TWENTY-THIRD ANNUAL
WILLEM C. VIS EAST INTERNATIONAL COMMERCIAL
ARBITRATION MOOT

MEMORANDUM FOR RESPONDENT

HEIDELBERG UNIVERSITY

CASE REFERENCE: ARB1991/25/VIS

ON BEHALF OF:	**AGAINST:**
Darwin Natural Food plc	Orchis Worldwide Ltd
Louis Liger Avenue 1704	Orchid Bee Drive
Oceanside	Capital City
Equatoriana	Mediterraneo
RESPONDENT	CLAIMANT

ANNA LOUISA HASSEL • MIRA LEHMANN • LILLI PETIRSCH
NOAH ROSENBOHM • EMMA SENDLER • VLADISLAVA SERZHENKO

Academic Integrity and Artificial Intelligence Disclosure Statement

UNIVERSITY: Heidelberg University

COUNTRY: Federal Republic of Germany

ACADEMIC INTEGRITY	**YES**	**UNSURE**	**NO**
We confirm that this memorandum does not include text from any source, whether the source was in hard copy or online available, which has not been properly distinguished by quotation marks or citation.	X		
USE OF AI			
We have used AI-enhanced tools for team-internal administrative tasks.	X		
We have used AI-enhanced search engines or library catalogues for researching sources and (factual or legal) information on the Moot Problem.	X		
We have used AI enhanced translation tools to translate sources relevant for our work on the Moot Problem.	X		
We have used AI enhanced translation tools to translate parts of the text submitted in this Memorandum into English from any other language.			X
We have used AI to generate high-level 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.			X
We have used AI-enhanced tools as a tutor to guide and support our preparation and learning.			X
We have used AI-enhanced proof-reading tools.	X		
We have used AI-enhanced tools to synthesize or summarize sources.			X
We have used AI-enhanced tools to reformulate or rewrite text that is submitted.			X

We have used AI tools to generate statements that are now included in the memo. Please tick yes even if you have altered or amended the text generated by AI before submission.	X
We have submitted documents issued by the Vis Moot Association to an AI-tool.	X
We have used an AI tool that has been trained on Vis Moot documents to generate text that is part of our Memorandum	X
Other (please specify):	X

We hereby certify the truthfulness of our statements, and confirm that we have not used AI-applications in any other way in preparing the submission of this memorandum.

Heidelberg, 22 January 2026

ANNA LOUISA HASSEL

MIRA LEHMANN

LILLI PETIRSCH

NOAH ROSENBOHM

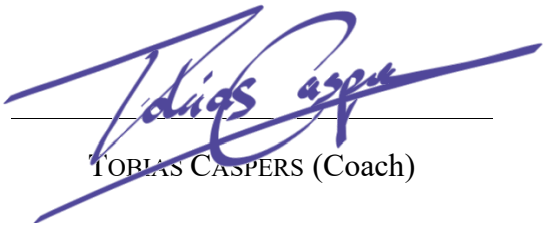
EMMA SENDLER

VLADISLAVA SERZHENKO

MORITZ BÖBEL (Coach)

CAROLINA RADKE (Coach)

MORITZ BARTH (Coach)



TOBIAS CASPERS (Coach)

ELENA STEGMANN (Coach)

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS

Abbreviation	Explanation
AMA Protocol	SIAC-SIMC Arb-Med-Arb Protocol
Art.	Article
Artt.	Articles
cf.	*confer* (compare)
ch.	chapter
CISG	United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980
CISG-Online	Internet database on CISG decisions and materials, available at http://www.cisg-online.ch
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
e.g.	*exempli gratia* (for example)
ed.	edition
emph. add.	emphasis added
et seq.	*et sequens* (and following)
et seqq.	*et sequentes* (and following; more than one page/paragraph)
Exh. C	CLAIMANT's Exhibit
Exh. R	RESPONDENT's Exhibit
i.e.	*id est* (that is)
IBA Rules	IBA Rules on the Taking of Evidence in International Arbitration (2020)
ibid.	*ibidem* (the same place)
ICC	International Chamber of Commerce

Abbreviation	Explanation
Import Permit	Import Permit required under Art. III(3) CITES for delivery from Mediterraneo (CLAIMANT) to Equatoriana (RESPONDENT)
infra	see below
LFA	Litigation Funding Agreement
MfC	Memorandum for CLAIMANT
No.	Number
NoA	Notice of Arbitration
NYC	Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Orchids	*Vanilla Planifolia Mediterraniensis* orchids
p.	page
para.	paragraph
paras.	paragraphs
Permit Moratorium	Following the Orchids' uplisting to CITES Appendix I on 1 February 2024 Equatoriana ceased issuing Import Permits completely.
PICC	UNIDROIT Principles on International Commercial Contracts
PO1	Procedural Order Number 1
PO2	Procedural Order Number 2
pp.	pages
Practice Note	Practice Note PN-01/17 (31 March 2017) on Arbitrator Conduct in Cases Involving External Funding
Response	Response to the Notice of Arbitration
sc.	*scilicet* (to wit)

Abbreviation	Explanation
SIAC	Singapore International Arbitration Centre
SIAC Rules	Arbitration Rules of the Singapore International Arbitration Centre
SOA/Contract	Sale of Orchids Agreement
supra	see above
Tribunal	Arbitral Tribunal
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration
v.	*versus*
Vol.	Volume

TABLE OF LITERATURE

Cited as	Citation	Cited in para.
BENCH NIEUWVELD/ SAHANI	**Bench Nieuwveld, Lisa** **Sahani, Victoria** Third-Party Funding in International Arbitration 2nd ed., Alphen aan den Rijn (2017)	36, 42
BERGAU/*Author*	**Bergau, Torsten** Praxishandbuch Unternehmenskauf 3rd ed., Berlin (2024)	48
BIANCA/BONELL/ *Author*	**Bianca, Cesare** **Bonell, Michael** Commentary on the International Sales Law – the 1980 Vienna Sales Convention 1st ed., Milan (1987)	77, 97, 101, 130
BINDER	**Binder, Peter** International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions 1st ed., Alphen aan den Rijn (2019)	65
BOOG	**Boog, Christopher** The New SIAC/SIMC AMA Protocol: A Seamless Multi-Tiered Dispute Resolution Process Tailored to the User's Needs In: Asian Dispute Review, Vol. 17 (2015), pp. 91-96	27

Cited as	Citation	Cited in para.
BORN	**Born, Gary** International Commercial Arbitration Part I: International Arbitration Agreements 3rd ed., Alphen aan den Rijn (2021)	16
BRÖDERMANN	**Brödermann, Eckart** UNIDROIT Principles of International Commercial Contracts 2nd ed., Alphen aan den Rijn (2023)	31
BRUNNER	**Brunner, Christoph** Force Majeure and Hardship under General Contract Principles: Exemption for Non-performance in International Arbitration 1st ed., Alphen aan den Rijn (2008)	84, 92, 101
CHOONG/MANGAN/ LINGARD	**Choong, John** **Mangan, Mark** **Lingard, Nicholas** A Guide to the SIAC Arbitration Rules 2nd ed., Alphen aan den Rijn (2024)	17, 63
DA SILVEIRA	**Da Silveira, Mercedeh Azeredo** Trade Sanctions and International Sales: An Inquiry into International Arbitration and Commercial Litigation 1st ed., Alphen aan den Rijn (2014)	84

Cited as	Citation	Cited in para.
DRAGUIEV	**Draguiev, Deyan** Arbitrating Bank Guarantees and Letters of Credit In: Dispute Resolution Journal, Vol. 71 (2016), pp. 91-106	42
DRESCHER/ FLEISCHER/SCHMIDT /*Author*	**Drescher, Ingo** **Fleischer, Holger** **Schmidt, Karsten** Münchener Kommentar zum Handelsgesetzbuch Vol. 5, Handelsgesetzbuch §§ 343-406, CISG 6th ed., Munich (2025)	122
ENDERLEIN/ MASKOW	**Enderlein, Fritz** **Maskow, Dietrich** International Sales Law: United Nations Convention on Contracts for the International Sale of Goods 1st ed., New York (1992)	84
FERRARI/ FLECHTNER/BRAND	**Ferrari, Franco** **Flechtner, Harry** **Brand, Ronald** The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention 1st ed., Munich (2004)	122

Cited as	Citation	Cited in para.
FERRARI/ ROSENFELD/*Author*	**Ferrari, Franco** **Rosenfeld, Friedrich** Handbook of Evidence in International Commercial Arbitration 1st ed., Alphen aan den Rijn (2022)	53
FERRARI/KIENINGER/ MANKOWSKI/*Author*	**Ferrari, Franco** **Kieninger, Eva-Maria** **Mankowski, Peter** Internationales Vertragsrecht 3rd ed., Munich (2018)	97, 115
FOO/CHATTERJEE	**Foo, Andrew** **Chatterjee, Promit** 'The Grandfathers I Never Had': Should We Choose Arbitral Rules with Grandfathering Provisions? In: Kluwer Arbitration Blog (15 November 2018), available at: https://legalblogs.wolterskluwer.com/arbitration-blog/the-grandfathers-i-never-had-should-we-choose-arbitral-rules-with-grandfathering-provisions/	18
GARRO	**Garro, Alejandro** Force Majeure, Hardship and other excuses In: Revue de droit international et de droit comparé, Vol. 92 (2015), pp. 217-232	81
GOELER	**Goeler, Jonas von** Third-Party Funding in International Arbitration and Its Impact on Procedure 1st ed., New York (2016)	38, 42, 46, 49, 56, 64

Cited as	Citation	Cited in para.
GREENBERG/MANGE	**Greenberg, Simon** **Mange, Flavia Foz** Institutional and Ad Hoc Perspectives on the Temporal Conflict of Arbitral Rules In: Journal of International Arbitration, Vol. 27 (2010), pp. 199-213	15
HEUZÉ	**Heuzé, Vincent** Traité des contrats - La vente internationale de marchandises 1st ed., Paris (2000)	84, 101
HONNOLD/ FLECHTNER	**Honnold, John** **Flechtner, Harry** Uniform Law of International Sales under the 1980 United Nations Convention 4th ed., Alphen aan den Rijn (2009)	74, 92, 112
HONSELL	**Honsell, Heinrich** Kommentar zum UN-Kaufrecht 2nd ed., Heidelberg (2010)	77, 81
HOWARD/BROCAS	**Howard, Karah** **Brocas, Johanne** Singapore, the UK, and Hong Kong: Three Approaches to Multi-Tiered Arbitration Agreements? In: Asian International Arbitration Journal, Vol. 21 (2025), pp. 1-30	25

Cited as	Citation	Cited in para.
HUBER	**Huber, Ulrich** Der UNCITRAL-Entwurf eines Übereinkommens über internationale Warenkaufverträge In: The Rabel Journal of Comparative and International Private Law, Vol. 43 (1979), pp. 413-526	81
HUBER/MULLIS/ *Author*	**Huber, Peter** **Mullis, Alastair** The CISG 1st ed., Munich (2007)	97, 112, 124, 127
JOLLES	**Jolles, Alexander** Consequences of Multi-tier Arbitration Clauses: Issues of Enforcement In: The International Journal of Arbitration, Mediation and Dispute Management, Vol. 72 (2006), pp. 329-338	25
KARRER/DESAX	**Karrer, Pierre** **Desax, Marcus** Security for Costs in International Arbitration – Why, when, and what if… In: Law of International Business and Dispute Settlement in the 21st Century, published by Briner, Robert/Fortier, L. Yves/Berger, Klaus Peter/Bredow, Jens, Cologne (2001), pp. 339-353	42
KASTER	**Kaster, Laura** Consent or Agreed Awards and the New York Convention – What Is the Status? In: New York Dispute Resolution Lawyer, Vol. 11 (2018), pp. 48-50	29

Cited as	Citation	Cited in para.
KHODYKIN/ MULCAHY/ FLETCHER	**Khodykin, Roman** **Mulcahy, Carol** **Fletcher, Nicholas** A Guide to the IBA Rules on the Taking of Evidence in International Arbitration 1st ed., Alphen aan den Rijn (2019)	37, 52, 53, 57, 67
KRÖLL *et al.*/*Author*	**Kröll, Stefan** **Mistelis, Loukas** **Perales Viscasillas, María del Pilar** UN Convention on Contracts for the International Sale of Goods (CISG) 2nd ed., Munich (2018)	6, 15, 71, 74, 77, 81, 84, 94, 99, 103, 109, 115
LAL *et al*.	**Lal, Hamish** **Casey, Brendan** **Kaiding, Josephine** **Defranchi, Léa** Multi-Tiered Dispute Resolution Clauses in International Arbitration – The Need for Coherence In: ASA Bulletin, Vol. 38 (2020), pp. 796-820	25
LIU	**Liu, Chengwei** Force Majeure Perspectives from the CISG, UNIDROIT Principles, PECL and Case Law 2nd ed. (2005) Available at: https://iicl.law.pace.edu/sites/default/files/cisg_files/liu6.html (last accessed on 22 January 2026)	81, 84, 90, 94

Cited as	Citation	Cited in para.
MARGHITOLA	**Marghitola, Reto** Document production in international arbitration 1st ed., Alphen aan den Rijn (2015)	53, 54, 67
MÖCKESCH	**Möckesch, Anabelle** Attorney-Client Privilege in International Arbitration 1st ed., Oxford (2017)	56
MUNICH COMMENTARY/ *Author*	**Säcker, Franz Jürgen** **Rixecker, Roland** **Oetker, Hartmut** **Limperg, Bettina** **Schubert, Claudia** Münchener Kommentar zum Bürgerlichen Gesetzbuch Vol. 4/1, Schuldrecht – Besonderer Teil I/1, §§ 433-480, CISG 9th ed., Munich (2024)	127
NEWMARK/HILL	**Newmark, Christopher** **Hill, Richard** Can a Mediated Settlement Become an Enforceable Arbitration Award? In: Arbitration International, Vol. 16 (2000), pp. 81-87	29
O'MALLEY	**O'Malley, Nathan** Rules of Evidence in International Arbitration, an Annotated Guide 1st ed., London (2012)	52, 53, 54

Cited as	Citation	Cited in para.
PETTIBONE/SIFFERT/ ZHU	**Pettibone, Peter** **Siffert, John** **Zhu, Angela** An Examination of Institutional Arb-Med-Arb Protocols and Practices In: Dispute Resolution Journal, Vol. 76 (2022), pp. 99-114	27
PURICE	**Purice, Matei** Multi-Tier Dispute Resolution Mechanisms: Enforcement Issues In: Revista Română de Arbitraj, Vol. 6 (2012), pp. 39-48	25
SCHERER	**Scherer, Maxi** Third-Party Funding in International Arbitration Towards Mandatory Disclosure of Funding Agreements? In: Dossier X: Third Party Funding in International Arbitration, International Chamber of Commerce (ICC) Publishing S.A, published by Cermades, Bernardo M./Dimolitsa, Antonias (editors), Paris (2013), pp. 95-100	38

Cited as	Citation	Cited in para.
SCHLECHTRIEM/ SCHWENZER/*Author*	**Schlechtriem, Peter** **Schwenzer, Ingeborg** Commentary on the UN Convention on the International Sale of Goods (CISG) 5th ed., Oxford (2022)	74, 77, 81, 92, 97, 98, 99, 101, 103, 109, 115, 121, 125
SCHMIDT-AHRENDTS	**Schmidt-Ahrendts, Nils** Das Verhältnis von Erfüllung, Schadensersatz und Vertragsaufhebung im CISG 1st ed., Tübingen (2007)	112, 121, 123, 127
SCHWENZER I	**Schwenzer, Ingeborg** Die clausula und das CISG In: Tradition mit Weitsicht, Festschrift für Eugen Bucher zum 80. Geburtstag, published by Wiegand, Wolfgang/Walter, Hans Peter, Bern/Zurich (2009), pp. 724-741	92
SCHWENZER II	**Schwenzer, Ingeborg** Force Majeure and Hardship in International Sales Contracts Victoria University of Wellington Law Review, Vol. 39 (2008), pp. 709-726	90, 92

