with the amount of any reserves established by the factor, and the remainder is the factor's payment for accounts receivable (see Section 5(b)).

When the customer fails or is unable to pay the account receivable, the same formula applies to the factor's payment (Section 5(d)). However, in this case, the formula does not include any discount offered to the customer in the invoice (Section 5(d)(i)).

In maturity factoring, by contrast, it is customary for the factor to pay the client for an entire month's receivables on a single fixed date, determined by averaging the maturities of the receivables assigned during the month. The formula for wholesale factoring assumes that the customer will avail itself of shortest terms in every case. See Standard Document, Maturity Factoring Agreement: Drafting Note, Factor's Payment for Accounts Receivable.

### Reserves

As with **asset-based lenders**, factors have broad discretion to establish reserves to protect against adversity. In asset-based lending, the reserve reduces the amount the borrower may otherwise be able to borrow against **borrowing base assets**. In factoring, other than advance factoring, the reserve reduces the purchase price otherwise owed by the factor to the client on the purchased accounts receivable (see Sections 5(a)(vi) and 5(b)).

For a discussion of reserves in asset-based lending, see Practice Note, Borrowing Base: Overview: Reserves; for a discussion of reserves in factoring, see Practice Note, Fundamentals of Factoring: Factoring Terminology.

6. **Indemnity; Expenses**

(a) Client agrees to indemnify and hold harmless Factor from and against any and all claims, damages, losses, liabilities, and related expenses (including reasonable attorneys' fees) incurred by Factor in connection with:

(i) the collection or attempted collection of any Account Receivable other than Approved Receivables; and

(ii) any claim asserted by any Customer for refund of any monies paid by such Customer on any Account Receivable.

(b) With respect to any Approved Receivable paid by Factor in accordance with Section 5(b) as to which a Dispute arises:

(i) Factor shall notify Client of such Dispute within [five (5)] business days; and

(ii) Client shall pay Factor on demand the amount paid to Client by Factor under Section 5(b).

(c) Client's obligations under this Section 6 shall survive termination of this Agreement.

## INDEMNITY; EXPENSES

In collection factoring, the factor is responsible for all collection costs associated with "Approved Receivables," accounts receivable for which the factor bears the credit risk. If a customer initiates a dispute, its receivable ceases to be an "Approved Receivable" and the credit risk reverts to the client (Section 2(c)). In that case, the costs of collection are borne by the client. This indemnity ensures that, even if the factor has already paid for a disputed account receivable, it has the right to collect these costs from the client.

7. **Grant of Security Interest.**

(a) To secure the Obligations, Client hereby grants to Factor a security interest in, and right of setoff with respect to, all of the following (collectively, "**Collateral**"):

(i) all Accounts Receivable, whether or not they are Approved Receivables or specifically assigned to Factor, and including Accounts Receivable arising after termination of this Agreement;

(ii) all present and future instruments, documents, notes, bills, chattel paper, and general intangibles (as that term is defined in the UCC);

(iii) all Reserves maintained by Factor under this Agreement; and

(iv) all proceeds (as that term is defined in the UCC) of the foregoing.

(b) "**Obligations**" means all of Client's obligations to Factor, direct or indirect, fixed or contingent, arising from time to time under this Agreement or any other agreement between the parties, or by operation of law. Obligations shall include, without limitation:

(i) Client's indebtedness under accounts receivable of other firms whose accounts receivable are assigned to Factor;

(ii) charges arising from Disputes;

(iii) costs and expenses, including attorneys' fees, incurred in any proceeding arising under or relating to this Agreement, other than proceedings referred to in Section 5(e)(iii);

(iv) amounts recovered from Factor on account of payments previously made by Customers on Accounts Receivable purchased by Factor; and

(v) any taxes, penalties, or other charges which Factor is required to pay in connection with this Agreement.

(c) Client shall not create, nor will it permit to exist, any lien on or security interest in any of the Collateral, except in favor of Factor.

## GRANT OF SECURITY INTEREST

Most factoring agreements include a grant of security. Occasionally the grant fails to cover:

- The accounts receivable generally (including those that are not approved by the factor) (see Section 7(a)(i)).

