

FIFTEENTH ANNUAL WILLEM C. VIS (EAST)  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

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HERAT UNIVERSITY OF AFGHANISTAN



MEMORANDUM ON BEHALF OF CLAIMANT

On behalf of

Delicatesy Whole Foods Sp.

14 Capital Boulevard

Equatoriana

CLAIMANT

Against

Comestible Finos Ltd.

75 Martha Stewart Drive

Mediterraneo

RESPONDENT

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Abdul Saboor Akbari, Aziz Ahmad Ahmadi, Mohammad Mabroor, Zabihullah Dae.

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## **Index of Abbreviations**

Arb.	Arbitration
Art /articles	article/ articles
CL.	CLAIMANT
CCS	Code of Conduct for Supplier
CISG	Convention on International Sales of Goods
CEO	Chief Executive Officer
CLOUT	Case Law on UNCITRAL Texts
DDP	Delivered Duty Paid
Ex.	Exhibit
GCPs	Global Compact Principles
GCC	General Conditions of the Contract
HF	Horace Fasttrack
ICC	International Chamber of Commerce
IBA	International Bar Association
No.	Number
PO1	Procedure Order number 1
PO2	Procedure Order number 2
PCA	Permanent Court of Arbitration
Para	Paragraph
P.	Page
Pr.	The Problem
SCC	Special Conditions of the Contract
SCR	Social Corporation Responsibility
UNEP	United Nations Environmental Program
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute on the Unification of Private Law

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USD	United States Dollar
UML	UNCITRAL Model Law
V /vs	Versus

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- 28. Barry Nicholas, Fault and Breach of Contract ..... (71)
- 29. SPAIN: Barcelona Provincial High Court (*Lathe machine case*) 27 January 2010)....(71)
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## **Statement of Facts**

1. Delicatesy Whole Foods Sp (“Delicatesy”), the CLAIMANT, is a medium sized manufacturer of fine bakery products registered in Equatoriana. Delicatesy is a social enterprise and committed to produce sustainably and ethically. It is a member Global Compact. Its philosophy is that only the best ingredients are just good enough for its products.
2. Comistibles Finos Ltd (“Comistibles”), the RESPONDENT, is a gourmet supermarket chain in Mediterraneo.
3. CLAIMANT met the RESPONDENT at the yearly Danubian food fair, Cucina, in March 2014. Annabelle Ming, RESPONDENT’S head of Purchasing, and Kapoor Tsai, CLAIMANT’s head of production discussed that, which products would be in interest of RESPONDENT and where those products would be feasible to supply. They had a general discussion about product choices, delivery quantities, cost versus the benefits of ethical and environmentally sustainable production and their respective experience. CLAIMANT expressed to establish a business arrangement.
4. Shortly after the food fair, CLAIMANT received an invitation to Tender from RESPONDENT for the delivery of chocolates cakes and the Tender Documents. CLAIMANT submitted its Tender on 27 March 2014 and made clear that its offer would be subject to the application of its own General Condition of sales and its code of Conduct.
5. The Contract was awarded to CLAIMANT by 7 April 2014 which RESPONDENT explicitly accepted the changes required by the CLAIMANT to the chocolate cakes and payment conditions and RESPONDENT did not object to the inclusion of CLAIMANT’s Standard Conditions.
6. CLAIMANT made its first delivery on 1 May 2014 in accordance with the contract. There were no problems concerning the deliveries in 2014, 2015 and 2016. On 27 January 2017 CLAIMANT received an email from the RESPONDENT which RESPONDENT demanded that CLAIMANT should confirm that its suppliers all strictly adhered to Global Compact Principles and threatened to terminate the contract if such confirmation not made and added that until the situation had not been cleared no further

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payments would be made and no further deliveries be accepted. RESPONDENT's main reason for this email was the report of a special rapporteur investigating for UNEP the deforestation in Ruritania and the wide spread fraud and corruption in the various agencies set up to protect the remaining rain forest and its biodiversity. The special rapporteur had indicated that probably many certificates certifying sustainable production methods were forged or obtained by bribery. On Monday 23 January 2017, Michelgault, the leading business paper in Equatoriana, reported about the findings of the report and possible consequences thereof.

7. CLAIMANT immediately replied and promised to investigate the issue further and expressed it has confidence that its suppliers would not be party to any fraudulent scheme. CLAIMANT also cleared that it saw no justification for RESPONDENT to stop payments for the chocolate cakes already delivered.
8. CLAIMANT had complied with all its obligation under the contract including its best efforts to ensure that its suppliers complied with the Global Compact Principles which had been certified annually.
9. Unfortunately, during further investigations it turned out that its suppliers, Ruritania Peoples Cocoa mbH, was involved in the scandal. It had breached its contractual obligations towards CLAIMANT to comply with the best practices of sustainable production in its Cocoa production.
10. It had provided CLAIMANT with forged official papers certifying such production while at least part of the beans came from farms illegally set up in protected areas after the deforestation of such areas. CLAIMANT was shocked and immediately terminated the contract with Ruritania Peoples Cocoa mbH.
11. RESPONDENT flatly rejected such an offer and terminated the contract and threatened to bring an action for damages and it had been already sold all Chocolate cakes delivered.
12. The dispute has to be decided by arbitration in accordance with the UNCITRAL Arbitration Rules by three Arbitrators. CLAIMANT appointed Mr. Rodrigo Prasad to act as its arbitrator.



## **Summary of Arguments**

**The arbitral tribunal does not have authority to decide on the challenge of Mr. Prasad.**

13. And even if it does so, Mr. Prasad should participate in the proceedings. Mr. Prasad was appointed as an arbitrator by the Claimant, and since appointing arbitrator in each arbitration is right of a party according to the International Arbitration Rules, regulations and also under the contracts in the case of settlement of a dispute.

**If the Arbitral Tribunal has authority to decide on the challenge of Mr. Prasad, Mr. Prasad should not be removed from the arbitral tribunal.**

14. Since in the present case, there are not justifiable doubts as to the impartiality and independence of Mr. Prasad, therefore by no means should Mr. Prasad be removed from the arbitral tribunal. Also its right of Mr. Prasad to act as an arbitrator because no one should be deprived from performing his duties and entitling his rights, unless by justifiable reasons, which are not occurred in the current case.

