Guidelines for Letters of Credit
GUIDELINES FOR
LETTERS OF CREDIT

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INTRODUCTION
The Guidelines are intended to cover two purposes. They are intended to alert parties of the points they should look for when they trade under GAFTA contracts which require payment by letter of credit, and to suggest a basic clause for use in such contracts.

In these Guidelines, the words "documentary credit", "letter of credit", "L/C" and "credit" are used interchangeably.

WARNING
Letters of Credit are indispensable tools in modern trade. However, they (and in particular Standby Letters of Credit) can also be fertile territory for fraudsters. It is up to you to ensure that the documentary instruments used are legitimate. You should therefore only operate through the proper banking channels, and you should ensure that your documentary requirements are provided independently and not entirely by the beneficiary.

DEFINITION:
Any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation (UCP Article 2). "Honour a complying presentation" means to pay against the documents for which the credit calls.

ROLE OF UCP:
The International Chamber of Commerce ("ICC") has issued their booklet "Uniform Customs and Practice for Documentary Credits". The current edition, habitually abbreviated to "UCP600", was issued in 2006 to take effect from 1st July 2007. Nearly all transactions for documentary credits between banks incorporate the provisions of UCP600. When one bank notifies a credit to another bank and/or its customer, it usually says somewhere in the message (usually towards the bottom) that the agreement is subject to the UCP. These Guidelines should be read in conjunction with the UCP600. Although the ICC tries to standardise the interpretation of its terms, various banks do interpret some of the provisions differently.

If there is no reference to UCP600, then it does not govern the L/C, except in cases where the credit has been transmitted between the banks by means of SWIFT ("The Society for Worldwide Interbank Financial Telecommunications", which sets standards for inter-bank electronic messages). All L/C's transmitted by SWIFT (SWIFT formats 700, 710 and 720) are by definition automatically governed by the latest available version of the UCP, even if the credit does not refer to UCP.

SEPARATE CONTRACT:
A letter of credit is an independent undertaking, in practice by a bank, usually on behalf of its customer. It operates as an entirely separate contract and the bank is in no way concerned with the terms of the sale contract pursuant to which the L/C has been issued (Article 4). As with any contract term it should be remembered that the terms of the letter of credit should be agreed between the contracting parties and should be compatible with other contract terms. It should also be remembered that the terms of the letter of credit should comply with the terms of the contract. If no objection is made to any terms in the L/C which are at variance with the terms of the contract, then the contract may be deemed to be amended to the extent of the inconsistency. The L/C should be a stand-alone document. Any and all relevant provisions of the sale
contract should be set out, in full or should be appropriately reflected. The L/C should not purport, by reference, to incorporate the sale contract.

By means of an L/C the Seller looks to the bank and not to the Buyer as its source of payment. However, as a general rule, the credit operates as conditional rather than absolute payment and so, depending on the precise wording of the contract and the underlying circumstances, the Buyer remains liable for the price, where, by reason of insolvency, the bank does not pay.

**REVOCABLE/IRREVOCABLE:**
It follows from the basic definition of a credit that the engagement of the bank is irrevocable. Irrevocability is assumed and need not be stated. Unlike previous editions of the UCP, UCP 600 does not cater for revocable letters of credit. Any document purporting to be a letter of credit but which, according to its terms, is revocable, is not a credit within the meaning of UCP 600.

**APPLICANTS AND BENEFICIARIES:**
The "Applicant" for a letter of credit is usually the Buyer in a contract of sale, and the "Beneficiary" is usually the Seller.

**NUMBER OF BANKS INVOLVED:**
A number of different banks can be involved in a letter of credit transaction. The Buyer will normally approach one of his own banks to open the letter of credit: this is the issuing bank and the letter of credit contains an undertaking by the issuing bank that it will pay for the documents conforming to the credit in the manner stipulated (Article 7).

The issuing bank can issue the L/C direct to the Beneficiary (which is unusual), or advise it through another bank with which it has corresponding relations in or near the Beneficiary's location. This is the advising bank. Very often, the Seller/Beneficiary will ask for the L/C to be advised through a certain bank and, as long as the two banks have corresponding relations, there is no reason why the request should not be complied with. An advising bank is obliged to check the authenticity of the letter of credit (Article 9). A credit may be advised through more than one bank.