Cited as	Citation	Cited in para.
SHERMAN	**Sherman, Andrew** Mergers and Acquisitions from A to Z 4th ed., New York (2018)	48
SREEKUMAR	**Sreekumar, Aparna** Hybrid ADR Mechanisms In: Edulogic International Journal for Multi Disciplinary Research, Vol. 1 (2025), pp. 87-106	29
STAUDINGER/*Author*	**Mansel, Heinz-Peter** J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB - Buch 2: Recht der Schuldverhältnisse: Wiener UN-Kaufrecht (CISG) 13th ed., Berlin (2025)	74, 81, 99, 103
STEINITZ/FIELD	**Steinitz, Maya** **Field, Abigail** A Model Litigation Finance Contract In: Iowa Law Review, Vol. 99 (2014), pp. 711-772	49
SUSSMAN	**Sussman, Edna** The New York Convention Through a Mediation Prism In: Dispute Resolution Magazine, Vol. 15 (2009), pp. 10-13	29
SWEIFY	**Sweify, Mohamed** Third Party Funding in International Arbitration: A Critical Appraisal and Pragmatic Proposal 1st ed., Cheltenham (2023)	41

Cited as	Citation	Cited in para.
TAN/AHMAD	**Tan, Paul** **Ahmad, Jawad** The UNCITRAL Model Law and Awards *infra petita* In: Journal of International Arbitration, Vol. 31 (2014), pp. 413-423	65
ZUBERBÜHLER *et al*.	**Zuberbühler, Tobias** **Hofmann, Dieter** **Oetiker, Christian** **Rohner, Thomas** IBA Rules of Evidence 2nd ed., Zurich (2022)	37

TABLE OF CASES

Cited as	Citation	Cited in para.
	Austria	
Propane Gas Case	Oberster Gerichtshof (Austrian Supreme Court) 6 February 1996 10 Ob 518/95 (CISG-Online 224)	127

	Canada	
Jardine Lloyd v. SJO Catlin	Court of Appeal of Alberta 18 January 2006 2006 ABCA 18	54

ECJ

Akzo Nobel v. Commission of the European Communities	European Court of Justice 14 September 2010 ECJ Case No. C-550/07 P	57

Leather For Furniture Case	Oberlandesgericht München (Higher Regional Court Munich) 15 September 2004 7 U 2959/04 (CISG-Online 1013)	117
Portuguese Cloth Case	Oberlandesgericht Bamberg (Higher Regional Court Bamberg) 13 January 1999 3 U 83/98 (CISG-Online 516)	123
PVC Foil Case	Oberlandesgericht Naumburg (Higher Regional Court Naumburg) 24 April 2019 12 U 152/18 (CISG-Online 4506)	127
Spanish Orange Juice Case	Oberlandesgericht Düsseldorf (Higher Regional Court Düsseldorf) 9 July 2010 I-17 U 132/08 (CISG-Online 2171)	121
Twisted Yarn Case	Oberlandesgericht Frankfurt am Main (Higher Regional Court Frankfurt am Main) 30 August 2000 9 U 13/00 (CISG-Online 594)	6

Hong Kong

C. v. D.	High Court of the Hong Kong Special Administrative Region Court of Appeal 7 June 2022 [2022] HKCA 729	25

	India	
Cox and Kings v. Sap India and Respondent	Supreme Court of India 6 December 2023 2023/INSC/1051	10
TSA v. SBS Holdings	Delhi High Court 29 May 2023 2023/DHC/3830/DB	42

	Netherlands	
UAB Ivabalté v. Nederlandse Schapen- en Geitenfokkersorganisatie	Gerechtshof Arnhem-Leeuwarden (Court of Appeal Arnhem-Leeuwarden) 1 December 2020 200.230.164	74

	New Zealand	
Dymocks v. Todd	Privy Council / The Court of Appeal of New Zealand 21 July 2004 [2004] 1 WLR 2807	49

	Singapore	
AQZ v. ARA	High Court of Singapore 13 February 2015 [2015] SGHC 49	12, 16, 18
Black & Vetach Singapore Pte Ltd v. Jurong Engineering Ltd	High Court of Singapore 8 July 2004 [2004] SGCA 30	16
BLB v. BLC	High Court of Singapore 30 September 2013 [2013] SGHC 196	65
Car & Cars Pte Ltd v. Volkswagen AG	High Court of Singapore 19 October 2009 [2009] SGHC 233	16
Navigator Investment Services Ltd v. Acclaim Insurance Brokers Pte Ltd	High Court of Singapore 29 September 2009 [2009] SGCA 45	16

	Slovenia	
Water And Oil Pumps Case	Višje sodišce v Ljubljani (Court of Appeal Ljubljana) 26 November 2014 VSL sodba | Cpg 299/2014 (CISG-Online 5917)	121

	Switzerland	
Construction Materials Case V	Obergericht des Kantons Thurgau (Court of Appeal Canton Thurgau) 12 December 2006 ZBR.2006.26 (CISG-Online 1566)	6
Fruits and Vegetables Case V	Obergericht des Kantons Aargau (Commercial Court Canton Aargau) 26 November 2008 HOW.2006.79/AC/tv (CISG-Online 1739)	15

	United Kingdom of Great Britain and Northern Ireland	
Barr v. Biffa	High Court of Justice of England and Wales 15 May 2009 [2009] EWHC 1033 (TCC)	57, 67
Bunge S.A. v. Kruse	High Court of Justice Queen's Bench Division (Commercial Court) [1979] 1 Lloyd's Rep 279 As reprinted in: *AQZ v. ARA [2015] SGHC 49 at para. 126*	15, 16
Chodiev v. Stein	High Court of Justice of England and Wales 16 May 2016 [2016] EWHC 1210 (Comm)	52
Essar v. Norscot	High Court of Justice of England and Wales 15 September 2016 [2016] EWHC 2361 (Comm)	46, 47
Excalibur v. Texas Keystone 1	High Court of Justice of England and Wales 23 October 2014 [2014] EWHC 3436 (Comm)	49
Excalibur v. Texas Keystone 2	High Court of Justice of England and Wales 5 July 2012 [2012] EWHC 2176 (QB)	67
PDVSA v. Clyde & Co	High Court of Justice of England and Wales 23 October 2020 [2020] EWHC 2819 (Ch)	42

Peter Cremer v. Granaria BV	High Court of Justice Queen's Bench Division (Commercial Court) [1981] 2 Lloyd's Rep 583 As reprinted in: *Black and Vetach Singapore Pte Ltd v. Jurong Engineering Ltd [2004] SGCA 30 at para. 20*	16
RBS Rights Issue Litigation	High Court of Justice of England and Wales 9 March 2017 [2017] EWHC 463 (Ch)	57
Three Rivers District Council v. Bank of England	House of Lords 11 November 2004 [2004] UKHL 48	57
Tsakiroglou v. Noblee Thorl	High Court of Justice Queen's Bench Division (Commercial Court) 5 June 1960 [1960] 2 Q.B. 318	90

United States of America

TABLE OF ARBITRAL AWARDS AND DECISIONS

Cited as	Citation	Cited in para.
	Arbitration Institute of the Stockholm Chamber of Commerce (SCC)	
IUGAS v. Naftogaz (I)	*Italia Ukraina Gas S.P.A v. National Joint-Stock Company "Naftogaz of Ukraine"* Final Award (19 December 2012) SCC Case No. V007/2008 In: Jus Mundi	74
	Cairo Regional Centre for International Commercial Arbitration (CRCIA)	
Diammonium Phosphate Case	*No party names available* Final Award (19 February 2023) Case No. 1527/2021 (CISG-Online 6272)	131
	Inter-American Commercial Arbitration Commission (IACAC)	
CISMA v. GCC and Grupo Cementos de Chihuahua	*Compañía de Inversiones Mercantiles s.a. v. GCC Latinoamérica, S.A. de C.V. and Grupo Cementos de Chihuahua, S.A.B. de C.V.* Final Award (10 April 2015) IACAC Case No. 50-180-T-00867-11 In: Jus Mundi	131

Muhammet Çap v. Turkmenistan, PO3	*Muhammet Çap*; *Bankrupt Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan* Procedural Order No. 3 (12 June 2015) ICSID Case No. ARB/12/6 In: Jus Mundi	44
Nachingwea v. Tanzania	*Nachingwea U.K. Limited (UK)*, *Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. United Republic of Tanzania* Final Award (14 July 2023) ICSID Case No. ARB/20/38 In: Jus Mundi	47, 63
RSM v. Saint Lucia	*RSM Production Corporation v. Saint Lucia* Decision on Saint Lucia's Request for Provisional Measures (12 December 2013) ICSID Case No. ARB/12/10 In: Jus Mundi	41
	International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry	
Butter Case	*No party names available* Final Award (22 January 1997) Case No. 155/1996 (CISG-Online 1296)	77

International Chamber of Commerce (ICC)

Dow Chemical v. ISOVER SAINT GOBAIN	*Dow Chemical France (France)*, *The Dow Chemical Company (USA)*, *Dow Chemical A.G. (Swiss)*, *Dow Chemical Europe (Swiss) v. ISOVER SAINT GOBAIN* Interim Award (23 September 1982) ICC Case No. 4131 In: ICCA Yearbook Commercial Arbitration Vol. 11 (1984), pp. 131-138	10
German Goods Case	*No party names available* Final Award (March 1999) ICC Case No. 9978 (CISG-Online 708)	115
Metal Concentrate Case	*No party names available* Final Award (September 1996) ICC Case No. 8574	121
TSK and MTU v. Prime Energía	*TSK Chile SoA*, *TSK Electronica y Electricidad*, *S.A. and MTU America Inc. v. Prime Energía Quickstart SpA* Final Award (18 April 2022) ICC Case No. 25168/MK/PDP (I) In: Jus Mundi	97
X v. Y and Z	*No party names available* Procedural Order (3 August 2012) No case number available As reprinted in: PINSOLLE, *Third Party Funding and Security for Costs in*: *Cahiers de l'arbitrage (2013)*, *pp. 399-416*	41

Permanent Court of Arbitration (PCA)

Guaracachi v. Bolivia	*Guaracachi America, Inc. and Rurelec plc v. The Plurinational State of Bolivia* Procedural Order No. 14 (11 March 2013) PCA Case No. 2011-17 In: Jus Mundi	41
SAS v. Bolivia, PO10	*South American Silver Limited (Bermuda) v. The Plurinational State of Bolivia* Procedural Order No. 10 (11 January 2016) PCA Case No. 2013-15 In: Jus Mundi	38, 58, 63
SAS v. Bolivia, PO2	*South American Silver Limited (Bermuda) v. The Plurinational State of Bolivia* Procedural Order No. 2 (1 December 2014) PCA Case No. 2013-15 In: Jus Mundi	53
Tennant Energy v. Canada	*Tennant Energy, LLC v. Government of Canada* Procedural Order No. 4 (27 February 2020) PCA Case No. 2018-54 In: Jus Mundi	38

	Singapore International Arbitration Centre (SIAC)	
Speers v. MakeMyTrip, Final Award	*Blair James Speers*, *Graham Paul Johnson v. MakeMyTrip Limited* (*MMM7*), *Hotel Travel Limited* (*HTD*) Final Award (9 June 2020) Case No. ARB169/16/AB In: Jus Mundi	44, 46
Speers v. MakeMyTrip, First Partial Award	*Blair James Speers*, *Graham Paul Johnson v. MakeMyTrip Limited* (*MMM7*), *Hotel Travel Limited* (*HTD*) First Partial Award (30 April 2018) Case No. ARB169/16/AB In: Jus Mundi	60, 66
	Ad Hoc	
Gasum v. Gazprom	*Gasum Oy v. Gazprom export LLC* Final Award (14 November 2022) In: Jus Mundi	81
Pope & Talbot v. Canada	*Pope & Talbot Inc. v. The Government of Canada* Decision on Official Secrecy and Professional Privilege (6 September 2000) In: Jus Mundi	57
Unico Marine Services v. JMB Shipping	*Unico Marine Services LLC v. JMB Shipping ATB 205, LLC, JMB Shipping ATB 220, LLC and JMB Shipping ATB 284, LLC* Final Award (13 November 2025) In: Jus Mundi	131

TABLE OF OTHER SOURCES

Cited as	Citation	Cited in para.
CIArb Guideline	**CIArb Guideline on Third-Party Funding** Chartered Institute of Arbitrators London (2025)	42, 49
CISG-AC No. 3	**Parol Evidence Rule, Plain Meaning Rule, Contractual Merger Clause and the CISG** CISG Advisory Council Adopted by the CISG Advisory Council on its 7th meeting, in Madrid, Spain (23 October 2004)	9
CISG-AC No. 7	**Exemption of Liability for Damages Under Article 79 of the CISG** CISG Advisory Council Adopted by the CISG Advisory Council following its 11th meeting, in Wuhan, People's Republic of China (12 October 2007)	92
CISG-AC No. 8	**Calculation of Damages under CISG Articles 75 and 76** CISG Advisory Council Adopted by the CISG Advisory Council following its 12th Meeting in Tokyo, Japan (15 November 2008)	109, 121, 123
CISG-AC No. 20	**Hardship under the CISG** CISG Advisory Council Adopted by the CISG Advisory Council following its 27th meeting, in Puerto Vallarta, Mexico (5 February 2020)	92

Conf. Res. 11.11	**Resolution on Regulation of trade in plants** Conference of the Parties of the CITES Eleventh meeting, in Gigri, Kenya (2000) Conf. 11.11 (Rev. CoP18)	78
IBA CoI Guidelines	**IBA Guidelines on Conflict of Interest in International Arbitration** International Bar Association London (2024)	49
IBA Task Force II	**IBA Arbitration Committee Task Force on Privilege in International Arbitration, Annex 2 – Legal Advice Privilege** International Bar Association London (2024)	57
ICCA Report	**Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration** International Council for Commercial Arbitration, Queen Mary University of London Paris (2018)	36, 42, 49, 57, 59
LexMundi	**Global Practice Guide: In-House Counsel and the Attorney-Client Privilege** LexMundi Litigation Arbitration and Dispute Resolution Group Houston (2014)	57

LFA BioCardia	**Litigation Funding Agreement between BioCardia Inc. and BSLF, LLC** (9 April 2020) Available at: https://www.sec.gov/Archives/edgar/data/925741/000143774920007637/ex_181285.htm (last accessed on 22 January 2026)	47, 49
Secretariat Commentary	**Commentary on the Draft Convention on Contracts for the International Sale of Goods, Prepared by the Secretariat** Secretariat of the United Nations Commission on International Trade Law New York (1979)	130
UNCITRAL Digest of Case Law	**UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods** United Nations New York (2016)	74

STATEMENT OF FACTS

The parties to this Arbitration are Orchis Worldwide Ltd ("**CLAIMANT**") and Darwin Natural Food plc ("**RESPONDENT**") (together, the "**Parties**"). CLAIMANT is a cultivator and international supplier of orchids based in Mediterraneo. RESPONDENT, headquartered in Equatoriana, is a producer of natural food and spices.

The Arbitration relates to whether RESPONDENT is liable for damages in connection with the concluded Sale of Orchids agreement ("**SOA**" or the "**Contract**").

01/12/2021 CLAIMANT and Botanical Garden of Equatoriana ("**Botanical Garden**") conclude a sales agreement for 300 *Vanilla Planifolia Mediterraniensis* orchids ("**Orchids**") for research purposes.