**CLAIMANT'S General Conditions of sale and general code of conduct for suppliers govern the contract.**

15. According to last shot doctrine and knock out doctrine. Since in the current case, RESPONDENT and CLAIMANT entered into a contract, by a counter offer of CLAIMANT, not by the former offer of RESPONDENT, therefore since the later offer (counter offer of CLAIMANT) contains the application of standard conditions of CLAIMANT. And as it is cleared in the Case, CLAIMANT'S Standard Conditions are the General Conditions of contract and General Code of Conduct of the CLAIMANT.

**CLAIMANT has delivered conforming goods according to article 35 of CISG and performed its obligations in the contract.**

16. CLAIMANT has delivered conforming goods according to article 35 of CISG and performed its obligations in the contract and hired its best efforts to ensure that its suppliers all adhere to the Global Compact Principles. In the current case, the chocolate cakes which were delivered by CLAIMANT were completely the same as mentioned in

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the contract. And also in the present case, CLAIMANT did not guarantee about the compliance of its suppliers. Therefore the chocolate cakes are in conformity with the contract and the unsustainable farming of cocoa by Ruritania cannot be attributed to the CLAIMANT. And there is not any obligation of Result in the case to be performed.

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## Arguments

### **ISSUE A: THE ARBITRAL TRIBUNAL DOES NOT HAVE THE AUTHORITY TO DECIDE UPON THE CHALLENGE RAISED BY RESPONDENT, AND IF IT DID, IT SHOULD DO SO WITH THE INCLUSION OF MR. PRASAD**

#### **A: UNCITRAL ARBITRATION RULES, ART. 13(4) IS APPLICABLE.**

##### ***1: CLAIMANT did not agree to the exclusion of Art. 13(4) of the UNCITRAL Arbitration Rules***

17. Art. 13(4) of the UNCITRAL Arbitration Rules contains time period in which the challenging party should seek a decision on the challenge by Appointing Authority. If Art. 13(4) was to be excluded, that should have been clearly expressed by RESPONDENT which it has not been done so.
18. CLAIMANT did not explicitly agree to the exclusion of Art 13(4) UNCITRAL Arbitration Rules. CLAIMANT did not want to exclude institutional involvement as it had suffered a bad experience in the constitution of the Arbitral Tribunal in an ad hoc arbitration which consumed too much time and gave fruitless results. [P. 41, EX. R5, Para 5].
19. After RESPONDENT's assurance that no such problems would occur, however, CLAIMANT came to agree to the arbitration clause put forth by RESPONDENT. [P. 8, EX. C1, Para 5]

##### ***II: The Secretary-General of the PCA may designate - Upon a Party's Request - the Appointing Authority.***

20. Art 6 of the UNCITRAL Arbitration Rules, indicates as the Parties did not agree on the appointing authority, The Secretary-General of the PCA may designate upon a party's request the Appointing Authority to decide on the challenge.
21. According to Art. 13(1)(2) and (3) of the UNCITRAL Arbitration Rules a party that wants to challenge an arbitrator must abide these steps, "A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator (UNCITRAL Arbitration Rules Art. 13(2))"
22. "The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge (UNCITRAL Arbitration Rules Art. 13(2))"

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23. “When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge (UNCITRAL Arbitration Rules Art. 13(2).”
24. Whenever these steps applied by a party to make a challenge, the parties do not agree to the challenge or challenged arbitrator does not withdraw, on that case according to Art. 13(4) of the UNCITRAL Arbitration Rules the challenging party may elect to pursue it and within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority. (UNCITRAL Arbitration Rules Art. 13(2))
25. In the present case while the parties have not agreed to the choice of an appointing authority and they have not expressly excluded Art 13(4) of the UNCITRAL Arbitration Rules mentioned above RESPONDENT should seek a decision on the challenge by appointing authority which it has not done and insists to pursue the challenge by two other members of the Arbitral Tribunal to decide upon. (The Problem [Notice of Challenge of Mr. Prasad, P. 39, Para 8.
26. In some cases, the parties may have failed to expressly designate an appointing authority, but adopted a rule that provides a mechanism for such appointing. This is the case of the UNCITRAL Rules after its 2010 revision. Where an appointing authority is required, the parties must apply to the Secretary-General of the Permanent Court of Arbitration (PCA), who will then designate the appointing authority (as the case may be, an individual or an institution) (International Arbitration in Brazil: An Introductory Practitioner’s Guide (Backsmann, Carreteiro, Freitas de Souza, et al.; Jan 2016).
27. PCA's Secretary-General has the important role of designating appointing authorities under the UNCITRAL Arbitration Rules (Article 6) where the parties have failed to choose such an appointing authority by agreement. (The Freshfields Guide to Arbitration Clauses in International Contracts (Third Edition) (Paulsson, Rawding and Reed (Eds); Jan 2010)

**B: Mr. Prasad should be the part of the arbitral tribunal’s decision on the challenge.**

28. Danubia, Mediterraneo and Equatoriana are all countries that have enacted the Model Law Acknowledged that the functions listed the Model Law shall be performed by the Supreme Court (The Problem [PO2, P. 55, Para 47] According to art 13(2) and (3) and

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16(2) and (3) of the UNCITRAL Model Law when a challenge is made by a party if the other party agrees on the challenge and challenged arbitrator withdraws from his office or the party does not agree to the challenge and the challenged arbitrator does not withdraw from his office the challenging party may request the court or other authority to decide on the challenge when such request is not made the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

29. “Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award (UNCITRAL Model Law Art. 16(3)).
30. The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award (UNCITRAL Model Law Art. 13(2)). RESPONDENT has not applied these steps and insisted that “the only body to decide the challenge is Arbitral Tribunal (The Problem [Notice of Challenge of Mr. Prasad, P. 39, Para 8].”
31. According to Paulsson and Bosman’s view the challenged arbitrator should not be removed from the deliberations and decisions of the arbitral tribunal in the challenge where The Commission confirmed the five Working Group's decision not to exclude a challenged arbitrator (ICCA International Handbook on Commercial Arbitration (Paulsson and Bosman (eds); Jan 1984).
32. Arbitral Tribunal is consist of three arbitrators. The parties have included on their dispute resolution clause that the number of arbitrators will be three. “The number of arbitrators