It may be a requirement of the contract that the letter of credit is to be confirmed by another bank. The issuing bank should include a requirement in the L/C that it be confirmed, and the confirming bank is often the same as the advising bank, although it need not be (Article 8). By confirming a L/C, the confirming bank undertakes that it will honour the presentation of documents complying with the credit, independent of the financial situation of the issuing bank (liquidity/solvency risk) or the financial situation in the country of the issuing bank (country risk) at the time that the payment is due. Sometimes a beneficiary may require a L/C to be confirmed without the knowledge of the issuing bank. Provided that the advising bank is prepared to do so, it may add its guarantee (in the past also called "silent confirmation") to the credit.

Banks have established business relations with many other banks, but not all, throughout the world. A bank with which another bank has such a relationship is known as a corresponding bank. A problem may occur if the issuing bank has no such relationship with the Seller's preferred advising bank. In these circumstances, the banks often seek an intermediary third bank that has "corresponding relations" with both of the other banks.

A nominated bank is a bank named by the issuing bank to effect the payment (see Reimbursement).

**TRANSFERABLE:**
Transfers of L/C's are dealt with by Article 38. A Beneficiary ("the first beneficiary") may transfer a credit, in whole or in part to another Beneficiary ("the second beneficiary"), provided that the credit is specifically stated to be transferable. It may even be sub-divided to several second beneficiaries, provided it does not exceed the total quantity, value and unit-price, the latest shipment date and expiry date of the master L/C, keeping the insurance requirement unharmed, and is otherwise permitted in the master text (e.g.: "partial shipments permitted"). The second beneficiary does not have authority to instruct the second advising bank to transfer the credit again. Consequently, transfer of the master credit may not take place more than once. Parties using transferable credits should be aware of the dangers involved with amendments, since each beneficiary is individually entitled to accept or reject each amendment. Also, the fact that the credit is stated to be
transferrable does not mean that the bank is obliged to transfer the L/C to any intended second beneficiary. A bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.

Transfers of letters of credit should be distinguished from assignments, which are dealt with by Article 39. As with any payment obligation, the beneficiary’s right to payment under a credit may be assigned. A restriction in the credit on transfer does not affect assignability. Payment by way of transfer of a credit presents certain risks to the transferee. Assignment presents greater risks. The assignee acquires no better rights than those of the assigning beneficiary. The terms of the credit may be changed without the knowledge and consent of the assignee and if the bank has advanced money to fund the Seller’s own purchase of the goods, the bank may well have a prior claim over the L/C proceeds.

REIMBURSEMENT:
All L/Cs must indicate if and where they are payable in one of two modes (called "tenors"): at sight or usance. Reimbursement "at sight" may mean by payment itself or by negotiation. Reimbursement by "usance" may mean by acceptance or by deferred payment. The issuing bank must indicate which bank is authorised to take up the documents. The bank authorised to do so is called the nominated bank. The nominated bank can be any bank in the world or within a specific geographical area 'named' ("restricted") in the credit or not ("unrestricted") or can be limited to the issuing bank.

"At sight" means that the nominated bank should pay upon presentation of documents complying fully with the terms and conditions of the credit. However banks require time to examine the documents to ensure that they comply with the credit and are allowed a maximum of five banking days to do this. Article 14 b states "A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation."

The characteristic feature of "negotiation" credits is that they stipulate a sight bill of exchange (also called a "draft") drawn on the issuing bank or on the bank nominated in the credit as the drawee. The issuing bank authorises the advising bank to negotiate this bill of exchange, that is, to pay it. This is a "restricted negotiation credit".

In the case of an "unrestricted negotiation credit", any bank in the Beneficiary’s country is authorised to negotiate the bill of exchange. Such negotiation is effected by the negotiating bank under usual reserve, which means that the negotiating bank may exercise its right of recourse if the bill of exchange is not honoured by the drawee (the issuing bank). In practice, this hardly ever occurs, unless the payment is reclaimed on account of discrepancies in the documents.

