TWENTY-FIFTH ANNUAL

WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

VIENNA, AUSTRIA – MARCH 2018

MEMORANDUM FOR CLAIMANT

UNIVERSITY OF BAHRAIN

ON BEHALF OF:	AGAINST:
Delicatesy Whole Foods Sp	Comestibles Finos Ltd
39 Marie-Antoine Carême Avenue	75 Martha Stewart Drive
Oceanside	Capital City
Equatoriana	Mediterraneo
-CLAIMANT-	**-RESPONDENT-**

COUNSEL :

EHSAN FATTAH – FERAS AL-ALEM – MOHAMMED ALI SHABAN – SAYED AYMAN ABDULLAH

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LIST OF ABBREVIATIONS:

§(§):	paragraph(s)
A/40/17	Report of the UNCITRAL on the work of its 18th session
Art(t):	Article(s)
cf.:	confer
CISG:	United Nations Convention on the International Sale of Goods, Vienna, 11 April 1980
CISG-AC Op. No.:	CISG Advisory Council Opinion Number
Cl. Ex. No:	CLAIMANT's Exhibit Number
Co:	Company
DAL:	Danubian Arbitration Law
Ed(s):	Editor(s)
Ed:	Edition
GCP	Global Compact Principles
GCP AT. NO.:	Global Compact Principles Assistant Tool Number
GCP. C	Global Compact Principles Commentary

i.e:	(that means)
IBA:	International Bar Association
IBA Guidelines:	IBA Guidelines on Conflicts of Interest in International Arbitration (2014)
Ibid:	ibidem (the same)
Ltd:	Limited
Mr:	Mister
Ms:	Miss
No.:	Number(s)
OED	Oxford English Dictionary
p(p).:	pages
Proc.:	Procedural
Proc. Order No.:	Procedural Order Number
Prof.:	Professor
Res. Ex. No.:	RESPONDENT's Exhibit Number
Sec.:	Section

U.S.:	United States
UN:	United Nations
UNCITRAL:	United Nations Commission on International Trade Law
UPICC:	UNIDROIT Principles of International Commercial Contracts
USA:	United States of America
USD:	United States Dollar(s)
v.:	versus

STATEMENT OF FACTS:

Delicatesy Whole Foods (hereafter referred to as **CLAIMANT**) is a medium sized manufacturer of fine bakery products registered in Equatoriana.

Comestibles Finos Ltd (hereafter referred to as RESPONDENT) is a gourmet supermarket chain in Mediterrano that aspires to be a Global compact leading company.

Ruritania Peoples Cacao mbH is the **CLAIMANT** supplier of Cocoa, based in Ruritania, it is obligated to send documents to the **CLAIMANT** regularly certifying that its carries out its production process ethically.

March 2014

The CLAIMANT represented by Mr. Tsai was approached by the RESPONDENT represented by Ms. Ming at Danubian food fair, They discussed various topics including the products that would be of interest to the RESPONDENT and whether it would be feasible for the CLAIMANT to supply them to the RESPONDENT.

[Notice of Arbitration, p. 4, §4]

10 March 2014

CLAIMANT was pleased to have received an invitation to tender from the RESPONDENT soon after the food fair, regarding the delivery of chocolate cakes.

[Notice of Arbitration, p. 4, § 4]

17 March 2014

The CLAIMANT sent a letter of acknowledgement to the RESPONDENT to acknowledge the receipt of the invitation and all the required documents and to express its intent to tender.

[Res, Ex 1, p. 28]

27 March 2014

The CLAIMANT tender was submitted whereby it had made a few changes to the requirement set by the RESPONDENT.

These changes include the specifications of the cake, the method of payment and adding that its own General conditions of sale including its Code of Conduct are to be applied to the Contract.

[Notice of arbitration, p. 5, §4]

7 April 2014

The RESPONDENT accepted the CLAIMANT'S tender notwithstanding the changes made by the CLAIMANT to the previous requirements.

Ms. Ming of the RESPONDENT also ascertains that she had read the CLAIMANT code of conduct.

In several statements in the record the RESPONDENT declares that one of the main reasons

for his acceptance of the Tender is CLAIMANT'S commitment to ethical production. [Response to the notice of arbitration, p. 25, §11]

1 May 2014

The First Delivery of chocolate cakes was made. Thereafter, there were no problems regarding the delivery or the chocolate cakes throughout majority of the contract; which includes 2014,2015 and 2016. [Notice of arbitration, p. 5, § 6]

23 January 2017

Michelgault the leading business paper in Equatoriana, reported on the findings of the rapporteur of the UNEP about the widespread fraud and corruption in Ruritania [Cl. Ex. No. 7, p. 19]

27 January 2017

The CLAIMANT received an email from the RESPONDENT threatening to terminate the contract, if the CLAIMANT does not give sufficient confirmation that it and its suppliers are in compliance with the Global Compact Principles, within one day of receiving the email. [Notice of arbitration, p. 5, § 7]

The CLAIMANT immediately replied and assured the RESPONDENT that its suppliers comply

with the GCP and attached certificates proving their compliance. The CLAIMANT made it clear it saw no justification for withholding the payment for the cakes already delivered. [Notice of arbitration p. 5, § 7]

*the RESPONDENT basis this accusation on a documentary published by UNEP which investigates corruption in Ruritania which lead to the distribution of forged certificate to several companies regarding compliance with the GCP.

It should be stated Ruritania is residence for CLAIMANT's main supplier of cocoa; which is one of the main ingredients for its Chocolate Cakes.

10 February 2017

The CLAIMANT discovers that its supplier, Ruritania Peoples Cacao mbH, was involved in the corruption scheme and directly informs RESPONDENT of the discovery.

Moreover, the CLAIMANT has stated that such fraud does not constitute as a breach of contract by them. Despite that the CLAIMANT offers the RESPONDENT a reduction in price for the inconvenience and not as damages. [Notice of arbitration p. 5, § 10]

12 February 2017

The RESPONDENT rejects CLAIMANT's offer, and states that it will refrain from payment of the Chocolate Cake as it will set-off the amount to be paid to the damages that the RESPONDENT has suffered due to the CLAIMANT's breach of contractual obligations for the nonconformity of the Chocolate Cake. Also, the RESPONDENT terminated the Contract. [Cl. Ex. No. 10, p. 22]

30 June 2017

The CLAIMANT submits the Notice to Arbitration.

The CLAIMANT appoints Mr Prasad as its Arbitrator. Mr Prasad submits his Declaration to Impartiality on 26 June 2017.

