



**ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT**

THE PROBLEM

Twenty Ninth Annual Willem C. Vis
International Commercial Arbitration Moot

Vienna, Austria
2021/2022

Oral Hearings
9 – 14 April 2022

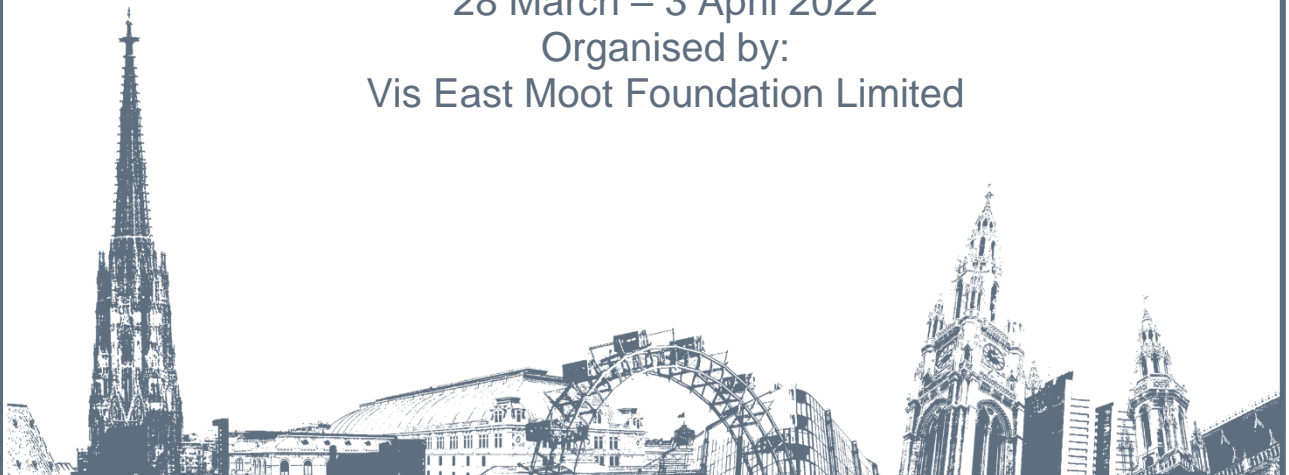
Organised by:
Association for the Organisation and Promotion of the Wil-
lem C. Vis International Commercial Arbitration Moot

and

Nineteenth Annual Willem C. Vis (East)
International Commercial Arbitration Moot
Hong Kong

Oral Arguments
28 March – 3 April 2022

Organised by:
Vis East Moot Foundation Limited



Contents

Document	Page
<i>Letter by Langweiler (15 July 2021)</i>	3
<i>Notice of Arbitration (14 July 2021)</i>	4
<i>Claimant Exhibit C 1 (Witness Statement of Mr James Chandra)</i>	9
<i>Claimant Exhibit C 2 (Email by Ms Claire Bupati)</i>	12
<i>Claimant Exhibit C 3 (Contract)</i>	13
<i>Claimant Exhibit C 4 (Email by Mr Forrest Rain)</i>	17
<i>Claimant Exhibit C 5 (Witness Statement of Mr Forrest Rain)</i>	18
<i>Claimant Exhibit C 6 (Extract Commodities News)</i>	19
<i>Claimant Exhibit C 7 (Letter by Ms Youni Lever)</i>	20
<i>Letter to Parties by ALAC (16 July 2021)</i>	21
<i>Letter to First Arbitrator by ALAC (20 July 2021)</i>	23
<i>Letter by Fasttrack (14 August 2021)</i>	24
<i>Response to the Notice of Arbitration (14 August 2021)</i>	25
<i>Respondent Exhibit R 1 (Extract ECO-Trade)</i>	29
<i>Respondent Exhibit R 2 (Email Ms Adrienne Fauconnier)</i>	30
<i>Respondent Exhibit R 3 (Witness Statement of Ms Claire Bupati)</i>	31
<i>Respondent Exhibit R 4 (Arbitration Clause)</i>	32
<i>Letter to Fasttrack by ALAC (15 August 2021)</i>	33
<i>Letter to von Jacquin by ALAC (16 September 2021)</i>	35
<i>Letter of Appointment by ALAC (16 September 2021)</i>	36
<i>Letter of Acceptance and Declaration by ALAC</i>	37
<i>Letter to von Jacquin by ALAC (20 September 2021)</i>	41
<i>Letter by von Jacquin (25 September 2021)</i>	44
<i>Letter by von Jacquin (8 October 2021)</i>	45
<i>Procedural Order No. 1 (8 October 2021)</i>	46

Joseph Langweiler

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
langweiler@lawyer.me

By email and courier

Tan Sri Datuk Suriyadi bin Halim Omar
Asian International Arbitration Centre
Director of the AIAC
Bangunan Sulaiman,
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur
Malaysia
arbitration@aiac.world

15 July 2021

Dear Director,

On behalf of my client, ElGuP plc., I hereby submit a Commencement Request and enclose the Notice of Arbitration and proof of service on JAJA Biofuel Ltd pursuant to Rule 2 of the AIAC Arbitration Rules. A copy of the Power of Attorney authorizing me to represent my client in this arbitration is also enclosed.

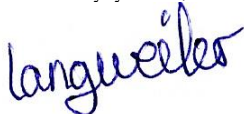
The registration fee has been paid. The relevant confirmation for payment is attached as are the required documents.

The Claimant requests a declaration that Respondent is required to perform its obligations under the contract concluded between Claimant and Respondent in April 2020.

The contract giving rise to this arbitration is governed by the law of Mediterraneo with the exclusion of the CISG and provides, through a reference to Claimant's General Sale Conditions, that all disputes shall be resolved by arbitration according to the Rules of the Asian International Arbitration Center with a seat of arbitration in Danubia.

We nominate Ms Tenera Nigrescens, Cocoseae Drive 3, Capital City, Mediterraneo as arbitrator.

Sincerely yours,



Joseph Langweiler

Attachments:

Notice of Arbitration with Exhibits

Power of Attorney (*not reproduced*)

Confirmation of Payment of Registration Fee (*not reproduced*)



Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
langweiler@lawyer.me

14 July 2021

Notice of Arbitration
(pursuant to Article 3 of the AIAC Arbitration Rules)

in the Arbitral Proceedings

ElGuP plc v. JAJA Biofuel Ltd

ElGuP plc
156 Dendé Avenue
Capital City
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

JAJA Biofuel Ltd
9601 Rudolf Diesel Street
Oceanside
Equatoriana

- RESPONDENT -

STATEMENT OF FACTS

1. Claimant, *ElGuP plc*, is one of the largest producers of RSPO-certified palm oil and palm kernel oil based in Mediterraneo. Its annual production lies at around 30,000t.
2. Respondent, JAJA Biofuel, is a well-established producer of biofuel based in Equatoriana. It was acquired in late 2018 by Southern Commodities, a multinational conglomerate engaging in all kinds of commodities and their derivatives with its headquarters in Ruritania.
3. For a long time, Claimant had sold 2/3 of its annual palm oil production, i.e. around 20,000t, under a long term contract to a single customer which used it for the production of biofuel. The biofuel was then sold primarily in Europe. In December 2018, the European Union revised its Renewable Energy Directive (RED II). Following considerable pressure from environmental interest groups, in the RED II it was, *inter alia*, foreseen that the EU would start phasing out the use of palm oil-based biofuels in 2023. In light of these unfavourable developments of the European market, Claimant's customer terminated the long-term supply agreement in January 2020 allegedly for cause, claiming temporary problems with Claimant's RSPO certification as a



pretext. As a consequence of that unjustified termination of the long-term supply contract, Claimant had to find a customer for 2/3 of its production of certified palm oil on short notice.

4. In light of that, Mr Chandra, Claimant's COO, used the Palm Oil Summit in Capital City in Mediterraneo on 28 March 2020 to approach Ms Bupati who had been appointed a year before as the Head of Purchasing for Respondent (**Claimant Exhibit C 1**). Ms Bupati had for a long time been the main purchase manager for the palm kernel oil section of Southern Commodities. In that function she had concluded numerous contracts with Claimant for palm kernel oil. In the context of the acquisition of Respondent, Southern Commodities had announced that it would centralize its entire oil business under the roof of Respondent which so far had primarily produced biofuel from other vegetable oils. The appointment of Ms Bupati as Head of Purchasing was in line with the announced intention to considerably enlarge the palm oil-based biofuel business.
5. Given the favorable price of USD 900/t offered by Claimant for a long-term commitment Ms Bupati showed great interest in purchasing the entire available production of palm oil from Claimant from 2021 onwards for five years. In principle, Mr Chandra and Ms Bupati managed to settle all commercial terms in their negotiations at the Palm Oil Summit. In light of the recent controversies concerning Respondent's palm oil business, Ms Bupati wanted to get approval from Respondent's management first, before entering into such a long-term commitment of a considerable size. Thus, it was agreed that Ms Bupati would get back to Mr Chandra with a definitive offer within the next three days, who would then prepare the contractual documents. That was largely the mode of operation which Mr Chandra and Ms Bupati had established for their numerous palm kernel oil contracts.
6. On 1 April 2020, Ms Bupati sent an email ordering 20,000t of RSPO-certified palm oil per annum for the years 2021 - 2025 to be delivered in up to six instalments per annum, delivery starting in January 2021 (**Claimant Exhibit C 2**). These were exactly the commercial terms agreed between the Parties at the Palm Oil Summit.
7. Mr Chandra had his assistant Mr Rain prepare the necessary contractual documents. In line with the practice established with Ms Bupati in previous transactions, the Contract was based on Claimant's contract template into which the details of the offer were incorporated (**Claimant Exhibit C 3**). On 9 April 2020, Mr Rain sent the Contract signed by Mr Chandra to Ms Bupati's assistant, Ms Fauconnier. The accompanying letter explicitly mentioned that the Contract would be governed by the law of Mediterraneo and that the purchase would be subject to the Claimant's General Conditions. The General Conditions were not included in the letter as they were known to Ms Bupati from her work for Southern Commodities. In addition, the letter named Mr Rain as the relevant contact for all questions concerning the Contract and asked for the return of one of the signed versions for Claimant's "files and the necessary paperwork for shipment" (**Claimant Exhibit C 4**).
8. On 3 May 2020, Ms Fauconnier contacted Mr Rain to set up a meeting to discuss issues concerning the letter of credit which Respondent was required to open under the Contract. She asked for a list of acceptable banks and wanted to clarify the documents to be presented for payment. In the call finally agreed between them, Mr Rain pointed out that so far no signed copy of the Contract had been received and Ms Fauconnier promised that she would look into that (**Claimant Exhibit C 5**). In light of that promise and the fact that in previous transactions conducted by Ms Bupati for Southern Commodities she had not always returned the requested signed versions of the contract, Claimant was not worried.