25/08/2022 Following RESPONDENT's takeover of Botanical Garden, the Parties terminate the unperformed research contract and replace it with a commercial Contract for 3,000 ± 10% Orchids. Therein, they agree on delivery between January and March 2024, the specific date to be determined by RESPONDENT.

01/12/2023 RESPONDENT sets the delivery date for 27 March 2024, exercising its contractual right.

01/02/2024 The CITES Conference includes the Orchids in CITES Appendix I with immediate effect, triggering an import permit ("**Import Permit**") requirement for wild Orchids and Orchids propagated from wild cuttings.

05/02/2024 RESPONDENT applies for an Import Permit. No permits are granted pending further ministerial guidance.

08/02/2024 The Equatorianian government unexpectedly announces a more restrictive approach to issuing Import Permits.

10/02/2024 RESPONDENT notifies CLAIMANT that it is impossible to obtain the Import Permit for the original delivery date. CLAIMANT suggests later delivery.

15/02/2024 CLAIMANT agrees with Herbal Cosmetics to bring forward performance of an existing contract and grants additional option rights for December 2024.

01/03/2024 CLAIMANT avoids the Contract. RESPONDENT subsequently withdraws its Permit application.

02/10/2024 Herbal Cosmetics exercises its option for 2,000 Orchids to be delivered in December 2024 at a price of USD 3,200 per Orchid.

31/07/2025 CLAIMANT initiates Arbitration with funding from AtJ-Financing and LitSure.

SUMMARY OF ARGUMENT

Trading Orchids is like walking on a narrow rope. Even experienced parties can be thrown off balance by unforeseen winds. The Parties anticipated this risk and included a safety net into their Contract—the *force majeure* clause, expressly covering "government measures".

In February 2024, that storm hit: The actions of Equatoriana's government made performance impossible, throwing RESPONDENT squarely within the agreed safety net. Although CLAIMANT ultimately leveraged its situation by selling the Orchids to another party at a profit, it now seeks double recovery to avert its impending insolvency. The Tribunal should deny CLAIMANT's attempt to deprive RESPONDENT of the very protections on which the Parties had agreed.

Part I: The 2025 SIAC Rules Govern This Arbitration

The Arbitration Agreement refers to the "current" SIAC Rules. Properly interpreted under Art. 8 CISG, this clause refers to the rules in force when arbitration commences. The present Arbitration commenced on 31 July 2025. Hence, the 2025 SIAC Rules apply.

Part II: The Tribunal Should Order Disclosure of CLAIMANT's Funding Agreements

Under Rule 38.4 of the 2025 SIAC Rules, the Tribunal should order the disclosure of CLAIMANT's funding agreement with AtJ and its insurance policy with LitSure. Disclosure maintains CLAIMANT's procedural rights but allows RESPONDENT to estimate and avert its financial risks. Even under the 2016 framework, the Tribunal can order disclosure.

Part III: RESPONDENT Is Not Liable for Damages

Equatoriana ceased issuing Import Permits completely—a scenario beyond RESPONDENT's control that it neither could have foreseen nor overcome. Under the Contract, RESPONDENT does not bear the risk of such *force majeure* events. Accordingly, RESPONDENT is exempt from liability for alleged damages as per Art. 79 CISG.

Part IV: CLAIMANT Did Not Incur Any Damages

Art. 75 CISG does not apply to the February 2024 Agreement because it (i) merely brought forward delivery under a pre-existing contract and (ii) CLAIMANT did not avoid the Contract in advance. In any case, the relevant quantity to calculate damages would be 2,700 Orchids since RESPONDENT had the contractual right to determine the exact quantity to be delivered.

ARGUMENT

PART I: THE 2025 SIAC RULES GOVERN THIS ARBITRATION

1 RESPONDENT submits that the 2025 SIAC Rules—not the 2016 SIAC Rules, as CLAIMANT asserts [*MfC*, *para*. *30*]—govern this Arbitration. The Parties agreed that the Tribunal determines the applicable version of the SIAC Rules [*PO1-II*, *p*. *52*; *Rule 27(n) 2016 SIAC Rules*; *Rule 50.2(j) 2025 SIAC Rules*]. By invoking the 2016 SIAC Rules, CLAIMANT effectively seeks to recast the agreed procedural framework to avoid the expressly regulated disclosure of third-party funding in the 2025 SIAC Rules. This cannot convince:

2 The Arbitration Agreement refers exclusively to the Arbitration Rules that are "current" at commencement of Arbitration [**I**]. The 2025 SIAC Rules govern all proceedings commenced after 1 January 2025 pursuant to Rule 1.5 2025 SIAC Rules. This Arbitration commenced upon receipt of the Notice of Arbitration ("**NoA**") in July 2025; thus, the 2025 SIAC Rules apply [**II**].

I. THE ARBITRATION AGREEMENT REFERENCES THE RULES IN FORCE AT COMMENCEMENT OF ARBITRATION

3 The Arbitration Agreement provides that "[a]ny dispute arising out of […] this contract […] shall be […] finally resolved by arbitration […] in accordance with the current Arbitration Rules of the Singapore International Arbitration Centre" [*Clause 15 SOA*]. Thereby, the Arbitration Agreement refers to rules in force when the Arbitration commences:

4 There is no evidence of the Parties' intent to freeze the rules at the time of Contract conclusion, *i*.*e*., 2016 SIAC Rules [**A**]. Absent such intent, the Tribunal must interpret "current" in line with the prevailing approach, *i*.*e*., as a reference to the SIAC Rules in force at commencement [**B**].

A. NO PARTY INTENT SUGGESTS AN EXPRESS REFERENCE TO THE 2016 SIAC RULES

5 CLAIMANT asserts that the 2016 SIAC Rules govern this Arbitration [*MfC*, *para*. *30*]. Allegedly, (i) Botanical Garden subjectively intended to apply the 2016 SIAC Rules under Art. 8(1), (3) CISG [*ibid*.] and (ii) this intent is attributable to RESPONDENT. CLAIMANT fails to prove either.

6 The Parties agree that the CISG governs the Arbitration Agreement [*PO1-III(5)*, *p*. *53*], which is consistent with jurisprudence in all three relevant jurisdictions [*PO1-II*, *p*. *52*]. Under Art. 8(1), (3) CISG, subjective intent can prevail over wording if it is apparent to the counterparty and has *manifested* in some way [*Construction Materials Case V*, *para*. *38*; *Twisted Yarn Case*, *para*. *26*; KRÖLL *et al*./*Zuppi*, *Art*. *8 para*. *8*]. Here, new Parties concluded a new Contract based on new negotiations, in which no intent supporting a static reference is

discernible [**1**]. Even if earlier negotiations between Botanical Garden and CLAIMANT were relevant, there is no manifestation of subjective intent to apply the 2016 SIAC Rules [**2**].

1. CLAIMANT and RESPONDENT Did Not Intend to Apply the 2016 SIAC Rules

7 There is no manifestation of the Parties' intent to apply the 2016 SIAC Rules. While CLAIMANT and RESPONDENT negotiated quantity and delivery terms, they did not address the Arbitration Agreement [*NoA-9*, *p. 3*]. Thereby, there is no manifestation of subjective intent affecting the meaning of "current" under Art. 8(1), (3) CISG.

8 CLAIMANT nevertheless argues that RESPONDENT had access to Botanical Garden's e-mail servers and is therefore bound by Botanical Garden's alleged intent in 2021 [*MfC*, *para. 50*]. That premise is flawed. Botanical Garden's intent cannot control the interpretation of RESPONDENT's new Contract with CLAIMANT for *three* reasons: *First*, the Contract expressly terminates the prior contractual relationship: "The Agreement *replaces* the earlier agreement between Seller [*sc.* CLAIMANT] and the Botanical Garden of Equatoriana concluded on 1 December 2021, *which is hereby terminated*" [*emph. add.*]. This Clause ensures legal certainty after the takeover. By *replacing* the earlier agreement, the Parties emphasized that RESPONDENT is not stepping into its predecessor's legal position; it enters a new Contract as a new contracting party in 2022 [*NoA-9*, *p. 3*]. Any alleged subjective intent formed in the context of the now terminated agreement is therefore not controlling.

9 The e-mail RESPONDENT sent in June 2022 does not alter this result. Therein, RESPONDENT stated that it was "taking over" Botanical Garden "including all commitments and liabilities" under the former contract [*Exh. C2*, *p. 9*]. Yet CLAIMANT cannot rely on that [*cf. MfC*, *para. 46*] because Clause 2.4 SOA reads "[t]his Agreement constitutes the exclusive terms governing the sale and purchase of the Goods". Accordingly, the written Contract prevails over any prior or contemporaneous statements to the contrary [*cf.* HYLAND, *CISG-AC No. 3*, *para. 4.1*]. In summary, at Contract conclusion on 25 August 2022, the new Parties created a level playing field for their future relationship.

10 *Secondly*, CLAIMANT argues that, by taking over Botanical Garden, RESPONDENT also took over its alleged intent regarding the Arbitration Agreement [*MfC*, *paras. 47 et seqq.*]. The authorities CLAIMANT relies on [*MfC*, *para. 47*] do not support this proposition: They concern attribution of knowledge within corporate groups where subsidiaries continued to exist as separate legal entities after the takeover [*Cox and Kings v. Sap India and Respondent*, *paras. 40*, *165(e)*; *Dow Chemical v. ISOVER SAINT GOBAIN*, *p. 132*]. The case at hand differs from that scenario in

two respects: (i) CLAIMANT tries to attribute not knowledge, but negotiation intent. (ii) The holder of that alleged intent has ceased to exist and was absorbed by RESPONDENT's corporate structure [*NoA-7*, *p. 3*; *Exh. C2*, *p. 9*]. CLAIMANT identifies no legal basis—and the cited authorities provide none—for imputing Botanical Garden's purported intent to RESPONDENT.

11 *Thirdly*, even on CLAIMANT's own premise, attribution would be implausible from the perspective of a reasonable party under Art. 8(2) CISG. Botanical Garden's reluctance to arbitration [*Exh. C7*, *p. 21*] was shaped by public-law constraints. After the takeover, RESPONDENT—a private commercial company—had no plausible reason to adhere to these reservations. To the contrary, the remainder of the Contract reflects a distinctly commercial bargain: the delivery volume was substantially increased, and delivery terms were materially altered [*NoA-9*, *p. 3*]. Botanical Garden's incentives did not transfer and cannot ground any inference that RESPONDENT intended to "freeze" the 2016 SIAC Rules.

2. Even the Original Parties Did Not Choose the 2016 SIAC Rules

12 CLAIMANT and Botanical Garden did not intend to apply the 2016 SIAC Rules. In their contract, they wrote "current Arbitration Rules" [*Clause 15 SOA*]. By contrast, they consistently specified "Incoterms® 2020" [*Clause 1.1 SOA*; *Clause 1.2 SOA*; *Clause 4.1 SOA*]. This evidences that the Parties—both if not legally educated, legally advised—knew how to select a particular version of a ruleset where they wanted to: by expressly specifying the version (*e.g.*, "2016 SIAC Rules") [*cf. AQZ v. ARA*, *para. 127*].

13 In addition to that, Botanical Garden's conduct could, even if it were relevant [*MfC*, *para. 37*], not have conveyed any subjective intent to freeze the 2016 SIAC Rules to CLAIMANT under Art. 8(1), (3) CISG. The statement that the "current version" was acceptable [*MfC*, *para. 39*; *Exh. C7-1*, *p. 21*] is not a sufficient manifestation of subjective intent to freeze the edition of the 2016 SIAC Rules. Botanical Garden did not propose, negotiate, or insist upon the 2016 SIAC Rules as such; it merely accepted SIAC arbitration based on the rules CLAIMANT presented [*Exh. C7*, *p. 21*]. This only reflects an agreement on SIAC—and the SIAC Rules framework generally—rather than a deliberate choice of a specific edition. Because the Tribunal cannot infer any intent of Botanical Garden to refer statically to the 2016 SIAC Rules, CLAIMANT's submission—that RESPONDENT silently agreed to Botanical Garden's alleged intent [*MfC*, *para. 32*]—lacks merit.

B. ABSENT CONTRARY INTENT, THE ARBITRATION AGREEMENT REFERS TO THE RULES IN FORCE AT COMMENCEMENT

14 Absent any manifestation of subjective intent, the Tribunal cannot rely on Art. 8(1), (3) CISG. Rather, it should interpret "current" according to the understanding of a reasonable person under Art. 8(2) CISG as a reference to the rules at commencement, *i.e.*, the 2025 SIAC Rules. "Current" refers to the rules in force when Arbitration commenced [**1**]. This interpretation is not refuted by any alleged substantiveness of the 2025 amendments to the rules [**2**]. Instead, the remainder of the Contract supports a dynamic reading [**3**].

1. "Current" Dynamically Refers to the Rules in Force at Commencement

15 "Current" is a reference to the rules in force when arbitration commences. Absent apparent subjective intent, the Tribunal must—under Art. 8(2) CISG—consider what a reasonable person would understand [*cf. Hanwha Corp. v. Cedar Petrochemicals Inc.*, *para. 19*; *Fruits and Vegetables Case V*, *para. 6*, *p. 8*; KRÖLL *et al.*/*Zuppi*, *Art. 8 para. 23*]. RESPONDENT therefore invites the Tribunal to interpret "current" as a dynamic reference to the rules in force at commencement. Procedural rules can easily become outdated, and to ensure the efficiency of the proceedings, parties generally prefer the most recent version of procedural rules at commencement [*Bunge S.A. v. Kruse*, *para. 286*; GREENBERG/MANGE, *p. 210*].

16 Accordingly, tribunals, courts, and scholars agree that ambiguous references to institutional rules capture the version applicable at commencement [*AQZ v. ARA*, *para. 127*; *Black & Vetach Singapore Pte Ltd v Jurong Engineering Ltd*, *para. 57*; *Bunge S.A. v. Kruse*, *para. 286*; *Car & Cars Pte Ltd v Volkswagen AG*, *para. 25*; *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd*, *para. 34*; *Peter Cremer v. Granaria BV*, *paras. 592 et seq.*; BORN, *9.03[C]*]. "Current"—as general terminology—indicates a reference to rules that cannot be identified as they do not yet exist [*cf. Car & Cars Pte Ltd v Volkswagen AG*, *para. 25*]. Hence, a reasonable person would understand "current" to refer to rules in force when arbitration commences.

2. The Changes to the New Version of the Rules Are Irrelevant to this Arbitration

17 The 2025 amendments do not refute this interpretation. CLAIMANT invokes that the changes are too significant to have been consented to in advance [*MfC*, *para. 42*]. However, the only practically salient update is the express disclosure of third-party funding [*Rule 38.4 2025 SIAC Rules*]. This is no "unfair surprise" for CLAIMANT [*MfC*, *para. 69*], given such regime was already in place at Contract conclusion [*infra para.* 34]. By selecting an institution, parties

accept its evolving procedural framework [*supra para. 13*]. SIAC's legislative history shows improvement across a range of disputes [CHOONG/MANGAN/LINGARD, *paras. 3.08 et. seqq.*]. The absence of "grandfathering clauses" indicates that the SIAC considers the 2025 version a structural evolution—not to a substantive revolution.

18 CLAIMANT—relying on *AQZ v. ARA*—attempts to invoke "grandfathering clauses" to protect its "reasonable expectations" [*MfC, para. 58*]. This is misdirected: *First*, while other institutions have adopted "grandfathering clauses", the SIAC Rules have never contained "grandfathering clauses" [*AQZ v. ARA, para. 135*; FOO/CHATTERJEE]. This indicates that the SIAC itself finds that the changes to the rules are covered by the parties' general consent to arbitrate under the SIAC regime. *Secondly*, in *AQZ v. ARA*, the Singapore High Court upheld a SIAC award that applied the rules in force at commencement although they contained a newly introduced procedural mechanism [*AQZ v. ARA, para. 132*]. Therefore, *AQZ v. ARA* undercuts, rather than supports, CLAIMANT's assertion. Party expectations to freeze older version are neither worthy of protection nor reasonable.