31 July 2017

The RESPONDENT submits the Response to the Notice of Arbitration and appoints Ms Reitbauer. [Response to the notice of arbitration, p. 24]

22 August 2017

Prof. Rizzo thanking both arbitrators for appointing him as presiding arbitrator and sets a case management conference on 30 august 2017.

29 August 2017

The RESPONDENT sends, the appointed Arbitral Tribunal, a notice claiming that sufficient proof was found that the CLAIMANT is funded by a third party, which may affect the impartiality of the arbitrator. [letter Langweiler, P. 33]

1 September 2017

The CLAIMANT discloses the information of the Funder. However, it insists that the RESPONDENT discloses how it discovered this information; as it doubts the legality of the method of discovery. [letter Rizzo, p. 34]

7 September 2017

CLAIMANT says that it is being funded by Funding 12 ltd and the shareholder is Findfunds LP, CLAIMANT ask the arbitration Tribunal to order the RESPONDENT to disclose how it obtained the information.

11 September 2017

Mr. Prasad sends an email stating that he has acted in two cases which were funded by other subsidiaries of Findfunds. Furthermore, Mr. Prasad mentioned that his firm merged with another firm in Ruritania that has represented a client that has been funded by Findfunds.

14 September 2017

The RESPONDENT submits Notice of Challenge of Arbitrator. In it states the following important points: [Notice of challenge of arbitrator, p. 38]

It has obtained the information through its IT Security Officer as he conducted a security check on the notice for arbitration which they discovered “Metadata” that included a Word Document, where the CLAIMANT gives statements regarding Third Party Funding

and of an article published by Mr Prasad.

That there are doubt of Mr Prasad's Impartiality due to him publishing a legal opinion which states "non-physical conformity standards" are not to be considered when determining the conformity of the goods.

Also, the involvement of the third party which Mr. Prasad is involved in may give doubts to his impartiality.

21 September 2017

Mr Prasad Submits letter indicating his "refusal to stand down" from his position and discloses further information regarding his association with the third party and gives reasonable justification that the RESPONDENT's discoveries, do not affect his impartiality. [Letter Prasad, p. 43]

29 September 2017

The CLAIMANT refuses to agree to the removal of its nominated arbitrator and states, he is obligated to disclose any information regarding the funding. [Letter Fasttrack, p. 45]

6 October 2017

Prof. Rizzo send procedural order No. 1 [Procedural order No. 1, p. 48]

SUMMARY OF ARGUMENTS:

The arbitral tribunal does not have the authority to decide on the challenge, as the procedural rules do not entitle them to do so. As the rules specify that the PCA secretary general is the authority set by the rules. Also, the claim made by the Respondent that they excluded the article that addresses the issue of the appointing authority being the PCA secretary general in case the parties do not agree (article 13.4 of the arbitration rules) is invalid as its application does not violate the confidentiality.

Even if the arbitral tribunal has the authority to decide, Mr. Prasad should participate in making the decision as it is common practice as set by the drafters of the arbitration rules themselves in addition to the courts. Furthermore, His participation in deciding the challenge is in accordance with the parties' agreement and his exclusion would cause a defect in the award. It should be mentioned that the Respondent contradicts itself by asking Ms. Reitbauer to participate on the challenge that involves third party funding after accusing Mr. Prasad on the base of doubts on his impartiality due to an article where he expressed his opinion regarding ethical production.

Regarding the removal of Mr. Prasad, the claimant is of the point of view that he should not be removed from the tribunal. That it is since the respondent does not meet the heavy burden of proof to prove doubts in impartiality and independence. Respondent's claim that Mr. Prasad violated his duty to disclose his involvement with third parties are unfounded, neither does his actual involvement or his opinion cause any doubts to his impartiality and independence.

Regarding the third issue, the claimant's standard conditions govern the contract as he was the only one to make an offer as the Respondent's tender does not qualify as an offer. And even if the Respondent's tender qualifies as an offer as the Claimant modified the offer and the Respondent accepted these modifications which excluded the Respondent's terms. And even if the issue became a battle of forms situation the Claimants terms would still govern the contract through the application of the last shot doctrine.

Finally, the goods delivered by the claimant are conforming regardless of the Claimant's obligation is an obligation of making a result or an obligation of best effort as the claimant has fulfilled his obligations completely and therefore the goods cannot be anything else but conforming.

Procedural arguments:

First question:

1. The Arbitral Tribunal Should Not Decide On The Challenge Because They Do Not Have The Authority

1. The parties have agreed that any dispute arising out of or relating to this contract shall be settled by arbitration in accordance with the UNCITRAL rules {*Cl. Ex. No. 2, p. 12*}.

Upon the "party autonomy principle" the arbitral tribunal must respect the agreement of the parties, thus any deviation from the chosen rules or laws will cause a defect in the arbitral award which will prevent the enforcement of it.

2. The arbitration clause clearly indicates to apply the UNCITRAL Rules as the chosen procedural law to govern any dispute relating to this contract.

A -The chosen procedural rules does not entitle the arbitral tribunal to decide on the challenge.

3. From the chosen procedural law Art. 13 regulates the process of challenging the arbitrators, the regulation of the UNCITRAL rules regarding the challenging of an arbitrator clearly entitles the (appointing authority) to take this decision {*UNCITRAL RULES Art.13.4*}. If the arbitral tribunal deviates from the application of the chosen rules, i.e. UNCITRAL Rules, the award may be challenged on the basis of not conducting the arbitration by what the parties have agreed on. {*REDFERN/HUNTER P.353*}.