9. That changed on 29 October 2020, when Claimant learned from an article in Commodities News that Respondent allegedly had stopped all further negotiations with Claimant concerning the delivery of palm oil and was potentially reconsidering its palm oil-based biofuel activities (Claimant Exhibit C 6).
10. Mr Chandra immediately called Ms Bupati trying to clarify the issue. He was told that she was on holiday but would call him back immediately upon her return. The next day, on 30 October 2020, Claimant received a letter from Respondent's CEO, Ms Youni Lever. In that letter she declared the termination of any further negotiations on the delivery of palm oil and additionally renounced all existing contractual relations, allegedly due to information about Claimant's infringements of basic RSPO standards (Claimant Exhibit C 7).
11. Four days later, Ms Bupati finally returned Mr Chandra's phone call. She largely confirmed the content of the letter and offered Mr Chandra to discuss the issue with Respondent's COO, Mr Fotearth. Over the course of the next month there were several rounds of negotiation with Mr Fotearth to no avail. Equally a mediation effort between the Parties under the agreed upon AIAC Mediation Rules vastly failed.
12. It was not even possible to agree on the jurisdiction of this Arbitral Tribunal. For obvious reasons Respondent apparently considered a trial before the courts of Equatoriana to be more favorable. These are not only its home turf but are known to be very receptive to arguments based on the environment.
13. At least, it was agreed between the Parties in the mediation that Mr Chandra should sell the quantities for the year 2021, if need be with a further reduction. That reduction would then become part of a damage claim should the present Arbitral Tribunal or the otherwise competent state court come to the conclusion that the Parties entered into a valid contract in spring 2020 which had not been terminated by Respondent (Claimant Exhibit C 1). While Mr Chandra had been able to find other buyers for the quantities sold to Respondent under the Contract for 2021, he has not yet been successful for the remaining quantities.

LEGAL EVALUATION

14. The Arbitral Tribunal has jurisdiction to hear this case. Claimant's General Conditions of Sale, which have been included into the Contract contain in Article 9 the following arbitration clause:

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules.
The seat of arbitration shall be Danubia.
The language to be used in the arbitral proceedings shall be English.
This contract shall be governed by the substantive law of Danubia.
Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the AIAC Mediation Rules as in force on the date of the commencement of mediation.”
15. Contrary to Respondent's allegation in its letter of 30 October 2020 (Claimant Exhibit C 7) and during the negotiations preceding this Arbitration, the Parties have entered into a binding contract including Claimant's General Conditions of Sale and the arbitration clause contained therein. The Parties were not still at the stage of contract negotiations.

16. According to Danubian contract law, which governs the issue as the law at the place of arbitration, a reference in a contract to general conditions containing an arbitration agreement is sufficient to make the arbitration clause part of the contract. There is no additional requirement, to provide the general conditions to the other party. Furthermore, such a requirement would be a pure formality as Ms Bupati was aware of the existence of the arbitration agreement due to her previous position at Southern Commodities.
17. Even if one would consider the law of Mediterraneo to be applicable to the arbitration clause, as the law chosen for the Contract, that would not lead to a different result. First, the inclusion of the clause would not be governed by the CISG, but the non-harmonized substantive contract law which in relation to the conclusion of contracts and the inclusion of standard conditions for international transactions is a verbatim adoption of Article 2.1 of the UNIDROIT Principles. Second, even if it would be governed by the CISG the arbitration clause would be included due to a practice established between the Parties.
18. Furthermore, Claimant is entitled to the requested declaration that the Contract was validly entered into and continues to exist. The Parties have entered into a valid Contract for the delivery of 20,000 tons RSPO-certified palm oil per year over a period of 5 years. For the conclusion of the Contract, it is irrelevant that Respondent had not returned a signed version of the contractual document. There is no form requirement under the CISG and that Respondent considered itself bound is obvious from the discussions about suitable banks for the letter of credit.
19. That a conclusion of the Contract is not dependent on the return of a signed version of the contract documents is also evident from Claimant's dealings with Southern Commodities, Respondent's parent company. There have been several instances where Ms Bupati, when acting for Southern Commodities, did not return a signed version of the contractual documents as requested, but performed the respective contract as set out in the documents. Thus, there is a practice between the Parties that unless Respondent objects to the contractual documents within a reasonable period of time, a contract is concluded with the terms of the contractual documents.
20. That practice also extends to the inclusion of the General Conditions of Sale even if one would not consider the clear reference to the General Conditions of Sale to be sufficient in itself to make them part of the contract. In the present case, given that Ms Bupati had been provided with a copy of the General Conditions of Sale in her function as the main purchase manager of Southern Commodities and should thus have been aware of their content, it would be a mere formality to require that such terms must be made available to her again.
21. Respondent has not validly terminated the Contract existing between the Parties. The remedies resulting from an existing or perceived lack of the required quality of the goods, including those associated with wrong expectations, are conclusively regulated by the CISG. It does not provide for any right to avoid a contract for mistake. In the present case, the requirements for an avoidance according to Article 49(a) CISG are not met. First, the palm oil is conforming to the contractual requirements and Respondent has not even alleged that the palm oil to be delivered would not be of RSPO-quality, but has merely referred to past events which have long been remedied. Furthermore, according to the Clause 4 of Claimant's General Conditions of Sale, Claimant would have been entitled to an additional period of time of two months to remedy the problems with individual suppliers, before Respondent could have terminated the Contract for cause.

22. By not taking delivery of the quantities for the year 2021 Respondent has breached the Contract. To mitigate the damages Claimant has sold the quantities of this year to other suppliers at lower prices, than those provided for in the Contract. This was in line with the agreement concluded between the Parties in their negotiations. The loss resulting in these sub-price sales amounts to USD 200,000.

REQUEST

23. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:

- 1) To declare that the Arbitral Tribunal has jurisdiction to hear the case.
- 2) To declare that the Parties entered into a valid contract for the delivery of 20,000t/annum of RSPO-certified palm oil for the years 2021 - 2025
- 3) To declare that Claimant's General Conditions of Sale were validly included into that Contract and exclude any termination of the Contract for temporary infringements of the RSPO requirements before Claimant was given a suitable period of one month to remove such infringements by its suppliers.
- 4) To declare that Respondent has not validly avoided the Contract either for mistake or for a fundamental breach of contract.
- 5) To order Respondent to compensate Claimant for the damages incurred for the failure to accept the deliveries of the quantities for the year 2021 in the amount of USD 200,000 plus interest thereon.
- 6) To order Respondent to perform the Contract for the years 2022 - 2025.
- 7) To order Respondent to bear the costs of these arbitration proceedings, including the cost incurred by Claimant for legal representation.



Joseph Langweiler

Witness Statement of Mr James Chandra

Born: 7 June 1967

1. I have degrees in agriculture and economics.
2. Since June 2018, I am the COO of the Claimant in this Arbitration. Until then, I had been the Head of Sales for 8 years. In that function I had been in regular contact with Ms Bupati who was at the time still working for Southern Commodities, which became the new parent company of Respondent in 2018. Since 2010, Claimant and Southern Commodities concluded around four to five contracts for palm kernel oil per year, one larger contract at the beginning of the year was usually followed by three or four smaller contracts. From 2010 - 2018 the relevant negotiations were done by Ms Bupati and myself and then by our respective successors.
3. After Ms Bupati and myself had met in person in 2010 to get to know each other, the contracts were usually concluded remotely without any in person contact. Ms Bupati would call me and enquire about the existing conditions. She would then send me an order with a price which would often be around a dollar less than the prices I had given her for our normal contracts. For the larger quantity contracts, I would normally accept the requested lower price and prepare the necessary contract documents which I would then send her. For the smaller contracts I would occasionally accept the requested reduction of the price or reject it giving explanations why I could not agree on a reduction. Only in three cases there were further discussions and minor amendments, in particular to the delivery terms. In all other transactions Ms Bupati then merely accepted the firm bid made by us. In the large majority of cases the acceptance occurred via sending back a signed version of the contract. There have, however, been at least 5 cases where no signed version of the contract was sent back, but the contract was subsequently performed.
4. For the contract documents we always used our contract template, which is a customized and simplified version of the FOSFA/PORAM 81 contract form. Into this template we inserted the previously agreed commercial terms including the shipping and insurance terms. In the accompanying letter or email we additionally provided for the application of our General Conditions of Sale, which were known to Southern Commodities. The content of our General Conditions of Sale remained unchanged, with the exception of the general Arbitration Clause in Article 9, where we replaced in 2016 the original arbitration clauses from the FOSFA/PORAM 81 contract form by the AIAC model clause. I am not certain whether we sent a copy of the revised 2016 version to Ms Bupati but I am 100% certain that I told her about the switch to the AIAC when negotiating a contract with her in 2016.
5. At the end of 2018, we were informed by investigative journalists and film producers that at least two of our suppliers had breached their sustainability obligations. Unfortunately, the immediately ordered internal investigation proved these allegations to be correct. It turned out that the two supplies mentioned in the film "Saving Lucy" had in fact delivered 3,000t of oil palm fruits from plantations which were not following our high sustainability principles. Irrespective of that, one of the members of our supervision team had confirmed the RSPO conformity against payment of a bribe.
6. We took immediate action against our employee and delisted the two suppliers. Irrespective of that, when that incident became public in June 2019 with the release of the film "Saving Lucy"

it was used by one of our major customers as a pretext of declaring the termination of a long-time supply contract with us. The real reason for the unjustified declaration of termination was the new European RED II which banned palm oil-based biofuel from 2030 onwards and thus constituted a major blow to the future of that industry in Europe.

