21st Annual Willem C. Vis (East) International Commercial Arbitration Moot

Hong Kong – 10th to 17th March, 2024

MEMORANDUM FOR CLAIMANT

ICC CASE NO: MOOT-100/MM

On Behalf of:	Against:
SENSORX, PLC.	**VISIONIC LTD.**
Atwood Lane 1784	Optronic Avenida 3
Capital City	Oceanside
Mediterraneo	Equatoriana
-CLAIMANT-	-RESPONDENT-

COUNSEL FOR CLAIMANT - NALSAR UNIVERSITY OF LAW, HYDERABAD

ADISHREE KRISHNAN • ADITI BHOJNAGARWALA • AMEYA SHARMA • ARCHITA SATISH • ARNAV MATHUR • KAVACH AGARWAL • KHUSH BHACHAWAT • MANAV PAMNANI • SHAMIK DATTA • ZORAWAR ALMEIDA

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School Name: NALSAR University of Law, Hyderabad

Jurisdiction: India (Common Law)

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We have used AI enhanced translation tools to translate parts of the text submitted in this Memorandum into English from any other language.	✓		
We have used AI to generate overviews or briefings on relevant factual and legal topics which are not submitted as part of the memorandum but have been solely used to advance our own understanding.			✓
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Other (please specify):			✓

Date: 7th December, 2023

NAME: ADISHREE KRISHNAN SIGNATURE:

NAME: ADITI BHOJNAGARWALA SIGNATURE:

NAME: AMEYA SHARMA SIGNATURE:

NAME: ARCHITA SATISH SIGNATURE:

NAME: ARNAV MATHUR SIGNATURE:

NAME: KAVACH AGARWAL SIGNATURE:

NAME: KHUSH BHACHAWAT SIGNATURE:

NAME: MANAV PAMNANI SIGNATURE:

NAME: SHAMIK DATTA SIGNATURE:

NAME: ZORAWAR ALMEIDA SIGNATURE:

NAME: TEJAS RAGHAV (Coach) SIGNATURE:

READER'S GUIDE

Dear Reader,

The Vis (East) Moot Team of NALSAR University of Law, Hyderabad is proud to present our CLAIMANT Memorandum to you. We have created this guide to maximise ease of navigation for the **electronic version** of our Memorandum. In this regard:

- Clicking on any heading under the Table of Contents will take you to the respective heading within our Memorandum.
- Clicking on our University's emblem at the top-centre of any page will take you to back to the Table of Contents.
- Clicking on any *infra* or *supra* mentioned in the text of the Memorandum will take you to the relevant paragraph that has been cited.
- Clicking on any authority mentioned in the text of the Memorandum will take you to the Index, where full information on that authority may be obtained.
- Similarly, clicking on the paragraph numbers mentioned in the Index for a particular authority will take you to the respective paragraph where that authority has been cited.

We hope this proves to be helpful. Enjoy your reading, and thank you for your time!

Respectfully,

Vis (East) Team, NALSAR University of Law, Hyderabad.

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Abbreviation	Full Form
&	And
¶	Paragraph
¶¶	Paragraphs
AC	Advisory Council
Art.	Article
Arts.	Articles
BCDR	Bahrain Chamber for Dispute Resolution
CAM	Milan Chamber of Arbitration
CE-	Claimant Exhibit
Ch.	Chapter
Chs.	Chapters
CIETAC	China International Economic & Trade Arbitration Commission
CISG	United Nations Convention on Contracts for the International Sale of Goods
DAL	Danubian Arbitration Law
DCA	Danubian Contract Act
Ed.	Edition
EDPA	Data Protection Act of Equatoriana
Eds.	Editions

FA	Framework Agreement
Fig.	Figure
FTCA	Foreign Trade Court of Arbitration of the Serbian Chamber of Commerce
Ibid.	Ibidem
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
Inc.	Incorporated
Int'l	International
Intro	Introduction
LfS	Letter from Secretariat
M	Million
No.	Number
NoA	Notice of Request for Arbitration
NYC	New York Convention
Pg.	Page
Pgs.	Pages
PO	Procedural Order
PurO	Purchase Order
PurOs	Purchase Orders
RANC	Request for Authorization of New Claim

RE-	Respondent Exhibit
Rev	Review
RNoA	Reply to Notice of Request for Arbitration
RRANC	Rejection of Request for Authorization of New Claim
Sr.	Serial
ToR	Terms of Reference
ULIS	Uniform Law on the International Sale of Goods, 1964
UNCITRAL	United Nations Commission on International Trade Law
v.	Versus
VCLT	Vienna Convention on the Law of Treaties, 1969
Vol.	Volume

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Fruits and Vegetables Case V	CISG Online No. 1739 Decision of the Commercial Court Canton Aargau	¶ 102

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Milan Chamber of Arbitration

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28th September 2001

Published in: Diritto del Commercio Internazional, 2010, pgs. 566–567

Netherland Arbitration Institute

Rijn Blend Oil Case	CISG Online No. 740 Final Award in Rijn Blend Oil Case 15th October 2002 Netherlands Arbitration Institute Case No. 2319 Published in: Internationales Handelsrecht (2003), pgs. 283–292	¶ 116

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CISG	United Nations Convention on Contracts for the International Sale of Goods, 1980
DAL	Danubian Arbitration Law (adoption of the UNCITRAL Model Law on International Commercial Arbitration, Vienna, 21 June 1985, with the 2006 amendments)
DCA	Danubian Contract Act (based on the UNIDROIT Principles on International Commercial Contracts, 2016)
Draft Convention	Draft Convention on Contracts for the International Sale of Goods, Prepared by the Secretariat, 1979
EDPA	Data Protection Act of Equatoriana (adoption of European Union's General Data Protection Regulation, 2016)
ICC Rules	The ICC Rules of Arbitration, 2021
NYC	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958
ULIS	Uniform Law on the International Sale of Goods, 1964
VCLT	Vienna Convention on the Law of Treaties, 1969

STATEMENT OF FACTS

The parties to this dispute are SensorX plc. (**CLAIMANT**) and Visionic Ltd. (**RESPONDENT**). They are collectively referred to as **the Parties**. CLAIMANT, headquartered in Mediterraneo, is a producer of sensors used in various applications in the automotive industry, particularly for autonomous driving. RESPONDENT, headquartered in Equatoriana, is a producer of optical systems, used by many leading car manufacturers for their autonomous parking systems.

Background Events

7th June, 2019	The Parties entered into the FA to regulate the future supply of CLAIMANT'S sensors to RESPONDENT.
June 2019 - Jan 2022	The Parties concluded 22 different PurOs under the FA and CLAIMANT fulfilled their obligations under all 22 PurOs. This resulted in the delivery of over 5M sensors to RESPONDENT, without any issues.
1st Dec, 2019	The Parties, in their price fixing meeting, orally agreed to deviate from the written requirement under Art. 40 FA, allowing for the annual determination of price as opposed to the earlier semi-annual determination as under Art. 6 FA.
2nd Dec, 2021	The Parties, on a second occasion, orally amended Art. 3 FA during their price fixing meeting. As a result, RESPONDENT was allowed to place orders above 1M units, amending the earlier 800,000-unit limit imposed under Art. 3

Events Concerning PurO-9601

17th Jan, 2022	RESPONDENT ordered 1.2M units of CLAIMANT'S S4-25899 Radar sensors under PurO-9601. The delivery was made in two instalments of 600,000 units; on 3rd April, 2022, and 30th May, 2022. Payment for the instalments had to be affected on 3rd May, 2022, and 30th June, 2022, respectively, amounting to a total of USD 38.4M.
28th Mar, 2022	RESPONDENT received a phishing email from the domain "semsorX," which requested payment under PurO-9601, and all future orders, to be made to a different bank account. The email contained various discrepancies, such as an incorrect PurO number, sensor name, domain name, and telephone number. Despite this, RESPONDENT complied with the instructions, and effected payment to an incorrect bank account, not mentioned in the FA or PurO-9601.

25th Aug, 2022	CLAIMANT discovered RESPONDENT'S non-payment of both instalments under PurO-9601.
5th Sep, 2022	CLAIMANT sent a letter to RESPONDENT, informing them of a deadline for payment under PurO-9601 by the following week, but RESPONDENT refused to pay despite delivery.
28th Nov, 2022	The Parties' CEOs, Mr. Enzo Isetta and Ms. Mercedes Ford had a meeting, which remained without a result regarding the resolution of the dispute in relation to payment. Instead, RESPONDENT informed CLAIMANT that they would terminate the FA, as they had planned to purchase sensors from 1st July, 2023 onwards from IQ-View, one of CLAIMANT'S competitors.
9th June, 2023	CLAIMANT sent a Request for Arbitration, requesting the Tribunal to order RESPONDENT to pay CLAIMANT USD 38.4M with simple interest, and, pay the cost of, as well as reimburse CLAIMANT for all costs incurred during the arbitration.

Events Concerning PurO-A-15604

4th Jan, 2022	PurO-A-15604 was placed by RESPONDENT under which CLAIMANT was to deliver 200,000 units of LIDAR L-1 sensors on 16th February, 2022. The payment of USD 12M for the same was due on 20th May, 2022. The terms of this order were governed by the FA itself. Thus, any defects under Individual PurOs governed by the FA had to be addressed by a notice sent within reasonable time, on the "Annex 3" form attached to the FA, to CLAIMANT'S Quality Department. The Dispute resolution clause specified arbitration under ICC Rules (excluding Emergency Arbitration provisions). Further, the Governing law clause specified CISG as the applicable law.
1st Sep, 2022	CLAIMANT became aware of RESPONDENT'S non-payment of the second instalment under PurO-A-15604. Subsequently, CLAIMANT contacted RESPONDENT, who stated that payment had not been made as a considerable amount of the L-1 sensors were defective and that they had sent CLAIMANT an email informing them of the same.
11th Sep, 2023	As a result, CLAIMANT raised an additional payment claim amounting to USD 12M. Further, they requested for the authorisation of a new claim, or in the unlikely event of its non-authorisation, the consolidation of the arbitration proceedings for the additional claim of payment for L-1 sensors under PurO-A-15604, with the present proceedings.

SUMMARY OF ARGUMENTS

ISSUE 1

The Tribunal has the power to authorize the addition of the Second Payment Claim and pursuant to this power, the Claim should be added. Art. 23(4) ICC Rules expressly confers this authority upon the Tribunal. The *Iura Novit Arbiter* principle further justifies the addition by permitting the arbitrators to exercise their discretion to consider any legal or factual considerations which are relevant to the dispute. The agreed condition of 'notable savings in cost and time' is met since the Second Payment Claim arises out of a contract, which forms a part of the same contractual relationship and contains a compatible arbitration agreement. Further, the Second Payment Claim also involves common questions of fact and law. Additionally, other relevant factors such as the stage of the arbitration, lack of prejudice caused and no risk of unenforceability or setting aside of the award, favour the addition.

ISSUE 2

Alternatively, if the new claim has to be raised in a separate arbitration, the Arbitral Tribunal can, and should, consolidate the proceedings. Although Art. 10 ICC Rules vests such power solely on the ICC Court, this power can be transferred to the Tribunal through the principle of party autonomy. Further, the parties have consented to such a transfer via Art 41(5) FA, which extends to both the PurOs. The Tribunal must use such powers as the present case meets the standards for consolidation under both the ICC Rules and the FA as the dispute in both the cases arise out of the same legal relationship, the arbitration agreements in the PurOs are compatible and all other relevant circumstances are in favour of consolidation. Further, the subject matter of the proceedings are related by common questions of fact and law and if the proceedings are not consolidated, it may lead to conflicting awards or obligations.

ISSUE 3

CLAIMANT is fully entitled to the complete payment of USD 38.4M, along with simple interest. RESPONDENT'S payment to the incorrect bank account fails to discharge their payment obligation under PurO- 9601 and Arts. 53 & 54 CISG. Moreover, the reliance on a phishing email to justify the same is untenable, given the apparent discrepancies therein. Consequently, CLAIMANT is entitled to the relief of specific performance under Art. 62 CISG along with an additional claim for interest. RESPONDENT cannot rely on Art. 80 CISG as CLAIMANT was not obligated to notify them of the cyberattack, and no causal link exists between the attack and the non-payment. Additionally, Art. 77 CISG is inapplicable, as CLAIMANT seeks specific performance, not damages, and there is no room for mitigation in this case.

ISSUE 1: THE SECOND PAYMENT CLAIM MUST BE ADDED TO THE PRESENT PROCEEDING

1. On 7th June 2019, CLAIMANT and RESPONDENT entered into the FA to regulate the supply of sensors [*CE-1, pg. 10*]. From June 2019 to January 2022, RESPONDENT issued 22 PurOs under the FA [*NoA, pg. 6, ¶ 10*], for which CLAIMANT dutifully fulfilled their obligations [*NoA, pg. 7, ¶ 13; RANC pg. 47, ¶ 2*]. However, RESPONDENT failed to meet their payment obligations on two occasions: first, under PurO-9601, and second, under PurO-A-15604 [*NoA, pg. 9, ¶ 30; RRANC, pg. 48, ¶ 4*]. The present arbitration, which arose on 9th June, 2023, was due to RESPONDENT'S failure to make payment under PurO-9601. Additionally, RESPONDENT'S non-performance of their payment obligations under PurO-A-15604 was discovered on 8th September 2023 [*RANC, pg. 47, ¶ 4*]. Consequently, CLAIMANT raised a request to authorize the addition of the second payment claim on 11th September, 2023 [*RANC, pg. 46*].