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shall be three, one to be appointed by each party and the presiding arbitrator to be appointed by the party-appointed arbitrators or by agreement of the parties. [P. 6, Clause 20: Dispute Resolution])

**1: CLAIMANT appointed Mr. Prasad to act as an arbitrator in accordance with the UNCITRAL Arbitration Rules and UNCITRAL Model Law.**

33. According to Article 9 of the UNCITRAL Arbitration Rules and Art. 11(3) (a) of the UNCITRAL Model Law every party shall appoint an arbitrator of three arbitrators.” If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
34. “In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator (UNCITRAL Model Law Art. 11(3) (a) CLAIMANT appointed Mr. Prasad to act as an arbitrator in its arbitration. Appointing of arbitrator is right of each party and Appointment of Mr. Prasad is legally. Mr. Prasad has been appointed by CLAIMANT under the articles 11 of UNCITRAL Model Law and Article 9 of UNCITRAL Arbitration Rules and CLAIMANT appointed him as an
35. arbitrator to decide in the arbitration. Composition of arbitral tribunal is consist of three arbitrators under the UNCITRAL Model Law and according it two arbitrators cannot decide on the challenge without participation of Mr. Prasad as bellow:
36. Article 10 of UNCITRAL Model Law states as The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three. In the case as the parties agreed on the dispute has to be decided by arbitration in accordance with the UNCITRAL Arbitration Rules by three Arbitrators.
  - a. The number of arbitrators shall be three, one to be appointed by each party and the presiding arbitrator to be appointed by the party-appointed arbitrators or by agreement of the Parties. (CLAIMANT, EX 11, pa 6)

**ISSUE B: MR PRASAD HAS DONE ALL HIS OBLIGATIONS AND SHOULD NOT BE REMOVED FROM THE ARBITRAL TRIBUNAL**

37. 34. IBA Guidelines for Arbitrators, and UNCITRAL Arbitration Rules provide some crucial regulations for arbitrators to be suitable in the case of performing his duties as an arbitrator. In the present case CLAIMANT respectfully submits that (A) its chosen arbitrator Mr. Prasad is suitable for acting as an arbitrator, since (I) he has performed his obligations as a qualified arbitrator, and (II) there is not any justifiable doubts as to his impartiality and independence. And (B) Mr. Prasad is entitled to act as an arbitrator on behalf of the CLAIMANT, since (I) IBA guidelines are not applicable in this case or at least the circumstances of this case are not the same as what IBA has foresaw in its Guideline, and (II) Mr. Prasad will not withdraw from his office and by no means CLAIMANT will accept the challenge of Mr. Prasad.

**A: MR PRASAD IS SUITABLE TO ACT AS AN ARBITRATOR IN THIS ARBITRATION AND HE IS INDEPENDENT AND IMPARTIAL.**

38. Mr. Prasad has all the qualifications of a suitable arbitrator since (I) he has done all his duties under IBA guidelines, and UNCITRAL Arbitration Rules, and (II) there are not any justifiable doubts as to his impartiality and independence.

**1: MR. PRASAD HAS DONE ALL HIS OBLIGATIONS WHICH HE WAS UNDER DUTY TO PERFORM DUE TO THE PRESENT CONTRACT, UNCITRAL RULES AND IBA GUIDELINES.**

39. Mr. Prasad disclosed about his past and present profession, business and other relationships with the parties and other relevant circumstances according the provisions of UNCITRAL arbitration rules and Model law to be impartial and independent (Article 11 of the UNCITRAL Arbitration Rules and Art 12(1) UNCITRAL Model Law) Mr. Prasad has declared his impartiality and independence, [CLAIMANT Ex C11, page 23]. Pursuant to Article 11 of the UNCITRAL Arbitration Rules he discloses the below listed circumstances of (a) his past and present profession, business and other relationships with the parties and (b) any other relevant circumstances.

40. Article 12(2) imposes a substantive standard of impartiality and independence, which all members of the arbitral tribunal must satisfy and which provides a basis for challenging

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an arbitrator or objecting to a proposed arbitrator. As discussed below, it is clear that the standard of impartiality and independence under Article 12(2) is an objective one (requiring “justifiable” doubts) and that the standard does not require proof of a certainty or likelihood of partiality or dependence (instead requiring only justifiable “doubts”).(GARY B< BORN VOLUME2)

41. As article 12 (1) UNCITRAL Model Law states. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
42. Article 11 UNCITRAL Arbitration Rules states as: When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.
43. According to IBA guidelines, impartiality of an arbitrator raises justifiable doubts when the arbitrator has a direct relationship and connection to the party which appoints the arbitrator (The problem, page 43 para 3) In according to D. Caron & L.Caplan, In general, impartiality means that an arbitrator will not favor one party more than another, while independence requires that the arbitrator remain free from the control of either party D. Caron & L. Caplan, The UNCITRAL Arbitration Rules: A Commentary 213 (2d ed. 2013). In this case Mr. Prasad does not favor one party and he is not under any party’s control.
44. Although he has been appointed as arbitrator by the law firm of Mr. Fasttrack twice over the past two years but both cases are completed by now and Mr. Fasttrack has not been involved in either of them and in no way those circumstances affect on his independence and impartiality ((Claimant Exhibit C11) page 23). And in the present case Mr. Prasad



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does not have any direct relationship with the Delecatesy Wholefoods Sp, and Mr. Fasttrack, the

45. Advocate of CLAIMANT was not involved with the former cases that Mr. Prasad was acting as an Arbitrator. When the relationship of an arbitrator is directly with the party, that arbitrator shall disclose all relevant information unless such a relationship, that arbitrator is not under duty to disclose the information. (The Problem, (Claimant Exhibit C11) page 23)