- The factor's payment obligations to the client (see Section 7(a)(iii)).

However, most agreements do include these provisions because they strengthen the factor's position against potential claims of third parties.

The obligations covered by the security interest include:

- Any obligations of the client to third-party companies that are themselves clients of the factor (Section 7(b)(i)).
- Amounts collected from customers by the factor that the factor must later disgorge, such as preferential payments in bankruptcy proceedings (Section 7(b)(iv)).

8. **Representations, Warranties, and Covenants.** Client represents, warrants, and covenants that:

(a) All Accounts Receivable are and, at the time of assignment to Factor, will be (i) bona fide obligations of Customers arising out of the sale of goods in the ordinary course of business, free and clear of liens and security interests, (ii) owned by Client, and (iii) without any Dispute.

(b) Client is, and will remain during the term of this Agreement, (i) duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and (ii) duly authorized to carry on its business, to create liens on its properties, and to execute, deliver, and perform its obligations under this Agreement. Client's execution, delivery, and performance of this Agreement does not and will not breach any other agreement to which it is a party, and does not require the consent of any third party.

(c) Client is now solvent, and will remain solvent at all times during the term of this Agreement.

(d) Client shall promptly notify Factor in writing of:

(i) any Dispute;

(ii) any material adverse credit information received by Client concerning any Customer; and

(iii) any other information that indicates that any Account Receivable will not be paid in full when due.

(e) Client shall not agree to any compromise, settlement, or credit on any Approved Receivable with any Customer without the prior written approval of Factor.

(f) Factor may retain title to all Accounts Receivable until all of the Obligations have been paid in full.

## REPRESENTATIONS, WARRANTIES, AND COVENANTS

The client's representations and warranties in Section 8(a) regarding its accounts receivable are essential from the point of view of the factor and are found in all factoring agreements. They confirm:

- The validity of the accounts receivable and the transactions out of which they arise.
- That, before assignment to the factor, they are owned by the client, free and clear of any other claims.

The client's covenants in Section 8(d) give the factor broad authority to act as it sees fit when disputes arise involving the accounts receivable. As the owner of these receivables, it needs the broadest possible scope, including if necessary pursuing litigation. This accomplishes one of the central purposes of a factoring agreement: relieving the client of the administrative burden and cost of collecting the receivables. It also protects the factor, which (even if it does not bear credit risk) still retains title to all accounts receivable until all of the client's obligations under the factoring agreement have been paid in full.

9. **Events of Default and Remedies.**

(a) The occurrence of any of the following events or conditions shall constitute an "**Event of Default**" under this Agreement:

(i) Client fails to pay any Obligation when due, and such failure remains unremedied for [NUMBER] days;

(ii) any representation or warranty made or deemed made by Client under this Agreement proves to have been false or misleading in any material respect on or as of the date made or deemed made;

(iii) Client fails to perform or observe any covenant, term, condition, or agreement contained in this Agreement, and such failure continues unremedied for [NUMBER] days after written notice by Factor to Client;

(iv) Client commences any case or proceeding seeking relief under any existing or future bankruptcy law;

(v) there is commenced against Client any case or proceeding under any existing or future bankruptcy law which remains undismissed, undischarged, or unstayed for [30] [60] [NUMBER] days;

(vi) Client is unable, or admits in writing its inability, to pay its debts as they become due;

(vii) there occurs a material change in the beneficial ownership of Client resulting in a change of control of Client; or

(viii) Client sells, leases, transfers, or otherwise disposes of all or substantially all of its property or assets, or consolidates with or merges into or with any corporation or other entity.

(b) If an Event of Default occurs and is continuing, then:

(i) Factor may, by notice to Client, declare this Agreement terminated;

(ii) Factor may, by notice to Client, declare all Obligations to be due and payable, whereupon the same shall immediately become due and payable; and

(iii) Factor may exercise all the rights and remedies of a secured party upon default under the UCC.

## EVENTS OF DEFAULT AND REMEDIES

Events of default fall into two categories:

- Immediate events of default.
- Events which the client has an opportunity to cure. These mature into events of default if not cured after the passage of an agreed number of days. The parties need to agree on appropriate cure periods for the events of default in Sections 9(a)(i), (iii), and (v).

