Twenty-third Annual

WILLEM C. VIS (EAST) INTERNATIONAL COMMERCIAL ARBITRATION MOOT

-MEMORANDUM FOR CLAIMANT-

CASE REFERENCE: ARB1991/25/VIS

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Date: 10th December 2025

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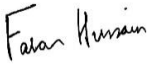
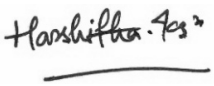
NAME: FARAN HUSSAIN SIGNATURE: 

NAME: HARSHITHA ADARI SIGNATURE: 

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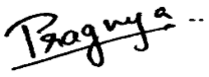
NAME: PRAGNYA AMIREDDY SIGNATURE: 

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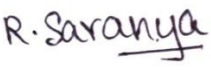
NAME: SARANYA RAVINDRAN SIGNATURE: 

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Dear Reader,

The Vis (East) Moot Team of NALSAR University of Law, Hyderabad is proud to present our Claimant Memorandum. If you are reading this Memorandum in **hardcopy format**, please note that the following remarks are of no further importance to you. We kindly refer you to the beginning of our Memorandum and sincerely hope you will enjoy our submissions.

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- Clicking on our University's emblem on any page will take you back to the Table of Contents.
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We sincerely hope this enhances your reading experience. Enjoy your reading, and thank you for your time!

Respectfully,

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

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TABLE OF ABBREVIATIONS

ABBREVIATION	FULL FORM
&	And
%	Percent
¶	Paragraph
¶¶	Paragraphs
AC	CISG Advisory Council
AMA	Arb-Med-Arb
ART.	Article
ARTS.	Articles
ATE	After The Event
EXH.	Exhibit
C[NO.]	Claimant
CISG	United Nations Convention on Contracts for the International Sale of Goods
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CF.	Confer
CL.	Clause
COMM.	Commentary
CONF.	Conference

COP	Conference of Parties
DAL	Danubian Arbitration Law, verbatim adoption of UNCITRAL Model Law on International Commercial Arbitration with the 2016 Amendments
DRC	Dispute Resolution clause, referring to Clause 15 of the Sale of Orchids Agreement
ED.	Edition
ET AL.	Et alia (Latin); and others
IBA	International Bar Association
IBID.	Ibidem (Latin); in the same place
ICC	International Chamber of Commerce
ICCA	International AC for Commercial Arbitration
ICSID	International Centre for Settlement of Investment Disputes
I.E.	id est, which means that is
INC.	Incorporated
INFRA	(Latin for) Below
INT'L	International
LCIA	London Court of International Arbitration
M	Million
MR.	Mister (Honorific used for Men)
MS.	Honorific used for Women

NO.	Number
NOA	Notice of Arbitration
NY	New York
NYC	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
P.	Page
PP.	Pages
PC	Plants Committee Meeting
PICC	Principles of International Commercial Contracts
PO1	Procedural Order No. 1
PO2	Procedural Order No. 2
R[NO.]	Respondent
RNOA	Response to Notice of Arbitration
SCC	Stockholm Chamber of Commerce
SEC.	Secretarial
SIAC	Singapore International Arbitration Centre
SIMC	Singapore International Mediation Centre
SCH.	Schedule
SUPRA	(Latin for) Above
TPF	Third Party Funding
UNCITRAL	United Nations Commission on International Trade Law

UNIDROIT	International Institute for the Unification of Private Law
USD	United States Dollar
V.	Versus (Latin); against
VOL.	Volume

STATEMENT OF FACTS

The parties to this arbitration are Orchis Worldwide Ltd. ("**Claimant**") and Darwin Natural Foods PLC ("**Respondent**") (collectively, "**Parties**"). CLAIMANT, is a medium-sized company based in Mediterraneo. It is engaged in the growth and sale of Orchids. CLAIMANT also has a line of business devoted to high-priced rare orchids. The most important product in this line is the *Vanilla Planifolia Mediterraniensis* (**Vanilla Orchid**), an endangered species, listed under Appendix II to the CITES. RESPONDENT, is based in Equatoriana. It is part of a group of companies that is one of the largest producers of natural foods and spices. The most profitable product in its spices business is Vanilla. Both Mediterraneo and Equatoriana are signatory countries to the CITES.

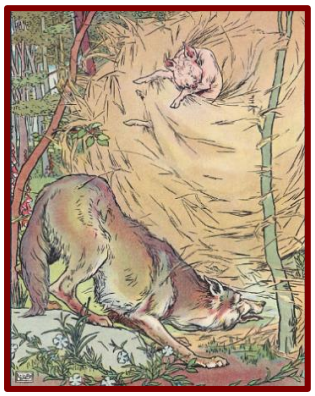
CHRONOLOGY OF EVENTS

26 NOV 2021	CLAIMANT enters into a contract with a third-party, Botanical Garden. This contract is to entail the delivery of 300 Vanilla Orchids in January 2024. During negotiations, both parties adopt a bespoke dispute resolution clause. Ms. Nicola Gobley, Botanical Garden's Chief Contract Officer, proposes a revised SIAC-SIMC Arb-Med-Arb clause identifying mediation as the first step, aligned with the *current version* of the SIAC Rules. The clause is accordingly amended to refer to the *"current"* SIAC Rules as read by her. She states that this change requires approval from the board. She adds that mediation must be treated as the commencement of arbitration to prevent the limitation period from expiring.
2022	Botanical Garden is eventually taken over by RESPONDENT's company. In good faith, catering to RESPONDENT's unique needs, CLAIMANT agrees to **revise the terms of the contract** in the following manner: (1) Increase the quantity of Orchids to 3000, (2) Make delivery timing flexible within a 3-month period, **and** (3) Reduce the price by 10%, from 2200 USD to 2000 USD, per Orchid The Dispute Resolution Clause, crucially, **remains untouched**. Mr. Albius, Respondent's Spices Director, and a board member of Botanical Garden, is aware of the changes made to the model clause and their purpose. RESPONDENT also has access to the related negotiations; however, they seek no amendments. RESPONDENT later requests that a 10% tolerance clause be added to allow for some flexibility to the quantity. This request is to accommodate for "commercial reasonableness" and to *"balance the parties' interests"*. CLAIMANT, in a further demonstration of good faith, agrees to this modification, even though it means that CLAIMANT now has to grow **3300 Orchids** in preparation for the contract.

SEP 2023	The CITES Standing Committee announces that it will vote on the inclusion of the Vanilla Orchid under Appendix I, at the end of January 2024. This would mean that any commercial trade in Vanilla Orchid would require a CITES Import Permit. CLAIMANT immediately requests RESPONDENT take delivery within January to avoid the permit requirement. RESPONDENT refuses, assuring CLAIMANT that it has *"good contacts"* within the government.
NOV 2023	Throughout November, Equatorianian authorities continue granting anticipatory permits, awaiting the reclassification. RESPONDENT, however, does not apply.
1 FEB 2024	The Orchid is officially reclassified into Appendix I. CLAIMANT yet again immediately contacts RESPONDENT, but these efforts yield no reply.
8 FEB 2024	RESPONDENT's Minister of Agriculture announces publicly that going forward, the country would restrict the granting of permits for commercial purposes.
10 FEB 2024	RESPONDENT finally gets back to CLAIMANT. Much to CLAIMANT's unpleasant surprise, they inform that timely delivery has become *"impossible"* and it is *"very doubtful"* whether delivery can happen at all. CLAIMANT informs RESPONDENT that they *"have to"* sell the Orchids by Mid-May, as the Orchids risk losing 30% of their value over the upcoming months.
15 FEB 2024	CLAIMANT finds a buyer in Herbal Cosmetics, an existing customer based in Ruritania. CLAIMANT contracts to sell 3300 Orchids at **1000 USD** per Orchid, only 9% below the prevailing market price of 1100 USD. This discount is primarily due to delivery urgency and Herbal's workforce unavailability.
27 FEB 2024	RESPONDENT confirms that it cannot perform its obligation to undertake delivery. As CLAIMANT would later find out, RESPONDENT had decided to shut-down its spices business altogether, following protests from environmental pressure groups.
1 MARCH	CLAIMANT terminates the contract, after unsuccessful negotiations.
19 DEC 2024	CLAIMANT, in yet another attempt to amicably resolve the dispute, begins mediation proceedings before the SIMC. However, all its attempts turn futile.
FEB 2025	CLAIMANT is under a need for financial support to pursue the present claim. Therefore, it, enters into a TPF agreement with AtJ Risk Insurance. However, as AtJ refuses to bear adverse costs, CLAIMANT engages LitSure Risk Insurance for adverse costs. LitSure Insurance carries a *"very good reputation"* in the industry.
31 JULY 2025	As both negotiations and mediations have failed, CLAIMANT is left with no option but to initiate the present arbitration.

SUMMARY OF ARGUMENTS

"*Then I'll huff, and I'll puff, and I'll blow your house down*" – *from* 'THE THREE LITTLE PIGS'



Each pig must choose its building material before the Wolf comes. The rules are fixed the moment construction begins. The pigs know that their houses cannot be altered once the Wolf has already arrived. When the contract was signed, both parties stood at the construction site and selected their building material to be the **2016 Rules**. They deliberately rejected the Model Clause and froze the rules at the time of contracting. Now that the dispute has arisen, RESPONDENT insists on magically rebuilding the house in the structure of the **2025 Rules**. Just as every child knows this to be impossible, the enforcement courts too, would refuse to recognize a house that was rebuilt in violation of the Parties' original blueprint. In any case, the dispute arose with the commencement of mediation, when the **2025 Rules** *did not even come into existence*. Therefore, RESPONDENT wishes to rebuild the house using materials that did not even exist when the dispute arose **[Issue 1]**.

Just as the Wolf goes from door to door, prying on each pigs' house, the RESPONDENT bangs on CLAIMANT'S door, demanding access to private financial agreements. However, the **2016 Rules** provide the RESPONDENT no key to enter. The inner structure of CLAIMANT'S house is neither relevant, nor material. The request not only endangers the inhabitant, but treats them unfairly, as the Wolf keeps its own den shrouded in shadow. Finally, even in a newer telling of the tale, under the **2025 Rules**, the script does not expand to grant the Wolf a single line more **[Issue 2]**.

When the Wolf finally huffs and puffs, the first two houses collapse immediately. This is because their builders ignored obvious warnings and deliberately chose fragile materials. Similarly, RESPONDENT faced clear warnings of regulatory winds, and could have chosen an earlier delivery or applied for an anticipatory permit. Instead, RESPONDENT built a straw house and called it sturdy. When the predictable winds finally blew, RESPONDENT'S straw hut collapsed. RESPONDENT must not be permitted to hide behind Article 79 CISG, after having assured a sturdy house **[Issue 3]**.

When the Wolf's coming became obvious, the third pig did not wait for the trouble to arrive at its door. Instead, it pre-emptively took immediate action to protect itself by building a brick house. Similarly, when RESPONDENT refused to fulfil its obligations, CLAIMANT secured a reasonable substitute sale under Article 75 CISG. Even if one quibbled over the construction date, Article 74 CISG comes to CLAIMANT'S aid. In any case, CLAIMANT'S self-help sale fills the gap. All three roads lead to the same brick-house conclusion – Claimant is due 3.3 million USD in damages **[Issue 4]**.

PROCEDURAL ISSUES

PART 1: THIS ARBITRATION PROCEEDING IS GOVERNED BY THE SIAC RULES 2016

1. These arbitration proceedings were initiated by CLAIMANT based on the DRC under Cl. 15 of the Sale of Orchids Agreement in accordance with 2016 Rules [*NoA p.5 ¶29*]. The RESPONDENT, in its initial submission, argued that 2025 Rules should apply to these proceedings, relying upon Rule 1.5 of 2025 Rules [*Rule 1.5 2025 Rules; Email by Fasttrack p. 24*]. This submission is incorrect.
2. In the present case, the Parties agreed that the 2016 Rules would govern these arbitration proceedings **(I)**. Further, the application of 2025 rules would undermine the Parties' agreement and compromise enforceability **(II)**. *In arguendo*, the dispute resolution process commenced before the 2025 Rules came into force, initiated by CLAIMANT's notice of mediation **(III)**.

I. THE PARTIES AGREED THAT THE 2016 RULES WOULD GOVERN THESE PROCEEDINGS

3. Arbitration is a *"creature of contract"* [*Carbonneau, pp.419-420; Blackaby, ¶6.07*]. Parties are free to agree on the procedural framework to be followed by the Tribunal in conducting the proceedings [*Art. 19 DAL; Smith, p. 731*]. The 2025 Rules themselves mandate that they are applicable only when the Parties do not agree otherwise [*Rule 1.5 2025 Rules*]. Accordingly, the applicable rules depend on the Parties' agreed intention, interpreted in accordance with CISG, which governs this arbitration agreement [*PO1 p.55 ¶5; Born p. 457; Ermir v. Biwater ¶82*].
4. In the present case, the Parties agreed that the 2016 Rules would govern their proceedings. This is because they deliberately departed from the language of the SIAC Model Clause, which opts for rules at the time of commencement of arbitration **(A)**. This was in accordance with their intention to incorporate the 2016 Rules **(B)**.