2. In the interest of efficiency, the second payment claim must be added to the present proceedings. The Tribunal has the power to authorize the addition of the second payment claim **[I]**. Further, the addition of the Second Payment Claim results in noticeable savings in cost and time **[II]**.

I. THE TRIBUNAL HAS THE POWER TO AUTHORIZE THE ADDITION OF THE SECOND PAYMENT CLAIM

3. The Tribunal has power to authorize the addition of the second payment claim under Art. 23(4) of the ICC Rules **[A]** and it is reinforced by the principle of *Iura Novit Arbiter* **[B]**.

A. ART. 23(4) ICC RULES AUTHORIZES THE TRIBUNAL TO ADD NEW CLAIMS TO A PROCEEDING

4. Art. 23(4) ICC Rules states, "*After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference* ***unless it has been authorized to do so by the arbitral tribunal****…*" (emphasis supplied). The Rules explicitly grant the power of authorization of new claims to the Tribunal [*Pryles/Waincymer, ¶ 437 - 499*].

5. The Terms of Reference ("**ToR**") were drawn up on 30th August 2023 [*PO1, pg. 59, ¶ 1*]. RESPONDENT argues that since the ToR exhaustively defines the issues to be determined, the second payment claim cannot be added to the present arbitration [*RRNAC, pg. 54, ¶ 4*]. However, the ToR states, "***Subject to any new claims (Art. 23(4) ICC Rules)*** *…the Arbitral Tribunal may have to consider, in particular, the issues listed in this paragraph (****but not necessarily all of these or only these…)"*** (emphasis supplied) [*RRNAC, ToR extract, Section 5, ¶ 85*]. Therefore, the ToR clearly authorizes the Tribunal to add new claims.

6. In ICC proceedings, the primary purpose of the ToR is to identify questions of fact and law which, at

the time of drafting the ToR, appear to be relevant to the parties' claims. [*Fry/Greenburg/Mazza, ¶ 3-827*]. However, mere signing or approval of the ToR does not preclude parties from introducing additional claims [*Art. 23(4) ICC Rules*]. Parties maintain the ability to do so, provided that the Tribunal grants its authorization [*Webster/Buhler, pg. 419, ¶ 23-83*]. Further, Art. 9 ICC Rules explicitly allows the tribunal to add claims even if they arise out of a different contract, provided there is an ICC arbitration clause present [*Art. 9, ICC Rules; Meier, pg. 2208*]. Therefore, the Tribunal has the power to add the Second Payment Claim.

B. THE PRINCIPLE OF IURA NOVIT ARBITER JUSTIFIES THE ADDITION OF NEW CLAIMS

7. The principle of *Iura Novit Arbiter* confers wide discretion on the Tribunal to consider any legal principle or fact, even if it has not been mentioned in the submissions of the parties [*Moss, pg. 466; SCC 93/2004*]. This is because the Tribunal is in a better position to adjudicate the dispute completely, and eliminating the discretion of arbitrators will defeat the very purpose of resorting to arbitration [*Collantes/Sologuren*].

8. Presently, the Tribunal can rely on the principle of *Iura Novit Arbiter* to authorize the addition of the Second Payment Claim, even if it extends beyond the initial scope of the submission to arbitration. This ensures a comprehensive resolution of disputes between the Parties.

II. ADDITION OF THE SECOND PAYMENT CLAIM RESULTS IN NOTICEABLE SAVINGS IN COST AND TIME

9. Under the ICC Rules, the ToR, once signed, supersedes the parties' initial arbitration agreement as the ToR post-dates that agreement [*Fry/Greenburg/Mazza, ¶ 3-870*]. Additionally, the ToR might incorporate procedural agreements that limit the Tribunal's discretion [*Fry/Greenburg/Mazza, ¶ 3-856*].

10. Presently, the Parties have raised the standard for admission of new claims under Art. 23(4) to "*noticeable savings in cost and time*" [*RRANC, ToR, Section 5, ¶ 85*]. However, the specific parameters of what constitutes noticeable savings in time and cost have not been defined. Despite this, RESPONDENT states that the addition of the new claim will not lead to noticeable savings in cost and time [*RRANC, pg. 55, ¶ 5*].

11. However, this is not the case as the claims arise out of the same contractual relationship **[A]** and are similar in law and fact **[B]**. Further, the arbitration agreements relevant to the claims are also compatible **[C]**. Additionally, all other relevant circumstances favor the addition of the second payment claim **[D]** and separate proceedings definitely result in a notable increase in cost and time **[E]**.

A. THE CLAIMS ARISE OUT OF THE SAME CONTRACTUAL RELATIONSHIP

12. A request for the addition of a new claim should be authorized if the claim arises from the same contractual relationship [*Pryles/Waincymer, pg. 437-499*]. This enhances efficiency without adversely

affecting the interests of either party [*Pryles/Waincymer, pg. 440*]. Close transaction dates and interconnected ancillary transactions among the same parties satisfy the criteria for the "*same contractual relationship*" [*ICC Case No. 7184*]. Additionally, the presence of a FA, such as one defining rights and obligations, serves as another indicator of such a relationship [*Glover, ¶ 3*].

13. The two payment claims arise from PurO-A-15604 and PurO-9601. There exists only a twelve-day gap between the two PurOs [*CE-2, pg. 13; CE-7, pg. 48*]. Moreover, ancillary transactions such as a total of 22 PurOs were concluded and over 5M sensors were sold between June 2019 and January 2022 [*NoA, pg. 6, ¶ 10*]. Further, CLAIMANT and RESPONDENT were the only parties to both the PurOs, where CLAIMANT was the seller and the RESPONDENT was the buyer [*CE-1; pg. 9*]. Additionally, both PurO-A-15604 and PurO-9601 were concluded under the FA [*CE-2, pg. 13; CE-7, pg. 48*]. Therefore, both the payment claims arise out of the same contractual relationship.

B. THE TWO CLAIMS ARE SIMILAR IN LAW AND FACT

14. Contrary to RESPONDENT'S assertions, the mere fact that the claims belong to different contracts does not negate noticeable savings in cost and time [*RRANC, pg. 55, ¶ 5*]. This is because both payment claims involve the same questions of law **[a]** and fact **[b]**.

a. Both payment claims involve the same questions of law

15. Presently, both the PurOs are governed by the CISG [*CE-2, pg. 13; CE-7, pg. 48*]. At the outset, RESPONDENT cannot argue that the claim arising out of PurO-A-15604 is one of non-conformity **[i]**. Further, as both the claims relate to RESPONDENT'S non-payment, the same provisions of the CISG will apply **[ii]**.

i. The claim arising out of PurO A-15604 cannot be one of non-conformity

16. Art. 39(1) CISG states, "*The buyer* ***loses the right to rely on a lack of conformity*** *of the goods* ***if he does not give notice*** *to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered or ought to have discovered it"* (emphasis supplied). Resultantly, the goods are deemed to have been approved if the notice is not proper [*Schlechtriem/Schwenzer, Art. 39, ¶ 32*]. Further, parties may agree upon a particular form of notice [*Schlechtriem/Schwenzer, Art. 39, ¶ 12*]. Art. 15(2) of the FA requires the notice of defect to be sent in the specified form to the Quality Department [*CE-1, pg. 11*].

17. RESPONDENT argues that the notice of defect and subsequent non-payment of the second instalment was given by way of email dated 4th April 2022 to Ms. Peugeotroen [*RRNAC, pg. 54, ¶ 2*]. However, this does not constitute a valid amendment of the form requirements as the two conditions pertaining to writing and Parties' signature were not fulfilled [*CE-1, pg. 11*]. Further, Ms. Peugeotroen was the Special Account Manager for the sale of LIDAR sensors [*CE-8, pg. 49, ¶ 3*] and did not belong to the Quality

Department. Therefore, the email does not amount to a proper notice under Art. 15 of the FA. Non-compliance with the form requirements results in "*the loss of any rights for the deficiency of the goods*" [*CE-1, pg. 11*]. Therefore, the issue of non-conformity cannot be raised by RESPONDENT.

ii. The same provisions of the CISG will apply to both payment claims

18. As the claims arising out of both PurOs deal with RESPONDENT'S non-payment, they will involve common provisions of the CISG, namely Arts. 53, 54, 77 and 80 [*Infra I-A, III, Issue 3*]. The addition of the Second Payment Claim is thus justified due to the existence of great overlap in the law [*ICC Case No. 20282/RD*].

b. Both payment claims involve common questions of fact

19. The closer a claim is to an existing claim, the more likely it is for the claim to be added [*Webster/Muhler, ¶ 23-92*]. The inter-relatedness of claims is a material factor supporting a single arbitration [*ICC Case No. 21950/RD/MK*]. This serves the purposes of international arbitration without causing prejudice to any of the parties. The inter-relatedness of the two claims is shown in *Fig. 1*:

	PurO 9601	**PurO A-15604**
Parties & Legal Relationship	Seller (CLAIMANT) and Buyer (RESPONDENT)	Seller (CLAIMANT) and Buyer (RESPONDENT)
Subject matter of Dispute	Payment Obligation breached by RESPONDENT.	Payment Obligation breached by RESPONDENT.
Institutional Rules of Arbitration	ICC Rules 2021	ICC Rules 2021 (*Emergency Arbitration excluded*)
Law governing the Contracts	CISG (Art. 53, 54, 77, 80)	CISG (Art. 53, 54, 77, 80)
Arbitration Clause	Art. 7 of PurO-9601	Art.7 of PurO-A-15604
Seat	Danubia	Danubia
Language of Arbitration	English	English

Fig. 1: Inter-relatedness of the Two Claims

20. Currently, both payment claims center around a cyber-attack suffered by CLAIMANT. Although the attack was identified in January 2022, its severity only became apparent in May [*PO2, pg. 64, ¶ 25*]. The January cyberattack underlies the false e-mail for payment under PurO-9601 and the second payment delay for PurO-A-15604 [*NoA, pg. 7, ¶ 26; CE-8, pg. 49, ¶ 9*]. RESPONDENT themself acknowledges that the risk of third-party interference had finally materialized in its payment to the new bank account communicated by the cybercriminal mimicking CLAIMANT. [*RNoA, pg. 31, ¶ 9*]. Additionally, the shutdown of CLAIMANT'S IT systems cannot be characterized as an internal problem [*RRNAC, pg. 54, ¶ 3*]. This is considering RESPONDENT'S own admission that the cyber-attack was not the first one affecting the Parties' relationship [*RNoA, pg. 30, ¶ 2*].

C. THE ARBITRATION AGREEMENTS ARE COMPATIBLE

21. For arbitration agreements to be compatible, it is sufficient if they are substantially or procedurally compatible [*Fry/Greenburg/Mazza, pg. 81, ¶ 3-243*]. The agreements should align in certain key aspects such as the seat, procedure for constitution of tribunal, applicable substantive law [*Born/Prasad, pg. 75-76*]. Presently, the compatibility in the two arbitration agreements arises out of various factors [*see Fig. 2 below*].

	PurO-9601	**PurO-A-15604**
Institutional Rules	ICC Rules, 2021	ICC Rules, 2021
Seat	Danubia	Danubia
Law Governing the Contracts	CISG	CISG
Language of Arbitration	English	English

Fig. 2: Compatibility of the Two Arbitration Agreements

22. For any incompatibility to arise, the differences must be of sufficient relevance or importance to materially impact the proceedings [*ICC Case No. 20910/ASM/JPA*]. Presently, the deviations are insignificant and do not render the arbitration agreements incompatible.

23. Firstly, the second arbitration agreement providing for "*one or more arbitrators"* does not render the clauses incompatible as it is only indicative of parties' intentions in case of a single dispute and cannot be extended to multi-claim disputes [*Pryles/Waincymer, pg. 448, ¶ 2*]. In any case, the ICC Court has the power to make the arbitration agreements compatible by changing the number of arbitrators in the two proceedings [*Webster/Buhler, ¶ 6-50*]. Therefore, "*one or more arbitrators"* can be read as "*three arbitrators,*" which is being followed in the present arbitration under PurO-9601. Additionally, all the three arbitrators

have extensive experience in the automotive industry, which would be beneficial in adjudicating both payment claims [PO*2, pg. 65, ¶ 36*].

24. Secondly, the stage of arbitration has made the emergency arbitration provisions redundant. Under Art. 29 ICC Rules, parties can invoke emergency arbitration only before the Secretariat transmits the file to the Tribunal. Presently, the file has already been transmitted to the Tribunal [*LfS, pg. 39*]. The Parties are thus precluded from invoking emergency arbitration under PurO-9601. Resultantly, the addition of the Second Payment Claim is tenable and express exclusion of emergency arbitration is not a ground for incompatibility.

