# Traders and the Contract of Sale of Goods.

*(International Trade)*



**Shipping is a derived demand**. It derives from trading. To comprehend better the daily tasks of chartering ships that will be employed in moving goods by sea, one should comprehend the needs and the procedures of trading.

## International Trade.

Although the roots of **International Trade** can be traced back in antiquity, its economic and political importance has been on the rise during the last century. During the early years, both the Western World and China managed to explore the globe and, in this way, expand the available markets. Nowadays, international trade has become globally available and represents a significant share of the Gross Domestic Product (*GDP*) for many of the developed and the developing countries. The volume of transported goods is getting bigger every year while the volume that was recorded during the 20th century has been unpreceded. Industrialization, technology, globalization and multinational corporations are all having a major impact on the increase of the volume of international trade. Modern communication facilities, easily accessible information and transportation capabilities offer opportunities to traders all over the world, allowing them the advantage of an open door to the globe. However, the standards for quality and fast delivery are becoming more and more demanding every passing day. The contracts and the obligations of the traders are nowadays more sophisticated and more complex. The traders are required to have a high standard of knowledge in many different aspects, the most complicated of which is the knowhow and the “turbulences” on the cost of “transporting goods by sea”.

## Traders (*definition*)

A Trader or Commodity Trader is a person or an entity that purchases and sells goods or commodity contracts. The traded goods are Grains, Iron Products, Coal, etc. However, the Traders may also trade with futures, options and financial derivatives, mainly for hedging the financial risk of contracts that will be executed at a later stage *(forward cargo book*). The goods and the contracts are purchased and sold for the traders’ own account. Commodity Traders should not be confused with traders engaged in buying and selling financial assets in any of the financial markets.

Traders buy the traded commodities either direct from the producers (*factories, farmers etc.,)* or from other major traders who can provide “origination” or through commodity brokers. (*see here below the definition of Commodity Brokers*).

Traders may “go long” which means that they agree contracts to buy commodities before selling them or “go short” which means that they agree to sell commodities before buying them. Obviously, this happens in order to take advantage of the ever-changing commodity market, grab an opportunity in buying or selling etc.

In practice a Trader can act both as Seller and Buyer. When buying goods, they seek the lowest possible price under the best possible contractual terms. A Buyer can either be a Trader seeking profit by reselling the goods to third parties or an entity – a factory, a mill, a merchant etc. – that consumes, uses or resells the goods. The latter usually issues the so called “tenders”, which in fact is an auction through which Traders are invited to offer their lowest price, usually for supply of goods that will be executed at a future stage.

## Commodity Brokers

A Commodity Broker is a person or an entity that executes purchase or sale orders and buys or sells commodity contracts on behalf of his clients. Commodity brokers work for a commission which is calculated as a percentage on the value of the goods or as an agreed amount per ton.

## Contracts of Sale of Goods (*definition*)

Obviously, each trading contract is agreed between two traders, one being the Seller and the other the Buyer. The task of transporting the traded goods is assigned to one of them – the Seller or the Buyer – depending on the terms and conditions of the Sale Contract. (*see here below INCO terms)*

The Contract of Sale of Goods **(***from now on* ***Sale Contract*)** is the basic document, which governs the agreement of a trading deal and, as far as this book is concerned, leads to an export or import transaction. In fact, it is the agreement between the Buyer (*or Receiver or Consignee*) and the Seller (*or Shipper*) of the goods. Consequently, one may say that this contract is in fact the initiation for the complex mechanism of international trade and eventually Chartering.

Naturally, the Sale Contract precedes the Chartering Agreement (*Charter Party*) and initiates the need for transportation. As a result, the cost of transportation needs to be “estimated” or “hedged”. In practice, the traders usually end up with the need to assign the task of having the goods transported to third parties (*contractors or operators or NVOCC[[1]](#footnote-0))* who will later act as “Charterers”.

## Terms and conditions contained in the Sale Contract.

The Contract of Sale initiates the need for transportation of the goods, consequently, it sets the basis for the agreement between the Charterers or the Forwarding Agents and the Carriers (*Owners or Disponent Owners*). Therefore, one might say that the Sale Contract is the basis for the Charter Party.

As already mentioned, the parties which are directly involved in a Sale Contract are the Sellers and the Buyers. Depending on the agreement it is one of them who will accept the burden (*expenses and risk*) to transport the Goods and thus become the Charterer.

After negotiations, the parties agree upon several terms and conditions such as:

Port of loading (*FOB contracts*) / - Port of discharging (*C&F contract*)

Delivery period

Quantity / - Quality /Specifications (*Specs*)

Price / - Payment terms (*CAD[[2]](#footnote-1) / LC etc*.)

Shipping Terms (S*ee next paragraph*)

Applicable law and arbitration

Set of rules on which the agreement is based (*for instance, GAFTA[[3]](#footnote-2) in case of Grain Trades*)

Shipping termscontained in a Sale Contract, are crucial as far as chartering is concerned. Shipping Terms usually include the following:

Terms related to the expenses of transportation, but mainly the expenses for Loading, Discharging and Stowing of the Goods.

* The name of loading / discharging port(s) and the LayCan or the loading window.
* Terms related to the risks of loading, transporting, discharging.
* Terms related to the description of the carrying ship as well as allowances to load part cargoes or not.
* Terms related to the time allowed for loading or discharging as well as the cost of delay (*demurrage*) or the savings in case that loading/discharging operations are completed earlier (*dispatch*). These terms also determine the conditions for the acceptance of NOR and the commencement of Laytime.
* Ports and/or Berth restrictions, if any (draft, length, breadth, air draft etc. of the carrying ship)
* Eventual time bars for the delivery of the goods (*speed of transportation, direct delivery etc.*)
* Terms and conditions related to the bills of lading.
* Applicable law and Dispute Resolution / Arbitration (*usually GAFTA*).

## Rules related to the Sale Contract.

### Inco Terms

The task of the **INCO terms** *(International Commercial Terms)* is to harmonize the rules of different legal systems giving definitions and a common basis on which the contracting parties may reach an understandable agreement.

This set of rules constitutes an effective tool, by means of which the contracting parties define the extent of responsibility that they accept, under a Sale Contract. Starting with **EXW** *(EX Works*) agreements, where the extend of transportation responsibility for the Buyer is the maximum, the INCO terms are completed with the **DDP** (*Delivered Duty paid*) agreement, which leaves almost all transportation responsibilities to the Seller.

INCO terms offer a step-by-step definition of the relationship between the contracting parties and the allocation of obligations and risks. The most common rules, which apply to goods transported by sea, are the **C&F** (*Cost & Freight*) and the **FOB** (*Free On Board*). **FOB** means that the Sellers are responsible to place the Goods on board a ship that is nominated by the Buyers. In this way, it is the Buyers who will pay the cost of transportation (*Freight or Hire*) and will remain responsible for the risks that arise during the carriage of the goods. On the other hand, **C&F**, means that the Sellers are paid both for the Cost of the Goods and for the Freight (*cost of transportation*). In this case, it is the Sellers who will charter and nominate the ship that will transport the goods. The Sellers will pay the Freight and they will remain responsible for the risks that arise during the carriage of the goods.

It is worth noting that under the INCO terms 2010 the exact moment where risk passes from the Seller to the Buyer has experienced some entanglements. The previously embraced concept that risk passes on when the cargo is ‘*over the ship’s rails’* has been replaced by a set of guidelines providing that risk passes when the goods are: 1- placed on board, or by 2- the procurement the goods to be so placed.[[4]](#footnote-3)

Taking into consideration that the Charterers is the party that works on behalf of the Traders and by knowing the INCO term that is used under a Sale Contract, the ones involved in Chartering may comprehend the actual role and the contractual obligations of the Charterers. By knowing that the goods to be transported were sold under FOB conditions, one understands that the Charterer is the Buyer or a party that has a Contract of Affreightment[[5]](#footnote-4) with the Buyer. By knowing that the goods to be transported were sold under C&F conditions, one comprehends that the Charterer is the Seller or a party that has a Contract of Affreightment with the Seller.