A. THE PARTIES DELIBERATELY DEPARTED FROM THE SIAC MODEL CLAUSE, WHICH OPTS FOR RULES AT THE TIME OF COMMENCEMENT OF ARBITRATION

5. CLAIMANT adopted a modified SIAC Model Clause as the DRC in its contract with Botanical Garden, dated 1 December 2021 [*NoA p.3 ¶6; Exh. C7 p. 23*]. When that contract was later replaced by the agreement with RESPONDENT, the same clause was retained without any change and incorporated verbatim into the agreement signed on 25 August 2022 [*Exh. C3 p. 47 ¶15*].
6. The DRC states that the arbitration will be conducted "*in accordance with the current … ("SIAC Rules")*" [*Exh. C3 p. 47 ¶15*]. Meanwhile, the Model Clause refers to the SIAC Rules *"for the time being in force*" [*Model Clause, SIAC Rules*]. It is worth noting that the Parties have replaced the phrase "*SIAC Rules for the time being in force*" with the words "*current SIAC Rules*" [*Exh. C3 p. 47 ¶15*].
7. To quote Professor Gary Born, an institution's model clause is generally adopted entirely and only departed from "*where necessary to achieve specifically desired results*" [*Born, pp. 75-76*]. The Model Clause

has consistently been interpreted to refer to the rules in force at the commencement of arbitration [*Bunge v. Cruse; ARA v. AQZ; BNA v BNB; Black v Jurong; Chiam v Chiam; Honeywell v Meydan; Insigma v Alstom*]. In the present case, the Parties, being aware of the standard interpretation, kept the majority of the clause intact and varied only the part dealing with the applicable rules. This indicates that the Parties opted to modify the scope in order to apply the 2016 Rules.

8. The SIAC, while classifying different arbitration clauses, noted that "*clauses with specific reference to the Arbitration Rules of the SIAC*" indicate the Parties' concern about the applicable rules [*Black v Jurong, ¶16*]. In this case, the Parties specifically used the words "*current Arbitration Rules*" in the DRC. This shows that they expected the SIAC Rules in force at the *"current"* time to apply, i.e., 2016 Rules [*Exh. C3 p.15 ¶15*].
9. The words *"current SIAC Rules"* entered the draft through Ms Gobley, the chief negotiator for Botanical Garden, with reference to the 2016 Rules [*Infra ¶¶14-17*]. When the RESPONDENT replaced the original agreement, it modified other terms but left the DRC unchanged [*PO2, p. 56 ¶8; NoA p. 3 ¶9; Exh. C3 p. 47 ¶15*]. RESPONDENT also did not inform CLAIMANT of any change in interpretation, thereby accepting the departure from the Model Clause.
10. Black's Law Dictionary defines *"current"* as *"running; now in transit; whatever is at present in course of passage"* [*Black's Dictionary*]. When the contract was signed, the only rules in force were the 2016 Rules. The DRC also avoids phrases like *"then-current"* or *"last-current"* which have been interpreted to mean current at the time of commencement [*Freaner v Lutteroth; Digene v Roche; UMS v Cornell; Apollo v Regent*]. While the agreement uses wording like *"as amended from time to time"* for the CITES Convention, it does not use any similar language in the DRC [*Exh. C3, p. 10 ¶¶1.1, 15*]. Thus, on a plain reading, the word *"current"* freezes the rules at the time of contracting, i.e., the 2016 Rules.

B. THE RECORD CONFIRMS PARTIES' SHARED INTENTION TO APPLY THE 2016 RULES

11. It has been consistently held that ordinary rules of contract interpretation apply to arbitration clauses, with the focus placed on the Parties' intention at the time of contracting [*Mastrobuono, p.62; Johnson v. Walmart; Suski v. Coinbase, p. 1229; Internaves v. Andromeda, p.1092; Goldman v. Reno, p.743*].
12. Under Art. 8 CISG, contract provisions ought to be interpreted according to the common intention of the Parties [*Art. 8, CISG; Schmidt-Kessel, Art. 8 ¶ 22; Saenger, Art. 8 ¶ 2*]. Where such common intent can be discerned, it must be taken into account even if the objective meaning attributable to the clause differs [*Ferrari et. al; Rainy Sky v Kookmin Bank; BG v Argentina*].
13. The negotiation record clearly shows a common intent to apply the 2016 Rules. Through her email on 26 November 2021, Ms Gobley informed the CLAIMANT that *"the current version of their arbitration rules … is acceptable to us,"* [*Exh. C7 p. 23*]. The word *"current"* referred to the 2016 Rules, which she had read [*PO2 p. 56 ¶7*]. As arbitration outside Equatoriana was *"novum"* for Botanical Garden, the

DRC required board approval. The approval was granted only after a detailed review of the 2016 Rules [*PO2 p. 56 ¶7; Exh. C7 p. 23*].

14. The reference to *"current"* was chosen to refer to the specific rules Ms Gobley had examined and the Botanical Garden had accepted [*PO2 p. 56 ¶7*]. When the RESPONDENT later adopted the DRC without change, it accepted the same procedural framework agreed upon in 2021 [*PO2 p. 56 ¶6*].
15. RESPONDENT may argue that, not being a party to the original negotiation, it lacked awareness of the intention to apply the 2016 Rules. However, after acquiring Botanical Garden, it had access to their email servers and therefore to communications detailing the rules intended to govern future disputes [*PO2 p. 56 ¶7*]. Further, the RESPONDENT's chief negotiator, Mr Albius, was a member of Botanical Garden's board [*PO2 p. 56 ¶6*]. Even if the RESPONDENT did not directly negotiate the original contract, Mr Albius was aware of and approved the DRC [*PO2 p. 56 ¶6*].
16. Mr Albius was also RESPONDENT's spokesperson in the later renegotiations of the Agreement [*Exh. C2 p. 11; Exh. R1 p. 38 ¶3*]. RESPONDENT was clearly aware of CLAIMANT's intent to apply the 2016 Rules by virtue of the DRC. However, they made no amendments to the DRC and communicated no different intention while amending other terms [*PO2 p. 56 ¶7*]. Thus, it was clearly the common intention of the Parties for the word *"current"* to refer to the 2016 Rules.
17. In the absence of such intention, Parties' statements are to be interpreted according to the understanding of a reasonable person in the same circumstances [*Schmidt-Kessel, Art. 8 ¶ 20; Magnus, Art. 8 ¶ 17; Art. 8(2), CISG*]. This Tribunal should read Art. 8(2) as an application of the *contra proferentem* rule, which means unclear terms are read against the drafter [*Schwenzer, Art. 8 ¶14–16; Honnold/Flechtner ¶107; AC Op. 3 ¶4.5*]. Botanical Garden drafted the DRC at its board's insistence, which included representatives of the RESPONDENT. It cannot take advantage of any ambiguity in a clause added at its insistence to demand the application of new rules.
18. The Parties negotiated DRC in detail, which makes it commercially unlikely that they meant *"current"* to track future amendments when the contract itself does not say so [*Holt Cargo v. ABC Container ¶71–72; Desputeaux ¶48*]. Since RESPONDENT left the DRC unchanged in later renegotiations, it accepted it in its original sense. Therefore, DRC must be interpreted as referring to the rules at the time of contracting, i.e., the 2016 Rules.

II. THE APPLICATION OF THE 2025 RULES WOULD BE CONTRARY TO THE PARTIES' AGREEMENT AND WOULD GIVE RISE TO ENFORCEMENT CONCERNS

19. Under the NY Convention, Art. V(1)(d) allows refusal of recognition or enforcement if the proceedings do not follow the procedure agreed by the Parties [*Art. V(1)(d) NYC; Born/Salas, p. 59; Mueller v Bergesen, p. 439*]. The changes introduced in the 2025 Rules are such that applying them would depart from the Parties' agreement, compromising the enforceability of any award rendered.

20. In the present case, the application of the 2025 Rules would be inconsistent with the Parties' agreement **(A)** and their application could expose the award to challenge, and compromise its enforceability **(B)**.

A. THE 2025 RULES WOULD BE INCONSISTENT WITH THE PARTIES' AGREEMENT

21. Where the rules undergo changes in substantive provisions, the rules in force at the time of contracting must apply [*Black v. Jurong; Cars v Volkswagen; Bunge v. Cruse; AQZ v. ARA*]. The 2025 Rules contain both procedural and substantive provisions that the Parties had not agreed to.
22. Procedural rules govern the administration of arbitration proceedings, while substantive rules are those that affect the Parties' obligations or remedies [*Born, pp. 291-292; Waincymer, p. 65; Moses p. 5; Insigma v Alstom ¶31; Holtzmann/Neuhaus, 542–543; Swiss Fed Trib 4A_342/2019*]. Several provisions of the 2025 Rules directly impact the Parties' obligations and remedies.
23. For instance, the 2025 Rules introduce a disclosure requirement for third-party funding agreements. This provision directly affects the quantum of costs borne by the parties and their financial exposure [*Rule 38.6, 2025 Rules; Essar v Norscot; ICSID ARB/07/5*]. The newly introduced streamlined procedure disallows fact or expert witness evidence, which is a substantive provision of law [*Sch. 2, ¶11(c), 2025 Rules; Pauker, p. 7; Trittman, pp. 7-14*].
24. A further amendment in the 2025 Rules concerns *ex parte* pre-arbitral relief through emergency arbitrators [*Rule 46, 2025 Rules*]. Under the 2016 Rules, such relief could not be granted without giving the opposing party a reasonable notice [*Rule 30, 2016 Rules*]. In this case, given that the Parties sought to minimise the need for a formal award, allowing *ex parte* pre-arbitral relief would be in conflict with the Parties' express agreement [*Exh. C7 p. 23; Noble Resources v Shanghai*].
25. The changes introduced in the newer versions of the SIAC Rules apply to arbitrations under agreements made before their enactment, notwithstanding any contrary agreement [*AQZ v. ARA; Noble Resources v Shanghai*]. In the present case, the Parties sought to avoid any dispute by specifying that only the "*current version*" of the arbitration rules would prevail [*Exh. C7 p. 23*]. The Parties would have changed the DRC had they seen the revised rules [*ICC 5622/1992*].
26. Tribunals have frequently held the rules in force at the time of commencement applicable where Parties could have reasonably foreseen the revisions [*ICC 5622/1992*]. However, preliminary orders and *ex parte* emergency relief were not included in the consultation draft, and their addition now makes SIAC the only institution to confer such powers [*Taylor; Oonbazul ¶13; Brown p. 7*]. These changes could not have been reasonably foreseen by the Parties and therefore they could not have agreed to such changes at the time of contracting.
27. Under the Legal Certainty doctrine, the purpose of dispute resolution clauses is to foster certainty and foreseeability in international transactions, allowing Parties to be prepared [*Normand v. Dimter*

¶46; Pompey v. ECU ¶20; Morguard v. Savoye ¶1096-97; Holt Cargo v. ABC ¶71-72]. CLAIMANT has relied on the 2016 Rules for its case strategy, budgeting, and planning. Applying the 2025 Rules would contradict the Parties' negotiation and disrupt the procedural equilibrium established.

28. RESPONDENT may claim that the revised rules improve efficiency, but efficiency cannot come at the cost of fairness or party autonomy [*Polimaster v. Rae Sys. ¶832; Tatneft v. Ukraine ¶8; Calbex v. ACC ¶461; Basel-Stadt App.¶200*]. In any case, the Tribunal already has ample case-management discretion under Rule 19 of the 2016 Rules and Art. 17(2) of DAL to ensure efficiency, without applying the 2025 Rules [*Art. 17(2) DAL; Rule 19.4, 2016 Rules; ADG v. ADI ¶112*].
29. Art. 19(3) CISG, which governs this arbitration agreement, treats changes to dispute resolution clauses as a material alteration [*Art. 19(3) CISG; Bunge v. Kruse*; *ICC 5622/1992*]. Since the incorporation of the 2025 Rules constitutes a material alteration of Cl. 15, the Tribunal should hold that 2016 Rules apply to the present arbitration proceedings.

B. APPLYING THE 2025 RULES MAY RENDER ANY AWARD UNENFORCEABLE

30. Under the SIAC Rules, the Tribunal has a duty to render an award that is capable of being enforced [*Rule 2.5, 2025 Rules; Rule 41.2, 2016 Rules*]. All three states connected to this arbitration, Mediterraneo, Equatoriana, and Danubia, rely on the NY Convention for recognition and enforcement of awards [*PO1 p. 56 ¶6*].
31. Art. V(1)(d) of the Convention and Art. 34(2)(a)(iv) of the DAL allow refusal or setting aside of an award where the Tribunal disregards the procedure agreed upon by the Parties [*Art. V(1)(d) NYC; Art. 34(2)(a)(iv) DAL; Ferrari et. al*]. Therefore, if the proceedings are not conducted under the 2016 Rules as per the Parties' agreement, any award would be liable to be set aside.
32. RESPONDENT may argue that material prejudice is required for an enforcement challenge [*Tatneft v. Ukraine ¶¶ 13-18*]. However, courts have held that when an express agreement regarding the arbitration's structure is violated, no such demonstration of material prejudice is required [*Cassazione ¶390; Vioans v. UMMP ¶250; Al-Qarqani v. Chevron ¶2019*]. In any case, the imposition of the 2025 Rules may cause material prejudice to CLAIMANT [*Infra ¶¶82-86*]. Therefore, to render an enforceable award, the Tribunal must respect the agreement to apply the 2016 Rules.

III. *IN ARGUENDO*, THE DISPUTE RESOLUTION PROCESS COMMENCED BEFORE THE 2025 RULES CAME INTO FORCE, INITIATED BY CLAIMANT'S NOTICE OF MEDIATION

33. Rule 1.5 of the 2025 Rules states that these rules apply to arbitrations commenced on or after 1st January 2025 [*Rule 1.5, 2025 Rules*]. However, in the present case, the arbitration commenced when CLAIMANT sent the notice of mediation on 19 December 2024, following the Parties' agreed-upon commencement mechanism [*NoA p. 5 ¶31*].

