



Getting Paid: The Neurosis of International Sales

Legal Disclaimer

- Law is ever-changing. This briefing is a synopsis only and cannot substitute for personal legal advice. Everyone's facts and circumstances are different and you should not rely on the contents of this publication to make substantive legal decisions. Please contact me for a further consultation.

All right now. You've carefully negotiated the sale documentation and the goods are waiting for shipment or transmission. But what about actual payment? There is nothing more nerve-racking than securing payment. The exact means of payment must be part of any agreement and the mechanism should be clearly understood by the parties. Let's look at the common means of securing payment—and the transactions that require them.

Let's Be Pragmatic

How neurotic you should be depends on the transaction itself and there are a few things to sort it out. First, what's the overall value of the transaction? If it's millions, then clearly the formalities go up and your very hide is on the line. If it's a few thousand, then you're going to be less stressed and payment can be arranged by credit line or credit card and so much the better. However, if it's large, then the usual methods of payment will probably be limited.

Second, what the relationship between you and the buyer? If it's a reliable long-term customer, then shaking hands and open accounts might figure in. After all, there's a relationship at stake. If it's some guy you've never heard of, then trust but verify. Needless to say, there'll probably be no open account this time around.

Third, where's the customer located? Or the ultimate destination? If it's a country that respects the rule of law and has both a good commercial law and regular enforce-

ment mechanisms, then so much the better. If not, then security becomes a major issue. Also, is there some reasonable assurance that a shipment will arrive in good order? Nothing affects payment like damage claims. Is it possible to arrange for a good commercial agent in the country of destination?

Finally, what's the nature of the goods or product being shipped? Is it fungible, standard goods or is it some custom, one-of-a-kind product that will impossible to sell if the buyer refuses to pay?

The Options

First, there's the good old open account. You ship the goods and then invoice the customer, hoping you get paid in ninety days or less. I suppose the good news is that the transaction costs are low. The bad news is that the transaction costs get very high if you don't get paid. Before resorting to this option, consider the factors just listed.

Second, there's the open account, but with a "standby letter of credit" in place. For the uninitiated, a "letter of credit" is a document issued by the buyer's bank that acts as a guarantee of payment to the seller or other beneficiary. This means that if your customer doesn't pay, their bank will.

Third, the letter of credit can also be the source of payment of the transaction, which means that you can get paid upon

Attorney at Law
David P. Crocker
Solicitor of England and Wales



Business Address
Russell House
158 Pleasant Avenue
Portland, Maine 04103-3204 USA

Phone: 207.879.0708
Fax: 207.221.6417
Email: dpc@davidcrocker.com

Local and International
www.davidcrocker.com

First admitted to practice in 1989, David P. Crocker manages an international law practice in licensing, intellectual property, information technology and business law. He has experience in domestic and international licensing, technology development and general intellectual property law, including copyright, trademark and trade secret protection.

Crocker provides direct and timely assistance not only to technologists, but also to writers, artists, photographers and all creative people who wish to protect and license their work.



Crocker is currently qualified to practice in the United States and England and Wales. He advises United States, United Kingdom and other international clients in intellectual property, technology and business matters.

All Content © 2008 David P. Crocker. All Rights Reserved

Getting Paid, con't

redemption of the letter of credit. In international transactions, the letters of credit involved are typically “standby” or “revolving” letters of credit. Standby letters of credit are a guarantee of payment. If you don’t get paid by the buyer, then you can then demand payment from the issuing bank by forwarding a copy of the invoice that was not paid and supporting documentation. A revolving line of credit is established when there are regular shipments of the same commodity between you and your customers. This eliminates the need to issue an separate letter of credit for each individual transaction. Although there are other factors involved such as the role of correspondent banks and confirmations, buyers should at least be concerned about the fees involved, which can run anywhere from 1.5% to 8% of the value of the letter of credit. There are, in fact, international standards applying to such credits, notably those promulgated by the International Chamber of Commerce (International Standby Practices 98, Publication No. 590). To apply, such standards should be referenced in the particular credit.

Sight Basis and Time Basis

Payments under letters of credit can be made on a sight basis or a time basis. Sight means that the goods are paid for as soon as the bank issuing the letter of credit determines that the seller shipping documentation meets the terms of the letter of credit. Time basis means payment by the bank is not made until the maturity of the draft. The bank

issuing the letter of credit may pay the seller before the maturity date if the seller requests the time drafts be discounted.

Why would one use a time draft under a letter of credit? Most likely it is because the buyer needs extra time to sell the purchased goods and earn enough cash to pay the bank. Beware that most sellers have two prices: one for sight, and one for time. If a seller offers to let the buyer pay under the letter of credit at say, sixty days after the bill of lading date, the seller has likely added in the cost of that sixty days financing to his price. If you’re a buyer, it doesn’t hurt to get the seller’s quote and then ask your banker what the bank would charge you in interest for a loan for the same sixty days. Compare the cost of the two financing alternatives: time drafts from the seller versus a traditional loan from your banker. If the time draft is created as a result of the letter of credit process, then your banker is financing you either way.

Caution

While letters of credit are valuable tools in insuring payment, there are cautions. An LC is a “documentary credit” and the terms and conditions that apply, particularly in a standby letter payable only on specific contingencies, must be carefully negotiated and stated. This becomes a three-way between the buyer, seller and the buyer’s bank. If all this sounds too complicated, consider the alternative, which is not getting paid. You can, I suppose, ask for cash in advance. But then the buyer will be the walking the tightrope.