Furthermore, the agreement under a specific INCO term is always reflected on the Bill of Lading[[6]](#footnote-5). It is almost certain that a Charterer requesting transportation of goods sold under a Sale Contract based on a C&F term, will request the Bills of Lading to be marked ‘Freight Prepaid’[[7]](#footnote-6). The reason for such requirement is very simple. The Buyers have paid the Sellers for C&F, i.e. both for the Cost of the Goods and the Freight. Consequently, the Buyers, in order to pay the agreed amount to the Sellers they need proof that Sellers have fulfilled all their obligations, and they will request such proof to be inserted on the Bills of Lading which is the most important document in trading.

It is worth noting that INCO terms are designed to cover all modes of transportation (*sea / air / land*). In fact, there are terms, which are good for one mode of transportation only and others that apply to all of them (*multi-modal transportation*). The terms have been revised several times the latest of which in 2010, in order to be in accordance with the needs of modern trade[[8]](#footnote-7).

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There are 13 INCO terms.

* EXW EX WORKS (*named place*)
* FCA FREE CARRIER (*named place*)
* FAS FREE ALONGSIDE SHIP (*named port of shipment*)
* FOB FREE ON BOARD (named port of shipment)
* CFR COST AND FREIGHT (named port of destination)
* CIF COST, INSURANCE AND FREIGHT (*named port of destination*)
* CPT CARRIAGE PAID TO (named place of destination)
* CIP CARRIAGE AND INSURANCE PAID TO (*named place of destination*)
* DAF DELIVERED AT FRONTIER (*named place*)
* DES DELIVERED EX SHIP (named port of destination)
* DEQ DELIVERED EX QUAY (named port of destination)
* DDU DELIVERED DUTY UNPAID (*named place of destination*)
* DDP DELIVERED DUTY PAID (named place of destination)

### GAFTA

The Grain and Feed Trade Association (*or GAFTA*) is a London based [trade organization,](http://en.wikipedia.org/wiki/Industry_trade_group%22%20%5Co%20%22Industry%20trade%20group) which can trace its origin back to 1878, when the London Corn Trade Association (*LCTA*) started operations. In 1906, a group of traders spun off the LCTA and formed the London Cattle Food Association (*LCFA*). In 1971 LCTA and LCFA merged to form GAFTA[[9]](#footnote-8)

The international sales of grain, animal feeding stuffs, pulses and rice are traditionally bought and sold under the terms and conditions of GAFTA standard forms of contract. The chain of supply starts with the farmers whose crops of grain, feed, fats, molasses, pulses, oilseeds and rice are processed and consumed in a vast range of products. At every link of the supply-demand chain there are prospective sellers and buyers, whose interaction creates the markets for which GAFTA provides the standard contract terms.

These buyers and sellers may also include specialists in malting, brewing and distilling, milling, feed and food processing who together with the exporters, importers and merchants are the international traders of the vast bulk commodity crops transported around the globe.

GAFTA has Members, who operate in all areas of the trade. Membership categories reflect the different aspect of the trade and include Traders, Brokers, Superintendents, Fumigators, Analysts and Arbitrators.

Its aim is to protect its members’ interests through standard forms of contract and to provide an internationally respected dispute resolution service offering both arbitration and mediation to parties using GAFTA standard contracts.

### The *Documentary* duties in Sale Contracts.

As aforementioned, the obligations under a Sale Contract are not single purposed. One does not merely have the duty to *physically* deliver the goods, but also an additional *documentary* duty to discharge the cargo under the relevant documents which are pre-agreed under the Sale Contract. These duties exist simultaneously and are independent of each other.[[10]](#footnote-9) Since we have discussed the obligation of the physical delivery of goods under various Sale contracts, namely C&F or FOB, it is important to examine the documentary aspect of the trade deal.

## Sale Contracts and the Letters of Credit.

Or Documentary Credit

In fact, the Letter of Credit is an agreement and an undertaking between banks, confirming that certain payments will be done under precisely described terms and conditions. Such terms and conditions are resulted from the agreement, made between the Sellers and the Buyers (*Sale Contract*). Nevertheless, the Letter of Credit is an individual document, which may be considered as the protection of the Seller (*Exporter*), for the payment of funds, and the protection of the Buyer (*Importer*) as far as the fulfillment of certain obligations are concerned. Hence, the letter of credit is mirroring and in the same time protecting the agreement reached through a Sale Contract.

Whenever the Sale Contract provides that payment will be done through a Letter of Credit, the opening of a Confirmed and Accepted Letter of Credit might be considered as the actual confirmation and/or enforcement of the Sale Contract.

(*See also, “Letter of Credit”*)

## Sale Contract and the Bills of Lading.

The Bills of Lading, as far as the Sale Contract is concerned, may be described as the conclusive evidence and the “prima facie” document, which proves that the Sellers have fulfilled their contractual obligations (*at least up to a certain extent*) and that they are entitled to receive money from the Buyers. Such payment is quite often done through a Letter of Credit. As a result, the Letter of Credit gives precise instructions both for the type of Bills of Lading, which will be used, and the wording, which will be inserted on them.

However, as the Letter of Credit derives from the Sale Contract, it is the latter which stipulates the type and governs the terms and conditions of the Bills of Lading. Furthermore, the Bills of Lading is the main link between the Sale Contract and the agreement for the Carriage of the Goods (*Charter Party*). As far as chartering is concerned, although the parties involved in it may never see either the “Sale Contract” or the “Letter of Credit” it is quite certain that the main terms and conditions of the Chartering Deal will be dictated by those documents, and such terms and conditions may not be altered through negotiations.

(*See also, “Bill of Lading” and “Chartering Procedure”)*

## Sale Contract and the Charter Parties.

One may notice that the Charter Party has a special relation to the Sale Contract. Although it is a totally independent contract, it is the result of the rights and the obligations that arise from the agreement between the Buyer and the Seller. Such agreements (*Sale Contracts*) concern the Sale of Goods while the transportation of the Goods is rather the result than the intention. The Charter Party governs an agreement the intention of which is solely the transportation of goods. Nevertheless, such need for transportation is the result of the sale of goods. The contracting parties under a Charter Party are the Charterers and the Owners. Although the Charterers might be the Sellers or the Buyers themselves, they might, as well, be third parties that have signed a Carriage Agreement, with either of them.

The terms and conditions agreed under a Charter Party rule the transportation of the goods only and not the Sale of the Goods. On the other hand, the Sale Contract, defines the responsibility of each party (*the Buyer and the Seller*) both for the quality / quantity, etc. of the Goods and their transportation.

Both the Sale Contract and the Charter Party offer to the contracting parties the ability to limit their responsibility. However, the contracting parties of each agreement (*Sale Contract and Charter Party*) are different while the subject (*the Goods*) remains the same. As a result, the Sale Contract, which is mainly based on the Sale of Goods, and the Charter Party, which exclusively concerns the Transportation of it, might sometimes be confusing or even contradicting.

(*See also the chapters, “Charter Party” and “Chartering Procedure”)*

## Terms and acronyms related to Sale Contracts.

**Soft Probe.** A confirmation method used Banks to verify funding for a Seller from a Buyer, conducted by the Seller's bank to the Buyer's bank. Such a probe is not recorded in the buyer's banking information, and usually nothing but confirmation or lack of confirmation is recorded by the Seller.

**FCO**: Full Corporate Offer.

**ICPO**: Irrevocable Confirmed Purchase Order.

**ICPO**: Irrevocable Commission Payment Order.

**ICC**: International Chamber of Commerce, based in Paris, established in 1936.

**INCO Terms**: International Commercial Terms, issued by the ICC. Latest revision: 2010.

**LOI.** Letter of Intent. A document outlining an intention between Sellers and Buyers agreement. Usually exchanged before the “binding” FCO is drafted.