34. RESPONDENT argues that the mediation is irrelevant to determine the commencement of these arbitral proceedings [*RNoA p. 34 ¶17*]. However, the Parties agreed that the initiation of mediation should be treated as the commencement of arbitration **(A)**. Even without such agreement, the SIMC-SIAC mediation and arbitration are an integrated dispute resolution process **(B)**. Treating the DRC as providing for two separate proceedings would render the clause invalid **(C)**.

A. THE PARTIES AGREED THAT THE INITIATION OF MEDIATION SHOULD BE TREATED AS THE COMMENCEMENT OF ARBITRATION

35. RESPONDENT argues that the present proceedings commenced on 31 July 2025 by CLAIMANT's notice of arbitration [*RNoA p. 34 ¶17*]. However, notice of arbitration only becomes relevant to the date of commencement when the Parties have not agreed otherwise [*Art. 21(1), DAL*]. The Parties have autonomy to decide what constitutes commencement, and such agreement need not appear in the arbitration clause itself [*Binder ¶¶351-356; Ali p. 12*]. In this case, the Parties expressly decided that the initiation of mediation should be treated as the commencement of arbitration.

36. In her email, Ms. Gobley stated that "*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. 23*]. It was necessary to treat mediation as the commencement of arbitration to prevent the limitation period from expiring under Equatorianian law, where RESPONDENT is based [*Exh. C7 p. 23*].

37. It also avoided forcing the Parties into an adversarial process merely to preserve their claim or keep open the option of converting a settlement into an award [*Lew/Mistellis/Kroll ¶20-28; Poudret/Besson ¶566*]. This was especially important for Botanical Garden, which aimed that the *"need for an actual decision should be minimized as much as possible"* [*Exh. C7 p. 23*].

38. The RESPONDENT's chief negotiator was a part of the board that raised these concerns about limitation and the preference for a mediated settlement [*PO2 p. 56 ¶¶ 5-7*]. Approval was given only on the condition that this structure be adopted [*PO2 p. 56 ¶ 7*]. The RESPONDENT had access to the email with the DRC attached, yet chose not to seek any change [*PO2 p. 56 ¶6*].

39. RESPONDENT knew or could not be unaware of CLAIMANT's understanding of the DRC. A reasonable person in the same circumstances would have arrived at the same conclusion. RESPONDENT is now estopped from claiming that it had a different interpretation of the DRC.

B. EVEN WITHOUT SUCH AGREEMENT, THE SIMC-SIAC MEDIATION AND ARBITRATION ARE AN INTEGRATED DISPUTE RESOLUTION PROCESS

40. In the present case, the Parties chose to arbitrate under a modified version of SIAC-SIMC Arb-Med-Arb protocol [*Exh C7 p. 23; PO2 p. 56 ¶7*]. As per Rule 1 of the AMA Protocol, it applies to

all disputes submitted to SIAC or SIMC under the Model Clause or any *other similar clause* [*Rule 1, AMA Protocol*]. Therefore, even the modified clause invites the application of the AMA Protocol.

41. Under the AMA Protocol, Mediation is treated as part of the arbitration process [*Choong et al, p. 18; Lee et al, p. 57*]. Once arbitration is formally commenced, the proceedings are stayed until after the termination of mediation [*AMA Protocol; Shaughnessy, p. 5; Boog, p. 3*]. The Parties adopted the same understanding when drafting their clause, agreeing that *"the mediation would form part of the arbitration process"* [*PO2 p. 56 ¶8*]. In its request for mediation, the CLAIMANT also stated that mediation was "*the first step of the dispute resolution process under the arbitration clause*" [*PO2 p. 59 ¶30*].
42. The only change to the Model Clause was the reordering of the steps so that mediation became the *first step,* without disturbing its unified structure [*PO2 p. 56 ¶8*]. The revision aimed to avoid unnecessary hostilities, while ensuring that mediation was not reduced to a token step once the notice of arbitration was sent [*PO2 p. 56 ¶8; Lee et al, p. 48*]. Further, Rule 6 of the AMA Protocol states that the limitation stops running from the date mediation begins [*Rule 6; AMA Protocol*]. The Parties wished to avoid a stand-alone mediation that would not pause limitation [*PO2 p. 56 ¶8*].
43. DRC now shifts the commencement from the SIAC Rules standard of a notice of arbitration to the initiation of mediation [*Rule 3 AMA Protocol; Rule 3.3 2016 Rules; Exh. C3 p. 15 ¶15*]. Once commencement occurs, the process operates as outlined in the AMA Protocol [*Boog, p. 3*]. Had the Parties intended two separate proceedings, they would not have adopted the SIMC-SIAC protocol, which was unprecedented for Botanical Garden [*Exh. C7 p. 23*].
44. The DRC does not cast mediation as a condition precedent but as the first step in a single process [*Emirates v. Prime; Born/Katsh; Choong et al, 321; UG Rail v. NSW*]. DRC states that all disputes must be resolved *finally* by arbitration, and even issues settled in mediation are to be recorded as consent awards [*Exh. C3 p. 15 ¶15*]. These awards are issued not by the mediator, as under the SCC Rules, but by an SIAC Tribunal [*SCC Mediation Rules*]. Mediation is thus closely intertwined within the arbitral process.
45. Since the two proceedings are integrated, the commencement occurred on 19 December 2024 with the initiation of the dispute resolution process. The 2025 Rules are therefore not applicable.

C. TREATING THE DRC AS PROVIDING FOR TWO SEPARATE PROCEEDINGS WOULD RENDER THE CLAUSE INVALID

46. An interpretation of the DRC as providing for two separate proceedings may render the arbitration agreement invalid and unenforceable. The DRC states: "*To secure the enforcement of any settlement reached in the course of the mediation, each party shall have the right to request to have the settlement be referred to the arbitral tribunal appointed by SIAC and turned into a consent award on agreed terms*" [*Exh. C3 p. 15 ¶15*].

47. The Parties intended for any settlement reached during mediation to be internationally enforceable. CLAIMANT is based in Mediterraneo, while RESPONDENT is based in Equatoriana. Neither of these states is a signatory to the Singapore Mediation Convention, making its enforcement difficult [*PO2, p. 59* ¶*32*]. Therefore, it was essential to turn any such settlement into a consent award.

48. Under the NY Convention, an arbitral award must arise *out of differences* to be recognised as enforceable [*Art. I, NYC*]. Therefore, when an arbitration is commenced, there must be a genuine dispute in existence [*Ferrari et. al,* ¶*124*].

49. A consent award based on a settlement reached before arbitration begins is not enforceable under the NY Convention, [*Waincymer, p. 1282; Lorcher, p. 280; Schlabrendorff p.1120; Blackaby, p.607*]. The only way to ensure the enforceability of a consent award is to commence arbitration before a settlement is reached, *that is*, before or during mediation [*Newmark/Hill, p. 85; Sessler/Schkabrendorff, p. 331–332*].

50. The Parties clearly intended such settlements to be enforceable. By adopting the AMA Protocol with a re-ordering of steps, the Parties intended to secure its advantages of creating an enforceable consent award arising out of a mediated settlement [*PO2, p. 56* ¶*7; AMA Protocol; Shaughnessy, p. 5; Scherer/Goldsmith, p. 352*]. This can only be achieved when the commencement of mediation is understood to be the commencement of arbitration.

51. Applying the Principle of Effective Interpretation, the interpretation that enables the clause to be effective should be adopted [*Born, pp. 1780-1784; Waincymer, p. 35; ICCA Commentary; BNA v. BNB*]. In the present case, the Parties' intent to obtain an enforceable consent award must be given effect to. The Tribunal should accordingly interpret DRC to construe that the arbitration was commenced with the initiation of mediation.

52. **Conclusion to Part 1**: In conclusion, the Parties agreed on the 2016 Rules to govern these proceedings. The changes in the 2025 Rules are so significant that applying them would contravene the Parties' agreement and raise concerns about enforceability. In any case, arbitration commenced before the 2025 Rules took effect, with the notice of mediation, making them inapplicable.

PART 2: THE TRIBUNAL SHOULD DECLINE TO ORDER DISCLOSURE OF THE ATJ FUNDING AGREEMENT AND THE LITSURE RISK COVER AGREEMENT

53. The Tribunal should refuse to order the requested disclosure of the third-party funding agreement with AtJ and the Litigation Risk Insurance agreement with LitSure. There is no general duty in international arbitration to disclose TPF [*De Brabandere/Lepeltak, p. 395; Smith, p. 26; Landi, p. 101*]. The 2016 Rules, which govern these proceedings, likewise impose no obligation on a party to disclose its funding arrangements [*2016 Rules*].

54. RESPONDENT, nonetheless, seeks production of the AtJ and LitSure agreements, claiming they may be relevant for a security for costs request and in its defence against CLAIMANT's reserved damages claims [*RNoA p. 34 ¶¶19-20*]. This request is unfounded under either set of rules.

55. The 2016 Rules do not confer any power on the Tribunal to compel disclosure of the funding agreements **(I)**. Even if the Tribunal were to rely on its general procedural powers, the RESPONDENT's request does not meet the threshold for document production **(II)**. *In arguendo,* even if the 2025 SIAC Rules applied, RESPONDENT has not shown any ground that would justify disclosure under Rule 38.4 **(III)**.

I. THE 2016 RULES DO NOT CONFER ANY POWER ON THE TRIBUNAL TO COMPEL DISCLOSURE OF THE FUNDING AGREEMENTS

56. Under the 2016 Rules, there is no express rule that permits or requires disclosure of TPF [*2016 Rules*]. When they were drafted, maintenance and champerty were still prevalent in Singapore, making TPF agreements void and unenforceable in both litigation and arbitration [*Law Society v. Kurubalan, p. 40; Hill v. Archbold, p. 693*]. Against this backdrop, the drafters could not have intended the regime to regulate TPF [*Hwang/Chan, p. 355*]. Issues related to TPF were left for the national courts to govern [*Otech v. Clough, p. 38; Siyyan, p. 3*].

57. Singapore permitted TPF in international arbitration only from 1 March 2017 [*Civil Law Act 2017; Civil Law Regulations 2017*]. Subsequently, SIAC issued "*Practice Note on Arbitrator Conduct in Cases Involving External Funding*" to set out standards of conduct to be observed by arbitrators when dealing with external funders [*Practice Note ¶1*].

58. Rule 1.3 of the 2016 Rules states that practice notes are *"guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules"* [*Rule 1.3 2016 Rules*]. As such, they may guide the operation of the 2016 Rules and fill regulatory gaps; however, they cannot modify, replace, or create novel obligations [*Born, p. 2104–2106*; *Kayali, p. 113–139*].

59. The Practice Note prescribes disclosure of only four matters concerning TPF: the existence & identity of the third-party funder, details of the funder's interest in the outcome where appropriate, and whether the funder has any adverse cost liability [*Practice Note ¶5*]. The Note adopts the language of Rule 27(c) of the 2016 Rules by referring to the Tribunal's power to *"conduct such enquiries as may appear… necessary or expedient"*. It then states that these enquiries include the four items listed above [*Practice Note ¶5; Rule 27(c), 2016 Rules*].

60. Under the 2016 Rules, the enquiry power and the document production power of the Tribunal are separate and should be treated as such [*Hwang/Chan, p. 245; Law Society v. Kurubalan, p. 14*]. The enquiry power under Rule 27(c), allows the Tribunal to make broad enquiries, and can be satisfied

through representations without producing documents [*Rule 27(c) 2016 Rules; Choong et al. p. 216*]. Whereas Rule 27(f) allows the Tribunal to order specific documents, subject to relevance, materiality, and objections like privilege [*Rule 27(f) 2016 Rules; Darwazeh, p. 14*].

61. No rule in the SIAC Rules, the IBA Rules, or any other soft law instrument permits a standalone request for an enquiry, as such power may only be exercised *sua sponte* [*IBA Rules; Hague Rules; Swiss Rules; LCIA Rules*]. The RESPONDENT, therefore, has no procedural basis to seek such an enquiry.

62. The Practice Note contains no reference to Rule 27(f) and does not mention document production [*Practice Note*]. If SIAC had intended to give Tribunals the power to compel disclosure of TPF agreements, it would have done so in express terms. This reading aligns with the Supreme Court of Danubia's ruling that upheld an award under the 2016 Rules. In that case, the Tribunal refused to order disclosure of the TPF agreement because it lacked the power to do so [*PO2 p. 60 ¶36*].

63. CLAIMANT has already disclosed three of the four items listed in the Practice Note, the existence of funding, the identity of funders, and LitSure's liability for adverse costs [*NoA p. 6 ¶36*]. The only remaining item is the funder's interest in the outcome. It is understood that, like any other commercial funder, AtJ's return depends only on the CLAIMANT winning [*Goeler, p. 57*]. LitSure's cover, which has also been disclosed, does not require the Tribunal to examine the premium terms [*NoA p. 4 ¶32*]. Examining these terms would reveal private arrangements that have no connection to fairness, efficiency, or merit. It would simply hinder the expediency of these proceedings.

64. Where Parties agree to arbitration rules, those rules govern the proceedings unless displaced by mandatory provisions of the *lex arbitri* [*Newman/Burrows, p. 170–180*]. Difficulties arise only where the rules are vague or silent [*Moses, p. 66–69*]. Here, the Parties adopted the 2016 Rules with the Practice Note, which supplements the Rules on this specific issue [*Moses, p. 66–69; Emmott v. Wilson*]. The Note clearly identifies what may be sought regarding TPF. It should therefore be treated as the limit of the Tribunal's authority, and no additional powers should be read into it.