7. That unjustified termination covering around 2/3 of our annual production of palm oil made it necessary to find new customers for the oil. I was able to sell the production of 2020 at a considerable discount to a long-time customer. For the quantities from 2021 onwards I contacted Ms Bupati at the Palm Oil Summit in March 2020.
8. I knew from the press that Ms Bupati had become the new Head of Purchasing of JAJA Biofuel, following its acquisition by Southern Commodities. There had been considerable coverage about the deal in the press. Southern Commodities had announced that it wanted to concentrate all its palm oil activities relating to biofuel at JAJA Biofuel. Initially also the palm kernel oil business had been shifted to JAJA Biofuel to benefit from the greater purchasing power but was then sold off at the end of 2020.
9. JAJA Biofuel had an excellent reputation in the market for its products but had so far largely used other vegetable oils to produce biofuel. It was thus clear that for the ambitious output objectives announced by Southern Commodities, JAJA Biofuel would have to increase its supply of biofuel considerably.
10. Ms Bupati was very interested in entering into a long-term relationship for the supply of palm oil with us, but insisted that it had to be RSPO-certified palm oil. She told me that she had been very surprised about the role played by environmental topics in Equatoriana, both in the general public, but also within JAJA Biofuel. That was in stark contrast to the attitude she had experienced both in Ruritania, which was one of the largest producers of coal world-wide, and also within Southern Commodities where environmental concerns also played a minor role.
11. I gave her a quotation for 2/3 of the annual production of our RSPO-certified palm oil for the next five years at a very competitive price. At the same time, I made clear that in light of the considerable reduction given no further discount would be possible. She understood that and accepted it. She indicated, however, that it could eventually be necessary to adapt some of the “legal” terms which had been used in the previous contracts between us, in particular the dispute resolution mechanism given the wide-spread hostility to arbitration in Equatoriana. I told her that for us agreeing on anything but arbitration would be very difficult.
12. On 1 April 2020, I received an email from Ms Bupati in which she placed an order with exactly the same commercial terms I had offered asking me to prepare the contract documents.
13. That was exactly in line with the procedure the two of us had established when she was still working for Southern Commodities, the parent company of JAJA Biofuel. I had my assistant Mr Rain to prepare two sets of contract documents and to send them to Ms Bupati on 8 April asking her to sign one version and return it to me. Furthermore, I asked him to point out that contrary to our previous practice – which was still reflected in our General Conditions of Sale as I later found out – the sales contract would be governed by the law of Mediterraneo and not by the law of Danubia. The decision to change the applicable law for our contracts had been taken in January 2020, following the advice of one of our lawyers. He had told us in the context of the unjustified termination of the contract by our previous customer that, in relation to problems with the supply chain, the law of Mediterraneo would be more favorable to us than the previously selected law of Danubia. While I had already mentioned the change of the applicable law in our discussions at the Summit, I wanted to remind her of that change.

14. I was not worried that Ms Bupati did not send back the signed version. That had happened before and the practice established with Ms Bupati in our previous contracts was that unless she objected to the terms of the contract documents within a week she accepted them.
15. That understanding was confirmed by the discussions of my assistant, Mr Forrest Rain, with Ms Fauconnier, Ms Bupati's assistant, who was the responsible person for the performance of the Contract. Ms Fauconnier had, *inter alia*, enquired which banks would be acceptable to open the required letter of credit. Such discussions are already the first steps in contractual performance and make no sense if there is no contract concluded.
16. To me, it was clear that we had agreed on a Contract at that point in time and I was very surprised when I read the article in the Commodity News in which Ms Youni Lever, the CEO of JAJA Biofuel, alleged that no contract had yet been concluded and that they were terminating the negotiations with us. I immediately tried to contact Ms Bupati who was, however, on holiday.
17. The next day, I received the letter from Ms Lever, in which she informed us about the intention of JAJA Biofuel to terminate the negotiations and "in the interest of utmost caution" declared avoidance of any contract concluded.
18. The subsequent discussions and mediation with JAJA Biofuel were largely without success. At least we agreed on a modus to mitigate the damages until a final decision in relation to the conclusion of the contract has been rendered.

Mediterraneo, 9 June 2021



James Chandra



From: Claire Bupati <c.bupati@jaja.biofuel.eq>
Sent: 1 April 2020, 8:25 am
To: James Chandra <james.chandra@elgup.me>
Cc: Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>
Re: Purchase offer

Dear James,

It was good to see you at the Palm Oil Summit last week, to catch up and to re-establish our long-lasting and successful business relationship in my new function.

As discussed at the Palm Oil Summit, Southern Commodities is still committed to pursue the planned expansion of its palm oil-based biofuel business, despite the temporary anti palm oil movement in some parts of the world. JAJA Biofuel is supposed to play a crucial role in this expansion strategy of Southern Commodities even if it is not sure yet that the decision to concentrate all palm oil activities under the roof of JAJA Biofuel will not be revisited in relation to the palm kernel oil. We are at least strongly interested in securing a long-term supply at the conditions we discussed at the Summit.

In light of that, I would like to place the following order with you as agreed at the Summit:

20,000t RSPO-certified segregated palm oil per annum for the years 2021 - 2025, cif Oceanside – delivery in up to 6 instalments; at USD 900/t for first year; thereafter market price – 5 %.

Could you please prepare the necessary contractual documents for signature and send them to my assistant, Adrienne Fauconnier, to whom I introduced you at the Palm Oil Summit and whom I put in cc. She will take care of the further discussions, if any, and the implementation of the Contract.

Following our discussion, I assume the documents for the sale of palm oil are largely comparable to those for the sale of kernel oil and are based on your shortened version of the FOSFA/PORAM Model Contract? As already indicated at the Summit the submission of the sales contract to Mediterranean law, which you mentioned as your company's new policy, is less a problem for us than the submission to arbitration, in particular if we submit to an institution which exclusively deals with palm oil.

You are probably aware of the strong opposition of several of the most influential activist groups in Equatoria to investment arbitration castigating its lack of transparency and the perceived self-interest of the players involved. The fewer potential arguments we give them to attack our business the better. At least we should select a non-industry related arbitration institution and provide for some sort of transparency, for example applying UNCITRAL's Transparency Rules.

In light of the general anti-palm oil atmosphere in Equatoria, it is, however, absolutely crucial for us that all palm oil delivered is RSPO-certified and that the supply chain is properly monitored.

Sincerely,
 Claire

Head of Contracting / JAJA Biofuel Ltd.

9601 Rudolf Diesel Street / Oceanside / Equatoria / Email: c.bupati@jaja.biofuel.eq



CONTRACT FOR PALM AND PALM KERNEL OIL PRODUCTS IN BULK CIF TERMS

Reference Nos

81

SELLERS: *ElGuP plc*.....BUYERS: *JAJA Biofuel Ltd*.....

BROKERS:

Date8 April 2020.....

*in case of alternative wording a decision by the parties is required.

Sellers have agreed to sell and Buyers have agreed to buy:

Contract No : 41		Date : 8 April 2020	
Product : <i>RSPO-certified fully segregated palm oil</i>			
Origin : Mediterraneo			
Quantity in metric tons	Shipment Period	Discharge Port	Contract Price CIF
20,000 / per annum 2021 – 2025	2021 - 2025 Up to 6 times per year	Oceanside / Equatori- ana	USD 900/t first year Years 2 -5: market price minus 5% at time of shipment
Special Conditions			
Seller's General Conditions of Sale apply – RSPO-certified fully segregated!			

Payment in

- X (i) in accordance with the provisions of paragraph (a) of the Payment Clause;
(ii) in accordance with the provisions of paragraph (b) of the Payment Clause;
(iii)
.....

1. TOLERANCE: Sellers have the option of shipping 5% more or less of the mean contract quantity. In the event of more than one shipment being made each shipment is to be considered as a separate contract but the tolerance on the mean contract quantity is not to be affected thereby.

2. QUALITY AND SPECIFICATIONS:

RSPO-certified - fully segregated palm oil.

.....
.....

At time and place of shipment, the oil shall be of good merchantable quality of the agreed description and specifications.

It shall not contain substances of non oil-palm origin or materials used in its processing and not customarily found in oil of the contract description.

If the oil is loaded in more than one tank of the same ship, the analysis details of the oil in each separate tank shall conform with the above.

3. ARRIVAL QUALITY-ADJUSTMENT: The price shall be subject to adjustment based on the arrival analysis ascertained in accordance with the provisions of the Sampling and Analysis Clause paragraph (d) contained in the General Conditions of Sale.

4. DECLARATION OF DESTINATION: The goods are sold for shipment to*Oceanside/Equatoriana*..... but Buyers have the option to declare*any other port in Equatoriana*

.....

as the port/s of destination with a minimum of ... 500... metric tons to any one port.

To exercise this option Buyers shall declare the port/s of destination to Sellers by any means of rapid written communication not later than 16.00 hours on ...*the day following the day at which the seller declares readiness for shipment*.....

The Notices Clause and the Non-Business Days Clause shall not apply to such declaration.

5. SHIPMENT AND CLASSIFICATION: Shipment in good condition in ship/s which comply with the FOSFA Qualifications and Operational Procedures for Ships Engaged in the Carriage of Oils and Fats in Bulk for Edible and Oleo-Chemical Use in force at the date of the Bill of Lading. The oil is to be shipped on a ship which, after loading in one or more origin ports, will proceed directly or indirectly, on a geographically normal route from the port/s of shipment to the port/s of destination.

6. INSURANCE:

[not provided]

7. PAYMENT AND SHIPPING DOCUMENTS: Payment shall be made at the above-named place as stipulated in the Preamble for 99% of Sellers' provisional invoice (or for 100% in the case where shipped weights are final) against a complete set of shipping documents:

- a. by irrevocable and confirmed letter of credit unrestricted for negotiation established in Sellers' favour through a recognised bank for 105% of the mean contract quantity. Unless otherwise agreed between the parties such credit shall be advised and

available to Sellers not later than 10 days from date of contract or the business day prior to commencement of loading, whichever shall first arise. Should the credit be opened on terms inconsistent with the contract, Sellers may demand amendment which shall be arranged by Buyers and notified to Sellers within 7 days of the demand being received but in no case later than the business day prior to commencement of loading. The negotiating bank may claim reimbursement by telex/cable from the credit-opening bank upon confirmation that all documents conform to the credit requirements:

- b. by cash on presentation:
- c. as stated in the Preamble:

If Sellers choose to present documents to Buyers through the intermediary of a bank/s all bank charges incurred including those raised by Buyers bank shall be for Sellers' account unless Buyers demand presentation through a bank of their choice in which case those bank charges shall be for Buyers account.

Any charges for telegraphic remittance of funds to Sellers shall be for Buyers' account. Shipping document shall consist of -

- (1) Commercial invoice;
- (2) Full set of clean "on board" Bill/s of Lading and/or Ship's Delivery Order/s and/or other Delivery Order/s in negotiable and transferable form, such other Delivery Order/s guaranteed by a recognised bank if required by Buyers;
- (3) Policy/ies and/or Insurance Certificate/s and/or Letter/s of Insurance in the currency of the contract and identifying the parcel insured. Letter/s of Insurance shall specify the insurance company/ies and/or underwriter/s and policy number/s and shall be guaranteed by a recognised bank if required by Buyers. After payment Letter/s of Insurance shall be substituted by policy/ies and/or certificate/s on request;
- (4) FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank from superintendents in the form in force at the date of the Bill/s of Lading;
- (5) Certificate of Analysis, based on independently sealed samples taken from the relevant ship's tank/s at time of loading, and issued by an independent certified analyst;
- (6) A Certificate of Origin and/or other documents as per the Duties, Taxes, Etc., Clause of the contract where applicable;
- (7) A Certificate of RSPO conforming production and appropriate segregation.

