Chapter 75

1985 REPLACEMENT PART

Letters of Credit

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CROSS REFERENCES

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75.010, 75.020, 75.030, 75.040, 75.050, 75.060, 75.070, 75.080, 75.090, 75.100 [Repealed by 1961 c.726 §427]

75.1010 Short title. ORS 75.1010 to 75.1170 may be cited as Uniform Commercial Code-Letters of Credit. [1961 c.726 §75.1010]

75.1020 Scope. (1) ORS 75.1010 to 75.1170 apply:

(a) To a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) To a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) To a credit issued by a bank or other person if the credit is not within paragraph (a) or (b) of this subsection but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1) of this section, ORS 75.1010 to 75.1170 do not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) ORS 75.1010 to 75.1170 deal with some but not all the rules and concepts of letters of credit as such rules or concepts have developed prior to the Uniform Commercial Code or may hereafter develop. The fact that ORS 75.1010 to 75.1170 state a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by ORS 75.1010 to 75.1170. [1961 c 726 §75.1020]

75.1030 Definitions. (1) In ORS 75.1010 to 75.1170 unless the context otherwise requires:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of ORS 75.1020 that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to ORS 75.1010 to 75.1170 and the sections in which they appear are:

(a) "Notation of credit," as defined in ORS 75.1080.

(b) "Presenter," as defined in ORS 75.1120 (3).

(3) Definitions in other sections which apply to ORS 75.1010 to 75.1170 and the sections in which they appear are:

(a) "Accept" or "acceptance," as defined in ORS 73.4100.

(b) "Contract for sale," as defined in ORS 72.1060.

(c) "Draft," as defined in ORS 73.1040.

(d) "Holder in due course," as defined in ORS 73.3020.

(e) "Midnight deadline," as defined in ORS 74.1040.

(f) "Security," as defined in ORS 78.1020.

(4) In addition, ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 75.1010 to 75.1170. [1961 c.726 §75.1030]

75.1040 Formal requirements; signing. (1) Except as otherwise required in ORS 75.1020 (1)(c) on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized

authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. [1961 c.726 §75.1040]

75.1050 Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. [1961 c 726 §75.1050]

75.1060 Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) As regards the customer as soon as a letter of credit is sent to the customer or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) As regards the beneficiary when the beneficiary receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. [1961 c.726 §75.1060]

75.1070 Advice of credit; confirmation; error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. [1961 c.726 §75.1070]

75.1080 "Notation credit"; exhaustion of credit. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation of credit."

(2) Under a notation credit:

(a) A person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) Unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit:

(a) The issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand.

(b) As between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. [1961 c.726 §75.1080]

75.1090 Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) For performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) For any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) Based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or

responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge. [1961 c.726 §75.1090]

75.110 [Repealed by 1961 c.726 §427]

75.1100 Availability of credit in portions; presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying. [1961 c 726 §75 1100]

75.1110 Warranties on transfer and presentment. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under ORS 73.1010 to 73.8050; 74.1010 to 74.5040; 77.1010 to 77.6040 and 78.1010 to 78.4060.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under ORS 74.1010 to 74.5040 and any such bank transferring a document warrants only the matters warranted by an intermediary under ORS 77.1010 to 77.6040 and 78.1010 to 78.4060. [1961 c.726 §75.1110]

75.1120 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter." (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) Defer honor until the close of the third banking day following receipt of the documents; and

(b) Further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending the presenter an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. [1961 c.726 §75.1120]

75.1130 Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) Unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) Unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom the customer received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. [1961 c.726 §75 1130]

75.1140 Issuer's duty and privilege to honor; right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title pursuant to ORS 77.5070 or of a certificated security pursuant to ORS 78.3060 or is forged or fraudulent or there is fraud in the transaction:

(a) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course as provided

in ORS 73.3020 and in an appropriate case would make it a person to whom a document of title has been duly negotiated as provided in ORS 77.5020 or a bona fide purchaser of a certificated security as provided in ORS 78.3020; and

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit. [1961 c 726 §75.1140; 1985 c.676 §75.1140]

75.1150 Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller as provided in ORS 72.7070 and may recover from the issuer the face amount of the draft or demand together with incidental damages under ORS 72.7100 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under ORS 72.6100 if the beneficiary learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. [1961 c.726 §75 1150]

75.1160 Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign the right of the beneficiary to proceeds. Such an assignment is an assignment of an account under ORS 79.1010 to 79.5070 on secured transactions and is governed by those sections except that:

(a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under ORS 79.1010 to 79.5070; and

(b) The issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) After what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned the right of the beneficiary to draw or the right of the beneficiary to proceeds, nothing in this section limits the right of the beneficiary to transfer or negotiate drafts or demands drawn under the credit. [1961 c.726 §75 1160; 1973 c.504 §4]

75.1170 Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which ORS 79.1010 to 79.5070 are made applicable by ORS 75.1020 (1)(a) or (b) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) To the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) On expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) A charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if

the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. [1961 c.726 §75.1170]

75.120, 75.130, 75.140, 75.150, 75,160, 75.170, 75.180, 75.190, 75.200, 75.210, 75.220, 75.230, 75.240, 75.250, 75.260, 75.270, 75.280, 75.290, 75.300, 75.310, 75.320, 75.330, 75.340, 75.350, 75.360, 75.370, 75.380, 75.390, 75.400, 75.410, 75.420, 75.430, 75.440, 75.450, 75.460, 75.470, 75.480, 75.490, 75.500, 75.510, 75.520, 75.530, 75.540, 75.550, 75.560, 75.570, 75.580, 75.590, 75.600, 75.610, 75.620, 75.630, 75.640, 75.650, 75.660, 75.670, 75.680, 75.690, 75.700, 75.710, 75.720, 75.730, 75.740, 75.750, 75.760, 75.770, 75.780 [Repealed by 1961 c.726 §427]