II. EVEN IF THE TRIBUNAL WERE TO RELY ON ITS GENERAL PROCEDURAL POWERS, THE RESPONDENT'S REQUEST ALLOW FOR DOCUMENT PRODUCTION

65. Even if the Practice Note permits disclosure beyond the listed items, any request for TPF agreements must still proceed through document production powers. Under Rule 27(f) of the 2016 Rules, the Tribunal may order the production of documents based on the standards of *"relevance"* and *"materiality"* [*Rule 27(f), 2016 Rules; Born p 2371*].

66. Under established practice, including the IBA Rules, production requests must be proportionate to any prejudice it may cause and should be granted only in exceptional circumstances [*Arts. 9.2(c), IBA Rules; IBA Commentary; Darwazeh, p. 12*]. TPF agreements should be treated like any other

document, and a request for their production must not turn into a fishing expedition [*Miller v. Caterpillar*; *Waterhouse v. PwC, p. 6*]. The RESPONDENT, thus, bears the burden under Rule 27(f) to show relevance, materiality, and proportionality [*Rule 27(f) SIAC Rules, 2016*].

67. This threshold has not been met here, as the funding agreements are neither relevant nor material to any issue before this Tribunal **(A)**. Further, any such production would cause prejudice to the CLAIMANT that is disproportionate to any limited value such disclosure might hold **(B)**.

A. THE TPF AGREEMENTS ARE IRRELEVANT AND IMMATERIAL TO THE ISSUES BEFORE THIS TRIBUNAL

68. Relevance requires a document to have a clear and logical connection to a fact or issue that the Tribunal must decide [*O'Malley, ¶ 3.69; Pilkov, p. 148; Tidewater v. Venezuela*]. Materiality requires that a document must affect the outcome of a claim or defence [*Hanotiau, p. 117; Kaufmann-Kohler, p. 18*]. The appropriate test is whether the funding agreement *"is relevant for the Tribunal's determination of the issues currently under deliberation"* [*Muhammet Çap v. Turkmenistan ¶¶10-11*].

69. PO No. 1 identifies four issues currently before the Tribunal: (1) which version of SIAC Rules applies; (2) whether disclosure should be ordered; (3) whether CLAIMANT is entitled to damages for breach of contract; and (4) how damages should be calculated under Art. 75 CISG [*PO1 p. 52 ¶1*]. The terms of CLAIMANT's funding arrangements have no connection to any of these issues and cannot influence their outcome. Accordingly, the Tribunal should not order disclosure, as the TPF agreements cannot be deemed relevant or material to issues that have *not even formed yet* [*PO1 p. 52 ¶1; Teniver v. Argentina ¶ 24*].

70. The only recognised exception is where facts related to TPF become relevant to deciding merits issues, such as in *Excalibur v. Keystone*, where the CLAIMANT's ability to raise finance was directly relevant to the merits of the claim [*Excalibur v. Keystone* ¶¶ 1373-1413]. No such exception applies here. CLAIMANT's financial arrangements have no bearing on the merits [*PO2 p. 58 ¶26*].

71. RESPONDENT's disclosure request rests entirely on speculation that the TPF agreements might be relevant for a potential security for costs application or defence against possible further damage claims [*RNoA p. 32 ¶20*]. Neither ground shows relevance or materiality, as the TPF agreements have no bearing on the security for costs *(i)* or any potential defence to further damages claims *(ii)*.

i. The funding agreements are irrelevant and immaterial to the security for costs

72. There is no security for costs application pending before this Tribunal. Even if such an application were to be made, the TPF agreements would still neither be relevant nor material [*Chadanian, p. 550; Goeler p. 764*]. Of the factors Tribunals usually weigh when considering security for costs, the only one that could implicate TPF is the CLAIMANT's ability to bear adverse costs [*Blackaby, p. 374*].

73. For that purpose, the only potentially relevant facts are whether TPF indicates the CLAIMANT's impecuniosity and whether the funder has any liability for adverse costs [*Crivellaro p. 43; Blackaby, p. 469*]. In this case, it is already known that the CLAIMANT is impecunious and that LitSure, an ATE insurer, has undertaken to meet all adverse costs [*PO2 p. 58 ¶20; NoA p. 4 ¶32*]. AtJ has no role in covering adverse costs, and any information concerning it is, therefore, not material to any future security for costs analysis [*PO2 p. 58 ¶25*].

74. An ATE insurance policy is simply another funding source for the CLAIMANT, and its internal terms do not affect a Tribunal's security for costs determination [*Arroyo v. BP Exploration¶¶75-82*]. Tribunals permit disclosure of funding terms only to assess whether the funder would bear adverse costs when considering a specific security request [*Guaracachi v. Bolivia ¶10; RSM v. Saint Lucia ¶90; Muhammet Çap v. Turkmenistan ¶25*]. The presence of ATE insurance significantly reduces the risk of default. Thus, further inquiry into the funder's capacity or willingness to provide additional cover is unnecessary [*Eskosol v. Italy ¶43*]. Since LitSure, a reputable ATE insurer, is already covering adverse costs, further details are irrelevant and immaterial [*PO2 p. 58 ¶23; NoA p. 4 ¶32*].

75. RESPONDENT has not filed a security for costs application. It has not shown that anything beyond what is already disclosed could be relevant if such an issue arises [*RNoA p. 32¶20*]. Accordingly, the relevance & materiality requirements are not satisfied.

ii. *The funding agreements are irrelevant to any potential defence for further damages claims*

76. RESPONDENT argues that TPF agreements may become relevant for the CLAIMANT's reserved right to seek damages arising from funding costs [*RNoA p. 32 ¶20; PO2 p. 58 ¶27*]. This is a substantive claim in the notice of arbitration. Even the RESPONDENT has treated it as a claim for damages, rather than a procedural defence [*NoA p. 6 ¶34; RNoA p. 32 ¶26*].

77. For the CLAIMANT to recover funding costs as damages, the Art. 74 CISG standard must be satisfied [*Art. 74 CISG; Schwenzer Art, 74 ¶14; NoA p. 4 ¶34*]. The TPF agreements do not assist the Tribunal in applying this test. They do not show whether the CLAIMANT's financial strain is tied to the breach or whether it was foreseeable [*PO2 p. 58 ¶20*]. Those issues depend on facts about the nature and size of the loss, the causal chain, and broader circumstances [*Schwenzer Art. 7 ¶57*]. These factors cannot be proved or clarified by the TPF agreements [*PO2 p. 58 ¶26*].

78. Even assuming the Art. 74 CISG test is met, the quantum of damages needs only to be fixed at the costs stage. This would arise only after the merits are decided, and the successful party is identified. [*Goeler, p. 1543*]. At that stage, CLAIMANT would need to substantiate the amount sought, which may require limited disclosure of funding terms [*Kardassopoulos v Georgia, p. 691; RSM v Grenada ¶68*]. Early disclosure would expose the CLAIMANT's risk assessment and strategy while

the merits remain unresolved. This would give the RESPONDENT a clear tactical edge, causing serious prejudice [*VV v VW, p. 13; Quasar v Russia ¶224; Blackaby et al., Waincymer, p. 1085; Sylvania v Iran*]. The agreements have no relevance or materiality at this stage and should not be disclosed.

79. When allocating costs, the inquiry should be limited to the reasonable costs a prevailing party would have incurred and the parties' conduct during proceedings [*Waincymer, pp. 170-180; Lachmann ¶1925; Pinsolle, p. 456*]. The existence or terms of TPF should not influence this assessment. The losing party cannot be charged inflated costs, and the winning party cannot be denied what is reasonably due, simply because of external funding [*Blackaby et al,¶9.99*].

80. As for RESPONDENT's reliance on the newspaper report on AtJ, funding terms are not open to scrutiny. They can be examined only if they affect the integrity of these proceedings [*RNoA p. 34 ¶26; RSM v Grenada ¶68; ATA v Jordan ¶34*]. This is because the CLAIMANT's decision to enter into a TPF arrangement is a private commercial matter outside the Tribunal's jurisdiction [*Sebok, p. 61–139; ICC Dossier, p. 57, 67*]. Any control AtJ may hold does not affect the Tribunal's cost analysis. It should be limited to determining reasonable expenses the CLAIMANT should have incurred [*Compagnie v Hammermills p. 10; Waterhouse v. PwC p. 16; Pinsolle, p. 385*]. Thus, funding agreement with AtJ is irrelevant to cost allocation, and disclosure of its terms is unnecessary.

81. Further, the AtJ agreement also does not suggest any influence or control over the proceedings. It only sets out the share AtJ would receive if CLAIMANT succeeds, and it contains no settlement threshold or control provisions [*Goeler p. 431; PO2 p. 58 ¶26*]. Therefore, both funding agreements are irrelevant to any issue presently before this Tribunal. They would still remain irrelevant even if the hypothetical concerns raised by the RESPONDENT were to arise later.

B. DISCLOSURE OF THE FUNDING AGREEMENTS WOULD BE DISPROPORTIONATE, GIVEN THE PREJUDICE IT WOULD CAUSE TO THE CLAIMANT

82. In deciding whether to order production, Tribunals look at the document's confidentiality and privilege [*De Brabandere/Lepeltak, p. 395;*]. They also consider whether disclosure would cause disproportionate prejudice to the party concerned [*Smith p. 26*]. This proportionality is central to ensuring fairness and equality, which the Tribunal must uphold under Art. 18 of the DAL and Rule 19.1 of the 2016 Rules [*Rule 19.1, 2016 Rules; Art. 18 DAL*].

83. Even if the Tribunal were to find marginal relevance, the request remains grossly disproportionate. TPF agreements invariably contain confidential financial terms, risk assessments, strategy notes, fee structures, budgets, and funder's case strength assessment [*Bouzols ¶42; Nieuwveld/Shannon p.* 65]. Disclosure would expose such terms, revealing CLAIMANT's strategy, giving RESPONDENT a

tactical advantage, and discouraging legitimate use of TPF [*Scherer/Goldsmith p. 147*]. It would also force the CLAIMANT to breach confidentiality, placing it at an undue disadvantage [*PO2 p. 59 ¶27*].

84. ATE insurance agreements attract legal advice privilege because they contain case assessments, litigation strategy, and other legally guided evaluations [*Arroyo v. BP Exploration; Eskosol v. Italy*]. They are therefore protected. Additionally, the AtJ funding agreement is bound by contractual confidentiality. Its terms for calculating the funder's recovery reflect the funder's assessment of the claim and funding model [*PO2 p. 58 ¶¶ 24-26*]. This indirectly reveals case strength and strategic considerations and falls within legal privilege [*Goeler, p. 564*].

85. The IBA Rules specifically permit exclusion of documents based on *"grounds of commercial or technical confidentiality"* [*Art. 9(2)(e), IBA Rules*]. The Tribunal's discretion should account for confidentiality interests when weighing whether disclosure is appropriate [*Born p. 2345-2601*].

86. The RESPONDENT's request fails the proportionality requirement. It places a heavy burden on the CLAIMANT, risks sensitive confidentiality, and comes at a stage with no clear procedural need. The RESPONDENT has also refused to share its own internal funding support from its parent company, creating an uneven footing [*Infra ¶ 100*]. The Tribunal should therefore decline the request.

III. *IN ARGUENDO*, EVEN IF THE 2025 RULES APPLIED, RESPONDENT HAS NOT SHOWN ANY GROUND THAT WOULD JUSTIFY DISCLOSURE UNDER RULE 38.4

87. Even if the Tribunal concludes that the 2025 Rules apply, Rule 38 does not necessarily require disclosure of the TPF agreements. It only obliges the funded party to disclose the funder's existence and identity [*Rule 38, 2025 Rules*]. The CLAIMANT has already disclosed these details in its Notice of Arbitration [*NoA p. 4 ¶26*], satisfying the mandatory disclosure obligations.

88. Any disclosure beyond the existence and identity of the funder can be ordered only under Rule 38.4. This rule allows the Tribunal to order disclosure of the funding agreements, including the funder's interest and its exposure to adverse costs [*Rule 38.4, 2025 Rules*].

89. The CLAIMANT has already disclosed the undertaking for adverse costs on its own initiative [*NoA p. 4 ¶30*]. As already established, any information beyond what has been disclosed has no relevance or materiality to the issues before this Tribunal [*Supra ¶¶68-81*]. The existence of an express disclosure rule does not lower the threshold or permit special treatment [*Van den Berg, p. 47*].

90. The Tribunal should not order the disclosure of the TPF agreements as such disclosure would hamper the expediency and cost-efficiency of these proceedings **(A)**. Furthermore, this would contravene fairness and equality between the Parties **(B)**.

A. THE DISCLOSURE OF TPF AGREEMENTS WOULD HAMPER THE EXPEDIENCY AND COST-EFFICIENCY OF THESE PROCEEDINGS

91. Rule 19.1 of the 2025 Rules requires the Tribunal to conduct the arbitration in an expedient and cost-efficient manner [*Rule 19.1, 2025 Rules*]. The Tribunal may decline to order disclosure, where doing so conflicts with these obligations [*ADG v ADI ¶ 112*; *Triulzi v Xinyi p. 151-152*].

92. Ordering disclosure of the funding agreements at this stage, without any identified procedural need, creates what commentators describe as *"numerous side-issues... distracting from the actual procedural issues in question"* [*Miller v. Caterpillar p. 21*]. This results in *a "waste of time and money"* on satellite disputes [*Ibid.*]. Such a diversion is inconsistent with the efficient conduct of the case.