D. ALL OTHER CIRCUMSTANCES FAVOUR AUTHORIZATION OF SECOND PAYMENT CLAIM

25. Presently, the nature of the two claims are similar as both deal with RESPONDENT'S non-payment [*Supra ¶ 20*]. Further, the current stage of the arbitration permits the addition of a new claim **[a]**. Secondly, the incorporation of a new claim does not cause prejudice to the RESPONDENT **[b]**. Thirdly, the addition of the second payment claim does not create a risk of the award being set aside or denied enforcement **[c]**. All the aforementioned considerations are also provided under Art. 23(4) of the ICC Rules, which the Tribunal would have ordinarily applied, if not for the raised standard for addition of new claims contained in the ToR. These conditions are also prescribed under Art. 9 of the ICC Rules [*Fry/Greenberg/Mazza, ¶ 3-910*].

a. The stage of arbitration allows for the Second Payment Claim to be added

26. If the new claim is raised shortly after the signing of the ToR, it is much more likely to be accepted than if it was made during or after the oral hearings. Such a course does not seriously delay the timetable previously agreed and allows the other party to adequately respond to the new claim [*Webster/Buhler, ¶ 23-97*].

27. Presently, the timetable does not include any explicit cut-off date for the submission of new claims or evidence [*PO2, pg. 65, ¶ 34*] and the proceedings are at a nascent stage as well. So far, only a case management conference was conducted to discuss the various options for structuring the proceedings in a cost and time-efficient manner [*PO1, pg. 58, ¶ 2*] and the first hearings are yet to be conducted. Therefore, the stage of the current arbitration is conducive to the addition of the second payment claim.

b. No prejudice is caused to RESPONDENT by adding the Second Payment Claim

28. In international arbitration, prejudice denotes an unfair disadvantage resulting from a jurisdictional or procedural defect that impacts the dispute's outcome [*Chan/Koh, pg. 185-212*]. This prejudice often arises when fundamental principles of international arbitration, like equal treatment of parties with full opportunity to present their case, are violated [*ICC Case No. 21398/RD/MK; ICC Case No.*

21848/RD/MK].

29. Prejudice is not caused to the parties by the addition of a new claim in cases involving a similar factual basis and contractual relationship [*ICC Case No. 20282/RD; Welser/Mimnagh, ¶ 40*]. Since the present dispute involves two claims with a similar factual and legal basis and arise out of the same contractual relationship, the addition of the Second Payment Claim will not result in any prejudice. In fact, the addition is mutually beneficial and has several advantages such as increased efficiency and time and cost savings because the claims will be resolved together, instead of being resolved in separate arbitrations [*ICC Case No. 7184; Webster/Buhler, ¶ 23-93*].

c. Addition of the Second Payment Claim does not create a risk of the award being set aside or denied enforcement

30. The grounds for setting aside an award are outlined in Art. 34 DAL, and the grounds for denial of recognition or enforcement are specified in Art. V NYC. As these grounds are identical, they can be considered together. The NYC requires a narrow construction of these grounds, aligning with its objective to facilitate the recognition and enforcement of foreign arbitral awards [*Linhas Aeras v. Matlin Patterson, ¶ 3*]. Similarly, given that the DAL grounds are modeled after the NYC, they too should undergo a restrictive interpretation [*Bantekas/Ortolani, pg. 858-898*].

31. Presently, there is no contention regarding Art. V(1)(a), V(1)(b), V(1)(d) and V(1)(e) NYC and the corresponding grounds under Art. 34 DAL. RESPONDENT may argue that the award can be set aside or denied recognition and enforcement as the second payment claim does not fall within the terms of submission to arbitration [*Art. V(1)(c) NYC; Art. 34(2)(a)(iii) DAL*]. For this ground, a liberal interpretation of the ToR is warranted to align with arbitration's flexible nature [*ICC Case No. 23878/AYZ, ¶ 3*]. The ToR explicitly allows the addition of a new claim for noticeable cost and time savings [*RRNAC, ToR extract, Section 5, ¶ 85*]. Since the two payment claims arise out of the same contractual relationship and involve common questions of fact and law, the addition of the Second Payment Claim would not be a hindrance to the Tribunal, even if it falls outside of the literal scope of submission to arbitration.

32. Further, the *Iura Novit Arbiter* principle rules out the possibility of setting aside or denial of enforcement or recognition of an award. The principle confers wide discretion on a tribunal to consider any fact or law that is relevant to the dispute [*Moss, pg. 466*]. This is because arbitrators are well-trained experts and so their discretion is important and not arbitrary [*Anischenko/Dubeshka, pg. 101*]. Thus, the addition of the Second Payment Claim will not result in the award being set aside or rendered unenforceable even if it lies outside the scope of submission of the Parties.

E. SEPARATE PROCEEDINGS DEFINITELY RESULTS IN NOTABLE INCREASE IN COST AND TIME

33. Art. 22 ICC Rules, obligates the Tribunal and the Parties to make all endeavours to carry out the arbitration in a manner that is cost-effective and efficient. Presently, adding the Second Payment Claim will result in significant cost and time savings. This is because the claims are between the same parties, sharing same contractual relationship, with compatible arbitration agreements involving similar questions of fact and law [*Supra II-A, II-B, II-C, Issue 1*].

34. On the contrary, if the Tribunal does not authorize the addition of the Second Payment Claim, CLAIMANT'S only recourse would be to initiate a separate proceeding against RESPONDENT. This would significantly raise costs and prolong the process for both the Parties. In terms of costs, the Court fixed the advance on costs at USD 610,000 and Claimant has advanced USD 135,000 [*ICC notification of the answer, pg. 28; ICC notification of court decision, pg. 39*]. It is reasonable to assume that both CLAIMANT and RESPONDENT must have incurred substantial legal costs and will incur witness, and other external costs.

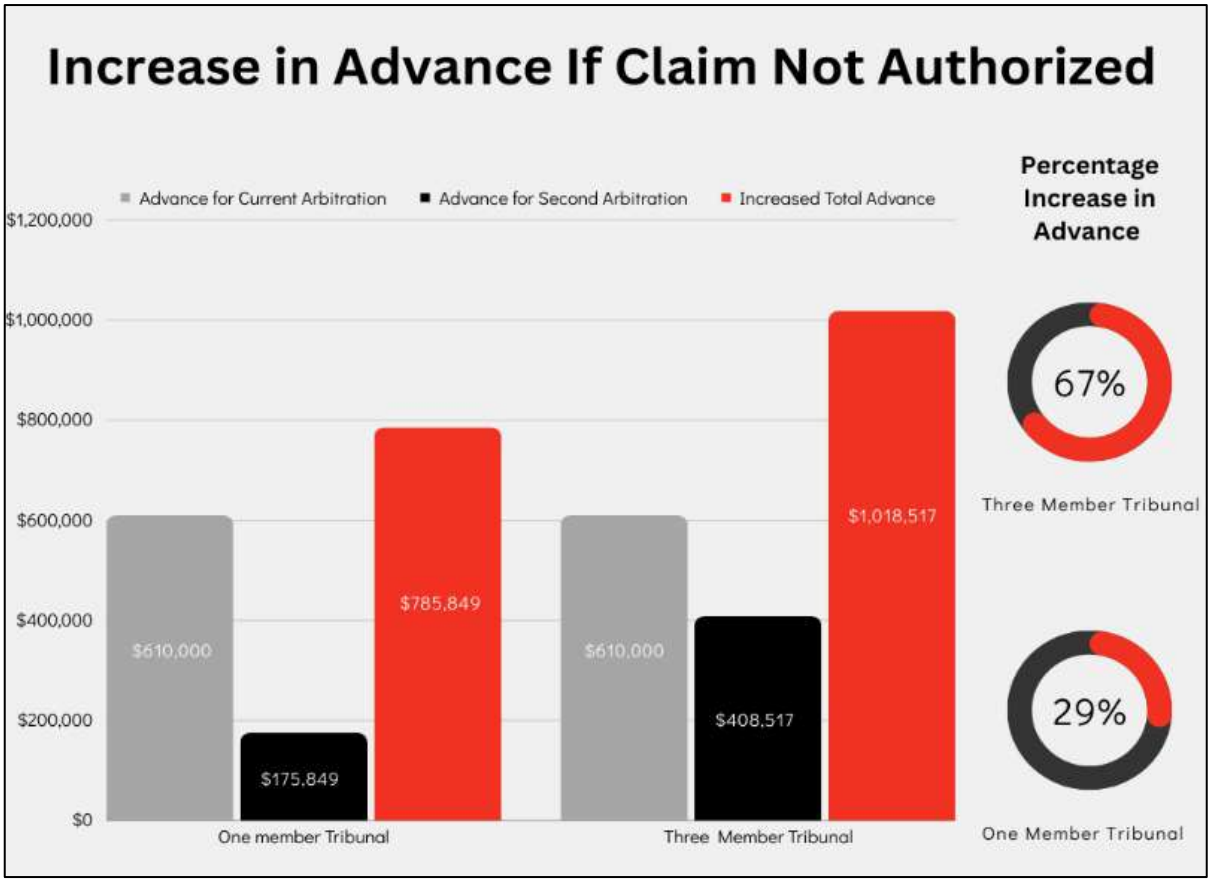


Fig. 3: Increase in Advance if Claim is not Authorized

35. If CLAIMANT were to commence a separate arbitration proceeding, the advance on cost itself would be USD 408,517 [*Appendix III Art. 3 ICC Rules*]. Even if the Parties opt for a sole arbitrator, the advance

on cost would amount to USD 175,849 [*Appendix III Art. 3 ICC Rules*]. The increase in advance costs, if the second claim is not added, is illustrated [*Supra Fig. 3*].

36. Further, these figures do not encompass arbitrator expenses, legal fees, anticipated witness expenses, management costs, and other external expenses. Additionally, there are also ICC administrative expenses, which do not include VAT, taxes, imposts or any other charges of a similar nature and parties have a duty to pay any such charges pursuant to invoices issued by ICC [*Appendix III, Art. 2, ¶ 14 ICC Rules*] Therefore, additional costs would be incurred to resolve essentially the same dispute if the claim is not authorized. When the Tribunal authorizes the addition of the Second Payment Claim, it can revise the advance on costs set by the Court, factoring in prior payments [*Art. 37(5) ICC Rules*]. The Parties will not have to incur any additional arbitrator expenses or administrative costs.

37. In terms of time, it took 275 days from CLAIMANT'S notice of arbitration to the first oral hearings being held [*NoA, pg. 5; PO1, pg. 58*]. Further, the average duration of ICC proceedings in cases that reached a final award is approximately 26 months [*ICC Dispute Resolution Statistics 2020*]. If CLAIMANT were to initiate a separate arbitration proceeding, the resolution would take a similar amount of time. Therefore, adding the Second Payment Claim would also result in noticeable savings of time.

CONCLUSION TO ISSUE 1

The Tribunal has the power to add the Second Payment Claim to the present proceeding and must do so in accordance with the ToR. This will lead to noticeable savings in time and costs because both payment claims are between the same parties, arise out of the same contractual relationships, have compatible arbitration agreements and involve similar questions of fact and law. Further, the stage of arbitration favors addition and there is no risk of the award being set aside or denied enforcement.

ISSUE 2: IF THE NEW CLAIM HAS TO BE RAISED IN A SEPARATE ARBITRATION, THE ARBITRAL TRIBUNAL MUST CONSOLIDATE THE PROCEEDINGS

38. Alternatively, if the Second Payment Claim cannot be added, then the RANC should be treated as a request for commencing arbitration proceedings for the Second Payment Claim [*RANC, pg. 47, ¶ 7*]. These new proceedings would arise out of the same contractual relationship between the same parties and involve the similar questions of fact and law as in the present proceeding.

39. To ensure that both payment claims are efficiently resolved, the two proceedings should be consolidated.

Presently, the Tribunal has the power to consolidate the proceedings **[I]** and should consolidate the two arbitral proceedings **[II]**.

I. THE TRIBUNAL HAS THE POWER TO CONSOLIDATE THE TWO PROCEEDINGS

40. RESPONDENT argues that the Tribunal lacks the power to consolidate the two arbitral proceedings as Art. 10 ICC Rules vests such power solely on the ICC Court [*RANC, pg. 55, ¶ 6*]. However, the power to consolidate can be transferred to the Tribunal through party autonomy **[A]**. Moreover, the Parties in this case, have consented to such a transfer through Art. 41 (5) FA, which extends to the two PurOs as well **[B]**.

A. THE POWER TO CONSOLIDATE THE ARBITRAL PROCEEDINGS UNDER ART. 10 ICC RULES CAN BE TRANSFERRED FROM THE ICC COURT TO THE TRIBUNAL

41. Art. 10 ICC Rules confers the ICC Court with the power to consolidate two arbitral proceedings. However, the parties may choose to deviate from such a provision through party autonomy [*Bühler/Jarvin, pg. 1153, ¶ 15,106*]. This is because party autonomy is the 'guiding principle' of arbitration, and provides that the parties 'are free to agree' on the procedural aspects of the arbitration [*Holtzmann/Neuhaus, pg. 564; UNCITRAL Secretariat Note, pg. 583*]. Such an agreement includes certain deviations from the institutional rules chosen by the parties, as long as it is consistent with the *lex arbitri* applicable to the arbitration [*Redfern/Hunter, pg. 315*; *Pryles/Waincymer, pg. 437-499*].

