

B. *Bankers' commercial credits*

UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION)¹

International Chamber of Commerce (ICC), brochure 222

GENERAL PROVISIONS AND DEFINITIONS

(a) These provisions and definitions and the following articles apply to all documentary credits and are binding upon all parties thereto unless otherwise expressly agreed.

(b) For the purposes of such provisions, definitions and articles the expressions "documentary credit(s)" and "credit(s)" used therein mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and in accordance with the instructions of a customer (the applicant for the credit), is to make payment to or to the order of a third party (the beneficiary) or is to pay, accept or negotiate bills of exchange (drafts) drawn by the beneficiary, or authorises such payments to be made or such drafts to be paid, accepted or negotiated by another bank, against stipulated documents and compliance with stipulated terms and conditions.

(c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.

(d) Credit instructions and the credits themselves must be complete and precise and, in order to guard against confusion and misunderstanding, issuing banks should discourage any attempt by the applicant for the credit to include excessive detail.

(e) When the bank first entitled to avail itself of an option it enjoys under the following articles does so, its decision shall be binding upon all the parties concerned.

(f) A beneficiary can in no case avail himself of the contractual relationship existing between banks or between the applicant for the credit and the issuing bank.

A. FORM AND NOTIFICATION OF CREDITS

Article 1

Credits may be either

- (a) revocable, or
- (b) irrevocable.

All credits, therefore, should clearly indicate whether they are revocable or irrevocable.

¹ Adopted by the Council of the International Chamber of Commerce, November 1962.

In the absence of such indication the credit shall be deemed to be revocable, even though an expiry date is stipulated.

Article 2

A revocable credit does not constitute a legally binding undertaking between the bank or banks concerned and the beneficiary because such a credit may be modified or cancelled at any moment without notice to the beneficiary.

When, however, a revocable credit has been transmitted to and made available at a branch or other bank, its modification or cancellation shall become effective only upon receipt of notice thereof by such branch or other bank and shall not affect the right of that branch or other bank to be reimbursed for any payment, acceptance or negotiation made by it prior to receipt of such notice.

Article 3

An irrevocable credit is a definite undertaking on the part of an issuing bank and constitutes the engagement of that bank to the beneficiary or, as the case may be, to the beneficiary and bona fide holders of drafts drawn and/or documents presented thereunder, that the provisions for payment, acceptance or negotiation contained in the credit will be duly fulfilled, provided that all the terms and conditions of the credit are complied with.

An irrevocable credit may be advised to a beneficiary through another bank without engagement on the part of that other bank (the advising bank), but when an issuing bank authorises another bank to confirm its irrevocable credit and the latter does so, such confirmation constitutes a definite undertaking on the part of the confirming bank either that the provisions for payment or acceptance will be duly fulfilled or, in the case of a credit available by negotiation of drafts, that the confirming bank will negotiate drafts without recourse to drawer.

Such undertakings can neither be modified nor cancelled without the agreement of all concerned.

Article 4

When an issuing bank instructs a bank by cable, telegram or telex to notify a credit and the original letter of credit itself is to be the operative credit instrument, the issuing bank must send the original letter of credit, and any subsequent amendments thereto, to the beneficiary through the notifying bank.

The issuing bank will be responsible for any consequences arising from its failure to follow this procedure.

Article 5

When a bank is instructed by cable, telegram or telex to issue, confirm or advise a credit similar in terms to one previously established and which has been the subject of amendments, it shall be understood that the details of the credit being issued, confirmed or advised will be transmitted to the beneficiary excluding the amendments, unless the instructions specify clearly any amendments which are to apply.

Article 6

If incomplete or unclear instructions are received to issue, confirm or advise a credit, the bank requested to act on such instructions may give preliminary notification

of the credit to the beneficiary for information only and without responsibility; and in that case the credit will be issued, confirmed or advised only when the necessary information has been received.

B. LIABILITIES AND RESPONSIBILITIES

Article 7

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.

Article 8

In documentary credit operations all parties concerned deal in documents and not in goods.

Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a bank authorised to do so, binds the party giving the authorisation to take up the documents and reimburse the bank which has effected the payment, acceptance or negotiation.

If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit.

If such claim is to be made, notice to that effect, stating the reasons therefor, must be given by cable or other expeditious means to the bank from which the documents have been received and such notice must state that the documents are being held at the disposal of such bank or are being returned thereto. The issuing bank shall have a reasonable time to examine the documents.

Article 9

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented thereby, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers or the insurers of the goods or any other person whomsoever.

Article 10

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of cables, telegrams or telex, or for errors in translation or interpretation of technical terms, and banks reserve the right to transmit credit terms without translating them.

Article 11

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by strikes, lock-outs, riots, civil commotions, insurrections,

wars, Acts of God or any other causes beyond their control. Unless specifically authorised, banks will not effect payment, acceptance or negotiation after expiration under credits expiring during such interruption of business.

Article 12

Banks utilising the services of another bank for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of the latter.

They assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank.

The applicant for the credit shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

C. DOCUMENTS

Article 13

All instructions to issue, confirm or advise a credit must state precisely the documents against which payment, acceptance or negotiation is to be made.

Terms such as "first class", "well known", "qualified" and the like shall not be used to describe the issuers of any documents called for under credits and if they are incorporated in the credit terms banks will accept documents as presented without further responsibility on their part.

DOCUMENTS EVIDENCING SHIPMENT OR DESPATCH (SHIPPING DOCUMENTS)

Article 14

Except as stated in Article 18, the date of the Bill of Lading, or date indicated in the reception stamp or by notation on any other document evidencing shipment or despatch, will be taken in each case to be the date of shipment or despatch of the goods.

Article 15

If the words "freight paid" or "freight prepaid" appear by stamp or otherwise on documents evidencing shipment or despatch they will be accepted as constituting evidence of the payment of freight.

If the words "freight prepayable" or "freight to be prepaid" or words of similar effect appear by stamp or otherwise on such documents they will not be accepted as constituting evidence of the payment of freight.

Unless otherwise specified in the credit or inconsistent with any of the documents presented under the credit, banks may honour documents stating that freight or transportation charges are payable on delivery.

Article 16

A clean shipping document is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging.

Banks will refuse shipping documents bearing such clauses or notations unless the credit expressly states clauses or notations which may be accepted.

MARINE BILLS OF LADING

Article 17

Unless specifically authorised in the credit, Bills of Lading of the following nature will be rejected:

- (a) Bills of Lading issued by forwarding agents.
- (b) Bills of Lading which are issued under and are subject to the conditions of a Charter-Party.
- (c) Bills of Lading covering shipment by sailing vessels.

However, unless otherwise specified in the credit, Bills of Lading of the following nature will be accepted:

- (a) "Port" or "Custody" Bills of Lading for shipments of cotton from the United States of America.
- (b) "Through" Bills of Lading issued by steamship companies or their agents even though they cover several modes of transport.

Article 18

Unless otherwise specified in the credit, Bills of Lading must show that the goods are loaded on board.

Loading on board may be evidenced by an on board Bill of Lading or by means of a notation to that effect dated and signed or initialled by the carrier or his agent, and the date of this notation shall be regarded as the date of loading on board and shipment.

Article 19

Unless transhipment is prohibited by the terms of the credit, Bills of Lading will be accepted which indicate that the goods will be transhipped en route, provided the entire voyage is covered by one and the same Bill of Lading.

Bills of Lading incorporating printed clauses stating that the carriers have the right to tranship will be accepted notwithstanding the fact that the credit prohibits transhipment.

Article 20

Banks will refuse a Bill of Lading showing the stowage of goods on deck, unless specifically authorised in the credit.

Article 21

Banks may require the name of the beneficiary to appear on the Bill of Lading as shipper or endorser, unless the terms of the credit provide otherwise.

OTHER SHIPPING DOCUMENTS, ETC.