The most important immediate defaults under a factoring agreement are:

- Material breach of any representation or warranty under Section 9(a)(ii), in particular, the failure of the accounts receivable to be as represented by the client.
- Bankruptcy or insolvency events initiated by the client under Sections 9(a)(iv) and (vi).

If an event of default occurs, the factor may

- Terminate the factoring agreement.
- Accelerate and demand that the client immediately pay all amounts owing to the factor.
- Exercise the rights and remedies of a secured party under the UCC regarding the collateral specified in Section 7(a).

10. **Term and Termination.**

(a) This Agreement shall be effective as of the date first written above and shall continue in full force and effect until the first anniversary thereof, unless earlier terminated as provided in Section 10(b). This Agreement shall be automatically extended for one-year terms on each anniversary of the effective date (each such anniversary, an "**Anniversary Date**") until terminated as provided in Section 10(b).

(b) This Agreement may be terminated:

(i) by Factor giving written notice to Client, specifying a termination date not less than sixty (60) days from the date of such notice; and

(ii) by Client, effective as of an Anniversary Date, giving written notice to Factor not less than sixty (60) days prior to such Anniversary Date.

(c) The following rights and obligations shall survive termination of this Agreement:

(i) Client's obligations under Section 6(a);

(ii) Factor's security interest and rights in Accounts Receivable under Section 7(a), which shall survive until all Obligations are fully satisfied; and

(iii) Factor's right to collect Accounts Receivable assigned and sold under Section 1(a) prior to termination.

### TERM AND TERMINATION

Most factoring agreements are structured as one-year agreements that renew automatically, unless terminated by either party. The factor typically may terminate at any time on 60 days' notice, while the client may only terminate on the anniversary of the agreement.

11. **Miscellaneous.**

(a) **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given upon the first to occur of (x) deposit with the United States Postal Service or overnight courier service, properly addressed and postage prepaid; (y) transmittal by electronic means, including email, properly addressed; or (z) actual receipt by an employee or agent of the other party. Notices hereunder shall be sent to the following addresses, or to such other address as such party shall specify in writing:

(i) if to Client:

[ADDRESS]

[NAME OF OFFICER]

[EMAIL ADDRESS]

[FAX NUMBER]

(ii) if to Factor:

[ADDRESS]

[NAME OF OFFICER]

[EMAIL ADDRESS]

[FAX NUMBER]

(b) **Amendments and Waivers.** Neither this Agreement nor any provision hereof may be amended, modified, or waived except in writing signed by both parties. No failure to exercise and no delay in exercising, on the part of Factor, any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof.

(c) **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) **Counterparts; Integration.** This Agreement and any amendments, waivers, consents, or supplements hereto may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings, oral or written, with respect to the subject matter hereof.

(e) **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision hereof or invalidate or render unenforceable such term or provision in any other jurisdiction.

(f) **Governing Law; Jurisdiction; Consent to Service of Process.**

(i) This Agreement and any claim, controversy, dispute, or cause of action (whether in contract or tort or otherwise) based upon, arising out of, or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of [New York] / [OTHER STATE].

(ii) Each party hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of [New York] / [OTHER STATE] sitting in [New York] / [OTHER] County, and of the United States District Court of the [Southern District of New York] / [OTHER DISTRICT COURT] and agrees that any such action, litigation, or proceeding may be brought in any such [New York] / [OTHER STATE] State court or, to the fullest extent permitted by applicable law, in such federal court. Each party hereto agrees that a final judgment in any such action, litigation, or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein shall affect any right that Factor may otherwise have to bring any action or proceeding relating to this Agreement against Client or its properties in the courts of any jurisdiction.

(iii) Each party hereto waives personal service of process and irrevocably consents to the service of process by registered or certified mail at the address set forth for notices in Section 11(a).

**Note:** ***Governing Law; Jurisdiction; Consent to Service of Process***

(g) **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY.

(h) **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

| | |
|---|---|
| [CLIENT NAME] | [FACTOR NAME] |
| By_________________ | By_________________ |
| Name: | Name: |
| Title: | Title: |

**PRODUCTS**

PLC US Finance, PLC US Law Department