42. Art. 41 (5) FA reflects such an express agreement to deviate from the institutional rules chosen by the parties [*CE-1, pg. 12*]. It states: "*Consolidation: If the Parties initiate multiple arbitration proceedings in relation to several contracts concluded under this framework agreement, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations,* ***the Arbitral Tribunal of the first arbitration proceedings has the power to consolidate all such proceedings into a single arbitral proceeding***."(emphasis supplied)

43. This provision reflects the clear intention of the Parties to exercise their autonomy and deviate from Art. 10 ICC Rules. In cases of express deviations, the agreement of the parties is respected and party autonomy must prevail over the discretionary powers of the arbitral institution [*Berger, pg. 362*; *Noble Resources v. Shanghai GCIT*]. This view has also been upheld in an ICC Case, in which party autonomy with respect to deviating from institutional rules on consolidation was upheld [*ICC Case No. 22374, ¶ 167*].

44. Moreover, giving effect to the Parties' arbitration agreement would be consistent with the applicable *lex arbitri* as well. Art. 19 DAL expressly confers the Parties with the authority to agree on the procedure to be followed in the proceedings, as is reflected in Art. 41 (5) FA [*Art. 19 DAL*]. The only restriction

placed upon such authority pertains to non-compliance with the *lex arbitri* itself, or a violation of public policy [*Noble China. v. Lei Kat; Desputeaux v. Éditions Chouette*]. Presently, an express deviation from the discretionary powers of the arbitral institution does not fall under either of these restrictions.

45. RESPONDENT may argue that such an exercise of party autonomy under Art. 41(5) FA is limited by the parties' express choice of the ICC Rules. RESPONDENT may do so by relying on the sole administrative authority conferred to the ICC Court and the binding nature of its decision under Art. 10 ICC Rules [*Grierson/Van Hooft, pg. 121-126; Prasad, pg. 32*]. However, the ICC Court's exclusive power to consolidate separate proceedings under Art. 10 can still be overridden by an express agreement by parties. This is because the ICC Rules expressly specify the limited instances wherein the ICC Court's authority would prevail over the parties' agreement [*Born I, pg. 7 ; Bonke ¶ 3; Berger, pg. 362; Derains/Schwartz, pg. 259-62, 312-16*].

46. Such instances can be found in Art. 2 (iv) Appendix VI, Art. 30 (1), Art. 12 (9) ICC Rules, where the ICC Rules expressly state: "*Notwithstanding any agreement by the parties, the Court may…*" [*ICC Rules, Art. 2 (iv) Appendix VI*]. This approach reflects the intention of the institution, to limit the instances of the institutional rules overriding the parties' agreement to questions covered only under those provisions [*Born I, pg. 7*]. In all other instances, the agreement of the parties must prevail [*Ibid*]. Therefore, in the absence of such a *non-obstante* clause in Art. 10 ICC Rules, the agreement of the parties must be given full effect.

B. THE PARTIES CONSENTED TO APPLY THE CONSOLIDATION PROVISION UNDER ART. 41(5) OF THE FA TO THE PUROS

47. The provisions of a dispute resolution clause contained in a FA generally encompass all disputes arising out of contracts concluded under it. This is because the inclusion of such a clause in the FA reflects the intention of the parties to have all disputes arising therein to be treated as a whole [*OBG Judgment of 19 October 2000*; *OBG Judgement of 18 June 2018*; *KB Components v. Husqvarna AB*; *ICC Case No. 11440; Collins v. Bldg; Leboulanger, pg. 82*].

48. Similarly, Art. 41 FA reflects the intention of the parties and has the nature of a broad form arbitration agreement, extending its application to "*the contracts concluded*" thereunder [*CE-1, pg. 11*]. Such an intention must be interpreted through the substantive law applicable to the arbitration agreement [*Enka v. Chubb*; *Berger, pg. 324; Samuel, pg. 87*]. Presently, the Parties have agreed that the FA is governed by the laws of Danubia, which includes the CISG [*CE-2, pg. 13; PO2, pg. 66, ¶ 38*].

49. This choice is consistent with the law chosen by the Parties for the arbitration agreement in the two PurOs as well, which expressly state: "*the arbitrators shall apply the CISG*" [*CE-2, pg. 13; CE-7, pg. 48*].

However, even if the FA were to be governed by the DCA, the standard of interpretation would remain the same. This is because both Art. 8 CISG and Art. 4.1.2 DCL provides identical standards for interpreting the intention of the parties. [*UNIDRIOT Off. Comm., pg. 92*].

50. Under Art. 8 CISG, the subjective intention of the parties must be considered first. This implies that the statements or conduct of one party must be interpreted in line with its intention, provided that the other party knew or could not have been unaware of such an intention. Presently, the consolidation provision was incorporated into the FA upon the insistence of RESPONDENT [*PO2, pg. 63, ¶ 19*]. However, it is unclear whether the context behind the same was ever communicated or indicated to CLAIMANT. Thus, in the absence of any evidence of such communication or indication, the subjective intention of the parties cannot be determined.

51. Instead, the standard of a reasonable third person in the position of the parties under Art. 8 (2) CISG must be applied [*Schlechtriem/Schwenzer, Art. 8, ¶ 22*]. Under this standard, the statements or conduct are to be interpreted as per the understanding of a reasonable third person of the same kind as the other party, under the same circumstances [*CISG Art. 8(2)*]. While determining such intent, the relevant circumstances, including the "*subsequent conduct*" of the parties must be examined [*CISG Art. 8(3)*].

52. A reasonable third person in the position of the parties would understand that by incorporating a consolidation provision in the FA, the parties would intend to extend the application of the provision to all contracts concluded under the FA [*Pryles/Waincymer, pg. 437-499; Heifer v. Helge; OBG Judgment of 19 October 2000; Socino v. NKAP*]. Such an intention becomes clear from the very scope of the consolidation provision itself as it empowers the Tribunal to consolidate "***multiple arbitration proceedings*** *in relation to* ***several contracts*** *concluded under this framework agreement*" (emphasis supplied) [*CE-1, pg. 12*].

53. Moreover, the *'subsequent conduct'* of the Parties reflects the intention to consolidate the arbitral proceedings as well. The preambles to both the PurOs expressly stipulate that the provisions of the FA govern the respective PurOs "*unless agreed otherwise*" [*CE-2, pg. 13; CE-7, pg. 48*]. The only deviations from the dispute resolution clause contained in the FA may be found in Art. 7 of PurO- A-15604 [*CE-7, pg. 48*]. However, such deviations solely relate to the number of arbitrators stipulated and the exclusion of the Rules on Emergency Arbitration, and are unrelated to the parties' intent to consolidate. They arise out of a concern regarding the enforceability of emergency arbitrator decisions and a mere adoption of the ICC Model Clause for the sake of convenience, respectively [*PO2; pg. 65; ¶ 32,33*]. Therefore, without any such express agreement to deviate from the consolidation provision, a reasonable third person would conclude that the Parties intended to extend the provision to the PurOs as well. Hence, the parties consented to extend the power of the Tribunal to consolidate under Art. 41(5) FA to the two PurOs.

II. THE TRIBUNAL SHOULD CONSOLIDATE THE TWO ARBITRAL PROCEEDINGS

54. To permit the consolidation of the two arbitral proceedings, the Tribunal has to consider the requirements for consolidation under the ICC Rules and the consolidation provision agreed upon by the Parties under the FA. In this case, the requirements under Art. 10 of the ICC Rules **[A]** and Art. 41 (5) of the FA **[B]** are satisfied.

A. THE REQUIREMENTS FOR CONSOLIDATION UNDER ART. 10 ICC RULES ARE SATISFIED

55. Art. 10(c) ICC Rules permits consolidation of arbitral proceedings even in instances where the claims in the arbitration are not made under the same arbitration agreement or identical arbitration agreements. Presently, the conditions under Art. 10(c) are satisfied as the parties to both disputes are the same, both disputes arise in connection with the same legal relationship **[a]**, and both arbitration agreements are compatible as well **[b]**. Additionally, all other relevant circumstances also lie in favour of the consolidation **[c]**.

a. The disputes in the two arbitrations arise in connection with the same legal relationship

56. For two arbitrations to arise in connection with the same legal relationship, they must arise out of a single economic transaction [*Whitesell/Romero, pg. 16*]. A single economic transaction includes transactions with a single framework agreement and multiple contracts concluded under it [*Leboulanger pg. 43-97; ICC Case No. 12605, ¶ 536; Hanotiau, pg. 210, ¶ 532*]. In such situations, the entire series of contracts must be treated as a single economic transaction as such contracts are a part of a single economic arrangement and are economically or functionally dependent upon each other to reach a common goal [*Sayag, pg. 439; Final Award (Paris, French, Italian law)*] .

57. Presently, PurO-9601 and PurO-A-15604 arise out of a larger contractual framework between the Parties. Without such PurOs governing the individual instances of supply, the FA would not achieve its economic purpose of regulating such supply. This demonstrates the functional dependency of the FA with the PurOs, to achieve the common goal set out in the FA. Further, the inter-relatedness of the contracts and the presence of a single economic transaction are underscored by explicit cross-references within the contracts [*Fouchard/Gaillard/Goldman, ¶ 520*]. Both PurOs explicitly refer to the FA in their preamble, stipulating that its provisions govern them unless agreed otherwise [*CE-2, pg. 13; CE-7, pg. 48*]. Similarly, the FA includes explicit references to the PurOs, stating that the call-off of required sensors under the Individual Contract shall be via individual purchase orders [*CE-1, pg. 9*]. These cross-references emphasize the interconnectedness of the contracts, providing evidence of a single economic transaction between the Parties.

58. Furthermore, the common consolidation provision in the overarching FA strengthens the case for a single legal relationship by indicating the Parties' intention to treat all disputes arising under the FA and respective PurOs as a unified whole [*Leboulanger, pg. 43-97*]. Given the evident inter-relatedness and functional dependency between the contracts, a single legal relationship exists between the parties.

b. The two arbitration agreements are compatible as per Art. 10 ICC Rules

59. As per Art 10(c), two proceedings may be consolidated if the different arbitration agreements are compatible with each other. Compatibility merely implies substantive compatibility and does not require the arbitration agreements to be identical [*Fry/Greenberg/Mazza, ¶ 3-243*]. Further, incompatibility in such aspects may or may not prevent the case from advancing further depending on the circumstances of a case [*Fry/Greenberg/Mazza, ¶ 3-246*]. Differences between arbitration agreements must be of sufficient relevance or importance that would materially impact the effective running of the consolidated proceedings [*Supra ¶ 22*]

60. Presently, CLAIMANT has established that the dispute resolution clauses contained in PurOs 9601 and A-15604 are compatible [*Supra ¶¶ 23,24*]. Both clauses align on key aspects such as the place of arbitration, institution administering the arbitration, applicable law governing the dispute, procedure for appointment of arbitrator, and language of arbitration [*Supra Fig. 1, 2*]. Further, the difference in the number of arbitrators and the exclusion of provisions on emergency arbitration under the second PurO do not render the arbitration agreements incompatible.

c. Other relevant circumstances favour consolidation of proceedings

61. Art. 10 ICC Rules provides that relevant circumstances may be considered while deciding upon the request for consolidation. One such circumstance includes whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different arbitrators have been confirmed or appointed [*Fry/Greenberg/Mazza, ¶ 3-358*]. Along with this, efficiency considerations such as savings in cost and time in a consolidated proceeding may also be considered while deciding upon consolidation [*Menon, ¶ 2; Veeder, pg. 319; Whitesell/Romero, pg. 16; Fry/Greenberg/Mazza, ¶ 3-348; Pryles/Waincymer, pg. 60; Canfor v. USA*]. Presently, the stage of the arbitral proceedings is suitable for consolidation **[i]** and the consolidation of proceedings will save cost and time of parties **[ii]**.

i. Stage of the two arbitral proceedings is suitable for consolidation

62. While deciding upon a request for consolidation, the Tribunal may take into consideration the appointment of arbitrators in more than one of the two proceedings. However, this circumstance does not hinder consolidation in the present case. This is because arbitrators have been appointed only for

the present proceedings. In the absence of appointment of arbitrators for the newly initiated proceedings under PurO No. 15604, the question of inconsistency between the arbitrators appointed does not arise.

63. Moreover, the present proceedings are still at a nascent stage as the Tribunal has not advanced to oral hearings or dealt with the substantive issues in dispute [*Supra ¶ 27, PO1, pg. 58, ¶ 4*]. In such situations, arbitral tribunals may proceed with the consolidation by permitting both the claims to be presented before the tribunal already appointed [*Meier, pg. 2206-2211; Hanotiau, pg. 197-310*]. Therefore, the stage of the arbitral proceedings is suitable for consolidation.

ii. Consolidation of the two proceedings would save time and costs for the parties

64. The consolidation of the two arbitral proceedings would lead to considerable savings in time and costs, particularly when both the proceedings involve common questions of fact and law [*Supra II-B, Issue 1*]. Non-consolidation of the proceedings would force the parties to bear the unnecessary burden of presenting the same evidence before two different arbitral tribunals, leading to a significant increase in time and costs [*Chan SweeEn; Born I*]. Furthermore, the appointment of a common arbitral tribunal for the consolidated proceedings would greatly reduce the arbitral costs associated with the proceedings [Chiu; *Whitesell/Romero*]. Alternatively, if the Tribunal does not consolidate the proceedings, CLAIMANT will have to initiate another arbitration, which will certainly lead to increased time and costs [*Supra II-E, Issue*].