3. Additionally, the Remainder of the Contract Supports a Dynamic Reference

19 The remainder of the Contract supports reading "current" as a dynamic reference to the rules in force when Arbitration commences. Clause 1.2 SOA provides that "[r]eferences to statutes include amendments and reenactments", establishing a contract-wide presumption for dynamic references. This extends to the SIAC Rules reference in the Arbitration Agreement because—unlike when referring to the Incoterms 2020 [*supra para. 12*]—the Parties did not specify a version. In conclusion, a reasonable person under Art. 8(2) CISG would understand "current" as reference to rules in force at commencement.

II. THE PROCEEDINGS COMMENCED WITH THE NOTICE OF ARBITRATION ON 31 JULY 2025, TRIGGERING APPLICATION OF THE 2025 SIAC RULES

20 CLAIMANT argues that the 2016 SIAC Rules would apply even if "current" was a dynamic reference—which it is—by asserting that the initiation of mediation on 19 December 2024 constitutes commencement [*MfC, para. 61*]. This is incorrect. The Tribunal should uphold the SIAC Registrar's determination that the Proceedings commenced upon receipt of the NoA on 31 July 2025. This is consistent with the SIAC Rules' design [**A**]. Further, the Parties did not agree to displace that default rule by treating mediation as commencement [**B**].

A. THE RECEIPT OF THE NOTICE OF ARBITRATION TRIGGERS COMMENCEMENT

21 The Arbitration commenced on 31 July 2025. Both Rule 6.2 2025 SIAC Rules and Rule 1.2 2016 SIAC Rules deem the date of the receipt of the NoA by the SIAC Registrar—rather than a mediation request [*MfC*, *para. 61*]—to be the commencement date. By agreeing to the "SIAC Rules" [*Clause 15 SOA*], the Parties submitted to that commencement mechanism. SIAC received CLAIMANT's NoA on 31 July 2025 [*SIAC Letter from 8 August 2025*, *para. 1*, *p. 24*]. Therefore, under Rule 1.5 2025 SIAC Rules the 2025 SIAC Rules apply.

22 The Registrar determined the commencement date accordingly [*SIAC Letter from 8 August 2025*, *para. 2*, *p. 24*]. The Parties agree that under Rule 63.1 2025 SIAC Rules and Rule 40.1 2016 SIAC Rules, the Registrar's decisions are binding on the Parties and the Tribunal [*cf. MfC*, *para. 72*]. However, contrary to CLAIMANT's submission [*MfC*, *para. 72*], this applies to the decision on the commencement date—not to the applicable rules; the Registrar expressly left this issue to the Tribunal [*SIAC Letter from 8 August 2025*, *para. 17*, *p. 26*]. RESPONDENT requests the Tribunal to confirm the Registrar's decision: Arbitration commenced with the receipt of the NoA on 31 July 2025.

B. THE PARTIES DID NOT AGREE ON MEDIATION TO MARK THE COMMENCEMENT

23 Contrary to CLAIMANT's contention [*MfC*, *paras. 61 et seqq.*], the Parties' agreement that mediation is "the first step of the dispute resolution process" [*Clause 15 SOA*] does not redefine the default rule that arbitration commences upon receipt of the NoA. Neither any alleged agreement to the SIAC-SIMC Arb-Med-Arb Protocol ("**AMA Protocol**") [**1**] nor any limitation-period considerations [**2**] alter that conclusion.

1. CLAIMANT's Reference to the AMA Protocol Does Not Justify a Different Finding

24 CLAIMANT contends that the Parties agreed to a modified AMA Protocol under which arbitration commenced with mediation [*MfC*, *paras. 62 et seqq.*]. Measured against the standard of Art. 8(2) CISG [*supra para. 15*], this fails for *four* reasons:

25 *First*, CLAIMANT invokes a general principle of a single commencement date for multi-tier dispute resolution mechanisms [*MfC*, *paras. 64*, *67*]. However, the authorities CLAIMANT cites address only whether pre-arbitral steps are mandatory—not whether they share one single commencement date [*MfC*, *para. 64*; *cf. C. v. D.*, *p. 39 et seqq.*; LAL *et al.*, *p. 816*; HOWARD/BROCAS, *p. 17*; JOLLES, *p. 334 et seqq.*, PURICE, *p. 45*]. CLAIMANT's proposition is unsupported.

26 *Secondly*, contrary to CLAIMANT's submission [*MfC*, *para*. *66*], Clause 15 SOA does not reference the AMA Protocol; it merely provides a two-tier dispute resolution process. RESPONDENT acknowledges that CLAIMANT and Botanical Garden discussed the AMA Protocol in earlier negotiations [*cf*. *MfC*, *paras*. *65 et seq*.]. However, RESPONDENT is not bound by Botanical Garden's prior statements under a terminated contract [*supra para*. *8*].

27 *Thirdly*, the Parties did not adopt the AMA Protocol's commencement architecture. CLAIMANT concedes that Clause 15 SOA is effectively a Med-Arb—not an Arb-Med-Arb—clause [*MfC*, *para*. *66*]. Under the AMA Protocol, arbitration is commenced by filing with SIAC, stayed for SIMC mediation, and then resumed for the issuance of a consent award [*paras*. *1*, *5*, *8 et seqq*. *AMA Protocol*; BOOG, *p*. *95*; PETTIBONE/SIFFERT/ZHU, *p*. *107*]. Here, the Parties did not approach SIAC until after mediation ended [*SIAC Letter from 8 August 2025*, *para*. *1*, *p 24*]. Treating arbitration as commenced upon initiation of mediation would therefore be a fiction not supported by the AMA Protocol.

28 Additionally, under Para. 6 AMA Protocol, mediation must terminate *within eight weeks*. Here, CLAIMANT filed for mediation on 19 December 2024 [*NoA-28*, *p*. *5*], which concluded on 1 June 2025 [*PO2-31*, *p*. *59*]—five months later. This departure makes CLAIMANT's reliance on the AMA Protocol's commencement logic untenable.

29 *Fourthly*, considerations regarding enforceability of a potential settlement do not change commencement. Art. 1 NYC limits enforcement to awards "arising out of differences". Where a tribunal merely endorses a pre-existing mediated settlement, no "difference" remains and the NYC does not apply [KASTER, *p*. *50*; NEWMARK/HILL, *p*. *83*; SUSSMAN, *p*. *12*]. The AMA Protocol solves this through its three-stage design, with arbitration commencing before mediation to ensure a "difference" exists when arbitration begins [SREEKUMAR, *p*. *91*]. Under the Parties' two-step dispute resolution clause, a tribunal would have been constituted and asked to turn a settlement into a consent award only after mediation already resolved the dispute. For NYC-based enforceability in such a structure, an arbitrator must have been appointed before mediation [NEWMARK/HILL, *p*. *83*; SUSSMAN, *p*. *11*], which did not occur here. A fictional commencement cannot fabricate NYC-based enforceability.

2. CLAIMANT's Reference to Limitation Periods Does Not Justify a Different Finding

30 CLAIMANT submits that arbitration commences with the initiation of mediation, relying on an incomplete quotation from Botanical Garden's chief contract officer Ms. Gobley [*MfC*, *para*. *68*]. The full e-mail passage states: "the initiation of the mediation proceedings should be

treated for the *purpose of the statute of limitations* as constituting the commencement of arbitration proceedings" [*Exh. C7*, *p. 21*, *emph. added*]. This does not support CLAIMANT's submission for *three* reasons: *First*, the e-mail cannot be attributed to RESPONDENT, which is not bound by Botanical Garden's negotiation history [*supra para. 8*].

31 *Secondly*, it does not establish that mediation constitutes commencement of arbitration. Under the contract law applicable in all three relevant jurisdictions—verbatim adoptions of the UNIDROIT Principles on International Commercial Contracts ("**PICC**") [*PO1-4*, *p. 53*]—the initiation of mediation suspends limitation periods [*Artt. 10.7*, *10.6 PICC*; BRÖDERMANN, *Art. 10.7 A*]. Botanical Garden only suggested the fiction because Equatorianian law deviated from the PICC in this regard [*PO2-35*, *p. 59*]. Since Equatoriana adopted the PICC in 2024 [*ibid.*], the fiction became redundant.

32 *Thirdly*, even if mediation were deemed to be the commencement of arbitration for limitation purposes, this would merely be a substantive-law fiction. There is no indication that the fiction extends to the procedural determination of the arbitral commencement. In particular, arbitral pendency governs the suspension of limitation periods [*Art. 10.6 PICC*], not *vice versa*. Accordingly, the Parties did not deviate from the default rule. Arbitration commenced upon receipt of the NoA.

III. CONCLUSION

33 The 2025 SIAC Rules govern this Arbitration. The Parties did not agree to freeze the 2016 version. Rather, "current" must be interpreted dynamically under Art. 8(2) CISG. The Arbitration commenced upon SIAC's receipt of the NoA on 31 July 2025—bringing the case within the temporal scope of Rule 1.5 2025 SIAC Rules.

PART II: THE TRIBUNAL SHOULD ORDER DISCLOSURE OF Claimant's FUNDING AGREEMENTS

34 RESPONDENT requests the Tribunal to order disclosure of the litigation funding agreements ("**LFAs**") CLAIMANT concluded with AtJ-Financing ("**AtJ**") and LitSure. CLAIMANT seeks to conceal its LFAs without any legitimate justification. RESPONDENT, however, is entangled in proceedings influenced by a third party and requires the LFAs to assess the financial risks arising from CLAIMANT's reliance on third-party funders.

35 Under the applicable 2025 SIAC Rules, the Tribunal should order disclosure of CLAIMANT's LFAs [**I**]. Even if the Tribunal were to apply the 2016 SIAC Rules, the requirements for

disclosure are met [**II**]. At a minimum, the Tribunal should order disclosure with redaction of sensitive terms [**III**].

I. THE TRIBUNAL SHOULD ORDER DISCLOSURE UNDER THE 2025 SIAC RULES

36 Under the 2025 SIAC Rules, the requirements to order the LFAs' disclosure are met. Rule 38.4 2025 SIAC Rules empowers the Tribunal to order disclosure "after considering the views of the parties […] as it sees fit including in respect of details of the third-party funder's interest in the outcome of the proceedings […]". The adverse costs insurance LitSure provides is, if not a form of, closely analogous to third-party funding [*cf.* BENCH NIEUWVELD/SAHANI, *p. 12*; *ICCA Report*, *p. 132*]. LitSure and AtJ both have a direct economic interest in the outcome of the Proceedings; placing them squarely within the definition of third-party funders under Rule 2.1 2025 SIAC Rules. Thus, the Tribunal can order disclosure.

37 The Parties agree that the IBA Rules on the Taking of Evidence in International Arbitration ("**IBA Rules**") provide suitable guidance for the Tribunal's exercise of its discretion under Rule 38.4 2025 SIAC Rules [*MfC*, *para. 110*]. Under Art. 9(2)(a) IBA Rules, documents relevant to the case can be disclosed. RESPONDENT must establish relevance *prima facie* [KHODYKIN/MULCAHY/FLETCHER, *para. 6.125*; ZUBERBÜHLER *et al.*, *pp. 70 et seq.*]. Disclosure is warranted because the LFAs are relevant to these Proceedings [**A**] while CLAIMANT's objections do not preclude disclosure [**B**].

A. THE LFAS' CONTENT IS RELEVANT TO THE PROCEEDINGS

38 RESPONDENT's interests substantiate that disclosure is relevant to these Proceedings. While the Parties agree that conflicts of interest are not at issue in the present case [*MfC*, *paras. 85 et seqq.*; *PO2-21*, *p. 58*], grounds beyond conflicts of interest can justify disclosure [*Muhammet Çap v. Turkmenistan*, *Award*, *para. 44*; *Tennant Energy v. Canada*, *paras. 104 et seqq.*; *SAS v. Bolivia*, *PO10*, *paras. 80 et seq.*; GOELER, *pp. 131 et seq.*; SCHERER, *ICC Dossier No. 10*, *pp. 86 et seq.*]. Contrary to CLAIMANT's contention [*MfC*, *paras. 101 et seqq.*], there are *four* grounds warranting disclosure:

39 *First*, the LFA concluded with LitSure contains information relevant to RESPONDENT's decision if it should request security for costs [**1**]. *Secondly*, RESPONDENT has a legitimate interest in estimating the scope of any further damages CLAIMANT has reserved [**2**]. *Thirdly*, without disclosure, RESPONDENT can only sell its spice line at a considerable discount [**3**]. *Lastly*, disclosure reveals AtJ's influence on the Proceedings [**4**].

1. Disclosure Is Relevant for a Security for Costs Request

40 Given CLAIMANT's precarious financial situation [*PO2-20*, *p. 58*], it may be unable to satisfy a potential adverse costs award. To avoid being left to bear those costs, RESPONDENT considers seeking security for costs under Rule 48 2025 SIAC Rules [*Response-20*, *p. 34*]. The criteria for such a request are satisfied [**a**]. Contrary to CLAIMANT's submission [*MfC*, *para. 104*], disclosure of the LFAs does not require a pending request [**b**].

a. The Criteria for a Security for Costs Request Are Fulfilled

41 A security for costs request would—contrary to CLAIMANT's contention [*MfC*, *para. 104*]—fulfil the criteria. CLAIMANT argues that its "financial difficulties"—with insolvency imminent in five months [*PO2-20*, *p. 58*]—and third-party funding alone do not justify security for costs [*MfC*, *para. 105*]. However, an "arbitral hit and run" [*Guaracachi v. Bolivia*, *para. 3*] can constitute the extraordinary circumstances warranting a security for costs [*RSM v. Saint Lucia*, *paras. 73 et seqq.*; *X v. Y and Z*, *para. 40*; SWEIFY, *p. 126*]. This risk arises where a claimant can pursue its claim without financial exposure due to funding, but if unsuccessful and insolvent, leaves the respondent to its own legal costs [*Guaracachi v. Bolivia*, *para. 7*].

42 CLAIMANT's submission that LitSure will cover any adverse costs [*MfC*, *paras. 107*] does not convince for *three* reasons: *First*, termination clauses allow funders to withdraw in defined scenarios [BENCH NIEUWVELD/SAHANI, *pp. 24 et seq.*; *CIArb Guideline*, *pp. 40 et seq.*; *ICCA Report*, *p. 32*]. *Secondly*, third-party funding is typically limited to a budget [BENCH NIEUWVELD/SAHANI, *pp. 31 et seq.*; *CIArb Guideline*, *pp. 36 et seq.*]. Both the budget and termination clauses are unknown and could leave RESPONDENT exposed. *Thirdly*, only CLAIMANT, and not RESPONDENT, will have a direct claim against LitSure [*cf. TSA v. SBS Holdings*, *paras. 72 et seqq.*; GOELER, *p. 423*], which in case of insolvency would fall into CLAIMANT's insolvency estate. By contrast, security for costs, typically provided via bank guarantee or escrow-deposit [ALTENKIRCH, *pp. 270 et seq.*; KARRER/DESAX, *p. 349*], is resistant to insolvency [*PDVSA v. Clyde & Co*, *para. 31*; DRAGUIEV, *p. 96*]. LitSure's good reputation [*MfC*, *para. 109*; *PO2-22*, *p. 58*] does not alleviate this structural exposure.