93. The fact that a party has externalised its costs and risks is merely background noise [*Ross, p. 111-119; Molot ¶423*]. It is irrelevant to the merits unless the funding arrangement itself has a direct role in the underlying dispute, which is not the case here [*Ross, p. 116-119*]. The Tribunal has no jurisdiction over the CLAIMANT's commercial relationship with the funder. Such disclosure cannot be compelled to satisfy only the curiosity of the RESPONDENT or the Tribunal [*Waterhouse v PwC ¶28; de Brabandere, p. 397*]. Without a concrete procedural need, such a request amounts to a fishing expedition [*Van den Berg, p. 17*].

94. Tribunals should deter vague or tactical attempts to use TPF as a tool in the dispute. Unless disclosure of TPF agreements has a genuine procedural or substantive consequence, concerns like exposing the *"real party in interest"* do not assist the Tribunal [*Waterhouse v PwC*]. A request that adds no procedural value and only creates side disputes should therefore be refused by this Tribunal.

B. DISCLOSURE WOULD GO AGAINST FAIRNESS AND EQUALITY BETWEEN THE PARTIES

95. Rule 19 of the 2025 Rules obliges the Tribunal to conduct the proceedings in a fair manner [*Rule 19.1, 2025 Rules*]. Additionally, Art. 18 of the DAL requires it to ensure equality between the Parties [*Art. 18 DAL*]. Compelling the production of the TPF agreements would disrupt this balance, create procedural asymmetry and expose any potential award to challenge [*Waincymer, p. 72*].

96. The CLAIMANT's ability to pursue this arbitration depends entirely on TPF [*PO2 p. 58 ¶20*]. International practice cautions tribunals against procedural measures that may stifle a claim by targeting arrangements that enable it to proceed [*Wietrzykowski, p. 23; Hamester v. Ghana ¶15*]. Requiring disclosure of TPF terms would undermine funder's confidence, disrupt the funding arrangement, or increase CLAIMANT's costs of compliance [*Lévy/Bonnan p. 24*]. Any of these outcomes would jeopardise CLAIMANT's ability to continue the arbitration [*Wietrzykowski, p. 27*].

97. There is no principled reason to treat commercial funders differently from a parent company that supports its subsidiary [*Scherer/Goldsmith p. 209*]. Both may provide support due to financial limitations and may influence proceedings, but cannot be held liable under the award.

98. Here, the RESPONDENT has disclosed that it receives financial support from its parent company. However, it has not offered to disclose the terms of this support, the extent of funding, coverage of adverse costs, or control over litigation [*RNoA p. 32 ¶21*]. RESPONDENT having financial stability and internal support, faces no equivalent disclosure obligations, as the same does not qualify as TPF under Rule 2 of the 2025 Rules [*Rule 2, 2025 Rules; RNoA p. 32 ¶21*]. Moreover, it is unlikely that a formal agreement exists; therefore, comparable information cannot be realistically obtained from the RESPONDENT.

99. Financial disparity, in itself, does not breach equality of arms. It becomes a violation only when it creates procedural inequality, allowing one party to exploit the other's disadvantage [*Lévy/Bonnan p. 78; Waterhouse v. PwC*]. Requiring disclosure of the TPF arrangement would enable the RESPONDENT to examine CLAIMANT's private financial arrangements, identify vulnerabilities, and impose compliance costs or risks of funding termination [*Scherer/Goldsmith p. 209*]. Since the RESPONDENT faces no corresponding obligation, ordering disclosure would create procedural asymmetry, thereby violating the equality of arms.

100. Procedural inequality and unfairness can justify setting aside or refusing enforcement of an arbitral award under both the DAL and the NY Convention [*Holtzmann/Neuhaus, p. 98; Born, p. 345-451*]. Both of them allow challenge or refusal where the arbitral process was unfair or deviated from agreed procedures [*Art.* 34(2)(a)(iii), *DAL; Art. V(1)(b) NYC*].

101. Imposing disproportionate disclosure obligations on a financially constrained CLAIMANT, while the RESPONDENT faces none, creates material asymmetry and breaches procedural equality. The Tribunal should therefore avoid such a burden to preserve procedural balance and enforceability.

102. **Conclusion of Part 2**: Under the 2016 Rules, the Tribunal lacks the power to compel TPF agreement disclosure. Even if such power existed, the Agreements fail the relevance and materiality threshold and would cause disproportionate prejudice to the CLAIMANT. Under the 2025 Rules, disclosure would hinder expediency and fairness, and violate equality between the Parties.

SUBSTANTIVE ISSUES

PART 3: RESPONDENT IS NOT EXEMPT UNDER ART. 79 CISG

103. CLAIMANT and RESPONDENT entered into a contract for the supply of *Vanilla Planifolia Mediterraniensis,* an extremely sensitive, rare and valuable Vanilla Orchid. Based on RESPONDENT'S representations, CLAIMANT invested substantial time, scientific expertise and financial resources to

perform the contract. However, RESPONDENT later unilaterally refused to take delivery of Orchids, and now seeks to hide behind Art. 79 CISG to excuse its deliberate non-performance. This defence is untenable and offers RESPONDENT no shelter from its obligations.

104. RESPONDENT cannot rely on Art. 79 CISG because it bore the risk of obtaining the import permit **(I)**. Additionally, the cumulative requirements for invoking Art. 79 CISG are not met **(II)**. Furthermore, RESPONDENT finds no refuge in the underlying contract **(III)**. RESPONDENT, therefore, remains fully liable for damages under the CISG **(IV)**.

I. THE RISK OF OBTAINING THE IMPORT PERMIT WAS BORNE BY THE RESPONDENT

105. Art. 79 CISG does not apply where the impediment lies within the sphere of risk assumed by the party invoking it [*Huber/Mullis, p 259; Staudinger/Magnus, Art 79, ¶16; Iron Molybdenum Case*]. Therefore, the natural question that must be asked is: *where did the allocation of risk lie?* Cl. 5.1 of the Sales Agreement squarely places the responsibility of obtaining *"all import permits"* with the RESPONDENT [*Exh. C3 ¶5.1*]. When a risk has been contractually allocated, there is no scope for the application of Art. 79 CISG [*Garro, pp 220-223; Davies/Snyder, p. 326; CISG-Online 5514*].

106. Contractual allocation aside, even as a general principle of international sales law, the responsibility for procuring an import permit rests with the buyer. This is because it is most closely connected to the buyer's regulatory environment [*Semi-Automatic Weapons Case; Honnold/Flechtner, Art. 31 ¶ 211*]. RESPONDENT, thus, had a duty to obtain the required import permit, but failed to do so.

107. Furthermore, RESPONDENT's own conduct confirms this allocation of risk. In September 2023, CLAIMANT had doubts whether the contract would be performed if the Orchid was reclassified under CITES. Mr Albius assured CLAIMANT that RESPONDENT would be able to obtain an import permit, even if the reclassification occurred [*NoA p.4 ¶15*]. RESPONDENT boasted of having "*good contacts*" with the import-granting authorities in Equatoriana, and assured CLAIMANT that it could obtain the permit, even on short notice [*ibid*]. Moreover, RESPONDENT explicitly told CLAIMANT that there was no need to advance the delivery date, or obtain an anticipatory permit, despite both options being open to the RESPONDENT [*NoA p.4 ¶ 12*].

108. CLAIMANT, in reliance of RESPONDENT's communication, proceeded with the contract. Permitting RESPONDENT to now invoke the failure to obtain the permit as an exempting impediment would completely undermine CLAIMANT's reliance. This is contrary to the general principle of *venire contra factum proprium*, derived from Art. 16(2) CISG [*Ad Hoc Case 2001; Ad Hoc Case 2004; Rolled Metal Sheets Case; Schmidt-Kessel, Art. 8 ¶ 52*].

109. Accordingly, the risk of procuring the import permit lay with the RESPONDENT, not only by default or by express contractual allocation, but also by virtue of its own representations. Put simply,

RESPONDENT sailed forward, assuring calm waters, only to later claim that the storm made the journey impossible. Having borne the risk, RESPONDENT cannot now rely on Art. 79 CISG.

II. THE CUMULATIVE REQUIREMENTS FOR INVOKING ART. 79 CISG ARE NOT MET

110. RESPONDENT cannot invoke Art. 79 CISG because the cumulative requirements for the same are plainly unmet. For a party to be exempted, the impediment must be the sole reason for its failure to perform [*Schwenzer, Art. 79 ¶16; Brunner, p. 340*]. Where non-performance results from a combination of events, each event must independently satisfy all requirements of Art. 79 CISG [*Heuzé, note 472; Schwenzer, Art. 79 ¶16; Ukrainian Miners Case*]. Therefore, a party cannot rely on one qualifying circumstance to excuse non-performance where other contributing factors fall within its sphere of control, were foreseeable or could have been avoided or overcome.

111. Contrary to RESPONDENT's portrayal, the reclassification under CITES was never the sole cause of its non-performance. Instead, it was a combination of events, including RESPONDENT'S failure to obtain the import permit, its refusal to take an earlier delivery, internal business decisions and concerns of reputational loss. Accordingly, even if RESPONDENT were able to establish that the reclassification under CITES meets the stringent requirements under Art. 79 CISG, it would still have to establish that each contributing event, taken independently, meets the same standard.

112. Therefore, Art. 79 CISG cannot be successfully invoked as RESPONDENT'S failure to obtain the import permit does not qualify as an exempting impediment **(A)**. Additionally, the CITES reclassification was foreseeable, and its consequences could have been reasonably avoided **(B)**.

A. THE FAILURE TO OBTAIN AN IMPORT PERMIT DOES NOT QUALIFY AS AN IMPEDIMENT

113. Art. 79 CISG requires the party invoking an exemption to demonstrate that the impediment and its consequences could not have been avoided or overcome [*Art. 79 (1), CISG*]. This standard is applied strictly in international sales contracts [*cf. AC Op. 20; AC Op. 7; Huber/Mullis, Art 79, ¶ 1*].

114. The requirements for invoking Art. 79 CISG do not stand met, as RESPONDENT could have avoided the impediment by opting for an earlier delivery **(i)**. Alternatively, RESPONDENT could have overcome the impediment by applying for an anticipatory permit **(ii)**.

iii. RESPONDENT could have opted for an earlier delivery and avoided the impediment

115. Under Cl. 4.2 of the Sales Agreement, RESPONDENT had a contractual right to take delivery of goods anytime between 1 January 2024 and 31 March 2024 [*Exh. C3 ¶ 4.2*]. RESPONDENT, thus, had the full opportunity to fix an earlier delivery date, prior to CITES reclassification coming into effect, thereby avoiding the impediment completely.

116. In September 2023, CITES initiated the process to reclassify the Orchid from Appendix II to I, with the finalizing on 1 February 2024 [*NoA p.3 ¶10; Exh. C4 ¶1*]. Therefore, it was evident from at least September 2023 that the CITES would finalize inclusion of the Orchid in Appendix I.

117. Keeping this in mind, in November 2023, CLAIMANT expressly proposed an earlier delivery to avoid the impediment altogether. Despite this, RESPONDENT flatly refused to advance delivery, citing increased storage costs and unfinished greenhouses [*NoA p.4 ¶11*]. For Art. 79 CISG to apply, the party seeking its application must prove that the event or its consequences could not have been prevented [*Art. 79, CISG*]. The meaning of '*could not have been prevented*' is treated strictly, such that a party is expected to overcome the consequences of an impediment, even if it results in greatly increased costs or losses [*Schwenzer, Art. 79 ¶15(c); Karrollus, p 209*]. While advancing delivery would have increased RESPONDENT's storage costs and risk of orchid loss [*PO2 p.55 ¶2*], increased costs, by themselves, are insufficient to invoke Art. 79 CISG [*Liu, ¶4.5; Iron Molybdenum Case*].

118. RESPONDENT may argue that their new greenhouses to store the Orchids were not ready yet [*RnoA p.35 ¶25*]. However, these considerations fall within RESPONDENT's own commercial sphere. Personal impediments are not considered under Art. 79 CISG [*CISG-Online 436; Flambouras, pp.267,268; Soergel/Lüderitz/Dettmeier, Art 79, ¶ 5*]. Therefore, the non-availability of greenhouses cannot be used as a justification for non-performance. RESPONDENT was expected to overcome the impediment, despite higher costs. By refusing an earlier delivery, RESPONDENT failed to take reasonable steps to avoid the impediment, precluding any defense under Art. 79 CISG.

iv. RESPONDENT could have applied for an anticipatory permit and overcome the impediment

119. Under Art. 79 CISG, exemption is only available where the party invoking it can demonstrate that the impediment and its consequences could not have been avoided or overcome [*Art. 79 (1), CISG*]. The promisor is bound to act reasonably and take all necessary precautions to avoid the impediment altogether [*Bianca/Bonell, Art. 79 ¶. 2.6.4; Brunner, p. 321; Pichonnaz, ¶¶1750,1751*].

120. As an alternative to opting for an earlier delivery, CLAIMANT suggested that RESPONDENT apply for an anticipatory import permit in November 2023. At the time, the authorities were granting such permits after the Standing Committee recommendation in September 2023 [*NoA p.4 ¶ 12*].

121. RESPONDENT, nevertheless, refused to apply for an anticipatory permit, citing its supposed "*good contacts*" with the authorities and assured CLAIMANT that it could obtain a permit even on short notice [*NoA p. 4 ¶ 15*]. Later, RESPONDENT informed CLAIMANT that it would be "*impossible*" to obtain an import permit on time, resulting in a breach [*NoA p.4 ¶ 19*]. Applying for an anticipatory permit could have overcome the impediment, and had been suggested by CLAIMANT well in advance. Therefore, the breach is directly attributable to RESPONDENT'S own conduct.