UCP 600 contemplates that drafts under letters of credit will be drawn on the issuing or nominated bank (Article 7) or, where the credit is confirmed, on the confirming or other nominated bank (Article 8). A credit may not provide for drafts drawn on the applicant - usually the Buyer – (Article 6 c)

"Usance" means that the nominated bank should take up documents on presentation of documents complying fully with the terms and conditions of the credit. If the L/C is for deferred payment, the nominated bank confirms the undertaking to pay, mentioning the amount and the due date in writing or by telecommunication. If the L/C is for acceptance, the nominated bank accepts the draft drawn on itself, and by that acceptance confirms the undertaking to pay the amount on the maturity date of the draft. In certain cases, especially if it has confirmed the credit, a bank may be prepared to discount the proceeds of the deferred payment undertaking or the accepted draft, with or without recourse on the beneficiary.

None of these terms stipulate how the reimbursement should be made. If the letter of credit omits to state that reimbursement will be made by telegraphic transfer (or other rapid method), then the remittance could be made by the slowest method possible, which is unusual. It should be remembered that currency has to be routed through a suitable location, usually in the country of that currency.
BILLS OF EXCHANGE:
According to S.3 (1) of the Bills of Exchange Act 1882, a bill of exchange is “an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer”.

Full discussion of bills of exchange lies outside the scope of these Guidelines. As a general rule, anyone who signs a bill of exchange, whether as drawer, acceptor or indorser assumes responsibility under it, although an endorsement sans recours (without recourse) has the effect that the endorsing party is not liable if the bill is dishonoured. Also avalised drafts may be agreed. Someone who endorses a bill of exchange pour aval is accepting secondary liability as guarantor of the obligations of others who, by way of unqualified signature, have assumed primary responsibility under the bill.

DOCUMENTS:
A letter of credit must stipulate the documents which have to be presented and against which payment is to be made. Article 14 of the UCP sets what some people would regard as a low standard for the checking of documents. Banks are required to do no more than to determine whether or not the documents “appear on their face” to comply. Banks do not look at the contract for the sale of goods to see what should be contained within the documents. Banks do not check the accuracy of the information contained in the documents themselves: for instance, a bank will not check if the named vessel in a bill of lading actually did load the goods at the named port, or even whether or not the ship actually exists. Banks do not look at documents which are not named in the L/C.

Similarly expressions in letters of credit which purport to require the bank to come to view about the status of the person or organization that is to issue the document (e.g. “first class”, “recognized”, “independent”, “official” etc ) allow any issuer except the beneficiary to issue that document.

One of the principal objectives of UCP 600 is to reduce the number of rejections of documents on account of apparent inconsistencies. Under UCP500, by Article 13 a, documents “appearing on their face” to be inconsistent were considered to be discrepant. This provision was often interpreted very restrictively by banks, resulting in documents not being accepted on account of very minor differences which those in the trade would regard as of no consequence. Article 14 d now says “Data in a document, when read in context with the credit, the document itself and international standard banking practice need not be identical to, but must not conflict with, data in that document, any other document or the credit”. For example data in a Quality Certificate might be slightly different from that in the Phytosanitary Certificate or the bill of lading weight might be slightly different from that in the Weight Certificate – although all within the tolerance of the credit. It remains to be seen whether the change of wording and emphasis in Article 14 d will in practice result in documents that do not precisely correspond with each other being regarded as complying where, under UCP 500, they would have been regarded as discrepant. By means of appropriate wording in the credit it is, of course, possible to cater for minor differences of the sort under discussion.

Under UCP 500 confusion used to arise on the related questions, were banks entitled to insist on original documents and what constituted an original document? The basic rule, to be found in Article 17 a, is that at least one original of each document stipulated in the credit must be presented. Articles 17 b and c then go on to provide that the following will count as originals unless the document itself states it is not an original; any document which

- Bears an apparently original signature, mark, stamp, or label of the issuer
- Appears to be written , typed, perforated or stamped by the issuer’s hand
- Appears to be on the issuer’s stationery
- States that it is an original

Unless copy documents are provided for in the contract and in the credit, issuers of documents should always be asked to state that the document is “original”. This applies particularly to electronically generated documents of the sort issued by some superintendence companies. The relevant part of Article 3, which is headed “Interpretations”, permits signature by mechanical or electronic means of authentication.
Bills of lading will be assumed to be “marine/ocean” (i.e.: generally “liner”) b/l’s unless they are specifically marked as charter-party bills of lading. (Articles 20 and 22). Therefore, if charter-party bills of lading are to be presented, the L/C should always allow this specifically (“charter-party bills of lading acceptable”, or the description of the b/l’s in the L/C should mention this). All types of b/l’s have to indicate that the goods have been “shipped on board”, unless the L/C expressly calls for some other notation. The b/l’s must also be “clean”, which means that the carrier/shipowner, the master or the ship’s agents have not made any remark on the face of the b/l suggesting any defect in the condition and/or packaging of the goods. (Article 27).