43 Further, CLAIMANT relies on a decision of the High Court of Equatoriana to argue that disclosure is unnecessary because the Tribunal could order AtJ to pay in case of CLAIMANT's insolvency [*MfC*, *para. 108*]. However, this case does not support CLAIMANT's argument: As AtJ is not a party to the Arbitration Agreement, the Tribunal does not have jurisdiction to issue

a costs order against AtJ like a state court could do. Crucially, the High Court only ordered AtJ to pay *after* disclosure [*Exh. R4*, *p. 40*], thus, implicitly supporting RESPONDENT's position.

b. A Pending Request Is No Requirement for Disclosure

44 CLAIMANT relies on *Speers v. MakeMyTrip* [*MfC*, *para. 104*] to argue that the Tribunal cannot order disclosure of the LFAs absent a security for costs request. However, unlike in the case at hand, the claimants were not impecunious [*Speers v. MakeMyTrip*, *Final Award*, *para. 179*]. Thus, an "arbitral hit and run" was impossible. Instead, RESPONDENT submits to take guidance from *Muhammet Çap v. Turkmenistan*, where the tribunal held that even considering a security for costs request is a legitimate basis for disclosure [*Muhammet Çap v. Turkmenistan*, *PO3*, *para. 10*]. There, the claimants also had serious financial problems [*Muhammet Çap v. Turkmenistan*, *Award*, *para. 624*] and the tribunal found disclosure relevant to mitigate the risk of funder withdrawal in the event of adverse costs [*Muhammet Çap v. Turkmenistan*, *PO3*, *para. 12*]. The same concern arises here [*supra paras. 41 et seqq.*] and warrants disclosure.

45 Rather than immediately imposing the financial burden of a security for costs on CLAIMANT, RESPONDENT seeks disclosure of the LFA with LitSure. Only if the payment of adverse costs remains uncertain after disclosure, RESPONDENT will proceed with a security for costs request.

2. Disclosure Is Necessary to Make Proper Provisions for Further Damage Claims

46 RESPONDENT requests the Tribunal to order disclosure to make appropriate provisions in case CLAIMANT seeks recovery of its third-party funding costs [*PO2-27*, *p. 59*]. However, such recovery should neither be awarded as "other costs" under Rule 58 2025 SIAC Rules nor as further damages under Art. 74 CISG. Recovery under either route presupposes that RESPONDENT's conduct caused CLAIMANT to resort to third-party funding [*cf. Essar v. Norscot*, *paras. 76 et seq.*; *Speers v. MakeMyTrip*, *Final Award*, *para. 179*; GOELER, *p. 415*]. CLAIMANT's financial distress stems solely from a former manager destroying over two thirds of its Orchids in March 2025 [*PO2-20*, *p. 58*], not from RESPONDENT's conduct. Consequently, CLAIMANT's funding costs are not recoverable.

47 In any event, RESPONDENT must be able to estimate its exposure to make proper provisions. The magnitude of claimed funding costs is presently unknown. Market standards indicate funding returns around 300% of investment or 35% of granted damages [*Essar v. Norscot*, *paras. 22 et seqq.*; *e.g.*, *Nachingwea v. Tanzania*, *para. 408*; *LFA BioCardia*, *p. 15*]. Even disregarding that AtJ's aggressive strategy points to high fees [*Exh. R4*, *p. 40*], RESPONDENT's

potential exposure amounts up to USD 1,155,000 on standard rates alone. Hence, disclosure is necessary.

3. Disclosure Would Prevent Devaluation of RESPONDENT's Spice Line

48 RESPONDENT currently plans to sell its spice line [*Exh. C6-13 et seq., p. 17*; *PO2-28, p. 59*] and it is its legitimate interest to do so without unnecessary devaluation. Prospective buyers will factor this Arbitration into due diligence [*cf.* BERGAU/Fietz, *ch. 7 para. 71*; SHERMAN, *ch. 5, Legal Due Diligence para. VI*]. Without disclosure, potential buyers face uncertainty regarding (i) the enforceability of a potential adverse costs claim [*supra paras. 40 et seqq.*], and (ii) the magnitude of any funding costs CLAIMANT may seek to recover [*supra paras. 46 et seq.*]—forcing a substantial risk discount and potentially millions in losses. As disclosure may reduce that risk, RESPONDENT is entitled to protect itself.

4. Disclosure Would Reveal AtJ's Influence on the Proceedings

49 Further, RESPONDENT must know who, CLAIMANT or AtJ, effectively controls the Proceedings and whether RESPONDENT could seek adverse costs directly from AtJ. CLAIMANT argues that AtJ's potential influence is no reason for disclosure [*MfC, para. 106*]. The opposite is the case: common law courts held funders who materially control the proceedings liable for adverse costs [*Abu-Ghazaleh v. Chaul*; *Dymocks v. Todd, para. 25*; *Excalibur v. Texas Keystone 1, paras. 4, 161*]. Funders exert influence via termination clauses, settlement limits, and reporting/consultation obligations [GOELER, *p. 35*; *IBA CoI Guidelines, General Standard 6b*; *ICCA Report, pp. 74 et seqq.*]—all typical LFA terms [*CIArb Guidelines, pp. 33 et seqq.*; GOELER, *pp. 12 et seqq.*; STEINITZ/FIELD, *pp. 749 et seqq.*; *e.g., LFA BioCardia, pp. 3 et seqq.*].

50 Consistently, the High Court of Equatoriana ordered AtJ to pay adverse costs after reviewing its LFA [*Exh. R4, p. 40*]. Given AtJ's aggressive funding strategy and non-compliance with the funding industry's code of conduct [*ibid.*], material control is likely. To assess whether RESPONDENT could seek a similar costs order against AtJ at its seat in Danubia, a common law jurisdiction [*PO2-33 et seq., p. 59*], disclosure is warranted.

B. NO GROUNDS JUSTIFY BARRING DISCLOSURE OF THE AGREEMENTS

51 Contrary to CLAIMANT's submissions [*MfC, paras. 10 et seqq.*], nothing bars disclosure of the LFAs: they are neither commercially sensitive [**1**] nor privileged [**2**]. Disclosure would not undermine procedural equality [**3**], and it would not prejudice this Tribunal [**4**].

1. The Agreements Are Not Commercially Confidential

52 CLAIMANT asserts that the LFAs are commercially sensitive [*MfC*, *para. 113*]. Under Art. 9(2)(e) IBA Rules, commercial confidentiality justifies exclusion from production, if the objecting party establishes how disclosure of specific contents causes harm [*Chodiev v. Stein*, *para. 19*; KHODYKIN/MULCAHY/FLETCHER, *para. 12.289*; *O'MALLEY 9.85*]. CLAIMANT merely advances general assertions [*MfC*, *para. 113*] and fails to meet this threshold. Absent concrete information, RESPONDENT can only refer to the typical content of LFAs.

53 On that basis, the LFAs are not commercially confidential: Exclusion is justified only where information is highly commercially sensitive and disclosure would cause significant harm [MARGHITOLA, *5.11 [E]*; KHODYKIN/MULCAHY/FLETCHER, *para. 12.281*]. Commercially confidential documents are: (i) financial records, (ii) documents revealing know-how, or (iii) documents subject to NDAs with third parties [*SAS v. Bolivia*, *PO2*, *para. 25*; MARGHITOLA, *5.11 [D]*; O'MALLEY *9.84*, *9.86*; KHODYKIN/MULCAHY/FLETCHER, *para. 12.292*; FERRARI/ROSENFELD/*Berger*, *13.02 [B]*]. It is not apparent which LFA terms reveal CLAIMANT's (i) financial structure or its (ii) Orchid-propagation know-how.

54 Likewise, (iii) the NDAs in the LFAs [*PO2-24*, *p. 58*] do not preclude production. As parties could circumvent production simply by concluding NDAs, they are not a complete shield against disclosure [*Jardine Lloyd v. SJO Catlin*, *paras. 50 et seqq.*; O'MALLEY *9.89*; MARGHITOLA, *5.11 [D]*]. In fact, the LFAs expressly provide that disclosure ordered by an arbitral tribunal does not constitute a breach of the NDAs [*PO2-24*, *p. 58*].

55 Furthermore, contrary to CLAIMANT's submission [*MfC*, *para. 113*], disclosing the LFAs would not significantly harm its funders: *First*, RESPONDENT is neither active in the funding market nor commercially funded. Hence, it has no commercial use for the funder's compensation structures and there is no danger that a competitor uses the LFAs' compensation structure commercially. *Secondly*, there is no risk of public disclosure, as these Proceedings are confidential under Rule 59 2025 SIAC Rules. In conclusion, the LFAs are not commercially confidential.

2. The Agreements Are Not Privileged

56 Contrary to CLAIMANT's submission that the LFAs are confidential [*MfC*, *para. 110*], privilege does not justify denying production under Art. 9(2)(a) IBA Rules. CLAIMANT identified no legal standard for when privilege attaches. The Tribunal's broad evidentiary discretion expressly covers privilege under Rule 50(2)(k) 2025 SIAC Rules. Rule 32.3 2025 SIAC Rules confirms

that tribunals are not bound by domestic evidence regimes. Neither the IBA Rules nor the SIAC Rules establish a legal standard for privilege. In international arbitration, parties legitimately expect that transnational evidentiary principles apply [*Latam Hydro v. Peru*, *para. 14*; GOELER, *p. 168*; MÖCKESCH, *p. 221*]—thereby avoiding domestic procedural idiosyncrasies. RESPONDENT invites the Tribunal to apply transnational evidentiary principles:

57 The LFAs are not covered by privilege. Legal advice privilege shields communications made for the purpose of seeking or receiving legal advice [*Pope & Talbot v. Canada*, *para. 1.9*; *Three Rivers v. Bank of England*, *para. 34*; KHODYKIN/MULCAHY/FLETCHER, *p. 432*]. This principle is universally recognized [*IBA Task Force II*, *p. 2*; *ICCA Report*, *p. 136*; *LexMundi*; *e.g.*, *Akzo Nobel v. Commission of European Communities*, *para. 40*; *BGH Neue Juristische Wochenschrift 1990*, *pp. 510 et seq.*; *Latam Hydro v. Peru*, *para. 47*]. Courts regularly find that adverse costs insurance policies contain no legal advice—particularly as they do not contain communication with counsel [*Barr v. Biffa*, *para. 47*; *RBS Rights Issue Litigation*, *para. 112*]. This reasoning extends to the LFA with AtJ given that third-party funding is similar to adverse costs insurance [*cf. ICCA Report*, *p. 132*; *supra para. 36*]. CLAIMANT did not substantiate that either LFA contains counsel communication. Hence, they do not attract privilege.

3. Disclosure of the Agreements Would Be Consistent With Equality of Arms

58 Ordering disclosure of the LFAs would be consistent with equality of arms. CLAIMANT invokes *SAS v. Bolivia* to suggest that disclosure would enable RESPONDENT to misuse information from the LFAs [*MfC*, *paras. 111*, *114*]. However, the tribunal in *SAS v. Bolivia* denied disclosure because it was irrelevant to the case [*SAS v. Bolivia*, *PO10*, *para. 81*]; without addressing equality of arms. Here, disclosure would—at most—allow RESPONDENT to infer the funders' attitude toward the Arbitration. Mere speculation does not convey a tactical advantage and does not create procedural inequality. Accordingly, CLAIMANT concedes that its LFA "does not explicitly lay out [its] arbitration strategy" [*MfC*, *para. 111*].

59 CLAIMANT further argues that disclosure of its LFAs would violate equality of arms if RESPONDENT is not ordered to disclose details of the support from its parent company [*MfC*, *para. 115*]. However, such support arises from an inherent shareholder interest in the economic wellbeing of its subsidiary. While independent third-party funders choose specific proceedings as an investment opportunity, parent companies have shares in all their subsidiaries' proceedings [*cf. Bay View v. Rwanda*, *para. 61*]. In addition, intra-group financing operates within established corporate governance frameworks [*ICCA Report*, *p. 35*]: RESPONDENT and

its parent company, as public limited companies [*NoA-2*, *p. 2*], are already subject to statutory disclosure regimes and the parent company's influence is constrained by corporate law. Finally, CLAIMANT benefits from RESPONDENT's additional liquidity while RESPONDENT will not recover any "funding costs". Disclosure of the LFAs is consistent with procedural equality.

4. Disclosure of the Agreements' Content Would Not Prejudice the Tribunal

60 CLAIMANT—citing *Speers v. MakeMyTrip*—impugns the Tribunal's neutrality by suggesting that disclosure of the LFAs would cause prejudice [*MfC*, *para. 112*]. This is unfounded. In *Speers v. MakeMyTrip*, the tribunal denied disclosure as the financing agreement in question was irrelevant to the case; any remarks on potential influence were confined to the specific circumstances of the case and merely hypothetical [*Speers v. MakeMyTrip*, *First Partial Award*, *para. 81*]. In the present Proceedings, the LFAs are relevant [*supra paras. 38 et seqq.*] and CLAIMANT thus cannot rely on that decision to oppose disclosure based on speculative concerns about prejudice of *this* Tribunal.

61 To the contrary, Rule 38.4 2025 SIAC Rules expressly permits disclosure of a funder's interest in the outcome of the proceedings. This shows that the SIAC does not share CLAIMANT's concern. CLAIMANT already disclosed the existence of its funders [*NoA-32*, *p. 6*], accepting that—given funders' rigorous claim selection processes—funding in itself reflects a third party's positive assessment of the claim [AFFAKI, *p. 11*]. It is unclear how disclosure of the LFAs would affect the Tribunal more than that. RESPONDENT seeks disclosure of the LFAs and not of prior correspondence. This provides no basis to question the Tribunal's neutrality.

II. EVEN UNDER THE 2016 SIAC RULES, THE TRIBUNAL SHOULD ORDER DISCLOSURE

62 Even if the Tribunal were to apply the 2016 SIAC Rules, it has power to order full disclosure of the LFAs [**A**] and should exercise that power on the facts of this case [**B**].

A. THE TRIBUNAL HAS POWER TO ORDER DISCLOSURE

63 The Tribunal has power to order disclosure of CLAIMANT's LFAs. The Parties agree that the 2016 SIAC Rules contain no provision expressly governing third-party funding [*MfC*, *para. 81*]. However, Rule 27(f) 2016 SIAC Rules confers a document-production power to the Tribunal [CHOONG/MANGAN/LINGARD, *paras. 12.19 et seqq.*]. The cases CLAIMANT invokes [*MfC*, *para. 82*] do not support that the Tribunal lacks power. There, the tribunals denied disclosure because it was irrelevant [*SAS v. Bolivia*, *PO10*, *paras. 80 et seqq.*] and merely held that a party was not obliged to disclose its LFA [*Nachingwea v. Tanzania*, *p. 409*]. Hence, under Rule 27(f) 2016 SIAC Rules, the Tribunal may order disclosure.

64 Additionally, the Practice Note PN-01/17 (31 March 2017) on Arbitrator Conduct in Cases Involving External Funding ("**Practice Note**") specifies the Tribunal's powers under the 2016 SIAC Rules. CLAIMANT acknowledges that the Practice Note serves as guideline [*MfC*, *paras*. *85*, *88*, *105*]. Para. 5 Practice Note permits disclosure of "details of the External Funder's interest in the outcome of the proceedings". The LFA with AtJ includes provisions on premiums and the amount of funding [*PO2-26*, *p*. *58*]—thereby mirroring the funder's interest. This extends to the LFA with LitSure. Adverse costs insurance policies typically reflect the insurer's financial interest [*cf*. GOELER, *p*. *53*]. The Practice Note therefore confirms the Tribunal's power to order disclosure under the 2016 SIAC Rules.