Buyers are to accept photostat or certified copy/ies of items (4), (5), and (7) relating to the whole parcel/s.

Buyers agree to accept Bill/s of Lading containing the Chamber of Shipping War Risk Clause and/or any other recognised War Risk Clause.

Should documents be presented with incomplete set/s of Bill/s of Lading, payment shall be made provided that delivery of such Bill/s of Lading be guaranteed, such guarantee to be signed, if required by Buyers, by a first-class bank. Acceptance of this guarantee shall not prejudice Buyers' rights under this contract. Should Sellers have failed to present shipping documents on arrival of the ship at destination, Buyers shall take delivery under a guarantee acceptable to the ship-owners to be provided by the Buyers, such guarantee to be signed by a first-class bank if required by the shipowners. Buyers shall pay for the documents when presented. Any reasonable extra expenses, including costs of such guarantee or extra handling charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers and allowed for in the final

invoice. In the event that Buyers take delivery as above and Sellers fail to provide shipping documents and if the guarantee provided by Buyers as above is encashed by the shipowners, Sellers shall be responsible for all damages, costs and consequences arising from their failure to present documents. Buyers shall inform Sellers immediately there is a claim against the guarantee and Sellers shall have the right to be joined in any legal action arising therefrom.

Any monies due by either party to the contract to the other for final invoices and/or accounts for items on shipments fulfilling this contract shall be settled by either party not later than 21 days from the date of the invoice, (except as otherwise provided under awards of arbitration or appeal as governed by the other provisions in the contract), and if not settled a dispute shall be deemed to have arisen which may be referred to arbitration.

8 DUTIES, TAXES, ETC: All export duties, taxes, levies, etc., present or future in country of origin/port of shipment shall be for Sellers' account. All import duties, taxes, levies, etc., present or future in port of discharge/country of destination shall be for Buyers' account. Where the goods are entitled to free entry into or preferential duty in the port of destination named in this contract, Sellers shall furnish together with the shipping documents a Certificate of Origin and/or necessary documents in the form valid at the time of shipment, otherwise Sellers shall be responsible for any extra duty incurred by Buyers through the non-production of such Certificate and/or document/s.

At Buyers' request and cost, Sellers shall endeavour to supply any alternative or additional certificate of origin and/or other documents but payment shall not be withheld for any delay incurred in complying with such request.

Signatures

For Seller

For Buyer



.....
(James Chandra)

8 April 2020

.....

From: Forrest Rain <forrest.rain@elgup.me>
Sent: 9 April 2020, 6:09 a.m.
To: Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>
Cc: Claire Bupati <c.bupati@jaja.biofuel.eq>
Re: Contract Documents

Dear Ms Fauconnier,

Please find attached a pdf of the contract documents which Mr Chandra asked me to prepare. As Ms Bupati expected, the template used is our customized and shortened version of the FOSFA/PORAM 81 form used in the palm oil trade, which also formed the basis of the previous 40 or so contracts concluded between Mr Chandra and Ms Bupati.

I have inserted the terms of your offer into the Contract, which we accept.

Mr Chandra asked me to point out that in deviation from the previous practice established between Ms Bupati and Mr Chandra the sale will be governed by the law of Mediterraneo.

In addition, Claimant's General Conditions of Sale apply to issues not regulated in the attached document.

The management of the Contract will be handled by Mr Chandra personally. Thus, if you have any questions, I will be your point of contact. Please do not hesitate to contact me.

I have sent you two signed versions of the contract documents. Could I kindly ask you to sign one copy and return it to me for my files and the necessary paperwork for shipments.

Kind regards,

Forrest

Witness Statement of Mr Forrest Rain

Born: 21 August 1998

1. I have a degree in biology. Since 2019 I have been working as an assistant for Mr Chandra.
2. In April 2020, Mr Chandra asked me to prepare the contract documents for the 5 years supply contract with JAJA Biofuel. He provided me with the necessary information and told me to send them to Ms Bupati and her assistant. He specifically asked me to mention once more that the sales contract should be governed by the law of Mediterraneo, which was a deviation for the choice of law clause contained in our sales conditions. The background for this discrepancy was that, after the unjustified termination of a major supply contract by a customer in January 2020, our lawyer had advised us to submit the contracts in the future to the law of Mediterraneo. It was planned to revise our general terms accordingly but somehow that had not yet happened.
3. I sent an email and a letter with two signed originals of the contract asking Ms Bupati to return one version for my files and to facilitate the necessary paperwork. There have been cases, where our customs authorities had asked for originals of the documents and I wanted to be prepared for that.
4. In early May 2020, I was contacted by Ms Bupati's assistant, Ms Fauconnier, who wanted to discuss with me details concerning the letter of credit. She wanted to know which banks would be acceptable, i.e. would be "recognised banks", and whether we could change the documents to be submitted. I gave her a list of acceptable banks and tried to address, as far as I could, her concerns relating to some of the documents requested for presentation. She seemed to be convinced by my explanations and said that there would be probably no need to change the contractual terms, which she would have to check, however, with their lawyers.
5. Furthermore, she wanted to know whether we could amend the arbitration section in clause 7 by adding at least a reference to the UNCITRAL Transparency Rules. As these Rules had already been mentioned in Ms Bupati's email I had looked them up in preparing the contract. I explained to her that according to my understanding, which had been confirmed by a friend who is a lawyer, these Rules had a different scope of application and were not suitable for our contract. She agreed and thought that Ms Bupati had probably mentioned them because they had been regularly mentioned in the press in the extensive debate in Equatoriana about the legitimacy of investment arbitration and its perceived secrecy.
6. During our call I reminded her that the return of the signed version of the contract was still outstanding. She said that she would look into that but never came back to me.
7. When I talked with Mr Chandra about that he told me not to worry. In the past, Ms Bupati had on several other occasions forgotten to send back the signed copy of the contract. Irrespective of that the mother company always considered itself bound by the contract and complied with it.

7 July 2021


Forrest Rain



29 October 2020 Commodities News

JAJA Biofuel reconsiders decision to enlarge production of palm oil-based fuels

After six weeks of continuous protest and actions by activists gaining increasing support of the general public in Equatoriana it seems that Management of JAJA Biofuel saw the need to react to the public. Yesterday, Ms Youni Lever, the CEO of JAJA Biofuel announced in a press conference that JAJA is presently examining its supply chain and all its suppliers of palm oil for their compliance with JAJA's commitment to the UN SDGs and sustainability in general. Depending on the results of that examination JAJA would re-evaluate its decision to increase the quantity of its biofuel based on palm oil.

The campaign against JAJA Biofuel and its palm oil business started with the release of the film "Saving Lucy" in Equatoriana in June 2020. The film is about a female Orangutan baby which lost its parents in one of the wild-fires used to clear rainforest for palm oil plantations.

For a considerable time JAJA Biofuel had been the darling of green investors in Equatoriana. Biofuel produced by JAJA Biofuel was widely considered to be an essential bridge technology in the fight against global warming. There were only few critics who raised general concerns against the concept of producing biofuels from food crops. For a long time that criticism had, however, largely focused on palm oil due to the negative effects widely associated with its production, such as an increasing deforestation of environmentally valuable peatland and the social effects of land grab by multinationals.

With the takeover by Southern Commodities the public attitude towards JAJA Biofuel had, however, changed completely. Southern Commodities had been for a long time one of the most controversial companies trading in commodities. Several of its subsidiaries have been involved in environmental scandals and Southern Commodities had the reputation of being very close to some of the most corrupt leaders in countries where it sourced its supplies. Even worse for many environmental activists, Southern Commodities was known to be one of the biggest financial supporters of the government of Ruritania, which largely denied any man-made effects on the climate.

In addition, the announcements by Southern Commodities in the context of the acquisition made clear that it was planning to considerably increase JAJA's production of biofuels based on palm oil.

With the cinema start of the prize winning "Saving Lucy" in Equatoriana, one year after its original release in June 2019 in Mediterraneo, the until then singular actions by environmental activists against JAJA gained considerable traction. Parts of the general public in Equatoriana, which has traditionally been very environmentally conscious, started to participate in the actions against JAJA Biofuel. Its premises were blocked and the activists did not only request to abandon any production of biofuel from palm oil but from food crop in general. When these actions started to seriously affect the share price, the management of JAJA Biofuel apparently saw the need for action.

As a first direct step, Ms Lever announced that due to the breaches documented in the film, JAJA Biofuel had already stopped its negotiations with ElGuP for a long-term supply contract. ElGuP had been one of the companies to whom the farmers mentioned in the film had sold their palm oil though it had been produced in clear violation of the RSPO standard. In the film it was submitted that ElGuP had not implemented the requested control system to verify that the palm oil sold to it by its suppliers as RSPO conformant did actually meet the requirements. Quite to the contrary, the film insinuated that at least one of ElGuP's purchasing managers had engaged in a flourishing sale of the required certificates.

When these allegations became public in June 2019 with the official release of the film, they were another serious blow to the palm oil industry in Mediterraneo which was already suffering from the European RED II. ElGuP immediately issued a press release in which it confirmed what it called "a singular problem with a corrupt employee and two suppliers" against which actions had been taken. At the time, ElGuP refused any further comment on the issue due to the ongoing criminal investigation which had been started against that employee upon ElGuP's insistence.

There are rumors that the incident had already led to the termination for cause by ElGuP major customer in January 2020. Sources close to the company reported that the case is presently pending before an arbitral tribunal under the AIAC-Rules.



BIOFUEL

Ms Youni Lever

Chief Executive Officer
JAJA Biofuel

9601 Rudolf Diesel Street
Oceanside
Equatoriana

y.lever@jaja.biofuel.eq

PER REGISTERED COURIER

James Chandra

Chief Executive Officer

ElGuP plc

156 Dendé Avenue

Capital City

Mediterraneo

james.chandra@elup.me

30 October 2020

Termination of Negotiations / Auxiliary Termination for Cause (Mistake)

Dear Mr Chandra,

I herewith terminate the negotiations for the conclusion of a 5 years supply contract between ElGuP and JAJA Biofuel.

As it is widely known in the market and as you have been told by Ms Bupati, our Head of Contracts, it is of utmost importance for JAJA Biofuel that all suppliers comply with the highest standards of sustainable oil production. We are convinced that only certified palm oil of the highest quality should be used in light of our responsibility for the environment and future generations. Unfortunately, your company and at least two of its suppliers have been involved prominently in the recent scandal relating to fake RSPO certificates. That excludes your company from the list of potential suppliers at least for the next three years.