122. RESPONDENT may contend that the immediate reclassification came as a surprise, since the provision had never been invoked before [*PO2 p. 57 ¶ 14*]. This contention is entirely without merit. RESPONDENT was fully aware of this provision, as it was already public knowledge that the Orchid was being reclassified using this very provision [*Exh. C4 p.14*]. Thus, it was publicly known, since September 2023, that the reclassification would be effective immediately.

123. A reasonable party in RESPONDENT'S shoes could have easily applied for an anticipatory permit, overcoming the impediment. RESPONDENT failed to do so, and later could not perform the contract. This was RESPONDENT's own doing, and it cannot now find shelter under Art. 79 CISG.

B. THE CITES REGULATORY CHANGE WAS FORESEEABLE

124. RESPONDENT cannot rely on Art. 79 CISG because the alleged impediment, the reclassification under CITES, was foreseeable. Foreseeability, for the purposes of Art. 79 CISG is assessed at the time of contract conclusion [*Sec. Commentary, Art. 65*]. The standard for foreseeability, in reference to Art. 8(2) CISG, is whether a reasonable party could foresee the possibility of the impediment arising [*Fischer, p.68; Kröll, Art. 79 ¶52*]. Where such a foreseeable risk is not contractually addressed, the risk is to be borne by the party upon whom performance depends [*Kröll, Art. 79 ¶50; Failure to Open Letter of Credit and Penalty Clause Case; Malaysia Dairy Case; Canned Oranges Case*].

125. The parties concluded their contract in August 2022 [*Exh. C3 p. 12*]. At that time, the reclassification of the Orchid was already within the regulatory process under CITES. This is because the Plants Committee cannot issue a recommendation for reclassification without first listing a species as *"under review"* at least one meeting prior [*Res. Conf. 14.8, CoP 19*]. Since the Plants Committee made its recommendation in August 2023 [*Exh. R 1 ¶6*], the Orchid must necessarily have been listed as *"under review"* at a prior meeting. The last meeting of the Plant Committee was in June 2021 [*Plant Committee Meeting*]. Since all meetings of CITES are publicly available [*CITES Meetings*], RESPONDENT was either aware, or ought to have been aware, that the Orchid was already a species "*under review*" for reclassification, prior to the conclusion of the contract.

126. Therefore, the possibility of the Orchids being reclassified was foreseeable at the time of contract conclusion, given the circumstances. This particular risk was not contractually addressed, and therefore, it must be assumed by RESPONDENT. Hence, Art. 79 CISG is inapplicable.

III. CL. 12 DOES NOT EXCUSE RESPONDENT'S NON-PERFORMANCE

127. Cl. 12, which is a force majeure clause, does not excuse RESPONDENT's non-performance, as the event fell within RESPONDENT's reasonable control **(i)**, was not complied with procedurally **(ii)**, and is barred by estoppel **(iii)**.

i. The event was within RESPONDENT's reasonable control

128. Cl. 12 of the contract exempts parties from events beyond their reasonable control. [*Exh. C3 ¶12*] However, as already established, [*Supra ¶¶ 105-109*] the circumstances relied upon by RESPONDENT, fell within their sphere of control. Further, RESPONDENT had the ability to prevent or overcome these difficulties [*Supra ¶¶ 113-123*]. Any event that could have been avoided and was within the party's control cannot be excused under Cl. 12.

ii. The requirement of notice under Cl. 12 is not met

129. Cl. 12.2 requires the party invoking it to give a notice to the other party within 5 days of a Force Majeure event. The reclassification occurred on 1 February 2024, and RESPONDENT only notified CLAIMANT of the effect of reclassification on 10 February [*Exh. C 6 ¶4*]. RESPONDENT, therefore, failed to notify CLAIMANT within the prescribed time period of 5 days [*Exh. C 4 ¶1*]. This procedural non-compliance alone defeats any attempt to invoke Cl. 12.

v. RESPONDENT's claim is barred by estoppel

130. In any case, RESPONDENT is estopped from relying on Cl. 12 [*Supra ¶108*]. RESPONDENT assured CLAIMANT that no difficulty would arise in obtaining the import permit even on short notice [*NoA p. 4 ¶ 15*]. CLAIMANT relied on this assurance and proceeded with the contract. Thus, RESPONDENT is not permitted to take an entirely contradictory stance before this Tribunal, as it would be in contravention of the general principle of *good faith* under Art. 7 CISG [*Schwenzer, Art. 7 ¶32*].

IV. RESPONDENT'S BREACH OF DUTY ENTITLES CLAIMANT TO DAMAGES

131. Under Art. 60 CISG, a buyer is under a duty to do everything reasonably required to perform the contract [*Art. 60, CISG*]. When a buyer fails to fulfil its duty under Art. 60 CISG, the seller is entitled, under Art. 61 (1)(b) CISG to claim damages under Arts. 74–77 CISG [*Art. 61 (1)(b), CISG*]. Therefore, CLAIMANT is entitled to advance a claim of damages.

132. **Conclusion to Part 3:** In sum, RESPONDENT cannot rely on Art. 79 CISG or any contractual provision to escape liability, as the risk of obtaining the import permit was allocated to it, the alleged impediments were foreseeable and avoidable, and RESPONDENT failed to take reasonable measures to prevent non-performance. Having breached its obligations, RESPONDENT is liable for damages arising directly from its unilateral refusal to take delivery.

PART 4: CLAIMANT IS ENTITLED TO DAMAGES UNDER THE CISG

133. After breaching the contract, RESPONDENT wrongfully invoked Art. 79. In doing so, RESPONDENT is trying to shield itself from the consequences of its own wrongdoing by denying CLAIMANT rightful damages. Its arguments amount to nothing more than grasping at straws in an

effort to curtail the quantum of damages. Its position rests on mere procedural technicalities and quantity clauses, while offering nothing of substance, in an attempt to limit its liability. Notwithstanding these attempts, RESPONDENT remains fully liable for damages under the CISG.

134. Despite RESPONDENT's objections, Claimant's base calculation of damages on 3300 Orchids is accurate **(I)**. Therefore, CLAIMANT is entitled to 3.3M USD in damages under Art. 75 CISG **(II)**. *In arguendo*, CLAIMANT is entitled to the same amount under Art. 74 CISG **(III)**. Independently, CLAIMANT is entitled to 3.3M USD by way of a set-off against a self-help sale **(IV)**. In any case, CLAIMANT is, at minimum, entitled to 2.97M USD in damages under Art. 76 CISG **(V)**.

I. THE BASE CALCULATION ON 3,300 ORCHIDS IS ACCURATE

135. The contract provides for delivery of 3000 Orchids, with an option to alter the quantity by 10% [*Exh. C3 ¶ 2.1*]. Contrary to RESPONDENT's claim**,** it did not have the sole right to determine quantity **(A)**. Damages must be calculated on the maximum quantity of 3300 Orchids **(B)**.

A. RESPONDENT DID NOT HAVE THE SOLE RIGHT TO DETERMINE ORCHID QUANTITY

136. RESPONDENT asserts that it had the right to determine the quantity and aims to limit damages to only 2700 Orchids [*RNoA p.35 ¶ 27*]. However, when studied in light of the parties' prior communication, the picture painted by RESPONDENT falls apart. This Tribunal may appreciate prior negotiations of parties to understand their intention [*Art. 8 (3), CISG*]. Prior to contract conclusion, RESPONDENT requested for a (+/- 10%) variance clause. The reasons given for the same were: commercial reasonability, *balancing the interests of both parties* and other transport or variation related concerns [*Exh. R2 ¶4*]. This clearly indicates that the clause was meant to allow commercial flexibility to both parties, and was not meant to be the RESPONDENT's unilateral right.

137. This understanding is furthered by the language used by both parties. The relevant clause reads – *"Seller shall sell, and buyer shall buy..."* [*Exh. C 3 ¶2.1*]. This language is directly in contrast to the very next clause, which allows the buyer to make the final determination, in cases involving substitutes [*Exh. C 3 ¶2.2*]. The previous clause makes no such qualification. In fact, it is common practice for CLAIMANT to have quantity tolerance clauses, where more than 2000 Orchids are involved [*PO 2 p.56 ¶ 9*]. Therefore, it is evident that, RESPONDENT did not have a unilateral right to fix quantity.

B. DAMAGES MUST BE CALCULATED ON THE MAXIMUM QUANTITY OF 3300 ORCHIDS

138. An inference must be drawn against the breaching party when there exists an uncertainty as to the precise measure of damages [*Kröll, Art. 74 ¶18; Super Valu Stores vs Peterson; AC Op. 6*]. This is in accordance with the general principle of '*full compensation*' under Art. 74 CISG, which allows an aggrieved party to recover all foreseeable losses [*Solarpower GmBH Case; I v NV P*].

139. RESPONDENT was well aware that CLAIMANT would have to cultivate and reserve the entire potential batch of 3,300 orchids at least 3 years in advance [*Exh. C 1* ¶*6*]. Therefore, RESPONDENT was well aware that a breach would result in CLAIMANT losing the full cultivation. Thus, RESPONDENT must not be permitted to artificially reduce damages that CLAIMANT is entitled to.

140. *In arguendo*, if RESPONDENT did have a unilateral right to fix the final quantity of Orchids, it could have eliminated the present uncertainty by exercising that right. Instead, RESPONDENT breached the contract [*RNoA p.35 ¶ 27*], creating the very ambiguity it now wants to rely upon. RESPONDENT cannot be allowed to benefit from an ambiguity created by its own fault. This approach is in consonance with the general principle of '*good faith*', which prevents a party from benefiting from its own wrongdoing [*Martínez Canellas, p. 144; Van Alstine, p. 153*]. Thus, in either case, the total quantity of 3300 Orchids is the accurate base for calculation of damages.

II. CLAIMANT IS ENTITLED TO 3.3M USD IN DAMAGES UNDER ART. 75

141. In order to invoke Art. 75, its three conditions must stand met. There must be a substitute transaction, done after avoidance, and such a transaction must be reasonable [*Huber/Mullis, p. 283; Timber Case; Diammonium Phosphate Case*]. The sale to Herbal Cosmetics qualifies as a substitute transaction **(A)**. This sale was performed *"after avoidance"* **(B)**. The sale was reasonable **(C)**. The damages thus calculated stand at 3.3M USD **(D)**.

A. THE SALE TO HERBAL COSMETICS QUALIFIES AS A SUBSTITUTE TRANSACTION

142. RESPONDENT contends that the sale to Herbal Cosmetics does not qualify as a substitute transaction, as it involved an existing customer [*RNoA p. 35 ¶ 26*]. However, such a claim stands without merit. For a transaction to qualify as a substitute, it must have been made to meet the innocent party's '*fulfilment interest*'. In other words, it is *only relevant* that the sale would not have been entered into, if the contract had been fulfilled [*Schwenzer, Art. 75 ¶1; Hager, pp. 681, 691*].

143. CLAIMANT contacted Herbal Cosmetics only after RESPONDENT informed CLAIMANT that timely performance would not be possible [*Exh. C6 ¶ 6*]. Owing to the plant's characteristics, CLAIMANT had to ensure sale before the plants began flowering, which would have resulted in a 30% reduction of their value [*NoA p.5 ¶23*]. Therefore, CLAIMANT undertook the contract with Herbal Cosmetics, after RESPONDENT refused performance [*Infra ¶¶ 146-154*]. This was a necessary step to prevent further losses from flowering and non-availability of the greenhouse for future cultivation [*Exh. C6 ¶ 5*; *NoA p.5 ¶23*]. Furthermore, CLAIMANT's intention to recoup performance is evidenced by the fact that the contract with Herbal Cosmetics included those very plants, that were originally grown for RESPONDENT, and in the same quantity [*Exh. C6 ¶¶10, 12*].

144. Therefore, the present transaction, having been entered into as a result of RESPONDENT's breach, and to prevent further losses, qualifies as a substitute transaction.

B. THE COVER SALE WAS PERFORMED *'AFTER AVOIDANCE'*

145. When one party to a contract refuses to perform its obligations, the innocent party becomes entitled to avoid the contract immediately [*Art. 72(3), CISG*]. RESPONDENT's communication on 10 February 2024 amounted to a refusal to perform the contract **(i)**. Subsequently, CLAIMANT impliedly avoided the contract on the same day **(ii)**. In any case, the procedural requirement of avoidance must be deemed to have been met in the present case **(ii)**.

i. RESPONDENT's communication on 10 February 2024 amounted to a refusal to perform

146. Ordinarily in cases of anticipatory breach, the aggrieved party is required to notify the other party, giving them an opportunity to assure performance [*Art. 72(2), CISG*]. However, when one party declares a refusal to perform, the contract may be avoided immediately, without issuing a notice [*Art. 72 (3), CISG*]. The sole enquiry is whether such refusal is '*clear and unambiguous*' to a reasonable party in its position [*Kröll, Art. 72 ¶ 27; Schwenzer, Art. 72 ¶ 35*].

147. On 10 February, Mr. Albius, informed CLAIMANT that timely performance was *"impossible"* and it was *"very doubtful"* whether performance could take place at all [*NoA p.4 ¶ 19*]. Such communication amounts to a '*clear and unambiguous*' refusal to perform, when assessed according to RESPONDENT's subjective intent under Art. 8(1) CISG **(a)**. Alternatively, it meets this standard, as understood by a reasonable person within the meaning of Art. 8(2) CISG **(b)**.

a. RESPONDENT's communication constituted a 'clear and unambiguous' refusal to perform under Art. 8(1) CISG

148. The statements of one party must be interpreted as to their intention where the other party *knew or could not have been unaware of* such intention [*Art. 8 (1), CISG, Zeller p.91*]. CLAIMANT knew or could not have been unaware of RESPONDENT's intention to refuse performance on 10 February 2024.