I. The appointing authority must be appointed by the PCA secretary general.

4. Applying the chosen procedural rules will refer the challenge to the appointing authority, and as in our case when the appointing authority has not been designated nor the parties agreed to designate it, the designating authority lies within the hands of the PCA secretary general, upon the RESPONDENT's unreasonable proposal to make the arbitral tribunal as if it was the entitled authority to decide on the challenge *{UNCITRAL RULES Art.6.02} { Notice of the Challenge p. 38} {BORN p.1641} {PAULSSON/PETROCHILOS p.45&p512} {REDFERN/HUNTER p.240}*

5. To exempt the application of Art. 13(4) there should be a mutual agreement between the parties to do so, and in nowhere the parties did. The agreement between the parties was to apply the UNCITRAL rules which give the right to the appointing authority to decide the challenge *(UNCITRAL rules Art. 6). {PAULSSON/PETROCHILOS pp. 43-44} {REDFERN/HUNTER p. 244}*

II. An exemption to the challenging procedures must be clearly stated.

6. The exclusion of the institutional involvement is limited to the appointing of the arbitrators and does not extend to the challenge of the arbitrators, such fundamental right cannot be impliedly excluded rather it must be clearly stated and written within the contract. *{Paulsson, p. 3}*

7. Furthermore, the CLAIMANT agreed on the exemption of the institutional involvement regarding the constitution of the arbitral tribunal only *{Cl. Ex. No. 2, p. 15}*

III. The application of the DAL regarding the challenging procedures cannot be achieved.

8. The DAL clearly stated when the parties have agreed on another procedure, the chosen procedures will overrule the DAL procedures, constituting the application of the party autonomy principle and respecting the choice of the parties. *(DAL, Art. 13.1) {BORN p.1645}*

B- The confidentiality character of the dispute has not been violated

I. The involvement of the PCA secretary-general would not harm the confidential character of the dispute.

9. The PCA secretary-general would only designate the appointing authority and will not be an appointing authority by himself, thus, he/she is going to designate an appointing authority appropriate to the circumstances of the case, it is usual for the PCA secretary-general to designate a private individual. {*WAINCYMER p.157*}

II. The designated authority is not going to involve in the substantive of the case.

10. The duty of the appointing authority is limited to the procedural aspects of the arbitration, i.e. the challenge of an arbitrator, the confidentiality of the substantive issues of the case would not be harmed by such involvement, therefore, no breach of confidentiality could the RESPONDENT allege. The issues that the PCA is authorised to take hold and control of are only three procedural issues which are the appointment of arbitrators, registry and secretariat services, allocation of arbitral rules of procedure {*Indlekofer,237*}

C- The unlikely presumption of the PCA considered as an institutional entity intervening within the case does not harm respondent's reputation.

11. Even if we considered the involvement of the PCA secretary-general as an involvement of an institutional entity in the substantive aspects of the dispute. The reason of the RESPONDENT to exclude the institutional involvement is to keep the matter confidential from the public to avoid the negative press.

12. Presuming that the PCA is going to leak something to the public, what negative press could be resulted from leaking a procedural issue. i.e. challenging an arbitrator. Thus,

such involvement would not cause any harm to the reputation of the RESPONDENT, therefore, it is not violating the reason behind the confidentiality requirement.

2- Even if the arbitral tribunal has the authority to decide on the challenge, mr. prasad must participate in the challenge.

A- The participation of the challenged arbitrator is a common practice.

I. The courts and the tribunals endorse the participation of the challenged arbitrator.

13. Under Austrian law, the challenge procedure consists of two tiers: In the first tier, the parties are free to agree on the challenge procedure. In the absence of such an agreement between the parties, the default rule is the arbitral tribunal itself shall decide on a challenge (such decision is made by all members of the tribunal, including the challenged arbitrator). *{ZPO, CHAPTER 4, SEC 589, §2}*

14. Institutional rules might provide for a different procedure, including the Vienna Rules, where the board of the institution is competent to decide upon such a challenge.

15. If the challenging party were not successful in the first tier, it may proceed to the second tier and request the courts of law to decide on the challenge. The second tier is binding. Hence, the parties cannot ignore the court's decision to reject a challenge.

II. The drafters of the UNCITRAL Model law (DAL) have agreed to the participation of the challenged arbitrator in his challenge.

16. Both commentators and courts support the participation of the challenged arbitrator in his challenge, such participation must be done to avoid any misconduct, and provide a valid decision made by the full composition of the arbitral tribunal.

17. The drafters of the model law have agreed that challenging procedure should be done with the participation of the challenged arbitrator *{A/40/17, §128}*, contrary to the

RESPONDENT allegation {*Notice of challenge, p. 39 §8*} it is not normal to decide without the participation of the challenged arbitrator.

B- The participation of Mr. Prasad assures the parties agreement and the parties autonomy principle

I. An agreement has been made by the parties that the dispute will be settled by three arbitrators.

18. UNCITRAL rules give the chance to the parties to agree on modifications to the rules itself {*UNCITRAL rules, Art. 1(1)*} and the RESPONDENT itself initiated in {*Cl. Ex. No.2, p.12*} that numbers of the arbitrators shall be three, while the CLAIMANT has clearly accepted the arbitration clause without any modifications and the RESPONDENT has accepted the other modifications suggested by the CLAIMANT, so an agreement between the CLAIMANT and the RESPONDENT has already been set the dispute will be settled by three arbitrators one chosen by the CLAIMANT and the other by the RESPONDENT while the presiding arbitrator to be chosen by the two arbitrators.

II. Going against the party autonomy will cause a defect in the final award.

19. The New York convention provides different grounds for the nonenforcement of the arbitral awards as (New York convention Art. V(I)) provides five defences to the enforcement of the awards, one of these defences is found in (New York convention Art. V(I)(D)) of the same convention, where it states the enforcement of the award may be refused if the composition of the arbitral tribunal or the arbitral procedure was not in compliance with the agreement made by the parties. Hence, failing to comply with such agreement respecting the party autonomy will cause a defect in the final award as an agreement of the arbitration to be decided by numbers of three arbitrators has already been done. {*Moses, p. 212*}

III. RESPONDENT cannot override the required quorum even if it proposes to appoint a substitute arbitrator.

20. The parties agreed that the arbitral tribunal must consist of three arbitrators *(Cl. Ex. No.2, p.12)*, therefore, the removal of Mr. Prasad will cause a defect in the arbitral tribunal quorum, thus, the agreement of the parties to refer their disputes to a tribunal of three arbitrators cannot be achieved without the participation of Mr. Prasad.

21. Even if the RESPONDENT is going to try to override this argument by proposing the substitute arbitrator participation to achieve the quorum required, this is hopeless approach since the situations of the substitute involvements are stated in the rules, and this situation is not one of them.

22. The substitute arbitrator cannot participate in deciding the challenge as the conditions of his appointment has not been met yet. As the DAL *(DAL art. 15)*, for a substitute arbitrator to be appointed the original arbitrator should withdraw. {*BARRINGTON, p. 341*} {*GOELER, p. 255*} {*ALFONSO, p. 70*}

C- The opinions of Ms. Reitbauer on the third-party funding is the reason behind the request to exempt Mr. Prasad from the participation

I. The RESPONDENT is contradicting itself by challenging Mr. Prasad while having Ms. Reitbauer takes part in deciding the challenge

23. The CLAIMANT has made it clear that it is of the position that having a pre-existing opinion and having it published does not create any doubt to the arbitrator's impartiality, yet the RESPONDENT clearly opposes this view as one of the reasons for his challenge on Mr. Prasad is his opinion regarding ethical production.

