

# NFM COMMERCIAL CREDIT APPLICATION

This application is to be filled out **ONLY** for businesses. Use the Nebraska Furniture Mart Credit Application for consumer financing.

Account Number
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SECTION <b>A</b> BUSINESS INFORMATION					
Business Name			Federal I.D. No.		Years in Business
Street Address		City	State	Zip	Business Phone
Type of Business Activity			Parent Company (if any)		<input type="checkbox"/> Sole Owner <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC
Name of Accounts Payable Contact		Title	Phone		<input type="checkbox"/> Check here if Purchase Order must be required

SECTION <b>B</b> PRINCIPALS (FILL OUT THIS SECTION FOR CORPORATIONS, LLCs, AND PARTNERSHIPS)		
Name	Title	Social Security No.
Name	Title	Social Security No.

SECTION <b>C</b> PERSONAL INFORMATION of RESPONSIBLE PARTY				
First Name	Middle I.	Last Name	Social Security No.	NFM Personal Acct. No.
Street Address		City	State	Zip
			Home Phone	

SECTION <b>D</b> CREDIT REFERENCES			
Bank	Account No.	Location	Individual to Contact
Bank	Account No.	Location	Individual to Contact

SECTION <b>E</b> AUTHORIZED BUYERS		
Name	Title	Social Security No.
Name	Title	Social Security No.
Name	Title	Social Security No.
Name	Title	Social Security No.

**The terms for this account are "Net 30."** Nebraska Furniture Mart, Inc will provide a copy of each invoice which must be paid in full within 30 days after receipt of the merchandise or services. Any invoice not paid in full is subject to a Late Charge after the 30<sup>th</sup> day, calculated at 1.33% of the invoice's unpaid balance at the end of each billing period. Any applicable Late Charge will be added to the account balance and will be due immediately.

I / We accept the terms detailed in the attached <b>Nebraska Furniture Mart Commercial Contract</b> , and I / we authorize the use of credit reports and references, in addition to information exchanged in connection with this application, in the initial and periodic evaluation of credit rating for purposes of credit decisions. This is a continuing authorization and may be terminated only upon written notice to Nebraska Furniture Mart, Inc.			
Signed	Title (on behalf of any entity or partnership)	Driver's License No.	Date
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**IMPORTANT: TURN TO OTHER SIDE AND SIGN GUARANTEE**

**CONTINUING GUARANTEE OF PAYMENT**

For valuable consideration, the undersigned, called "Guarantor," hereby agrees as follows:

1. PARTIES:

- (a) NFM is Nebraska Furniture Mart, Inc., 700 South 72nd Street, Omaha, Nebraska, 68114, which will be the assignee or otherwise hold all rights to payment under merchandise purchased from a Seller on credit.
- (b) Seller is NFM or any wholly owned subsidiary, including NFM of Kansas, Inc. or TXFM, Inc.
- (c) Buyer is the individual, sole proprietorship, corporation, limited liability company, or partnership which has or will purchase merchandise from a Seller on credit, whose name and address are listed in BOX A - Buyer, set forth below.
- (d) Guarantor is an individual whose name and address are listed in BOX B - Guarantor, set forth below, who is promising to pay the Buyer's debts.