A “marine/ocean” bill of lading must be signed by the carrier or his named agent on his behalf, or by the master or by a named agent on behalf of the master. Additionally a charterparty bill of lading may, unlike under UCP 500, be signed by the charterer or by a named agent on behalf of the charterer. This change has been the source of concern in the trade. In any particular case, the charterer may be an operator. But, equally, he may be the shipper and or the CIF/C&F Seller. By means of the b/l, the Buyer has independent verification that the goods have been shipped in apparent good order and condition on the date stated in the b/l. If such turns out not to have been the case, the Buyer will, in addition to claims against the Seller, generally have rights of suit against the vessel/contracting carrier. But where the bill of lading is signed by or on behalf of the charterer, who is also the shipper and or the CIF/C&F Seller, the additional b/l claim may add nothing in practice and, of course there is increased scope for ante-dated bills of lading and for bills of lading that do not accurately describe the goods or their condition on shipment.

It is open to parties to agree that bills of lading signed by/on behalf of charterers will not be acceptable and for the L/C to be made out accordingly.

There are also lengthy provisions for other types of transport documents: Non-negotiable Sea Way-Bills (Article 21), Multimodal Transport Documents (Article 19), Air Transport Documents (Article 23), Road Rail or Inland Waterway Documents (Article 24) and Transport Documents issued by others (e.g. Freight Forwarders) (Article 14 L).

L/Cs should state the type of insurance cover required, if any, and the value of the cover. Unless otherwise stated in the credit, banks will accept insurance certificates or policies but they must be in the currency of the L/C. Similarly, unless otherwise provided for in the credit, the insurance may be on any conditions but must be for at least 110% of the CIF value. (Article 28).

Banks will accept documents issued by third parties except the invoice and draft, if any. An exceptional situation occurs in respect of a transferred documentary credit (Article 38).

The UCP does not say much about other documents, such as certificates of weight and quality. However, it is apparent that the title and content of these documents should be complete to ensure that the banks examine them adequately. For instance, L/Cs should require that certificates issued by superintendents should name those superintendents who are acceptable under the contract. They should also state what the certificates should contain. We suggest that a certificate of quality should contain, for example, a statement that “samples were drawn at the time and place of loading into the ocean vessel in accordance with the GAFTA Sampling Rules No.124”, or that a Certificate of Origin be issued by a specified authority. Vague terms present two dangers: first, banks will ignore them and, secondly, you may not get the documents you need.

**BILLS OF LADING TO ORDER OF ...**

Banks often require that bills of lading be made out to the order of the bank or of a named consignee. Parties should resist this as it affects the negotiability of the documents. If a b/l is issued to the order of a bank or named consignee, then it is not a document of title in the hands of anyone else, and it is not a negotiable instrument, unless the bank or the named consignee has properly endorsed the original bill of lading. If the documents were refused, the beneficiary would be dependent on the goodwill of the bank or named consignee in re-endorsing the b/l back to him.

It is not acceptable, under a letter of credit which calls for b/l’s to be issued to a named bank or consignee, for the b/l to be issued “to order” and then endorsed on the reverse of the document to the named bank or consignee. It is suggested that a b/l made out to the order of a named bank or another consignee would not be a negotiable document in the hands of another whereas a b/l “endorsed” to a bank or a named consignee
would be negotiable until the endorsement took place. If possible, parties are advised to ask that b/l's be "blank endorsed", that is, that the b/l should be consigned "to order" without further endorsement, apart from the shipper's signature on the reverse side.

