

top@doc Newsletter

“There is still some room...” – Permissible Tolerances in the Quantity of Goods

The Uniform Customs and Practice for Documentary Credits UCP 600 allow a tolerance of plus/minus 5% in the quantity of the goods provided that the total utilization of the credit does not exceed the credit amount and the credit terms do not state the quantity in terms of a specific number of packing units or individual items. These requirements are easy to comply with – things will, however, get difficult when the description of the goods consists of several single positions with individual quantities.

The following example will demonstrate what creates the difficulties:

NoLimits Inc. receives from its principal banker, CarefulBank, a documentary credit issued in its favour covering the following goods:

Drapery and textiles as in the following specification:

1. Painted velvet, blue	100 mtrs.
2. Painted velvet, purple	200 mtrs.
3. Satin, black	150 mtrs.
4. Satin, red	230 mtrs.
5. Brocade, green	320 mtrs.
6. Brocade, gold	320 mtrs.

Total: 1320 mtrs.

For utilization of the credit, NoLimits Inc. submits, among others, an invoice showing details as follows:

Drapery and textiles as in the following specification:

1. Painted velvet, blue	110 mtrs.
2. Painted velvet, purple	210 mtrs.
3. Satin, black	150 mtrs.
4. Satin, red	250 mtrs.
5. Brocade, green	320 mtrs.
6. Brocade, gold	330 mtrs.

Total: 1370 mtrs.



CarefulBank examines the documents and informs NoLimits Inc. that they are not compliant with the credit and can, therefore, not be taken up. Discrepancies in the invoice are given as reason for refusal: the quantity of the goods delivered is too high. NoLimits Inc. is, however, sure of complying precisely with the provisions of UCP 600 and argues that the surplus quantity is permissible. Article 30 b of the UCP 600 would allow exceeding the quantity stipulated in the credit by up to 5%. Since the total quantity of goods delivered exceeds the specified quantity of 1320 mtrs. by less than 4% and is thus permissible according to the UCP 600, CarefulBank must, in the opinion of NoLimits Inc., take up the documents. Is NoLimits Inc. right?

The majority of the banks represented in the International Chamber of Commerce (ICC), among them Commerzbank, are of the opinion that the indication of a permissible tolerance does not only refer to the total quantity of the goods, but also to individual items, unless otherwise specified in the

credit. In this connection, it makes no difference whether reference is made to the permissible tolerance of plus/minus 5% according to the UCP 600, art. 30 b, or to a tolerance individually specified in the credit.

Otherwise, it would, for example, be possible to deliver as follows under the above-mentioned credit:

Drapery and textiles as in the following specification:

1. Painted velvet, blue	1 mtr.
2. Painted velvet, purple	1 mtr.
3. Satin, black	1 mtr.
4. Satin, red	1 mtr.
5. Brocade, green	1 mtr.
6. Brocade, gold	1365 mtrs.

Total: 1370 mtrs.

This does not appear to make sense.

In order to provide clarity for all parties involved in the credit and to avoid misunderstandings and/or disputes, it is advisable to set out clear requirements already upon issuance of the credit. In the aforementioned case, these could read as follows:

Field 47 – additional conditions:

“A tolerance of plus/minus 5% in the quantity of goods is acceptable. This allowance is applicable to each one of the partial items and not only to the total quantity.”

The same applies to partial shipments. Whenever the credits provide for shipment of the goods in several lots, the stipulation of precise credit terms is equally advisable. An example also in this respect:

The credit provides for the following “1000 mtrs. of painted velvet, blue. Delivery instruction: 700 mtrs. have to be delivered by 1 Aug 2015 at the latest, 300 mtrs. have to be

delivered by 1 Oct 2015 at the latest.” Moreover, a tolerance of 10% with respect to the quantity of the goods and credit amount is permissible.

Does the permitted tolerance refer to the total quantity of 1000 mtrs. or to the individual partial shipments? Here too, Commerzbank is of the opinion that the tolerance refers to both the total quantity and the partial shipments. Otherwise, it would be permissible to deliver upon the first partial shipment, for example, 10 mtrs. of the drapery and two months later another 1090 mtrs. One can very well imagine the difficulties that the importer would encounter in respect of production start, storage, etc.

Here too, a supplementary condition of the credit could provide clarity:

“A tolerance of plus/minus 10% in the quantity of goods and credit amount is acceptable. This allowance is applicable to both partial shipments and not only for the total quantity shipped.”

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