65 The Danubian Supreme Court decision CLAIMANT portrays as its silver bullet [*MfC*, *para*. *83*] is, upon closer scrutiny, merely a blank. Contrary to CLAIMANT's submission, the Tribunal is neither bound by the Supreme Court's decision nor the upheld award. Further, the Danubian Supreme Court's reasoning is opaque: The grounds for the review of the award are unpublished and may well be entirely unrelated to third-party funding. If a tribunal erroneously found it had no power, a court could review the award under Art. 34(2)(a)(iii) UNCITRAL Model Law on International Commercial Arbitration, adopted in the Danubian Arbitration Law [*PO1-III-4*, *p*. *53*], as *infra petita* [*cf*. *BLB v*. *BLC*, *para*. *99*; TAN/AHMAD, *p*. *422*], which requires a party application [BINDER, *p*. *450*]. There is no indication that either party pursued this. Hence, the Danubian Supreme Court decision does not support CLAIMANT's contention that the Tribunal lacks power to order disclosure of the LFAs.

B. THE FULL AGREEMENTS SHOULD BE DISCLOSED UNDER THE 2016 SIAC RULES

66 Under the 2016 SIAC Rules, the Tribunal should order disclosure of CLAIMANT's LFAs. The Parties agree that, under the Practice Note, disclosure must be "appropriate" [*MfC*, *para*. *85*]. The tribunal in *Speers v*. *MakeMyTrip*—applying the 2013 SIAC Rules and the Practice Note—balanced the parties' submissions in deciding the issue [*cf*. *Speers v*. *MakeMyTrip*, *First Partial Award*, *para*. *81*]. Here, while RESPONDENT has demonstrated legitimate, case-relevant interests warranting disclosure, CLAIMANT fails to substantiate interests capable of excluding production [*supra paras*. *38 et seqq*.]. Given this stark asymmetry, disclosure is appropriate.

III. AT A MINIMUM, REDACTED VERSIONS OF THE AGREEMENTS SHOULD BE DISCLOSED

67 Even if the Tribunal were to find that some of CLAIMANT's objections have merit, this would not justify dismissing RESPONDENT's application in its entirety. The Tribunal can order disclosure subject to redactions of any genuinely sensitive clauses, which is well-established in

arbitration [*cf.* MARGHITOLA, 5.11 *[E]*; *e.g.*, *Barr v. Biffa*, *para. 48*; *Excalibur v. Texas Keystone 2*, *para. 25*]. Complete exclusion of evidence is an exception [KHODYKIN/MULCAHY/FLETCHER, *para. 12.278*]. In any event, the Tribunal should order production of redacted LFAs.

IV. CONCLUSION

68 Under the 2025 SIAC Rules, and even under the non-applicable 2016 SIAC Rules, the Tribunal can and should order disclosure of CLAIMANT's LFAs. RESPONDENT has legitimate interests in disclosure to assess its financial exposure. CLAIMANT seeks to conceal its LFAs without substantiating any legitimate basis. The Tribunal should therefore order disclosure of the LFAs.

PART III: Claimant IS NOT ENTITLED TO DAMAGES

69 RESPONDENT requests the Tribunal to find that CLAIMANT is not entitled to damages under Art. 61(1)(b) CISG. CLAIMANT attempts to pin liability to RESPONDENT for an unforeseeable and insurmountable impediment, disregarding what the Parties agreed: they included "government measures" into their *force majeure* clause. Now that this scenario materialized, CLAIMANT seeks to deprive RESPONDENT of the very protections the Parties agreed upon.

70 CLAIMANT's allegations [*MfC*, *paras. 118 et seqq.*] overlook decisive facts: Following the Orchids' uplisting to CITES Appendix I on 1 February 2024 with immediate effect, Equatoriana ceased issuing Import Permits altogether ("**Permit Moratorium**") [*PO2-17*, *p. 57*]. At the latest on 5 February 2024—when RESPONDENT's Import Permit application failed—timely performance was definitively impeded because no Permits were issued pending further ministerial guidance [*PO2-17*, *pp. 57 et seq.*]. The Permit Moratorium continued throughout the delivery period [*PO2-18*, *p. 58*] and qualifies as impediment beyond RESPONDENT's control, exempting it from liability (Art. 79 CISG) [**I**]. In any event, CLAIMANT is barred from claiming damages under Art. 80 CISG as its propagation method triggered the requirement for an Import Permit and thereby caused the impediment [**II**].

I. Respondent IS EXEMPT FROM LIABILITY DUE TO *FORCE MAJEURE*

71 RESPONDENT is exempt under Art. 79(1) CISG because the Permit Moratorium rendered obtaining an Import Permit impossible. CLAIMANT correctly notes that Art. 79(1) CISG must be interpreted in light of Clause 12 SOA [*MfC*, *paras. 118 et seq.*]. Clause 12 SOA prevails where it differs from Art. 79 CISG [*cf.* KRÖLL *et al./Atamer*, *Art. 79 para. 89*] but crucially mirrors Art. 79 CISG's legal effects. Further, it specifies "impediment[s] beyond […] control" [*Art. 79(1) CISG*] by enlisting potential *force majeure* events—expressly extending to "government measures", *i.e.*, the scenario at hand.

72 Accordingly, exemption under Art. 79 CISG in conjunction with Clause 12 SOA requires that non-performance was caused by an impediment beyond control, which was not reasonably foreseeable at contract conclusion, and which could not reasonably be avoided or overcome. Contrary to CLAIMANT's submissions [*MfC*, *paras. 118 et seqq.*], RESPONDENT is exempt from liability because the Permit Moratorium was an impediment beyond its control, for which the risk was not allocated to RESPONDENT [**A**]. The Permit Moratorium was not foreseeable at Contract conclusion [**B**], and its effects could not reasonably be mitigated [**C**]. Further, notification is not a requirement for exemption [**D**], and the Permit Moratorium was the exclusive cause for non-performance [**E**].

A. THE PERMIT MORATORIUM WAS AN IMPEDIMENT BEYOND CONTROL FOR WHICH RESPONDENT DID NOT ASSUME A GUARANTEE

73 Contrary to CLAIMANT's contentions [*MfC*, *paras. 124 et seqq.*], the Permit Moratorium constitutes an impediment [**1**] beyond RESPONDENT's control [**2**]. RESPONDENT did not assume the risk for the impediment, such that performance would have been guaranteed [**3**].

1. The Permit Moratorium Was an Impediment

74 RESPONDENT, in principle, agrees with CLAIMANT that events listed in Clause 12 SOA, including "government measures", may qualify as impediments which can exempt a Party from liability [*MfC*, *para. 123*]. Nevertheless, CLAIMANT argues that neither the CITES decision nor Equatoriana's Permit Moratorium qualify as a "government measure" because, in its view, only permanently binding measures prevent performance [*MfC*, *paras. 126 et seqq.*]. This is incorrect. Courts, tribunals, and scholars agree that an impediment is an event outside the parties' spheres of risk [*cf. infra paras. 80 et seqq.*] that hinders performance [*UAB Ivabalté v. Nederlandse Schapen- en Geitenfokkersorganisatie*, *para. 34*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 12*; STAUDINGER/*Magnus*, *Art. 79 para. 16*], including state interference with import/export permits [*IUGAS v. Naftogaz* (I), *para. 146*; HONNOLD/FLECHTNER, *para. 432.1*; KRÖLL *et al.*/*Atamer*, *Art. 79 para. 46*; *UNCITRAL Digest of Case Law*, *Art. 79 para. 10*]. Contrary to CLAIMANT's line of argument, impediments need not be "permanent": Art. 79(3) CISG provides that temporary impediments exempt from liability for their duration [KRÖLL *et al.*/*Atamer*, *Art. 79 para. 87*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 42*].

75 Although the authorities awaited ministerial guidance, the Permit Moratorium was an executive act of the Equatorianian government that rendered obtaining Import Permits during this period

impossible [*PO2-17*, *p. 57*]. The Permit Moratorium continued until CLAIMANT terminated the Contract on 1 March 2024 [*PO2-17 et seq*., *p. 57 et seq*.]. To achieve this interference, no legislation was needed. Accordingly, it is a "government measure" and thus, the impediment.

2. The Impediment Was Beyond RESPONDENT'S Control

76 CLAIMANT concedes that the CITES decision was "outside" RESPONDENT's control [*MfC*, *para. 124*]. RESPONDENT submits that the same holds true for the subsequent Permit Moratorium. RESPONDENT neither controlled the government measure nor whether an Import Permit would be required in the first place.

77 Only events *outside* the breaching party's sphere of control justify exemption from liability; events *within* its sphere, such as defects in the goods, cannot [BIANCA/BONELL/*Tallon*, *Art. 79 para. 2.6.2*; HONSELL/*Magnus*, *Art. 79 para. 10*; KRÖLL *et al.*/*Atamer*, *Art. 79 para. 44*]. State interventions are generally outside a party's sphere of control [SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 18*]; as are events within the counterparty's sphere of control. In this regard, RESPONDENT invites the Tribunal to consider the 1997 *Butter Case* as guidance. There, the MKAC tribunal held that, under the CISG, the denial of a governmental certificate—due to excess lead salts in the butter attributable to the seller—was beyond the buyer's control [*Butter Case*, *p. 14*]. The goods complied with the contract but not with the applicable health regulations leading to a sales ban. Here, the requirement for an Import Permit equally depended on whether the Orchids would fall under the CITES exception—which in turn depended solely on CLAIMANT's production method:

78 The Permit Moratorium would not have impeded performance had CLAIMANT propagated the Orchids as usual: CLAIMANT typically sourced up to 10% wild parental stock, which preserves the "artificially propagated" status [*cf. Conf. Res. 11.11*, *para. 2*, *3*] and qualifies for exception under Art. VII(4) CITES; no Import Permit would have been required. Augmentation from the wild is merely exceptionally permitted [*Conf. Res. 11.11*, *para. 1b*]. In May 2021, however, CLAIMANT added additional wild cuttings to replace a 30% propagation-stock loss caused by its employees and propagated all Orchids together [*PO2-3*, *p. 55*]. Thereby, CLAIMANT triggered the requirement for an Import Permit for the whole batch under Art. III(3) CITES.

79 Like the seller in the *Butter Case*, CLAIMANT alone controlled the relevant composition of the goods, and—by extension—whether the CITES exception applied. The Import Permits' unattainability is an impediment beyond RESPONDENT's control.

3. The Risk for The Impediment Was Not Allocated to RESPONDENT

80 CLAIMANT contends that RESPONDENT contractually undertook the risk for the impediment [*MfC*, *para*. *124*]. This does not convince. RESPONDENT did not assume that risk. Rather, the Parties agreed—via Clause 12 SOA—that "government measures" constitute *force majeure* such that neither Party bears the risk for non-performance due to state interventions.

81 RESPONDENT agrees with CLAIMANT [*MfC*, *para*. *124*] that contractual risk allocation determines liability [GARRO, *pp*. *220 et seqq*.; HONSELL/*Magnus*, *Art*. *79 para*. *12*; KRÖLL *et al*./*Atamer*, *Art*. *79 para*. *89*]. Where a party expressly assumes a risk and thereby guarantees performance, it cannot invoke *force majeure* [SCHLECHTRIEM/SCHWENZER/ *Schwenzer*, *Art*. *79 para*. *13*; STAUDINGER/*Magnus*, *Art*. *79 para*. *17*]. However, absent express and clear wording, a performance obligation is not ordinarily a guarantee [SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art*. *79 para*. *59*; HUBER, *p*. *498*]. Accordingly, where parties list a specific event in a *force majeure* clause, the risk is not assigned to one party and exemption remains available [*Gasum v*. *Gazprom*, *paras*. *335 et seq*.; LIU, *para*. *4.4*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art*. *79 para*. *58*].

82 No reasonable person under Art. 8(2) CISG would understand that RESPONDENT assumed a guarantee under the Contract: CLAIMANT points to RESPONDENT's obligation to apply for an Import Permit under Clause 5.1 SOA and Section B(7) Incoterms , it thereby attempts to infer a guarantee from RESPONDENT's expression of intention to do its best to fulfill the Contract, despite the impediment [*MfC*, *para*. *125*]. Yet neither does the Contract contain express language transforming this obligation into a guarantee, nor did RESPONDENT ever communicate this. Hence, the Tribunal should not turn RESPONDENT's efforts to perform into a guarantee. A reasonable person would not view this as sufficient to meet the high threshold of the express wording requirement. Further, well-versed business parties would not have assumed such a guarantee, as policy development was unforeseeable and the trade with regulatory susceptibility depended, *inter alia*, on the propagation method exclusively controlled by CLAIMANT. Clause 12 SOA exemplifies "government measures" as *force majeure* events such that neither Party bears the risk for non-performance due to state interventions. Accordingly, the risk was not allocated to RESPONDENT.

B. THE IMPEDIMENT WAS NOT FORESEEABLE AT THE TIME OF CONTRACT CONCLUSION

83 CLAIMANT argues that the CITES decision was foreseeable because CITES conferences occur at regular intervals [*MfC*, *paras*. *130 et seqq*.]. Yet the uplisting would not have impeded

performance absent the Permit Moratorium [*supra para. 70*]. Further, the periodic nature of CITES conferences does not establish foreseeability of its decisions or its practical effect.

84 While the following Permit Moratorium proved *possible* as it happened, CLAIMANT does not substantiate how it was *probable* enough to be foreseeable. Foreseeability is assessed objectively under Art. 8(2) CISG by reference to a reasonable person in the party's position and business context [KRÖLL *et al./Atamer*, *Art. 79 paras. 50*, *52*; BRUNNER, *p. 160*; DA SILVEIRA, *pp. 224 et seq.*; HEUZÉ, *para. 470*; LIU, *para. 4.4*]. The relevant point in time is contract conclusion [ENDERLEIN/MASKOW, *Art. 79 para. 6*; DA SILVEIRA, *pp. 222 et seq.*]. Accepting CLAIMANT's rationale—that every possibility is foreseeable—would deprave the requirement of its purpose and practical effect [*cf.* ENDERLEIN/MASKOW, *Art. 79 para. 5.3*; KRÖLL *et al./Atamer*, *Art. 79 para. 51*]. The impediment was highly unlikely for *four* reasons:

85 *First*, CLAIMANT relies on protests from 2023—*after* Contract conclusion—to infer that RESPONDENT should have anticipated public opposition and, by extension, the impediment [*MfC*, *para. 137*]. However, the relevant time is Contract conclusion on 25 August 2022.

86 *Secondly*, the Parties contracted under a generous permitting practice in Equatoriana and Mediterraneo, including routine grants for primarily commercial plant deliveries under the pretext of research [*Exh. C4*, *p. 14*]. At Contract conclusion, nothing indicated a policy shift. In fact, Equatoriana did not view trade bans as feasible conservation policy [*Exh. R1-6*, *p. 37*].

87 *Thirdly*, the concrete causal chain and timing were unforeseeable: Mediterraneo strongly objected to the CITES decision [*Exh. C4*, *p. 14*]; Equatoriana initially opposed the decision and later did not support it [*NoA-12*, *17*, *p. 4*; *Response-13*, *p. 33*]. Only sudden public outrage shortly before the CITES decision—unforeseeable one and a half years earlier—catalyzed the policy shift [*Response-13*, *p. 33*]. A reasonable person could not have foreseen such abrupt change in the authorities' issuance practice at Contract conclusion.

88 *Fourthly*, RESPONDENT expected the CITES decision on 1 February 2024 not to enter into force within the delivery period [*PO2-14*, *p. 57*]. Usually, CITES decisions are implemented after 90 days pursuant to Art. XV 1(c) CITES—which, in this case, would not fall within the delivery window ending in March 2024. Contrary to what CLAIMANT argues [*MfC*, *para. 136*], a reasonable person would assume that delivery remains unaffected, particularly as CITES decisions had never been introduced with immediate effect before [*PO2-14*, *p. 57*]. Hence, a reasonable person could not have foreseen the Permit Moratorium at Contract conclusion.