Article 22

Banks will consider a Railway or Inland Waterway Bill of Lading or Consignment Note, Counterfoil Waybill, Postal Receipt, Certificate of Mailing, Air Mail Receipt, Air

Transportation Waybill, Air Consignment Note or Air Receipt, Trucking Company Bill of Lading or any other similar document as regular when such document bears the reception stamp of the carrier or issuer, or when it bears a signature.

Article 23

When a credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or any other official indication of weight on the shipping documents unless the credit calls for a separate or independent certificate of weight.

INSURANCE DOCUMENTS

Article 24

Insurance documents must be as specifically described in the credit, and must be issued and/or signed by insurance companies or their agents or by underwriters.

Cover notes issued by brokers will not be accepted, unless specifically authorised in the credit.

Article 25

Unless otherwise specified in the credit, banks may refuse any insurance documents presented if they bear a date later than the date of shipment as evidenced by the shipping documents.

Article 26

Unless otherwise specified in the credit, the insurance document must be expressed in the same currency as the credit.

The minimum amount for which insurance must be effected is the CIF value of the goods concerned. However, when the CIF value of the goods cannot be determined from the documents on their face, banks will accept as such minimum amount the amount of the drawing under the credit or the amount of the relative commercial invoice, whichever is the greater.

Article 27

Credits must expressly state the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as "usual risks" or "customary risks" shall not be used.

Failing specific instructions, banks will accept insurance cover as tendered.

Article 28

When a credit stipulates "insurance against all risks", banks will accept an insurance document which contains any "all risks" notation or clause, and will assume no responsibility if any particular risk is not covered.

Article 29

Banks may accept an insurance document which indicates that the cover is subject to a franchise, unless it is specifically stated in the credit that the insurance must be issued irrespective of percentage.

COMMERCIAL INVOICES

Article 30

Unless otherwise specified in the credit, commercial invoices must be made out in the name of the applicant for the credit.

Unless otherwise specified in the credit, banks may refuse invoices issued for amounts in excess of the amount permitted by the credit.

The description of the goods in the commercial invoice must correspond with the description in the credit. In the remaining documents the goods may be described in general terms.

OTHER DOCUMENTS

Article 31

When other documents are required, such as Warehouse Receipts, Delivery Orders, Consular Invoices, Certificates of Origin, of Weight, of Quality or of Analysis, etc., without further definition, banks may accept such documents as tendered, without responsibility on their part.

D. MISCELLANEOUS PROVISIONS
QUANTITY AND AMOUNT*Article 32*

The words "about", "circa" or similar expressions are to be construed as allowing a difference not to exceed 10 % more or 10 % less, applicable, according to their place in the instructions, to the amount of the credit or to the quantity or unit price of the goods.

Unless a credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 3 % more or 3 % less will be permissible, always provided that the total amount of the drawings does not exceed the amount of the credit. This tolerance does not apply when the credit specifies quantity in terms of packing units or containers or individual items.

PARTIAL SHIPMENTS

Article 33

Partial shipments are allowed, unless the credit specifically states otherwise.

Shipments made on the same ship and for the same voyage, even if the Bills of Lading evidencing shipment "on board" bear different dates, will not be regarded as partial shipments.

Article 34

If shipment by instalments within given periods is stipulated and any instalment is not shipped within the period allowed for that instalment, the credit ceases to be available for that or any subsequent instalment, unless otherwise specified in the credit.

VALIDITY AND EXPIRY DATE

Article 35

All irrevocable credits must stipulate an expiry date for presentation of documents for payment, acceptance or negotiation, notwithstanding the indication of a latest date for shipment.

Article 36

The words "to", "until", "till" and words of similar import applying to the expiry date for presentation of documents for payment, acceptance or negotiation, or to the stipulated latest date for shipment, will be understood to include the date mentioned.

Article 37

When the stipulated expiry date falls on a day on which banks are closed for reasons other than those mentioned in Article 11, the period of validity will be extended until the first following business day.

This does not apply to the date for shipment which, if stipulated, must be respected.

Banks paying, accepting or negotiating on such extended expiry date must add to the documents their certification in the following wording:

"Presented for payment (or acceptance or negotiation as the case may be) within the expiry date extended in accordance with Article 37 of the Uniform Customs."