### **II: RESPONDENT fails to submit justifiable doubt as to Mr. Prasad's impartiality and independent.**

46. As per article 12(1) of the UNCITRAL Arbitration Rules, no circumstances exist that give rise to justifiable doubts as to the Mr. Prasad's impartiality or independence. Article 12 of the UNCITRAL Arbitration Rules states, any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
47. For supporting my client I have another similar case which was in Suez in 2009 between Barcelona S.A and The Argentine Republic and Suez in that case the arbitral tribunal reject the claim of respondent to disqualify the arbitrator because the respondent doubts were not justifiable. (General de Aguas de Barcelona S.A., and InterAguas Services Integrals Del Agua S.A. v. The Argentine Republic and Suez 12 May 2008 Headnotes the ICSID Tribunal rejects Argentina's second proposal to disqualify Professor Gabrielle Kaufman\_ Kohler as a member of the Tribunal.)
48. RESPONDENT's claim on challenge of Mr. Prasad is unjustifiable, because when CLAIMANT appointed him as arbitrator RESPONDENT did not object on his appointment. In line with the arbitration agreement, CLAIMANT appointed Mr. Rodrigo Prasad as its arbitrator. His declaration of Impartiality and Independence and Availability was enclosed to Notice of Arbitration [Claimant's Exhibit C 11],[ legal evaluation page (6) of the case] (page 23).
49. RESPONDENT is Not Entitled to invoke any other Factors. The other factors RESPONDENT relies upon are irrelevant. There were mostly disclosed by Mr. Prasad in his Declaration of Impartiality and Independence and Availability as well as available on

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his website. If RESPONDENT did not invoke them at the time, it is not entitled to do so now. (Procedure N2 ,14)

50. Mr. Prasad acting as an arbitrator in two cases in past which has finished and were funded by subsidiaries of Findfunds, is not relevant for the question of his impartiality or independence and such disclosure is only made for the utmost caution and in the interest of full transparency. (pg36 pa4)
51. In addition, the fact that circumstances should be disclosed does not mean automatically that they justify a challenge. In one of the two cases, they only signed the funding agreement after he had been appointed. Consequently, his involvement in the other two cases would not give rise to justifiable doubts even if one were to equate Findfunds with its subsidiaries. (p 43, pa 3)

### **B: MR PRASAD SHOULD NOT BE REMOVED FROM ARBITRAL TRIBUNAL.**

52. Appointment of arbitrator is right of each party and appointing of Mr. Prasad is legally. Mr. Prasad has been appointed by CLAIMANT under the articles 11 of UNCITRAL Model Law and Article 9 of UNCITRAL Arbitration Rules. Composition of arbitral tribunal is consist of three arbitrators under the UNCITRAL Model Law and according it two arbitrators cannot decide on the challenge without participation of Mr. Prasad as below: Article 10 of UNCITRAL Model Law states as (1) the parties are free to determine the number of arbitrators. (2) Failing such determination, the number of arbitrators shall be three. Article II of the Geneva Protocol provided that “the constitution of the arbitral tribunal shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.”
53. Article II of the Geneva Protocol provided that “the constitution of the arbitral tribunal shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.”( GARY B< BORN VOLUME2) In the case as the parties agreed on: The dispute has to be decided by arbitration in accordance with the UNCITRAL Arbitration Rules by three Arbitrators.
- a. The number of arbitrators shall be three, one to be appointed by each party and the presiding arbitrator to be appointed by the party-appointed arbitrators or by agreement of the Parties. (CLAIM EX 11, pa 6)

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- i. IBA Guidelines are not applicable, even if they were, existing circumstances in this case do not comply with the IBA and cannot lead to justifiable doubts to remove Mr. Prasad. In the present case, parties did not agree upon the application of IBA and can't be applicable and there is not any legal obligation for claimant to disclose under applicable laws. There is no legal obligation for CLAIMANT under the applicable arbitration law, i.e. Danubian Law, or the applicable arbitration rules, i.e. the UNCITRAL Arbitration Rules, to make any disclosure. Consequently, RESPONDENT – unsuccessfully – tries to deduce such an obligation from the IBA-Guidelines on Conflict of Interest. These are, however, not applicable to the present arbitration as Parties have never agreed upon their application (The problem [page.45, para 3])
54. 51. IBA guidelines in this regard stipulate the following provisions: General Standard 2(c) clarifies that: Doubts are justifiable if a reasonable and informed third party would reach the conclusion that there was a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching [his/her] decision.
  55. General Standard 2(d) further clarifies that: Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence if there is an identity between a party and the arbitrator, if the arbitrator is a legal representative of a legal entity that is a party in the arbitration, or if the arbitrator has a significant financial or personal interest in the matter at stake.
  56. General Standard 3(a) provides that an arbitrator has to disclose facts or circumstances that may, 'in the eyes of the parties', give rise to 'doubts' as to the arbitrator's impartiality or independence, a challenge must be based on circumstances that give rise to 'justifiable doubts'. The subjective disclosure standard thus turns into an objective disqualification standard (IBA –Guidelines on Conflict of Interest, para. 2.3.6).
  57. General Standards six (6) IBA Guidelines provides that: When considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists or whether disclosure should be made, the activities of an arbitrator's law firm, if any,

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should be reasonably considered in each individual case. Therefore, the fact that the activities of the arbitrator's firm involve one of the parties shall not automatically constitute a source of such conflict or a reason for disclosure.

58. Similarly, if one of the parties is a legal entity which is a member of a group with which the arbitrator's firm has an involvement, such facts or circumstances should be reasonably considered in each individual case. Therefore, this fact alone shall not automatically constitute a source of a conflict of interest or a reason for disclosure.
59. If one of the parties is a legal entity, the managers, directors and members of a supervisory board of such legal entity and any person having a similar controlling influence on the legal entity shall be considered to be the equivalent of the legal entity.
60. According to Art 13(2) UNCITRAL model law Arbitral Tribunal will decide on the challenge when the arbitrator withdraws from his office or the other party agrees to the challenge. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge (UNCITRAL Model Law art 13(2))
61. Mr. Prasad Explicitly mentioned that he will not withdraw from his office as arbitrator by indicating the as a consequence of the above, and taking into account the importance of the right for each party to choose its own arbitrator, I will not withdraw from my office as arbitrator ( problem page 44 ,last para) And as Mr. Fasttrack insisted, Claimant did NOT agree to the challenge of Mr. Prasad as well in the present case by stating we consider the challenge against Mr. Prasad to be devoid of any merits and therefore do not agree to it ( page 45, last pa).

