INTERNATIONAL CHAMBER OF COMMERCE

The world business organization

Department of Policy and Business Practices

Mrs. Nynne Norman Scheuer
Deputy Secretary General,
ICC Denmark
Börsen
1217 Copenhagen K
Denmark

14 June 2017

Document 470/TA.873

Dear Mrs. Scheuer,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

A credit was available with the issuing bank and included the following description of goods:

47 Pipeburster Pulling Unit
Ref. Packing List
DAP Bratislava, [+ the address of the applicant] Incoterms 2010

Amongst other documents, the credit required a stamped and signed commercial invoice.

Under "additional conditions" the following were indicated:

"TYPING ERRORS NOT AFFECTING FIGURES ARE ACCEPTABLE AND WILL NOT CONSTITUTE A DISCREPANCY UNDER THIS L/C.

IN THE EVENT THAT DOCUMENTS ARE DETERMINED TO BE DISCREPANT, WE MAY SEEK A WAIVER OF SUCH DISCREPANCIES FROM THE APPLICANT. SHOULD SUCH A WAIVER BE OBTAINED, WE MAY RELEASE THE DOCUMENTS AND EFFECT SETTLEMENT, NOTWITHSTANDING ANY PRIOR COMMUNICATION TO THE PRESENTER THAT WE ARE HOLDING DOCUMENTS AT THE PRESENTER'S DISPOSAL, UNLESS WE HAVE BEEN INSTRUCTED OTHERWISE BY THE PRESENTER, PRIOR TO OUR RELEASE OF DOCUMENTS."

The beneficiary made a presentation to the issuing bank via the advising bank.

Following the receipt of the documents, the issuing bank refused the presentation. Below is an extract from the refusal notice (sent in the form of a SWIFT MT799 to the advising bank):

DRAFT

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org

"THIS ADVICE CONSTITUTES OUR REFUSAL OF DOCUMENTS UNDER THE ABOVE MENTIONED REFERENCE AND IS SENT IN ACCORDANCE 16 C. NEVERTHELESS, WE HAVE REFERRED ALL THE DISCREPANCIES TO THE APPLICANT UPON RECEIPT OF ACCEPTANCE WE WILL RELEASE DOCUMENTS TO THEM WITHOUT ANY REFERENCE TO YOU UNLESS YOUR INSTRUCTIONS TO THE CONTRARY ARE RECEIVED BY US BEFORE SUCH ACCEPTANCE.
WE HAVE REFERRED THE FOLLOWING DISCREPANCY:
1: GOODS DESCRIPTION ON INVOICE INCONSISTENT WITH LC FIELD 45A
2: INVOICE MISSING INCOTERMS

MEANWHILE, WE HOLD THE DOCUMENTS AT YOUR RISK AND RESPONSIBILITY"

On the invoice, the description of goods was indicated as follows:

T247 Pipeburster pulling unit
+ standard accessories
Machine [the number of the machine]
Engine [the number of the engine]

(The Incoterm was not stated.)

Additional information:

- The invoice was addressed to the applicant, and issued for the exact amount of the documentary credit.
- The model number ("47") was wrongly stated in the credit. The correct model number was "T247".

Kindly clarify the following.

1. Whether or not the two discrepancies are valid?
2. Whether or not the refusal notice is in accordance with the provisions of UCP 600 article 16?
3. Whether or not, on the basis of questions 1 and 2, the issuing bank is obligated to honour the presentation?

UNQUOTE

ANALYSIS

Goods description on invoice inconsistent with LC field 45A

It is noted that under the additional conditions field it was stated that typing errors not affecting figures are acceptable.

The goods description in the credit included '47' which appears to have been a model number. In the context of the goods description, the model number is shown as a figure. The presented invoice stated 'T247' instead of '47'. Accordingly, this did not constitute a description corresponding with that appearing in the credit, as required by UCP 600 sub-article 18 (c) and ISBP 745 paragraph C3 and is, therefore, discrepant. Being a figure, the condition regarding typing errors was not applicable to the model number.

The fact that the credit incorrectly stated the model number has no bearing on this issue. In accordance with ISBP 745 preliminary consideration (iv), the parties are advised to pay careful attention to the detail in the credit. Furthermore, the final sentence of ISBP paragraph A23 provides an example of a discrepant goods description that can be related to this particular query.

The presented invoice also included additional information with regard to standard accessories, machine number and engine number. As stated in ICC Opinion 470/TA.860, in accordance with ISBP 745 paragraph C5, the description of the goods may also indicate additional data in respect of the goods, provided that it does not appear to refer to a different nature, classification or category of the goods. These additional elements do not create a discrepancy.

Invoice missing incoterms

ISBP 745 paragraph C8 states that when a trade term is stated as part of the goods description in the credit, an invoice is to indicate that trade term, and when the source of the trade term is stated, the same source is to be indicated.

The description of goods in the credit included a trade term, i.e. DAP Bratislava (+address of the applicant) Incoterms 2010. The presented invoice did not include this trade term. Accordingly, this constitutes a discrepancy.

Refusal notice

The credit contained an additional condition that in the event documents were determined to be discrepant, the issuing bank could seek a waiver from the applicant and, should such waiver be obtained, it may release the documents to the applicant and effect settlement, unless otherwise instructed by the presenter prior to the release of the documents and notwithstanding any prior communication to the presenter that documents were held at the presenter's disposal.

This condition modifies the content of UCP 600 sub-article 16 (c) (iii) (b), as permitted by the content of UCP 600 article 1 which allows for the rules to be expressly modified by the credit. Should this particular condition not have been acceptable to the advising bank, a suitable amendment should have been obtained.

The refusal notice was issued in accordance with UCP 600 sub-article 16 (c) in that the issuing bank indicated its refusal of the documents, listed each discrepancy, and stated that it was holding the documents until it received acceptance from the applicant. The issuing bank additionally stated, in line with the credit terms, that upon receipt of acceptance of the discrepancies by the applicant, the documents would be released to the applicant without further reference to the advising bank, unless the advising bank provided instructions to the contrary prior to receipt of such acceptance. On the basis of the information provided, it appears that the advising bank did not object to this process nor did it provide instructions to the contrary.

CONCLUSION

1. Yes, both discrepancies were valid.
2. Yes, the refusal notice was in accordance with UCP 600 article 16.
3. No, the issuing bank was not obligated to honour the presentation.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.

If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).

Yours Sincerely,

Olivier Paul
Head of Policy, Banking Commission