24. Yet when it came to challenging Mr. Prasad with claims of doubts to his independence due to his relationship with a third party, the RESPONDENT asked for the arbitral

tribunal to decide on the challenge without the participation of Mr. Prasad, even though Ms. Reitbauer has published clear opinions opposing relations between an arbitrator and a third party that may be somehow involved.

25. Therefore, the RESPONDENT clearly contradicts itself and asks for the application of certain rules on Mr. Prasad while disregarding that same rule should apply to the arbitrator appointed by them.

II. The participation of Mr. Prasad is a guarantee to the impartiality of the arbitral tribunal

26. Having two arbitrators only decide a challenge is undesirable and a recipe for deadlock and uncertainty. It causes issues in the case of the disagreement between the deciding arbitrators as it does not offer a way to resolve such issue, which may lead to the hindering the arbitration process *[BORN, p. 1672]*

27. This can be considered as a reason for delay which violates the duties of the tribunal stipulated as (the arbitral tribunal) shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.) {*UNCITRAL rules Art. 17(1)*}

28. It is considered unfair and an unequal treatment for a party to have a greater influence on the tribunal than the other party, such as having only its appointed arbitrators take part in making the decision without any arbitrators from the opposing party {*Seimens vs dutco*} {*Kröll, p 253*}

29. Subject to the UNCITRAL arbitration rules as the chosen rules, all parties must be treated equally which means the arbitral tribunal cannot make decisions without the participation of Mr. Prasad as this would constitute unequal treatment. *(UNCITRAL Rules Art. 17)*

Second question:

In case the Arbitral Tribunal has authority to decide on the challenge, should Mr. Prasad be removed from the Arbitral Tribunal?

Mr. Prasad should not be removed from the arbitral tribunal:

1. Respondent fails to meet up to the heavy burden of proof criteria

I. The allegations of the RESPONDENT have no proof.

30. Looking at *[Cl. Ex. No.2, Sec. F, P.14]* putting in mind the approval of CLAIMANT on said code of conduct including previously stated section CLAIMANT has provided RESPONDENT all documentations asked for and so is the case with Mr. PRASAD as a formal procedure followed in arbitration without any questioning brought by RESPONDENT let alone reasonable or unreasonable questioning without a true concrete platform of proof.

II. The RESPONDENT is trying to delay the process of the arbitration and change the arbitrator due to his opinion

31. The challenge of an arbitrator is a right given by law to the disputing parties, unfortunately it is a right that can be abused by parties to delay the arbitration procedure, especially when a party fears the outcome of the case may turn out against them *[Böckstiegel, p. 132]* The challenge of the RESPONDENT has a few indicators that might lead to the conclusion that this is what the RESPONDENT intends from this challenge.

32. First would be that one of the reasons brought up by the RESPONDENT is the opinion of Mr. Prasad is his opinion on conformity of goods, which is the completely opposite of the opinion of the RESPONDENT , even though the opinion had nothing to do with the facts of the case, another indicator would be the insistence of the RESPONDENT that the arbitral tribunal decides the challenge without the participation of Mr. Prasad which would mean that there would be only two arbitrators in the tribunal.

33. It is well established that having an even number of arbitrators is a recipe for deadlock and may render a tribunal unable to decide if the arbitrators disagree, this is why some legislations prohibit constituting a tribunal with an even number of arbitrators

including: France (in domestic arbitrations), Netherlands, Belgium, Italy, Portugal, Egypt and Tunisia. *[Born, p. 1674}*

34. With the French Code of Civil Procedure providing "An arbitral tribunal shall consist of one or an uneven number of arbitrators" and "If an arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed. If the parties cannot agree on the appointment of the additional arbitrator, he or she shall be appointed by the other arbitrators within one month of having accepted their mandate or, if they fail to do so, by the judge acting in support of the arbitration. *[arts. 1453, 1454 of the French code of civil procedures]*

35. Also, the fact that the RESPONDENT claims that the information was discovered through a virus check a while after that nomination of Mr. Prasad has been sent to the RESPONDENT and read by them as well, even though virus checks are usually done as soon as any file is received and before reading it, leads to a doubt regarding the intent of the RESPONDENT , whether it was simply a virus check or was the RESPONDENT trying to dig up any information that may somehow be used to disqualify Mr. Prasad.

III. Mr. Prasad showed his good intentions by his immediate and full disclosures.

36. Mr. Prasad has already disclosed everything possible to be disclosed at the time he had knowledge of it. Hence, showing good intentions by his immediate and full disclosure, as he disclosed all the information available to him at the time of him providing his declaration of impartiality and independence which was at the 26th of June 2017. *(Cl. Ex. No.11, P. 23, **§ 5**)*

37. At the letter of 29 August 2017, The RESPONDENT alleges that he found reliable information of the CLAIMANT being financed by a third-party funder *(Letter Rizzo, p. 33)* and consequently, Mr. Prasad immediately on 11 September 2017 has disclosed all the information of his relationships with the third-party funder when the information of the CLAIMANT being funded has reached his knowledge. *(Declaration Prasad, p. 36).*

38. As a conclusion, this shows the good intentions of Mr. Prasad by his full disclosure once the information he needs to disclose has reached to his knowledge.

2. The claimant is not under the obligation of disclosing the third-party funder

I. The absence of such disclosure does not reflect any bad faith from the CLAIMANT.

39. Neither presence nor absence of disclosure requested from RESPONDENT to CLAIMANT on the third-party funding reflect any bad faith on behalf of CLAIMANT due to its irrelevancy. Looking back at the record *(Letter Langweiler, p. 33)* the purpose of the disclosure is merely to facilitate discussion which would reflect the non-fundamentality of the disclosure and as clearly stated by CLAIMANT in *(Letter Fasttrack, p.35)* the only reason for compliance is to speed up proceedings which would actually prove good faith.