**ISSUE C: CLAIMANT STANDARD CONDITIONS GOVERN THE CONTRACT**

62. Delicatesy Whole Foods Sp. and Comestible Finos Ltd became part of a contract pursuant to Article 19 of CISG, where the contract was concluded by mere acceptance of the RESPONDENT. The acceptance of respondent contained accepting the General Conditions of Sale of CLAIMANT as it was mentioned in its offer, and with the inclusion of its Code of Conduct. RESPONDENT (A) made itself bound to the contract by explicitly accepting the offer of CLAIMANT, and (B) accepted the application of CLAIMANT's General Standards without objecting to them.

**A: RESPONDENT IS BOUND TO THE CONTRACT WHICH WAS CONCLUDED BY ITS OWN MERE ACCEPTANCE.**

The contract was concluded by the explicit acceptance of CLAIMANT's offer by RESPONDENT, without making any objection.

**I. RESPONDENT MADE ITSELF BOUND TO THE CONTRACT AND ACCEPTED ALL CIRCUMSTANCES OF THE CONTRACT**

63. According to Article 19 when the acceptance of a party had modifications, additions or limitations, constitutes a rejection of the offer and is a counter offer (CISG article 19) the modifications can be the way of payment, price, quality and quantity difference (UNIDROIT article 2.1.11) and according to CISG article 23 a contract is concluded when an acceptance to a binding offer becomes effective. And also consent to an offer either by statement or by any conduct that shows assent, constitutes acceptance (Article 18 CISG) CLAIMANT made a binding offer in the case of producing Chocolate Cake to RESPONDENT pursuant to article 14 of CISG, by sending its tender on 27 of January 2014. (CLAIMANT Exhibit C3) And RESPONDENT accepted the offer explicitly and without any objection. (CLAIMANT Exhibit C3) Furthermore, this contract has been stable for about three years without any problem that shows the conduct of RESPONDENT that accepted the conclusion of contract as an offeree (p. 5 paragraph 6) As far as RESPONDENT accepted CLAIMANT's offer without objection and moreover, has conducted in accordance with the contract for three years, there no doubt would be left that RESPONDENT is bound to the contract.

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64. Hence RESPONDENT is bound to the contract and the acceptance itself made to the offer of CLAIMANT and conducting in the three previous years in the light of that agreement. (The problem page 5 paragraph 6)

### **II: RESPNDENT CANNOT CLAIM THAT IT WAS NOT AWARE OF THE INTENT OF CLAIMANT IN THE CASE OF APPLICATION ITS GENERAL CONDITIONS**

65. Article 8 paragraphs 1,2 and 3 of CISG indicate how the intent of a party be interpreted, this article emphasizes on the statement made and the conduct of the party, to be in mind in determining the intent of a party in making statement. And the common intention of the parties always prevail as is indicated in the UNIDROIT, the common intention of the parties in choosing their standard conditions is to be applicable. (UNIDROIT principles article 4.1 comment 1 page 136) And also this notion was ordered by Bombay high court. (Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc. and Ors, Supreme Court of India, 28 September 2012).

66. In the present case, RESPONDENT by no means could be unaware from the intent of CLAIMANT's statement in the inclusion of its General Conditions of Sale. CLAIMANT clearly mentioned that its offer is subject to its own General Conditions of Sale and its own Code of Conduct (Claimant Exhibit C4). And furthermore RESPONDENT had downloaded and studied CLAIMANT's Code of Conduct out of curiosity (Claimant Exhibit C5). So by no means can RESPONDENT allege in not being aware from the intent of CLAIMANT in its statements of offer.

### **B: GENERAL CONDITIONS OF SALE OF CLAIMANT AND ITS CODE OF CONDUCT WERE AGREED TO GOVERN THE CONTRACT**

67. 60. RESPONDENT and CLAIMANT both suggested that there General standards to be applicable in the present case, but CLAIMANT in its tender which resulted in conclusion of the contract clearly stated that the contract would be subject to application of its own general standards, so according to last shot doctrine, CLAIMANT general standards govern the contract, and RESPONDENT cannot claim that it was not aware from the intention of CLAIMANT.

**I: GENERAL STANDARDS OF SALE OF CLAIMANT PREVAIL ACCORDING TO LAST SHOT DOCTRINE**

68. According to UNIDROIT principles, when one or both parties use standard terms, the general rules on formation applies (UNIDROIT principles, 2.1.19). When both parties have their own general standards and allege to set their standards, a battle of forms happens (UNIDROIT article 2.1.22). Where a battle of forms occurs, according to the last shot doctrine, the standards which were last sent, will be applicable (UNIDROIT article 2.1.22, comment 2 page 72). Some national courts have used the last shot doctrine to resolve cases involving the battle of the forms.
69. According to this approach, courts interpret an action or performance by one of the parties as an indication of assent to additional terms. The last shot doctrine can be seen as evolving from rules of offer and acceptance, with each new offer being a counter-offer until the last one is accepted when one party indicates assent by performance or other conduct (The Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence Larry A. DiMatteo, Lucien Dhooge, Stephanie Greene, Virginia Maurer and Marisa Pagnattaro) In such conditions, a well solution is to use from second shot rule (last shot doctrine) (*See Maria del Pilar Perales Viscasillas, Battle of the Forms and the Burden of Proof; An Analysis of BGH 9 January 2002*, vol 6, no. 2 Vindobona J. of Int'l Comm. L. & Arb. 217-28 (2002), available at<<http://cisgw3.law.pace.edu/cisg/biblio/perales2.html>>).
70. In this case RESPONDENT clearly and explicitly accepted the offer of CLAIMANT without any amendments or any objection, while its offer contained the application of its own General Conditions of Sale and its Code of Conduct, and never has had objected to the inclusion of CLAIMANT's standard conditions (page 5 paragraph 5). And RESPONDENT awarded the contract to CLAIMANT after receiving the tender of CLAIMANT and its conditions and amendments (Claimant Exhibit C5).