**PARTIAL SHIPMENTS, TRANSSHIPMENTS AND DISCHARGE PORTS:**
Partial shipments and partial drawings are allowed, unless the L/C stipulates otherwise (Article 31). Transshipments are allowed, unless the credit stipulates otherwise, provided the bill of lading covers the entire ocean carriage from the load port to the destination named in the credit (Article 20). However, in the case of goods shipped in a container, trailer or lash barge, a bill of lading that provides for transshipment will be regarded as compliant, even if the credit prohibits transshipment. Similarly, liner bills invariably give the carrier the liberty to transship. Such clauses are disregarded (Article 20 d). The port of discharge should be specified in the b/l but the discharge port may also be shown as a range of ports or a geographical area, as stated in the credit (Article 22 a iii).

**LAST SHIPMENT DATE / EXPIRY:**
Letters of credit must state an expiry date, which is the last date on which documents complying with the terms and conditions of the credit may be presented with the nominated bank within their business hours (Article 6). If the expiry date or the last day for presentation falls on a day when the bank to which presentation is to be made is closed, for reasons other than force majeure, the expiry date/last day for presentation is extended to the first following banking day (Article 29)

It is advisable that L/C's also state a last shipment date, although this should take into account any extensions of shipment/delivery for which the contract provides. Customarily, there should be 21 days between the last date for shipment and the expiry date, although the parties are free to agree any number of days. In relation to FOB contracts on GAFTA terms it should be remembered that, even if the Extension of Delivery Clause is excluded, it is necessary only that the Buyer’s nominated vessel should present for loading within the delivery period.

**EXTENSION OF SHIPMENT/DELIVERY CLAUSES:**
Extension of Shipment clauses may be incorporated within a credit where the scale of allowances for late shipment is specified. Most GAFTA CIF contracts, for example, contain a clause with an express scale of allowances, which will apply automatically when the Seller invokes the clause. Some FOB contracts also include a scale. However, there are other extension clauses (usually carrying charges clauses for FOB contracts) where the carrying charges have to be proven: in these circumstances, of course, the carrying charges will have to be settled outside the terms of the credit.

**FORCE MAJEURE CLAUSES:**
There can be considerable difficulty with the drafting of a L/C if the GAFTA Force Majeure clause is taken into consideration. As the Seller is under no obligation to provide immediate substantiating proof of the force majeure claim, this clause allows for automatic extension of the shipment period, if invoked. Logically, therefore, there should be an automatic extension of the letters of credit to match. There is no obligation on a seller to ship goods if the letter of credit is not in order, and therefore parties are advised to cooperate very closely on this issue, or to issue their l/c's with provision for these clauses, or to deal with the potential problems somehow in their contract.

**CHARGES:**
All the banks in a transaction will charge fees for the issuing, advising, confirming and amending the L/C and separate fees for the negotiation of the documents and the reimbursement of the payment. On a per document basis, banks also charge for discrepant documents presented under the credit. The level of those fees will be subject to agreements between the banks and their customers and will be related to the level of service provided. The L/C should stipulate which types of charges are payable by whom. If the L/C is not specific with regard to commissions/charges, the applicant (Buyer) will be deemed responsible for all the commissions/charges of all the banks involved. To avoid dispute, it is recommended that the parties agree in their contract how the fees will be divided.

For the sake of comparison, it is suggested that the parties should consider how bank fees are apportioned in CAD ("cash against documents") transactions: the Seller is obliged to present documents to a location (usually
bearing the fees of presentation but not those of the Buyer’s bank) of the Buyer’s choice or an agreed location and the Buyer remits funds to a bank in accordance with the seller’s instructions (usually bearing the fees of the remittance to the country of the currency).

WHEN SHOULD IT BE OPENED?
The UCP provisions do not concern themselves about when a L/C should be opened or what should happen to the contract if the L/C is not opened in time or inadequately. That is a matter of contract and how the parties deal with it is a matter of negotiation between them.

However, it should be borne in mind that the Seller is not obliged to ship goods unless the letter of credit is opened and workable or if he has reasonably objected to any terms in a letter of credit.

A contract often calls for the L/C to be opened by a certain date but the parties should be aware that the L/C is not deemed ‘opened’ until it has been notified by the advising bank to the beneficiary. It is not sufficient, therefore for the opener to just request the opening of the L/C on the given date, or even for the banks to advise each other. It should also be remembered that the L/C should be opened in accordance with the terms of the contract by that given date; if it is not, then the L/C is rejectable and the opener could find himself in no position to make the proper amendments on that day.