In the interest of utmost caution and in the unlikely event that under the applicable laws our previous negotiations should have resulted in any contractual and pre-contractual rights and obligations between our two companies these are herewith terminated. The obvious violation of the RSPO standards by your own personnel – which were shown in the film “Saving Lucy” when taking bribes for granting certificates – constitutes by all accounts a fundamental breach of contract entitling JAJA Biofuel to terminate all contractual relationship with immediate effect for cause.

Reserving any rights to damages I remain at your disposal for any further discussion about the legal consequences associated with this letter.

Yours sincerely

Youni Lever

Chief Executive Officer / JAJA Biofuel

Please quote our reference when replying.

Ref. : AIAC/INT/ADM-123-2021

16th July 2021

JOSEPH LANGWEILER

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
[Ref.: *please advise*]

By Fax, Email & Post

(Fax: (0) 146 9850)
(Email: langweiler@lawyer.me)

JULIA CLARA FASTTRACT

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
[Ref.: *please advise*]

By Fax, Email & Post

(Fax: (0) 214 77 33)
(Email: fasttrack@host.eq)

Dear Sirs/Madams,

**IN THE MATTER OF AN AIAC ARBITRATION BETWEEN ELGUP PLC
(CLAIMANT) AND JAJA BIOFUEL LTD (RESPONDENT)**

We refer to the above matter and the Claimant's commencement request with enclosures dated 15th July 2021.

Please be advised that this arbitration matter has been registered pursuant to **Rule 2** of the **AIAC Arbitration Rules 2018** (the "**Rules**"). According to **Rule 2(2)** of the **Rules**, the arbitration commenced on 15th July 2021.

We note that the Claimant has nominated Ms Tenera Nigrescens as the First Arbitrator.

We wish to bring to your attention **Rule 14(1)** and **Rule 14(2)** of the **Rules**, which states that the Director of the AIAC shall fix a provisional advance deposit that is intended to cover the costs of the arbitration. The amount of this deposit shall be paid in equal shares by both Parties within 21 days upon request from the AIAC.

Having regard to the above, please be informed that a provisional advance deposit of **USD24,000.00** is payable in equal shares by the Parties. The amount to be paid by the Parties is as follows:

Claimant : **USD12,000.00**
Respondent : **USD12,000.00**

Please be advised that pursuant to **Rule 14(3)** of the **Rules**, in the event that any of the Parties fails to pay its share of the deposit, the Director of the AIAC will give the other Party an opportunity to make the required payment within a specified period of time. The arbitral proceedings shall not proceed until the provisional advance deposit is paid in full.

We wish to highlight that pursuant to **Rule 14(4)** and **Rule 14(5)** of the **Rules**, further deposits may be requested following a calculation of the estimated fees and expenses of the Arbitral Tribunal and AIAC administrative fee. Any unexpended balance shall be returned to the Parties upon rendering of the final account.

Please find enclosed our Invoices no. 10010855 and 10010856 for your reference.

Kindly remit the above-stated amount within 21 days by **6th August 2021** and submit to us the proof of the remittance.

Finally, we kindly request you to ensure that the following AIAC email addresses are copied to all communications in this matter:

- director@aiac.world (Tan Sri Datuk Suriyadi Bin Halim Omar, Director of the AIAC);
- counsel@aiac.world (Ms Anggun Sulaiman, Senior International Case Counsel); and
- arbitration@aiac.world (AIAC Arbitration).

Please do not hesitate to contact us if you have any queries.

Thank you.

Yours faithfully,



ANGGUN SULAIMAN

Senior International Case Counsel

Email: director@aiac.world; arbitration@aiac.world; counsel@aiac.world

[Communication between AIAC – First Arbitrator concerning appointment largely not provided (see Presiding Arbitrator)]

Please quote our reference when replying.

Our Ref. : AIAC/INT/ADM-123-2021

20th July 2021

TENERA NIGRESCENS

Cocoseae Drive 3
Capital City
Mediterraneo
[Ref. No.: *Please advise*]

By Post & Email
(Email: t.nigrescens@mail.me)

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
[Ref. No.: *Please advise*]

By Email
(Email: fasttrack@host.eq)

Dear Ms Nigrescens,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

We refer to the above matter.

We thank the First Arbitrator for accepting the appointment and returning the duly executed copies of the Letter of Acceptance and the Declaration.

Please be advised that pursuant to **Rule 4(5)(a)** of the **AIAC Arbitration Rules 2018** (the “**Rules**”), the Respondent is at liberty to nominate the Second Arbitrator within 30 days after the receipt of the notification from the Claimant nominating the First Arbitrator. If the Respondent fails to nominate upon the expiration of the said 30 days, the Second Arbitrator will be appointed by the Director of the AIAC.

Thank you.

Yours faithfully,

Tan Sri Suriyadi

TAN SRI DATUK SURIYADI BIN HALIM OMAR

Director

Email: director@aiac.world; arbitration@aiac.world; counsel@aiac.world

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email and courier

Asian International Arbitration Centre
Director of the AIAC
Bangunan Sulaiman,
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur
Malaysia
arbitration@aiac.world

14 August 2021

Case Reference: AIAC/INT/ADM-123-2021
ElGuP plc v. JAJA Biofuel Ltd.

Dear Director,

I hereby indicate that I represent Respondent in the above referenced arbitral proceedings. The power of attorney is attached.


Please find enclosed Respondent's Response to the Notice of Arbitration, a copy of which has been sent directly to Claimant.

Respondent agrees to communicate by email only. Emails may be sent to fasttrack@host.eq.

As arbitrator we nominate Mr Georges Chavanne, Rue Ester 37, Oceanside, Equatoriana.

Could you please take the necessary steps for his appointment?

Kind regards,



Julia Clara Fasttrack

Attachments:

Response to the Notice of Arbitration with Exhibits
Power of Attorney (*not reproduced*)

cc. Joseph Langweiler

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

Response to the Notice of Arbitration
(pursuant to Article 6.1. to 6.2.(d) of the AIAC Rules)

in the Arbitral Proceedings

Case Reference: AIAC/INT/ADM-123-2021

**ElGuP plc (Claimant) v.
JAJA Biofuel (Respondent)**

14 August 2021

Introduction

1. Claimant, after having been at the center of one of the greatest greenwashing scandals in the palm oil industry with considerable repercussions on all market players tries to create a case where there is none by
 - turning obviously still ongoing contract negotiations into an already concluded contract,
 - including standard conditions which were never made available to Respondent and clearly contradict the discussion of the Parties.

Facts

2. Respondent is one of the pioneers in the production of sustainable biofuels in Equatoriana. Until its acquisition by Southern Commodities it had produced its biofuel largely from local energy crops such as corn or rapeseeds, with an increasing share of advanced biofuels produced from non-food feedstock.
3. Environmental issues and sustainability have always played a major role in the public discussion in Equatoriana. That is reflected by the existence of very powerful and influential environmental activist groups, the amount of green investment and some groundbreaking decisions requiring the government and companies to take specific actions to protect the environment and to prevent global warming. As a consequence of that, the acquisition of JAJA Biofuel by Southern Commodities in 2018 and the resulting changes in the management were seen very critically. The announcement of the plans to considerably increase the production of biofuel based on palm oil raised considerable public opposition in Equatoriana and the actions by activists seriously affected the production by JAJA Biofuel. To address these concerns, JAJA Biofuel's new CEO Ms Youni Lever invited news outlets to inform the press in detail about the future plans of JAJA Biofuel and its continued commitment to sustainability and the protection of the

environment in December 2019. She announced in particular that only RSPO-certified palm oil would be used for the production of biofuel despite its higher price (**Respondent Exhibit R 1**).

4. Given the limited availability of such RSPO-certified palm oil, Ms Bupati was very happy when Mr Chandra approached her at the Palm Oil Summit at the end of March 2020 and offered a long-term supply of RSPO-certified palm oil at a very good price. Ms Bupati had heard rumours that Claimant had just lost one of its major customers and was looking for new customers. Mr Chandra confirmed the loss of a major customer and told Ms Bupati that in reaction to what he considered to be an unjustified termination, Claimant had initiated arbitration proceedings against its previous customer claiming damages for breach of contract. It was apparent that Mr Chandra did not want to disclose further details about the ongoing dispute but was at the same time confident to be entitled to damages. As a consequence, Ms Bupati did not ask further about the reasons for the contract termination but focused on realizing the commercially attractive opportunities created by the termination for Respondent by discussing the terms of the contract.
5. Ms Bupati made, however, clear to Mr Chandra, that JAJA Biofuel was operating in a completely different political and commercial environment than Southern Commodities and that environmental issues played a much more important role (**Respondent Exhibit R 2**).
6. Mr Chandra asserted that this would not be a problem for Claimant, but to the contrary would be in line with Claimant's general policy of sustainable production. While Ms Bupati knew from the past that Claimant offered also RSPO-certified products, she was surprised to hear that they made up 80% of the overall quantity produced by Claimant. In light of the price differences between RSPO-certified and non-certified palm products, Southern Commodities had always bought the non-certified palm kernel oil. For palm oil the difference between certified and non-certified oils was around USD 30/t for mass balanced oils and USD 70/t for segregated oils.
7. Due to the exceptional circumstances, Claimant was not only willing to enter into a long-term supply contract guaranteeing a steady supply of RSPO-certified segregated palm oil, but also offered a very favorable price. It was fixed for the first year at USD 900/t and then for the remaining four years at 5% below the "market price", which fluctuates in Mediterraneo between USD 1,000/t and 1,200/t for CFR contracts. It was obvious that Mr Chandra was convinced to be able to recover the difference to the market price as damages from its previous customer.
8. Given the size of the contract and the political sensitivity of the palm oil expansion, Ms Bupati wanted to discuss the agreed commercial terms of the contract with Respondent's management first before making a firm offer.
9. Following the approval of the transaction and its commercial terms by Respondent's CEO, on 1 April, Ms Bupati sent an email to Mr Chandra making an offer on the basis of the commercial terms agreed and asked him to prepare the necessary contractual documents (**Claimant Exhibit C 2**).
10. During their discussion at the Palm Oil Summit Mr Chandra had informed Ms Bupati, that Claimant would use the same contract template for the palm oil sales that it had used for the palm kernel oil sales to Southern Commodities. The only changes were that the contract would be submitted to the law of Mediterraneo and no longer to the law of Danubia. Furthermore, the General Conditions of Sale were supposed to be the same.