**POP**. Proof Of Product (if fact proof that the product actually exists).

**SPA**. Sale and Purchase Agreement.

## Example of C&F Sale Contract.

*The Contract pro-forma here-below is a draft copy of C&F contract under negotiations by Messrs.* ***Lemarc Agromond*** *as Sellers (whom we thank), presented to their Shipping department for comments and feedback on Shipping Terms.* ***It is not the final contract.***

**DATE:** March 22, 2018

**SELLER:** LEMARC AGROMOND

**BUYER:**

BROKER:

**COMMODITY:** Brazilian Soybeans Crop 2017/2018

**PACKING:** In Bulk

**SPECIFICATION:** The soybeans supplied by Seller should be of satisfactory quality in conformity with the following specifications:

Protein: basis 34.5% min 34%, 1:1 Boni

Oil: basis 18.5% min 18%, 1:1 Boni

Broken beans: max 30%

Moisture: max 14.0%

Foreign Matters: basis 1.0% max 2.0%, 1:1 Boni

Total Damaged Beans: basis 8.0%, max 8.5%

Heat Damaged Beans: max 5.0%

If Protein is between 34.49% down to 34.00% minimum, the Seller shall pay to the Buyer an allowance of 1% of the contract price for each 1% protein deficient (1:1), fractions in proportion. Protein 34.50% or more shall be free to Buyer. Protein content below 34.00% is rejectable. If Oil is between 18.49% down to 18.00% minimum, the Seller shall pay to the Buyer an allowance of 1% of the contract price of each 1% oil deficient (1:1), fractions in proportion. Oil 18.50% or more shall be free to Buyers. Oil below 18.00% is rejectable. If Foreign Material is between 1.01% up to 2.00% maximum, the Seller shall pay to the Buyer an allowance of 1% of the contract price of each 1% foreign material excess (1:1), fractions in proportion. Foreign material 1.00% or less shall be free to Buyer. Foreign Material more than 2.0% is rejectable. If Total damaged kernels is between 8.01% up to 8.50% maximum, the Seller shall pay to the Buyer an allowance of 2% of the contract price of each 1% total damaged kernels excess (2:1), fractions in proportion. Total damaged kernels 8.00% or less shall be free to Buyers. Total damaged kernels more than 8.5% is rejectable. The soybeans supplied by the Seller should be in sound condition, fit for crushing purpose, without any unpleasant odor, free from any sign of mould, fermentation or deterioration as well as free from live insect pests. The soybeans supplied by the Seller should be substantially free from castor seeds/husks, poisonous seed that are not a natural part of soybeans at time and place of shipment as per certificate issued by a first-class independent surveyor.

**QUANTITY:** **60,000** metric tons - 10 percent more or less at seller’s option at contract premium.

**SHIPMENT:** From **June 1st** to **June 30th, …..**, both dates included. It is mutually agreed that the date of the bill of lading at the last load port is to be basis for shipment dates under this contract. FOSFA extension clause applies to this contract. Bills of Lading dated prior to shipment period allowed provided last B/L dates within shipment period. An extension of the latest shipment date is allowed up to a period of 8 days, in case Seller/beneficiaries do exercise this option, a shipment extension penalty to apply and deductible from the invoice amount at the rate of: -

a) 0.5% of the invoice amount for 1st, 2nd, 3rd or 4th days after last shipment period.

b) 1.0% of the invoice amount for 5th or 6th days after last shipment period.

c) 1.5% of the invoice amount for 7th or 8th days after last shipment period.

Extension penalties/allowances are payable on the entire loaded quantity.

The Seller shall nominate and notice Buyer the performing vessel with its particulars at least 3 days prior to its ETA at load port.

**LOADING PORT:** Any Brazilian port(s) excluding Rio Grande at seller’s option.

**PRICE:** USD per bushel over CBOT July 2018 CBOT soybean CNFFO one safe berth, one safe port, North China Port, China. Soybeans to be converted into U.S. Dollars per metric ton.

CNF FO one safe berth one north China port 13 M SWAD (North China means North of Ningbo, China and including Ningbo).

**DISCHARGE PORT SPREADS:** Buyer’s option to discharge at 1 safe berth, 1 safe port South China (South of Huangpu including Huangpu and Xinsha) 13M, **1.00** USD/mt discount.

Buyer’s option to discharge at 1 safe berth, 1 safe port Mid China rage from Ningbo to Huangpu (both sides excluded) 13M, **0.50** USD/mt discount.

Buyer’s option to discharge at 1 safe berth Zhoushan, 13M + 1 safe berth Zhangjiagang, **1.50** USD/mt premium.

Buyer’s option to discharge at 1 safe berth Zhoushan, 13M + 1 safe berth Jiangyin, **1.50** USD/mt premium.

Buyer’s option to discharge at 1 safe berth Zhoushan, 13M + 1 safe berth Nantong, **1.25** USD/mt premium.

Buyer’s option to discharge at 1 safe berth Zhoushan, 13M + 1 safe berth Nanjing, **1.75** USD/mt premium.

Above options to be declared latest by 3 days before vessel passing Singapore.

**PROCEDURES FOR FIXING OF FUTURES IN CASE OF A BASIS SALE:** Pricing to be performed as per clause 5.2 B and C of ANEC 41 with buyer’s give up, with the following clauses inserted: Pricing to commence upon conclusion of trade. Any overfill or underfill, the corresponding futures to be exchanged latest 2 working days after vessel’s completion.If basis Month is not traded anymore in Chicago board of trade, parties shall take the spread between the basis month and next trading month and add it to the original premium or discount of this contract. The spread date to be considered shall be the closing of CBOT 2 days prior to the first notice day of the month serving as basis for this contract. All exchanges of futures shall be made during CBOT opening hours within the range of prices prevailing on the futures market on the day of the exchange.Upon completion of fixing the futures contract at CBOT, the actual contract price basis CNFFO per metric ton to be based on the average of all the contracts bought or transferred plus contract premium, Flat price per metric ton to be converted at the rate of 36.7433 bushels.

**WEIGHT/QUALITY:** Final time and place of loading as per certificate issued by first class independent surveyor (either Schutter, CCIC, SGS, Super inspect, Intertek) at Buyer’s option and for Seller’s account.

**INSURANCE:** To be covered by the buyers.

**PAYMENT:** Cash against full and complete set of original documents as per "shipping documents" in Hong Kong by telegraphic transfer to seller’s bank. Payment to be effected within 02 working days after presentation of full and complete set of original documents in order in Buyer’s bank in Hong Kong and after Buyer receipt of the advice for the presentation from Buyer’s bank in Hong Kong.

Buyer’s option to pay by Letter of Credit issued by prime bank for 100% of contractual value plus tolerance. In case of deferred payment Seller has the right to request payment at sight. Deferred payment charges are at Buyers account and the LC is payable within 2 working days after a compliant presentation.

Final LC wording, tenor and financing fees to be provided by Buyer as an addendum to this contract. LC must be available to Sellers in full working order latest 2 working days prior to estimated time of negotiation of documents.

**SHIPPING DOCUMENTS REQUIRED:** The following documents to be presented for payment after shipment effected.Signed commercial invoice in 3 originals plus 3 copies.Clean on-board ocean shipping bills of lading in 3 originals plus 3 copies, made out to order, blank endorsed and marked “Freight Prepaid”, notify party as per buyer’s instruction. Weight certificate issued by independent surveyor in 1 original and 3 copies.

Quality certificate issued by independent surveyor in 1 original and 3 copies. Certificate of origin chamber of commerce or commercial association at loading port in 1 original and 3 copies. Phytosanitary certificate issued by official authorities in 1 original and 3 copies. Laboratory certificate issued by independent surveyor in 1 original and 3 copies certifying the goods are substantially free from the following diseases, pests and weeds dangerous to plants in accordance with the regulations of AQSIQ of The People’s Republic of China. Sorghum Halepense (L) Pers. (Johnson Grass) / Sorghum Almum Parodi / Acanthoscelides Obtectus (Say) / Zabrotes Subfasciatus (Boheman) / Prostephanus Truncates (Horn) / Trogoderma Granarium Everts / Phytophthora Megasperma (Dreschsl) / Cuscuta Spp / Callosobruchus Analis (Fabricius) / Callosobruchus Phaseoli (Gyllenhaal) / Arabis Mosaic Virus / Southern Bean Mosaic Virus / Tomato Ringspot Virus / Tobacco Ringspot Virus / Maize Weevil Certificate of chemical residues issued by independent surveyor in 1 original and 3 copies certifying the chemical residues of the soybeans supplied by the Seller should not exceed the regulations stipulated by the Ministry of Public Health of The People’s Republic of China: Arsenic compound shall be maximum 0.2 ppm (0.2 part per million calculated according to the arsenious oxide (AS203) content.) Mercuric compound shall not be found. Phosphides shall be maximum 0.05ppm (0.05 parts per million calculated according to the PH3 content.) Cyanides shall be maximum 5 ppm (5 parts per million calculated according to the HCN content.) Malathion shall be a maximum 3 ppm (3 parts per million.)

Ethylene debromide content shall not exceed 10 ppb (10 parts per billion). Fumigation certificate issued by independent fumigator or fumigation at seller’s option and expenses in 1 original and 3 copies.