B. THE REQUIREMENTS FOR CONSOLIDATION UNDER ART. 41(5) OF THE FRAMEWORK AGREEMENT ARE SATISFIED

65. Under Art. 41(5) FA, the Tribunal may order the consolidation of multiple arbitration proceedings if the subject matter of the proceedings is related by common questions of fact or law and if the proceedings may lead to conflicting awards or obligations.

66. Presently, both payments arise out of the common legal relationship between the same parties and involve common questions of fact and law [*Supra II-B, Issue 1*]. Since the first condition pertains to common question of law '*or*' fact, even if RESPONDENT contests the validity of one of the above arguments i.e., validity of overlapping law or fact, the other criteria still stand fulfilled and consolidation will be allowed [*Conoco Shipping Co. v. Norse Shipping Co.*]. Therefore, the first condition under Art. 41(5) FA is duly fulfilled.

67. Taking this analysis further, the second condition for consolidation under Art. 41(5) FA is also fulfilled. There exists a significant risk of contradictory awards which may create conflicting obligations on the Parties. This is because the risk of conflicting decisions arises as a natural consequence of the existence of common questions of law or fact in any two proceedings [*Chan SweeEn*; *Whitesell/Romero, pg. 16*].

68. For instance, it can be assumed that under the first award, CLAIMANT could be entitled to specific performance and under the second award, there would be no such obligation on the RESPONDENT. Even though both the disputes arise from similar points of fact and law, the awards impose conflicting and contradictory obligations [*Supra II-B, Issue 1*]. This situation is undesirable and also affects legal predictability [*Spoorenberg/Viñuales*]. Thus, the second condition under Art. 41(5) FA is fulfilled as non-consolidation poses the risk of conflicting awards.

CONCLUSION TO ISSUE 2

The power of the ICC Court to consolidate arbitration proceedings under Art. 10 ICC Rules can be transferred to the Tribunal through an agreement between the parties and has been done so through Art. 41(5) DA. The Tribunal should consolidate the two arbitration proceedings because the requirements for consolidation under Art. 10 ICC Rules and Art. 41(5) FA are fulfilled.

ISSUE 3 – CLAIMANT IS ENTITLED TO THE FULL AMOUNT DUE AS PAYMENT UNDER PURO-9601

69. On 17th January, 2022, RESPONDENT placed PurO-9601 under the FA, ordering 1.2M sensors, which were to be delivered in two equal instalments [*NoA, pg. 6, ¶ 13*], with payment to be made 30 days after each delivery [*NoA, pg. 6, ¶ 14*]. Despite CLAIMANT fulfilling their delivery obligations [*NoA, pg. 6, ¶ 13*] they never received payment as per the agreed terms [*NoA, pg. 6, ¶ 14*]. Upon inquiry, it was discovered that RESPONDENT had been a victim of a phishing attack, due to which they had paid the money to an incorrect bank account [*NoA, pg. 6, ¶ 16*].

70. However, as CLAIMANT had never requested a transfer to said account, RESPONDENT'S payment obligation has not been fulfilled [*NoA, pg. 7, ¶ 26*]. Instead of remedying their breach, RESPONDENT now takes the defence that their payment obligation should be reduced or extinguished entirely in accordance with Art. 77 and Art. 80 CISG, respectively [*NoA, pg. 8, ¶ 29*]. Further, they allege that CLAIMANT was obligated to inform them of a cyberattack on their systems based on Art. 5.1.3 DCA and Art. 7 CISG [*NoA, pg. 8, ¶ 28*]. However, CLAIMANT was under no such duty, and is entitled to full payment of the price.

71. The payment of price is established in the FA and individual PurOs [*CE-1, pg. 10; CE-2, pg. 13; CE-7, pg. 48*], with the latter being explicitly governed by the CISG [*CE-2; pg. 13; CE-7, pg. 48*]. Similarly, Art. 41 FA states that "*this Framework Agreement…governed by the law of Danubia*" [*CE-1, pg. 12*].

72. The law applicable in arbitral proceedings is first and foremost the law chosen by the parties [*Schlechtriem/Schwenzer, Intro to Arts. 1-6 (CISG), ¶ 12; Fry/Greenberg/Mazza, Art. 21(ICC Rules), ¶ 3-747*]. If parties make reference to the law of a Contracting State, without any further specifications, the CISG generally applies, provided that considerations within Art. 1(1) are met [*Schlechtriem/Schwenzer, Art. 6, ¶ 18; Machines Case I; Coke Case III*]. Since the parties chose the law of a Contracting State i.e., Danubia [*PO1, pg. 59, ¶ 4*] to govern their FA, they effectively opted into the CISG. [*Schlechtriem/Schwenzer, Art. 6, ¶ 29; Electricity Meters Case; Used Car Case III*]. Therefore, in order to exclude the CISG by choice of law of a Contracting State, parties would have to make an explicit exclusion of the same [*Staudinger/Magnus, Art 6, ¶ 27; Schlechtriem/Schwenzer, Art. 6, ¶ 18; Cybernetix v. CD Systems.; Paper Bags Case*]. However, in the present case, no such exclusion was made.

73. Further other considerations within Art. 1(1) have been met. FAs are governed by the CISG if they specify the main sales obligations of the parties with precise obligations to buy and sell, which are intended to form the main part of the contract [*Schlechtriem/Schwenzer, Art. 1, ¶ 14; Metallurgical Sand Case; Multifunctional Fax Machine Case, Cardboard Coffins Case*]. Under Art. 1 of the FA, "*The FA governs the* ***contractual terms****...respective individual contracts"* (emphasis supplied). Further, it entails numerous articles precisely detailing the various rights and obligations, of the buyer and seller, which are characteristic of sale contracts [*see. Fig. 4 below*]. This is reaffirmed by the recitals of PurOs 9601 and A-15604 [*CE-2, pg. 13; CE-7, pg. 48*].

Art. No.	Rights/ Obligations Laid Down
Art. 3	Delivery obligations of the seller
Art. 4	Purchase obligations of the buyer
Art. 5	Conditions required to be met by the PurOs [*supplemented by PO2, pg. 63, ¶ 20*]
Art. 6	Price setting procedure to be followed by the parties
Art. 7	Mode of payment to be followed by the buyer for the individual PurOs
Art. 8	Liability insurance to be maintained by the seller throughout the course of their contractual relationship with the buyer

Fig. 4: Rights & Obligations of the Parties as Under the FA

74. Additionally, the requirements under Art. 1 require the contract to be for moveable and tangible goods and between parties whose places of business are in different states [*Schlechtriem/Schwenzer, Art. 1, ¶¶ 16 & 23; Market Research Study Case; Chinchilla Furs Case*]. As CLAIMANT'S sensors clearly satisfy the test of being movable and tangible and the sale is between parties in different states, which was clearly disclosed [*CE 1, pg. 9*], the CISG is applicable to the given case.

75. Resultantly, RESPONDENT is liable to make full payment under PurO-9601, as per Arts. 53 and 54 CISG **[I]**. Since RESPONDENT has not made the requisite payment, CLAIMANT is entitled to specific performance under Art. 62 CISG **[II]**. Further, RESPONDENT cannot escape liability by using Art. 80 or 77 CISG **[III].**

I. RESPONDENT IS LIABLE TO MAKE FULL PAYMENT UNDER PURO-9601, AS PER ARTS. 53 AND 54 CISG

76. Art. 53 CISG establishes the general obligations of the buyer: taking delivery and paying the price [*Schlechtriem/Schwenzer, Art. 53, ¶ 1; Honnold/Fletchner, Art. 53, ¶ 322; Italian Office Furniture Case*]. Failure by the buyer to perform these obligations, can lead to a claim for specific performance subject to the requirements of Art. 28 [*Staudinger/Magnus, Art 60, ¶ 1; Honsell/Schnyder/Straub, Art 53, ¶ 4; Schlechtriem/Schwenzer, Art. 53, ¶ 1*]. Art. 54 CISG states that, "*The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required* ***under the contract****… to enable payment to be made.*" (emphasis supplied) Given that the obligation to pay and to take steps to make payment are interlinked, Arts. 53 and 54 are two faces of the same obligation [*Kroll/Mistelis/Viscasillas, Art. 53, ¶ 4; Imporgess v. Autos Cabrera*].

77. Presently, RESPONDENT has failed to perform their obligations under Art. 53 and 54 CISG **[A]**. Further, RESPONDENT cannot rely on the phishing email to argue that their payment obligation has been fulfilled **[B]**.

A. RESPONDENT HAS NOT FULFILLED THEIR OBLIGATIONS UNDER ARTS. 53 AND 54 CISG

78. Under PurO-9601, RESPONDENT was required to make payments, via transfer of funds on 3rd May and 30th June, 2022 [*NoA, pg. 6, ¶ 14*]. Payment by a transfer of funds, is only possible if the seller has indicated a particular account or has made it known that they possess an account with a particular financial institution [*Schlechtriem/Schwenzer, Art. 53, ¶ 10*]. Further, the CISG is only concerned with the **discharging effect** of such a payment [*Schlechtriem/Schwenzer, Art. 53, ¶ 12*]. If parties have agreed on payment by telegraphic transfer to the seller's bank, the **entry of credit to the seller's account** at the

said bank is decisive in determining completion of payment [*Schlechtriem/Schwenzer, Art. 53, ¶ 12; Benicke, Art. 57, ¶ 9; Brunner/Lerch/Rusch, Art 54, ¶ 3; Atamer, pgs. 275, 282; Leather Goods Case*; *Haniberia v. Kunshan Huayue*]. Such transfer is timely only if the payment is made unconditionally without any reservations to the seller's account [*Schlechtriem/ Schwenzer, Art. 53, ¶ 12; MüKoBGB/P Huber, Art 53, ¶ 13; Witz/Salger/Lorenz, Art. 53, ¶ 8*].

79. Presently, under Art. 7 FA, CLAIMANT had provided two bank accounts to which payment under individual orders had to be affected [*CE-1, pg. 10*]. However, CLAIMANT never received payment, under PurO-9601, to either of the bank accounts [*CE-3, pg. 14; NoA, pg. 6, ¶ 15*]. Instead, RESPONDENT paid the money to an incorrect bank account without any instruction from the CLAIMANT [*NoA, pg. 6, ¶ 16*]. Therefore, as the standard established above has not been adhered to, RESPONDENT has not met their obligations under Arts. 53 and 54 CISG.

B. RESPONDENT CANNOT RELY ON THE PHISHING EMAIL TO ARGUE THAT THEIR PAYMENT OBLIGATION HAS BEEN FULFILLED

80. RESPONDENT contends that the email allegedly sent from Ms. Audi's account on 28th March, 2022 constituted a valid amendment to Art. 7 FA and therefore, they should not be held liable for non-payment under PurO-9601 [*RNoA, pg. 31, ¶ 9; RE-4, pg. 36, ¶ 4*]. However, the email did not constitute a valid amendment as it did not conform with Art. 40 FA **[a]**. Further, RESPONDENT cannot claim the exception under Art. 29(2) CISG **[b]**.

a. The email sent to RESPONDENT on 28th March, 2022, did not constitute a valid amendment as it did not conform with Art. 40 FA

81. Under Art. 29(2) CISG, if a written contract contains a provision requiring modification or termination of the contract to be in writing, then the parties cannot modify or terminate the contract in a different manner [*Brunner/Brand, Art 29, ¶11; Schlechtriem/Schwenzer, Art. 29, ¶ 22; Graves Import v. Chilewich Int'l; Spinning Plant Case*]. The intention of the parties, interpreted in accordance with Art. 8 CISG, is relevant to determine what these agreed writing requirements, under Art. 29(2) CISG, entail. [*Schlechtriem/Schwenzer, Art. 29, ¶ 32*]. The CISG provides various circumstances to consider when determining the intent of the parties, such as negotiations, established practices and usages, etc. [*Schlechtriem/Schwenzer, Art. 8, ¶ 14; Fruits and Vegetables Case II*]. Further, consideration is to be given to all relevant circumstances [*Schlechtriem/Schwenzer, Art. 8, ¶ 14; Marzipan Paste Case; MCC-Marble Ceramics v. Ceramica Nuova*].