**II: ACCORDING TO KNOCK OUT DOCTRINE ALSO CLAIMANT GENERAL CONDITIONS ARE APPLICABLE**

71. When a party automatically sends its general standards with its offer or counter offer, and the other party accepts it without objection, it is considered that the contract is concluded by the agreed standard conditions which are called the Knock out doctrine (UNIDROIT article 2.1.22). If an expression of acceptance contains terms that are additional to or

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different from those in the offer, the conflicting terms in both of the offer and acceptance are knocked out of the contract by the last offer and acceptance. (Quimbi University of law).

72. There are many cases that used from this doctrine in this notion (Pilar Perales Viscasillas, Battle of the Forms under the 1980 United Nations Convention on Contracts for the
73. International Sale of Goods: A Comparison with Section 2-207 UCC and the UNIDROIT Principles. Pace International Law Review, 1998, vol. 10, no. 1, pp. 97-155.). Two cases decided by the German courts applied the knock out rule. In a case involving the sale of knitwear by an Italian seller to a German buyer (*See Amtsgericht [Petty Court] [AG] Kehl 3 C 925/93, Oct. 6, 1995 (F.R.G.), available at*<http://cisgw3.law.pace.edu/cases/951006g1.html>) [English translation by Gerd A. Zimmermann, translation edited by Ruth M. Janal]). In the case on the hand,
74. CLAIMANT indicated in its counter offer for RESPONDENT that the contract will be subject to application of its own general standards (*See Amtsgericht [Petty Court] [AG] Kehl 3 C 925/93, Oct. 6, 1995 (F.R.G.), available at*<http://cisgw3.law.pace.edu/cases/951006g1.html>) [English translation by Gerd A. Zimmermann, translation edited by Ruth M. Janal]). And RESPONDENT did not object to this and awarded the contract to CLAIMANT. (The problem, Claimant exhibit c5 page 17).

### III: MIRROR IMAGE RULE ALSO FAVORS CLAIMANT IN THIS CASE

75. In the law of contracts, the mirror image rule, also referred to as an unequivocal and absolute acceptance requirement, states that an offer must be accepted exactly with no modifications. The offeror is the master of one's own offer. An attempt to accept the offer on different terms instead creates a counter-offer, and this constitutes a rejection of the original offer (Expressed by supreme court of Australia, *Masters v Cameron* (1954) 91 CLR 353.) The principle according which the acceptance must be the mirror image of the offer, implies that even unimportant differences between the offer and acceptance permit either party at a later stage to question the existence of the contract. (UNIDROIT article 2.1.11 page 51 comment 2)
76. In this case it is obvious that CLAIMANT in its tender changed some provisions and at the time of tendering explicitly added its own standard conditions of sale to the contract



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and RESPONDENT accepted, awarded the contract and furthermore did not object to inclusion of CLAIMANT's standard conditions, which contain its general conditions of sale and its code of conduct, (The problem, PO2, page 55, para 45) and the contract therefore concluded after RESPONDENT's assent to CLAIMANT's offer and tender

77. (The problem, Claimant Exhibit C5) And also in some cases in England happened that were subject to the mirror image rule (Gibson v Manchester City Council [1979] UKHL 6 and , Hyde v Wrench [1840] EWHC Ch J90 and Butler Machine Tool Co Ltd v Excello Cpn (England) Ltd 1979 1 WLR 401). Therefore according to the mirror image rule, RESPONDENT as an offeree accepted the standard conditions of CLAIMANT that contains its general conditions of sale and its code of conduct.

### **ISSUE D: SINCE THE GOODS DELIVERED BY CLAIMANT ARE IN CONFORMITY WITH THE CONTRACT AND CISG, CLAIMANT IS ENTITLED TO ITS FULL PURCHASE PRICE AND COMPENSATION FOR THE ILLEGALLY TERMINATION OF CONTRACT BY RESPONDENT**

78. *Pacta Sunt Servanda* (UNIDROIT principles, article 1.3, page 10) Principle, CISG and UNIDROIT Principles on International Commercial Contracts oblige each party to fulfill its duties and obligations toward another party in a contract and furthermore CISG and UNIDROIT principles provide rules and regulations for contracting parties in the field of concluding, terminating and avoiding a contract that parties to an International commercial contract shall adhere. In the present case, (A) the delivered goods by CLAIMANT are in conformity with the contract and CISG and CLAIMANT has fulfilled all its contractual obligations toward RESPONDENT (1) according to the requirements of the contract and CISG rules,(II) CLAIMANT had an obligation of performing best efforts and did not fail to do so.

79. In contrary, (B) RESPONDENT had illegally terminated the contract therefore it is obliged to retrieve the contract, by this means RESPONDENT is under obligation (I) to pay CLAIMANT's full purchase price and the unpaid money moreover pay compensation for the illegally termination of the contract and unjustifiable avoidance, and furthermore RESPONDENT is obliged (II) to pay the fees of arbitration.

**A: CLAIMANT DELIVERED CONFORMING GOODS AND ALSO CLAIMANT HAS FULFILLED ALL ITS OBLIGATIONS TOWARD RESPONDENT, UNDER REQUIREMENTS OF THE CONTRACT AND CISG**

80. CLAIMANT has fulfilled all its obligations including delivering conforming goods to RESPONDENT, by the virtue of the contract requirements and CISG, even if the general conditions of RESPONDENT were to govern the contract.

**I: Chocolate cakes delivered by CLAIMANT are in conformity with the contract requirements and CISG rules.**

81. Article 35 (1) in the case of conformity of the goods obliges parties to provide goods pursuant to the contractual agreement in the same quality, quantity and package. Conformity of the goods in the light of CISG article 35 has a notion of physically conforming, and this article indicates the conformity of the products not the process of the production (Barry Nicholas, *Fault and Breach of Contract* page 26 para 7). This notion of the conformity of the goods is accepted also by well-known doctrine of international commercial law such as Ernst Wilston and professor Honnold (Uniform Sales Act 12; Williston, *What Constitutes an Express Warranty In the Law of Sales*, 21 Harv. L. Rev. 555 (1908); 1 *Williston, Sales* 194201. Under UCC 2313, ) And there are not any case that pays weight to a claim in the case of non-conformity through a production process while the products are the same as the contractual agreement (SPAIN: Barcelona Provincial High Court (*Lathe machine case*) 27 January 2010).