11. These General Conditions of Sale had been sent to Southern Commodities in October 2011. Ms Bupati had a closer look at them in the context of an arbitration which had been initiated by Claimant against Southern Commodities in 2014 concerning the payment for a delivery. At that time, Claimant's contract template as well as its General Conditions of Sale contained a different arbitration clause. It was the original arbitration clause from the FOSFA/PORAM Contract Form 81, which provided for arbitration under the rules of a commodity arbitration institution (**Respondent Exhibit R 3**).
12. That was the background for Ms Bupati's request in the offer of 1 April 2020 to at least avoid arbitration under the rules of a palm oil specific arbitration institution (**Claimant Exhibit R 2**). When she wrote the email she had forgotten that Mr Chandra had informed her during their discussions of the first contract for 2016 on the phone, that Claimant after the experience in the arbitration with Southern Commodities had changed the arbitration clause. It was from then on using the Model Clause of the Kuala Lumpur Regional Center, which has now been renamed into Asian International Arbitration Center. Apparently, in the context of that change of the chosen institution the general arbitration clause was also removed from Claimant's contract template and only included into its General Conditions. At least the contract itself from the second contract 2016 onwards did no longer contain a general arbitration clause.
13. While Ms Bupati cannot exclude that Southern Commodities received a copy of the 2016 version of Claimant's General Conditions, it is uncontested that neither the current version nor any previous version of Claimant's General Conditions was ever sent to JAJA Biofuel.

Legal Considerations

Jurisdiction

14. The Arbitral Tribunal lacks jurisdiction as the arbitration clause contained in Claimant's General Conditions was never validly included into the contract. Contrary to Claimant's allegation, the conclusion of the arbitration clause is not governed by the law of Danubia, but by the law of Mediterraneo including the CISG. According to the CISG, even if a contract should have been concluded (quod non), the General Conditions of Sale including the Arbitration Clause would not have been validly included into the contract. The General Conditions were never made available to Respondent by Claimant.
15. There can be no inclusion by a practice established between the Parties. Claimant's General Conditions of Sale included into the various contracts with Southern Commodities contained two different arbitration clauses. Until 2016 they provided for arbitration in favor of a palm oil specific arbitration institution and from then until the end of 2018, when Ms Bupati stopped working for Southern Commodities, they were referring to arbitration under the rules of the Kuala Lumpur Regional Centre. Furthermore, there was never any practice established between Claimant and Respondent.

Substance

16. Claimant is not entitled to any of the requested reliefs. The Parties never entered into a valid contract but were still at the stage of negotiations. Even if one were to interpret the email of Ms Fauconnier as an offer, though it is not, Claimant rejected such offer by insisting on the application of its General Conditions of Sale.

17. This counteroffer in turn was never accepted by Respondent which did not sign the contract and returned it to Claimant as requested.
18. Claimant cannot rely on an alleged practice established between the Parties. This was the first contract for the sale of palm oil between the Parties. Any practice established in the around 40 contracts concluded between Southern Commodities and Claimant for the sale of palm kernel oil is irrelevant for the relationship between Claimant and Respondent.
19. Even if one were to assume the valid conclusion of a contract between the Parties (quod non), Respondent would have validly terminated the contract. Respondent was unaware of the fact that Claimant had previously sold palm oil as RSPO-certified though it did not comply with the necessary requirements, so that it could not be guaranteed that the RSPO certified palm oil sold to Respondent was actually RSPO-certified. In so far Respondent erred about a crucial feature of the oil purchased and was thus entitled under the law of Mediterraneo to avoid the contract for mistake. Contrary to Claimant's allegation, the CISG does not regulate the issue of avoidance for mistake but that question as to the validity of the contract is governed by the non-harmonized rules of the Mediterranean Civil Code.
20. Furthermore, as the General Conditions of Sale were not included into the alleged contract, Claimant cannot rely on Clause 4 of its General Conditions of Sale giving it the right to try to remedy any problems resulting from its supply chain before any remedies could be invoked by Respondent. Thus, Respondent could also terminate the – anyway non-existent – contract on the basis of Article 49(a) CISG due to Claimant's fundamental breach of contract.
21. On the basis of the aforementioned facts, Claimant is obviously neither entitled to the requested declarations nor to any of the other claims. Thus, the case should be dismissed outright.

Requests for Relief

22. In light of the above, Respondent requests the Arbitral Tribunal to make the following orders:
 - To reject all claims made;
 - To order Claimant to bear the costs of this arbitration, including any legal costs.


Julia Clara Fasttrack

| Environment | Business | Sustainability |

Eco-Trade

19 December 2019

Companies

Danubia • In a press conference, Ms Youni Lever, the new CEO of JAJA Biofuel expressed her vision for the future of JAJA Biofuel after its controversial acquisition by Southern Commodities. Ms Lever, who had been installed by the new owner, replaced the very popular previous CEO Mr Hasselmann who had managed to turn JAJA Biofuel into one of the darlings of the supporters of a green economy. Thus, his replacement by the largely unknown Ms Lever has raised serious concerns about the future course of JAJA Biofuel and has led to several very critical articles.

It was obvious that the main purpose of Ms Lever's press conference was to address these concerns and criticisms raised by several influential environmental activist groups from Equatoriana. For many of these groups Southern Commodities with its roots in the trade of coal and precious minerals and its involvement in some of the most serious environmental pollutions is a symbol of the current carbon-based economic system they fight. Thus, Southern Commodities' bid for JAJA Biofuel was seen very critically.

Given the strong opposition against the use of palm oil for the production of biofuel expressed by many environmental activist groups, which are traditionally very strong and influential in Equatoriana, it appears highly doubtful that Ms Lever reached her objective with the press conference. The announcement that Southern Commodities would concentrate all its palm oil business in JAJA Biofuel which it intended to develop into one of the leading producers of palm oil-based biofuel was not taken very well. Ms Lever's statement that JAJA Biofuel would ensure that only RSPO-certified palm oil would be used did not help much. There are considerable doubts in the industry that sufficient RSPO-certified palm oil would be available on the market. Furthermore, it was questioned whether customers would actually buy the more expensive biofuel produced with RSPO-certified oil which is between 30 and 70 US\$ more expensive than non-certified oil.



From: Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>
Sent: 3 May 2020, 8:25 am
To: Forrest Rain <forrest.rain@elgup.me>
Re: Determination of "Recognised Bank" / further terms of sales contract.

Dear Forrest,

Thank you for the contractual documentation and sorry for the belated reply, but I have been swamped with other projects.

In light of the upcoming biennial discussions with our banks next week and the problems we had with the payment terms in another contract recently, we would like to specify the payment terms and directly determine the names of the banks which would classify as "recognised banks" in the sense of the Contract.

There are also two other issues where I would suggest changes to the existing terms of the contractual documents to take into account particularities of JAJA Biofuel's present situation.

I will be visiting other palm oil producers in Mediterraneo during the next two weeks and could offer to meet during that time, to get to know each other personally. I think it is always easier to negotiate open issues in person.

If that does not work for you could we agree on a date for a phone call the week thereafter? I will be available the entire Tuesday and Wednesday.

I am looking forward to hearing from you.

Sincerely,
Adrienne

Contracting Department

JAJA Biofuel Ltd.

9601 Rudolf Diesel Street

Oceanside / Equatoriana

Email: a.fauconnier@jaja.biofuel.eq

Witness Statement of Ms Claire Bupati

1. I was born on 1 December 1966.
2. From 2004 until 2019, I worked in various functions in the purchasing department of Southern Commodities. From 2010 onwards, I was responsible for the purchase of palm kernel oil. In that function I had regular contacts with ElGuP plc and Mr Chandra. We concluded overall around 40 contracts over the years. I normally called Mr Chandra and other suppliers and asked for quotations. On the basis of such quotations, I then made offers for fixed quantities which were often a little bit below the quotations received or had different shipping or insurance terms.
3. With Mr Chandra I had established a practice that if the terms of my offer were acceptable to him he would prepare the necessary contractual documents and send them to me for acceptance and signing. In around 80% of the cases I had then signed the documents and returned a copy of the contract to Mr Chandra. There were, however, also three cases when the added terms were unacceptable and I asked for changes after having received the contract documentation. In these instances my requests were then more or less accommodated and the documentation was changed accordingly before I signed it. It is correct that in five cases I did not return a signed version of the respective contract but we nevertheless performed all of them.
4. In 2018, Southern Commodities purchased JAJA Biofuel. Southern Commodities' intention was to centralize all of its biofuel activities in JAJA Biofuel which was an established player in the biofuel market, but has so far only produced biofuel from other vegetable oils. My experience in the palm kernel oil market and the resulting connection to the palm oil producers was one of the reasons why Southern Commodities offered me the position as Head of Purchase at JAJA Biofuel. Originally, also the palm kernel oil business was transferred to JAJA Biofuel but then sold of as it did not really fit into JAJA's business of producing biofuels.
5. Contrary to the expectation of the management of Southern Commodities, the planned increase of the palm oil share in the biofuel of JAJA Biofuel went everything but smoothly. I assume that the management of Southern Commodities had underestimated the different political climates in Ruritania and Equatoriana. Thus, from the day it was announced that Southern Commodities would take over JAJA Biofuel there had been considerable political opposition from powerful environmental groups to Southern Commodities' plan to enlarge the quantities of palm oil-based biofuel. At the beginning, Southern Commodities and the new management it had installed in JAJA Biofuel were convinced that they would be able to outlive such opposition without the need to abandon the expansion plans as such. To reduce the criticism, it was publicly announced that JAJA Biofuel would only use RSPO-certified palm oil, despite its higher price and its limited availability. As only 20% of the available palm oil fulfills the certification requirements it has proven very difficult to acquire the necessary quantities at an acceptable price.
6. In light of that, I thought it to be a lucky coincidence when Mr Chandra approached me at the Palm Oil Summit. I had heard that they had lost a major customer and were looking desperately for a short notice replacement. Mr Chandra told me that he was very much interested in the offer made by myself at the Palm Oil Summit.

Oceanside, 12 August 2021


Claire Bupati

**General Conditions of Sale
(before changes in 2016)**

Article 9: Arbitration Clause

9 ARBITRATION: Where both parties at or subsequent to the date of the contract agree, any dispute arising out of or in connection with this contract shall be submitted to arbitration in Malaysia in accordance with the Arbitration Act of Malaysia 1952 (as revised in 1972) and in accordance with the PORAM Rules of Arbitration and Appeal in force at the date of the contract.

In all other cases, any dispute arising out of the contract, including any question of law arising in connection therewith, shall be referred to arbitration in London (or elsewhere if so agreed) in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Associations Limited, in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant.

Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitrators, umpire or Board of Appeal (as the case may be), in accordance with the Rules of Arbitration and Appeal governing the dispute, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators, umpire or Board of Appeal (as the case may be), shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

**General Conditions of Sale
(after changes in 2016)**

Article 9: Arbitration Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules.