II. The UNCITRAL rules do not obligate the CLAIMANT to disclose such matter.

40. (*UNCITRAL rules Arts. 12 ,11)* gives the right to the opposing party to challenge the arbitrator based on justifiable doubts on the arbitrator's impartiality and independence, the UNCITRAL rules did not define independence nor there is an express stipulation in the rules of any major arbitral institutions that requires a party to disclose if it is being funded. *(Khouri. 8.4)*

41. Furthermore, it is better not to inform the arbitrator about the third-party funding to avoid any conflict of interest on the basis of '[w]hat an arbitrator does not know cannot influence his decision-making'. *(Goeler, 264)*

3. There are no justifiable doubts as required by the UNCITRAL rules to remove Mr. Prasad

A. according to the UNCITRAL rules criteria Mr. Prasad is independent.

I. The third-party funding does not affect his independency.

1. The funding is not representing a reliable worth in Mr. Prasad venues.

42. In the PCA case {*Guaracachi vs Plurinational*} the arbitral tribunal ruled that even in a case of a conflict of interest claim that the scale of how large the involvement of a third party is relevant and that only on a large scale of involvement would a problem arise, and minor involvements cannot be considered an issue of much importance.

43. Therefore, the arbitral tribunal did not rule in favour of the challenging party as in this case before us the challenged arbitrator Mr. Prasad and the involvement within the relationship of the third party funding issue is considered irrelevant and RESPONDENT has not specified in an exact manner what the conflict of interest matter is in addition to that as clearly stated in *[Proc. Order No. 2 §10]* Mr. Prasad only makes up to 30-40% of his venues from arbitration which is a minority of venues. {*Goeler, pg. 133*}

2. Findfund involvement with the former SlowFood partner does not extend to Mr. Prasad.

44. The connection made by the RESPONDENT of Mr. Prasad to Findfunds through the former partner at Slowfoods since that employee has nothing to do with Mr. Prasad since he is not involved with his firm anymore.

45. Furthermore, Mr. Prasad has stated that all matters related to his firm will continue through other partners even if it involved the parties themselves or companies related to them in his declaration of independence and impartiality, which the RESPONDENT accepted. *[Cl. Ex. No. 11, P. 23]*

46. Therefore, even if the concerned relationship is considered to be of effect RESPONDENT has waived his right to base a challenge upon it.

3- Funding 12 Ltd is a separate legal entity from FindFund LB

47. Funding 12 Ltd acts like a separate legal entity from FindFunds LP as FindFunds LP is merely a shareholder in Funding 12 Ltd, the connections to FindFunds LP doesn't provide a ground for challenge of the arbitrator's impartiality and independence as they are not direct connections because the funding was provided by a separate entity not FindFunds LP directly *[Letter Prasad, p. 43]*

II. The previous appointment of Mr. Prasad does not affect his independency.

1. The multiple appointment is a common practice in the international arbitration.

48. The diversity of choice between the arbitrators found in the world right now is not that big, so the reappointment of arbitrators became a common practice in arbitration, as the appointing parties may be satisfied with the performance of this specific arbitrator. Hence, the multiple appointments of arbitrators is a common practice in the international arbitration. *(Daele,2012)*

2. The appointment of FindFund does not represent a multiple appointment situation.

49. As clearly stated in the record of the problem, *[Declaration Prasad, p. 36]* regarding the issue of the previous appointments in question and the entrance of Findfunds LP as a funder does not add up to three appointments nor does it constitute a conflict of interest situation as Findfunds only entered into a funding agreement after the arbitral tribunal had been appointed including Mr. Prasad.

3. RESPONDENT has accepted the previous appointments from Fasttrack when Mr. prasad disclosed them.

50. In the declaration of Mr. Prasad Independence and impartiality, Mr. Prasad has already disclosed the information about his previous appointments from Mr. Fasttrak *(Cl. Ex. No. 11, § 3]* In the notice of challenge of Mr Prasad the issue of the reappointment of Mr Prasad from Mr. Fasttrack has been brought up *[Notice of challenge, p. 39, § 10]*

51. The RESPONDENT has no grounds on challenging Mr. Prasad for previous appointment as to a party must send the notice of challenge within 15 days after it has been notified of the appointment of the challenged arbitrator and in this case more than 15 days has passed since the declaration of impartiality and independence of MR. Prasad letter was sent to the RESPONDENT. From 26 June 2017 until 14 September 2017 *(UNCITRAL rules, art. 13.1)*

B- According to the UNCITRAL rules criteria Mr. Prasad is impartial.

I. The arbitrator's legal opinions have no impact on their impartiality.

52. Arbitrators are not aliens who live in outer space as humans they tend to have opinions on matters that pass by them therefore an abstract opinion on any matter does not cause an arbitrator to be partial.

53. Partiality regarding having a written opinion is caused when the arbitrator writes his opinion on the case itself or has given counsel to one of its party an article giving a strong opinion on an abstract matter including what Mr. Prasad does not constitute a doubt regarding his impartiality. *[Kröll, p. 260]*

II. The article is published before the establishment of the tribunal and does not concern with the present case itself.

54. To even further support the argument the article published by Mr. Prasad was published in 2016 even before the dispute began between the CLAIMANT and the RESPONDENT, therefore further supporting that the article was written based on an abstract issue not the dispute at hand.

55. Therefore, nothing of the facts discussed above raises any doubt regarding Mr. Prasad's partiality

III. The RESPONDENT waived his right to challenge Mr. Prasad on the ground of this article, giving the fact that his publications were available to the RESPONDENT when they accepted his appointment

56. RESPONDENT has waived his right, if any, to challenge Mr. Prasad for the published article because as mentioned in *(Proc. Order No. 2, §14)* the published article was available for RESPONDENT to see as it was published before the arisen of the issue in Mr. Prasad's website under "publications", RESPONDENT should have been more prudent and aware and read through all publications before showing consent as it is only natural for the publications of an individual to reflect his personal points of view.

4. The tribunal should not consider the IBA guidelines.

I. The IBA Guidelines are soft law

57. The IBA Guidelines drafters have clearly stated in their introduction that the IBA guidelines are not legal provisions, and comes after any national law or chosen procedures agreed by the parties, thus, the commentators consider the IBA guidelines as potential soft law does not obligate the parties unless they agreed on them. *(Paula Hodges, pp. 210-211)*

II. The parties did not agree to apply the IBA guidelines

58. The laws applied on the case at hand are those chosen by the parties and the laws of the seat of arbitration. Neither of these include the IBA guidelines, therefor using them as a base for judgement would lead to the violation of party autonomy and application of a law not chosen by the contracting parties.

III. The chosen procedural rules are sufficient to define the conditions of the arbitrator's bias.

59. The chosen and agreed upon procedural rules by both parties which is the UNCITRAL rules is sufficient and eligible to define the conditions of an arbitrator's bias in question.