82. In the present case, CLAIMANT has delivered the goods completely in accordance with the contract by the quantity, quality and package, even the RESPONENT had seen the sample of the cake before (Claimant Exhibit C3 page 15), and has resold them for three years. (The Problem, page 5 para 6) Therefore RESPONDENT cannot claim nonconforming of the goods under the contract.

83. Even if the characteristics of goods were not clear between the parties, article 35(2) applies and favors CLAIMANT. Article 35(2 a) confirms the conformity of the goods, if the goods be fit for the purpose that the same described good be used for that purpose. If a delivered good, can meet the requirements that are ordinary expected from such good to meet, that good is considered conform good, such as in case between a Swiss seller and a German buyer in the case of purchasing New Zealand mussels (See BGH 8 March 1995

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affirming OLG Frankfurt, 20 April 1996.). Article 35 (2 c) confirms such conformity; if the delivered goods are the same as the sample or model that buyer had seen. According to the facts of the Problem, CLAIMANT has delivered the chocolate cakes the same as the sample that RESPONDENT had seen in Cucina. (CLAIMANT Exhibit C3 page 15).

84. RESPONDENT has lost its right to object on the chocolate cakes non-conforming. Even if there had been any non-conformity in the goods delivered by CLAIMANT, in any event the buyer loses the right to rely on a lack of conformity of the goods, if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed (CISG article 39 (2))
85. And also as a court in Germany stated difference in quantity, quality and contractual requirements can only be regarded as non-conforming under article 35 CISG, if the defects reach a certain level of seriousness that amount to a fundamental breach (Oberlandisgreicht Dssenderf, Germany 21 April 2004 available at <http://cisgw3.law.pace.edu/cases/040421g2.html>). In the present case RESPONDENT received the same goods for more than three years without any objection by itself (The Problem page 5 para 6) or any claim by its customers. (PO2. Page 54, para 38)

### **II: CLAIMANT performed all its obligations under the contract and under section two of the CISG, and noncompliance of Ruritania Cacao mbH with the Global Compact Principles cannot be attributed to the CLAIMANT**

86. General Conditions of Sale and General Code of Conduct of CLAIMANT that govern the contract and even the General Condition of RESPONDENT oblige CLAIMANT to comply with the ethical standards and Global Compact Principles and to do its best efforts to ensure that its suppliers are doing so.
87. As the present case was concluded according to article 19 CISG and also according to the Last Shot doctrine, General Conditions of Sale and Code of Conduct of CLAIMANT govern the Contract, and the General Conditions of Sale and Code of Conduct for Suppliers of CLAIMANT provide an obligation of best efforts regarding to the conduct of suppliers, CLAIMANT is merely under a duty to do its best efforts to ensure that Ruritania Cacao mbH comply with the Global Compact Principles.
88. Even in a case that RESPONDENT's General Conditions were applicable, it merely oblige CLAIMANT to perform its best efforts to guarantee that its suppliers all adhere to

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the Global Compact Principles. And by no means had CLAIMANT agreed to guarantee this issue (The Problem page 7 paragraph 21.) .Therefore CLAIMANT was under an Obligation of doing best efforts, and it did not fail in this case.

89. According to UNIDROIT principles a party which is under a duty to do its best efforts, that party is bound to do its best efforts as it would may be done by a reasonable person at the same kind in the same circumstances. (UNIDROIT principles, article 15.1.4) And when a party does so, it is deemed to have done its duty and performed its obligation. Journal of Contracts Requiring "Best Efforts" and "Commercially Reasonable Efforts (Will Taylor, Laurens Wilkes, Joshua Fuchs, Basheer Ghorayeb, and Roy Powell –May 27, 2015)
90. In the present case CLAIMANT had performed its obligations since Claimant had established a practice of looking every five years at the clauses used in its model contract and evaluate their suitability in light of practical experiences with the clause over the last five years (PO2 page 51 para 19). And had monitored the assistance compliance of Ruritania Cacao Peoples mbH documentations, as was witnessed by Anabelle Ming herself (Claimant Exhibit C8 page 20). And also CLAIMANT established the Egimus AG which is specialized in providing expert opinions on Global Compact Principles compliance to investigate if the Ruritania Peoples Cacao mbH is involved with any scandal scheme. (Journal of Contracts Requiring "Best Efforts" and "Commercially Reasonable Efforts" by: Will Taylor, Laurens Wilkes, Joshua Fuchs, Basheer Ghorayeb, and Roy Powell –May 27, 2015) Therefore, CLAIMANT did no fail to perform its obligations.
91. CISG rules exempt a party from liability if it proves that the failure to perform his obligation is due to an impediment beyond its control, and that party reasonably could not be expected to take that impediment into account (CISG article 79). In the present case the unsustainably farming of cacao does not constitute a breach of contract by CLAIMANT, since CLAIMANT could not be expected to not rely on the certificates rendered by Peoples Cacao mbH to it. Ruritania Peoples Cacao mbH provided for CLAIMANT forged official papers certifying such production to be legal. (The Problem page 5 para 9) Since the exemption in the article 79 CISG is valid until the existence of such impediment, (CISG article 79(3) CLAIMANT terminated immediately the contract

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with the Ruritania Peoples Cacao mbH after being aware of that covered impediment.  
(The Problem, page 5 para 9)

### **B: RESPONDENT ILLEGALLY TERMINATED THE CONTRACT AND THEREFORE IS UNDER OBLIGATION TO PAY THE FULL PURCHASE PRICE AND SHOULD COMPENSATE CLAIMANT, AND MOREOVER SHOULD PAY THE ARBITRATION COSTS**

92. In international commercial law contract requires that as the contract is only concluded by the mere agreement of the parties, therefore parties can only modify or terminate the contract with the agreement of both parties, one party cannot basically terminate the contract individually.

