

top@doc Newsletter

“But it is for free ...!”- is it permitted to deliver additional goods under a documentary credit?

From time to time, commercial invoices presented under documentary credits are evidence that goods in excess of the quantity called for in the credit have been dispatched. In such event and if an amount is invoiced that is higher than that covered by the credit, the matter is quite simple: the commercial invoice is not compliant with the terms of the credit and may not be taken up. But what if those additional goods are delivered at no cost to the buyer?

The answer to this question depends on the wording for the goods' description in the credit. The following example illustrates that slightly different wording may imply a significant difference:

In an export credit for USD 1,000.00 in favour of NoLimits Inc., the following “description of goods” is mentioned in field 45:

100 bottles shampoo

For drawings under the credit, NoLimits Inc. presents to CarefulBank, which acts as nominated bank, inter alia, an invoice with the following details:

<i>100 bottles shampoo</i>	<i>USD 1,000.00</i>
<i>10 bottles shampoo</i>	<i>– free of charge –</i>
<i>total</i>	<i>USD 1,000.00</i>

CarefulBank rejects acceptance of this document for the reason that the indication of ten additional shampoo bottles is not permitted. This decision makes no sense to NoLimits Inc.. After all, no charge was made for these ten bottles – some kind of “present” to the buyer. Ever seen someone object to a present?



Indeed, at first glance, it may appear that the delivery of goods free of charge would be a fine thing for the buyer. However, this “present” may turn out to be inconvenient and by no means welcome. For example, customs clearance problems may arise. The importer may incur higher customs duties, clearance may be delayed due to the indication of undeclared goods and this may in turn lead to a late arrival of the goods actually ordered at the buyer’s premises.

Depending on the kind of goods involved, it is easy to imagine that the buyer might have a problem storing the additionally delivered goods. This is obviously not the case with ten shampoo bottles. However, the focus here is the fundamental question of whether “additional quantities” are permitted. The “International Chamber of Commerce” (ICC), Paris, has therefore stipulated in paragraph C12 b of the “International Standard Banking Practice”, Publ. 745E, that an invoice presented under a credit may not state goods or services that have not

been called for in the credit. This also applies in cases where such an “extra” quantity is delivered free of charge or simply represents advertising material.

The next credit, this time for USD 2,000.00, that is advised by CarefulBank in favour of NoLimits Inc. includes the following goods description:

Cosmetics as per proforma invoice no. 123:

In the invoice presented under this credit by NoLimits Inc. to CarefulBank, the goods are described as follows:

Cosmetics as per proforma invoice no. 123
200 bottles shampoo USD 2,000.00
20 bottles shampoo - free of charge -
total USD 2,000.00

And once again, NoLimits Inc. receives from CarefulBank, instead of the expected payment for the documents, the notice that the documents cannot be accepted. And again, the reason given is that the invoice shows a delivery that is not called for in the credit and thus not permitted.

Consternation takes hold of NoLimits Inc. – the credit had specifically been made out in such a way as to avoid any information on the delivery quantity in the goods description. How can it be that CarefulBank claims again that an unauthorised extra delivery has been made?

And indeed, this case is not that simple. NoLimits Inc.’s line of reasoning is by no means illogical – if the credit gives no details on the delivery quantity, then one can also not determine that this quantity has been exceeded.

In the final analysis, the quantity indicated in the proforma invoice should be the determining factor. However, since this invoice is not an integral component of the credit (and should also not be made one!), there is no need to include it in the examination of the documents. However, CarefulBank argues that the wording “free of charge” indicates that an additional quantity has been delivered.

The case is not clear and the UCP 600 also do not offer a one-off solution. However, Commerzbank follows the ap-

proach taken by CarefulBank – the documents should not be taken up without reserve also in the customer’s interest since customs clearance problems cannot be excluded. Moreover, it is quite imaginable that the issuing bank will refuse to take up the documents on account of the presumed additional goods.

By presenting documents that leave room for doubt as to the credit’s conformity, the credit may possibly lose its function as a payment securing instrument. Therefore, NoLimits Inc. would be well advised to amend the invoice accordingly.

In our example, there is still sufficient time left for a renewed presentation of the documents. NoLimits Inc. presents a new invoice that mentions a description of goods worded as follows:

Cosmetics as per proforma invoice no. 123
220 bottles shampoo USD 2,000.00
total USD 2,000.00

This invoice is in line with the stipulations of the credit and the UCP 600 since it contains no reference to a possible additional delivery. Therefore, it will be taken up by CarefulBank without reserve.

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