- 5. Guarantor hereby agrees and consents to, and waives any discharge which might otherwise arise as a result of:
  - (a) Any act of NFM or any Seller;
  - (b) The death, termination or dissolution of Buyer or any other guarantor or guarantors;
  - (c) The release or discharge, for any reason, of Buyer from any debt covered by this Guarantee; or
  - (d) A change in the name, organization, or configuration of Buyer.
- 6. Guarantor acknowledges that Guarantor is not relying on the existence or creation of any collateral to secure Buyer's debts, acknowledges that existing debts may not be secured, and acknowledges that the parties do not anticipate that any of Buyer's future debts will necessarily be secured. Guarantor agrees and consents that NFM or any Seller, without affecting Guarantor's liability to NFM or any Seller, may without notice to or consent of Guarantor and upon such terms as it deems advisable, release, surrender, substitute, fail to perfect, or fail to take any action to preserve the value of, any collateral.
- 7. The obligations of Guarantor hereunder are primary and independent of the obligations of Buyer to NFM or any Seller. Guarantor agrees this is a guarantee of payment and not of collection. The obligation of each guarantor (if more than one) is joint and several.
- 8. Guarantor waives any right to require Seller to:
  - (a) Proceed against Buyer or any other guarantor;
  - (b) Proceed against or exhaust any security; or
  - (c) Pursue any other remedy in NFM's or any Seller's power whatsoever prior to proceeding against Guarantor.
- 9. Guarantor waives any defense arising by reason of any disability of Buyer, including bankruptcy, the benefit of any statute of limitations affecting Buyer's liability hereunder or the enforcement of this Guarantee, or any defenses of Buyer to the fullest extent allowed by law.
- 10. In the event any lawsuit is brought to enforce the terms of this Guarantee, NFM and any Seller shall be entitled to reasonable costs and attorney fees if allowed by law.
- 11. Any indebtedness of Buyer to Guarantor now existing or hereafter arising is subordinated to existing and future debts of Buyer to NFM or any Seller referred to in paragraph three.
- 12. If any provision of this Guarantee is prohibited or invalid under applicable law, the remaining provisions of this Guarantee shall not be invalidated.
- 13. Guarantor may revoke this Guarantee by notifying NFM, in writing, of such revocation. The Guarantee is continuing and shall remain in force for any debt incurred by Buyer prior to actual receipt by NFM of written revocation. Furthermore, this Guarantee shall remain in force on prior sales even if shipment or delivery is not contemplated or completed until after such receipt.
- 14. Guarantor waives notice, presentment, demand, protest, notice of dishonor, non-payment, or any other default of Buyer. Guarantor waives notice of the acceptance of this Guarantee or the existence or creation of any claim or lien against Buyer.
- 15. The word "debt" as used in this Guarantee includes principal, interest, delinquency charges, and the expenses of collection including court costs and attorney fees to the extent allowed by law.

<b>BOX A - Buyer</b>
Contact:
Buyer's Full Legal Name:
Address:
Telephone:
Social Security No. or Federal I.D. No.:

<b>BOX B - Guarantor(1)</b>
Individual's Full Legal Name:
Address:
Telephone:
Social Security No. or Federal I.D. No.:

<b>BOX B - Guarantor(2)</b>
Individual's Full Legal Name:
Address:
Telephone:
Social Security No. or Federal I.D. No.:

- 2. STATEMENT OF CONSIDERATION: Guarantor is signing this Guarantee either to induce NFM and any Seller to extend new credit to Buyer, or to delay action contemplated by NFM or any Seller to collect existing debt owed by Buyer, or both.
- 3. GUARANTEE OF PAYMENT: Guarantor hereby absolutely and unconditionally guarantees to each of NFM and any Seller, and their respective successors and assigns, the full and prompt payment of all debts owed to NFM or any Seller by Buyer, whether the debts are now owed or hereafter incurred. This Guarantee is made without limit in duration or amount.
- 4. Guarantor hereby agrees and consents that NFM or any Seller, without affecting Guarantor's liability to NFM or any Seller hereunder, may, without notice to or consent of Guarantor, and upon such terms as it deems advisable:
  - (a) Extend, in whole or part, by renewal or otherwise, the time of payment of any debt owed by Buyer to NFM or any Seller;
  - (b) Sell or compromise any claim of NFM or any Seller against Buyer;
  - (c) Add, release, or substitute one or more other guarantors;
  - (d) Create new debts;
  - (e) Change or alter the amount or terms of any of the sales orders or contracts now existing or created in the future between NFM or any Seller and Buyer, including oral orders from Buyer or Buyer's authorized representatives for additional goods and/or services.

Signed by Guarantor(1)	Date
Signed by Guarantor(2)	Date

# NEBRASKA FURNITURE MART COMMERCIAL CONTRACT

Account Number

In consideration of the financing of all or a portion of the purchase price for the Goods (hereinafter described) by Nebraska Furniture Mart, Inc., a Nebraska corporation ("NFM") under any Sales Order between NFM or any of its wholly owned subsidiaries, including NFM of Kansas, Inc. and TXFM, Inc., and for other good and valuable consideration, Buyer hereby agrees as follows:

1. SECURITY INTEREST. Buyer acknowledges that all rights to payment under any Sales Order are assigned to or otherwise held by NFM and hereby grants to NFM a continuing purchase money security interest in the goods described in any Sales Order, together with all attachments, replacements, accessories, parts and substitutions, additions, repairs and accessories incorporated therein or affixed thereto, and proceeds thereof (collectively, the "Goods"), as described in this Contract to secure (a) payment and performance of all of Buyer's obligations under this Contract, and (b) to the extent permitted by law, indebtedness now or hereafter owing by Buyer to NFM or its assignees. Buyer authorizes NFM to file a financing statement describing the Goods (which may include generic references or categories) and agrees to execute such other documentation, and to take such other and further action as may be required by NFM, for the purposes of maintaining and perfecting such security interests.

