

EXPORTER GUIDE TO DOCUMENTARY CREDITS UNDER UCP 600

Introduction

With the implementation of UCP 600 a little over 2 years ago, this is an opportune time to reinforce some of the principles that should be adopted by Exporters when handling a documentary credit and the subsequent presentation of documents. Collyer Consulting can offer extensive services to Exporters in the review of documentary credits for conformity to an underlying contract or proforma invoice; applicability of the terms and conditions stated within the credit including payment conditions; to the creation of beneficiary issued documents and examination of documents prior to their presentation to the bank. See the “Corporate Clients” tab on our website – www.collyerconsulting.com

Primarily, this document is designed to explain the role of the bank, under UCP 600, in relation to the various functions it may perform (advising, confirming, nominated (to honour or negotiate)) and provide an overview of what you, as the Exporter, should consider at the point of receipt of the credit and any amendment thereto, and considerations required in the creation and preparation of documents for presentation under a credit. In all cases, the bank will (to varying degrees) have reviewed the credit or amendment, at the point of receipt, from the perspective of whether there are any obvious errors in its content. However, it is only you, as Exporter, that can truly determine whether the terms and conditions are as agreed or are achievable – see comments under ‘Guidelines for Exporters’.

The Bank as an advising bank

The advising of documentary credits and amendments are governed by article 9 of UCP 600. This article highlights a number of requirements that must be followed and these will form the basis of any documentary credit that is advised in your favour and any amendment thereto.

- Where the credit is advised without confirmation, there is no undertaking on the part of the bank to honour (pay at sight, accept a draft and pay at maturity or to incur a deferred payment undertaking and pay at maturity) or negotiate – **see definitions of ‘Honour’ and ‘Negotiation’ in article 2 of UCP 600.**
- Unless the bank advises to the contrary, in their advice of the credit or amendment, they will have satisfied themselves as to the apparent authenticity of the message received.
- The advice of the credit or amendment, that the bank will provide to you, should accurately reflect the terms and conditions of the credit or amendment received in your favour and as received by them.
- The advising bank is under no obligation to advise any credit or amendment. In the event the bank decides not to advise the credit or amendment, they must inform the issuing bank of their decision, without delay. The UCP 600 does not require that the bank advise you, as the beneficiary, of their refusal to advise a credit or amendment. Subject to the reason(s) for such a refusal, if it should happen, the bank

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may be in a position to advise the reason(s) to you.

The Bank as a confirming bank

The confirmation of a documentary credit is governed by article 8 of UCP 600. The bank's ability to confirm any credit will be subject to there being an appropriate confirmation facility in place for the issuing bank. This would cover criteria such as the amount, expiry, tenor of the payment period and, in some cases, the underlying goods.

- Article 8 refers to the confirming bank honouring or negotiating provided the stipulated documents are presented to the bank and their determining that the presentation constitutes a complying presentation – **see definition of 'Complying presentation' in article 2 of UCP 600.**
- Sub-article 8 (a) (ii) states that where a credit is available with a confirming bank by negotiation, the confirming bank negotiates on a *without recourse* basis.
- Sub-article 8 (b) defines the time from which the confirming bank is irrevocably bound by its confirmation – at the time it adds its confirmation. Therefore, as of the moment that they provide their advice of the credit, with their confirmation, sub-article 8 (b) has been invoked.
- Should the bank be requested to add their confirmation and they are unable to do so, they are required to advise the issuing bank without delay of their decision. The bank may be in a position

to advise you of their reason(s) for such action. In the event that they decline to confirm, they may advise the credit to you without their confirmation.