Ship’s hold inspection certificate issued by independent surveyor in 1 original and 3 copies showing that the holds of the carrying vessel are suitable to receive and carry the soybeans and date of inspection must not be later than the B/L date. Certificate issued by and independent surveyor certifying the actual crop year from which the soybeans are shipped in 1 orignal and 3 copies. Non-wooden packing material certificate issued by independent surveyor in 1 original and 3 copies. Draft survey issued by an approved FOSFA superintendent.

Copy of master’s authorization for agents to sign Bill of Lading on his behalf.

**OTHER PAYMENT TERMS AND CONDITIONS:** Third party documents acceptable except invoice.Documents showing cargo description of goods as “soybeans / yellow soybeans” are acceptable.

**DISCHARGE TERMS:** Buyer to guarantee to discharge at the average rate of 8,000 metric tons per weather working day of 24 consecutive hours, Saturdays, Sundays and holidays excluded, even if used (S SHEX EIU).

Buyer’s option to declare discharge at the average rate of 12,000 metric tons per weather working day of 24 consecutive hours, Saturdays, Sundays and holidays excluded, even if used (S SHEX EIU), with 0.5 USD/mt discount. Notice of Readiness to be tendered to receivers(s) or ship agents during working hours between 08:00 to 17:00 Monday to Friday. Laytime to commence at 08:00 hours next working after Notice of Readiness is tendered. Notice of Readiness to be tendered whether vessel in port or not (WIPON), whether vessel in berth or not (WIBON), whether vessel has been customs cleared or not (WICCON), whether vessel has been granted free pratique or not (WIFPON). Demurrage rate to be as per Charter Party. Despatch rate is half demurrage, but sellers should declare the dem/des rate upon vessel’s nomination. Seller shall give Buyer copy of the section of Charter Party where it contains specified demurrage / despatch rate within 5 working days after B/L date. Demurrage money, if incurred, to be paid by buyer to seller. Despatch money, if earned, to be paid by Seller to buyer. Payment of demurrage/despatch to be settled within one month after completion of discharge. Buyer’s agent at discharge port. The agent by best endeavour to give Buyer 10/5/3/2/1 days ETA advice at discharge port. Laytime at 2nd discharge port if used to count upon arrival.

**Lightening Clause:**

Buyers guarantee minimum 8,000 metric tons per weather working day of 24 consecutive hours, Saturdays, Sundays and holidays excluded, even if used (S SHEX EIU). Notice of Readiness to be tendered at lightering anchorage to receivers(s) or ship agents during working hours between 08:00 to 17:00 Monday to Friday. Notice of Readiness to be tendered whether vessel in port or not (WIPON), whether vessel in berth or not (WIBON), whether vessel has been customs cleared or not (WICCON), whether vessel has been granted free pratique or not (WIFPON). Laytime to commence upon NOR valid tendered and to be suspended upon lightering operation finished. Laytime resume 08:00 the next working day after lightering operation finished.

Shifting time from lightering anchorage to discharge berth not to count as Laytime. Laytime at discharge berth to cease upon completion of discharge including draft survey if requested by buyers.

The port disbursement at lightering port / anchorage / place should be at seller’s account.

**VESSEL TERMS:**

Vessel age maximum 20 years old. Overage insurance premium (OAP) at seller’s account at rage for 16-20 years at a maximum of USD 20,000 and is to be settled 14 days after completion of discharge. No cargo to be loaded in deep tanks or wing tank or other compartments not suitable for grab discharge.

Gearless vessel acceptable. Transhipment, combined shipment and partial shipment not allowed.

The seller shall advise the buyer within 3 working days after the Bill of Lading date, the departure date, invoice amount, quantity actually shipped, type of vessel, it’s draft, ETA to China and B/L number and date. Max vessels size 83k DWT, LOA max 230mtrs and beam max 35m.

**INSPECTION:** Quality and shipped weight to be taken as final at loading port as per certificates issued by and independent superintendent (either Schutter, CCIC, SGS, Superinspect, Intertek) at Buyer’s option and for Seller’s account.

**OTHER CONDITIONS:** Presentation of documents shall be within 21 days after B/L date.Seller to provide a draft certificate at his expense.Seller will issue 02(TWO) lots of documents per vessel as per buyer’s instructions, but not limited 02 lots, max 1(ONE) set of documents by hold. Buyer should instruct number of sets requested on documents instructions.Please confirm shipper is duly registered at AQSIQ/CHINA\*\*Shipper’s name/address/CNPJ number to be exactly the same as the one registered at Ministry of Agriculture AQSIQ (CICASQ) China list.

**ARBITRATION**: Should any dispute arise between the contracting parties to which no agreement can be reached, these disputes shall be settled by Arbitration, which shall take place in London in accordance with English law as per FOSFA 23, Section 28. The award given by the organization concerned shall be final and binding upon both parties. The award given by the organization concerned shall be final and binding upon both parties. The fees for the arbitration shall be borne by the losing party.

**FORCE MAJEURE:** As per applicable FOSFA contract(s) for soybeans – FOSFA 23 for Brazilian origins.

**OTHER TERMS:** If the cargo cannot be discharged in China for any reason whatsoever, then Sellers as agent for Buyers will resell the goods. Buyers will return the shipping documents to Sellers. Sellers shall remit to Buyers the proceeds of the re-sale, having deducted from that amount all damages arising from the failure to discharge in China. In the absence of safety certificate, the goods remain at buyer’s responsibility and risk. All other terms not in contradiction with the above as per FOSFA 23 for Brazilian origins.

**SANCTIONS :** Nothing in this contract is intended to or shall require either Party to take any action that is likely to place it or its affiliates in a position of non-compliance with or in contravention of the laws, regulations, resolutions, decrees or rules of the United Nations, the United States of America, Switzerland, the European Union, or individual European Union member countries, as may be amended from time to time, including but not limited to those laws, regulations, resolutions, decrees or rules which relate to economic sanctions, trade-embargoes, foreign export/trade controls, anti-bribery and anti-corruption measures or international boycotts and trade restrictions of any type (hereinafter “Economic Sanction Laws”). Each Party warrants that it will comply with Economic Sanction Laws in all respects related to the performance of this contract. This warranty refers particularly, but not exclusively to the carrying vessel, to whoever may own, control, operate or have chartered her, to shippers, to any intervening banks and in general to any person, vessel, company, bank or entity involved in the performance of the contract. Each Party shall indemnify and hold the other fully harmless in the event of loss or damage suffered by the other Party, its principals or affiliates, as a result of any breach, whether intentional or not, of the above mentioned Economic Sanctions Laws by the breaching Party or any of the persons, companies and entities comprised in the breaching Party’s warranty under the terms of this clause. The Party in receipt of an appropriation or vessel nomination shall be entitled to refuse such appropriation or reject or withdraw acceptance of any vessel nomination at any time where appropriation or acceptance of the vessel nomination would place that Party or their affiliates in a position of non-compliance with, or in contravention of, the said Economic Sanction Laws. In such case the nominating Party shall immediately appropriate a substitute cargo and/or nominate a suitable fully contractual substitute vessel. Sellers shall at any time be entitled to refuse or reject or withdraw acceptance of any bank or other financial institution nominated, appointed or otherwise used by Buyer for the making or facilitating of any payment pursuant to this contract, or of any person providing any form of guarantee to Sellers on behalf of Buyer, if the acceptance of such bank, financial institution or other person would place Sellers in a position of non-compliance with, or in contravention of, the said Economic Sanction Laws. For the avoidance of doubt, any refusal, rejection or withdrawal of acceptance by a Party in accordance with this clause shall not excuse the other Party from its obligations set out in this contract. If either Party reasonably suspects an actual or potential breach of this clause that Party shall promptly notify the other Party in writing providing full particulars. Either Party may thereafter request further information in relation to the breach committed by the other Party, and/or request the other Party to remedy and/or mitigate the effect of such breach and confirm that appropriate action has been taken.