C. IT WAS NOT EXPECTABLE TO MITIGATE THE EFFECTS OF THE IMPEDIMENT

89 RESPONDENT was not expected to undertake the endeavors proposed by CLAIMANT—taking delivery early [**1**] and obtaining an anticipatory permit [**2**] [*MfC*, *paras. 142 et seqq.*]—as they fail to consider that required endeavors to mitigate the impediment's effects must be "reasonable" according to Clause 12.2 SOA, which none of the above were.

1. Taking Delivery Early Could Not Reasonably Be Expected

90 CLAIMANT contends that RESPONDENT could have easily taken delivery before the determined delivery date on 27 March 2024 and is thus not exempt from liability [*MfC*, *paras. 139 et seqq.*]. However, "reasonable" endeavors under Clause 12 SOA are those a similarly situated person would undertake [*cf. Macromex v. Globex*, *para.* 29; LIU, *para. 4.5*]. Measures that fundamentally alter the contractual equilibrium are not reasonable [*Tsakiroglou v. Noblee Thorl*, *pp. 331 et seq.*; SCHWENZER II, *pp. 714 et seq.*]. Early delivery would have fundamentally altered the contractual equilibrium in *two* respects:

91 *First*, requiring early delivery would negate RESPONDENT's contractually vested right to determine the delivery date. Changes going to the essence of the agreement deprive a party of what it was entitled to expect and are not reasonable alternatives [*Hilaturas Miel, S.L. v. Republic of Iraq*, *paras. 83 et seqq.*]. RESPONDENT accepted CLAIMANT's proposal at short notice only because it negotiated the right to set the delivery date to accommodate known greenhouse-construction delays [*Exh. R2*, *p. 36*]. Without that right, the Contract would have been unprofitable, as communicated to and accepted by CLAIMANT from the outset [*Exh. R2*, *p. 38*; *NoA-9*, *p. 3*]. Hence, a reasonable person under Art. 8(2) CISG would view the contractual equilibrium as fundamentally altered, rendering early delivery unreasonable.

92 *Secondly*, early delivery would have caused excessive transportation, storage and energy costs in relation to the contractual risk distribution. Where performance becomes excessively onerous, the obligor need not incur losses beyond the *limit of sacrifice* [GARRO, *CISG-AC No. 7*, *comment 38*; BRUNNER, *p. 223*; HONNOLD/FLECHTNER, *Art. 79 para. 432.2*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 31*; SCHWENZER I, *pp. 728 et seq.*; SCHWENZER II, *p. 714*]. The relevant tolerance is determined by risk allocation [*CISG-AC No. 20*, *Rule 7a*]: Exemption is barred where the risk for a fundamental change in circumstances has been assumed; but conversely, remains available where it is contractually excluded [MUÑOZ, *CISG-AC No. 20*, *comment 1.2*; BRUNNER, *para. 147*].

93 Early delivery would have doubled transportation costs to 100 USD per plant [*PO2-15*, *p. 57*] and required either container storage—risking at least 20% or even total loss—or using unsuitable old greenhouses, raising energy costs by at least 200% and most likely causing total loss within three years [*ibid.*]. This renders performance excessively onerous, considering that RESPONDENT did not assume the risk for a change in circumstances [*supra paras. 80 et seqq.*]. Early delivery would alter the contractual equilibrium fundamentally and thus be unreasonable.

2. Obtaining an Anticipatory Permit Could Not Reasonably Be Expected

94 CLAIMANT contends RESPONDENT should have applied earlier for an anticipatory permit [*MfC*, *para. 145*]. However, this could not reasonably be expected: the less likely an impediment, the lower the threshold for *reasonable* endeavors, because parties cannot be required to plan for all possible contingencies [KRÖLL *et al./Atamer*, *Art. 79 para. 51*; LIU, *para. 4.4*]. RESPONDENT promptly applied for an Import Permit when the impediment arose—six weeks before the anticipated delivery [*PO2-17*, *p. 57*]. Earlier application was unreasonable because the impediment depended on a cascade of unlikely events [*supra paras. 83 et seqq.*] and because it was uncertain whether a Permit would be required or granted before the policy shift. Parties cannot be required to pursue all potentially relevant licenses where future necessity is uncertain.

D. THE NOTIFICATION WAS NO REQUIREMENT FOR EXEMPTION

95 CLAIMANT argues that RESPONDENT failed to notify CLAIMANT in time and is therefore precluded from invoking exemption [*MfC*, *paras. 119 et seq.*]. However, notification is not a requirement for exemption [**1**]. In any event, RESPONDENT complied with the duty to notify [**2**].

1. Clause 12.2 SOA Merely Specifies Art. 79(4) CISG

96 The duty to notify under Clause 12.2 SOA is not an additional requirement for exemption under Art. 79(1) CISG. It merely specifies "within reasonable time" under Art. 79(4) CISG.

97 CLAIMANT relies on *TSK and MTU v. Prime Energía* to argue that failure to notify "can result in forfeiting the exemption" [*MfC*, *para. 119*]. That is only true where the parties expressly stipulated such forfeiture—as in that case ("[i]f the Affected Party fails to notify […] [it] shall not be entitled to the benefits of this Article [*sc.* the *force majeure* clause]") [*TSK and MTU v. Prime Energía*, *paras. 186 et seqq.*]. Here, Clause 12.2 SOA provides no separate remedy; it merely fixes a notification period. The legal consequence of Art. 79(4) CISG remains unchanged: it establishes a separate basis for damages resulting from late notification, but does not affect exemption under Art. 79(1) CISG [BIANCA/BONELL/*Tallon*, *Art. 79 para. 2.8*; FERRARI/KIENINGER/MANKOWSKI/*Saenger*, *Art. 79 para. 10*; HUBER/MULLIS/*Huber*, *Art. 79*

para. 4c; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 48*]. Absent express condition-precedent language, non-compliance does not affect exemption.

98 Even if Clause 12 SOA were ambiguous, any ambiguity must be construed *contra proferentem* against CLAIMANT. CLAIMANT drafted the clause [*PO2-8*, *p. 56*] and omitted any consequence for non-notification; it therefore bears the risk of ambiguity [*cf. Bowling Alleys Case*, *para. 21*; SCHLECHTRIEM/SCHWENZER/*Schmidt-Kessel*, *Art. 8 para. 53*].

2. In Any Event, RESPONDENT Complied With the Duty to Notify

99 In any event, RESPONDENT notified CLAIMANT as required under Art. 79(4) CISG in conjunction with Clause 12.2 SOA. CLAIMANT argues that notification is required regardless of "actual knowledge of the impediment" [*MfC*, *para. 119*]. This is unsupported: notification duties are satisfied where notice does not convey new information, because then, notification is redundant [KRÖLL *et al.*/*Atamer*, *Art. 79 para. 96*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 47*; STAUDINGER/*Magnus*, *Art. 79 para. 45*].

100 CLAIMANT was already aware of the potential uplisting into CITES Appendix I in November 2023 [*NoA-11*, *pp. 3 et seq.*]. The later actual uplisting and its immediate effect were public and known to CLAIMANT [*NoA-17 et seq.*, *p. 4*]. Requiring further notice from RESPONDENT would elevate form over substance. Additionally, regarding the subsequent Permit Moratorium, RESPONDENT notified in time pursuant to Clause 12.2 SOA, which only requires notice "within **5** days of becoming aware". RESPONDENT became aware of the impediment and its effects on 8 February 2024, when the Permit Moratorium was announced [*PO2-18*, *p. 57*], and notified CLAIMANT on 10 February 2024 [*NoA-19*, *p. 4*]. Thus, notification was timely and sufficient.

E. THE IMPEDIMENT WAS THE EXCLUSIVE CAUSE FOR THE NON-PERFORMANCE

101 Equatoriana's Permit Moratorium caused the non-performance as required under Art. 79 CISG. CLAIMANT's assertion that RESPONDENT caused the non-performance by not applying for an anticipatory permit [*MfC*, *paras. 150 et seqq.*] conflates distinct requirements: Causality excludes exemption only where an independent breach would have led to the non-performance regardless of the impediment [BIANCA/BONELL/*Tallon*, *Art. 79 para. 2.6.6.*; BRUNNER, *p. 340*; HEUZÉ, *para. 472*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 79 para. 16*]. However, causality may not undermine the reasonableness criterion, which limits endeavors required to overcome the impediment [BALL/*Bach*, *Art. 79 para. 56*]. Therefore, CLAIMANT cannot repurpose unreasonable endeavors [*supra paras. 89 et seqq.*] to now establish a separate cause.

102 CLAIMANT further alleges that RESPONDENT's business decision to revise its spice line caused the non-performance [*MfC*, *paras*. *149 et seqq*.]. However, motives are immaterial: the causality test is objective and asks only whether non-performance was "due to" the impediment [*Macromex v. Globex*, *pp*. *5 et seqq*.]. The decisive barrier was the blanket suspension of Permits, not RESPONDENT's business strategy. But for the Permit Moratorium, RESPONDENT would have been able to perform and is thus exempt from liability.

II. IN ANY EVENT, Claimant IS BARRED FROM CLAIMING DAMAGES IT HAS CAUSED

103 In any event, CLAIMANT is barred from asserting a claim for damages in accordance with Art. 80 CISG because its own conduct triggered the Import Permit requirement and thereby led to the impediment preventing delivery. Art. 80 CISG applies where the other party's non-performance is caused by an act or omission—not necessarily a breach of contract—of the party asserting the claim [KRÖLL *et al.*/*Atamer*, *Art*. *80 paras*. *4 et seqq*.]. Indirect causation suffices where a risk from the promisee's sphere of control, created by its conduct, materializes [*Beer Case I*, *para*. *81*; ACHILLES, *Art*. *80 para*. *3*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art*. *80 para*. *4*; STAUDINGER/*Magnus*, *Art*. *80 para*. *16*]. Here, the immediate obstacle was Equatoriana's cessation of permit issuance—but the requirement arose only because CLAIMANT derogated from its usual, renowned propagation method by including 30% wild flowers [*Exh*. *C1-5*, *p*. *7*]. Accordingly, CLAIMANT is barred from asserting damages under Art. 80 CISG.

III. CONCLUSION

104 The Parties designated "government measures" as *force majeure* events for which neither party is liable where—as here—they are unforeseeable and insurmountable. Now that this scenario has materialized and rendered performance impossible, CLAIMANT seeks to pin liability to RESPONDENT. RESPONDENT, nevertheless, applied diligently for an Import Permit and did all that was reasonably expected. Thus, RESPONDENT is exempt from liability under Art. 79 CISG.

PART IV: Claimant DID NOT INCUR DAMAGES

105 Even if CLAIMANT were entitled to damages—*quod non* [*supra paras*. *69 et seqq*.]—RESPONDENT requests the Tribunal to find that CLAIMANT did not incur damages under Artt. 74, 75 CISG. Properly applied, the CISG yields no damages because CLAIMANT's arbitrary designation of a specific transaction as "cover sale" disregards Art. 75 CISG's core requirements. RESPONDENT invites the Tribunal to look at the bigger picture:

106 *First*, the February 2024 Agreement is no cover sale under Art. 75 CISG because it merely accelerated performance of a pre-existing contract [**I**]. *Secondly*, Art. 75 CISG does not apply

because the alleged cover sale occurred before avoidance [**II**]. *Thirdly*, in any event, the relevant quantity to calculate damages is 2,700 Orchids [**III**].

I. THE FEBRUARY 2024 AGREEMENT IS NOT A COVER SALE UNDER ART. 75 CISG

107 On 15 February 2024, CLAIMANT concluded a contractual "package" [*NoA-24*, *p. 5*] with Herbal Cosmetics ("**Herbal**") affecting an earlier sale concluded in January 2022 ("**January 2022 Sale**"): *First*, CLAIMANT agreed for the "early delivery [*sc.* on 15 April 2024]" [*NoA-22*, *p. 5*] of 3,200 ± 5% Orchids at USD 1,000 per Orchid ("**February 2024 Agreement**"). *Secondly*, CLAIMANT concluded a contract for 2,000 Orchids to be delivered in December 2024 at the market price of 1 October 2024, with an additional 2,000 Orchids at Herbal's option until 10 October 2024 ("**October 2024 Sale**") [*NoA-24*, *p. 5*]. Herbal exercised its option on 2 October 2024 at USD 3,200 per Orchid—a gain for CLAIMANT compared to the Contract price of USD 2,000 per Orchid [*Clause 3.1 SOA*].

108 CLAIMANT argues that the February 2024 Agreement constitutes a cover sale under Art. 75 CISG [*MfC*, *paras. 167*, *185 et seqq.*]. This contention is unfounded. The February 2024 Agreement merely advanced delivery under the January 2022 Sale and therefore cannot qualify as a substitute transaction under Art. 75 CISG [**A**]. In addition, where a party regularly concludes comparable transactions, the first transaction after avoidance is the relevant cover sale under Art. 75 CISG—here the October 2024 Sale [**B**].

A. THE FEBRUARY 2024 AGREEMENT DID NOT REPLACE THE ORIGINAL CONTRACT

109 The February 2024 Agreement is not a cover sale under Art. 75 CISG because it merely advanced delivery under an existing contract. For a transaction to qualify as "substitute" under Art. 75 CISG, the aggrieved party must establish a sufficient connection to the original contract [SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 75 para. 3*; *Glass Crushing Machine Case*, *para. 56*]. A transaction concluded irrespective of the original contract cannot serve as cover sale because it is no "substitute" within the meaning of Art. 75 CISG [GOTANDA, *CISG-AC No. 8*, *comment 3.4*; *Delchi Carrier S.p.A. v. Rotorex Corp.*, *para. 40*; KRÖLL *et al./Djordjević*, *Art. 74 para. 40*].

110 CLAIMANT understands RESPONDENT's argument as being that the February 2024 Agreement cannot serve as cover sale because it additionally amended the January 2022 Sale [*MfC*, *para. 174*]. This is not RESPONDENT's argument. The February 2024 Agreement was not a separate sale but rather modified the delivery schedule of the January 2022 Sale. CLAIMANT itself labels it an agreement for an "early delivery" [*NoA-22*, *p. 5*; *Exh. C6-9 et seq.*, *pp. 16 et*

seq.], not a short notice substitute sale. Accordingly, the delivery of Orchids under the February 2024 Agreement constituted performance of the January 2022 Sale. The payment terms confirm this: The down payment for the January 2022 Sale was used for the delivery of Orchids under the February 2024 Agreement [*Exh*. *C6-10*, *p*. *17*]. The February 2024 Agreement therefore did not substitute the original Contract and cannot qualify as a cover sale under Art. 75 CISG.

111 CLAIMANT argues that the February 2024 Agreement is sufficiently linked to the original Contract because both sales concerned the same generation of Orchids [*MfC*, *para*. *186*]. Such a link is allegedly absent for the October 2024 Sale because "the SOA provided for Orchids that would flower in the Summer of 2024" [*ibid*.]. CLAIMANT cannot specify which Clause states an exact production batch [*cf*. *ibid*.]—because there is no such contractual basis: Clause 7.1 SOA does not specify a production batch, and the Parties did not agree on any batch allocation in negotiations or through subsequent conduct [*cf*. *PO2-8*, *p*. *56*; *Exh*. *C1-11*, *p*. *8*; *Exh*. *C2*, *p*. *9*]. CLAIMANT's "batch" narrative therefore cannot establish the required link and remains an opportunistic assertion.