The Bank as a nominated bank

In addition to being an advising and/or confirming bank, the bank will, in most cases, also be a nominated bank i.e., the bank that is authorised to honour (pay at sight, accept a draft and pay at maturity or incur a deferred payment undertaking and pay at maturity) or negotiate your documents upon their determining that the documents are complying. For the bank to be a nominated bank, and to act on your behalf, it will require the credit to be restricted for payment, acceptance, deferred payment or negotiation at the counters of the branch of the bank with who you are in a banking relationship with. Alternatively, the credit may be stated to be available with any bank, in which case you have the choice of bank as to whom you wish to present documents and seek honour or negotiation. A bank's ability to handle documents under a credit that has been advised through another bank, and is available with any bank, will be subject to that bank having a banking relationship with the issuing bank.

Article 12 of UCP 600 is specifically entitled 'nomination' and covers aspects related to that nomination such as:

- The receipt, examination and forwarding of documents to an issuing bank do not constitute honour or negotiation and unless the bank has

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added their confirmation there is no obligation on them to honour or negotiate.

- As a nominated bank that has not confirmed the credit, the bank may agree to act beyond the role envisaged, when expressly agreed to by them and communicated to you.
- Where an issuing bank issues a credit available with the nominated bank by acceptance or deferred payment, that bank is authorized to prepay or purchase provided they have incurred their deferred payment undertaking or accepted a draft drawn on it.

Articles of UCP 600 for which you should have a good working knowledge:

Article 1 – Application of UCP
Article 2 – Definitions
Article 3 – Interpretations
Article 8 – Confirming Bank Undertaking
Article 9 – Advising of Credits and Amendments
Article 10 – Amendments
Article 12 – Nomination
Article 14 – Standard for Examination of Documents
Article 16 – Discrepant Documents, Waiver and Notice
Article 17 – Original Documents and Copies
Article 18 – Commercial Invoice
Articles 19 – 27 in relation to Transport Documents
Article 28 – Insurance Document and Coverage
Article 31 – Partial Drawings or Shipments

Most of the articles listed above have an impact in relation to the advising,

confirmation, amendment, document preparation and settlement. The exception is article 1 which outlines the application of the rules. This is included in the list to emphasise the position that the UCP are considered as rules and *all the rules will apply to a letter of credit unless the terms and conditions of the credit expressly modifies or excludes their application.*

Guidelines for Exporters

As mentioned previously, the bank can carry out a review of the credit or amendment to ascertain whether there are any obvious errors in the wording. This will definitely happen when the bank adds their confirmation to the credit, but does not always happen when the credit is not confirmed. However, it is for you, the Exporter, to provide the definitive yes or no as to whether it is in a workable form. It is imperative that upon receipt of the credit or amendment that a full review is undertaken to ensure that the conditions meet those agreed or envisaged. Particular reference should be made to:

- Whether the expiry, latest shipment and presentation dates/periods are correct and allow sufficient time for manufacture of the goods or provision of the services or performance; the shipment of any underlying goods AND the presentation of documents to the bank. This period should also allow sufficient time in the event that there are discrepancies that can be corrected;
- The names of the applicant and your company are correct. Sub-article 14 (j)

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- of UCP 600 allows for variations in the addresses appearing on documents;
- The amount and currency is correct;
 - Payment terms have been correctly stated;
 - Partial shipments and/or transshipment are allowed, if required;
 - Places of shipment from and to have been correctly stated;
 - Description of goods or services is in line with any proforma or contract;
 - Required documents are obtainable and in the form that is requested in the credit and any applicable provision in UCP 600;
 - Charges are stated to be for the correct party; and
 - Do you require confirmation? Has it been authorized in the credit and has confirmation been added.

If there are terms and conditions to which you do not agree, you should contact the applicant immediately and request a suitable amendment. It is advisable not to make any shipment until you have a credit in your possession that meets your needs and for which you feel reasonably comfortable in satisfying its conditions.

It should be noted that article 14 of UCP 600 contains a number of standards for examination that should aid your preparation of documents and it is recommended that you become familiar with its contents. Another ICC publication that will be of considerable assistance is the “International Standard Banking Practice for the Examination of Documents under Documentary Credits – 2007 revision for UCP 600” – ICC Publication No. 681. By its

title, you could be forgiven in thinking that the contents are designed for banks, due to the reference to “.. for the Examination of Documents ...”. However, whilst the paragraphs of the publication explain how the rules in the UCP should be applied, its contents can also aid the document preparation task of the beneficiary. If you understand how the banks will be examining your documents and what they will be looking for or are able to accept, then you can create a set of documents that has a better opportunity to be accepted as compliant on first presentation.