 **ANTI-BRIBERY AND CORRUPTION** Buyer and Seller each warrant and undertake to the other that in connection with the contract and the performance thereof, they will each respectively comply with any laws, regulations, rules, decrees and/or official government orders applicable to such Party relating to anti-bribery or anti-money laundering, including but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the Money Laundering Regulation 2007 and The UK Proceeds of Crime Act 2002, and any other applicable laws or regulations applicable in the jurisdiction in which Buyer and/or Seller are registered, conduct business and/or in which any aspect of the contract is to be performed, and that they shall each respectively take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements. Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly pay, offer, give or promise to pay or authorize the payment of, any monies or gifts or other benefits of value to: (i) a government official or an officer or employee of a government or any department or agency of any government; (ii) an officer or employee of a public international organization; (iii) any person acting in an official capacity for or on behalf of any government or department or agency of such government or of any public international organization; (iv) any political Party or official thereof, or any candidate for political office; or (v) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above described persons and entities.

BUYER AND SELLER REMAIN RESPONSIBLE FOR ALL EXECUTION ISSUES INCLUDING TIMELY VESSEL NOMINATION. BOTH PARTIES ARE TO PROVIDE MCDONALD PELZ WITH THEIR EXECUTION EMAIL ADDRESSES WHICH WILL BE EXCHANGED. WE THANK YOU FOR THIS BUSINESS AND KINDLY ASK YOU TO PROMPTLY SIGN AND RETURN A COPY OF THIS CONFIRMATION. HOWEVER, THE VALIDITY OF THIS CONTRACT SHALL NOT BE AFFECTED BY THE NON-RETURN OF A SIGNED COPY.

SELLER BUYER

## Example of FOB Sale Contract.

*The Contract pro-forma here-below a draft copy of FOB contract under negotiations by Messrs.* ***Lemarc Agromond*** *as Buyers (whom we thank), presented to their Shipping department for comments and feedback on Shipping Terms.* ***This is not the final Contract.***

DATE:

SELLER:

**BUYER**: LEMARC AGROMOND

**QUANTITY/COMMODITY**: 25,000 METRIC TONS, EXACT QUANTITY, IN BULK. BRAZILIAN SOYABEANS

ANEC 87512 / CROP 2.017/2018, SPECIFICATIONS AS PER CONTRACT ANEC ANEC 41. BASIS 18.5% OIL CONTENT WITH NON- RECIPROCAL ALLOWANCE OF 1% FOR EACH 1% DEFICIENCY FRACTIONS IN PROPORTION.

AS PER ANEC 41.

PRICE:

PARANAGUA PREMIUM:

PORT/S OF SHIPMENT:

PAYMENT: DELIVERY:

BASIS CBOT, U$S 0,09 OVER PARANAGUA PREMIUM TO BE FIXED PRICE FOR THE MONTH OF MARCH 2018, PER BUSHEL. THE US$ PER BUSHEL VALUE MULTIPLIED BY 36,7454 IS THE US DOLLARS PRICE PER METRIC TON OF 1.000 KILOS EACH, BASIS BULK CARRIER, DELIVERED FREE ON BOARD, STOWED AND TRIMMED, IN BULK.

PRICE TO BE FIXED AS PER CLAUSE 5.2 B OF ANEC 41 (FUTURES IN EXCHANGE) WITH SELLER TO GIVE-UP A NUMBER OF FUTURES CLOSEST TO THE CONTRACTED QUANTITY, TO BUYER LATEST 05 BUSINESS DAYS PRIOR SHIPMENT, OR LATEST 02 BUSINESS DAYS PRIOR TO FIRST NOTICE DAY OF CBOT MONTH, WHICHEVER EARLIER.

PARANAGUA PREMIUM TO BE FIXED UNTIL 30 DAYS PRIOR SHIPMENT. FOB IN PARANAGUÁ/PR, AT EXPORT CORRIDOR. ONE SAFE PORT AND ONE SAFE BERTH.

BY TELEGRAPHIC TRANSFER, AGAINST PRESENTATION OF DOCUMENTS IN SÃO PAULO WITHIN TWO BUSINESS DAYS. EXPENSES FOR BUYER'S ACCOUNT.

BETWEEN MARCH 01ST AND MARCH 31ST, 2.018, BOTH DATES INCLUDED. WITH 30 DAYS OF EXTENSION. VESSEL/S TO BE NOMINATED WITH 15 DAYS OF PRE-ADVICE. CARRYING-CHARGES AS PER ANEC CONTRACT N°41.

SPECIAL CONDITIONS: LOADING CONDITIONS: AS PER CLAUSE 9.1 OF ANEC 41. THE VALIDITY OF THIS CONTRACT SHALL NOT BE AFFECTED BY THE NON- RETURN OF A SIGNED COPY.

ALL OTHER TERMS AND CONDITIONS NOT IN CONTRADICTION WITH THE ABOVE, AS PER CONTRACT ANEC 41, IN FORCE, AT TIME AND PLACE OF SHIPMENT, INCLUDING ITS REFERENCE TO FOSFA 4, ARBITRATION AS CLAUSE 16-A OF ANEC 41.

**SANCTIONS CONDITION**: BUYER RECOGNIZES THAT SELLER CONSIDERS ITSELF SUBJECT TO AND COMPLIES WITH ALL U.S., EU AND BRAZILIAN ECONOMIC SANCTIONS LAWS RELATED TO TRANSACTIONS WITH RESTRICTED COUNTRIES, PERSONS AND ENTITIES (THE "SANCTIONS LAWS"). BUYER THEREFORE AGREES THAT THE GOODS WILL NOT BE RESOLD TO A RESTRICTED DESTINATION, PERSON OR ENTITY, OR BE TRANSPORTED ON A VESSEL OR BY OTHER CARRIER OWNED, FLAGGED OR CHARTERED BY ANY COUNTRY, PERSON OR ENTITY WOULD CAUSE SELLER OR A PERSON SUBJECT TO U.S. JURISDICTION TO BE IN VIOLATION OF THE SANCTIONS LAWS. SELLER HAS THE RIGHT TO REJECT ANY RESTRICTED DESTINATION, VESSEL, PERSON OR ENTITY THAT WOULD CAUSE SELLER OR A PERSON SUBJECT TO U.S. JURISDICTION TO BE IN VIOLATION OF THE SANCTIONS LAWS. SHOULD THE PAYMENT OF THE GOODS BE IMPEDED BY THE SANCTIONS LAWS, BUYER SHALL ENSURE THAT SUCH PAYMENT BE EFFECTED THROUGH A CHANNEL THAT SELLER IS PERMITTED TO ACCEPT UNLESS ANY SUCH PAYMENT PROBLEMS ARE A RESULT OF SELLER’S CONTRAVENTION OF THE SANCTIONS LAWS. “SELLER WILL NOT COOPERATE WITH, AGREE TO, OR COMPLY WITH ANY TERMS OR REQUESTS, INCLUDING DOCUMENTARY REQUESTS, WHICH CONTRAVENE OR ARE PROHIBITED OR PENALIZED UNDER U.S. ANTI-BOYCOTT LAWS OR REGULATIONS.”

ADDITIONALLY, (I) BOTH PARTIES UNDERTAKE THAT THEY WILL FULLY COMPLY WITH THE SANCTION LAWS IN THEIR PERFORMANCE HEREUNDER; AND (II) SELLER AGREES THE GOODS WILL NOT DIRECTLY OR INDIRECTLY ORIGINATE FROM, BE PROVIDED BY OR BE TRANSPORTED ON A VESSEL, OR WITH ANY CARRIER, OWNED, CONTROLLED, FLAGGED OR CHARTERED BY ANY COUNTRY, PERSON OR ENTITY THAT WOULD CAUSE BUYER TO BE IN CONTRAVENTION OF THE SANCTION LAWS.

ANY DISCREPANCIES MUST BE REPORTED IMMEDIATELY YOUR SUPPORT IN THIS BUSINESS IS MOST APPRECIATED, THANK YOU RGDS, ACI LTD

PLEASE NOTE THAT IN RESPECT OF THE ADMINISTRATIVE WORK FOR THE ABOVE-MENTIONED CONTRACT(S) PLEASE USE THE FOLLOWING CONTACT INFORMATION: EMAIL:

THE SELLERS. THE BUYERS

## Risk Management in Trading

Companies that are involved in buying and selling commodities as well as producers of commodities are usually trying to limit their risk by hedging in commodity markets. In fact, they are trying to limit the market price exposure and minimize the risk that forward (*future*) contracts impose on their books. The best-known place to hedge the risks CME Group, is made up of four exchanges, that is, CME, CBOT, NYMEX and COMEX. Each of the above exchanges offers a wide range of well-regulated hedging tools. They cover agricultural products, energy products, metals and Forex.