60. It is common between the courts and tribunals to use only the UNCITRAL rules to define the justifiable doubts standards, an example is *{sino dragon vs noble resources},* where the tribunal has decided on the challenge by the UNCITRAL rules only.

5. Even if arbitral tribunal is going to consider the IBA guidelines, Mr. Prasad is independent and impartial

I. Article (2.3.6) does not apply to the present facts regarding the third-party funding.

61. Art. 2.3.6 of the IBA guidelines talks about when an arbitrator's law firm has a significant relationship with one of the parties or an affiliate of one of the parties.

62. The connections between the CLAIMANT and FindFunds LP has been made through the merger of Mr. Prasad previous Law Firm with Slowfood which clearly does not consist a significant commercial relationship with one of the parties or an affiliate of one of the parties as these are remote connections to FindFunds LP.

II. Article (3.1,3) does not apply to the present facts regarding the previous appointment.

63. Article 3.1.3 under the orange list within the IBA GUIDELINES states a situation in which the arbitrator has been appointed within the past three years on two or more occasions by one of the parties, while it has been clearly mentioned in the record of the case within the correspondence letters between parties the participation was with SUBSIDIARIES *[Declaration Prasad, p. 36]*

III. The opinion of Mr. Prasad situation is on the green list.

64. The green list in the IBA guidelines lists situations where no appearance and no actual conflict of interest exists therefore all the situations listed do not raise an issue even if not disclosed.

65. Art. 4.1.1 of the IBA guidelines, which is under the green list allows for the arbitrators to express legal opinions concerning a legal issue as long as it does not concern the case at hand directly which is exactly the present situation.

66. Meaning that even under the IBA guidelines the article published by MR. Prasad before the present dispute arose does not lead to any doubts regarding his partiality.

Substantive arguments:

First question:

WHICH STANDARD CONDITIONS GOVERN THE CONTRACT CLAIMANTS OR RESPONDENTS OR NONE OF THEM?

CLAIMANT'S standard conditions govern the contract:

A- The valid offer that established the contract has been made by the CLAIMANT.

67. The RESPONDENT is arguing that the offer was made by him thus the standard terms governing the contract is his standard terms and that the CLAIMANT has accepted them.

68. Conversely, the RESPONDENT invitation to tender was merely an invitation to make offers and his intention was not to be bound by the invitation to tender once accepted as his invitation was not sent to specific persons as he received offers for his invitation from four different businesses he had no prior contacts with. Which shows clearly that his intention was not for him to be bound once accepted.

69. As a matter of fact, the CLAIMANT has made the first offer as his proposal for concluding a contract was sufficient to be an offer and not merely an invitation to make offers.

70. Moreover, even if we considered the invitation to tender made by the RESPONDENT as an offer then the sales offer made by the CLAIMANT would constitute a counteroffer that the RESPONDENT has clearly accepted.

I. The CLAIMANT made the first offer

71. The CLAIMANT made the first offer as the sales-offer made in *(Cl. Ex. No 4, p. 16)* did constitute a proposal sufficiently definite. *(CISG, Art. 14)* defines a sufficient definite proposal as the proposal addressed to one or more specific persons which is

the situation in our case, and for it to be definite it must indicate the goods, quantity and price.

72. Furthermore, the offeror must intend to be bound in case of acceptance and this is the situation in our case as the CLAIMANT has incorporated all the details that will make the proposal for concluding a contract a sufficiently definite proposal thus constituting an offer.

73. Moreover, the CLAIMANT intention was to be bound by the offer he made as he stated in more than one situation that the proposal he is making is an offer and he clearly stated that in *[Cl. Ex. No. 3, p. 15, **§ 4].***

II. RESPONDENT has accepted CLAIMANT'S offer notwithstanding the changes made by the CLAIMANT

74. The RESPONDENT has accepted the offer made by the CLAIMANT by him showing the assent for the CLAIMANT offer notwithstanding the changes made by the CLAIMANT *[Cl. Ex. No. 5, P. 17, § 1]* as in *(CISG art. 18)* a statement or a conduct indicating an assent to the offer is to be considered as an acceptance.

75. The RESPONDENT not only showed assent by his written statement and notwithstanding any changes in the offer but also accepted the deliveries made by the CLAIMANT which constitutes a conduct indicating an assent to the offer thus applying all the conditions stated in *(CISG Art. 18)*

III. The invitation to tender is not a valid offer

76. The RESPONDENT states that the offer is expected to be made by the CLAIMANT clearly indicating it did not consider the invitation to tender a proper offer "I look forward to the submission of your offer and remain" *[Cl. Ex. No. 1, P. 8]*

77. Furthermore, in accordance to article 14(2) proposals directed to public does not constitute an offer, as the RESPONDENT received six different offers where four of these offers were from businesses the RESPONDENT had no prior contact with. *(Response to notice of challenge, p. 25, **§ 9**)*.

78. Hence, showing that this does not constitute an offer as it was sent to the public not to specific people which clearly does not constitute an offer. *[Aguiar, p. 52]*

79. Moreover, an offer must contain an intention from the offeror to be bound in case of the acceptance *[CISG Art. 14.1]*. Meaning that the tender document is just an invitation

to make an offer by the RESPONDENT to the CLAIMANT and cannot be considered as a valid offer

IV- Even if tribunal consider the invitation to tender as a valid offer, CLAIMANT has modified it and established a counter offer.

80. **C**onsidering that the invitation to tender was a valid offer then the CLAIMANT has made a counteroffer by his modifications on the invitation to tender. *(CISG Art. 19.3)* talks about the situations that changes in an offer would be considered as changes that changed the offer materially thus constituting a counter offer, including price, payment, quality and quantity of the goods.

81. In our case the CLAIMANT did not only change the type of goods as in [Cl. Ex. No. 3, p. 15 **§ 2]** it was stated the shape of goods were slightly different from the tender but also the time of payment and method of payment was changed which clearly shows a material change in the tender which constitutes a counter-offer {*Switzerland vs Italy*} In this certain case a change in the payment time and method did constitute a counter offer. Thus, applying *(CISG art. 19)*

B- Alternatively, this is a battle of forms situation.

I- The facts of the case represent a battle of forms situation.

82. The **UPICC**, Several COURT DECISIONS and COMMENTARIES have unanimously talked about and identified what is to be considered a battle of forms situation by providing the reader with criteria with traits and examples of a battle of forms situation it is clear to us that this case is indeed a battle of forms situation

1- The UPICC:

83. Under Art. 2.1.22 of the UPICC, a battle of forms situation is identified as present when both parties use standard terms meaning both litigating parties have their own standard terms and have reached an agreement over a matter, both standard terms will

be looked upon and all similar terms are to be considered agreed upon leaving aside the contradicting or disputed upon terms and the agreed upon terms can only be disputed upon if one of the parties in advance states their intention of not being bound by them

84. In this case all situations have indeed met up to this article as both CLAIMANT and RESPONDENT have attached their standard forms and these standard terms have similarities and differences and both CLAIMANT and RESPONDANT have agreed upon a sales contract.

2- The commentators

85. Different and potentially conflicting standard terms by both parties, is typical for domestic as well as international contracts this issue arises in a large number of cases since many, if not most, contracts concluded in international business are based in whole or in part on standard terms. *[Berger, p. 427]*

86. If a contract has been concluded by exchange of (fax, phone, EDI or hardcopy) messages, legal analysis of contract conclusion has to follow the chronological order of events. Standard forms introduced by both parties raise the problem of 'battle of forms. *[ibid]*

3- The courts

87. According to national courts of law regarding the issue of standard terms and which of these standard terms to be considered as the terms to be abided by the cases in hand were referred to and described as a case of battle of forms.

88. the Federal Supreme Court of Germany looked into a case where The defendant a German company, sold to the plaintiff a used gear-cutting machine and after delivery with the arisal of a dispute concerning the goods delivered the issue of disapproval between standard terms it was found such battle of forms situation must be dealt with in accordance of whichever law the disputing parties agreed to and in the absence of such law international terms were to be referenced to *{Bundesgerichtshof 31 october}*.

89. A commercial relation between an Italian company and a Dutch company for the sale of mirrors the Dutch company had failed to make some payments, the seller sued it before the Italian Court of Rovereto. The Court concluded that the contract was avoided and issued an order of payment in favour of the Italian company.

90. The defendant objected since the forum selection clause in favour of the Dutch Courts, contained in the standard terms incorporated into the contract, applied. The Court dismissed the defendant's argument stating that the parties had not validly agreed upon a forum selection clause, The Court noted the clause had never been accepted by the seller in writing, nor was it possible to consider the clause as accepted only on the ground that the seller had executed the buyer's order the seller provided evidence that it used to send a written statement confirming the orders received and including its own standard terms, which the other party had to sign and return.

91. According to the Court, this implied the contract between the parties had been concluded by exchange of written statements and not by the seller's performance of the order.

92. Therefore, as in our case and the previous case it is obvious that a battle of forms situation is one of which no agreement was reached to in advance regarding party terms and following an absence of a clear agreement a dispute rises. {*Takap vs Europlay*}

II- The RESPONDENT realised that a battle of forms situation would exclude the application of its standard condition

93. A battle of form situation is situation where both of the parties included their standard terms without agreeing which standard term would govern the contract.

94. Applying the battle of form situation would lead to the application of the CLAIMANT standard terms through the last shot approach as the last general conditions incorporated in the contract is the CLAIMANT general conditions. For this reason, the RESPONDENT is avoiding applying to *[UPICC, Art.2.2.22].*

1- The battle of forms is going to be solved by applying the last shot approach

95. Regarding which theory applies on the following battle of forms situation, the UPICC stipulated that the last shot doctrine applies "if the parties clearly indicate that the

adoption of their standard terms is an essential condition for the conclusion of the contract."*[UPICC , ART.2.1.22]*

96. The facts of the case at hand are parallel to what has been stipulated, as Both the CLAIMANT and the RESPONDENT clearly indicating the application of their terms as an essential part of the contract, both of them including the terms in the contract itself.

97. with the CLAIMANT subjecting its entire offer to the standard terms as courts have ruled that stating that standard conditions govern the contract in order forms is a sufficient indicator and have applied the last shot theory by ruling that the terms sent last would apply wherever there was conflict between the two sets of terms.{conveyer band case}

2- The last shot approach will lead to the exclusion of the RESPONDENT general conditions and to the application of the CLAIMANT 'S

98. The UPICC principles stipulate that when the last shot doctrine is applied "The contract would be considered to have been concluded on the basis of those terms which were the last to be sent or to be referred to"

99. It is undisputed that the last terms to be sent and were referred to prior to the acceptance were the terms of the CLAIMANT. Which leads to the conclusion that the terms of the CLAIMANT govern the contract anyway.

100. The intention of the CLAIMANT was for the contract to be governed by its standard terms and the Claimant's offer clearly stated that its general conditions will govern this offer.

101. According to art. 8.1 CISG "statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.", thus the statement of the CLAIMANT to

incorporate its General standards for sale was sufficient to interpret the intention as to govern the contract by these standards, and to consider the standards as an integral part of the offer.

102. Claimant has expressly included his standard terms at the time of concluding the contract with *[Cl. Ex. No. 4, p 16]*at the bottom of the tender document and Respondent had a reasonable amount of time to take notice of these terms. CISG-AC Op. No.:13

Second question:

103. In Case RESPONDENT's General Conditions are applicable, has CLAIMANT delivered non-conforming goods pursuant to Article 35 CISG as the cocoa was not farmed in accordance with the ethical standards underlying the General Conditions and the Code of Conduct for Suppliers, or was CLAIMANT merely obliged to use its best efforts to ensure compliance by its suppliers?

THE CLAIMANT DELIVERED CONFORMING GOODS PURSUANT TO ART. 35 CISG.

A- The CLAIMANT'S obligation is an obligation of best effort

I- The language used in the contract confirms the obligation is an obligation of best effort

104. Regarding the methods of determining the type of duty involved best effort or specific result) art. 5.1.5 provides the way the obligation is expressed in the contract is referred to.

105. The word "expect" used in the special conditions of contract implies that Respondent regarded the obligations of CLAIMANT as <u>likely</u> to happen *[OED, "expect"]*.

106. Meaning that the compliance with the obligation is only probable *[OED, "likely"]* indicating that the obligation is only an obligation of the best effort not an obligation to make a result.

107. Had the Respondent used a word including "must" that would indicate the obligation is of making a result.

108. -As the word "expect" was mentioned in the Special conditions of contract is overrules all other conflicting words in the general conditions of contract that imply the opposite as article 5 of the special conditions specifies that in case of divergence in meaning the special conditions shall overrule all other documents.