Documents – General

Keep the data content in the documents to the bare minimum that is required by the credit or the UCP. Adding information that is not required often leads to data being re-keyed incorrectly and banks refusing documents due to the data being in conflict either within that document, any other stipulated document or the credit – **see sub-article 14 (d)**. If extensive detail is required by your customer, consider sending this information directly and providing only the detail required by the credit. For example, where a credit calls for a document without stating its content i.e., “Packing List”, the document must appear to fulfil the function of the document and, in this example, should contain some form of packing data – **see sub-article 14 (f)**. This does not mean extensive detail such as what is in each crate, box or parcel or the gross and net weights of each crate, box or parcel. If that was required by the applicant, then those conditions should have been expressed in the credit instead of merely saying “Packing List”. In effect, a packing list

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that says “All goods covered by invoice number 1234 are packed in container number ABCD1234567” would comply with a credit requesting the presentation of a “Packing List” with no further information as to the data that is to appear.

High level items to look out for, subject to the credit not modifying or excluding a rule, include:

Documents – Invoice

- Must appear to have been issued by you as beneficiary;
- Made out in the name of the applicant;
- Made out in the same currency as the credit;
- Need only be signed if requested in the credit; and
- Description of goods, services or performance must correspond with that in the credit.

Documents – Transport

- Must indicate the name of the carrier (as required by UCP articles 19-21 and 23-24);
- Be signed according to the details shown in articles 19-25;
- Bear an ‘on board’ notation as required;
- Bear a general goods description that does not conflict with that in the credit or contain one that corresponds with the credit
- For air transport, the date shown in any flight stamp will be considered to be the date of shipment.

Documents – Insurance

- Must appear to be issued and signed by an insurance company, an underwriter or their agents or proxy;
- No cover notes are allowed;
- Insurance policy is acceptable in lieu of an insurance certificate or declaration under an open cover;
- Must evidence that insurance cover is effective no later than the date of shipment as evidenced on the transport document;
- Requirement in a credit for “insurance covering 110% of the invoice value ...” means the minimum amount of insurance required; and
- Insurance documents may contain reference to any exclusion clause.

REMEMBER: when creating/preparing documents for presentation under a documentary credit ask yourself one question “Does this data need to appear on this document”. If the answer is that the documentary credit does not request it and the UCP 600, does not require it, then do not put it on the document.

The number one category of discrepancy today is data in one document being in conflict with data appearing in that same document, another stipulated document or the credit. The analysis of this fact can only lead to one conclusion – that individually the documents comply with the requirements of the documentary credit and the applicable rules of UCP 600, but data that is conveyed across more than one document (i.e., gross weight, net weight, shipping marks, etc.) is stated on one or more documents incorrectly. But, the

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underlying issue is one of why was the data there in the first place?

Consider a documentary credit whose requirements include “Commercial Invoice”. There are no other conditions related to the requirement. According to article 18 of UCP 600, the invoice must appear to have been issued by the beneficiary; be made out in the name of the applicant; be made out in the same currency as the credit, and bear a goods description that corresponds to that in the credit. As the credit did not request the invoice to be signed, it need not be signed. The credit will require the insertion of the amount of the shipment and, probably, the Incoterm.

Now, for one moment, consider your own invoice and the data that you insert on to it. Anything that is in addition to the above will be examined and may be found to be in conflict and discrepant. In effect, the discrepancy was caused by nothing related to the credit or the UCP. That discrepancy, at best will cause delays in settlement being made and additional costs in rectifying the discrepancy (if possible). At worst, in the meantime the credit has now expired and the applicant could refuse the documents outright resulting in a loss of the consignment value.