The seat of arbitration shall be Danubia.

The language to be used in the arbitral proceedings shall be English.

This contract shall be governed by the substantive law of Danubia.

Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the AIAC Mediation Rules as in force on the date of the commencement of mediation.

Please quote your reference when replying.

Our Ref.: AIAC/INT/ADM-123-2021

15th August 2021

JULIA CLARA FASTTRACK

Advocate at the Court

14 Capital Boulevard

Oceanside

Equatoriana

[Ref.No: *please advise*]

By Email

(Email: fasttrack@host.eq)

Dear Sirs/Madams,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC
(CLAIMANT) AND JAJA BIOFUEL LTD. (RESPONDENT)**

We refer to the above matter and to your letter dated 14th August 2021.

We are in receipt of your Response to the Notice of Arbitration with enclosures dated 14st August 2021.

We note that the Respondent has agreed to communication by way of email only and nominated Mr Georges Chavanne as the Second Arbitrator.

Furthermore, we confirm that both the Claimant and Respondent have paid their share of the provisional advance deposit. The official receipts for the said payments are enclosed herewith.

At this juncture, we would like to point out that on 1st August 2021, the AIAC Arbitration Rules 2021 (the “**2021 Rules**”) came into force. The **2021 Rules** contain significant amendments to the **2018 Rules** to reflect contemporary standards and practices in international arbitration. Key features of the **2021 Rules** include:

- (i) the merging of Part I and Part II of the **2018 Rules** to ensure a harmonious and coherent set of procedural rules that are modelled on the UNCITRAL Model Law (as revised in 2013);
- (ii) incorporation of a Fast Track Procedure to provide for expedited arbitrations and minimising the need for a standalone set of AIAC Fast Track Arbitration Rules (Rule 8);

ASIAN INTERNATIONAL ARBITRATION CENTRE

(Established under the auspices of the Asian-African Legal Consultative Organisation)

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F +603 2271 1010

E enquiry@aiac.world

- (iii) revisions to the process of appointing the Arbitral Tribunal, including a new provision on multi-party appointments (Rule 9);
- (iv) revisions to the Emergency Arbitration provisions to enhance clarity (Rules 17 and 18);
- (v) new provision on Summary Determination for the early dismissal of claims (Rule 19);
- (vi) revisions to the joinder and consolidation provisions, including a new provision for the consolidation of multi-contract disputes (Rules 21 and 22);
- (vii) substantive revisions to the provisions on the closure and termination of proceedings, the technical review process, and the release, correction and interpretation of awards to enhance clarity (Rules 32 – 39)
- (viii) revisions to the provisions relating to costs and deposits to enhance clarity (Rules 40 and 41); and
- (ix) revisions to the confidentiality provision to reflect best practices (Rule 44).

We also wish to emphasise that the **2021 Rules** have retained similar deposit calculations to those found in the **2018 Rules**, which means that the benefits outlined above can be availed by the Parties at no extra cost. In light of the above, if the Parties and the Arbitral Tribunal are agreeable to adopting **2021 Rules** to this proceeding, please confirm the same in writing to the AIAC. In the absence thereof, the **2018 Rules** shall apply to this proceeding.

Please do not hesitate to contact the undersigned should you have any queries.

Thank you.

Yours faithfully,



ANGGUN SULAIMAN

Senior International Case Counsel

Email: director@aiac.world; arbitration@aiac.world; counsel@aiac.world

c.c. **Joseph Langweiler**
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
[Ref.: *please advise*]

By Email
(Email: langweiler@lawyer.me)

[Communication between AIAC – Second Arbitrator concerning appointment largely not provided (see Presiding Arbitrator)]

Please quote our reference when replying.

Our Ref.: AIAC/INT/ADM-123-2021

16th September 2021

Prof Nikolaus von Jacquin

Botanical Gardens 1

1011 Vindobona

Danubia

[Ref. No.: *Please advise*]

By Post & Email
(Email: nikolaus@jacquin.da)

Dear Prof. von Jacquin,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

Warm greetings from the Asian International Arbitration Centre (the “AIAC”).

We note that the Director of the AIAC has confirmed the First and Second Arbitrators’ nomination of you as the Presiding Arbitrator pursuant to Rules 4(5)(a) and 4(7) of the AIAC Arbitration Rules 2018.

The Letter of Appointment and five (5) copies of the Letter of Acceptance together with the Declaration are enclosed for your execution.

Please also find enclosed the AIAC’s Code of Conduct for Arbitrators, the Recommended Good Practices for the Conduct of Arbitration Proceedings, and Drafting of Awards in AIAC Administered Arbitrations under the AIAC Arbitration Rules 2018, and a copy of the Electronic Fund Transfer (“EFT”) form requesting your banking details for ease of fee deposits.

Kindly return four (4) duly signed copies of the Letter of Acceptance and Declaration together with the duly completed EFT form to us for our further action.

Thank you.

Yours faithfully,



ANGGUN SULAIMAN

Senior International Case Counsel

Email: director@aiac.world; arbitration@aiac.world; counsel@aiac.world

ASIAN INTERNATIONAL ARBITRATION CENTRE

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T +603 2271 1000

F +603 2271 1010

E enquiry@aiac.world

**AIAC ARBITRATION [AIAC/INT/ADM-123-2021] IN THE MATTER OF
AN ARBITRATION BETWEEN ELGUP PLC (CLAIMANT) AND JAJA
BIOFUEL (RESPONDENT)**

Pursuant to Rules 4(5)(a) and 4(7) of the AIAC Arbitration Rules 2018, I hereby appoint

PROF. NIKOLAUS VON JACQUIN

as the Presiding Arbitrator in the above arbitration.

Dated this 16th September 2021.

Tan Sri Suriyadi

.....
Tan Sri Datuk Suriyadi Bin Halim Omar
Director

IN THE MATTER OF AN AIAC ARBITRATION

BETWEEN

ELGUP PLC
156 Dendé Avenue
Capital City
Mediterraneo

CLAIMANT

AND

JAJA BIOFUEL LTD
9601 Rudolf Diesel Street
Oceanside
Equatoriana

RESPONDENT

LETTER OF ACCEPTANCE

The Parties allegedly entered into a contract (No. 41) dated 8th April 2020, whereby the Claimant was to supply RSPO-certified fully segregated palm oil to the Respondent for the years 2021 to 2025 (hereinafter the “Contract”). The Claimant’s General Conditions of Sale were allegedly incorporated into the Contract by way of reference.

A dispute arose between the Parties regarding the validity of the Contract whereby the Claimant is of the position that a valid contract exists, which the Respondent has breached, and the Respondent opposes this position contesting the conclusion of a contract. The Parties attempted to negotiate and mediate the dispute but were unable to resolve such.

On 14th July 2021, the Claimant served a Notice of Arbitration (the “NoA”) on the Respondent alleging that the Respondent breached the Contract and claimed for both compensatory and declaratory relief. The Claimant is of the position that the tribunal has the jurisdiction to decide the matter.

On 14th August 2021, the Respondent served a Response to the NoA (the “RNoA”) on the Claimant claiming that no valid contract had been entered into and therefore the tribunal has no jurisdiction over the matter. The Respondent further alleged that should the tribunal find a valid contract exists, then it validly terminated the Contract.

The alleged arbitration clause is contained in Article 9 of the General Conditions of Sale of the Contract and reads as follows:

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F +603 2271 1010

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Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules.

The seat of arbitration shall be Danubia.

The language to be used in the arbitral proceedings shall be English.

This contract shall be governed by the substantive law of Danubia.

Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the AIAC Mediation Rules as in force on the date of the commencement of mediation.

In the Respondent's email dated 1st April 2021, it acknowledged that the Claimant's new policy was for the Claimant's sale contracts to be submitted to Mediterranean law. The Claimant confirmed such in its email dated 9th April 2021 stating the sale was to be governed by the law of Mediterraneo.

On 15th July 2021, the Claimant submitted its Commencement Request to the Director of the AIAC enclosing the relevant documents. On 16th August 2021, the AIAC confirmed commencement under Rule 2(2) of the AIAC Arbitration Rules 2018 and raised the provisional advance deposit, which has been paid in full.

In its Commencement Request, the Claimant nominated Ms Tenera Nigrescens as the First Arbitrator, which was confirmed by the Director of the AIAC on 16th July 2021. On 20th July 2021, Ms Nigrescens accepted the appointment as First Arbitrator.

In its letter to the Director of the AIAC dated 14th August 2021, the Respondent nominated Mr Georges Chavanne as the Second Arbitrator, which was confirmed by the Director of the AIAC on 15th August 2021. On 20th August 2021, Mr Chavanne accepted the appointment as the Second Arbitrator.

On 14th September 2021, the First and Second Arbitrator nominated me, Prof. Nikolaus von Jacquin, as the Presiding Arbitrator, which was confirmed by the Director of the AIAC on 16th September 2021.

As such, I, Prof. Nikolaus von Jacquin, have been appointed as the Presiding Arbitrator in the above dispute by the Director of the AIAC pursuant to Rules 4(5)(a) and 4(7) of the AIAC Arbitration Rules 2018.

I, Prof. Nikolaus von Jacquin, hereby confirm my acceptance of the appointment as the Presiding Arbitrator in the above dispute.

Dated: 17th September 2021



PROF. NIKOLAUS VON JACQUIN

DECLARATION

AIAC ARBITRATION (AIAC/D/ADM-123-2021) IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC (CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)

I, Prof. Nikolaus von Jacquin, having accepted my appointment as the Presiding Arbitrator in the above matter, hereby declare:

- 1) That I am able to act impartially in the above matter.
- 2) That I am independent of each of the parties and that I shall remain so.
- 3) That I have read the Code of Conduct for Arbitrators and agree to abide by it. (Please check the box) ☒
- 4) That I will devote the time necessary to discharge my duties as arbitrator diligently, efficiently and according to the Recommended Good Practices for the Conduct of Arbitration Proceedings and Drafting of Awards in AIAC Administered Arbitrations under the AIAC Arbitration Rules 2018. (Please check the box) ☒
- 5) That I am not at liberty to unilaterally apply a fee arrangement, and that any agreement on fees reached with the parties will be communicated to the Director of the AIAC. (Please check the box) ☒
- 6) I agree that there are, to the best of my knowledge, no facts or circumstances, past or present, likely to give justifiable doubts to my impartiality and/or independence. (Please check the box) ☒
- 7) I agree that I will immediately disclose in writing to the Director of the AIAC and to the parties, should I gain knowledge of any facts or circumstances that may give rise to justifiable doubts as to my impartiality and/or independence during the course of the arbitration proceedings. (Please check the box) ☒

After consideration of paragraphs 2 and 3 of the Code of Conduct for Arbitrators, I wish to make the following disclosures to the Director and to the parties of facts and circumstances which are of such a nature that they may give rise to justifiable doubts as to my impartiality or independence:

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E enquiry@aiac.world



Dated: 17th September 2021

PROF. NIKOLAUS VON JACQUIN

Please quote our reference when replying.