2. BUYER'S WARRANTIES. Buyer hereby represents and warrants each of the following: (a) the Goods will be kept at Buyer's principal place of business as disclosed in this Contract, and Buyer will immediately notify NFM in writing of any change in such principal place of business; (b) Buyer will not attach or affix the Goods to real property in any manner, and the Goods shall, in all events, remain personal property, with the exceptions set forth in paragraph (g) herein below; (c) Buyer will not sell, offer to sell, lease, rent or otherwise transfer or hypothecate the Goods or any interest therein, with the exceptions set forth in paragraph (g) herein below; (d) Buyer will promptly pay all taxes, fees, and assessments which may be levied or assessed with respect to this sale, or upon the Goods, or their use; (e) Buyer will keep the Goods free from any adverse lien, security interest, claim or encumbrance and in good order and repair; (f) Buyer will permit Seller or its Assignee to examine and inspect the Goods at any time; and (g) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN Seller acknowledges that Seller's security interest shall terminate in the event that Buyer, at the time of purchase of such goods, informs Seller that such goods are to be sold by Buyer or installed (e.g. in such instances where Buyer is a contractor and is purchasing goods to be incorporated into a building or residence, (or if the goods are purchased by Buyer for the purpose of renting such goods to third parties). In such case, upon the installation of the goods, (or delivery of the goods by Buyer to a third party for rental), Seller's security interest shall terminate, however Buyer shall still be responsible for payment to Seller as set forth under the remaining terms and conditions of this Contract.

3. BUYER'S WAIVERS. To the extent permitted by applicable law, Buyer hereby waives any and all rights and remedies conferred upon a Buyer by applicable law, including, but not limited to, Buyer's rights to: (a) rescind this Contract; (b) reject the Goods; (c) revoke acceptance of the Goods; (d) recover damages from NFM for any breaches of warranty or for any other reason; (e) "cover" by making any purchase or lease of or contract to purchase or lease substitute Goods; (f) recover any general, special, incidental, or consequential damages; and (g) specific performance, replevin, detinue, sequestration, claim and delivery or the like for any Goods identified to this Contract; or (h) a security interest in said Goods. Buyer also waives any rights conferred by statute or otherwise which may limit or modify any right or remedy of NFM or any Seller. Any action by Buyer for any alleged breach of this Contract or any Sales Order, including breach of warranty or indemnity, must be commenced within one (1) year after any such cause of action accrues.

4. DISCLAIMER OF WARRANTIES. To the extent permitted by applicable state law, BUYER UNDERSTANDS AND AGREES THAT THE ONLY WARRANTIES, EXPRESS OR IMPLIED, IF ANY, WHICH ATTACH TO THE GOODS ARE THOSE WARRANTIES WHICH ARE MADE BY THE MANUFACTURER OF THE GOODS. SELLER HEREBY ASSIGNS TO BUYER, AND BUYER HEREBY ACCEPTS THE WARRANTIES, IF ANY, MADE BY THE MANUFACTURER OF THE GOODS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER EXPRESSLY AGREES THAT NO LIABILITY HAS BEEN ASSUMED FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING FROM A BREACH OF THIS CONTRACT, AND BUYER'S REMEDIES SHALL BE LIMITED TO THE EXPRESS AND IMPLIED WARRANTIES, IF ANY, MADE BY THE MANUFACTURER OF THE GOODS.

Buyer hereby acknowledges each of the following: (a) Neither NFM nor any Seller is the manufacturer of the Goods; (b) the Goods are of a size, design, capacity, description and manufacture selected by the Buyer; (c) Buyer is satisfied that the Goods are suitable and fit for Buyer's purposes; (d) NEITHER NFM NOR ANY SELLER HAS MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE GOODS, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE GOODS OR WORKMANSHIP IN THE GOODS, SELLER'S TITLE TO THE GOODS, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, AND NFM HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH WARRANTIES; (e) THE GOODS ARE ACCEPTED BY BUYER ON AN "AS IS" BASIS, "WITH ALL FAULTS", SUBJECT TO ANY MANUFACTURER'S WARRANTIES, IF ANY; and (f) neither NFM nor any Seller shall be liable to Buyer for any loss, damage, or expense, direct, consequential or otherwise, caused directly or indirectly by any Goods. No defect or unfitness of the Goods shall relieve Buyer of the obligation to pay any installment or perform any other condition under this Contract.

Buyer hereby assigns to NFM, upon the occurrence of any Event of Default, as defined in this Contract, any supplier's or manufacturer's warranty or agreement with respect to the Goods, to the extent that such warranty or agreement is assignable.