82. Presently, it is evident that the parties considered the term "writing" to refer to written and signed documents only **[i]**. Further, even if the email sent to RESPONDENT fell within this category, it would

not qualify as a valid modification under Art. 40 FA and Art. 29(2) CISG as the email could not have been reasonably assumed to have been sent by CLAIMANT **[ii]**.

i. The term "writing" referred to written and signed documents only

83. Art. 40 FA clearly uses the phrase "*in writing and signed by the Parties*", indicating their intention to restrict amendments to **signed documents only** [*CE-1, pg. 11*]. This is reaffirmed by the conduct of the Parties in September 2020, where they had agreed to a change in bank account through a **signed side letter** [*PO2, pg. 63, ¶12*]. Further, it was clear to RESPONDENT that emails generally would not conform to the form requirement under Art. 40 FA. This is evidenced by the fact that they had, in response to the email sent on 28th March, 2022, asked CLAIMANT for a confirmation regarding its compliance with the form requirements [*RE-4, pg. 36, ¶ 4*]. Clearly, the writing requirement as laid down under Art. 40 FA referred to written and signed documents only and thus, the amendment of Art. 7 FA via email was invalid.

ii. The email could not have been reasonably assumed to have been sent by CLAIMANT, and hence, RESPONDENT should not have relied on it

84. RESPONDENT alleges that there was "*no reason whatsoever*" to question the authenticity of the spoof email due to the multiple "*precise pieces of information*" it contained [*RNoA, pg. 31, ¶ 6*]. However, a surface level examination of the email proves that there were in fact, **material** details which differed from the specificities of the Orders decided between CLAIMANT and RESPONDENT [*Infra Fig. 5*].

From: <telsa.audi@**semsorx (A-i)**.me>
Sent: 28 March, 2022, 8:25 am
To: <henry.royce@yisippic.eg>

Dear Mr Royce,
I hope you are doing well in these challenging times.
You are probably aware that some of the sensors we produce, in particular the LIDAR sensors ordered by you under **Purchase Order No. 15605 (B)**, are **used in military products as well and thus require heightened attention (D-i)** under the existing sanction regimes in Mediterraneo. That led in the past to several problems with our existing banking partners which are located in Mediterraneo. Those problems have increased considerably over the last weeks.

I would like to inform you that in light of those problems we have switched to a new banking partner in Danubia where the government has refrained from imposing any sanctions and which is **used by our Danubian subsidiary (E)**. From now on **all payments by bank transfer (D-iii)** should be made to the following account:

First Bank of Danubia
56 Hamilton Road
Vindobona
BIC: FIRSTBANKXXX
IBAN: DA33 6598 3241 2111 33

That already applies to the **payments to be made under Purchase Order No. 9601 (D-ii)** which is planned for delivery next week. Unfortunately, I can only authorize delivery of the 600,000 **S4- 25889 (C)** sensors after you confirm that the banking details for the transfer of the payment have been changed to the new account.
Could you thus please urgently change the banking details and then immediately confirm such change by replying to this email so that I can authorize shipment? Should you have any questions, the best way to reach me during the next days is via reply email as I am working from home due to health problems and the mobile connection is bad.

Kind Regards,
Telsa Audi
Capital City
Mediterraneo
T: **(0)214 (F)** 6698053
Email: telsa.audi@**sensorX (A-ii)**.me

KEY
A- Incorrect domain name; correct domain name is **sensorx**
B- Incorrect PurO No.; correct PurO No. is **A-15604**
C- Incorrect sensor name; correct sensor name is **S4-25899**
D- Sanctions only applied to military products, **no need to change account for PO-9601 and all future payments by bank transfer**
E- Respondent **already possessed details** of this account from a prior transaction; did not need to rely on the email
F- Incorrect area code; correct area code for Mediterraneo is **0(146)**

Fig. 5: Material and Apparent Errors in the Phishing Email sent to RESPONDENT

85. Further, considering that CLAIMANT and RESPONDENT had concluded 22 individual PurOs between June 2019 and January 2022 without a hitch [*NoA, pg. 5,6, ¶ 10*], and had regular communication over email [*PO2, pg. 61, ¶ 4*], an email sent from a domain unknown to RESPONDENT should have been treated with suspicion. In such a situation, RESPONDENT should have taken all reasonable measures to contact CLAIMANT, specifically Ms. Peugeutroen as per Ms. Audi's voicemail [*PO2, pg. 61, ¶ 4*]. Instead, after unsuccessfully trying to contact Ms. Audi, they chose to reply to the **phishing email itself**, to seek confirmation of the order to pay to a different bank account. It is RESPONDENT'S contention that the reply they received in this regard was sufficient, and that there was "*no known reason to be in a heightened state of risk awareness*" [*RE-4, pg. 36, ¶ 4*]. However, it is unreasonable for them to have relied on it, due to the blatant errors in the previous email [*Supra Fig. 5*].

86. Further, the prior business practices and conduct of the parties made it unreasonable for RESPONDENT to believe that the phishing email was genuine and had been sent by CLAIMANT. CLAIMANT had acquired a subsidiary, SensorDanube, to facilitate the production and export of most of the dual use LIDAR sensors, as Danubia had a fairly liberal export restriction regime [*PO2, pg. 61, ¶ 2*]. To effect payments under such orders, SensorDanube had established its bank account with the First Bank of Danubia [*PO2, pg. 61, ¶ 2*]. Further, RESPONDENT had the details of this bank account, as part payment under an earlier PurO was made to it in September, 2020 [*PO2, pg. 63, ¶ 12*]

87. The phishing email mentioned that the change in bank account was due to the sanction regime in Mediterraneo increasingly causing problems to CLAIMANT'S existing banking partners [*CE-5, pg. 16*]. This change was entirely unsubstantiated, as sensors under PurO-9601 were not subject to heightened attention under the existing sanction regimes of Mediterraneo, since they did not have a dual military use [*PO2, pg. 63, ¶ 15*]. Further, the email stated that **all future payments** effectuated by bank transfer would also have to be made to the new account [*CE-5, pg. 16*]. Such a drastic change in the method of payment, which is an extremely crucial aspect of commercial transactions, requires heightened deliberations and clear confirmation [*Haniberia Espana v. Kunshan Huayue; Mees van den Brink v. SAS (Shanghai)*]. Therefore, it was only reasonable for RESPONDENT to inquire into the contents of the email, as it is clear that such an email could not have been sent by CLAIMANT.

88. Further, RESPONDENT already possessed details of the bank account of SensorDanube [*PO2, pg. 63, ¶ 12*]. Therefore, even if payment logically had to be made to the account of CLAIMANT'S subsidiary, there was no reason for RESPONDENT to rely on the banking details provided in the email.

89. Thus, in light of the apparent errors in the phishing email, RESPONDENT should not have placed reliance on it [*Haniberia Espana v. Kunshan Huayue; Mees van den Brink v. SAS (Shanghai)*]. Presently, RESPONDENT'S losses arose out of their own lack of due diligence. It was not reasonable for RESPONDENT to rely on the phishing email to constitute a valid amendment to Art. 7 FA. Resultantly, CLAIMANT is still entitled to a claim for payment under PurO-9601.

b. RESPONDENT cannot claim the exception under Art. 29(2) CISG

90. The exception under Art. 29(2) prevents a party from relying on a 'no oral modification' clause if their conduct has been in contravention of the same [*Kroll/Mistelis/Viscasillas, Art. 29, ¶ 20; Schlechtriem/Schwenzer, Art. 29, ¶ 63*]. While Art. 29(2) provides that a party's conduct may preclude the invocation of no oral modification clauses, it does not elaborate on the kind of conduct that would justify such reliance [*Kroll/Mistelis/Viscasillas, Art. 29, ¶ 20; Russian-Canadian Contract Case*]. Thus, to invoke the exception under Art. 29(2), the above-mentioned conduct should be viewed as it would be understood by a reasonable party of the same kind as the one who assumed that due to such conduct, the written modification clause would not be asserted [*Schlechtriem/Schwenzer, Art. 29, ¶ 70*]. Consequently, one would have to see if the contract modification achieved formal validity [*Schlechtriem/Schwenzer, Art. 29, ¶ 70*].

91. There is no evidence of any established behaviour or practice which could result in the email qualifying as an exception to Art. 40 FA [*Russian-Canadian Contract Case*]. However, RESPONDENT contends that the email constituted such a practice, as a "*pragmatic approach*" was always taken regarding form requirements [*RE-4, pg. 36, ¶ 6*]. In this regard, they mention the amendments made in the price-fixing meetings on 1st December 2019 & 2nd December 2021 [*RE4, pg. 36, ¶ 6; NoA, pg. 6, ¶¶ 11,12*]. However, this view is erroneous, as the circumstances surrounding the amendments made in the meetings, and the alleged amendment in the email differ greatly.

92. The price fixing meetings in question were conducted between the lead sales and purchase managers [*NoA, pg. 6, ¶ 11*], with all changes being agreed upon orally [*PO2, pg. 62, ¶ 8*]. Minutes of the meeting were circulated by RESPONDENT, summarising the results of the meeting, particularly the oral agreements reached [*PO2, pg. 62, ¶ 8*]. Further, it was common understanding between the parties that CLAIMANT would object to the minutes if it considered them to be incorrect, otherwise no other action was necessary [*PO2, pg. 62, ¶ 8*]. While there were no written and signed documents regarding amendments made in these meetings [*PO2, pg. 62, ¶ 8*], its surrounding circumstances, specifically the discussions between the parties, provided for a high degree of thoroughness. Further, the test of reliance

under Art. 29 CISG was satisfied, as parties, in their subsequent dealings, incorporated these amendments [*NoA, pg. 6, ¶ 11; CE-2, pg. 13, ¶ 5*], affirming their **formal validity**.

93. It is not possible to extend the application of this pragmatic approach to the email sent to RESPONDENT, as the circumstances which allowed the Parties to make such exceptions did not exist and could not reasonably be attributed to the supposed email modification. Hence, CLAIMANT is entitled to payment under PurO-9601.

II. AS PER ART. 62 CISG, CLAIMANT IS ENTITLED TO SPECIFIC PERFORMANCE OF PAYMENT UNDER PURO-9601

94. RESPONDENT has failed to perform their payment obligation in relation to PurO-9601 [*Supra I, Issue 3*]. Consequently, CLAIMANT is entitled to specific performance of payment, since they have met the requirements of seeking performance under Art. 62 CISG and have not resorted to any remedy inconsistent with the performance of payment **[A]**. Further, this right is not limited by Art. 28 CISG, and the Tribunal is bound to order performance of full payment under its own law **[B]**.

A. CLAIMANT HAS MET THE REQUIREMENTS TO SEEK SPECIFIC PERFORMANCE UNDER ART. 62 AND HAS NOT RESORTED TO ANY REMEDY INCONSISTENT WITH THE SAME

95. Art. 62 CISG gives the seller the right to require the buyer to perform the contract, which may include any obligations, such as payment of price, if the buyer has breached the contract [*Schlechtriem/Schwenzer, Art. 62,* ¶ 9; *Bianca/Bonell, Art 62, ¶ 2.1; Staudinger/Magnus, Art 62, ¶ 6*]. To seek such specific performance for the payment of price, the price must be determinable and due [*Herber/Czerwenka, Art 62, ¶ 3; Schlechtriem/Schwenzer, Art. 62, ¶ 10; Apparel Case*].

96. Presently, PurO-9601 provides for a payment of USD 38.4M payable in two equal instalments the payment date for which has passed [*NoA, pg. 6, ¶ 14*]. RESPONDENT was notified of this non-payment via the email sent by CLAIMANT'S head of sales, Dr. Bertha Durant [*CE-3, p.14*]. Further, RESPONDENT'S reliance on the phishing email would not fulfil their payment obligation in accordance with Arts. 53 & 54 CISG [*Supra I-B, Issue 3*]. Thus, payment is determinable and due.

97. Art. 62 also stipulates that, the seller must not resort to a remedy inconsistent with that of specific performance, namely by seeking avoidance of the contract. [*Schlechtriem/Schwenzer, Art. 62, ¶ 12; Honsell/Schnyder/Straub, Art. 62, ¶ 16; Irish-Slovak Contract Case; Medicaments Case; Iron Ore Case*] Presently, the request for performance is coupled with a claim for simple interest at the rate of 4% [*NoA, pg. 8, ¶ 30*]. The claim for interest under Art. 78 is allowed for "*any sum in arrears*" which means any sum remaining to be paid [*Schlechtriem/Schwenzer, Art. 78, ¶ 1; AC Opinion 14, ¶ 1.1; Frozen Meat Case; Plastic Granulates Case; Italian Sunflower Oil Case*]. Here, CLAIMANT has requested for simple interest on the price

due on goods in relation to PurO-9601 alone [*RNoA, pg. 8, ¶ 30*]. Therefore, CLAIMANT'S request for interest does not preclude specific performance under Art. 62 and they can seek the same [*Hotel Materials Case, LOC Case*].

B. THE TRIBUNAL IS BOUND TO ORDER SPECIFIC PERFORMANCE UNDER ITS OWN LAW

98. Art. 28 CISG gives courts, including arbitral tribunals, the discretion to not order specific performance, unless they would do so in a domestic contract of sale in accordance with domestic law of contract [*Müller-Chen, Art 28, ¶ 1*; *Schlechtriem/Schwenzer, Art. 62, ¶ 13; Magellan v. Salzgitter*]. "*Own law*" refers to the law of the forum and not its conflict rules [*Enderlein/Maskow/Strohbach, Art 28, ¶ 5*; *Schlechtriem/Schwenzer, Art. 28, ¶ 9; Honnold/Flechtner, Art. 28, ¶ 195; Magellan v. Salzgitter*]. Since the Tribunal is seated in Danubia, "*own law*" presently refers to the DCA, under which, Art. 7.2.1 provides for the performance of a monetary obligation without any exemption, when it becomes due [*Vogenauer, Art. 7.2.1, ¶ 1*]. As the payment has become due [*Supra ¶ 69*], the Tribunal would be bound to order specific performance under its own law and thus, Art. 28 cannot limit CLAIMANT'S right to seek specific performance under Art. 62.

