

Corporate Banking

top@doc Newsletter

Amendment of letter of credit and presentation of documents – “implied conduct”?



The “Uniform Customs and Practice for Documentary Credits UCP 600” do not provide an answer to all questions that arise in the context with the examination of documents. This also applies to the case study which we present in the following. Even though there is no clear-cut solution, top@doc would like to explain the line adopted by Commerzbank in this regard.

Our practical case study is as follows:

Careful Bank issued a credit for USD 100,000.00 in favour of WellDone Ltd. The description of goods specifies a unit price of USD 100.00. The credit permits partial shipment.

Upon request of the applicant, Careful Bank amends the credit as follows:

Credit amount – new: USD 70,000.00

Unit price – new: USD 70.00 per unit

Careful Bank sends a corresponding SWIFT-Message MT 707 to the principal banker of WellDone Ltd.

A few weeks after this amendment, Careful Bank, which had to date not received any information on an explicit consent or

non-acceptance of the amendment so far, receives through the principal banker of WellDone Ltd. two sets of documents on the same day. Both sets contain the “commercial invoice” requested in the credit. The date of the two invoices is identical. Each invoice is accompanied by a complete set of the other documents stipulated in the credit. De facto, we are dealing here with two separate partial shipments.

One of the two invoices states a unit price of goods of USD 100.00, while the other shows a unit price of USD 70.00.

Given the above, Careful Bank is confronted with several questions:

1. Is the presentation of the documents in itself contradictory?
2. Is the unit price indicated in the original credit applicable or must the reduced price be applied when examining the documents?
3. Are both invoices compliant with the credit? If only one invoice can be taken up – then which one of the two?

The view taken by Commerzbank with respect to these questions is as follows:

Ad 1)

If the two invoices would relate to one and the same delivery of goods, the presentation of the documents would indeed be contradictory in itself. According to the UCP 600, art. 14 d, this would be a reason for non-acceptance of the documents. However, no contradiction can be seen in this connection since the invoices refer to two separate consignments.

Ad 2)

It is objectively unclear to Careful Bank whether WellDone Ltd. has accepted the amendment or not. According to the UCP 600, art. 10 c, the original credit terms remain in force until WellDone Ltd. states acceptance of the amendment. However, since WellDone Ltd. has not done so until the date on which the documents are presented to Careful Bank, the credit condition "credit amount USD 100,000.00/unit price USD 100.00" remains unchanged.

In our opinion, article 10 c of the UCP 600, according to which the presentation of documents that correspond to the as yet not accepted amendment of the credit will be regarded as acceptance of the amendment, does not apply here. The reason for our point of view: the presentation of documents that correspond to both the original terms and the amended terms cannot be regarded as a conclusive acceptance of the amendment.

Accordingly, the unit price of USD 100.00 shall be applicable when examining the documents.

Ad 3)

Hence, only the invoice which states a unit price of USD 100.00 is compliant with the credit. The second set of documents which shows a unit price of USD 70.00 cannot be accepted.

We would like to point out explicitly that the aforementioned questions cannot be answered by the provisions of the UCP. In fact, different viewpoints may be adopted.

The approach taken by Commerzbank is based on the explanatory power of WellDone's conduct and it relies on German law.

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