Article 38

The validity of a revocable credit, if no date is stipulated, will be considered to have expired six months from the date of the notification sent to the beneficiary by the bank with which the credit is available.

Article 39

Unless otherwise expressly stated, any extension of the stipulated latest date for shipment shall extend for an equal period the validity of the credit.

Where a credit stipulates a latest date for shipment, an extension of the period of validity shall not extend the period permitted for shipment unless otherwise expressly stated.

SHIPMENT, LOADING OR DESPATCH

Article 40

Unless the terms of the credit indicate otherwise, the words "departure", "despatch", "loading" or "sailing" used in stipulating the latest date for shipment of the goods will be understood to be synonymous with "shipment".

Expressions such as "prompt", "immediately", "as soon as possible" and the like should not be used. If they are used, banks will interpret them as a request for shipment within thirty days from the date on the advice of the credit to the beneficiary by the issuing bank or by an advising bank, as the case may be.

PRESENTATION

Article 41

Documents must be presented within a reasonable time after issuance. Paying, accepting or negotiating banks may refuse documents if, in their judgment, they are presented to them with undue delay.

Article 42

Banks are under no obligation to accept presentation of documents outside their banking hours.

DATE TERMS

Article 43

The terms "first half", "second half" of a month shall be construed respectively as from the 1st to the 15th, and the 16th to the last day of each month, inclusive.

Article 44

The terms "beginning", "middle" or "end" of a month shall be construed respectively as from the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of each month, inclusive.

Article 45

When a bank issuing a credit instructs that the credit be confirmed or advised as available "for one month", "for six months" or the like, but does not specify the date from which the time is to run, the confirming or advising bank will confirm or advise the credit as expiring at the end of such indicated period from the date of its confirmation or advice.

E. TRANSFER

Article 46

A transferable credit is a credit under which the beneficiary has the right to give instructions to the bank called upon to effect payment or acceptance or to any bank entitled to effect negotiation to make the credit available in whole or in part to one or more third parties (second beneficiaries).

A credit can be transferred only if it is expressly designated as "transferable" by the issuing bank. Terms such as "divisible", "fractionable", "assignable" and "transmissible" add nothing to the meaning of the term "transferable" and shall not be used.

A transferable credit can be transferred once only. Fractions of a transferable credit (not exceeding in the aggregate the amount of the credit) can be transferred separately, provided partial shipments are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the credit. The credit can be transferred only on the terms and conditions specified in the original credit, with the exception

of the amount of the credit, of any unit price stated therein, and of the period of validity or period for shipment, any or all of which may be reduced or curtailed. Additionally, the name of the first beneficiary can be substituted for that of the applicant for the credit, but if the name of the applicant for the credit is specifically required by the original credit to appear in any document other than the invoice, such requirement must be fulfilled.

The first beneficiary has the right to substitute his own invoices for those of the second beneficiary, for amounts not in excess of the original amount stipulated in the credit and for the original unit prices stipulated in the credit, and upon such substitution of invoices the first beneficiary can draw under the credit for the difference, if any, between his invoices and the second beneficiary's invoices. When a credit has been transferred and the first beneficiary is to supply his own invoices in exchange for the second beneficiary's invoices but fails to do so on demand, the paying, accepting or negotiating bank has the right to deliver to the issuing bank the documents received under the credit, including the second beneficiary's invoices, without further responsibility to the first beneficiary.

The first beneficiary of a transferable credit can transfer the credit to a second beneficiary in the same country, but if he is to be permitted to transfer the credit to a second beneficiary in another country this must be expressly stated in the credit. The first beneficiary shall have the right to request that payment or negotiation be effected to the second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the original credit, and without prejudice to the first beneficiary's right subsequently to substitute his own invoices for those of the second beneficiary and to claim any difference due to him.

The bank requested to effect the transfer, whether it has confirmed the credit or not, shall be under no obligation to make such transfer except to the extent and in the manner expressly consented to by such bank, and until such bank's charges for transfer are paid.

Bank charges entailed by transfers are payable by the first beneficiary unless otherwise specified.