**CME Chicago Mercantile Exchange** is a **Designated Contract Market (DCM)** that offers products subject to CME rules and regulations. It was established in 1848 as the world’s first futures exchange based in Chicago.

**CBOT: Chicago Board Of Trade**, which merged with CME Group in 2007, is a **Designated Contract Market (DCM)** that offers products subject to CBOT rules and regulations. It added to CME a suite of interest rates, agricultural and equity index products.

**NYMEX: New York Mercantile Exchange**, merged with CME in 2008. It is a DCM, offering its products subject to NYMEX rules and regulations. It brought an expansive selection of energy products as well as metals and agricultural contracts.

**COMEX: Commodity Exchange**, also merged with CME in 2008, is one more DCM offering products subject to COMEX rules and regulations. The merger expanded the suite of metal products of CME Group to include several global benchmarks in precious, base and ferrous metals.

# Letter of Credit.

*Or Documentary Credit (L/C or LOC)*

## The Letter of Credit as a security.

The development of international trade would have never been possible without the security that the Letter of Credit provides to both the Seller and the Buyer. A Sale Contract governing the agreement between two merchants (*the Seller and the Buyer*), sets obligations and rights for both. The main obligation of the Seller is to provide the Goods and that of the Buyer is to pay for them. Obviously, the Buyer would rather pay if and when the Goods are delivered or shipped in the way agreed on the Sale Contract. On the other hand, the Seller would rather proceed to deliver or to load the Goods on a Carrier, if and when the payment for such Goods is made.

Consequently, both parties need a kind of security in order to proceed and fulfill their contractual obligations.

The Letter of Credit is, in fact, a guarantee letter issued by a bank, securing that a Buyer's payment to a Seller will be made on time and for the correct amount, provided of course that certain conditions are met. Having in hands a “Confirmed” Letter of Credit issued by a first-class Bank, the Seller will receive his money from the Bank, which will be required to cover the full, or the remaining amount of a Sale. On the other hand, the Buyer rests assured that the Bank will check the validity, the accuracy and the legality of all required and agreed documents before payment for his purchase is made.

It is, thus, a very important consequence of the Sale Contract and could be considered as its accomplishment or its realization.

*The Letter of Credit fulfills a dual scope. A: to protect and guarantee the right of the Seller to receive an agreed amount of money after fulfilling certain obligations. B: to protect and guarantee the right of the Buyer (holder of Letter of Credit), not to pay unless the agreed obligations of the Seller are materialized.*

Since international dealings include factors such as distance, divergence in laws and difficulty in knowing each party personally, the use of Letters of Credit has become a very important aspect of international trade often characterized as the “life blood of International Trade”.

In certain cases, a Letter of Credit may also be given as a security for the payment of Freight or even Hire. Such a Letter of Credit is not based on a Sale Contract but on a Charter Party.

The issuance and enforcement of Letters of Credit are usually subject to a set of rules on the use by the International Chamber of Commerce (*ICC*) such as UCP, eUCP, ISP98 or ISBP. However, a Letter of Credit may state the conditions that govern its enforcement, including Article 5 of the Uniform Commercial Code (*which has been enacted into law throughout the United States*). Nevertheless, the extensive use of LC's in international transactions mandates that one contemplating becoming a party to a transaction involving an LC must be familiar with the laws of other countries which may have jurisdiction over a dispute. It is very important to remember that these rules are ONLY applicable when they are specifically incorporated into the text of the L/C. Then they are binding on all parties thereto, unless otherwise expressly stipulated in the L/C. ICC also issues detailed statistics on cases presented to them (*as” International Court of Arbitration” and “International Center of Alternate Dispute Resolutions”*)

The current ICC publications cover the following types of transactions.

* **Uniform Customs and Practice (*UCP*)** - Commercial Letters of Credit The previous publication is the UCP 500 of 1993, however letters of credit can be subject to this publication or earlier publications if so noted in the Letter of Credit). The current publication is the UTC 600, effective as from 1st July 2007, which tries to balance between STRICT COMPLIANCE (*of UTC 500*) and commercial reality of today
* **e-UCP** - Commercial Letters of Credit that allow for electronic presentations.
* **International Standby Practices of 1998 (*ISP98*)** - Standby Letters of Credit (*The UCP may also be used for standby Letters of Credit, but these practices are not as well suited for a standby Letter of Credit situation*).
* **International Standard Banking Practice -Revised 2007 (*ISBP*)** - This is a supplement to the UCP which attempts to standardize banking practices for the examination of documents under Documentary Credits.

Considering that over 50% of submitted documents to the Banks are rejected on first presentation due to “discrepancies” (*in a great extend due to purely technical grounds*) one must understand the value of the uniformity of practice globally.

In fact, the ISBP is a check list for submitted documents for scrutinized examination to be strictly in accordance with L/C. Although this does not substitute the UCP, it demonstrates how to use in practice.

One of the essential features of the system of financing international sales by means of bankers’ documentary credits is that there is autonomy of the credit. In the case of *Edward Owen Engineering Ltd v Barclays Bank International* [*1978*] Lord Denning MR said, “The only exception is when there is a clear fraud of which the bank has had notice".[[11]](#footnote-10)

CASE 1:“CZARNIKOW RIONDA SUGAR” v “STANDARD BANK LONDON 1999 (*L/C, Fraud Exception, Injuction granted only if known to bank in time).*

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| ***In Czarnikow Rionda Sugar Co v Standard Bank London Ltd* [1999],[[12]](#footnote-11)  Rix J** accepted that there is an implied term in the letters of credit contracts that the bank shall not pay in case on documents being clearly fraudulently m[[13]](#endnote-0)ade (that case though has not being accepted by the English courts). |

CASE 2:“HAMZEH MALAS” v “BRITISH IMEX INDUSTRIES” 1957 (L/C Autonomy, Absolute obligation of Banker to pay, irrespective of parties disputes).

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| **In Hamzeh *Mallas and Another v British Imex Industries Ltd* [1958],[[14]](#footnote-12)** the court noted that the bank has the obligation to pay without regard to any dispute concerning the seller and the buyer. |

UCP600 clearly states that : “A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person."

Another essential feature of the system is the Principle of STRICT COMPLIANCE.

This means that the documentary credits must strictly comply with the terms of the credit. According to UCP600: A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, based on the documents alone, whether or not the documents appear on their face to constitute a complying presentation. Article 15 of the same act says: When an issuing bank determines that a presentation is complying, it must honor". Moreover, in UCP600 it is established that:

 **a**. At least one original of each document stipulated in the credit must be presented.

 **b.** A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.

 **c.** Unless a document indicates otherwise, a bank will also accept a document as original if it : i. appears to be written, typed, perforated or stamped by the document issuer’s hand; or ii. appears to be on the document issuer’s original stationery; or iii. states that it is original, unless the statement appears not to apply to the document presented.

 **d.** If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.

 **e.** If a credit requires presentation of multiple documents by using terms such as "in duplicate", "in two-fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.

The above articles impose the compliance rule of the letters of credit to the terms of the credit in order for those letters to be accepted by the Bank. The point is that unless a document is clearly original because it is handwritten or appears to be an original typescript a bank must accept it as original only if it is marked as original, usually by means of an original rubber stamp. This was the point in “GLENCORE” case in 1995 and upheld by the Court of Appeal in 1996.