III. RESPONDENT CANNOT ESCAPE LIABILITY BY USING ART. 80 OR 77 CISG

99. As RESPONDENT has failed to make payment in accordance with both the contract and the CISG, CLAIMANT is entitled to the relief of specific performance [*Supra I, II, Issue 3*]. However, RESPONDENT contends that their payment to the incorrect bank account was caused due to CLAIMANT'S non-communication of the cyberattack and so their liability ought to be extinguished or reduced in accordance with Art. 80 and Art. 77 CISG respectively [*RNoA, pg. 32, ¶ 12; RNoA, pg. 32, ¶ 13*]. However, neither Art. 80 **[A]** nor Art. 77 **[B]** apply to the present case.

A. RESPONDENT CANNOT RELY ON ART. 80 TO AVOID THEIR PAYMENT OBLIGATIONS

100. RESPONDENT contends that CLAIMANT'S non-communication of the cyberattack led to their payment to the incorrect bank account [*RNoA, pg. 32, ¶ 10*]. However, the exemption under Art. 80 requires that the party's non-performance should have been caused by the other party's own act or omission [*Schlechtriem/Schwenzer, Art. 80, ¶ 3; Ferrari Digest, Art. 80, ¶ 4; Acrylic Blankets Case; Key Press Case*] Thus, the blame cannot be shifted onto CLAIMANT, since they were not duty-bound to inform RESPONDENT of the cyberattack **[a]**. Moreover, there was no causal link between the non-performance of RESPONDENT and any act or omission of CLAIMANT **[b]**.

a. CLAIMANT was not duty-bound to inform RESPONDENT of the cyberattack

101. To hold a party liable for any '*omission*' under Art. 80, it must be proved that they had a duty to act or cooperate, instead of staying passive [*Schlechtriem/Schwenzer, Art. 80, ¶ 3; Huber/Mullis, pg. 266; Clay Case*].

RESPONDENT alleges that CLAIMANT had a duty to inform them about the cyberattack. However, for such a legal duty to inform to exist, it must have been established between the parties either explicitly or implicitly [*Kröll/Mistelis/Viscasillas, Art. 80, ¶ 7; Staudinger/Magnus, Art. 80 ¶ 10; Steel Wire Case; Chinese Machines Case*]. Presently, the Parties have not effectuated such a duty through their contract **[i]**. Further, no such duty is imposed by the governing law **[ii]**. Lastly, such a duty does not arise from a practice or usage **[iii]**.

i. The Parties have not effectuated a duty to inform through their contract

102. The CISG gives primacy to the parties' contract [*Schlechtriem/Schwenzer, Art. 6, ¶ 23; Ferrari Digest, pg. 247; Dynamic Page Printer Case*]. Presently, neither the FA nor PurO-9601 lays down any duty on either party to inform the other of any internal events [*NoA, pg. 7, ¶ 27*]. Further, Art. 8(3) CISG requires the consideration of surrounding circumstances in determining the intent of the party [*Schlechtriem/Schwenzer, Art. 8, ¶ 13; AC Opinion 3, ¶ 1.1.1; Fruits and Vegetables Case V*]. The legislature of Mediterraneo has explicitly rejected the introduction of a data protection law to protect its producers from mass claims for violations of such duty [*RE-3, pg. 35; CE-6, pg. 17, ¶ 7*]. Hence, under Art. 8 CISG, RESPONDENT could not have reasonably interpreted the intent of CLAIMANT to include an obligation to inform the other party of a cyberattack on their systems.

ii. No such duty to inform is imposed by the Governing Law

103. RESPONDENT contends that due to the principle of good faith under Art. 7(1) CISG, CLAIMANT would have a duty to inform them of the cyberattack. [*RNoA, pg. 31, ¶ 11*]. However, based on the drafting history and wording of Art. 7(1), good faith is restricted only to the interpretation of the CISG and the contract, and cannot impose an additional burden on the conduct of the parties [*Staudinger/Magnus, Art. 7, ¶ 25; Schlechtriem/Schwenzer, Art. 7, ¶ 17; Sluiter v. Stender*].

104. Further, RESPONDENT states that its act of informing CLAIMANT about the cyberattack in 2020 imposed a reciprocal obligation of good faith on CLAIMANT to act similarly [*RE-4, pg. 30, ¶ 2*]. However, RESPONDENT'S communication of the cyberattack was due to the obligation imposed by their domestic law i.e., Art. 34 EDPA [*RNoA, pg. 30, ¶ 2*]. RESPONDENT cannot rely on their domestic legal system to derive such standards because an autonomous interpretation of the CISG is necessary to ensure uniformity and independence [*Schlechtriem (2004) 16 Pace Int'l Law Rev, pg. 279; Staudinger/Magnus, Art. 7, ¶ 25; Gillette/Walt, pg. 1; Clay case; Frozen Pork Case I*].

105. RESPONDENT also argues that the duty to cooperate under Art. 5.1.3 DCA would impose a duty to inform upon the CLAIMANT [*NoA, pg. 8, ¶ 28*]. Although, the DCA does not apply to the present case [*Supra ¶¶ 71, 72, 73, 74*], this argument is still untenable as under Art. 5.1.3, the duty to cooperate exists

only to the extent that it may be reasonably expected to enable the other party's performance [*UPICC 2016 Report, pgs. 153-154; Vogenauer, Art. 5.1.3, ¶ 8*]. The guiding factors of reasonableness are the knowledge available to the parties and the commercial sensitivity of such information [*Vogenauer, Art. 5.1.3, ¶ 9*]. Presently, both parties were aware of the rising risk of cyberattacks in their industry [*CE-6, pg. 17, ¶ 8*]. In fact, RESPONDENT itself was victim to such an attack in 2020 [*CE-6, pg. 17, ¶ 8; RNoA, pg. 30, ¶¶ 3,4*]. Thus, RESPONDENT cannot argue that they would have exercised due diligence upon receiving the phishing email, had they been informed about the cyberattack. Instead, such due diligence must have been exercised in any case and so Art. 5.1.3 would not impose a duty to inform.

iii. Lastly, no practice or usage has been established between the Parties, which may give rise to a duty to inform

106. Contrary to RESPONDENT's assertion, a duty to inform cannot be considered a standard practice under the FA [*CE-4, pg. 15*]. For any act to be established as a practice under Art. 9 CISG, a reasonable expectation must be created that such an act would be repeated in the future [*Soergel/Lüderitz/Fenge, Art. 9 ¶ 2; Staudinger/Magnus, Art. 9 ¶ 13; Honnold/Flechtner, Art. 9, ¶ 116; Tantalum Powder Case II*]. For this requirement to be met, a certain frequency and duration at which the act is performed is necessary [*Saenger, Art. 9, ¶ 3; Schlechtriem/Schroeter, Art. 9, ¶ 223; Staudinger/Magnus, Art. 9, ¶ 13; Pizza Boxes Case; Caiato v. Factor France*]. Thus, an act which has only occurred once, is not sufficient to establish a practice between the parties [*Witz/Salger/Lorenz, Art. 9, ¶ 17; Schlechtriem/Schwenzer, Art. 9, ¶ 21; Solingen Cutlery Case; Bulgarian White Urea Case*]. Presently, RESPONDENT had notified CLAIMANT of a cyberattack only once in 2020 [*RE-1, pg. 33*]. The same was done as per the mandatory duty established by Art. 34 EDPA, the domestic law of RESPONDENT [*RE-1, pg. 33*]. This does not constitute a practice but instead, is an instance of RESPONDENT fulfilling their domestic legal obligations [*RNoA, pg. 30, ¶ 2*].

b. There is no causal link between RESPONDENT'S failure to pay and any of CLAIMANT'S acts or obligations

107. The establishment of a causal link between the act or omission of the obligee and the failure to perform by the obligor, is a pre-requisite for the applicability of Art. 80 [*Schwenzer/Manner, pg. 470 (475); Boog/Schlapfer, Art. 80, ¶ 3; Schlechtriem/Schwenzer, Art. 80, ¶ 4; ATT v. Armco; Shoe Leather Case*]. A causal link is established if the omission is objectively of such a nature, so as to prevent performance by the obligor [*Brunner/Boog/Schläpfer, Art. 80, ¶ 6; Piltz, ¶ 4–224; VSL v. Trenzas Cables; BMW 3 Series Case*]. An omission is said to objectively prevent performance of the obligor, if it is a condition *sine qua non* of the non-performance [*Kroll/Mistelis/Viscasillas, Art. 80, ¶ 8; Achilles, Art. 80, ¶ 3; Italian Shoes Case XXIII*]. Moreover, the omission must be of such an act which is necessary and objectively suited to enable

performance by the obligor [*Schlechtriem/Schwenzer, Art. 80, ¶ 3; Huber/Mullis, pg. 266; Trachsel, pg. 384; Leather Goods Case*].

108. Presently, RESPONDENT claims that the transfer to the incorrect bank account was effected due to the omission of CLAIMANT in informing them of the cyberattack [*RNoA, pg. 31, ¶ 9*]. However, CLAIMANT'S apparent omission had no causal link with RESPONDENT'S failure to perform and the payment was made to the wrong bank account due to RESPONDENT'S own negligence [*Supra I-B, Issue 3*].

109. RESPONDENT received a phishing email that asked them to transfer the payment due under PurO 9601 to a different account. [*CE-5, pg. 16*]. However, the email had many glaring mistakes [*Supra Fig. 5*] Moreover, RESPONDENT had previously made a payment to SensorDanube and had access to its bank details [*PO2, pg. 63, ¶ 12*]. RESPONDENT should have checked if the bank details mentioned in the phishing email were identical to the details they had from their previous transaction. Further, the phishing email stated that the switch in bank account was made due to the heightened sanction regime in Mediterraneo, applicable to sensors used in military products. However, the sensors under PurO-9601 had no such military use [*PO2, pg. 63, ¶ 15*]. Hence, there is no rationale in demanding the payment for sensors under PurO-9601 to be made to SensorDanube's account. Further, since SensorDanube's work was restricted to LIDAR sensors, with them having no involvement in the production or delivery under PurO-A-15604 [*PO2, pg. 61, ¶ 2*], it is unlikely that CLAIMANT would demand a switch in the bank account.

110. Clearly, with reasonable due diligence, RESPONDENT could have identified the glaring defects in the email and prevented itself from paying the money to the incorrect bank account [*Haniberia Espana v. Kunshan Huayue; Mees van den Brink v. SAS (Shanghai)*]. Thus, there is no causal link between RESPONDENT'S non-payment and CLAIMANT'S non-communication of the cyberattack.

B. RESPONDENT CANNOT RELY ON ART. 77 CISG TO CLAIM A REDUCTION IN PAYMENT

111. RESPONDENT'S payment to the incorrect bank account does not fulfil its payment obligations under the FA or the CISG [*Supra I, Issue 3*]. However, instead of trying to remedy their breach, RESPONDENT argues that their "*obligations to pay should be reduced in line with the principles underlying Art 77 CISG*" [*RNoA, pg. 32, ¶ 13*]. By imposing the unjustified burden of mitigation upon CLAIMANT, RESPONDENT seeks to reduce their payment obligation. However, Art 77 CISG does not apply to the present case **[a].** Should the Tribunal find otherwise, CLAIMANT could not have mitigated their loss in any circumstance **[b].**

a. Art.77 CISG does not apply to the present case

112. Art. 77 CISG requires a party who relies on a breach of contract to mitigate the loss arising from it [*Secretariat Commentary, Art. 73, ¶ 1; Sizing Machines Case*]. If they fail to mitigate, the party in breach may

claim a reduction in damages [*Secretariat Commentary, Art. 73, ¶ 2; Schlechtriem/Schwenzer, Art. 77, ¶ 12; Schlechtriem/Schroeter, ¶ 739; Sizing Machines Case*]. Essentially, the party entitled to damages is required to mitigate damages [*Schlechtriem/Schwenzer, Art. 77, ¶ 1*].

