



# SECURING YOUR PAYMENT: TRADING TO THE LETTER



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Many international shippers find themselves in a difficult position when securing payment from buyers after a sale. Often, international sale of goods transactions are secured through a Letter of Credit (LC). The LC serves to facilitate prompt payment for goods purchased. Parties to the LC include the seller, buyer, buyer's bank (issuing bank), and seller's bank.

For the seller/shipper, issues arise when the buyer refuses payment. When the seller demands payment, the buyer often directs attention to the LC, citing a lack of LC compliance with banking standards. Banks which have not adequately ensured they will be reimbursed by their customer (the buyer), have narrowly applied LC principles to deny payment. These decisions have been upheld by courts on the grounds that the seller has not strictly complied with the terms of the LC. For the seller, a comprehensive way to secure payment is to take preventative action:

### Control the Process

When negotiating with the buyer, the seller should attempt to persuade the buyer to use a bank of the seller's choice to issue the LC. The seller should conduct due diligence, discussing with its own bank, preferably a bank with a substantial international presence, what corresponding bank it uses in the country of the buyer.

If the buyer can have the LC issued by that corresponding bank, the process can proceed more expeditiously.

### Confirming the LC

If the seller does not have confidence in the bank of the buyer's choice, or if there is any question about the political stability of the foreign country where the issuing bank is located, then the LC should be confirmed by a U.S. bank. When a U.S. bank confirms an LC issued by a foreign bank, it takes upon itself the payment obligation. Thus, if a U.S. bank confirmed an LC, and subsequently, for political or economic reasons, the foreign bank could not reimburse the U.S. bank, the U.S. bank must pay the beneficiary under the LC.

### Keeping the Documents Simple

The seller should negotiate with the buyer prior to the issuance of the LC exactly what documents must be presented to the bank for payment under the LC. The seller's priority must be to have as few documents as possible, to have as simple a description as possible, and to be sure that all documents called for by the LC can in fact be produced. Cases have occurred where one of the documents is a certificate supposed to be issued by the foreign government, which was simply never produced. Another problem can be created if the LC requires a document to be signed by someone under the control of the buyer. The document may not be signed by the right person, or may not be signed at all.

Almost all LC's require production of a commercial invoice and a transport bill of lading. With respect to the commercial invoice... (con't)

...the LC will typically state the description of the goods which must be found in the invoice. If the goods are not described exactly the same way, the seller may not be paid.

To prevent denial of payment, sellers should understand the following:

- Documents must be accurate.
- If there is a mistake or a problem with the documents which the LC requires to be presented, the seller/beneficiary should not ship goods until the LC has been amended. Further, no amendment can take place unless the issuing bank, the confirming bank, if any, and the seller, agree to it.
- A prudent seller will not let the buyer take possession of the goods until he has been paid under the LC. If there are discrepancies in the documents preventing payment of the LC, a buyer in possession of the goods has much less incentive to waive discrepancies so the seller can be paid.

### Meeting the deadlines

Every LC has three important dates: (1) the date by which goods must be shipped; (2) the date by which documents must be presented; (3) and the expiry date for the LC. A seller should make sure that each of these dates can be met, and should allow a large margin for error.

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