CASE 3: **Bayerische Vereinbank and Glencore International AG v. Bank of China** 1996 (Original Documents)

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| In Bayerische Vereinbank and Glencore International AG v. Bank of China, the judge accepted the defendant bank’s refusal to accept a certificate which was produced from another by alteration and photocopying and hand-signed but was NOT marked ORIGINAL. The certificate was merely a declaration that specified documents had been sent to the beneficiary.  |

CASE 4: **“KREDIETBANK” Antwerp v “MIDLAND” Bank 1999 L/C, Bank Rejection for Original Insurance Policy. &** “CHENG JEN” 1996 Glencore **International and BV v Bank of China. L/C, Bank (Rejection for Document not marked “Original”).**

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| **The case of *Kredietbank Antwerp v Midland Bank and others* [1999],[[15]](#footnote-13)** is as follows: The Court of Appeal dismissed the appeals of Midland Bank and Karaganda Ltd against a decision that Kredietbank Antwerp was entitled to accept certain documents tendered under a letter of credit. The Midland had opened a letter of credit through Kredietbank. The buyer was Karaganda Ltd. The terms of the letter of credit, which was subject to UCP 500, required, inter alia, an "Original Insurance Policy or Certificate". The documents tendered were in fact the original and duplicate of the policy. Both documents bore ink signatures. There were two documents because one of the express insurance conditions provided: "This policy is issued in original and duplicate, one of which to be accomplished, the other to stand void." One document was stamped "DUPLICATE". The other bore no equivalent marking. The original document was produced by a word processor and printed by a laser printer on to the insurance company's headed paper bearing its logo. The duplicate was a photocopy of that document. Midland refused to accept the original document, notwithstanding that it was the original, because it was not marked "Original" as required by article 20(b) of UCP 500. On that ground, inter alia, Midland refused to indemnify Kredietbank, and Kredietbank issued proceedings. The buyer brought separate proceedings against Midland disputing its own liability to indemnify Midland, and the judge found in favor of Kredietbank. Midland and the buyer appealed. On the appeal it was submitted for Kredietbank, inter alia, that the two insurance documents clearly satisfied the requirements of article 34 of UCP 500, namely that "Insurance documents must appear on their face to be issued and signed by Insurance Companies or Underwriters or their Agents". Midland contended however, that article 20(b), as interpreted in **Glencore v Bank of China [1996]**, meant inevitably that the documents failed to conform. The first document had been produced "by reprographic, automated or computerized systems" within article 20(b)(i) and so was subject to the proviso that it should be "Marked as Original", which it was not. Lord Justice Evans said that the purpose of the rule, was clear. Previously, banks had been entitled to reject documents which were not originals. Henceforth they would accept certain documents which would previously have been rejected as non-originals, provided that specified safeguards were observed. That applied expressly to photocopies ("reprographic systems") and to carbon copies. Those were by their nature copies of some other document which was their original. A document which was clearly the original, in the sense that it contained the relevant contract, and which was not itself a copy of some other document, was certainly an original for the purposes of the rule. In the present case, the first insurance document was clearly the original policy and was not a copy of some other document, nor did it appear that it might be a copy document. Kredietbank had, accordingly, been entitled to accept the document tendered as the Original Insurance Policy, and Midland had been wrong to reject it. |

## Types of “Letters Of Credit”.

* **Irrevocable Letter of Credit – ILOC.** It cannot be amended or cancelled without prior agreement of the beneficiary, the issuing bank and the conirming bank, if any. In this way, it is guaranteed that a Buyer's payment to a Seller will be received on time and for the correct amount. The irrevocable Letter of Credit is often used in international transactions
* **Sight Letter of Credit.** A Letter of Credit that becomes payable once it is presented along with the necessary documents. Such Letters of Credit require a more stringent process of verification.
* **Standby Letter of Credit.** A stipulation that states a Letter of Credit will be called back if the payer defaults. It is considered as a secondary payment method in which the bank pays the beneficiary “only” when the holder cannot.

## The Parties Involved in the Letter of Credit.

The parties to a Letter of Credit are the **Beneficiary** who is to receive the money, the **Issuing Bank** of whom the **Applicant** is a client, and the **Advising Bank** of whom the beneficiary is a client. Since nowadays almost all Letters of Credit are Irrevocable, the **Applicant** is not considered to be a party to the Letter of Credit.

## The Chartering point of view.

As far as Chartering is concerned, the terms and conditions of the Letter of Credit – although not directly involved in the chartering deal itself – play a vital role in the Chartering Agreement. The L/C affects certain parts of the Charter Party such as – but not limited to - clause(s) related to the Bill of Lading.

As a matter of fact, the L/C is the document that dictates the type of Bills of Lading to be used and the remarks that are allowed (*or not allowed*) on them.

Furthermore, the Letter of Credit, being a form of a “guarantee”, has an expiring date. As a result, the sellers are very much concerned in loading the carrying vessel and consequently in receiving the Bills of Lading, in a date before the expiration date of the Letter of Credit. Thus, the Cancelling Clause[[16]](#footnote-14) of the Charter Party is determined not only by the actual load-readiness of the cargo but from the expiring date of the L/C as well. Therefore, the Date inserted on the B/L (*i.e. the date of completion of loading)* should conform with the Cancelling Date provided by the L/C.

Taken that the Bill of Lading is the most important document that a Shipper (*Seller*) needs in order to receive money from a L/C, it is obvious that the terms and conditions, which derive from it, are not negotiable. Examples: Carrying vessel to be maximum 15 years old, no transshipment allowed, no part cargo allowed etc.

Remarks such as “Clean on Board”[[17]](#footnote-15), “Freight Prepaid”[[18]](#footnote-16) etc., are quite often, obligatory in order to negotiate the Letter of Credit.

Sometimes, the Shippers/Charterers (*in fact the Sellers*), request the Carriers (*ship-Owners*), to sign “Predated Bills of Lading”. Such a request is related to the expiration date of the Letter of Credit. Although such request is not rare and even though the Charterers and/or the Shippers are usually eager to keep the Carrier “harmless” and “non-responsible” by providing a Letter of Indemnity (*LOI*), such request is illegal and, in some cases, might consist fraud against the Buyer (*Receiver of the goods*). Thus, signing predated Bills of Lading, as a result of an expiring Letter of Credit, is not recommended and should be avoided.

 *(See also: “****Bill of Lading”****)*

## Terms related to Letters of Credit.

**Issuing Bank.** The Bank that issues the Letter of Credit. In practice, the bank of the Buyer. The Issuing Bank assumes full liability for the payment of the funds.

**Applicant**. The one who pays under a Letter of Credit. In practice the Buyer.

**Advising Bank**. An advising bank acts as the agent of the Issuing bank. On receipt of the documents for examination and payment, the advising bank will pay the seller only if it has received good funds from the Issuing Bank, even if it was specifically named as paying bank in the Letter of Credit.

**Confirmed L/C.** By confirming a letter of credit, the Advising or another bank assumes the same responsibilities as the issuing bank, including the obligation to pay against presented documents if they are in order and all the letter of credit terms are met. In effect, the beneficiary has the individual promise of two banks to pay against conforming documents; the issuing bank and the confirming bank.

**Irrevocable L/C.** A Letter of Credit that can't be cancelled. This guarantees that a Buyer's payment to the Seller will be received on time and for the correct amount, provided of course that the Seller will honor his obligations in time.

**Revocable credit.** This type of credit may be amended or cancelled without the beneficiary's consent. It is generally used when the applicant and the beneficiary are members of the same group of companies.

**Documentary Letter of Credit (*DLC*)**. Since all Letters of Credit are Documentary, this term is redundant. Nevertheless, in practice it is not uncommon to use the term DLC or Documentary Letter of Credit.

**Transferable / Non-Transferable LOC.** Letters of Credit may be transferable or non-transferable. It is usually described as "transferable" in case of a transferable credit. In the absence of such indication, the LOC is deemed to be non-transferable. In a transferable Letter of Credit, the first Beneficiary (*the Seller*) may request the paying, accepting or negotiating bank to make the credit available in whole or in part to one or more second beneficiary(*ies*). The second beneficiary can be an export-manufacturer or an export-trader. The LOC is expressly designated "transferable" by the Issuing Bank after instructions of the Applicant. If the words "transmissible", "assignable", "divisible", and "fractionable" are used, the L/C is not transferable.

**Revolving.** Issued whenever the same Letter of Credit is needed to cover numerous scheduled shipments over a long period without the necessity of issuing new credits or amending the existing one.

**Payable at Sight.** A Letter of Credit that is payable as soon as the required documents have been submitted.

**Standby L/C.** These types of credits are not specifically related to the movement of goods, they act more like a guarantee. Like a performance guarantee, a standby letter of credit allows the beneficiary to draw in the event of default on a contract, provided that the complying documents (usually a sight draft) are presented.