5. ASSIGNMENTS. Buyer will not, without the prior written consent of NFM, (a) voluntarily or involuntarily transfer, sell, assign, pledge, sublet, lend, grant a security interest in, relinquish possession of, or otherwise hypothecate Buyer's interest in this Contract or any item or all of the Goods, or (b) permit the Goods or any part thereof to be used by anyone other than Buyer or Buyer's employees and agents, excepting only as provided for in paragraph 2(g) above.

Seller and any assignee of Seller may assign or transfer this Contract without notice to Buyer. Any assignee shall have all the rights, but none of the obligations, if any, imposed upon Seller by this Contract, and Buyer agrees that it will not, to the extent permitted by applicable law, assert against any assignee any defense, counterclaim, or offset that Buyer may have against Seller. The term "assignee" shall include NFM as well as any subsequent assignee of NFM.

6. INSURANCE. Except as provided for in paragraph 2(g) above, Buyer shall provide, maintain and pay for physical damage insurance against the loss or theft or damage to the Goods, for the full replacement value, designating NFM as loss payee. Buyer will also maintain insurance against such other risks and in such amounts as NFM may require. All insurance shall contain the insurer's agreement to give 30 days written notice to NFM before cancellation of any policy of insurance. Buyer shall deliver the policies or copies thereof or certificates of insurance to NFM promptly upon demand. Buyer shall cooperate to obtain prompt payment of any proceeds to NFM for application on any related balance.

7. TERMS OF PAYMENT. The balance owing under each Sales Order will be separately invoiced and must be paid within 30 days of receipt of the related Goods or services. If Buyer does not pay the total balance of any invoice within 30 days of receipt of Goods or services, a late charge will be added to the account of Buyer with NFM for the current billing period and any subsequent billing period in which a portion of the invoice remains unpaid at the end of the billing period. The late charge will be calculated at 1.33% of the unpaid invoice and will be due immediately.

8. AUTHORIZATION FOR PURCHASES. Buyer acknowledges that Buyer has completed a Commercial Credit Application in connection with this contract. Such Commercial Credit Application identifies, in addition to Buyer, any Buyer authorized representatives that may from time to time authorize additional purchases from Sellers on behalf of Buyer, either in writing or orally. Such authorization shall remain in effect until terminated in writing by Buyer.

9. GENERAL INDEMNITY. Buyer shall indemnify and hold NFM and any Seller harmless from and against any and all claims, losses, liabilities, damages, judgments, suits, and all legal proceedings of any nature whatsoever, including, but not limited to, negligence, tort, and strict liability, and any and all costs and expenses in connection therewith, including attorneys' fees, arising out of or in any manner related to (a) the manufacture, purchase, financing, ownership, delivery, rejection, non-delivery, installation, possession, use, transportation, storage, operation, maintenance, repair, return or other disposition of the Goods or (b) this Contract and any Sales Order, including without limitation, claims for injury to or death of persons and for damage to property. Buyer shall immediately give NFM written notice of any such claim or liability.

10. EVENTS OF DEFAULT. An Event of Default shall occur hereunder if Buyer or any guarantor of the obligations imposed by this Contract (a) fails to pay any payment when due; or (b) fails to perform or observe any other covenant, condition or agreement to be performed or observed by Buyer hereunder or in any Sales Order, or breaches any representation or provision contained herein or therein; or (c) attempts to remove, sell, transfer, encumber, part with possession, or assign Buyer's rights or duties hereunder, excepting only as provided for in paragraph 2(g) above; or (d) institutes Insolvency, bankruptcy or reorganization proceedings, or such proceedings are instituted against Buyer or any guarantor, or Buyer or any guarantor makes a general assignment for the benefit of, or enters into any composition or arrangement with creditors; or (e) shall, at any time, be in default under any other agreement with NFM or any Seller; or (f) defaults under the terms and provisions of any mortgage, deed of trust, lease or other encumbrance secured by or relating to the real property upon which the Goods are located; or (g) shall create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or other attachment of any nature upon, affecting or with respect to the Goods or this Contractor (h) dies, or if Buyer is a corporation, partnership or other entity, the dissolution or termination of existence of such corporation, partnership or other entity, or the sale or transfer of a majority or controlling interest in such corporation, partnership or other entity; or (i) has made any representation, warranty or statement which is false in any material respect when made or furnished; or (j) performs or fails to perform any other act, as a result of which NFM deems itself insecure or NFM deems any Goods to be in jeopardy.