Our Ref.: AIAC/INT/ADM-123-2021

Your Ref.: Please Advise

20th September 2021

PROF. NIKOLAUS VON JACQUIN

Botanical Gardens 1

1011 Vindobona

Danubia

By Post & Email

(Email: nikolaus@jacquin.da)

Dear Prof. von Jacquin,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

We refer to the above matter.

We thank you for accepting the appointment as the Presiding Arbitrator and returning the duly executed copies of the Letter of Acceptance and the Declaration.

Please be advised that pursuant to **Rule 14(2)** and **Rule 14(3)** of the **AIAC Arbitration Rules 2018** (the “**2018 Rules**”), the Asian International Arbitration Centre has requested the Parties to pay a provisional advance deposit in equal shares and the requested sum has been paid in full. Given that the arbitral tribunal is now fully constituted, you may proceed with this arbitration proceeding.

We also wish to highlight that pursuant to **Rule 13(4)** of the **Rules**, the Parties and the arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal (the “**Fee Agreement**”). This Fee Agreement is to be executed within 30 days after the appointment of the arbitral tribunal and is to be communicated to the Director of the AIAC within the said period. For the avoidance of doubt, the Parties and the arbitral tribunal may discuss the Fee Agreement even in the absence of the payment of the provisional advance deposit. If the Parties and the arbitral tribunal fail to come to an agreement upon the expiration of the said 30 days, the fees of the arbitral tribunal shall be fixed by the Director in accordance with Schedule 1 (*cf.* **Rule 13(2)** of the **2018 Rules**). For the avoidance of doubt, the arbitral tribunal may not unilaterally apply different fees.

At this juncture, we would like to point out that on 1st August 2021, the AIAC Arbitration Rules 2021 (the “**2021 Rules**”) came into force. The **2021 Rules** contain significant amendments to the **2018 Rules** to reflect contemporary standards and practices in international arbitration. Key features of the **2021 Rules** include:

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- (i) the merging of Part I and Part II of the **2018 Rules** to ensure a harmonious and coherent set of procedural rules that are modelled on the UNCITRAL Model Law (as revised in 2013);
- (ii) incorporation of a Fast Track Procedure to provide for expedited arbitrations and minimising the need for a standalone set of AIAC Fast Track Arbitration Rules (Rule 8);
- (iii) revisions to the process of appointing the Arbitral Tribunal, including a new provision on multi-party appointments (Rule 9);
- (iv) revisions to the Emergency Arbitration provisions to enhance clarity (Rules 17 and 18);
- (v) new provision on Summary Determination for the early dismissal of claims (Rule 19);
- (vi) revisions to the joinder and consolidation provisions, including a new provision for the consolidation of multi-contract disputes (Rules 21 and 22);
- (vii) substantive revisions to the provisions on the closure and termination of proceedings, the technical review process, and the release, correction and interpretation of awards to enhance clarity (Rules 32 – 39)
- (viii) revisions to the provisions relating to costs and deposits to enhance clarity (Rules 40 and 41); and
- (ix) revisions to the confidentiality provision to reflect best practices (Rule 44).

We also wish to emphasise that the **2021 Rules** have retained similar deposit calculations to those found in the **2018 Rules**, which means that the benefits outlined above can be availed by the Parties at no extra cost. In light of the above, if the Parties and the Arbitral Tribunal are agreeable to adopting **2021 Rules** to this proceeding, please confirm the same in writing to the AIAC. In the absence thereof, the **2018 Rules** shall apply to this proceeding.

Finally, we kindly request you to ensure that the following AIAC email addresses are copied to all communications in this matter:

- director@aiac.world (Tan Sri Datuk Suriyadi Bin Halim Omar, Director of the AIAC);
- counsel@aiac.world (Ms Anngun Sulaiman, Senior International Case Counsel); and
- arbitration@aiac.world (AIAC Arbitration).

Thank you.

Yours faithfully,

Tan Sri Suriyadi

TAN SRI DATUK SURIYADI BIN HALIM OMAR

Director

Email: director@aiac.world; arbitration@aiac.world; counsel@aiac.world

Encl. copy of the Letter of Acceptance and Declaration of the Presiding Arbitrator

c.c. TENERA NIGRESCENS

Cocoseae Drive 3
Capital City
Mediterraneo

By Email

(Email: t.nigrescens@mail.me)

GEORGES CHAVANNE

Rue Ester 37
Oceanside
Equatoriana

By Email

(Email: georges.chavanne@post.eq)

JOSEPH LANGWEILER

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
[Ref. No.: *Please advise*]

By Email

(Email: langweiler@lawyer.me)

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
[Ref. No.: *Please advise*]

By Email

(Email: fasttrack@host.eq)

Prof. Nikolaus von Jacquin
Botanical Gardens 1
1011 Vindobona
Danubia

By email and courier
Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

cc. Asian International Arbitration Centre

Arbitral Proceedings
Case Reference: AIAC/INT/ADM-123-2021

ElGuP plc (Claimant) v.
JAJA Biofuel Ltd (Respondent)

25 September 2021

Dear Colleagues,

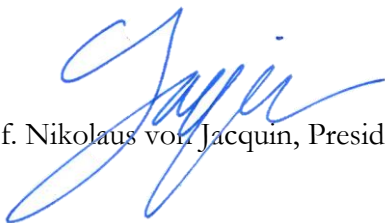
After having been duly appointed by the Asian International Arbitration Centre (AIAC), the Arbitral Tribunal has familiarized itself with the case.

To discuss the further conduct of the proceedings the Arbitral Tribunal would like to invite the Parties to a telephone conference on 7 October.

Kind regards,

For the Arbitral Tribunal

Prof. Nikolaus von Jacquin, Presiding Arbitrator



Prof. Nikolaus von Jacquin
Botanical Gardens 1
1011 Vindobona
Danubia

By email and courier
Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

cc. Asian International Arbitration Centre

Arbitral Proceedings
Case Reference: AIAC/INT/ADM-123-2021

ElGuP plc (Claimant) v.
JAJA Biofuel Ltd (Respondent)

8 October 2020

Dear Colleagues,

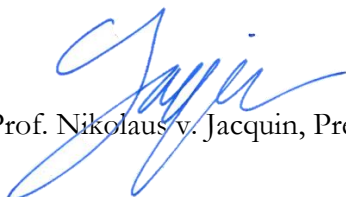
The Arbitral Tribunal appreciates your cooperation during yesterday's TelCo.

Please find attached Procedural Order No. 1 which is based on the discussion during the TelCo.

Kind regards,

For the Arbitral Tribunal

Prof. Nikolaus v. Jacquin, Presiding Arbitrator



PROCEDURAL ORDER NO. 1

of 8 October 2021

in the Arbitral Proceedings
Case Reference: AIAC/INT/ADM-123-2021
ElGuP plc v. JAJA Biofuel Ltd

- I. Following the receipt of the file from the Asian International Arbitration Center the Arbitral Tribunal held a telephone conference with both Parties on 7 October 2021 discussing the further conduct of the proceedings.
- II. The Arbitral Tribunal takes note of the fact that in the telephone conference of 7 October 2021 both Parties agreed:
 - to conduct the proceedings on the basis of the 2021 AIAC Rules - Global Solution;
 - to limit the first phase of the Arbitration to questions listed below addressing the Arbitral Tribunal's jurisdiction and conclusion of the Contract and the eventual inclusion of Claimant's General Conditions of Sale,
- III. In light of these agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
 1. In their next submissions and at the Virtual Hearing the Parties are required to address the following issues:
 - a. Have the Parties validly agreed on the jurisdiction of the Arbitral Tribunal?
 - i. What is the law governing the Arbitration Agreement?
 - ii. Is the CISG applicable to the conclusion of the Arbitration Agreement in the event it is governed by the law of Mediterraneo?
 - b. Have the Parties concluded a contract in 2020?
 - c. If a contract was concluded were Claimant's General Conditions of Sale validly included into that alleged contract?

The Arbitral Tribunal is aware that the various questions are closely connected to each other. Thus, the Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims, in particular the avoidance or termination of the (allegedly existing) contract should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

2. The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference. For their submissions the following Procedural Timetable applies:
 - a. Claimant's Submission: no later than 9 December 2021;
 - b. Respondent's Submission: no later than 27 January 2022.
3. It is undisputed between the Parties that

- Equatoria, Mediterraneo and Ruritania are Contracting States of the CISG;

- the general non-harmonized contract law of all three countries is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts;
 - Danubia is not a Contracting State of the CISG;
 - under Danubian general contract law the inclusion of standard conditions into an existing contract requires a clear statement that such conditions are to be applied but not that they are made available to the other party;
 - all four countries are Member States of the New York Convention and their national arbitration law is a verbatim adoption of the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. While Danubia and Equatoriana have adopted Option 1 of Article 7, Mediterraneo and Ruritania have adopted Option 2.
4. There is consistent jurisprudence in Equatoriana that in sales contracts governed by the CISG, the latter also applies to the conclusion and interpretation of the arbitration clause contained in such contracts. By contrast in Mediterraneo, there are conflicting decisions of lower courts and the issue can be considered to be open. In Danubia, courts have generally rejected the application of the CISG to arbitration clauses contained in sales contracts even if the law governing the arbitration agreement was the law of a Contracting State.
 5. In the event Parties need further information, Requests for Clarification must be made in accordance with para. 29 of the Rules of Moot no later than 30 October 2021 via their online party (team) account. No team is allowed to submit more than ten questions. Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Claimant and its business.
- (2) Questions relating to the Respondent and its business.
- (3) Questions related to Southern Commodities and its business.
- (4) Questions relating to the contracts for the sale of palm kernel oil concluded between Claimant and Southern Commodities in the years 2010 - 2018.
- (5) Questions relating to the commercial side of the agreements.
- (6) Questions relating to the contract template.
- (7) Questions relating to Claimant's General Conditions of Sale.
- (8) Questions concerning the applicable laws and rules.
- (9) Other questions.

IV. Both Parties are invited to attend the Virtual Hearing scheduled for 9 April to 14 April 2022, Vindobona, Danubia. The details concerning the timing and the software to be used will be provided in due course.

Vindobona, 8 October 2021

Prof. Nikolaus von Jacquin, Presiding Arbitrator