## Acronyms related to Letters of Credit.

**LOC or L/C or LC**. Letter Of Credit.

**DLC**. Documentary Letter Of Credit.

**ILOC**. Irrevocable Letter Of Credit.

**TTR or TT.** Telegraphic Transfer or Telex Transfer. An electronic means of transferring funds overseas.

## Sample term used on a Sale Contract, related to the Letter of Credit.

***“****On signing this contract, Buyers to remit an Irrevocable Letter of credit to the Sellers, issued by Buyers first class, and acceptable to Seller, Bank of Europe or USA, payable at sight by TTR in favor of the Seller. Three banking days after receipt of the Letter of Credit as above, Sellers to present to Buyers the Export License.*

*All banking charges of the Buyer but not limited to issuing, confirmation and amendment fees to be at Buyer’s account, while all banking charges including advising and negotiation fees to be at Seller’s account.*

*Terms and conditions of L/C must be exactly based on the present contract.”*

## Documents usually needed to allow payment of the Letter of Credit.

* “Seller’s signed commercial invoice in 3 originals and 3 copies.
* Full set 3/3 of original “clean shipped on board” **bills of lading** marked “freight payable as per charter party” .
* Seller’s signed **packing list** in 1 original and 3 copies
* **Phytosanitary** certificate issued by an authorized organization under the plant protection department of ministry of agriculture.
* **Fumigation** certificate issued by an official authority.
* **Certificate of origin** issued by the chamber of commerce in 1 original and 3 copies.
* **Certificate of quality**, weight and packing issued by SGS or VERITAS only; fees are at the seller expense”.
* (*The above list of Documents is just an example which was extracted from a Sale Agreement of Rice ex Vietnam*.)

## How it works, in practice.

After negotiating and agreeing a Sale Contract, the Buyer (*Applicant*) requests his Bank (***Issuing Bank***) to open a Letter of Credit to the name (*to the favor*) of the Seller (*beneficiary*). The Bank of the Seller (***Advising Bank***) receives the Letter of Credit and asks its client (*the beneficiary*) if the commercial terms and conditions contained therein are in accordance to the Sale Contract and thus acceptable. At the same time, the bank undertakes the task of checking the legal aspects of the LOC and checks if it is in accordance with the banking practice. If everything is in order, the LOC is accepted and the involved banks, promise (*guarantee*) to pay if and when the Beneficiary materializes his obligations.

From this point of view the LOC is the order of a bank to another bank to pay certain amounts of money provided that the client of the latter fulfills specific obligations towards the client of the former.

As soon as the beneficiary has fulfilled his obligations (*from a chartering perspective, as soon as loading of the ship has been completed and Bills of Lading are signed and released*), he presents the agreed documents to the bank, (*mainly the Bill of Lading, a commercial invoice, a certificate of origin etc.)* and gets paid in accordance with the Letter of Credit.

* After a Contract (***Sale Contract***) is agreed between the Buyer and Seller, the Bank of the Buyer (***Issuing Bank*)** presents a LOC pro-forma to the Bank of the Seller (***Advising Bank*)**.
* The Advising Bank on behalf of its client the Seller (***Beneficiary*),** accepts the LOC (*usually after negotiating the wording, the terms and the conditions to meet the required standards*).
* The Beneficiary (*Seller/Shipper*) consigns (*loads*) the Goods to a Carrier (*carrying ship*) in exchange for a Bill of Landing.
* The Beneficiary presents the Bill of Lading and other agreed documents to his Bank (*Advising Bank*) and requests to be paid according to the Letter of Credit.
* The Advising Bank (*Bank of the Seller / Beneficiary*) presents the Bill of Lading and the other requested documents to the Issuing Bank (*the bank of the Buyer*).
* The Issuing Bank pays in accordance with the Letter of Credit and delivers the Bill of Lading and the set of other documents to the Buyer (***Applicant***) .
* The Buyer (***Applicant***) presents the Bill of Lading to the Carrier and takes delivery of Goods.

**Both the UCP 500 and the UCP 600 define that:**

1. The Letters of Credit are thoroughly separated (Independence Principle) from Sale Contracts (although they are based on them) and Banks are in NO WAY concerned with or bound by such contracts , even if such contracts are referred in the L/C
2. Banks deal exclusively with documents and NOT with goods, services or performances to which the documents may relate.

In July 2013 and in an attempt to simplify the L/C transactions, which are often time-consuming and inefficient by using paper-based processes, the ICC BANKING COMMISSION finally accepted uniform rules for NEW METHOD OF PAYMENT in international trade the “BANK PAYMENT OBLIGATION’ (*URBPO*), which is an Irrevocable Payment Instruction , uses the ISO 20022 data structure and combines LEGALLY BINDING RULES with ELECTRONIC MESSAGING and MACHING CAPABILITIES.

The checking of the submitted by the Shipper documents is performed “electronically” (*Automated Matching*) and if found in order, then the documents are sent directly from Shipper to Consignee. In this transaction, the “SWIFT” is playing a key role in driving the digitization of trade flow.

This is a revolutionary attempt to use the facilities of the today’s technology, which started in March 2011 with a first meeting with participation of the SWIFT , Nine Major Banks and of course the ICC (*Banking Commission*).

## Sample Letter Of Credit.

*Name and Address of Bank*

*Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Irrevocable Letter of Credit No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Beneficiary: Commodity Credit Corporation Account Party: Name of Exporter  Address of Exporter*

*Gentlemen:*

*We hereby open our irrevocable credit in your favor for the sum or sums not to exceed a total of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dollars ($\_\_\_\_\_\_\_\_\_\_), to be made available by your request for payment at sight upon the presentation of your draft accompanied by the following statement:*

*………………………………………….*

*This Letter of Credit is valid until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, provided, however, that this Letter of Credit will be automatically extended without amendment for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/4 from the present or any future expiration date thereof, unless at least thirty (30) days prior to any such expiration date the Issuing Bank provides written notice to the Commodity Credit Corporation at the U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Room 4503, South Building, Stop 1035, Washington, D.C. 20250-1035, of its election not to renew this Letter of Credit for such additional \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ period. The notice required hereunder will be deemed to have been given when received by you.*

*This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, and International Chamber of Commerce Publication No. 500*

*(Name of Bank)*

*By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*



1. NVOCC: Non-Vessel Operating Common Carrier, [↑](#footnote-ref-0)
2. CAD: Cash Against Documents. [↑](#footnote-ref-1)
3. GAFTA. Grain And Feeds Trade Association. [↑](#footnote-ref-2)
4. Incoterms 2010, CIF, CFR and FOB, A4. [↑](#footnote-ref-3)
5. Contract of Affreightment: Agreement for the transportation of goods by sea, by a carrier who is not necessarily the Owner of the ship. It refers to an agreed quantity which must be carried by multiple shipments., on vessels of specified *characteristics within an agreed period of time* (*see also, “Types of Charter”*). [↑](#footnote-ref-4)
6. Bill of Lading: A receipt for Goods, issued by the Master of the transporting ship. Probably the most important document used in a transportation deal. It *is also a document of Title for the legal holder and an evidence of the contract of carriage.*  (*see also, “Bill of Lading”*). [↑](#footnote-ref-5)
7. Freight Prepaid: By marking the Bill of Lading as Freight Prepaid, the Carrier (ship) cannot claim freight payment from the Buyers. (*see also, “Bill of Lading”*). [↑](#footnote-ref-6)
8. Since the previous revision in 2000, much has changed in global trade. Cargo security is now at the forefront of the transportation agenda for many countries. In addition, the United States’ Uniform Commercial Code” was revised in 2004, resulting in a deletion of US shipment and delivery terms. The latest version of the INCO terms rules (INCO terms 2010) was launched in Mid-September 2010 and came into effect on January 2011 in order reflect the aforementioned changes. [↑](#footnote-ref-7)
9. Source: www.gafta.com [↑](#footnote-ref-8)
10. *Kwei Tek Chao v British Traders and Shippers Ltd* [1954] 2 QB 459. [↑](#footnote-ref-9)
11. [1978] 1 All ER 976. [↑](#footnote-ref-10)
12. [1999] 2 Lloyd's Rep. 187. [↑](#footnote-ref-11)
13. [↑](#endnote-ref-0)
14. [1958] 1 All E.R. 264. [↑](#footnote-ref-12)
15. [1999] All ER (D) 431. [↑](#footnote-ref-13)
16. Charter Party Cancelling Clause. One of the conditions of the Charter Party is the Cancelling Date. Should the vessel not arrive on or before the Cancelling Date, the Charterers have the right to cancel the agreement. Sea also the chapter “the Charter Party”. [↑](#footnote-ref-14)
17. Clean on Board, means that the cargo has been loaded in apparently good condition. [↑](#footnote-ref-15)
18. Freight Prepaid means that the Freight has been paid to the Carrier, consequently the cargo Owners are not liable to pay. [↑](#footnote-ref-16)