149. It is settled that when a party refuses to perform on time, without specifying a future date of performance, such conduct amounts to the *'clearest'* form of refusal to perform [*Kröll, Art. 72 ¶ 28; Bridge, pp. 911, 927; Compound Fertilizer Case*]. In the present case, RESPONDENT informed CLAIMANT that timely performance was '*impossible*', and simultaneously failed to indicate any future date for performance, thereby meeting this standard [*NoA p. 4 ¶ 19*].

150. In any case, the present contract contains a '*time is of the essence*' clause [*Exh. C 3 ¶ 4.2*]. Where time has been made of the essence, a delay in performance, constitutes a fundamental breach [*Schwenzer, Art. 25 ¶ 132; CISG-Online 17; Antima Case; Glacier Bay Case*]. Therefore, RESPONDENT'S outright refusal to perform on time must be treated as a refusal to perform altogether.

151. Evidently, in both instances, RESPONDENT's conduct amounts to a '*clear and unambiguous*' refusal to perform within the meaning of the CISG. CLAIMANT, therefore, knew or could not have been unaware, that RESPONDENT's communication constituted a refusal to perform. This intention was clearly apparent to CLAIMANT, as, Ms. Theophrastus was "*not surprised at all*" by RESPONDENT's conduct and immediately began looking for other buyers [*Exh. C 6* ¶*6*]. Thus, RESPONDENT's statement must be interpreted as their unequivocal intent to refuse performance, in accordance with Art. 8(1) CISG [*Art. 8 (1), CISG*]. Consequently, RESPONDENT's conduct translates to a clear refusal to perform both as a matter of law and under the CISG'S interpretative rules.

b. In arguendo, RESPONDENT's conduct on 10 February amounts to a 'clear and unambiguous' refusal to perform under Art. 8 (2) CISG

152. The standard for interpretation under Art. 8(2) of the CISG is the understanding that a reasonable person would have in the same circumstances [*Ferrari et. al p. 181; Kröll, Art. 8* ¶ *23*]. In light of the present circumstances, any reasonable party in CLAIMANT's position, would interpret RESPONDENT's conduct to be a '*clear and unambiguous*' refusal to perform.

153. On 1 February, the CITES Standing Committee voted to move the Orchid to Appendix I, with immediate effect by invoking Conf.XX.8 [*Exh. C 4* ¶ 2]. This was followed by a leading newspaper reporting that an environmental group was mounting pressure on RESPONDENT's government to tighten import restrictions for commercial uses [*Exh. C 4* ¶ *11*]. Subsequently, on February 8, the Minister of Agriculture and Nature in RESPONDENT's country, announced publicly, that the country would revise and restrict granting of import permits [*NoA p.4* ¶ *13*]. It was under these circumstances that RESPONDENT informed the CLAIMANT that, timely delivery was '*impossible*' and it was '*very doubtful*' whether delivery could take place at all [*NoA p.4* ¶ *14*].

154. A reasonable party in CLAIMANT's position, aware of RESPONDENT's regulatory environment, the public and governmental stance, and the explicit statement of impossibility, would naturally conclude that RESPONDENT did not intend to perform. In the *Compound Fertilizer Case*, *"[Seller] wrote to [Buyer] stating: '… It is impossible to deliver the goods. We will try to find other sources, but… the possibility is low'"*. This was held to be a definite and final refusal to perform within the CISG [*Compound Fertilizer case*]. Accordingly, here too, RESPONDENT's conduct on 10 February constituted a '*clear and unambiguous*' refusal within the meaning of Art. 8(2) CISG. RESPONDENT'S refusal to perform entitled CLAIMANT to avoid the contract immediately on 10 February.

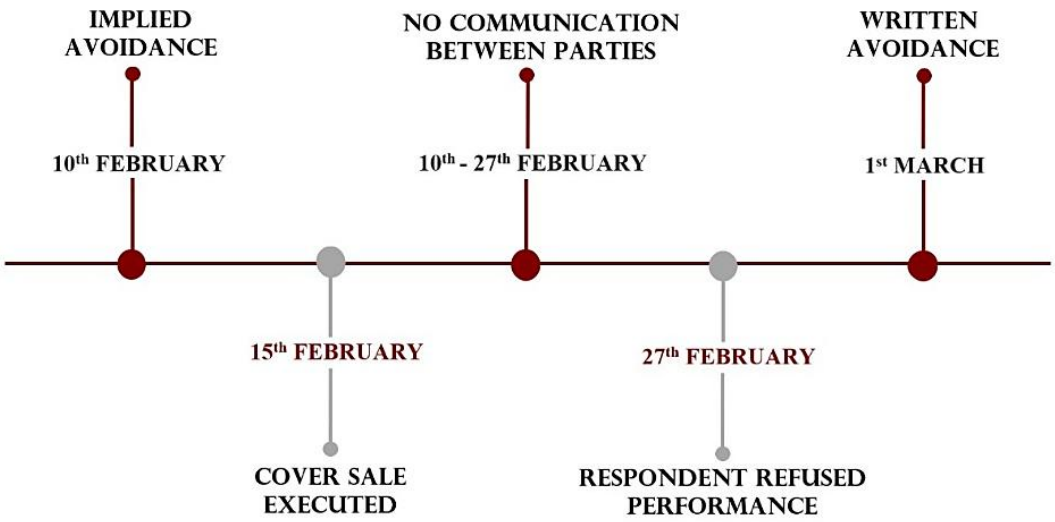
ii. CLAIMANT impliedly avoided the contract on 10th February

155. In accordance with the '*freedom of form'*, a notice of avoidance may be implied [*Neumayer/Ming, Art. 26 Note 1; Schwenzer, Art. 26* ¶ *7*]. Where the aggrieved party's conduct makes its intention to avoid

evident to a reasonable person, the requirement of implied notice is met [*Cosmetics and Perfume Case*]. Similarly, when an aggrieved party sets a condition and threatens avoidance, the unmet condition, by itself is sufficient to trigger avoidance [*Schwenzer, Art. 26 ¶ 8*]. Accordingly, where a buyer required the seller to provide a firm commitment to continue performance, even a vague reply was considered sufficient grounds for implicit avoidance [*Chemical Fertilizer Case*]. Furthermore, a party who fails to protest against a communication that reflects a discussion to avoid the contract, must be barred from claiming that avoidance has not occurred [*cf. Radio Phones Case*].

156. On 10 February, CLAIMANT clearly informed RESPONDENT, that they "*had to*" deliver the Orchids, by mid-May, to either RESPONDENT or any other buyer [*Exh. C 6 ¶ 5*]. CLAIMANT made it clear that in such a case, delivery per the contractual timeline would not occur [*ibid*]. This communication, to any reasonable person, made it clear that this was an ultimatum. It required RESPONDENT to confirm whether it would take delivery. However, RESPONDENT failed to give an assurance and merely stated that they would "*come back*" [*ibid*]. Therefore, RESPONDENT having failed to provide assurance or otherwise safeguard its position, cannot claim non-avoidance.

157. Furthermore, in cases where avoidance may not be fully certain, Tribunals may refer to the conduct of the parties after contract conclusion to determine their intent [*Art. 8 (3), CISG*]. When there is prolonged inaction by either party towards contract fulfillment, it has been held as sufficient intention to extinguish the agreement, by the aggrieved party [*Egyptian Cotton Case*]. After 10 February, CLAIMANT acted consistent to its communication, by carrying out a substitute sale [*Exh. C 6 ¶ 6*]. Meanwhile, RESPONDENT neither objected to any cover sale nor assured performance. Neither party proceeded with their contractual duties, until 27 February, when RESPONDENT finally informed that the contract could not be fulfilled. This prolonged inaction by both parties serves as a marker of implied avoidance.



iii. In any case, the requirement of avoidance must be deemed to have been met

158. Under the prevailing opinion, when a party '*seriously and definitely*' refuses to perform, the aggrieved party has no obligation to avoid the contract before entering into a substitute sale [*Schwenzer, Art. 75 ¶5; PVC Foil Case; Iron Manganese Case; Iron Molybdenum Case*]. A party that has wrongfully refused performance cannot insist on formal avoidance by the innocent party. This is because, doing so would contravene the principles of good faith and estoppel (*venire contra factum proprium*) within the CISG [*Kröll, Art. 75 ¶9; Furniture Leather Case*]. The rationale is to avoid penalizing a party that acted diligently following a refusal to perform, and the same reasoning squarely applies here.

159. RESPONDENT's conduct on 10 February, was an unambiguous denial, thus qualifying as a '*serious and definite*' refusal [*Supra ¶¶ 146-154*]. Therefore, even if the CLAIMANT's assertion of implied avoidance were rejected, it would, in any case be entitled to proceed without avoidance.

C. THE SUBSTITUTE TRANSACTION WITH HERBAL COSMETICS WAS REASONABLE

160. For a transaction to be considered a substitute, it must be reasonable in both price and other terms of contracting [*Schlechtriem/Butler, ¶311a; Canned Oranges Case*]. The contract with Herbal Cosmetics was reasonable as to its price **(i)**. It was also reasonable as to the other terms of contracting **(ii)**.

i. The contract with Herbal Cosmetics was entered into at a reasonable price

161. For a transaction to be reasonable, it need not be at the exact prevailing market price. It may be slightly higher or lower, depending on the circumstances surrounding the transaction [*AC Op. 8; Saidov, p.179; Industrial Raw Materials Case*]. Furthermore, an innocent party is not expected to go out of its way in searching for the best possible price to conclude a cover sale [*cf. Schwenzer/Hachem/Kee, ¶ 44.233; Chemical Fertilizer Case; Schmidt- Ahrendts/Czarnecki, Art. 75 ¶5*].

162. At the time of contracting with Herbal Cosmetics, the prevailing market price of Vanilla Orchid stood at 1100 USD [*PO 2 p.55 ¶ 2*]. The substitute sale price, therefore, was just 9% below market value, with the discount resulting from the urgency of delivery [*Exh. C6 ¶ 9*]. Therefore, CLAIMANT's cover sale was concluded at a reasonable price under Art. 75 CISG.

ii. The sale to Herbal Cosmetics was reasonable as to other terms

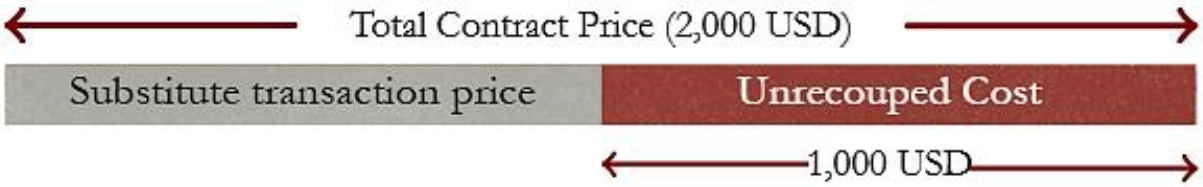
163. Under Art. 75 CISG, a substitute transaction need not mirror the original contract. While other terms of contracting, such as time, location and quantity are relevant, differences are permissible so long as it remains commercially reasonable [*Kröll, Art. 75 ¶22; Corn Fodder Case*].

164. The present contract with Herbal Cosmetics was concluded within the same time period, and involved the same quantity as the original contract [*Exh. C3 ¶¶ 2.1, 4.2*]. Although the delivery location was different, this was necessary because CLAIMANT had to find a buyer in a non-CITES country, to avoid the need for a CITES import permit [*NoA p.4 ¶ 21*]. This adjustment was a

reasonable step, consistent with CLAIMANT's duty to mitigate under Art. 77 CISG [*Art. 77, CISG*]. Thus, the other terms were either similar to the original contract or reasonably adapted.

D. CLAIMANT IS ENTITLED TO 3.3M USD IN DAMAGES UNDER ART. 75

165. Damages must be calculated as the difference between the contract price and substitute transaction price [*Art. 75, CISG*]. The contract price stood at 2000 USD, [*Cl. Ex 3* ¶ *3.1*] while the cover sale price was 1000 USD [*NoA p.5* ¶ *24*]. Therefore, the difference in the price, when multiplied by the total (3300) Orchids [*Supra* ¶¶ *136-140*], amount to 3.3M USD in damages [*Infra Calculation*].



III. *IN ARGUENDO*, CLAIMANT IS ENTITLED TO THIS AMOUNT UNDER ART. 74 CISG

166. If this Tribunal were to find Art. 75 CISG inapplicable in the present case, CLAIMANT is nonetheless entitled to the same quantum of damages under Art. 74 CISG. This is because, a reasonable substitute sale concluded prior to formal avoidance is compensable under Art. 74 CISG **(A)**. The requirement of foreseeability under Art. 74 CISG is fully satisfied **(B)**.

A. SUBSTITUTE TRANSACTIONS CONCLUDED PRIOR TO AVOIDANCE ARE COMPENSABLE UNDER ART. 74 CISG

167. Since Art. 74 does not provide a formula, tribunals are enabled to calculate damages based on the facts and circumstances of each case [*Sec. Commentary, Art. 70; Trentor, p. 145*]. Accordingly, when an aggrieved party enters into a reasonable substitute sale before avoidance, it may recover the difference between contract price and the substitute price under Art. 74 CISG, if Art. 75 CISG is deemed inapplicable [*AC Op. No. 6; Festschrift Apostolous Georgiades; Italian Grape Juice Case*].