Additionally, an Event of Default shall occur if there is a loss, theft, or substantial damage to the Goods which is not fully compensable under any policy of insurance to be maintained by Buyer and the proceeds are not promptly remitted to NFM for application on any outstanding balance related to the Goods.

The failure of NFM to require strict performance by Buyer of any provision of this Contract shall not constitute a waiver of any right pf NFM hereunder. No waiver by NFM of any breach or default shall constitute a waiver of any other breach or default by Buyer or a waiver of any right of NFM hereunder.

11. REMEDIES. Upon the occurrence of any Event of Default, NFM may, in its sole discretion, do any one or more of the following: (a) accelerate all sums due and owing or to become due and owing pursuant to this Contract; (b) institute suit against Buyer and/or any guarantor to enforce performance by Buyer and/or such guarantor of the covenants, terms and provisions of this Contract or any related guarantee; (c) require Buyer to assemble the Goods and make the Goods available to NFM at a place to be designated by NFM; (d) enter upon any premises where any of the Goods are located and repossess any or all of the Goods; (e) sell any or all of the Goods at public or private sale; (f) lease or otherwise dispose of any or all of the Goods; (g) recover from Buyer the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like, and reasonable attorneys' fees ;and expenses incurred by NFM; and/or (h) exercise any other right or remedy which may be available to it.

12. EXERCISE OF REMEDIES. The exercise of any remedy granted herein shall not constitute an election of remedies. The remedies set forth herein are cumulative and are in addition to any other remedy available to NFM at law or in equity. To the extent permitted by law, Buyer hereby waives any duty which may be imposed upon NFM in connection with the exercise of any right or remedy by NFM. If any notification of the intended sale, lease or other disposition of any of the Goods is required by law, such notification shall be deemed sufficient if the same is mailed to Buyer ten (10) days prior to such intended sale, leasing or other disposition.

13. PERFORMANCE BY NFM. If Buyer fails to make any payment to a third party (other than a Seller) or to perform any obligation imposed on Buyer by this Contract, NFM may make such payment or perform such obligation. The amount of any such payment, including reasonable attorney fees, shall be immediately due and payable to NFM. Such sums shall bear interest at (a) 1.33% per month or (b) the highest lawful rate, whichever is less, from the date that such payment is made or such expense is incurred by NFM. This authorization shall not impose upon NFM any duty to perform any act which Buyer has failed to perform.

14. USURY. Notwithstanding any provision contained herein to the contrary, in no event shall interest or any charge accrue or be payable in excess of the highest lawful rate.

15. BENEFIT. Except as otherwise provided herein, this Contract shall be binding upon Seller, Buyer and their respective heirs, successors and assigns. (This reference to Buyer's assigns shall not constitute a consent by NFM to any assignment of this Contract by Buyer.) If Buyer is more than one person or entity, all obligations imposed upon Buyer are joint and several. In the event that this Contract is referred to an attorney for collection, Buyer agrees to pay a reasonable attorney's fee, to the extent permitted by applicable law.

16. SEVERABILITY. Whenever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid, but if any provision shall be held to be prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Contract.

17. GOVERNING LAW. This Contract shall be made and considered executed at the offices of NFM in Omaha, Nebraska, upon its review and approval of Buyer's Commercial Credit Application, and shall be governed by and construed in accordance with the laws of the state of Nebraska. Buyer agrees to submit to the jurisdiction of the state and federal courts in said state, with venue of any action instituted in connection with this Contract, at the option of NFM, being in the county and under the jurisdiction of any state or federal court where any such court is situated or otherwise in any other county and before such state or federal court with jurisdiction over the county in which Buyer executed any Sales Order incorporated herein that remains unpaid.

18. FACSIMILE. This Contract may be executed by a party and transmitted by facsimile or electronic mail. Any copy of this Contract which bears a signature which was transmitted by facsimile shall be deemed an executed original of this Contract.

19. ENTIRE AGREEMENT. This Contract, together with any incorporated Sales Orders between any Seller and Buyer, constitutes the entire understanding and agreement between NFM and Buyer, and there are no understandings or agreements between the parties, oral or written, which are not set forth herein. This Contract may not be amended except by written agreement signed by NFM and Buyer. Notwithstanding the foregoing, NFM has the right to change the terms of this Contract by written notice to Buyer. Any Sales Orders by Buyer 14 days after notice will constitute agreement to the revised terms. NOTICE TO BUYERS: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT, OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN, FULLY EXECUTED.

Buyer: (Business Name)

Dated:

Signed By:

Printed Name:

Nebraska Furniture Mart, Inc.

Signed By:

Dated:

Printed Name: