The Respondent breached the contract of 28 of March entitling claimant the delivery of 30 metric tons by virtue of article 46 of the CISG,

\*Respondent sent a notice of transport that did not conform to the contract requirement amounted as a breach\*

1. The Respondent did not lawfully avoid the contract because the Claimant did not breach, and therefore did not fundamentally breach the contract.
2. There was no valid avoidance on 7 July 2014 [R. 13, CL.EX. 7].
   1. The Claimant did not breach the contract.
      1. Claimant issued a letter of credit as per the amended contract on June 27, 2014.
         1. The contract was amended to provide for delivery of 100 metric tons of coltan.
            1. [Claimant’s offer/Respondent’s acceptance]
            2. [Respondent’s offer/Claimant’s acceptance]
         2. The letter of credit of 4 July 2014 clearly complied with the amended contract terms.
      2. Even if the contract was not amended, the letter of credit complied with the original contract. (Placeholder: provision of a letter of credit in amount exceeding what is required under the contract complies with the contract).
      3. Respondent specifically requested the CIP price delivery term in the notice of transport, which Claimant provided in the letter of credit issued on the 4July 2014.
   2. Even if the Claimant breached the contract, that breach was not a fundamental breach as defined in CISG Article 25.
3. The suggested breach of contract was not detrimental to the Respondent; therefore it is not a fundamental breach as per Article 25 of the CISG.
4. The suggested breach did not substantially deprive the Respondent of what they reasonably expected of the contract.
5. The Respondent’s declaration on 9 July 2014 did not constitute a rightful avoidance of the contract of March 28, as the Claimant did not breach the contract.
6. Respondent did not rightfully avoid the contract on 7 July 2014, therefore the letter of credit on 8 July 2014 could not have been received too late.
7. Claimant provided the second letter of credit within the time provided for in the contract.
   1. The Letter of Credit conformed exactly to the specifications of the original contract of March 28 2014.
   2. The Claimant issued the letter of credit on 8 July 2014, which was within the agreed deadline.
8. The requirement that Respondent present a commercial invoice does not amount to a breach of contract.
9. Providing a commercial invoice is a standard element of international commercial transactions and does not constitute any additional obligations on the Respondent.
10. The Arbitral Tribunal should not lift the remaining part of the order made by the Emergency Arbitrator against Respondent.
11. The Respondent’s avoidance of the contract of 28 March was invalid.
12. The Arbitral Tribunal Does Not Have Jurisdiction Over Global Minerals.
    1. Global Minerals was not a party to the contract of 28 March due to its explicit rejection of the Respondent’s proposal to list it as an additional buyer. [R. 50 respondent reply to counterclaim, para 6)

II. The Emergency Arbitrator’s order compelling the Respondent not to dispose of the thirty tons of coltan in dispute under the contract was proper and therefore should not be lifted by the Arbitral Tribunal.

A. Even though the Arbitral Tribunal may modify, terminate or annul the order made by the EA, it should not lift the order because it was proper under Article 29(3) of the ICC Rules.

1. Respondent has the burden of demonstrating that the EA’s order should be lifted.

2. Respondent clearly has not met its burden, because the order was proper under the test provided in Danubian Arbitration law.

a. The substantive test applied by the emergency arbitrator is the same as the test applied in Art. 17A of the Danubian Arbitration law (and, persuasively, Article 26 of the UNCITRAL Arbitration Rules).

i. Lifting the order would clearly cause irreparable harm to the Claimant.

ii. The Claimant clearly will succeed in its argument before this Tribunal.

b. Respondent cannot meet its burden of demonstrating that the substantive test was not properly applied.

B. Article 21 does not exclude the right of a party to apply to either an Emergency Arbitrator or this Tribunal for interim measures.

1. Article 21 authorizes the parties to go to court for the purpose of interim measures.

a. The Emergency Arbitrator appropriately ruled that Article 21 does not prevent the issuance of interim measures by other than a court (the law of this case).

i. Under Art. 8 CISG it is appropriate to look beyond the simple language of the contract for the intent of the parties, and here the record clearly discloses that the intent of the parties was to allow concurrent jurisdiction of the court and the Arbitral Tribunal for interim measures.

ii. ICC Arbitration Rules Art. 29(7) clearly provide for concurrent jurisdiction between courts and the Arbitral Tribunal for the issuance of interim measures, and Art. 21 is simply consistent with the choice of such concurrent jurisdiction in Art. 20 of the contract.

III. Respondent cannot demonstrate that Global Minerals ever consented to being a party to this arbitration and therefore Global Minerals should not be joined in the proceedings.

A. Global Minerals is not a party to the contract between Claimant and Respondent, and therefore, is not a party to the arbitration.

B. Global Minerals is clearly a legal entity wholly separate from Claimant, and has not separately consented to arbitration.

1. Global Minerals is not liable for Respondent’s claims under the Group of Company doctrine.

2. Global Minerals is not liable for Respondent’s claims under any other applicable legal doctrine.

C. Good faith considerations do not justify the joinder of Global Minerals as a party to this arbitration.