168. Therefore, this Tribunal may apply the exact same methodology prescribed under Art. 75 CISG, to adjudge the claim under Art. 74 CISG, which does not demand avoidance. In the present case, CLAIMANT entered into a sale, that was both reasonable and a substitute [*Supra* ¶¶ *142-162*], and hence damages are justified under Art. 74 CISG, using Art. 75's methodology.

A. THE PRESENT DAMAGES WERE FORESEEABLE

169. Under Art. 74 CISG, damages are recoverable only if the loss was foreseeable at the time of contract conclusion [*Schwenzer, Art. 75* ¶ *4; W Witz/Salger/Lorenz, Art 74* ¶ *2*]. The relevant event which must be foreseeable is not the breach itself, but the possible consequences flowing from such a breach [*Murray, p.365; Albert Kritzer, p. 477; Saidov/Cunnington, p. 311*].

170. RESPONDENT may contend that the loss arose from a decrease in price of Orchid and was unforeseeable. However, such a defence would fail. This is because unfavourable market price changes are deemed foreseeable to a breaching party **(i)**. In the present case, any losses arising from a decrease in price was foreseeable **(ii)**.

i. Unfavourable Market Price changes must be deemed foreseeable

171. A breaching party bears the risk of unforeseeable price changes, that may give rise to a claim for damages. Their risk may not be shifted to the innocent party for lack of foreseeability [*Schwenzer, Art. 74 ¶ 54; Electric Kettles Case*]. Were it otherwise, a breaching party could weaponize unfavourable market shifts as a justification to terminate, and deny the aggrieved party damages under Art. 74 CISG. RESPONDENT, being in breach, cannot benefit from their own mischief by claiming unforeseeability of a price decrease.

ii. Any losses arising from a decrease in price was objectively foreseeable

172. Orchid prices have exhibited extreme volatility over the past five years, varying between USD 2,500, 2,000, 1,100, and 3,200 [*PO2 p.55 ¶2*]. Accordingly, losses arising due to a downward price movement were objectively foreseeable to any reasonable party. In accordance with Art. 74 CISG, only the *general extent* of the loss must be foreseeable, and not its exact bounds [*Schwenzer, Art. 74, ¶ 39; Bianca/Bonell, Art. 74 ¶ 2.10; Cooling Machines Case*]. Thus, CLAIMANT is entitled to 3.3 million USD in damages under Art. 74 CISG [*Supra ¶165; Infra Calculation*].

IV. ALTERNATIVELY, CLAIMANT IS ENTITLED TO 3.3 MILLION USD BY SET-OFF UNDER A SELF-HELP SALE

173. Even if the CLAIMANT were not entitled to the damages claimed under Arts. 75, and 74 CISG, CLAIMANT would be entitled to the same amount as a result of a set-off. This is because CLAIMANT made a valid self-help sale within Art. 88 CISG **(A).** CLAIMANT remains entitled to set-off the difference between the contract price and sale price **(B)**.

A. THE CLAIMANT MADE A VALID SELF-HELP SALE WITHIN ART. 88 CISG

174. To constitute a valid self-help sale, a party must have a duty to retain the goods in accordance with Art. 85 CISG. CLAIMANT'S sale qualifies as a self-help sale, since it was acting under a duty to retain the goods **(i)**. Further, all other requirements of the self-help sale are met in the present case **(ii)**.

i. CLAIMANT was under a duty to retain the goods, in accordance with Art. 85

175. To make a self-help sale under Art. 88, the aggrieved party must be under a duty to retain goods under Art. 85 CISG [*Art. 88, CISG; Art. 85, CISG*]. Such a duty arises where the buyer is in delay in taking delivery, and the seller remains in possession of the goods.

176. When a buyer refuses to take delivery prior to the due date, such conduct may be treated as a '*delay in taking delivery'* within the meaning of Art. 85 CISG [*Schwenzer, Art. 85 ¶ 4; Schlechtriem/Magnus, Art. 94 EKG, No. 1; Kröll, Art. 85, ¶ 11*]. On 10 February, RESPONDENT informed CLAIMANT that timely delivery had become '*impossible*' [*Exh. C 6 ¶ 4*]. This constituted a refusal to take delivery [*Supra ¶¶ 146-154*], thus meeting the requirement of a '*delay in taking delivery*' within Art. 85 CISG.

177. It is further required, that the aggrieved party must be in possession of the goods at the time of such refusal [*Art. 85, CISG*]. At the time of this refusal, CLAIMANT remained in possession of the Orchids, which continued to be stored in its greenhouses [*Exh. C 6 ¶ 5*]. Therefore, both the conditions of Art. 85 being satisfied, CLAIMANT was under a duty to retain the goods.

ii. The sale to Herbal Cosmetics meets the requirements of a self-help sale

178. In compliance with Art. 88 (1) CISG, CLAIMANT sold the goods due to unreasonable delay in taking delivery caused by the RESPONDENT **(a)** and gave a notice of its intention to sell **(b)**.

a. The RESPONDENT was in an unreasonable delay in taking delivery of the goods

179. Whether a delay is unreasonable, within the meaning of Art. 88 (1) CISG, is a matter of enquiry, as to the costs and burdens of preserving the goods [*Herber/Czerwenka, Art. 88 ¶ 2*]. However, when the buyer expressly refuses to take delivery, such refusal in itself is sufficient in making the delay '*unreasonable*' under Art. 88 CISG [*Kröll, Art. 88 ¶14; Schwenzer, Art. 88 ¶5; MüKoBGB/P Huber, Art. 88 ¶ 3*]. Therefore, RESPONDENT having refused to take delivery, [*Supra ¶¶ 146-154*] meets the requirement of an *'unreasonable delay'* in the present case.

b. The CLAIMANT gave a valid notice of its intention to sell

180. A notice of intention to perform a self-help sale may be given to the other party in any form [*Schwenzer, Art. 88 ¶ 7; Austrian Garments Case; AC Op. 1*]. Such notice may be given both before or after the breaching party has caused an unreasonable delay [*Brunner/Gottlieb, Art. 88 ¶ 3; Enderlein/Maskow/Strohbach, Art. 88, Note 3.1; Reinhart, Art. 88 ¶ 3*]. On 10 February, Mr. Haarman informed Mr. Albius, that if RESPONDENT was unable to take delivery, CLAIMANT would sell the goods to another buyer, thus satisfying this requirement [*Exh. C 6 ¶5*].

181. *In Arguendo,* even if this notice were deemed insufficient, it does not hamper the validity of the self-help sale itself [*Schwenzer/Fountoulakis/Dimsey, p. 778; Kröll, Art. 88 ¶ 19; Mobile Phone Covers Case*]. At most, RESPONDENT would only be entitled to damages, resulting from a lack of notice [*Ferrari/Kieninger, Art. 88 ¶ 6; Schwenzer, Art. 88 ¶ 9*]. Therefore, CLAIMANT's sale to Herbal Cosmetics constituted a valid self-help sale within the meaning of Art.88 (1) CISG.

B. CLAIMANT IS ENTITLED TO SET OFF THE PRICE DIFFERENCE ARISING FROM THE SELF-HELP SALE

182. When a party sells goods by way of a self-help sale, it must remit the proceeds to the other party, after deducting preservation expenses [*Art. 88 (3), CISG*]. However, after a self-help sale, the seller may remit the proceeds, and simultaneously claim full contractual price as damages [*Schwenzer, Art. 62 ¶ 18; Maier/Lohman ¶ 406; Steel Pipes Case*]. Alternatively, the seller may directly claim the difference between the contract price and the proceeds, as damages under Art. 74 CISG [*Shamo Jeans Case; Cotton Gin Motes Case*]. In any case, the seller remains entitled to this price differential.

183. CLAIMANT, in good-faith, is ready to waive off all preservation expenses, by remitting the entire sale amount. At the same time, CLAIMANT is entitled to receive the contractual price.

184. These amounts naturally interact through *set-off*, as it is governed by the CISG [*AC Op. 18; AC Op. 9*]. Alternatively, even if the CISG were viewed as silent, such a right may be derived with recourse to the general principle of '*good faith*' [*Hungarian Injection Case*]. Finally, even if set-off were not to be governed by the CISG, recourse must be had to the domestic law [*Czech Floor Materials Case; Set-Off Case*]. The relevant domestic law is the UNIDROIT Principles, which permit the right to set-off [*Art. 7.1.6, PICC; PO 1 ¶4*]. Therefore, whichever view is adopted, CLAIMANT is entitled to set-off the contractual price against the remittance amount.

185. The contract price is 2000 USD [*Exh. C 3 ¶ 2.1*], and the self-help sale amounts to 1000 USD [*Exh. C 6 ¶ 10*]. Setting these amounts off against each other, in relation to the outstanding amount on 3300 Orchids [*Supra ¶¶ 136-140*], gives rise to a claim of 3.3 million USD [*Infra Calculation*].

V. *IN ARGUENDO*, CLAIMANT IS AT MINIMUM ENTITLED TO 2.97M USD IN DAMAGES

186. If this Tribunal were to find that RESPONDENT's communication on 10 February did not amount to an anticipatory breach within Art. 72(3) CISG, it may reject the CLAIMANT's damages under Art. 75 and Art. 74 CISG. However, even in such a case, CLAIMANT would still, at a minimum, be entitled to 2.97M USD in damages under Art. 76 CISG **(A)**. Contrary to Respondent's submissions, the October sale cannot be construed as a valid cover sale **(B)**.

A. CLAIMANT IS ENTITLED TO 2.97M USD IN DAMAGES UNDER ART. 76 CISG.

187. If RESPONDENT's communication on 10 February, were not a breach under Art. 72 (3) CISG, their communication on 27 February clearly was. On 27 February, it expressly stated that delivery had become '*impossible*'. This amounts to the clearest refusal to perform, within the meaning of Art. 72(3) CISG [*Art. 72 (3), CISG; Honnold/Fletcher, Art. 72 ¶ 396*]. CLAIMANT did not enter into a cover sale after formal avoidance on 1 March [*Exh. R ¶3*]. Thus, damages must be calculated using the market-price method under Art. 76 CISG [*Achilles, Art 76, ¶2; CISG Online 491*].

188. Damages must be calculated as the difference between contract price and the market price on the date of avoidance [*Exh. C 3 ¶2.1; PO2 p.55 ¶2*], and amount to 2.97M USD [*Infra Calculation*].

Article	Art. 75/74 CISG	Self-Help Sale	Art. 76 CISG
Contract Price **(CP)**	2000 USD	2000 USD	2000 USD
Quantity **(Q)**	3300 Orchids	3300 Orchids	3300 Orchids
Sale Price **(SP)**	1000 USD	1000 USD	N/A
Market Price **(MP)**	N/A	N/A	1100 USD
Formula	**[CP – SP] × Q**	**[CP × Q] – [SP × Q]**	**[CP – MP] × Q**
Calculation of Damages	[2000 – 1000] × 3300	[2000 × 3300] – [1000 × 3300]	[2000 – 1100] × 3300
Total Damages	***3,300,000 USD***	***3,300,000 USD***	***2,97,000 USD***

B. THE OCTOBER SALE DOES NOT QUALIFY AS A SUBSTITUTE TRANSACTION

189. RESPONDENT may argue that CLAIMANT'S October sale constitutes a cover sale, rendering Art. 76 CISG inapplicable [*cf. RN0A ¶26*]. This is untenable. A cover sale must be concluded with the intention of replacing the avoided performance and protecting the aggrieved party's '*expectation interest*' [*Schwenzer Art. 75 ¶1; Kröll Art. 75 ¶12*]. CLAIMANT'S October sale to Herbal Cosmetics concerned 2000 plants from a different batch, *which were not even ready for sale at the time of termination* [*Exh. C6 ¶12*]. These plants *were to flower in April 2025*, unlike the 3300 plants *which were to flower in June/July 2024* [*ibid*]. As the October sale related to entirely different goods, it could not replace RESPONDENT'S performance and therefore cannot qualify as a cover sale [*Delchi Carrier Case*].

190. **Conclusion to Part 4:** CLAIMANT is entitled to 3.3M USD in damages under Art. 75 CISG, or under Art. 74 CISG. CLAIMANT may also claim this as a result of a set-off. Should the breach be determined to have occurred on 27th February, CLAIMANT is at minimum entitled to 2.97M USD.

PRAYER FOR RELIEF

In light of the above, CLAIMANT respectfully requests the Tribunal to grant the following relief:

(1) DECLARE that the 2016 SIAC Rules apply to the current proceedings.

(2) DENY the disclosure of the third-party funding agreements.

(3) DECLARE that RESPONDENT is not exempt under Art. 79 CISG.

(4) DECLARE that CLAIMANT is entitled to 3,300,000 USD in damages.

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CERTIFICATE OF AUTHENTICATION

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

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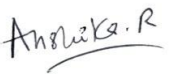
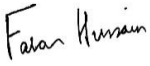
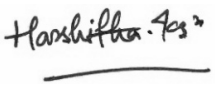
NAME: ANSHIKA RANJAN SIGNATURE: 

NAME: FARAN HUSSAIN SIGNATURE: 

NAME: HARSHITHA ADARI SIGNATURE: 

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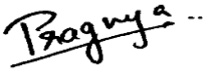
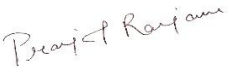
NAME: PRAGNYA AMIREDDY SIGNATURE: 

NAME: PRANJAL RANJAN SIGNATURE: 

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