113. However, CLAIMANT has requested for specific performance of the payment obligation and not for damages [*NoA, pg. 8, ¶ 29; Supra ¶ 97*]. Although this claim is coupled with a claim for simple interest, this would not change it into a claim for damages [*NoA, pg. 8, ¶ 30*]. This is because under Art. 78 CISG, the party in breach is to pay interest on any sum that is in arrears [*Schlechtriem/Schwenzer, Art. 78, ¶ 1; Morrissey/Graves, pg. 289; Frozen Meat Case*]. The sum in arrears includes a claim for performance of the payment obligation [*Schlechtriem/Schwenzer, Art. 78, ¶ 5; Butler, pg. 19; Italian cloth case II*]. Resultantly, CLAIMANT'S claim is one of specific performance. Presently, the wording of Art. 77 precludes its application to CLAIMANT's claim **[i].** Further, no general principle derived from Art. 77 can apply in the present case **[ii].**

i. The wording of Art. 77 precludes its application to CLAIMANT's claim

114. When interpreting the CISG, the first step is to have regard to the wording and the context of the provision [*Schlechtriem/Schwenzer, Art. 7, ¶ 21; VCLT Art. 31; Pamesa Ceramica v. Yisrael Mendelsohn*]. Art. 77 states that if the party relying on the breach fails to mitigate its loss, "*the party in breach may claim a reduction in the damages.*" Further, Art. 77 has been systematically placed in the Damages Section of the CISG [*Kroll/Mistelis/Viscasillas, Art. 77, ¶ 7*]. Thus, the sanction provided by Art. 77 against a party who fails to mitigate its loss, only enables the other party to claim a reduction in the damages and does not affect the claim for payment [*Secretariat Commentary, Art. 73, ¶ 3; Schwenzer/Manner, pg. 483; Koziol, pg. 388; Ferrari Digest, Art. 77, ¶ 2; Sizing Machines Case; Clay Case*]. Since CLAIMANT'S claim is for specific performance, Art. 77 would not apply.

ii. No general principle derived from Art.77 can apply in the present case

115. Art 7(2) CISG addresses gap filling and acts as an instrument to develop and adjust the CISG to new needs [*Schlechtriem/Schwenzer, Art. 7, ¶ 5; Schlechtriem/Schwenzer, Art. 7, ¶ 30*]. Thus, if matters arise that were not originally contemplated by the drafters of the CISG, they could easily be settled [*Schwenzer, Interpretation pg. 118; Honnold, ¶ 96*]. Art. 7 allows for "*matters governed by this Convention which are not expressly settled in it to be settled in conformity with the general principles on which it is based.*" This requires that first, it be ascertained whether the matter is governed by the CISG and second, whether a general principle can be discerned to settle it [*Schwenzer, Interpretation pg. 115; Janssenn/Meyer/Magnus, pg. 44; Honnold, ¶ 98; Mineral Water & Soft Drinks Case*].

116. Presently, the matter relates to CLAIMANT'S alleged obligation to mitigate their losses failing which RESPONDENT would be entitled to claim a reduction in their payment obligation [*RNoA, pg. 32, ¶ 13*]. The wording of Art. 77 clearly shows that this matter is not governed by the CISG [*Supra ¶ 114*]. However, if RESPONDENT were to argue that the wording of Art. 77 is inconclusive, the drafting history of the article must be consulted [*Schlechtriem/Schwenzer, Art. 7, ¶ 22; Janssen/Meyer/Eilsen, pg. 80; Honnold,* ¶ 88; *VCLT Art. 32; Rijn Blend Oil Case; Forestal v. Daros*].

117. Art. 88 ULIS, which is the predecessor to the CISG, contains the same principle as Art. 77 CISG. Art. 88 provides that if the aggrieved party fails to mitigate its losses, the party in breach may claim a reduction in the damages [*Schlechtriem/Schwenzer, Art. 77, ¶ 1; Tunc, pg. 96*]. Thus, both articles only relate to damages and not specific performance [*Ndulo, pg. 20*].

118. The 1977 UNCITRAL Committee relating to the Draft Convention, which was set up to replace ULIS, considered a proposal to extend Art 77 to the remedy of specific performance [*1977 Report, ¶ 502*]. However, it was rejected, as members felt it would destroy the distinction between an action for price and an action for damages and so the present wording was adopted [*1977 Report, ¶ 504*]. Additionally, at the 1980 Vienna Diplomatic Conference, where the CISG was adopted, the United States proposed extending the mitigation principle to remedies other than damages [*30th Meeting Records, ¶ 55*]. This was, however, rejected for being too vague and giving the buyer a unilateral option to avoid the contract [*30th Meeting Records, ¶ 78*].

119. The legislative history of Art. 77 clearly shows that the drafters of the CISG never intended for cases where a reduction in specific performance was claimed due to an alleged failure to mitigate, to be governed by the CISG [*Schlechtriem/Schwenzer, Art. 77, ¶ 4; Kroll/Mistelis/Viscasillas, Art. 77, ¶ 7*]. This is because the CISG embodies the principle of party autonomy [*Schlechtriem/Schwenzer, Art. 7, ¶ 32; Design of Pagers Case*], and such a provision would give courts the power to modify contracts at will. Further, the CISG gives primacy to the right to require specific performance [*Schlechtriem/Schwenzer, Art. 46, ¶ 1; Schlechtriem/Schwenzer, Art. 62, ¶ 1; Tombstones Case II*], and a unilateral option to avoid the contract would greatly undermine the same.

120. Therefore, the wording, context, and drafting history of Art. 77 show that the duty to mitigate only applies to claims for damages, and no general principle can be discerned to apply it to the present claim for specific performance [*Schlechtriem/Schwenzer, Art. 77, ¶ 4; Kritzer, pg. 610; Bianca/Bonell, Art. 77, ¶ 2.8; Huber/Mullis, pg. 290; Kröll/Mistelis/Viscasillas, Art. 77, ¶ 7; Mankowski, Art. 77, ¶ 4; Witz/Salger/Lorenz, Art. 77, ¶ 3; Sizing Machines Case; Solea Int'l. v. Bassett & Walker; HP France v. Matrox Graphics*]. Clearly, settling the present matter by applying general principles discerned from Art. 77 would not align with

the principles underlying the CISG. Thus, as Art. 77 does not apply directly or by way of a general principle discerned from it, CLAIMANT had no duty to mitigate the losses arising from RESPONDENT'S breach of their obligations.

b. In arguendo, CLAIMANT could not have mitigated their loss in any circumstance

121. Art. 77 would only impose a duty on CLAIMANT to mitigate the loss arising out of RESPONDENT'S non-payment [*Secretariat Commentary, Art. 73, ¶ 1; Sizing Machines Case*]. However, CLAIMANT could not have mitigated their loss after RESPONDENT'S breach **[i].** Further, this duty did not arise before the breach of contract **[ii].** Even if such a duty arose, CLAIMANT could not have mitigated their losses before RESPONDENT'S breach **[iii].**

i. CLAIMANT could not have their mitigated their loss after RESPONDENT'S breach

122. Art. 77 requires that the party relying on the breach takes reasonable measures to mitigate the loss that can be expected under the circumstances [*Schlechtriem/Schwenzer, Art. 77, ¶ 7; Witz/Salger/Lorenz, Art. 77, ¶ 9; Clay Case*]. To determine such measures, one must look at the actions a reasonable man in the same situation would take [*Schlechtriem/Schwenzer, Art. 77, ¶ 7; Huber/Mullis, pg. 290; PVC Foil Case, Propane Gas Case*]. This standard of reasonability has been held to leave the seller with two options under the CISG- to conclude a substitute or cover sale of the goods [*Schlechtriem/Schwenzer, Art. 77, ¶ 10; Ferrari Digest, Art. 77, ¶ 12; Neumayer/Ming, Art 77, ¶ 3; Australian Raw Wool Case III; Italian Shoe Case XIII; Treibacher Industrie vs. Allegheny Technologies*], or to preserve the goods in order to sell them at a later date [*Schlechtriem/Schwenzer, Art. 77, ¶ 8; Staudinger/Magnus, Art 77, ¶ 13; Ferrari, Art. 77, ¶ 12; Foamed Boards Case; LOC case*].

123. In both these situations, at the time of breach, the possession of the goods is still with the seller. In fact, even during the Vienna Convention, when it was proposed to extend Art. 77 to remedies other than damages, its scope was restricted to cases where the seller had not already parted with the possession of the goods [*Honnold, ¶ 419*]. The intention behind the proposal was to prevent a seller, who despite having knowledge of the buyer's anticipatory breach, refused to resell or store the goods that were in his possession, from claiming the total amount by way of specific performance [*Honnold, ¶ 419.3*]. Therefore, mitigation requires the seller to have possession of the goods which were to be sold [*Solea Int'l v. Bassett & Walker; Tomato Paste Case*]. However, CLAIMANT had already delivered the goods after which RESPONDENT breached their payment obligation [*NoA, pg. 6, ¶ 13*]. As CLAIMANT was not in possession of the goods, there was no scope for them to mitigate their losses by reselling or storing the goods.

ii. CLAIMANT's duty to mitigate losses did not arise before RESPONDENT's breach of contract

124. Art. 77 states that the losses to be mitigated must result from the breach [*Secretariat Commentary, Art. 73, ¶ 1; Sizing Machines Case*]. This clearly indicates that no duty to mitigate would arise until the party relying on the breach has positive knowledge of the same [*Schlechtriem/Schwenzer, Art. 77, ¶ 3; DiMatteo et. al., pg. 157; Mankowski, Art. 77, ¶ 6; Clay Case; Brassiere Cups Case*]. The only exception to this rule is when the party in breach has informed the other party of its intention to not fulfil its contractual obligations [*Schwenzer/Manner, pg. 481*]. Then, the duty to mitigate applies to cases of anticipatory breach [*Secretariat Commentary, Art. 73, ¶ 4; Bianca/Bonell, Art 77, ¶ 3.12*].

125. Presently, RESPONDENT asserts that CLAIMANT ought to have informed them about the cyberattack which took place before their breach of contract [*RNoA, pg. 30, ¶ 4*]. However, CLAIMANT had no positive knowledge of the breach until non-payment was discovered on 25th August 2022 [*NoA, pg. 6, ¶ 13*]. As RESPONDENT had never informed CLAIMANT of its payment to a different bank account, CLAIMANT had no knowledge of an impending breach of contract [*RE-4, pg. 36, ¶ 4*]. Thus, in neither situation did CLAIMANT have an obligation to mitigate losses by informing RESPONDENT of the cyberattack before their breach of contract.

iii. Even if such a duty arose, CLAIMANT could not have mitigated their losses before RESPONDENT's breach of their obligations

126. RESPONDENT has alleged that by not informing them of the cyberattack on their systems, CLAIMANT failed to mitigate their losses [*RNoA, pg. 32, ¶ 9*]. However, CLAIMANT was not obligated to inform RESPONDENT of the cyberattack [*Supra III-A-a, Issue 3*]. Further, CLAIMANT'S communication would not have been material to RESPONDENT'S performance because, despite having knowledge of the cybersecurity attack on CLAIMANT [*RE-3, pg. 35*], RESPONDENT still went ahead with the payment of the second instalment [*Supra ¶ 105*]. In fact, the payment to the incorrect bank account arose due to the lack of due diligence exercised by RESPONDENT upon receiving the phishing email and not due to CLAIMANT'S non-communication of the cyberattack [*Supra ¶ ¶ 108, 109, 110*]. Thus, as RESPONDENT'S non-payment was not caused by CLAIMANT'S non-communication, they cannot claim a reduction in the payment due as the loss could not have been mitigated. Thus, CLAIMANT is entitled to full payment which cannot be reduced by RESPONDENT'S invocation of Art. 77.

CONCLUSION TO ISSUE 3

RESPONDENT breached their payment obligations under Arts. 53 and 54 CISG. Under Art. 62 CISG, CLAIMANT is entitled to seek specific performance of the payment obligation in its entirety, along with interest. RESPONDENT cannot rely on Art. 80 CISG to avoid the payment obligation as CLAIMANT was under no duty to inform RESPONDENT of the cyberattack and there was no causal link between the cyberattack and the non-payment. Further, RESPONDENT cannot claim a reduction in accordance with Art. 77 as CLAIMANT has asked for specific performance and not damages and secondly, because CLAIMANT could not have mitigated the loss in any circumstance.

PRAYER FOR RELIEF

In light of the submissions made above, CLAIMANT respectfully requests this Arbitral Tribunal to:

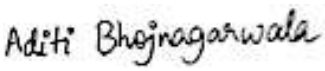
1. Order RESPONDENT to fulfill their payment obligation of USD 12M arising from the delivery under PurO-A-15604 and accordingly:
    a. Add the second payment claim regarding PurO-A-15604 to the present proceeding.
    b. Consolidate the proceedings of both payment claims if the second payment claim needs to be raised in a separate arbitration.
2. Order RESPONDENT to make payment under PurO-9601, along with simple interest at the annual rate of 4 % on the amount of USD 19.2M from 4th May 2022 onwards, and on the amount of 19.2M from 1st July 2022 onwards.
3. Order RESPONDENT to pay the cost of this arbitration, and reimburse CLAIMANT for all costs incurred in connection with it.

Respectfully submitted on 7 December 2023 by Vis (East) Team, NALSAR University of Law, Hyderabad.

CERTIFICATE OF AUTHENTICATION

We hereby certify that this Memorandum was written only by the persons whose names are mentioned below. Additionally, we confirm that we did not receive any assistance during the writing process from any person that is not a member of this team.

ADISHREE KRISHNAN



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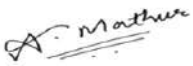

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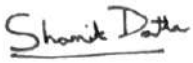

SHAMIK DATTA

ZORAWAR ALMEIDA