The parties may wish to give some consideration to what they want to happen to the contract if the L/C is indeed opened late or inadequately. If there is a date by which the letter of credit should be opened, and it is not, then the Buyer is, as a general rule, in breach of a strict condition of the contract, entitling the Seller to treat the contract as discharged by repudiation and to damages in accordance with the Default Clause. If no date is mentioned, then the L/C must be opened latest on the day prior to the first day of the shipment period (delivery period under an FOB contract), with the same consequences if it is not. In practice, the parties may prefer to find less draconian solutions to late opening: for example, the Seller may wish to include in the contract a provision allowing it to extend the shipment/delivery period (rather than cancel the contract) if a workable L/C is not opened in time. In deciding how long in advance of the shipment/delivery period the contract should require the credit to be opened, parties should bear in mind that unless the contract has annexed to it a full draft of the L/C or its full terms are agreed, e.g. by reference to a previous L/C, differences of opinion can often arise as to whether the credit, as opened, satisfies the requirements of the contract and these differences may take some time to sort out.

AMENDMENTS:
These are dealt with by Article 10. Amendments to L/C’s may be accepted or rejected. The Beneficiary may tell the bank, expressly, whether it accepts or rejects, in which case the beneficiary is bound accordingly. If the beneficiary presents documents that reflect the amendments it is deemed to have accepted those amendments, as from the date of presentation. If the beneficiary presents documents that reflect the original, unamended, credit the amendments are considered not to have been accepted and the terms of the unamended credit apply. In the case of amendments made well in advance of the shipment period, the applicant could find himself in a difficult position if there is no reaction, one way or another, from the beneficiary. It is suggested, therefore, that the contract and the original credit should contain a specific clause requiring amendments to be rejected within, say, seven days; otherwise they are deemed to have been accepted. However, clauses in credits to the effect that amendments are deemed accepted unless specifically rejected within a stated period, are ineffective.

It should also be noted that the Beneficiary may not accept some amendments and reject others if they are all notified on the same list of amendments. The Beneficiary must accept or reject the entire list. If only a part of a list is acceptable, then the parties should agree to issue a new list of those acceptable items in order to include them as amendments.

REVOLVING LETTER OF CREDIT:
If there is a run of shipments under a contract of sale, say for instance 10,000t each month October, November, December, the parties may consider (subject to the terms of the contract) issuing one revolving L/C, which repeats itself for 10,000t in each month, rather than three separate L/Cs or one large one providing for consecutive shipments/deliveries and consecutive drawings at stated intervals over a stated period. An L/C, which repeats itself in this manner, is known as a revolving letter of credit.
Revolving L/C’s may be "cumulative" or "non-cumulative". Under a cumulative revolving L/C, remaining quantities of prior shipments may be made later than originally intended and remain valid under the terms of the credit, whereas in a non-cumulative revolving L/C shipment must be made, within the quantity tolerance, for each installment. The position is the same with single credits providing for consecutive shipments/deliveries and consecutive drawings at stated intervals over a stated period. If any installment is not shipped/delivered the credit ceases to be available for that and any subsequent shipment/delivery (Article 32).

Parties preparing revolving L/C’s should be aware that the issuing bank is committed to effecting payment for all the shipments, and therefore the customer’s credit line will be debited with the total amount of all the shipments.

**RED CLAUSE OR GREEN CLAUSE:**
The parties may agree that the advising bank may provide the Seller with a certain value of the L/C in advance of the payment for the documents, for the account and risk of the issuing bank. This may be done against some form of security such as warehouse receipts ("covered red clause") or without security ("clean red clause"). The issuing bank will deduct this advance, augmented by interest, from the next drawing made under the credit. A L/C, which includes such a provision, is known either as a Red Clause L/C, or alternatively a Green Clause L/C. There is no technical difference between the two terms.

**ADVANCE PAYMENT L/C:**
An advance payment credit is often confused with red clause or green clause L/C, but has a different effect. In this case, the issuing bank allows the advising bank to effect an advance payment, with or without security, but the issuing bank (and consequently the Buyer) is charged for these payments immediately.