II- The Respondent understood that the obligation would be an obligation of the best effort

109. From the witness statement made by Ms. Ming it is clear both parties understood the auditing and reporting obligations can only "largely guarantee" compliance. *[Res. Ex. No. 5, p. 41, § 3]*

110. Therefore, it is only guaranteed to a "great extent" [largely, OED]

111. leading us to say both parties understood the CLAIMANT'S obligation of insurance as an obligation of the best effort not an obligation of making a result.

112. <u>As the obligation is an obligation of best effort the cakes are in conformity pursuant to Art. 35 CISG.</u>

113. The UPICC stipulate that when the duty is a duty of best effort the obligated party would be bound to make the same effort as that expected of a person of the same kind and with similar circumstances.

114. The claimant completely complied with the insurance procedures set by the respondent, Even the respondent was impressed by the procedures set by the Claimant *[Cl. Ex. No. 5, p. 17]*

115. Any claim set forth by a party must be proven by them, and the Respondent fails to provide any evidence that the Claimant has in any way neglected his duty to monitor its suppliers, therefore cannot claim that the cakes are non-conforming.

116. Claimant had faced a situation in which there should be an exemption from liability due to an external event beyond its sphere of risk and control for it is impossible for claimant to foresee all circumstances that have occurred in the scandal of Ruritania especially given the fact that a government was one part of this scandal. *[Brunner,61]*

B- Alternatively, even if the obligation is an obligation of achieving a specific result, the goods are still conforming

I- The goods conformed to their ordinary purpose

117. Article 35 (2)(a) includes the last default rule for the needed quality if both parties did not agree on a conflicting quality standard.

118. Assuming that both the CLAIMANT and the respondent did not agree on a standard for the conflict happening in the case, then Article 35 (2)(a) applies, and as stated by the Secretariat commentary on 1978 draft, Art.33 (now Art.35) §.5.

119. The relevant standard for determining the ordinary purpose is "the normal expectations of persons buying the goods of this contract description" which basically means it must have the qualities usually required from goods of the types described in the contracts and free from any damages usually not to be expected in such goods.

120. While special or unordinary requirements which goes beyond the ordinary and normal use, is not guaranteed or by the seller (CLAIMANT) under article 35 (2)(a). Furthermore, ordinary purpose can be determined on the re-saleability of the goods. *{Frozen pork case}*

121. In the case of foodstuff which is meant for human use, the re-saleability is determined on if the goods are not harmful as to health *{Frozen pork case}* and in our case the whole cakes were sold *(CLAIMANT notice of arbitration p. 5, §11).*

122. In the end applying the ordinary purpose standard, the CLAIMANT has delivered conforming goods.

II- The goods conformed to their particular purpose under the Rules of the GCP thus, CLAIMANT has delivered conforming goods.

123. RESPONDENT cannot base his claims of non-conformity under a personal or local policy that RESPONDENT and only RESPONDENT follows, rather non-

conformity must be based on the referred to GCP criteria in which goods are nonconforming if they fail to meet such criteria.

124. CLAIMANT has delivered goods that are considered conforming for their particular purpose, the goods are fit for the purpose for which goods of the same description would ordinarily be used and are conforming to the criteria put into test by the GCP assessment tool

125. RESPONDENTS standard terms deviates and misinterprets the joint membership between CLAIMANT and RESPONDENT to the GCP.

126. GCP principles 7, 8 and 9 / Commentary on UN Global Compact Communication on progress, under this clarification text when the commitment was referred to two main goals were meant as stated to be most considerable to the whole principles in question which were minimising our business' impact on the environment, focusing on carbon efficiency and climate protection in the 9th principle. {GCP.C}

127. The GCP assessment tool regarding how complying a member of the GCP is to the principles clearly shows that CLAIMANT is complying to the principles that RESPONDENT claims to have been breached, therefore these claims can only be considered void claims and have no merits. *GCP AT. No.1*

128. Even if RESPONDENTS standard terms were to be applied and that the RESPONDENT'S strict standard terms correspond to the GCP principles which is not the case, the phrases used in the GCP principles under RESPONSIBILITY AND PERFORMANCE of the ASSESSMENT TOOLS clearly state that in the case of even minimising harmful environmental actions in the production line of a member the member has achieved this term fully, therefore CLAIMANT has indeed if not considered to have eliminated any doubt on the conformity of the goods he has achieved to the fullest amount his obligation of minimising harmful actions as even though the supplier of CLAIMANT has indeed provided un-ethically produced cocoa beans yet not ALL the cocoa beans were indeed un-ethically produced but SOME only. *[Cl. Ex. No. 9, p.21]* {*GCP AT. No.2*}

129. In a case with several similarities between a defendant and a plaintiff in which the plaintiff entered into a contract with the defendant and after the receival of the goods from the defendant there was a claim on behalf of the plaintiff that the goods were in breach of conformity not realising that there were agreed upon terms mutually agreed upon between the litigants that abided both of them to comply with specified and not strict terms in which there was no expanding in the interpretation of these terms. *[MMI Vs. IMS]*

III- The CLAIMANT fulfilled its obligation by conducting similar standards.

130. In the special conditions of the contract provided by the RESPONDENT, it constitutes an obligation of adhering to standards like their, CLAIMANT has fulfilled this obligation and the RESPONDENT acknowledged this fulfilment and impressed by the similarity between the twos standards *[Cl. Ex. No. 5, p. 17]*

IV- Even if the goods were produced non-ethically, they remain conforming as the CLAIMANT obligation is fulfilled.

131. The CLAIMANT obligation with respect to its suppliers is limited to ensuring that they comply with similar standards as to those set in the contract.

132. As to the extent of the obligation of ensuring, the contract itself states in paragraph F, the methods of ensuring and verifying compliance is by binding the part to "keep a record of all relevant documentation and provide (the inspecting party) supporting documents upon request" and to "audit and inspect your (the bound party) facilities. *[Cl. Ex. No.2, Sec. F, P.14]*

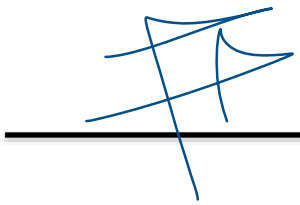
133. The CLAIMANT fulfilled these obligations fully and therefore cannot be held liable for the fraud committed by the supplier.

We hereby confirm that this Memorandum was written only by the persons who signed below. We also confirm that we did not receive any assistance during the writing process from any person that is not a member of this team.

Mohammed Ali Ahmed

Sayed Ayman Abdullah

Feras Al-Alem



Ehsan Fattah