### **I: RESPONDENT unilaterally terminated the contract and violated its obligations toward CLAIMANT.**

93. Binding character of the contracts or the *Pacta Sunt Servanda* principle indicates that no contract can be terminated, unless by the agreement of both parties, as the contract cannot be concluded individually and without the agreement of both parties (UNIDROIT principles, article 1.3). And also CISG rules emphasis that a contract only can be modified or terminated by the mere agreement of both parties. (CISG article 29) In the present case, RESPONDENT clearly violated its solemn obligations toward CLAIMANT by illegal and unilateral termination of the contract. (The Problem, page 5 para 11) RESPONDENT neither obtained the consent of CLAIMANT in its termination of the contract, nor should submitted justifiable reasons for its action, therefore RESPONDENT retrieve the contract immediately and its circumstances.

94. RESPONDENT's avoidance of the contract is not justifiable. A party can declare a contract avoided only when the other party fails to deliver goods completely in compliance with the contract that this noncompliance amounts to a fundamental breach of the contract. (CISG article 51(2) and a fundamental breach happens when the actions or omissions of a party deprives another party from what it was entitled or expected to be entitled by the contract. (CISG article 82) The buyer loses the right to avoid the contract when the seller delivers the goods within the fixed time. (CISG article 25)

95. The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution

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of the goods substantially in the condition in which he received them. UNIDROIT principles also indicate this notion broadly. (UNIDROIT article 3.2.15 ) In the present case, RESPONDENT declared the contract avoided while it sold the delivered goods (The Problem, page 5 para 6 and 11) and never was deprived from what it was entitled and even there was not any complain from its customers regarding the goods produced and delivered by CLAIMANT (The problem, PO2 page 54 para 38), and moreover, denied to return the delivered cakes back to the CLAIMANT. (The Problem, page 5, para 11)

### **II: RESPONDENT IS UNDER OBLIGATION TO PAY THE UNPAID MONEY TO CLAIMANT, COMPENSATE IT FOR THE INVALID TERMINATION OF THE CONTRACT AND ALSO PAYS FOR THE ARBITRATION FEES**

96. In each contract the seller, as well as, the buyer has obligations that should perform them. CISG convention has broadly and clearly determined the duties of buyer and seller, one of the most important obligations of (a) the buyer is to pay the price of delivered goods with paying (b) the compensation for the illegally terminating the contract. And also as well-known duty of sentenced party to (c) pay the costs of the tribunal, RESPONDENT should pay the costs of this arbitration.

***RESPONDENT should pay the US\$ 120000 for the chocolate cakes which were delivered but RESPONDENT has not yet made payment for.***

97. Article 53 of CIS obliges the buyer to pay the price for the goods which were delivered. The seller can require the buyer to pay the price of the delivered goods (CISG article 62) when the buyer has received and accepted the goods, Article 62 of the Convention will apply with full force. In the case when the buyer does not pay the price, the seller can resort to article 81, and ask for the recovering the goods (Comment of Excerpt from John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*, 3rd ed. (1999), pages 378-383. Reproduced with permission of the publisher, Kluwer Law International, the Hague) Judges and arbitrators implemented and cited frequently to article 62 for entitling the seller for its goods' price. (Okresny Sud Komarno, Solvakia, 12 March 2009, CLOUT case No. 1020, the journal of law and commerce page 298) And there are numerous decisions citing article 53 by judges and arbitrators as a pure duty of the buyer.

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98. (Some are as follow Oberandesgrericht Saarbruken, Germany 12 may 2010, Internationales Handelsrecht 2010, available on the internet at [www.globalsaleslaw.org/content/api/cisg/urteile/2015.pdf](http://www.globalsaleslaw.org/content/api/cisg/urteile/2015.pdf)) In the case on the hand, CLAIMANT delivered the goods to RESPONDENT, but did not receive the price of its deliveries for about two months (The Problem, page 6, para 16) while RESPONDENT had already sold the goods, and did not recover the goods (The Problem, page 5 para 11), therefore RESPONDENT can claim for the unpaid money at the amount of US\$1,200,000.

1. ***RESPONDENT should pay compensation for the illegally avoidance of the contract.***

99. Article 61 of CISG provides if the buyer fails to perform any of his obligations under the contract or this convention, the seller can claim damages as provided in articles 74 to 77 of this convention (CISG, article 61(1) (b)) As various courts and arbitral tribunals have done it. (The journal of law and commerce, page 294, Lendgrericht Munchen, Germany 18 May 2009 available at [www.globasaleslaw.org/content//api/cisg/urteile/1998.pdf](http://www.globasaleslaw.org/content//api/cisg/urteile/1998.pdf)) First sentence of article 74 CISG states that damages for losses include lost profits as well (CISG article 74), and this notion was broadly awarded by the courts and tribunals (Helsingin hovioikeus, Finland, 26 October 2000. English translation is available at <http://cisgw3.law.pace.edu/case/001026f5.html> , CLOUD case, No 476).

100. In the case on the hand CLAIMANT is entitled to claim for damages incurred by the unjustified termination of the contract by RESPONDENT based on the aforementioned reasons. So RESPONDENT is under obligation to compensate CLAIMANT for the amount of at least US\$2,500,000 audited by CLAIMANT and for the further damages as to CLAIMANT's reputation which will in the arbitration proceedings be clear. (The Problem, page 7 paragraph 23

## **Statement of Relief sought:**

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On the basis of the above CLAIMANT requests the Arbitral Tribunal :

1. To order RESPONDENT to pay the outstanding purchase price in the amount of USD 1,200,000;
2. To declare that the contractual relationship between CLAIMANT and RESPONDENT is governed by CLAIMANT's General Conditions of Sale;
3. To order RESPONDENT to pay damages in the amount of at least USD 2,500,000;
4. To order RESPONDENT to bear the costs of the arbitration.

**Respectfully Submitted,**  
**Abdul Saboor Akbari**  
**Aziz Ahmad Ahmadi**  
**Mohammad Mabroor**  
**Zabihullah Dae**