**STANDBY LETTERS OF CREDIT:**
A standby letter of credit is a letter of credit with a specified value which may, or may not, be drawn upon in specific circumstances and in specific situations. For example, in some industries it is common for the Buyer to open a standby L/C for demurrage. Another example is a standby letter of credit providing for the payment by one party to the other in the event of non-performance. The document or documents for which the standby credit calls will be matter of agreement between the parties but, typically, may consist of no more than a simple written demand from the beneficiary.

An alternative regime for standby letters of credit is provided by ISP98, also published by the ICC.

A standby L/C performs the same basic function as a guarantee but, unlike under a guarantee, the issuer is not concerned with whether the claim on the guarantee is justified. Where a claim is made under a guarantee an enquiry into the facts has to be undertaken and a view taken as to the merits of the claim. For this reason, banks are reluctant to issue guarantees, properly so called. When doing business with a subsidiary company, the contract counterparty will sometimes require a performance guarantee from the parent company of known substance and credit-worthiness.

**PERFORMANCE BONDS:**
By a performance bond the issuer, who may be a party to the contract, a bank, or another third party (such as the parent company of a subsidiary) undertakings that, under certain conditions, the party in question will pay a certain sum of money or up to a certain sum of money to the party to whom the bond is given. Typically the Seller will first be required to provide a performance bond in respect of its own performance, this in turn triggering the Buyer’s obligation to have the L/C opened. Typically also the performance bond will be payable on first written demand, without proof of non-performance or loss. Thus in most material respects, performance bonds are identical to L/C’s although UCP will not necessarily apply.

**BID BONDS:**
Bid bonds are occasionally required, often by government purchasing agencies. Bid bonds are issued for a sum of money with a trader’s bid for a contract to the agency. Government agencies are often obliged by law to accept the best bid, and bid bonds are designed to protect the agency from irresponsible bids designed to disrupt the market rather than offer contractual performance. Typically, as with performance bonds, the
obligation to pay requires no more than a written demand from the counterparty addressed to the issuer of the bond.

OPTIONAL CLAUSE:
The following is a suggested clause-words in brackets to be used where the contract is FOB -which is available to parties to negotiate and amend appropriately for inclusion in their contract terms:

"Where payment has been agreed by letter of credit, the following terms shall apply unless the parties agree otherwise. Payment to be by a confirmed irrevocable documentary letter of credit issued in favour of Sellers. It shall be in accordance with the ICC Uniform Customs and Practice for Documentary Credits in the latest edition available at the time of the contract, save for any vacation agreed by the parties by this clause or otherwise in this contract. A letter of credit in conformity with this contract shall be opened and advised to Sellers no later than 21 consecutive days prior to the commencement of the shipment (delivery) period. It shall be confirmed through a bank acceptable to Sellers, such acceptance shall not be unreasonably withheld and shall be deemed in any event to have been given unless objection is made by Sellers within 2 business day of advice of the identity of the bank in question. The value and quantity in the letter of credit shall include the tolerance agreed in the contract.

The letter of credit shall be payable at sight for 100% of the invoice value at the counters of the advising (or confirming) bank against the documents specified in the letter of credit. Reimbursement shall be by telegraphic transfer.

The expiry date shall be 21 consecutive days after the last date for shipment (delivery). (Any agreed carrying charges for late delivery in accordance with the Extension of Delivery Clause shall be included within the terms of the letter of credit).

Confirming and/or advising bank's charges, if any, shall be for Seller's account. All other bank charges shall be for Buyers' account.

Failure to comply with the terms of this clause shall entitle Sellers, at their option, to extend the shipment (delivery) period by the period of the delay, or to call a Default."

ELECTRONIC PRESENTATION
eUCP Version 1.1 was published at the same time as UCP 600, as a supplement to it, and is for use in cases where the contract/credit provides for electronic presentation of documents. Electronic presentation is seldom used in the international bulk commodity trades and at present is not suited to them, as relatively few countries have in place the necessary legislation to permit electronic bills of lading.

DISPUTES
It follows from the fact that the letter of credit is a separate contract that, in the event of a dispute with any of the banks involved; the GAFTA Arbitration Clause will not apply. The dispute will have to go to court and English law, whilst it may govern the underlying contract, will not necessarily apply to disputes under the credit.