B. THE FIRST SALE AFTER AVOIDANCE IS THE COVER SALE UNDER ART. 75 CISG

112 Contrary to Claimant's assertion [*MfC*, *paras*. *185 et seqq*.], the October 2024 Sale forms the basis for any calculation under Art. 75 CISG because it is CLAIMANT's first transaction after avoidance within its regular Orchid trade. Where a party regularly carries out similar transactions and does not provide anticipatory notice to conclude a specific cover sale, the first transaction after avoidance constitutes the cover sale [HONNOLD/FLECHTNER, *para*. *410.1*; HUBER/MULLIS, *p*. *285*; SCHMIDT-AHRENDTS, *p*. *83*]. This approach prevents arbitrary selection of a disadvantageous transaction to shift market risk onto the breaching party—as intended by Art. 75 CISG [*ibid*.]. CLAIMANT regularly sells Vanilla Orchids [*NoA-8*, *p*. *3*; *Exh*. *C1-6*, *p*. *7*]. Thus, the October 2024 Sale is the relevant benchmark to calculate damages. Under this Sale, CLAIMANT made a gain compared to the original Contract.

II. ALTERNATIVELY, THE COVER SALE DID NOT OCCUR *AFTER* AVOIDANCE

113 Even if the Tribunal were to find that the February 2024 Agreement qualifies as cover sale, Art. 75 CISG still does not apply because the transaction occurred *before* avoidance [**A**]. Moreover, CLAIMANT cannot recover damages under Art. 74 CISG, as that would circumvent the requirement of avoidance under Art. 75 CISG [**B**].

A. ART. 75 CISG DOES NOT APPLY

114 CLAIMANT argues that it avoided the Contract on 10 February 2024 [*MfC*, *paras*. *182 et seq*.], and that RESPONDENT's alleged definite refusal renders avoidance dispensable [*MfC*, *paras*. *178 et seqq*.]. This is neither factually nor legally convincing. On the facts, CLAIMANT did not avoid the Contract [**1**], and RESPONDENT did not definitely refuse performance [**2**]. As a matter of law, applying Art. 75 CISG based on a pre-avoidance cover sale would contradict the Article's wording, its remedial logic, and legal certainty [**3**].

1. CLAIMANT Did Not Avoid the Contract on 10 February 2024

115 CLAIMANT asserts that it avoided the Contract already on 10 February 2024 [*MfC*, *paras*. *182 et seq*.] This is not convincing. The declaration of avoidance under Art. 26 CISG "must satisfy a high standard of clarity and precision" [*German Goods Case*, *p*. *2*; FERRARI/KIENINGER/MANKOWSKI/*Ferrari*, *Art*. *26 para*. *6*]. Avoidance must clearly and unequivocally express an intention to unwind the contract [*Italian Bacon Case*, *para*. *17*; SCHLECHTRIEM/SCHWENZER/*Fountoulakis*, *Art*. *26 para*. *10*] and indicate that the aggrieved party is no longer willing to perform [KRÖLL *et al*./*Björklund*, *Art*. *26 para*. *4*].

116 CLAIMANT states that it informed RESPONDENT it "would have to find another buyer for the orchids" [*MfC*, *para*. *183*]. This is false. On 10 February 2024, CLAIMANT stated it would "have to sell the Vanilla Orchids before mid-May to either Darwin Natural Food or another customer" [*Exh*. *C6-5*, *p*. *16*]. Thereby, CLAIMANT merely addressed consequences of permit uncertainty. It did not communicate termination or unwinding of the contractual relationship. CLAIMANT also conveniently omits [*cf*. *MfC*, *para*. *183*] that it simultaneously stated it "would then only be able to deliver orchids to Darwin Natural Food by the end of the year" [*Exh*. *C6-5*, *p*. *16*]. Far from avoiding, CLAIMANT proposed performance scenarios and continuation of the relationship.

2. RESPONDENT Did Not Refuse Performance Definitely

117 CLAIMANT argues that "final and definite" refusal renders formal avoidance dispensable [*MfC*, *para*. *178*]. This is incorrect [*infra paras*. *120 et seqq*.]. But even by its own standard, CLAIMANT cannot rely on Art. 75 CISG: RESPONDENT did not refuse performance definitely prior to the purported "cover sale". Under the CISG, definite and final refusal requires a high threshold [*Iron Molybdenum Case*, *para*. *35*; *Leather For Furniture Case*, *para*. *18*]. Mere statements of delay do not suffice [*Macromex v*. *Globex*, *p*. *3*].

118 RESPONDENT concedes that when discussing the Permit Moratorium with CLAIMANT, it mentioned that there might be a scenario in which RESPONDENT would not be able to obtain the Import Permit at all. Nonetheless, at that point, it was only certain that it "would not be able to obtain the requisite import permit […] *to meet the original delivery date*", as clarified with CLAIMANT [*Exh. C6-4*, *p. 16*, *emph. add.*]. Under Art. 8(2), (3) CISG, a reasonable person would understand this as communicating difficulties—not an outright refusal to perform. Accordingly, CLAIMANT reacted by suggesting a later delivery at the end of 2024 [*Exh. C6-5*, *p. 16*]. RESPONDENT itself withdrew its permit application only *after* CLAIMANT's avoidance on 1 March 2024 [*PO2-17*, *pp. 57 et seq.*]. Therefore, there was no "final and definite" refusal.

119 In its Memorandum, CLAIMANT itself does not consistently treat RESPONDENT's statement as refusal to perform: Art. 72(3) CISG expressly provides a direct right to avoidance in case of a refusal to perform. CLAIMANT instead discusses its right to avoid the contract following the statement only under the general rule of Art. 72(2) CISG [*MfC*, *para. 182*].

3. Even a Definite Refusal Would Not Render Avoidance Dispensable

120 CLAIMANT does not explain how a definite refusal substitutes avoidance and, by extension, justifies calculating damages under Art. 75 CISG based on a pre-avoidance cover sale [*MfC*, *para. 178*, *180*]. The Tribunal should reject CLAIMANT's presumption for *four* reasons:

121 *First*, Art. 75 CISG's wording is dispositive: it applies only where the goods are resold "in a reasonable time *after* avoidance" [*emph. add.*]. Because the alleged cover sale occurred *before* avoidance, it cannot serve as the basis for Art. 75 CISG damages. Courts, tribunals and scholars agree that Art. 75 CISG does not apply to pre-avoidance cover sales—even where the breaching party refused performance—because of the Article's wording [GOTANDA, *CISG-AC No. 8*, *comment 2.3.3*; *Water And Oil Pumps Case*, *para. 14*; *Spanish Orange Juice Case*, *para. 70*; *Metal Concentrate Case*, *paras. 12 et seq.*; SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 75 para.* 5; SCHMIDT-AHRENDTS, *pp. 79 et seqq.*].

122 *Secondly*, CLAIMANT cannot argue that *venire contra factum proprium* overrides Art. 75 CISG's structure: The drafters of Art. 75 CISG considered good faith when establishing the prior avoidance requirement, leaving no room for a general-principles carve-out under Art. 7 CISG [FERRARI/FLECHTNER/BRAND/*Ferrari*, *Art. 7*, *p. 156*]. Further, RESPONDENT does not come against its own act. It relies on CLAIMANT's failure to avoid, not its own [*cf.* DRESCHER/FLEISCHER/SCHMIDT/*Sommerfeld*, *Art. 75 para. 6*].

123 *Thirdly*, Art. 75 CISG's systematic logic excludes pre-avoidance cover sales. Only avoidance terminates the parties' obligations and restores freedom of disposition, allowing the aggrieved party to satisfy its performance interest through a cover sale [GOTANDA, *CISG-AC No. 8*, *comment 2.3.3*; *Portuguese Cloth Case*, *para. 5*]. At the time of the alleged cover sale, CLAIMANT was still bound by its obligations and could not lawfully seek its performance interest elsewhere. This is expressly mirrored in Art. 72(3) CISG: even where a party has refused performance, the aggrieved party must still declare avoidance. Allowing pre-avoidance cover sales would undermine that structure [SCHMIDT-AHRENDTS, *p. 81*].

124 Additionally, the avoidance requirement prevents speculation at the breaching party's expense [ACHILLES, *Art. 75 para. 3*; HUBER/MULLIS, *p. 286*] as illustrated by the case at hand: had the February 2024 Agreement turned out economically favorable, CLAIMANT could have kept the Contract and claimed performance. Because the February 2024 Agreement became disadvantageous in light of later rising prices [*PO2-2*, *p. 55*], CLAIMANT subsequently avoided the Contract and now seeks to anchor damages in the earlier transaction [*NoA-36*, *p. 6*]. Allowing pre-avoidance transactions under Art. 75 CISG would shift the entire market risk of CLAIMANT's trading choice onto RESPONDENT, which Art. 75 CISG is designed to prevent [*cf.* ACHILLES, *Art. 75 para. 3*; HUBER/MULLIS, *p. 286*].

125 *Fourthly*, legal certainty requires a clear temporal anchor. Determining whether and when a party has "definitely" refused performance is inherently more uncertain than whether a contract was avoided [SCHLECHTRIEM/SCHWENZER/*Schwenzer*, *Art. 75 para.* 5]. The present case—where definite refusal is factually contested [*supra paras. 117 et seqq.*]—proves the point. For legal certainty, only post-avoidance cover sales may serve as benchmark under Art. 75 CISG.

B. Respondent Does Not Owe Damages Under Art. 74 CISG Either

126 CLAIMANT argues that the price reduction in the February 2024 Agreement enables it to recover damages under Art. 74 CISG [*NoA-34*, *p. 6*]. It does not.

127 While the aggrieved party may invoke Art. 74 CISG instead of Art. 75 CISG [HUBER/MULLIS, *p. 283*], courts and scholars agree that damages for non-performance, *i.e.*, a cover transaction, are not recoverable under Art. 74 CISG absent avoidance [*PVC Foil Case*, *para. 44*; *Propane Gas Case*, *para. 43*; SCHMIDT-AHRENDTS, *pp. 159* et *seqq.*; HUBER/MULLIS, *p. 282*]. Otherwise, the CISG's strict avoidance regime would be circumvented [*ibid.*]. The existence of Artt. 75, 76 CISG proves that the liquidation of performance interest presupposes avoidance [HUBER/MULLIS, *p. 282*]. Without that restriction, an aggrieved party could claim

the performance interest twice—via damages and via specific performance [*Italian Shoes Case XVI*, *para*. *25*; MUNICH COMMENTARY/*Huber*, *Art*. *74 para*. *9*].

128 In conclusion, CLAIMANT cannot recover damages for non-performance based on a "cover sale" without prior avoidance. RESPONDENT owes no damages under Art. 74 CISG.

III. IN ANY EVENT, THE QUANTITY TO CALCULATE DAMAGES IS 2,700 ORCHIDS

129 Even if the Tribunal were to calculate damages under Art. 75 CISG, CLAIMANT would be entitled to only USD 2,700,000. Clause 2.1 SOA provides for "3,000 ± 10%" Orchids. CLAIMANT—conveniently—calculates at the maximum of 3,300 Orchids [*MfC*, *para*. *154*]. This contradicts both the CISG and the Contract. Damages must reflect the quantity that would have been delivered assuming contractual options were exercised in favor of the party entitled thereto [**A**]. On the facts, RESPONDENT held the option to limit the quantity to 2,700 Orchids [**B**].

A. THE CALCULATION OF DAMAGES MUST TAKE INTO ACCOUNT EXERCISABLE OPTIONS

130 CLAIMANT can be compensated only for the quantity that would have been delivered had RESPONDENT exercised its contractual rights in its favor. CLAIMANT does not set a legal standard regarding the determination of which quantity of Orchids it should be reimbursed for [*MfC*, *para*. *158 et seqq*.]. Hence, CLAIMANT fails to take into account the CISG's total-compensation principle, under which damages restore the position as if the contract had been performed [*Chicago Prime Packers*, *Inc*. *v*. *Northam Food Trading Co*., *para*. *48*; *Secretariat Commentary*, *Art*. *70 comment 3*; BIANCA/BONELL/*Knapp*, *Art*. *74 para*. *3.2*].

131 Options have economic value and are secured through concessions elsewhere; therefore, they must be reflected in the damages counterfactually [*CISMA v*. *GCC and Grupo Cementos de Chihuahua*, *paras*. *234 et seqq*., *246*; *Unico Marine Services v*. *JMB Shipping*, *paras*. *405*, *418 et seq*.]. Accordingly, in flexible-quantity contracts, damages are calculated as if the quantity was determined in favor of the party holding the option—not the top of the range [*Diammonium Phosphate Case*, *paras*. *213 et*. *seqq*., *331*]. Selecting the maximum quantity would distort the contractual equilibrium and unjustifiably reward CLAIMANT.

B. Respondent HELD THE OPTION TO DETERMINE THE QUANTITY OF ORCHIDS

132 Clause 2.1 SOA omits which party determines the quantity. Under Art. 8(2), (3) CISG, the understanding of a reasonable person aware of all circumstances is decisive [*supra para*. *15*].

133 Applying this standard leads to only one conclusion: RESPONDENT held the option to set the exact quantity within the ± 10% range. In negotiations, the Parties agreed that the quantity

flexibility should "take into account the problems in securing appropriate transport capacity" [*Exh. R2, p. 38*]. This is commercially coherent: the delivery date is determined only three months in advance and Orchid transport requires specialized, scarce equipment [*Response-7, p. 32*]. Moreover, the Parties replaced "CIF Oceanside" [*Exh. C2, p. 9*] with "FCA Capital City" in Clause 4.1 SOA, shifting transport responsibility to RESPONDENT. A reasonable person would understand that short-notice transport responsibility includes the right to determine quantity within the ± 10% range.

134 The Parties agree that the quantity tolerance served a second function: to "safeguard [CLAIMANT] against natural production […] losses" [*MfC, para. 160*; *Exh. R1-4, p. 36*]. Contrary to CLAIMANT's submission, this does not necessitate CLAIMANT's right to determine the quantity. CLAIMANT's legitimate interest—not having to deliver more than it can—is already maintained by Art. 7(1) CISG. In good faith, RESPONDENT could not have exercised its option for a quantity impossible to deliver due to natural production losses. Nothing in the Contract nor its negotiation history suggests an output contract; CLAIMANT therefore has no legitimate interest in delivering its entire output. Since CLAIMANT's production incurred very few losses, making 3,300 Orchids available for delivery [*PO2-9, p. 56*], the decisive factor would have been transport availability under RESPONDENT's responsibility—and discretion. In conclusion, any damages must be calculated based on a quantity of 2,700 Orchids.

IV. CONCLUSION

135 CLAIMANT selectively relies on a "cover sale" and calculates damages on the maximum quantity. This is incompatible with Art. 75 CISG: the February 2024 Agreement occurred before avoidance and merely advanced delivery under a pre-existing contract. RESPONDENT requests the Tribunal to find that CLAIMANT did not incur damages.

REQUEST FOR RELIEF

Based on the aforesaid, RESPONDENT requests the Tribunal to grant the relief set out herein below:

1) to find that the 2025 SIAC Rules govern this Arbitration and then continue the proceedings on the basis of those Rules;
2) to order CLAIMANT to disclose the third-party funding agreement between CLAIMANT and AtJ-Financing;
3) to order CLAIMANT to disclose the after-the-event insurance policy between CLAIMANT and LitSure;
4) to find that
    a. CLAIMANT is not entitled to damages; or, in the alternative,
    b. to find that CLAIMANT did not incur any damages;
5) to order CLAIMANT to bear the costs of this Arbitration and to reimburse RESPONDENT for all costs incurred in connection with it.

Heidelberg, 22 January 2026

Counsel for **RESPONDENT**

ANNA LOUISA HASSEL

MIRA LEHMANN

LILLI PETIRSCH

NOAH ROSENBOHM

EMMA SENDLER

VLADISLAVA SERZHENKO